

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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ATTORNEY GENERAL

June 13, 1988

DAN LIPSCHULTZ
Dept. of Human Services, Rules Div.
444 Lafayette Road, 2d Floor

MARTHA J. CASSERLY
Special Assistant
Attorney General

296-6839

In the Matter of the Adopted Permanent Rules Relating to AFDC; Employment and Training, pts. 9500.2720-30.
RR#1488

The above-referenced rule has been approved as to its legality by the Attorney General on June 10, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:bbl

Enclosures

cc: Maryanne Hruby
Duane Harves

RULE REVIEW CHECKLIST

File No. 1488
DATE RECEIVED 5-27-88
REVIEW DATE 6-6-88
DUE DATE 6-10-88

APPROVED 6.10.88 mjc
DISAPPROVED
WITHDRAWN

Docket No. 05-0009.0850
ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

12/21/87 Date published in State Register

NONE Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule

YES Revisor's Certificate

✓ Notice of Intent to Adopt Rule

256.736 Subd 7 (1987) Statutory Authority

NO Small Business Statement

YES Expenditure of public money statement

YES Signature

✓ Statement of Need and Reasonableness

NO Small Business Statement

NO Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

3/9/88 Date (30)/25 days before adoption

✓ Publication in State Register

3/14/88 Date (30)/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting

5/26/88 Date

✓ Written requests, submissions or comments (~~3~~)

✓ Declaration of attorney

Craig Anderson Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

MJC

Department of Human Services

Adopted Permanent Rules Relating to Aid to Families With Dependent Children; Employment and Training

Rules as Adopted

9500.2720 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 9500.2720 to 9500.2730 have the meanings given them in this part and in part 9500.2060 unless otherwise indicated.

Subp. 2. **Employability plan.** "Employability plan" means a plan written for a registrant by an employment and training provider in consultation with the registrant that defines the registrant's employment and training goals and outlines the training, education, and support services the registrant needs to achieve these goals.

Subp. 3. **Employment search.** "Employment search" means the program authorized under the Code of Federal Regulations, title 45, part 240, which provides AFDC recipients with training and assistance in finding and securing regular, unsubsidized employment.

Subp. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services as defined in Minnesota Statutes, section 256.736, subdivision 1a, paragraph (d).

Subp. 5. **Employment and training service provider or service provider.** "Employment and training service provider" or "service provider" means a provider certified by the commissioner of jobs and training under Minnesota Statutes, section 268.0122, subdivision 3, to deliver employment and training services.

Subp. 6. **Priority caretaker.** "Priority caretaker" means a caretaker who:

A. is under age 21;

B. has not graduated from high school or received a

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general equivalency diploma; or

C. has received AFDC for 24 or more months out of the last 36 consecutive calendar months.

9500.2722 ORIENTATION REQUIREMENT.

Subpart. 1. **Local agency responsibilities.** Each local agency shall:

A. provide or contract with another entity to provide orientation to AFDC caretakers residing in the local agency's jurisdiction who are required to attend orientation under subpart 2; and

B. provide or pay the reasonable cost of child care and transportation needed to enable a caretaker to attend orientation. A local agency is not required to pay child care costs that exceed limits established by the local agency under Minnesota Statutes, section 268.91, subdivision 8.

Subp. 2. **Mandatory participants.** A recipient shall attend an orientation session if the recipient is:

A. a caretaker who is a principal wage earner in an assistance unit whose eligibility is based on the unemployment of a parent under part 9500.2300;

B. a priority caretaker; or

C. a caretaker who is determined eligible for AFDC on or after July 1, 1988, and who has not attended an orientation within the previous 12 calendar months.

Subp. 3. **Orientation content.** Orientation must consist of a presentation that tells a recipient of the identity, location, and phone number of available employment and training services, and support services relevant to the recipient's circumstances. Orientation must encourage recipients to view AFDC as a temporary program providing grants and services to clients who set goals and develop strategies for supporting their families without AFDC assistance. The content of orientation must not imply that a recipient's eligibility for AFDC is time limited. The presentation must also inform recipients of the headstart program and encourage caretakers to have their

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children screened for enrollment in the program where appropriate.

Subp. 4. **Orientation format.** Videotaped presentations may be used, but orientation must include the opportunity for face-to-face interaction between the recipient and staff of the local agency or the entity providing orientation.

Subp. 5. **Good cause for failure to attend orientation.** Good cause for failure to attend orientation exists when a recipient cannot attend because of:

A. illness or injury of the recipient;

B. illness or injury of a member of the recipient's family that requires the recipient's care during the hours when orientation is offered;

C. an inability to obtain the necessary child care ~~and~~ or transportation; ~~or~~

D. employment, school, or employment and training service obligations that are scheduled during the hours when orientation is offered and that cannot be changed to allow participation in orientation;

E. a judicial proceeding that requires the recipient's presence in court during the hours when orientation is scheduled; or

F. a nonmedical emergency that requires the recipient's presence at a different location during the hours when orientation is scheduled. "Emergency" under this item means a sudden, unexpected occurrence or situation of a serious or urgent nature that requires immediate action.

Subp. 6. **Notice to mandatory participants.** Except as provided in subpart 7, the local agency shall provide written notice of the orientation requirement to a recipient required to attend orientation under subpart 2. The notice must tell the recipient the time, date, and location of the orientation that the recipient is scheduled to attend, the consequences of failing to attend on the scheduled date, and the recipient's appeal rights in part 9500.2740, subparts 8 to 10. The notice must be mailed or delivered to the recipient at least ten days

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before the recipient's scheduled orientation date.

Subp. 7. **Voluntary early participation in orientation.** If the local agency and the applicant or recipient agree ~~to have the recipient's orientation occur within ten days after the recipient is determined eligible for AFDC, no notice of,~~ orientation ~~is required~~ may be provided before issuance of the notice under subpart 6. If the applicant or recipient fails to attend orientation ~~within ten days immediately following the eligibility determination as~~ on the agreed upon date, the local agency shall schedule the recipient for orientation under subpart 8 and issue a notice under subpart 6.

Subp. 8. **Timing of orientation.** A recipient required to attend orientation under subpart 2 must attend orientation on the date scheduled by the local agency under this subpart unless the recipient has good cause for not attending on that date or the local agency and recipient agree on a different date. The local agency must schedule a recipient required to attend orientation under subpart 2, item A or B, for an orientation session to be held before January 1, 1989. The local agency must schedule a recipient required to attend orientation under subpart 2, item C, for an orientation session to be held within 60 days after the local agency mails the recipient's notice of eligibility.

Subp. 9. **Sanctions for failure to attend orientation.** If a recipient who is required to attend orientation under subpart 2 fails, without good cause, to attend orientation on a scheduled or agreed upon date after issuance of the notice required under subpart 6, the recipient must be sanctioned under items A ~~to C~~ and B. Before imposing sanctions under item A or B, the local agency must provide the notice required under part 9500.2740, subpart 6.

A. When a recipient fails for the first time to attend an orientation session, the local agency shall issue a maximum of 50 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the

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recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

B. When a recipient fails for the second time to attend an orientation session, the local agency shall issue 100 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. ~~The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.~~ The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The sanction under this item ends when the recipient attends the orientation. The local agency shall then issue to the recipient any remaining benefits being held for vendor or protective payments.

~~C. When a recipient fails for the third time to attend an orientation session, the local agency shall not take the recipient's needs into account when determining the amount of the next monthly payment to the assistance unit. The amount of the monthly payment to which the rest of the assistance unit is entitled, if any, must be issued in the form of a vendor or protective payment. The recipient's needs must not be considered again until the recipient has attended an orientation session. The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. The recipient must contact the local agency to schedule an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The~~

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~~sanction-under-this-item-ends-when-the-recipient-attends-the orientation,-and-the-local-agency-shall-issue-prorated-benefits for-the-rest-of-the-payment-month-following-the-date-the recipient-attends-the-orientation.~~ When a vendor payment is required under item A or B, the local agency may continue payments to the caretaker to the extent that no vendor is available.

9500.2724 GENERAL EMPLOYMENT AND TRAINING REQUIREMENTS.

Subpart 1. **Registration and referral for employment and training services.** Except for registration with the local job service office under part 9500.2300, item F, or subpart 2 of this part, completion of the AFDC application form automatically registers the applicant for WIN and for other mandatory employment and training services that require registration. The local agency shall refer to the local WIN office recipients residing in WIN counties who are not exempt from mandatory WIN registration under part 9500.2726, subpart 1. The local agency shall refer to the local job service office recipients who are principal wage earners residing in non-WIN counties whose program eligibility is based on the unemployment of a parent under part 9500.2300.

Subp. 2. **Mandatory employment and training participation.** Recipients shall participate in WIN if required under part 9500.2726, subpart 1, in employment search if required under part 9500.2728, subpart 1, and in CWEP if required under parts 9505.1050 to 9505.1065 [Emergency]. ~~When~~ A principal wage earner who resides in a non-WIN county and ~~who~~ whose program eligibility is ~~eligible~~ based on the ~~basis of~~ unemployment of a parent under part 9500.2300 ~~does not register~~ must be currently registered with the local job service office. If an applicant or recipient does not comply with this requirement, the person's entire assistance unit shall be ineligible.

9500.2726 WIN REQUIREMENTS.

Subpart 1. **Participation in WIN.** A recipient living in a WIN county, regardless of the recipient's basis of program

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eligibility under parts 9500.2180 to 9500.2300, shall cooperate with the local WIN office as a condition of AFDC eligibility unless the local agency determines that the applicant or recipient is exempt. A recipient who is exempt from mandatory WIN registrant status is:

A. A child under the age of 16.

B. A student who is at least 16 but less than 18 years of age and meets the conditions of part 9500.2060, subpart 58, item A, B, C, or F.

C. A person who is 18 years of age and meets the conditions of part 9500.2060, subpart 39, items B and C.

D. A person who, for up to 90 consecutive days, is ill or injured to the extent that the illness or injury temporarily prevents participation in training or employment. Determination of an exemption under this item must be made by the AFDC unit and may be allowed without medical documentation when the illness or injury is evident. An exemption for an illness or injury that extends for 90 days or more must be documented by medical evidence described in item E.

E. A person who, for at least 90 consecutive days, is physically or mentally incapacitated when the incapacitating factors, by themselves or with the person's age, prevent participation in training or employment. The incapacity must be documented by medical evidence. The medical evidence must include a prognosis and diagnosis of the impairment from at least one licensed physician or licensed psychologist. The local agency shall give the applicant or recipient voluntary referral to the Minnesota Department of Vocational Rehabilitation upon determination of the exemption.

F. A person 65 years of age or older.

G. A person whose round trip commuting time from the person's residence to the local WIN office is more than two hours by the means of transportation available to the recipient and exclusive of the time needed to transport children to and from child care.

H. A person needed in the home to care for a

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physically or mentally incapacitated person living in the household. The incapacity and the need for care must be documented by medical evidence from a licensed physician or licensed psychologist.

I. A parent or caretaker of a child under age six who is providing full-time care for that child. A person who is anticipated to be absent from the child for an average of at least 30 hours per week during the current and following month, exclusive of absences related to providing care for the child, does not qualify for this exemption.

J. A person who is currently employed in unsubsidized employment that is expected to last at least 30 days and that provides a monthly average of at least 30 hours of employment per week.

K. A parent who is not a principal wage earner but who is in an assistance unit whose program eligibility is based on the unemployment of a parent, provided the principal wage earner in the assistance unit is not exempt under the other items of this subpart and is cooperating with WIN.

L. A person, who after applying for AFDC, volunteered to participate under the Volunteers in Service to America (VISTA) program as provided by United States Code, title 42, sections 4951 to 4959 as amended through December 31, 1987.

M. A pregnant woman when the pregnancy has entered the third trimester.

N. A person employed under a work supplement program established under the Code of Federal Regulations, title 45, part 239.

Subp. 2. **Good cause for noncooperation with WIN.** A recipient who has good cause for not cooperating with WIN shall not be sanctioned. Good cause for not cooperating with WIN must be determined under the Code of Federal Regulations, title 45, section 224.34.

Subp. 3. **Determination of noncooperation.** The WIN office shall determine whether a WIN registrant has, without good cause, failed to cooperate with WIN. The WIN office shall

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notify the local agency of a deregistration action taken against a registrant for noncooperation. When notified of deregistration, the local agency shall sanction the recipient under part 9500.2730, beginning with the first payment month following deregistration in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

9500.2728 EMPLOYMENT SEARCH REQUIREMENTS.

Subpart 1. **Participation in employment search.** ~~A~~ Each local agency shall provide a mandatory employment search program for recipients whose participation is mandatory under item A. A local agency may provide a voluntary employment search program for recipients who are not required to participate under item A. The employment search program must be administered in accordance with items A to C.

A. A caretaker who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under part 9500.2300 must participate in employment search as a condition of AFDC eligibility unless:

(1) the caretaker is exempt from WIN participation under part 9500.2726, subpart 1, items A to F or H to N;

(2) the caretaker is currently participating in another employment and training service~~,-other-than-the employment-search-component-of-WIN,~~ which can reasonably be expected to improve the recipient's ability to obtain and keep employment;

(3) the caretaker's employability plan specifies other activities that ~~prevent-or-contraindicate~~ conflict with participation in employment search; or

(4) the caretaker cannot secure employment because of an inability to communicate in the English language as determined by the local agency, a specialist in English as a second language, or a vocational specialist as defined in part 9500.1206, subpart 33, and the recipient is attending a program

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in English as a second language, if available.

B. In the third month after determining that a recipient is required to participate in employment search, the local agency shall refer the recipient to the employment search service provider and inform the recipient of the consequences of failure to participate and of the recipient's appeal rights.

C. The employment search service provider shall specify the number of weeks and hours that a recipient must participate in employment search. The service provider shall not require a recipient to participate in employment search for more than eight weeks in any 12 consecutive calendar months and for more than 32 hours during any week.

D. A WIN registrant who is suspended from WIN and referred to the employment search program by the local WIN office is not exempt from the employment search program under item A, subitem (2).

Subp. 2. **Offers of employment.** A recipient who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under 9500.2300 must, as a condition of AFDC eligibility, accept any bona fide offer of employment made by an employer.

Subp. 3. **Good cause for refusing or terminating employment or failing to comply with employment search requirements.** A recipient who fails to participate in employment search required under subpart 1 or accept employment as required under subpart 2 shall not be sanctioned if the recipient has good cause for the failure. ~~A local agency shall determine~~ Good cause shall be determined by applying the conditions in items A to I.

A. Good cause exists when a job or employment search is not suited to the physical or mental capacity of the person or when it will have an adverse effect on that person's physical or mental health. Evidence from a licensed physician or licensed psychologist must document a claim under this item.

B. Good cause exists when the round trip commuting time from a person's residence to the employment search or job site is more than two hours by available means of

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transportation, exclusive of the time to transport children to and from child care.

C. Good cause exists when licensed child care is required but not available.

D. Good cause exists when the work or employment search site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Jobs and Training.

E. Good cause exists when a person documents discrimination at the job or employment search site on the basis of age, sex, race, religion, or place of national origin.

F. Good cause exists when the hourly gross employment earnings are less than the federal or state minimum wage for that type of employment, whichever applies.

G. Good cause exists when the gross monthly employment earnings are less than 185 percent of the AFDC family allowance for the recipient's assistance unit.

H. Good cause exists when the job that is offered is vacant due to a strike, lockout, or other bona fide labor dispute.

I. Good cause exists when the recipient incurs unreimbursed out-of-pocket expenses to participate in employment search.

Subp. 4. **Determination of failure to accept employment or participate in employment search.** The employment search service provider shall determine whether a recipient has failed, without good cause, to comply with employment search requirements under subpart 1 or accept employment as required under subpart 2. If the employment search or employment offer is provided through WIN, the WIN office shall make the determination. If the service provider determines that a recipient has failed, without good cause, to comply with the participation or employment requirements of subpart 1 or 2, the provider shall notify the recipient under subpart 5.

Subp. 5. **Notice of failure to participate or accept employment.** If a service provider determines under subpart 4

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that a recipient has failed, without good cause, to participate in employment search or accept employment as required, the provider shall mail a written notice of its determination to the recipient at the recipient's last known mailing address. The notice shall provide a detailed explanation of the reasons for the determination, the consequences of failure to participate or accept employment, the actions the service provider believes are necessary for the recipient to comply with the employment and training requirements, the right to request a conciliation conference within 15 days after the date the notice is mailed, and the right to request a hearing under part 9500.2740, subpart 8.

Subp. 6. **Conciliation conference.** A service provider shall, according to its contract with the local agency, provide a conciliation conference to recipients who request a conference within 15 days after the notice under subpart 5 is mailed. The conciliation conference must be conducted according to items A to D.

A. If a recipient requests a conciliation conference, the service provider shall provide the conference within 30 days after receiving the recipient's written request for a conference. The service provider shall notify the recipient of the conference date at least ten days before the date of the conference.

B. The local agency shall reimburse the recipient for the recipient's reasonable and necessary child care and transportation expenses incurred as a result of the recipient's attendance of the conciliation conference.

C. The service provider shall hold the conciliation conference during regular working hours at the service provider's office. If the service provider and the recipient agree, the conciliation conference may be conducted over the telephone.

D. If a conciliation conference is not requested or if the dispute is not resolved at the conference, the service provider shall provide to the local agency and to the recipient

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written notification of its determination that the recipient failed or refused without good cause to participate in employment search or accept employment.

Subp. 7. **Final determination before sanction.** When WIN does not sanction a recipient for failure to accept employment assigned by WIN or participate in an employment and training service provided through WIN, a local agency shall not apply sanctions for the same failure. The local agency shall make a final determination of whether the recipient has failed, without good cause, to accept employment that has not been assigned by WIN or to participate in employment search program that has not been provided through WIN. Upon final determination of failure to participate or accept employment, the local agency shall apply the sanctions under part 9500.2730.

9500.2730 SANCTIONS FOR FAILURE TO PARTICIPATE IN A MANDATORY EMPLOYMENT AND TRAINING SERVICE OR ACCEPT EMPLOYMENT.

Subpart 1. **Notice.** If a local agency is notified of WIN deregistration under part 9500.2726, subpart 3, or if a local agency determines under part 9500.2728, subpart 7, that a recipient has failed, without good cause, to participate in employment search or accept employment, the local agency shall notify the recipient that the local agency will impose the sanctions of subpart 2, beginning with the first payment month following deregistration or noncompliance in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

Subp. 2. **Sanctions.** The following sanctions apply to recipients who do not comply with WIN, employment search, or employment requirements:

A. When a recipient is also the principal wage earner under part 9500.2300, the entire assistance unit is ineligible for three payment months for the first failure to comply or for six payment months for later failures to comply. When, during the period of sanction, the principal wage earner leaves the home or when either parent becomes incapacitated and eligibility

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is established under parts 9500.2180 to 9500.2260, the sanction period ends for the remaining members of the assistance unit.

B. When a recipient in an assistance unit that qualifies under part 9500.2300 is the parent who is not the principal wage earner, or when the recipient is a parent caretaker in an assistance unit that qualifies under part 9500.2180, 9500.2220, or 9500.2260, the parent caretaker shall be removed from the assistance unit. The parent caretaker shall be ineligible for a period of three payment months for the first failure to comply or for six payment months for later failures to comply. Protective or vendor payments shall be issued for the needs of the remaining members of the assistance unit under part 9500.2680, subpart 2, item A until the period of the sanction ends or the recipient who is under sanction is no longer a member of the assistance unit.

C. When a recipient who is under sanction is a caretaker relative other than a parent or is one of several dependent children, that person must be removed from the assistance unit for three payment months for the first failure to comply or for six payment months for subsequent failures to comply. When the recipient is the only dependent child in the assistance unit, the assistance unit shall be ineligible for AFDC for three payment months following the first occasion of noncompliance or for six payment months following later occasions of noncompliance.

REPEALER. Minnesota Rules, part 9500.2700, subparts 13, 14, 15, 16, 17, 18, and 19, are repealed.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

June 10 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 13 1988

Joan Anderson Growe 12:10 P.M.
Secretary of State

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

TO: Rita Desmond
515 Transportation Building
St. Paul, MN 55155

RECEIVED

MAY 27 88

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

FROM: Dan Lipschultz 7-4302
Rules Division
Minnesota Department of Human Services
444 Lafayette Road, 2nd Floor
St. Paul, MN 55155-3816

SUBJECT: Review of a Rule Adopted Without a Public Hearing: Rules Relating to Aid to Families with Dependent Children; Employment and Training, parts 9500.2720 to 9500.2730.

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavit states that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. The notice of submission of the rule to the attorney general.

12. The affidavit of mailing notice of submission of the rule to the attorney general.

If you have any questions on this submitted material, please call me at 297-4302.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

RECEIVED
JUN 09 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

Martha Casserly
Office of the Attorney General
Administration/Finance Division
515 Transportation Building
St. Paul, MN 55155

Dear Ms. Casserly:

In our phone conversation Monday, June 6, you informed me that you had spoken with an individual employed by the Department of Jobs and Training (DJT) regarding the Department of Human Service's AFDC Employment and Training Rule, parts 9500.2720 to 9500.2730. This rule was submitted to your office on May 27, 1988 for adoption.

According to the information you gave me over the phone, the oral comments you received pertain to part 9500.2722, subpart 7 of the adopted rule. Specifically, the commentator appears to have raised two issues: (1) whether the changes to subpart 7, as proposed, violate state statute to the extent the changes permit counties to provide orientation to applicants; and (2) whether the changes to subpart 7 are "substantial."

I.
WHETHER THE CHANGES TO PART 9500.2722, AS PROPOSED, VIOLATE STATE STATUTE TO THE EXTENT THE CHANGES PERMIT COUNTIES TO PROVIDE ORIENTATION TO APPLICANTS

This issue appears to be the same issue raised by DJT in its comments submitted during the public comment period. DJT's comments on this issue are discussed on page 11 of the Department's Findings of Fact and Order Adopting.

In its comments, DJT argued that Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10, clause (6) prohibits counties from providing orientation to applicants. This provision "requires all caretakers coming into the AFDC program to attend orientation." DJT asserted that the phrase "coming into the program" limits orientation to individuals who have been determined eligible for AFDC.

The Department's Findings point out that the phrase referred to by DJT is present in the provision requiring caretakers to participate in orientation; it is not contained in the provision requiring counties to provide orientation. There is, in fact, no limiting language in the provision that requires counties to provide orientation. Instead, the provision requires counties to provide "all caretakers" with orientation. Minn. Stat. §256.736, subd. 10 (3) (Supp. 1987). Applicants as well as

recipients come within the statutory definition of caretaker. Minn. Stat. §256.736, subd. 1a (c) (Supp. 1987) ("Caretaker means a parent or eligible adult who is part of the assistance unit that **has applied for or** is receiving AFDC."). Therefore, if DJT's interpretation of the phrase "coming into the program" is correct, the phrase at most places a limit on who may be required to participate in orientation. It does not place limits on who among caretakers may be offered the option of participating in orientation.

It is unlikely the legislature intended to make orientation unavailable to AFDC applicants. If it had intended to limit orientation in this way it could have simply used the term "recipient" instead of the more inclusive term "caretaker" in setting forth the orientation requirements in statute. Indeed, in subdivision 1b of the same section of statute the legislature used the term recipient in limiting availability of the work incentive subsidized housing program.

Orientation is, in essence, a forum for the provision of information on the AFDC program and community resources available to help caretakers become self-sufficient. As such, providing orientation to applicants would not be a novel or unusual practice. Applicants are typically provided with an array of information which may be helpful to a person seeking AFDC, including information on the emergency assistance program, the food stamp program, the EPSDT program, employment and training services and sliding fee child care. It is doubtful that the legislature would intend to delay the provision of potentially beneficial information until after eligibility is determined, particularly in light of the long-standing practice of providing information to applicants. Indeed, it is possible that orientation will provide information on employment and support services that eliminates the need for AFDC before an applicant begins receiving AFDC.

My notes from our telephone conversation indicate that the commentator you spoke with expressed concern that providing orientation to AFDC applicants would divert a significant portion of AFDC resources away from AFDC recipients in favor of individuals who never receive AFDC. The legal argument implicit in the commentator's suggestion is that state statute must prohibit the provision of orientation to applicants because the legislature would not have intended to permit the use of AFDC resources for purposes unrelated to AFDC.

In reality, approximately 90% of all AFDC applicants are found eligible for AFDC (87% in 1987). Therefore, very few applicants will receive orientation without going on to become AFDC recipients. Moreover, even if an applicant is not ultimately found eligible for AFDC, providing orientation to the applicant may further the goals of the AFDC program by connecting the applicant with employment or support services that make the person self-sufficient without the need for AFDC benefits. Given the small number of applicants who are not ultimately found eligible for AFDC and given the substantial benefits of providing information at the earliest possible date, it is unlikely the legislature intended to absolutely prohibit counties from making orientation available to AFDC applicants. Again, orientation can only be provided to an applicant with the applicant's consent and an applicant cannot be sanctioned for failing to attend orientation since subpart 2 only makes orientation mandatory for recipients.

II.
WHETHER THE CHANGES TO PART 9500.2722, SUBPART 7, AS PROPOSED, ARE SUBSTANTIAL

As proposed, part 9500.2722, subpart 2 required certain recipients to participate in orientation. Subpart 6 required local agencies to give written notice to these recipients at least 10 days before the scheduled orientation, telling them when they must attend orientation and what may happen if they do not. Subpart 9 imposed a sanction on recipients who are required to attend orientation but who fail to attend without good cause after issuance of the notice referred to in subpart 6. These provisions are essentially the same in the proposed rule as they were in the adopted rule.

As proposed, subpart 7 provided that a local agency and recipient could agree to have orientation take place within the first 10 days of eligibility without issuance of the notice required under subpart 6. This would have the effect of allowing voluntary participation in orientation at an early juncture of the person's involvement with AFDC. If the person failed to attend on the agreed upon date, the person would not be sanctioned. The person would then be subject to mandatory participation, with possible sanction, after notification and scheduling under subpart 6.

County representatives on the rule advisory committee stressed the importance of permitting orientation at the earliest possible date, particularly on the date an AFDC applicant is present at a local agency's offices for his or her intake interview. The Department indicated that counties were free to provide orientation on intake day on a voluntary basis since neither statute nor rule expressly prohibited orientation on the day of intake. Counties, however, were concerned that provisions in the proposed rule prohibiting mandatory orientation until after issuance of the notice under subpart 6 could be construed to prohibit recipients from participating in orientation voluntarily prior to issuance of the notice. Proposed subpart 7 was added to part 9500.2722 to alleviate this concern.

The language in subpart 7 as proposed was limited to recipients because the mandatory language in subparts 2 and 6 that created the concern pertained to recipients. The Department assumed that applicants and counties could, in the absence of an express prohibition, agree to have orientation take place before the applicant is found eligible. DJT's request in its official comments for language "absolutely precluding the provision of orientation on the same day as the AFDC application" suggests that DJT shared this assumption in part. See April 13 comments from Colleen Gunderson. However, DJT's comments also questioned whether orientation on application day was permitted by the proposed rule. This suggested that the Department's intent was not sufficiently clear and that subpart 7 as proposed might be construed to prohibit applicants from participating in orientation. Consequently, subpart 7 as proposed was modified as shown in the adopted rule to ensure that applicants as well as recipients have the opportunity to attend orientation.

The changes in subpart 7 are not substantial. They do not raise significant new subject matter or make a "major substantive change that was not raised by the proposed rule as originally noticed." The subject of early, voluntary orientation was raised by subpart 7 as proposed. The proposed subpart simply did not mention applicants on the assumption that voluntary participation by applicants would be permitted since state statute did not expressly prohibit it. A subpart specifying early, voluntary orientation must have been sufficient to raise any concerns with respect to who would have access to the orientation. Indeed, it was sufficient to engender comments from DJT on this point.

The modification to subpart 7 does mention a class of persons, applicants, who were not mentioned specifically in the subpart as proposed. However, it is reasonable to have expected applicants or their representatives to comment on the proposed subpart. In expressly authorizing voluntary orientation for recipients right around the time of application, the proposed subpart should have been sufficient to cause applicants or their representatives to express concerns they may have had regarding the provision and perhaps question why applicants were not included in the subpart. The fact that neither applicants nor their representatives commented on this subpart may suggest that they assumed, like the Department, that applicants were permitted to attend orientation voluntarily without express authorization in rule.

Had the rule been proposed as modified, any comments from applicants would likely have been favorable. Early, voluntary orientation benefits applicants in at least two ways. First, it allows applicants to avoid the inconvenience of returning to the local agency, often over long distances, to attend an orientation that could have been attended on the day the applicant was at the local agency for his or her intake interview. Second, by attending orientation when first present at the local agency's offices, the applicant eliminates the risk of being sanctioned for failing to attend orientation at a later date. Since early participation by applicants is completely voluntary, it imposes no burden on applicants. The modification to subpart 7 simply ensures that the rule is not construed to deny applicants a right they appear to have under statute. It is highly unlikely individuals would object to a provision that ensures them this right.

As indicated in the SNR, early, voluntary orientation also benefits counties. It reduces the administrative burden of scheduling and providing notices of orientation sessions. It also reduces transportation expenses associated with bringing applicants back to the local agency for orientation after they have been found eligible. Counties have assumed that early, voluntary orientation is an option and have stressed its importance thoughout the rulemaking process.

Early, voluntary participation is beneficial to the two major parties involved directly in orientation: applicants/recipients and counties. It should further the legislative goal of helping AFDC recipients become self-sufficient. As an important component of the orientation program it should be retained.

Thank you for relaying to me the comments you received on the Department's adopted rule. Also, thank you for your consideration of this response to those comments. If you have any questions please call me at 297-4302.

Very truly yours,

Dan Lipschultz

Dan Lipschultz
Rules and Bulletins Division
Department of Human Services

cc: Paul Timm-Brock
Mike Sirovy
Kristy McGovern

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING PARTICIPATION IN EMPLOYMENT AND TRAINING SERVICES BY AFDC RECIPIENTS, PARTS 9500.2720 to 9500.2730.

MINNESOTA DEPARTMENT OF HUMAN SERVICES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The above-entitled rules are authorized by Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7 which permits the commissioner of human services to adopt rules necessary to carry out the section.

The rules, as proposed, do two things. First, they move existing WIN provisions into a new rule part governing employment and training programs with some minor modifications to existing language to reflect legislative changes adopted in 1987. Second, they implement Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10, clauses (3), (6) and (11) and subdivision 14. These provisions (1) require local agencies to provide orientation and employment search programs, and (2) require certain AFDC recipients to participate in orientation and employment search as a condition of AFDC eligibility.

The proposed rules have been developed in consultation with an advisory committee composed of representatives from counties, service providers, legal aid and the department of jobs and training. This committee met on three separate occasions to discuss various drafts of the rules. The language of the proposed rules reflects input received from this committee.

SPECIFIC RULE PROVISIONS

The above-entitled rules are affirmitively presented by the department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

9500.2720 DEFINITIONS.

Subpart 1. Applicability.

This subpart is necessary to clarify that the definitions in this part apply to the entire sequence of proposed rule parts 9500.2720 to 9500.2730. It is reasonable to include this subpart since it helps ensure that affected parties understand when and how the definitions apply.

Subpart 2. Employability plan.

This subpart is necessary to clarify the meaning of an uncommon term used in the proposed rule parts. The definition is reasonable because it is consistent with federal regulations which define employability plan as a plan written for WIN registrants which sets forth the registrant's occupational goal and the manpower and support services needed to attain the goal. 45 CFR, section 224.1. This subpart modifies the federal definition slightly to ensure that the registrant is consulted in the development of the plan. The modification was suggested by a member of the advisory committee. It is reasonable because it helps ensure that the plan is truely suited to the needs and aspirations of the registrant which, in turn, helps ensure that the plan leads to employment and self-sufficiency.

Subpart 3. Employment search.

This subpart is necessary to clarify the general nature of the employment search program. The definition is reasonable because it is consistent with 45 CFR, section 240.01 which describes employment search as a program intended to "reduce welfare dependency by assisting individuals in obtaining regular unsubsidized employment."

Subpart 4. Employment and training services.

This subpart is necessary to clarify the meaning of an uncommon term used in these rule part. The definition is reasonable because it references the section of Minnesota Statutes that defines this term.

Subpart 5. Employment and training service provider or service provider.

This subpart is necessary to clarify the meaning of an uncommon term used in these rule parts. The definition is reasonable because it merely restates the statutory definition of the term contained in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 1a, paragraph (e).

Subpart 6. Priority caretaker.

This subpart is necessary to clarify the meaning of an uncommon term used in these rule parts. The term is used as a convenient way of referring to individuals in the "priority groups" identified in statute. The definition is reasonable because it is restates the statutory definition of priority groups contained in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 2a.

9500.2722 ORIENTATION REQUIREMENT.

Subpart 1. Local agency responsibilities.

Item A. Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10 clause (3) requires counties to "provide all caretakers with an orientation program . . .." Item A restates this requirement and adds specificity by stating that a county is only required to provide enough orientation to accomodate mandatory participants within the county's jurisdiction.

Item A is necessary to make certain that the statutory orientation requirement is implemented. The item is reasonable because it comports with state statute in requiring counties to provide orientation. It is reasonable to limit the amount of orientation required to that which is needed for mandatory participants since this permits counties to target the program in accordance with state statute. Limiting the county's orientation obligation to caretakers within the county's jurisdiction is reasonable because it is consistent with the Minnesota unitary residence and financial responsibility act which assigns county financial responsibility for assistance to the county of residence. See Minnesota Statutes 1987 Supplement, section 256G.02, subdivision 4.

Item B. Item B requires counties to provide or pay the reasonable cost of child care and transportation needed to enable caretakers to attend orientation. This requirement is necessary to implement Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4, clause (1) which requires the commissioner to "arrange for or provide" the child-care services and transportation needed by a caretaker or child required to participate in employment and training services. The cap on the financial obligation of counties for child care is necessary to ensure that this item is not construed to require counties to exceed the limits established in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 8.

Requiring counties to provide or pay for needed child care and transportation is reasonable because it implements section 256.736 in a manner consistent with Minnesota Statutes 1987 Supplement, section 268.871, subdivision 1 which makes local services units responsible for the delivery of employment and training services. The cap on county financial obligations for child care is reasonable because it restates the limit established in state statute.

Subpart 2. Mandatory participants.

Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10, clause (6) obligates counties to require caretakers coming into the AFDC program to attend orientation if permissible under federal law. This subpart implements the statutory orientation requirement by requiring caretakers to attend orientation if they are principal wage earners, priority caretakers or caretakers determined eligible for AFDC on or after July 1, 1988. This subpart is necessary to ensure compliance with state statute.

Item C of this subpart is reasonable because it implements the statutory requirement that all caretakers "coming into the AFDC program" attend orientation. The statute does not prescribe the date to use in identifying recipients who have "come into the program" for purposes of this requirement. The July 1, 1988 date proposed in this item is reasonable because it is the date that orientation programs are expected to begin operating. This item excuses from orientation those who have received orientation within the previous 12 months. This is reasonable since some counties may begin providing orientation before July 1, 1988. Orientation provided no more than 12 months prior to July 1 should give recipients sufficiently current information.

Items A and B go beyond the express statutory requirement by mandating orientation for principal wage earners and priority caretakers who become AFDC recipients prior to July 1, 1988. This is reasonable because it is consistent with the employment and training section of state statute which emphasizes priority caretakers and unemployed parents.

Priority caretakers are stressed in section 256.736, subdivision 3a which requires caretakers in priority groups to participate in employment and training services. Since orientation is crucial to ensuring beneficial participation in employment and training services, the emphasis on priority caretaker participation in these services must be accompanied by an emphasis on priority caretaker involvement in orientation. Item B provides this emphasis.

Principal wage earners are targeted for services in section 256.736, subdivision 14 which requires principal wage earners in assistance units eligible under 9500.2300 to participate in an employment search program. As such, principal wage earners are the only individuals, other than priority caretakers, who are specifically and explicitly targeted by statute for employment and training services. Item A emphasizes principal wage earners for the same reason priority caretakers are given mandatory status in item B: to ensure that the individuals given priority in statute with respect to employment and training services are given priority in rule with respect to orientation.

Subpart 3. Orientation content.

Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10, clause 3 requires the provision of orientation which (1) informs recipients of available employment and training services and support services, and (2) encourages recipients to view AFDC as a temporary program providing grants and services to clients who set goals and develop stratagies for supporting their families without AFDC assistance. This subpart is necessary to implement this statutory requirement.

This subpart is reasonable because it is consistent with the statutory requirement it seeks to implement. Most of the subpart is a restatement of the statutory requirement. The subpart adds specificity by requiring that the information given to recipients on available services include the location and phone number as well as the identity of those services. Requiring counties to provide more specific information than required by statute was recommended by members of the rule advisory committee. The requirement of additional specificity is reasonable because it will enable recipients to take additional steps on their own to contact and use the services that can help them eliminate their dependence on AFDC.

Subpart 4. Orientation format.

This subpart permits counties to present orientation sessions on videotape. However, the subpart also requires counties to provide participants in orientation with the opportunity for face-to-face interaction with staff. This subpart is necessary to provide the state and counties with the flexibility needed to attempt innovative orientation presentations which may include the use of videotapes.

Videotape is a reasonable mode of presenting orientation since it enables the state to ensure more uniformity. In addition to providing uniformity, it may also be less expensive, eliminating the staff time needed to prepare and provide an individual orientation presentation in each county. Requiring the opportunity for face-to-face interaction was recommended by members of the rule advisory committee. It is reasonable because there may be situations where recipients need additional information not provided in the video presentation.

Subpart 5. Good cause for failure to attend orientation.

This subpart establishes good cause for not participating in orientation as (1) illness or injury of the recipient; (2) illness or injury of a member of the recipient's family which requires the recipient's care; (3) an inability to obtain the necessary child care and transportation; or (4) obligations in employment, school or training programs during the hours orientation is offered. The subpart is necessary to clarify the conditions under which nonparticipation in orientation will not be sanctioned.

Items A to D were agreed upon by the rule advisory committee. They are reasonable in that they represent the circumstances which could forseeably prevent a recipient from attending orientation. The reasonableness of illness or injury of the recipient as a basis for nonparticipation is self-evident as are the need to care for an ill or injured member or the recipient's family and the inability to obtain needed child care and transportation.

The existence of employment or school-related obligations which conflict with orientation is also a reasonable basis for nonparticipation. Orientation is not an end in itself. Its purpose is to facilitate and enhance a recipient's participation in employment and training services toward the ultimate goal of employment. As such, it would be unreasonable to sanction an individual for not participating in orientation when the nonparticipation results from involvement in the very activities that orientation is meant to facilitate.

Subpart 6. Notice to mandatory participants.

This subpart requires counties to provide written notice of the orientation requirement to each recipient required to participate. The subpart requires that the notice be sent at least 10 days before the scheduled orientation date and further provides that the notice must contain the time, date and location of the scheduled orientation as well as the consequences of failure to attend and the recipient's appeal rights. These requirements are necessary to ensure that recipients are fully informed about the orientation requirement and the consequences of failing to attend as required.

Informing recipients of the time, date and location of the orientation session is reasonable because it provides recipients with the information necessary to enable them to attend. Informing recipients of the consequences of failing to attend is reasonable in that it conveys the seriousness of the orientation requirement and ensures that a recipient's decision on whether to attend is fully informed. Including appeal rights in the notice is reasonable because it lets recipients know that they can challange a proposed sanction for not attending orientation. Requiring counties to mail or deliver the notice at least 10 days prior to orientation is reasonable since, notwithstanding natural delays in mail delivery, it allows recipients time to make plans to attend or contact the county prior to the scheduled date to attempt to make alternative arrangements.

Subpart 7. Early participation in orientation.

This subpart permits a county and recipient to mutually agree to conduct orientation within the first 10 days following determination of the recipient's AFDC eligibility. The subpart further provides that failure to attend within the 10 day period as agreed will not result in immediate sanction, but instead will trigger the regular notice and scheduling requirements of subparts 6 and 8.

This subpart was recommended by several members of the advisory committee and by Itasca County in written comments submitted to the department. The subpart is necessary to allow orientation to occur on a mutually convenient date before a county has had sufficient time to provide the recipient with written notice of the orientation requirement. The subpart is reasonable because, in many instances, it will allow recipients to attend orientation when they are at the local agency office for other reasons. This will reduce the travel time and expenses of many recipients. It may also be more convenient for local agencies.

Subpart 8. Timing of orientation.

This subpart requires recipients to attend orientation on their scheduled dates unless there is good cause for not attending. The subpart also specifies the dates by which recipients must be attend orientation: January 1, 1989 for principal wage earners and priority caretakers who were found eligible for AFDC prior to July 1, 1988; and within 60 days after mailing of the notice of eligibility for caretakers who are determined eligible on or after July 1, 1988.

Requiring attendance on scheduled dates is necessary to ensure the effective, orderly implementation of orientation. Simply requiring attendance on any number of dates of the recipient's choosing could result in unmanageably large numbers of recipients attending particular orientation sessions. The requirement is reasonable in that it contains a good cause exception which ensures that failure to attend on the scheduled date is not sanctioned when circumstances make attendance impossible.

The specific dates by which recipients must attend orientation are necessary to make certain that recipients attend orientation before developing a long-term dependency on AFDC without benefit of the information and motivation orientation is expected to provide. The 60 day period for new recipients is reasonable because it allows larger counties to accomodate large numbers of recipients in different sessions spread over time without excessive delay. The 60 day period was not opposed by any members of the rule advisory committee. The January 1, 1989 date for other recipients is reasonable because it allows larger counties to efficiently schedule large backlogs of recipients who were receiving AFDC before July 1, 1988. This date is also reasonable in that it coincides with the statutory deadline for full implementation of the employment and training section, Minnesota Statutes, section 256.736, subdivision 17.

Subpart 9. Sanctions for failure to attend orientation.

This subpart identifies the sanctions which will be imposed for failure to attend orientation. The sanctions identified are those specified in Laws of Minnesota 1987, chapter 403, article 3, section 92. Clause (6) of section 92 requires the department to seek federal waivers needed to replace existing sanctions with the graduated santions specified thereunder. The sanctions consist of 50% vendor payment for the first instance of noncompliance, 100% vendor payment for the second instance of noncompliance, and loss of the caretaker's share of the assistance payment.

Section 92, subdivision 2 of the law referred to above requires the department to adopt rules implementing any of the specified waivers obtained by the department. Although the department did not receive a waiver to apply the new sanctions generally, it did receive permission to apply the sanctions to orientation and other state employment and training requirements. Therefore, this subpart is necessary to comply with the rulemaking directive in state law. It implements the new sanctions to the extent permitted by federal law.

Items A and B restate the first two sanctions as written in state law but go further in providing that the recipient must be scheduled for and notified of another orientation session in the next payment month. The additional language is reasonable because it ensures that all sanctioned recipients are given the opportunity to attend orientation prior to imposition of the next level of sanctions.

Item C restates the third and final sanction as written in state law but goes further in requiring the local agency to offer to schedule the recipient for an orientation session. Requiring that counties offer to reschedule is reasonable because it ensures that recipients have the opportunity to attend orientation and restore their benefits.

Recipients sanctioned under item C are not automatically scheduled as they are under item B because these individuals have demonstrated a propensity not to attend. This is reasonable because it promotes a more efficient use of orientation resources. If a recipient initiates scheduling as provided under item C, it is more likely the recipient will actually attend and it is reasonable then to schedule the recipient for orientation as soon as practicable. The 30 day deadline for scheduling was agreed upon by members of the advisory committee as reasonably prompt, allowing counties time to accomodate their orientation schedules while affording sanctioned recipients the opportunity to avoid the loss of more than one AFDC payment.

9500.2724 GENERAL EMPLOYMENT AND TRAINING REQUIREMENTS.

Subpart 1. Registration and referral for employment and training services.

This subpart provides that AFDC applicants are automatically registered for WIN and other mandatory employment and training services which require registration. The subpart also requires the local agency to refer mandatory WIN registrants to the local WIN office and refer principal wage earners residing in non-WIN counties to the local job service office.

The automatic registration requirement is necessary to ensure compliance with Minnesota Statutes 1987 Supplement, section 256.736, subdivision 3, paragraph (b) which requires automatic registration to the extent permissible under federal law. This subpart essentially restates the statute but limits automatic registration to mandatory services which require registration. Limiting automatic registration to mandatory services is reasonable in light of the purpose of automatic registration -- to streamline the registration process in order to eliminate delays in the provision of assistance. Since AFDC eligibility is not affected by failure to register for voluntary services, there is no need to apply automatic registration to services that are not required.

The requirement of referral to WIN is necessary to ensure that WIN is aware of the identity of mandatory participants and can contact them to initiate the provision of WIN services. The requirement is reasonable because it helps ensure contact between WIN and mandatory registrants without eliminating the benefit of automatic registration. As such, it ensures that recipients are afforded the opportunity to receive WIN services and satisfy their participation requirements.

Title 45, section 233.100(a)(5)(i) of the Code of Federal Regulations provides that all principal wage earners in unemployed parent assistance units who are exempt from WIN registration because of physical remoteness must be "currently registered with a public employment office." Requiring counties to refer principal wage earners living in non-WIN counties to the local job service offices is necessary to ensure that the appropriate recipients register with job service as required by federal law. It is reasonable to limit this referral to recipients living in non-WIN counties since the group of recipients in Minnesota who are exempt on the basis of physical remoteness consists soley of individuals living in non-WIN counties.

Subpart 2. Mandatory employment and training participation.

This subpart identifies Minnesota's employment and training services in which recipients are required to participate. These services are WIN, employment search, and CWEP. This subpart also provides that principal wage earners in non-WIN counties must register with job service as a condition of eligibility for the person's entire assistance unit.

It is necessary to identify the mandatory services to clarify the full scope of required participation on which a recipient's eligibility may depend. This subpart is a reasonable clarification of the scope of mandatory services because it identifies all the employment-related services that may be required as a condition of eligibility and it references the rule parts that apply to each mandatory service.

It is necessary include the job service registration requirement in this subpart to ensure compliance with federal law which, as discussed above, requires principal wage earners in non-WIN counties to register with a public employment office and which conditions the entire assistance unit's eligibility on the principal wage earner's registration status.

9500.2726 WIN REQUIREMENTS.

Subpart 1. Participation in WIN.

This subpart essentially readopts subpart 15 of part 9500.2700 with the following changes: (1) deletions needed to make the subpart consistent with automatic registration, (2) changes needed to provide clarification, and (3) additions needed to reflect fully the requirements of federal law. The bases for each item of this subpart are discussed in pages 170 through 172 of the department's statement of need and reasonableness for part 9500.2700, subpart 15. See Appendix A.

The deletions of references to registration and applicant are reasonable because of automatic registration. Automatic registration means that only cooperation with WIN, not registration, affects eligibility for AFDC since all applicants will be registered simply by signing their applications, regardless of whether they are exempt. It also means that only recipients, not applicants, can be found ineligible for failing to comply with WIN since the issue of noncooperation can only arise after referral to WIN which occurs after an individual becomes a recipient.

The addition of the words "as a condition of AFDC eligibility" is reasonable because it identifies the primary significance of cooperation with WIN -- AFDC eligibility.

Item J is changed to limit the exemption to jobs which are expected to last for at least 30 days. This limitation is reasonable because it is mandated by federal law in 45 CFR, section 224.20(b)(10). The other changes to item J are made for purposes of clarity and do not change the meaning of the item as previously adopted.

In item K, the words "must be registered with" are deleted and replaced with the words "is not exempt under the other items of this subpart". This change is reasonable in light of automatic registration. As discussed above, registration is no longer an eligibility issue. The remaining eligibility issues stemming from WIN are cooperation and exemption. As changed, this item retains the existing reference to cooperation and replaces the reference to registration with language referring to the appropriate exemption criteria. The changes are consistent with applicable federal regulations which mandate this exemption. See 45 CFR, section 224.20(b)(9).

Item N identifies employment under a Work Supplementation Program established pursuant to 45 CFR, part 239 as a WIN exemption criterion. The additional exemption is mandated by federal law and inclusion of the exemption in this item is a reasonable means of ensuring compliance with the federal requirement.

Subpart 2. Good cause for noncooperation with WIN.

This subpart provides that a recipient who fails to cooperate with WIN must not be sanctioned if the failure is justified by good cause. The subpart also provides that good cause for not cooperating with WIN must be determined in accordance with 45 CFR, section 224.34.

The term good cause is not used in 45 CFR, section 224.34; however, the section does identify an array of circumstances that justify failure to cooperate with WIN. These circumstances are generally associated in Minnesota with the term good cause. This subpart is necessary to ensure compliance with federal law. The subpart is reasonable in that it associates the applicable provision of federal law with the appropriate recognizable term.

Subpart 3. Determination of noncooperation.

This subpart places the responsibility for determining good cause on the WIN office. This is necessary and reasonable because federal law places the responsibility with the WIN sponsor. See 45 CFR, section 224.34(a). The term WIN sponsor is synonymous with the term WIN office as used in these rule parts.

This subpart also (1) requires the WIN office to notify the local agency of any deregistration action and (2) requires the local agency to sanction the recipient after receipt of the notice of deregistration. It is necessary and reasonable to require notification of the local agency because it ensures that the recipient is sanctioned as required under federal law. The requirement that local agencies sanction after receiving a deregistration notice is necessary and reasonable for the same reason.

9500.2728 EMPLOYMENT SEARCH REQUIREMENTS.

Subpart 1. Participation in employment search.

This subpart (1) requires each local agency to provide an employment search program for mandatory participants, (2) provides the criteria for determining who is required to participate in employment search, (3) identifies when recipients must be referred to an employment search service provider, and (4) specifies the limits on how long a recipient may be required to participate in employment search. All the provisions of this subpart are necessary to ensure that the employment search program is implemented in an efficient, effective manner that is consistent with state and federal law.

The requirement that each local agency provide an employment search program is reasonable because it ensures that the employment search program required by Minnesota Statutes, section 256.736, subdivision 14 is implemented on a state-wide basis as required by subdivision 17. Limiting this requirement to mandatory participants is reasonable because it promotes the efficient use of resources by ensuring that resources are not diverted from those targeted by statute for participation in the employment search program. This subpart permits counties to provide an employment search program to voluntary participants. This is reasonable because a voluntary employment search program is authorized by Minnesota Statutes, section 256.736, subdivision 14, paragraph (c). A voluntary program will not divert resources from mandatory participants since counties will first have to provide employment search to mandatory participants as required.

Item A. Item A is necessary to ensure proper implementation of state and federal law governing the employment search program. This item identifies mandatory employment search participants as principal wage earners in assistance units for which program eligibility is based on unemployment of a parent. Subitems (1) through (4) specify the conditions under which principal wage earners are not required to participate. These are (1) exemption from WIN for reasons other than remoteness from the WIN site; (2) participation in another employment and training service which is expected to improve the recipient's employability; (3) activities specified in the recipient's employability plan which prevent or contraindicate participation in employment search; and (4) inability to communicate in the English language coupled with participation in an available English as a second language program.

Minnesota Statutes, section 256.736, subdivision 14 requires principal wage earners in AFDC-UP assistance units to participate in employment search unless they fall under one of three exceptions. The introductory sentence in item A is reasonable because it restates the statute in designating principal wage earners as mandatory participants. Subitems (1) through (4) are reasonable because they incorporate the three state statutory exceptions and one federal regulatory exception to the participation requirement.

Subitem 1. Subitem (1) is necessary to ensure that the sole federal exemption from employment search participation is implemented. The subitem is reasonable because it restates the sole federal exemption from mandatory employment search participation.

Subitem 2. Subitem (2) restates one of the three statutory exceptions but adds further clarification by providing that another employment and training service can substitute for employment search only if the other service can be reasonably expected to improve the recipient's employability. This is a reasonable addition because it ensures that any service which substitutes for employment search furthers the statutory purpose of the employment search program. That purpose is to improve a recipient's chances of obtaining employment. Indeed, given this purpose, it would not make sense to allow participation in another program to substitute for employment search unless the other program also had a reasonable chance of doing the same.

Subitem 3. Subitem (3) restates one of the statutory exceptions but adds further clarification by providing that other activities specified in a recipient's plan can substitute for employment search only if the other activities prevent or contraindicate participation in employment search. The clarification is reasonable because it prevents recipients from being limited soley to employment search when other activities provided simultaneously would be beneficial and would not interfere with a recipient's participation in employment search. This must have been the legislature's intent since it would make no sense to deprive a recipient of the benefits of employment search simply because the recipient is participating in other beneficial activities which do not impede employment search participation.

Subitem 4. Subitem (4) restates one of the statutory exceptions and adds further clarification by providing that inability to communicate in the English language must be determined by the local agency, an English as a second language (ELS) specialist or a vocational specialist. The clarification is reasonable because it allows latitude in choosing who may make the determination but does not permit a a recipient to avoid employment search by mere assertion. The recipient is protected since he or she has the option of obtaining an independent determination by a qualified professional in the event the local agency finds the recipient's language abilities sufficient to permit participation in employment search. This subitem is also consistent with department rules governing general assistance which allow the local agency, a vocational specialist or an ESL specialist to determine English language difficulty for purposes of establishing catagorical eligibility. See Minnesota Rules, part 9500.1258, subpart 1, item G.

Item B. This item is necessary to ensure compliance with state and federal law and ensure the efficient use of resources. The item requires counties to refer recipients for participation in employment search in the third month following the determination that they are required to participate. The third month is a reasonable juncture for referral because it allows the more employable recipients to obtain employment without the use of employment search resources in the first two months but still makes certain that recipients participate within four months of eligibility [or loss of exemption] as required by Minnesota Statutes, section 256.736, subdivision 14.

Item C. This item is necessary to ensure compliance with state and federal law. The item is reasonable since it merely restates relevant state and federal law. Specifically, this item restates the state statutory requirements that the provider specify the number of weeks and hours of employment search and that the recipient not be required to participate in employment search for more than 32 hours per week. The item also incorporates the federal limit on the number of weeks of employment search which may be required. See 45 CFR, section 240.20.

Subpart 2. Offers of employment.

This subpart is necessary to ensure implementation of Minnesota Statutes, section 256.736, subdivision 4, clause (4) which provides for sanction when a mandatory participant in an employment and training program refuses, without good cause, to accept a bona fide offer of employment. The subpart is also necessary to ensure implementation of 45 CFR, section 233.100(a)(1)(i) which conditions the AFDC eligibility of an unemployed parent assistance unit on the principal wage earner's not having refused a bona fide offer of employment without good cause within 30 days prior to application.

This subpart is reasonable because it is consistent with the state and federal laws it seeks to implement. Principal wage earners are generally required to participate in the employment search program which brings them within subdivision 4, clause (4) of section 256.736. Principal wage earners also come within the federal regulation cited above. This regulation requires principal wage earners to accept bona fide offers of employment within 30 days prior to application. Undoubtedly, it also requires principal wage earners to accept employment after application. Indeed, it would be inequitable and unreasonable to require principal wage earners to accept offers of employment before applying for AFDC but not require the same after they become recipients. Moreover, it would be unreasonable to require recipients to search for work but not accept employment when found.

Subpart 3. Good cause for refusing or terminating employment or failing to comply with employment search requirements.

This subpart consists primarily of minor semantic changes in and deletions from part 9500.2700, subpart 19 of the adopted AFDC rule. These minor changes are needed to ensure that good cause is applied to the employment search program and to avoid unnecessary duplication. These needs are satisfied reasonably by adding references to employment search where appropriate and deleting WIN related material which is now covered under a seperate rule part. The rationale for the items of this subpart are discussed in pages 176 through 178 of the department's statement of need and reasonableness for part 9500.2700, subpart 19. See Appendix A.

The only significant substantive changes to subpart 19 are the change in item G and the addition of item I. The change in item G is needed to simplify administration of the AFDC program and encourage recipients to obtain employment and achieve independence from AFDC. The 185% level used to determine whether a recipient must accept employment is reasonable because it is the level of gross income above which an individual is not eligible for AFDC under 45 CFR, section 233.20(a)(3)(xiii). The 185% level is known as the "gross income test" and it is incorporated in part 9500.2500, subpart 4.

The addition of item I is needed to ensure that participation in employment search does not harm the recipient financially. The item is reasonable because it is consistent with department policy of not imposing financial burdens on recipients as a condition of eligibility. Moreover, item I is consistent with Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4, clause (1) which requires the commissioner to provide or arrange for needed child-care, transportation and other family services needed to facilitate participation in employment and training services.

Subpart 4. Determination of failure to accept employment or participate in employment search.

This subpart requires service providers to make noncompliance and good cause determinations with respect to employment search and job offers outside WIN. The subpart leaves determinations of noncooperation with WIN to the WIN office.

Requiring providers to make the initial determinations of noncompliance is necessary to ensure that these determinations are made promptly and accurately. The requirement is reasonable because providers, not counties, are the entities that have daily contact with recipients on employment and training matters. Therefore, providers are in the best position to know whether recipients are complying with employment and training requirements. Indeed, state statute contemplates providers making initial determinations of noncompliance. See Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4a ("If the . . . service provider determines that the caretaker has failed or refused, without good cause, to cooperate or accept employment . . ..").

Providing that the WIN office must make noncompliance determinations regarding WIN is necessary to ensure compliance with federal law which assigns sole responsibility over WIN to the WIN office. 45 CFR, section 224.50(a)(state rule uses the term "WIN office" in lieu of the term "WIN sponsor" as defined in federal regulations). This provision is reasonable because it comports with federal law.

Subpart 5. Notice of failure to participate or accept employment.

This subpart requires a provider to give a recipient written notice of its determination that the recipient has failed, without good cause, to accept employment or comply with employment search requirements. It further requires that the written notice provide a detailed explanation of the reasons for the determination, the consequences of failure to comply, the actions necessary for compliance, the right to request a conciliation conference and the right to request a hearing.

This subpart is necessary to ensure compliance with state statute. The subpart is reasonable because, with one exception, it is identical with Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4a which governs notice and appeal in cases of noncompliance with employment and training requirements.

This subpart differs from subdivision 4a in requiring recipients to request a conciliation conference within 15 days after the notice is mailed rather that 10 days after the notice is received. This is reasonable because the mailing date is routinely documented and, therefore, more reliable than the date of receipt as a starting point for determining when conference requests must be made. It also permits providers to give recipients a specific date by which they must make their requests. This will aid recipients by eliminating any uncertainty as to exactly when they must contact providers to request conferences. The additional five days was added to account for mailing time. It is a reasonable means of ensuring that the rule does not reduce a recipient's request time to less than that granted by statute. The advisory committee agreed on the 15 day period.

Subpart 6. Conciliation conference.

This subpart requires providers to provide conciliation conferences when requested within the 15 day period specified in subpart 5. This requirement is necessary to ensure compliance with state statute which requires providers to offer these conferences. The requirement is reasonable because it comports with Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4a. Items A through D identify specific requirements governing conciliation conferences.

Item A. This item requires the provision of a conciliation conference within 30 days after one is requested. It also requires providers to notify a recipient of his or her conference date at least 10 days before the conference. The 30 day limit is necessary to avoid excessive delays in the conciliation process. The time period is reasonable because it is was accepted by all parties on the advisory committee. It is reasonable from the perspective of providers because it provides sufficient time to plan and prepare for a conference. It is reasonable from the perspective of recipients since recipients will continue to recieve their benefits during the 30 day period. The 10 day notification requirement is needed to ensure that recipients have sufficient time to make the necessary arrangements to attend. The time period is reasonable because it was accepted by the advisory committee.

Item B. This item requires the local agency to reimburse the recipient for necessary child care and transportation expenses incurred as a result of the recipient's attendance at the conciliation conference. This requirement is necessary to ensure that recipient are able to take full advantage of the conciliation process. A prior draft required reimbursement for expenses associated with the attendance of witnesses as well as the recipient. Several members of the advisory committee objected to any reimbursement for conference attendance because of the potential cost. Other members of the committee felt strongly that full reimbursement should be provided. As a comprimise, the committee agreed to provide reimbursement for recipient expenses but not the expenses of witnesses. Therefore, this item is a reasonable in that it has been approved by the advisory committee as a reasonable means of facilitating the use of the conciliation process without posing an unnacceptable financial risk to counties.

Item C. This item requires providers to hold conciliation conferences during regular working hours at their own offices. This item also permits telephone conferences upon the mutual consent of the provider and recipient. It is necessary to specify where, when and how conciliation conferences may be held to avoid confusion and potential disputes over the location, timing and mode of these conferences.

It is reasonable to specify the provider's office as the required location because it is the one location with which the recipient and provider will be invariably familiar. The use of other locations could raise confidentiality questions since many private client records may need to be brought to the conference location. This concern was raised by members of the advisory committee. Although there was some disagreement amoung committee members, most members agreed that conciliation conferences should be held on county or provider premises.

The requirement that conferences be held during regular working hours is reasonable because it avoids potential conflicts with collective bargaining agreements that could prevent the attendance of needed county or state participants in the conciliation process. It is reasonable to permit telephone conferences by mutual consent because it can reduce costs and expedite the conciliation process. Requiring mutual consent is reasonable because there may be situations where one party believes that face-to-face contact is needed to resolve the dispute. Permitting one party to force a telephone conference on the other would diminish the chances of resolving disputes in those situations.

Item D. This item requires providers to give counties written notice of a recipient's failure to comply with employment and training requirements when a conciliation conference does not resolve the matter or when the recipient does not request a conference. This requirement is necessary to ensure that counties are aware of instances of noncompliance and can take the appropriate sanction action. The requirement is reasonable since without notification from the provider a county will probably remain unaware of violations which are subject to sanction. Requiring written notice is reasonable because it is less subject to misinterpretation than oral communications and provides a written record for appeals.

Subpart 7. Final detmination prior to sanction.

This subpart requires counties to make the final determinations on issues of noncompliance prior to sanction unless the issue is noncooperation with WIN. This requirement is necessary to ensure that counties do not abdicate their ultimate responsibility over issues of eligibility for AFDC. The requirement is reasonable because it recognizes that counties are the final decision-makers on issues of eligibility except in cases of noncooperation with WIN.

9500.2730 SANCTIONS FOR FAILURE TO PARTICIPATE IN A MANDATORY EMPLOYMENT AND TRAINING SERVICE OR ACCEPT EMPLOYMENT.

Subpart 1. Notice.

This subpart requires local agencies to inform recipients prior to the imposition of the sanctions under subpart 2. The requirement is necessary to ensure that recipients have the information necessary to exercise their appeal rights. Although notice is required by part 9500.2740, subpart 6, it is reasonable to reiterate that requirement here to ensure compliance.

Subpart 2. Sanctions.

This subpart identifies the sanctions applicable to recipients who fail to comply with WIN, employment search or employment requirements. The sanctions specified in this subpart are essentially identical to the sanctions set forth in part 9500.2700, subpart 18 of the current AFDC rule. The only changes are those needed to make the sanctions applicable to employment search as well as WIN and the addition of language to item C needed to ensure consistency between state rule and federal regulation.

This subpart is necessary and reasonable as it applies to WIN because the sanctions identified are dictated by federal regulations in 45 CFR, section 224.51. These regulations as they relate to this subpart are discussed in pages 175 and 176 of the department's statement of need and reasonableness for part 9500.2700, subpart 18. See Appendix A. The subpart is necessary and reasonable as it applies to employment search because federal regulations apply the WIN sanctions to employment search. See 45 CFR, section 240.22.

The last sentence in item C was added to ensure consistency with federal law. The sentence is reasonable because it restates 45 CFR, section 224.51(b)(2) which governs WIN. The language of this regulation was inadvertently omitted from the current rule. The sentence is also contained in 45 CFR, section 240.22(a)(2) which governs the employment search program.

REPEALER.

The repeal of part 9500.2700, subparts 13, 14, 15, 17, 18, and 19 is proposed because the language or substance of these subparts has been moved or incorporated into the proposed rule parts discussed above. The repeal of subpart 16 is proposed because automatic registration which is now required by state statute is makes subpart 16 unnecessary.

TESTIMONY

If a hearing is held, the Department does not expect to present the testimony of any expert witnesses.

CONCLUSION

The foregoing discussion establishes the need for and reasonableness of the proposed rules, parts 9500.2720 to 9500.2730. To a great extent, the need for the proposed rules is prescribed expressly by state statute, federal requirements, and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

2/23/88
DATE

SANDRA S. GARDEBRING
Commissioner

activities which are a condition of eligibility. However, Title 45 CFR, section 233.100(a)(5)(i) requires the registration of an unemployed parent with employment services when he or she is exempt under Title 45 CFR, section 224.20(b)(6). In addition, Title 45 CFR, sections 240.01 and 238.14 permit the state to establish mandatory job search and work experience programs in accordance with federal requirements. It is reasonable to include this subpart to conform with federal regulations.

Subpart 15. Work requirements in WIN counties. This subpart is necessary because Title 45 CFR, section 224.20(a) mandates registration "for manpower services, training, employment and other employment-related activities as a condition of eligibility for AFDC", unless an exemption from registration exists. These requirements are met through the WIN program in counties which are serviced by a WIN project office. It is reasonable to include this subpart to conform with federal regulations.

Item A is necessary because Title 45 CFR, section 224.20(b)(1) mandates an exemption for persons under the age of 16. It is reasonable to include this item to conform with federal regulations.

Item B is necessary because Title 45 CFR, section 224.20(b)(2) mandates an exemption for a person who meets the state's definition of a "full-time student" and is 16 or 17 years of age. It is reasonable to include this item to conform with federal regulations.

Item C is necessary because Title 45 CFR, section 224.20(b)(2) mandates an exemption, "for a full-time student under age 19, if the State AFDC plan extends coverage to children under age 19." Minnesota Statutes, section 256.12, subdivision 14 elects this optional coverage. It is reasonable to include this item to conform with state law and federal regulations.

Item D is necessary because Title 45 CFR, section 224.20(b)(3) permits exemption for illness "on the basis of medical evidence or on another sound basis." Because it is not necessary to have medical documentation to confer exemption on this basis, exemptions for illness can be granted solely on a determination by the income maintenance unit of a local agency. It is necessary to specify that 90 days is the time limit permitted for illness which qualify for a temporary exemption because federal regulations require states to define temporary conditions in order to distinguish between the separate medical exemptions provided under Title 45 CFR, sections 224.20(b)(3) and (4). The state WIN program makes a distinction based upon the same probable timeframe of a medical condition. A person who is registered with that program whose medical condition would prevent participation for at least 90 days is referred to the IV-A agency to have medical exemption determined and to be deregistered if the medical documentation supports an inability to participate for at least 90 days. However, if the medical condition is of shorter duration, WIN defers active participation and does not deregister that person. It is reasonable to include this item to provide an objective standard for determining exemption which conforms to state IV-C policy and federal regulations.

Item E is necessary because Title 45 CFR, section 224.20(b)(3) permits exemption for physical or mental incapacity, but that determination must be documented by a report from a physician or licensed psychologist. It is necessary to specify that referral be made to the Minnesota Department of Vocational Rehabilitation because Title 45 CFR, section 224.20(e) mandates this for "individuals who have been determined to be exempt from registration on the basis of incapacity to the appropriate State vocational rehabilitation agency." It is reasonable to include this provision for a WIN exemption for a medical condition which is not temporary to conform with federal regulations. It is reasonable to require referral to the department of vocational rehabilitation to conform with federal regulations.

Item F is necessary because Title 45 CFR, section 224.20(b)(5) mandates an exemption for persons who are at least 65 years of age. It is reasonable to include this item to conform with federal regulations.

Item G is necessary because Title 45 CFR, section 224.20(b)(6) provides an exemption for persons who live in the WIN project area but are precluded from effective participation because their place of residence is remote from the WIN project office or service unit. It is reasonable to include this item to conform with federal regulations.

Item H is necessary because Title 45 CFR, section 224.20(b)(7) provides an exemption on this basis. It is reasonable to include this item to conform with federal regulations.

Item I is necessary because Title 45 CFR, section 224.20 (b) (8) provides an exemption when a parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child." Officials of the Department of Health and Human Services have stated that the definition of brief and infrequent absences should not be tied to a prohibition of any specific activity, but should use a time standard to identify when a person is not providing full-time care for the child. Those officials hold that a person who spends time (on activities other than caring for the child) sufficient to have full-time employment or training does not qualify for the exemption. Requiring that the caretaker be absent from the child no more than 30 hours per week in order to qualify for this exemption is reasonable because it is consistent with the standard used to distinguish full-time employment (more than 30 hours per week) from part-time employment (less than 30 hours per week) in Part 9500.2580, item B. Excluding activities related to caring for the child is reasonable because some activities related to the child's well-being are normally done without the child. Such activities may include shopping for food and clothing, looking for a new apartment, or visiting a pre-school program to see if it meets the child's educational needs. It is reasonable to include this part to conform to federal regulations and the direction of the United States Department of Health and Human Services (see Appendix R).

Item J is necessary because Title 45 CFR, section 224.20(b)(10) provides

an exemption on this basis. It is reasonable to include this item to conform with federal regulations.

Item K is necessary because Title 45 CFR, section 224.20(b)(11) provides an exemption on this basis. It is reasonable to include this item to conform with federal regulations.

Item L is necessary because a communication from the Region V office of the Work Incentive Program dated April 30, 1985 asserts that AFDC recipients, who volunteer for VISTA after applying for AFDC, qualify for exemption from WIN registration (see appendix S). This communication is based on a 1979 amendment contained in Public Law 96-143, sections 9 to 404(g) of the Domestic Volunteer Services Act of 1973, codified at 42 U.S.C.A., section 5044(g). It is reasonable to include this item to conform with federal statute.

Item M is necessary because the Deficit Reduction Act (DEFRA) requires conferral of temporary medical exemption during the last trimester of pregnancy without additional medical evidence to show that the condition of a pregnancy is serious enough to prevent entry into employment or training. It is reasonable to include this item to conform with federal statute (Public Law 98-369, section 2631, which amended 402(a)(19)(A) of the Social Security Act).

Subpart 16. Registration in WIN counties. This subpart is necessary because Title 45 CFR, section 224.20 requires registration for applicants and recipients who are not exempt from participation in the WIN program, and Title 45 CFR, section 224.21 specifies the procedures which must be followed to accomplish that registration. It is reasonable to include this subpart because it details the responsibilities of the local agency and of applicants and recipients in this process.

Item A is necessary because Title 45 CFR, section 224.20(b) assigns responsibility to the agency administering the AFDC program to identify which applicants and recipients must be referred for WIN registration. This responsibility for a prompt referral of mandatory registrants is necessary because the date of authorization of payment, selected by Minnesota under Title 45 CFR, sections 206.10(a)(6)(i)(A),(C) and (D), allow for eligibility beginning with the date of application when all eligibility factors are met on that date. Consequently, when WIN referral is required for an applicant, but WIN registration is completed on some date after the date of application for AFDC, a period of ineligibility for AFDC exists, and payment cannot be issued for that period because of Title 45 CFR, section 206.10(a)(6)(i)(D), which requires proration from the date of application or the date all other eligibility factors are met. It is necessary to apply the provisions of this item to recipients even though proration of payment is not a factor because recipients who are mandatory WIN registrants will be ineligible for AFDC for any payment month in which those recipients are not registered with the WIN program. It is reasonable to include this item which assigns this responsibility to local agencies because failure to make prompt WIN referral will affect the amount of initial payment which

Subitem (5) is necessary because Title 45 CFR, sections 224.20(a) and (b) mandate the registration of dependent children who are 16 or 17 years of age, who are not full-time students and who do not qualify for exemption on another basis. Title 45 CFR, section 224.20(c) specifies the effect on eligibility when a non-exempt child fails to register with WIN and Title 45 CFR, sections 224.51(b)(2) and (3) specify the effects on eligibility which apply when a child is sanctioned by WIN for non-cooperation. It is reasonable to include this subitem to conform with federal regulations.

Subpart 17. Cooperation with WIN. This subpart is necessary because Title 45 CFR, sections 224.34 and 224.50 mandate responsibilities of the WIN program to registrants and responsibilities of registrants to the WIN program. The WIN project office is assigned responsibility for monitoring the participation and cooperation of the registrant. Title 45 CFR, section 224.60 to 224.71 assigns full responsibility for determination of non-cooperation to WIN, and any subsequent disputes over non-cooperation of a registrant must be resolved by the WIN adjudication system. It is reasonable to include this subpart to conform with federal regulations.

Subpart 18. Sanctions for failure to cooperate with WIN. This subpart is necessary because Title 45 CFR, section 224.51 mandates sanctions which must be applied by the AFDC program when the WIN program has deregistered a recipient for non-cooperation. This subpart establishes the effect those sanctions must have when recipients are deregistered for non-cooperation. It is reasonable to include this subpart to conform with federal regulations.

Item A is necessary because Title 45 CFR, section 224.51(a) and (b) mandate the length and effect of the sanction. In the case of a principal wage earner in an unemployed parent assistance unit, an unemployed parent basis of eligibility cannot exist for the child for the period of the sanction because current WIN registration is necessary under Title 45 CFR, section 233.100(a)(5) to satisfy that basis of eligibility. It is also necessary to specify that eligibility may exist for the other members of the assistance unit when another basis of eligibility is established during the period of that sanction. It is reasonable to include this item to conform with federal regulations.

Item B is necessary because Title 45 CFR, section 224.51(b)(1) requires both the removal of the parent caretaker and vendor payment to the remainder of the assistance unit when the caretaker has been sanctioned by WIN for non-cooperation. It is reasonable to include this item to conform with federal regulations.

Item C is necessary because Title 45 CFR, section 206.10(a)(vii) does not require a non-parental caretaker to be included in the assistance unit. Title 45 CFR, sections 224.51(b)(1) and (3) do not authorize protective or vendor payment when a child is sanctioned for non-cooperation. It is reasonable to specify that the only effect of a non-parental caretaker's refusal is ineligibility for the period of the sanction because that caretaker can choose to defeat eligibility by not applying or requesting

removal from the assistance unit, neither of which permits vendor payment. If vendor payment was required, the non-parental caretaker would be denied the choice of payment method which would be available if he or she did not apply, or requested removal from the assistance unit.

Subpart 19. Good cause for refusing or terminating employment or training. This subpart is necessary because Title 45 CFR, section 224.34 imposes limitations on the WIN office in making referrals for employment or training. WIN must apply those standards for WIN registrants in making placements for employment or training to determine whether the refusal or termination of employment or training constitutes non-cooperation.

A termination or refusal of employment without good cause has specific consequences. WIN registrants are sanctioned under Title 45 CFR, section 224.51, which specifies a period of ineligibility. Title 45 CFR, sections 233.20(a)(11)(iii)(A) and (B) mandate a loss of applicable earned income disregards when an individual terminates, reduces, or refuses employment without good cause. That regulatory provision requires a State plan to specify what constitutes a loss or refusal without good cause. Title 45 CFR, section 233.100(a)(3)(ii) disallows payment of AFDC benefits on an unemployed parent basis of eligibility for 30 days when the principal wage earner has refused an offer of employment or training without good cause. It is necessary to designate WIN as sole authority for determining whether a sanction under subpart 18 is applied because this is required under Title 45 CFR, section 224.51. It is necessary to include this subpart because Title 45 CFR, sections 233.20(a)(11)(iii)(A) and (B) and section 233.100(a)(3)(ii) require states to define good cause to determine whether a termination or refusal results 1) in the loss of earned income disregards, and 2) in the loss of 30 days of eligibility under an unemployed parent basis.

It is also necessary to specify that when WIN makes a placement which is refused or terminated by a WIN registrant and that refusal or termination does not result in the application of a sanction under Title 45 CFR, section 224.51, that refusal or termination is presumed to be due to the placement not meeting the criteria in Title 45 CFR, section 224.34. Title 45 CFR, section 224.34 sets conditions on the placement of WIN registrants. Those criteria also set conditions for refusal or termination of employment which is allowable and which would not produce a WIN deregistration and sanction action. It is reasonable to specify that a WIN placement which is refused or terminated and which does not result in a sanction under subpart 18 must also be accepted by the local IV-A agency as a quit or termination with good cause for purposes of AFDC eligibility and payment to avoid conflict and contradiction between complementary programs authorized under Title IV of the Social Security Act. It is reasonable to define good cause for termination or refusal of employment or training when a local agency is required to make that determination to conform with federal regulations.

Item A is necessary because Title 45 CFR, section 224.34(a)(2) prevents the WIN program from making employment or training assignments under these circumstances, and if these circumstances are discovered after an assignment has been made, a subsequent refusal or termination cannot constitute WIN non-cooperation. When a person is not placed by WIN and

these circumstances exist, it is reasonable to consider any quit or refusal of employment or training to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Item B is necessary because Title 45 CFR, section 224.34(a)(3) prevents the WIN program from making employment or training assignments under this circumstance, and if this circumstance is discovered after an assignment is made or occurs as a result of relocation of an employment or training site, a subsequent refusal or termination would not constitute WIN non-cooperation. When a person is placed by WIN, and this circumstance exists, it is reasonable to consider any quit or refusal of employment or training to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Item C is necessary because Title 45 CFR, section 224.34(a)(4) prevents the WIN program from making employment or training assignments under this circumstance, and if this circumstance is discovered after an assignment or child care later becomes unavailable, a subsequent refusal or termination would not constitute WIN non-cooperation. It is reasonable when a person is not placed by WIN, and this circumstance exists, to consider any quit or refusal of employment or training to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Item D is necessary because Title 45 CFR, section 224.34(a)(5) prevents the WIN program from making employment or training assignments under these circumstances, and if these circumstances are discovered after an assignment is made or later occurs at an employment or training site, a subsequent refusal or termination would not constitute WIN non-cooperation. When a person is not placed by WIN and these circumstances exist, it is reasonable to consider any quit or refusal of employment or training to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Item E is necessary because Title 45 CFR, section 224.34(a)(6) prevents the WIN program from using discriminatory practices in placing registrants in training or employment assignments. WIN would also violate this requirement if it placed a registrant with an employer or training facility which has practices known to WIN which would discriminate against that registrant. Consequently, when a person can establish that he or she terminated employment because of the discriminatory practices of an employer or training facility, a subsequent termination would not constitute WIN non-cooperation. When a person is not placed by WIN and that person quits or refuses employment or training because they were subjected to discriminatory practices, it is reasonable to consider that termination or refusal to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Item F is necessary to because Title 45 CFR, section 224.34(b)(2) prevents the WIN program from making employment assignments which pay less than the federal or state minimum wage when an employment disregard is available and a quit or refusal when the wage rate is below this level cannot constitute WIN non-cooperation. It is reasonable to consider a quit or refusal of employment to be with good cause when the rate of pay is less than the applicable federal or state minimum wage, without reference to whether eligibility exists for an income disregard, because employment which pays less than the minimum wage would not promote self-sufficiency. Generally that employment would continue to require partial AFDC payment. However, in a two person assistance unit, a caretaker's receipt of a $3.30 hourly wage for 40 hours of work per week would produce $528 gross monthly income if four weekly or two biweekly checks are received. With only a $75 work expense disregard available, that person would have $453 net income applied to determine the AFDC payment. Because the family allowance for that assistance unit is currently $19 less than the net income, there would be no eligibility for AFDC. In virtually every other case when a sub-minimum wage is paid and the circumstances deviate from the above example, including less hours of employment, a lower rate of pay, a larger assistance unit size, or when a need exists for dependent care, AFDC eligibility would continue after eligibility for the $30 and the 1/3 work incentive ended.

Item G is necessary because Title 45 CFR, section 224.34(b)(3) prevents the WIN program from making employment assignments, "When, as a result of becoming employed, no income disregard is available to the individual, the wage, less mandatory payroll deductions and a reasonable allowance for necessary employment related expenses, shall provide an income equal to or exceeding the family's AFDC cash benefits." In addition, when WIN makes an employment placement and that employment is terminated, WIN must assess that terminated employment against this standard to determine whether non-cooperation exists. Thus, if employment causes termination of AFDC because the assistance unit fails either the gross income test or payment eligibility test or the monthly hours of employment of the unemployed parent exceed 100, a disregard will not be available. If the income, after allowance for mandatory deductions and actual work expenses does not equal or exceed the AFDC payment standard, termination of employment would not result in a determination of non-cooperation. When a person is not placed by WIN, and actual net income is less than the AFDC payment standard, it is reasonable to consider termination of that employment to be with good cause because that employment would not permit self-sufficiency.

Item H is necessary because Title 45 CFR, section 224.34(b)(5) prevents the WIN program from making employment assignments under these circumstances. When these circumstances are discovered or occur after an assignment is made, a subsequent refusal or termination cannot constitute WIN non-cooperation. It is reasonable when a person is not placed by WIN, and these circumstances exist, to consider any quit or refusal of employment or training to be with good cause because persons who have not been placed by WIN should not be subject to more restrictive requirements than those who are.

Appendix B

Department of Human Services
FISCAL NOTE ON MINNESOTA RULES
PARTS 9500.2720-9500.2730
AFDC EMPLOYMENT AND TRAINING

These new parts of the AFDC rule do not increase State costs above the appropriations provided by the 1987 Legislature for AFDC employment and training services and do not mandate increased local agency costs.

Local agency responsibilities to provide orientation (Part 9500.2722) and an employment search program (Part 9500.2728) can be funded from the PATHS employment and training block grant, for which no county matching funds are required. This assumes that local agencies limit their programs and contracts to keep them within the available funding.

The provision of conciliation conferences for recipients who fail to participate in employment search (Part 9500.2728, subpart 6) is required by statute. The cost of providing conciliation conferences is part of the cost of an employment search program. Child care costs for recipients attending conciliation conferences can be paid out of the Child Care Fund or from the local agency's employment and training block grant (no local share). Transportation expenses can be funded as AFDC special needs (7% local agency share) or from the employment and training block grant (no local share).

WIN requirements (Part 9500.2726) are the same as in the existing rule.

Reports and Statistics Division
February 17, 1988

Appendix C

COMMITTEE FOR AFDC EMPLOYMENT/TRAINING RULE

1. Daryl Bessler (218) 732-3339
   Hubbard County Social Service Center
   Courthouse
   Park Rapids, MN 56470

2. Ruth Kothman 968-6254
   Benton County Social Service Agency
   Courthouse
   Foley, MN 56329

3. Daryl Rude (218) 726-2000
   St. Louis County Social Service Department
   Government Services Center
   320 West 2nd Street
   Duluth, MN 55802

4. Bob Gibbens 298-5968
   Ramsey County Human Services Department
   160 East Kellogg Blvd.
   St. Paul, MN 55101

5. Bob Porter (218) 327-2941
   Itasca County Family Service and Welfare Department
   Courthouse
   Grand Rapids, MN 55744

6. John Winkelman
   Hennepin County Department of Economic Assistance
   121 Government Center
   300 South 6th Street
   Mpls, MN 55487

7. Bev Parker
   Anoka County Community Health and Social Services Agency
   Courthouse
   Anoka, MN 55303

8. Audrey Grover*
   Carlton County Human Services Center
   1215 Avenue C, P.O. Box 316
   Cloquet, MN 55720

9. Francesca Chervenak 332-1441
   Legal Aid Society of Minneapolis
   222 Grain Exchange Bldg.
   323 4th Ave. South
   Mpls., MN 55415

10. Martha Eaves 222-5863
    Southern Minnesota Regional Legal Services
    300 Minnesota Bldg.
    46 East 4th Street
    St. Paul, MN 55101

11. Luanne Nybery 227-6121
Children's Defense Fund
316 University Ave.
St. Paul, MN 55103

12. Patrick Sheedy* 227-8777
Minnesota Catholic Conference
296 Chester Street
St. Paul, MN 55107

13. Mary Reed** 527-0342
Minneapolis Urban League (LEAP)
2000 Plymouth Ave. North
Mpls, MN 55411

14. Terry Steeno**
Executive Director, Family and Children's Services of Minneapolis
414 South 8th Street
Mpls, MN 55404

15. Lao Family Community, Inc.** 487-3466
976 West Minnehaha
St. Paul, MN 55104

*Cannot attend first meeting but wants to attend subsequent meetings

**Potentially interested in serving on committee but undecided

Appendix D

ADDITIONAL MAILINGS FOR AFDC EMPOLYMENT/TRAINING RULE

1. Laura Scott
   Minneapolis Urban League (OJT)
   2000 Plymouth Ave. North
   Mpls, MN 55411

2. Tom Pappin
   Itasca County Social Services Agency
   Courthouse
   Grand Rapids, MN 55744

Appendix E

MINUTES
AFDC EMPLOYMENT/TRAINING RULE ADVISORY COMMITTEE MEETING
JULY 31, 1987

On July 31, 1987, the Department conducted a meeting of the AFDC Employment and Training Rule Advisory Committee. The meeting was convened at 9:00 a.m. in the Minnesota Room of the Space Center Building, St. Paul.

The following persons attended the meeting:
Dan Lipschultz, Department of Human Services
Sandra Norman, Department of Human Services
Paul Timm-Brock, Department of Human Services
Bruce Netland, Department of Jobs and Training
Colleen Gunderson, Department of Jobs and Training
Mary Martin, University of Minnesota
Daryl Bessler, Hubbard County
Don Mohawk, Department of Jobs and Training
Diana M. Rankin, Lao Family Community of Minnesota
Ying Uang, Lao Family Community of Minnesota
Sara Morrissey, Legal Aid Society of Minneapolis
Beverly Parker, Anoka County Social Services
Jerry Vitzthum, Anoka County Job Training
Tom Tjepkema, St. Louis County
Gloria Lundberg-Jorgenson, Hennepin County - AFDC Division
Mary Jo Ahlgrer, Ramsey County
Martha Eaves, Southern Minnesota Regional Legal Services
Robert Parke, Ramsey County Human Services Department
Luanne Nyberg, Children's Defense Fund
Tom Anzelc, Office of Jobs Policy
Ruth Kothman, Benton County
Bob Porter, Itasca County

DISCUSSION

Subpart 2. Employability plan.

Luanne Nyberg recommended that this subpart (1) require consultation with the registrant in developing the plan and (2) specify that the plan is appealable. Daryl Bessler and several other county representatives did not object to requiring consultation; however they objected to making the plan appealable. Sara Morrissey indicated that the statute conveys a right of appeal and that, therefore, the issue is one of timing--when an appeal can be brought--not whether the plan is appealable. Jerry Vitzthum suggested using the phrase "work with" to clarify the consultation requirement. Jerry indicated that this language is contained in statute.

Martha Eaves asked what "support services" means in the context of this subpart. Sandra Norman said that she intended support services to mean transportation and child care needed to implement the employability plan. Bruce Netland said that he believes support service means more, including every social service needed to implement the plan. Daryl objected to Bruce's interpretation. Daryl stated that counties do not have the funds needed to provide the full range of social services in conjunction with employability plans. Other county representatives agreed with Daryl. Colleen Gunderson said that DJT emergency rules currently contain a narrow definition of support services.

Luanne Nybery asked whether the department will develop rules that establish requirements for providers. Paul Timm-Brock said that this rule is not intended to specify how the training requirements are to be implemented. Colleen said that the Dapartment of Jobs and Training (DJT) will determine the need for a certification rule. Paul and Colleen said that DJT and DHS are working together to identify the need for rules governing providers and clarify the role of each department in the development of such rules. Luanne indicated that she wants kids assessed and said that she wants to know where this will be dealt with and what the proper forum would be for expressing her views on this subject.

Jerry asked why case management is not addressed in this rule. Sandra Norman explained that the department does not have authority under federal law to require case management for the recipients governed by this rule.

Subpart. 3. Employment and training programs.

One committee member asked why the statutory definition of "employment and training services" is much more broad than the definition of "employment and training program" in this subpart. Sandra said that the definition in this subpart is intended to be a generic definition of programs, not services. Daryl said that the department is to be commended for doing a generic rule. To clarify the coverage of this rule, Colleen recommended adding a purpose/scope section which identifies the programs covered by this rule.

Martha said that these programs should be designed for the purpose of securing "permanent, full-time" employment and that this purpose should be reflected in this definition. Bruce Netland and several county representatives expressed opposition to Martha's suggestion, stating that part-time employment can be high-paying and very beneficial. Ruth Kothman said that part-time or temporary work can lead to full-time permanent employment.

Tom Anzelc recommended that the term employment in this definition be qualified to exclude "subsidized" employment. Daryl agreed with this suggestion. Tom said that the legislation is intended to upgrade skills and the ability to compete for employment, not to "give people jobs." One member of the committee recommended substituting "skills leading to self-sufficiency" for the term "employment." Daryl disagreed and said you cannot talk self-sufficiency without talking jobs.

Subpart. 4. Employment and training provider.

One county representative recommended substituting the term "deliver" for the term "contract" so that local agencies are not excluded as potential providers.

Subpart 5. Employment and training program participants.

Luanne said that under federal law items C, D and E apply to children as well as caretakers. Sandra said the department would look into it.

Daryl asked if the AFDC rules contain a definition of "ill." Paul said that the term is not defined in rule. Paul asked whether any of the counties were having difficulty implementing current rules without a definition of illness. None of the county representatives indicated that they were having any difficulties that would require a definition of illness.

Bob Gibbens said that he does not like item H. Paul replied that item H is dictated by federal law.

Daryl wants a more restrictive definition of household. Martha and representatives from DJT indicated that the current definition is dictated by federal law.

Subpart. 6. Employment and training registration and participation.

Luanne said that she wants the rule to specify the services recipients receive as part of participation in employment search. Paul said that the department will take another look at federal law. Luanne also said she would like the rule to require providers to provide certain services. Paul said that Luanne's suggestion went beyond the department's rulemaking mandate to adopt rules governing eligibility. Paul suggested that Luanne's recommendation may be part of another rulemaking effort.

Subpart 7. Sanction for failure to participate in an employment and training program.

Martha objected to the use of the term "failure" in reference to non-participation.

Martha said that counties should either sanction or collect overpayments but not both. Mary Jo Ahlgrer said that Ramsey county sanctions but does not collect overpayments on WIN registrants since registrants are registered during the pendancy of their appeals.

Martha said that item B should include a requirement that recipients be informed that they have to reapply after the three month sanction period. If not, Martha suggested that recipients be reinstated automatically after three months. One county representative expressed support for automatic reinstatement but Paul said that reapplication is necessary to ensure that counties and the department have current information on registrants.

Subpart 8. Good cause reasons for failure to participate in employment and training programs.

There was extended discussion of good cause. The discussion began with Daryl asking how minimum wage is determined. Department staff replied that OCEA is used when necessary but that this is rarely an issue. There followed some specific recommendations from committee members. One member recommended including in item C the entire list contained in Minnesota's human rights statute. Department staff replied that they would look into it. Luanne and several county representatives recommended that the term "actual costs" in item E be clarified as actual costs "to registrant." Under the current draft of item B, good cause exists when the work or training site is unsafe. Martha recommended that item B define good cause as a "reasonable belief" that a work or training place is unsafe. Bob Porter indicated that reasonableness is implicit and will be the standard of judgment on appeal.

A number of county representatives on the committee objected to the long list of exemptions in item E which constitute good cause for a large number of recipients who have minumum wage or relatively low-paying jobs. The committee members who objected to the extent of these exemptions said that the exemptions eliminate the incentive for recipients to seek and continue in low-paying jobs. Martha said in response that the standard of

assistance for AFDC is subsistance-level and recipients should not therefore be forced off of AFDC and into employment at wages that are less than the AFDC grant. There was general agreement that the answer is a system that requires recipients to accept employment, even if low-paying, but which also requires partial AFDC payments to ensure recipients do not fall below the AFDC assistance standard.

Martha suggested that providers should not determine good cause because some of them may have an incentive against finding good cause. Paul responded by saying that provider determination of good cause is consistent with WIN and that providers are the experts, unlike county financial workers. Daryl agreed with Paul.

Subpart 9. Right to notice.

Martha said that the notice should be required in the three forms required for WIN: (1) mail; (2) certified mail; and (3) phone. County representatives expressed opposition to Martha's suggestions and Bruce added that certified mail is very expensive. Both Martha and Diana Rankin said that the phone call is particularly important for recipients who have reading difficulties. Paul responded by pointing out that WIN requirements do not apply to all recipients covered by this rule.

There was general agreement with Martha's suggestion that the 10 day time period from receipt of the notice be changed to 15 days from mailing of the notice. Martha argued that 15 days from mailing is consistent with 10 period in statute because the 15 day period assumes a 5 day lag time between mailing and receipt.

Luanne said that the rules should require the presence of a neutral third party at the conciliation conference and that the conferences should be held at a mutually agreed time and place rather county offices during business hours. Paul's response to the first point was that we should not overly formalize the conciliation process which is intended to be an informal non-bureaucratic means of resolving disputes. Paul said that the use of a neutral third party should be left up to the counties. Service providers commented that it is customary for supervisors to appear at conciliation conferences but that they prefer not to have additional people attend. Many committee members expressed opposition to Luanne's recommendation on where the conferences should be held. These committee members pointed to problems of confidentiality and collective bargaining agreements among others as reasons for requiring that conferences be held at county offices during regular business hours.

Sara Morrissey recommended substitution of the term "resolution" for the term "decision" so the rule conveys the mutuality of the conciliation process.

Bruce suggested that item B may be costly. County representatives generally agreed that child care and transportation costs associated with appeals have not, to date, been a heavy financial burden on counties. However, Daryl believes the burden may be excessive if counties are also required to pay these costs in association with conciliation conferences. Therefore, Daryl is opposed to item B.

Subpart 12. Mandatory employment search program participants.

Luanne said that the rule should require an employability plan before requiring job search. Sara added that recipients should be exempt from job search if there is no employability plan. Tom Anzelc said that there is not enough money for require an employability plan in every case. Paul said that the department would consider the recommendation.

Jerry asked for clarification on the meaning of "approved" employability plan. Luanne does not want "approved plans" limited to those developed by E&T providers.

Diana said that recipients should not be excused from job search on the basis of an inability to communicate in the English language. She indicated that this exclusion is a disincentive to learning the English language and an incentive to faking difficulty with the language. Diana also recommended that the rule specify the level of literacy at which a recipient would be considered unable to comminicate in the English language. Paul said that the English language exclusion cannot be eliminated because it is required by statute. Paul said that the department is opposed to specifying a particular literacy level because the testing involved would be time-consuming and costly and because the general language has worked thus far in the work readiness program. Diana indicated that she was not satisfied with Paul's answer.

Martha said that she wants a provision for voluntary participation in job search with a requirement that counties provide support services to facilitate participation. Paul said that this rule does not preclude voluntary programs but that the department cannot guarantee funds for such programs.

Diana urged the inclusion of minimum standards in addition to the maximum limits contained in the current draft of the rule. Daryl agreed with the recommendation for minimum standards but representatives from Anoka county expressed opposition to this recommendation. Paul said that minimum standards would tie money up.

The committee agreed to hold the next committee meeting on the 17th of August.

Appendix F

MINUTES
AFDC EMPLOYMENT/TRAINING RULE ADVISORY COMMITTEE MEETING
AUGUST 17, 1987

On August 17, 1987, the department conducted a meeting of the AFDC Employment and Training Rule Advisory Committee. The meeting was convened at 9:00 a.m. in the Minnesota Room of the Space Center Building, St. Paul.

The following persons attended the meeting:

Dan Lipschultz, Department of Human Services
Sandra Norman, Department of Human Services
Paul Timm-Brock, Deparetment of Human Services
Mike Sirovy, Department of Human Services
Patrick Sheedy, Minnesota Catholic Conference
Karen Korman, Department of Jobs and Training
Mary Jo Ahlgren, Ramsey County
Bob Parke, Ramsey County Human Services Department
Diana Rankin, Lao Family Community of Minnesota
Sara Morrissey, Legal Aid Society of Minneapolis
Jerry Vitzthum, Anoka County
Martha Eaves, Southern Minnesota Regional Legal Services
Ruth Kothman, Benton County Social Services Department
Joyce Connor, Hubbard County Social Services Department
Mary Martin, University of Minnesota
Nancy Wiggins, Hennepin County

DISCUSSION

Subpart 2. Employability plan.

Sandra Norman explained that this subpart was changed to conform to statutory definition as recommended at the previous advisory committee meeting. Sandra also said that the definition of support services in the rule is the definition contained in federal WIN regulations. Committee members had no comment on this subpart.

Subpart 3. Employment and training programs.

Sandra explained that this subpart was changed to identify the specific programs covered by the rule in response to a committee member's recommendation at the previous meeting that a purpose/scope section be added.

Subpart 4. Employment and training provider.

Sandra said that this subpart was changed for clarification purposes.

Subpart 5. Employment and training program participants.

Sandra explained the changes in this subpart since the last draft. Martha suggested that transportation time associated with child care be excluded from the two hour travel time in item C. Paul Timm-Brock said that this was the department's intent.

Sara Morrissey suggested defining participants as those required to participate. Sara also recommended using the terms "applicant" and "recipient" instead of registrant.

Mike Sirovy asked whether "another member of the household" in item D can be a person not included in the assistance unit (e.g. friend). Paul said that he thought it could be.

Subpart 7. Sanction for failure to participate in an employment and training program.

Sara suggested putting this subpart after the subpart on good cause. Sara also recommended that the "inadequate funding" clause be put under the good cause or the exemptions section. Mary Jo Ahlgren and Ruth Kothman objected to putting the inadequate funding clause in the exemptions section because financial workers make exemption determinations and they are not qualified to determine whether funding is adequate. Paul agreed that the inadequate funding clause would be put under the good cause section and not the exemption section.

Patrick Sheedy objected to sanctioning the entire assistance unit under item A. Paul said that federal law requires that the sanction be applied to the entire assistance unit.

Subpart 8. Good cause reasons for failure to participate in employment and training programs.

Sandra pointed out that this subpart was changed to parallel the Human Rights Act as recommended by committee members at the previous committee meeting.

Martha and Sara asked department staff to clarify the meaning of the term "documents" contained in item C. Both Martha and Sara said that the term as used in item C could be interpreted to place a burden of proof on recipients. Sandra said that the department did not intend to allocate burden of proof by use of the term. Much discussion followed with a number of committee members suggesting removal of the term.

Jerry suggested that "public assistance" be added after the term employment in item E. Paul said that Jerry's suggestion was consistent with the department's intent and that the department would add the term.

Martha said that child support payments may not be sufficiently reliable to count as income under item E for good cause purposes. Sara agreed and suggested limiting income considered in item E to "regular" income. Mary Jo said that prospective budgeting would prevent the big "one-time" support or maintenance payment from creating a problem in determining good cause.

Patrick Sheedy expressed concern that subpart 8 perpetuates the myth that welfare recipients are lazy.

Subpart 9. Right to notice.

Sandra explained changes in this subpart from previous draft.

Subpart 10. Conciliation conference.

Martha pointed out typo in line 2 of item A.

Paul informed committee that the Department of Jobs and Training had recommended making the conciliation process more informal by (1) allowing phone conferences at the option of the provider; (2) allowing provider to inform recipient of post-conference decision verbally and not in writing; and (3) deleting item B which provides reimbursement for child care and transportation costs associated with the conference.

The committee was unanimous in objecting to deletion of item B, although Jerry Vitzthum and several other committee members said they would agree to removing witnesses from this item. County representatives said that counties are rarely asked by recipients to reimburse them for expenses associated with attending appeals and that it is unlikely providers would be financially burdened by item B. Many committee members also objected to informing recipients by phone without written confirmation. There was little objection to allowing phone conferences although some committee members indicated that there may be circumstances where conference are best held face-to-face. Bob Parke said that face-to-face contact is an important right that ought to be left in the rule. Diana Rankin said that non-English speaking people will be unable to handle phone conferences without interpreters. Diana asked who would pay for the necessary interpreters.

Sara objected to use of the term "failure" and suggested using the term "resolution" instead. Martha said the 10 day period should be changed to 15 days to allow for the presumed 5 day mailing time.

Subpart 12. Mandatory employment search program participants.

Sandra explained that the changes in this subpart from the previous draft were the result of comments made at the last committee meeting.

Martha asked why the term "caretaker" was used in item C and not the term "recipient" as used in other items. Paul said we will make the provisions consistent.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Aid to Families with Dependent Children; Employment and Training

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on March 14, 1988 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on March 9, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received no requests for a public hearing.

Based on the comments and evidence in the record before the agency, I find the following:

1. The Legal Aid Society of Minneapolis (Legal Aid)) submitted written comments recommending changes to six of the department's proposed amendments.

2. In its first comment, Legal Aid recommends the following two changes to proposed part 9500.2722, subpart 5: (1) the replacement of the word "and" with the word "or" in item C; and (2) the addition of an item E which would excuse a recipient's failure to attend a scheduled orientation session in the event of a "non-medical emergency that requires the recipient's presence at a different location during the hours when orientation is scheduled."

Item C as proposed is intended to excuse nonparticipation in orientation when a recipient is unable to obtain both the child care and transportation needed to attend. That is, if a recipient were able to obtain only one of these two necessities, the recipient would be excused from participation. Legal Aid suggests that this provision, as proposed, could be misconstrued to mean that good cause for nonparticipation exists only when both child care and transportation are unavailable. Adopting Legal Aid's recommendation will prevent this potential misconstruction and ensure that item C is interpreted as intended. Therefore, proposed part 9500.2722, subpart 5, item C is modified as follows:

> C. an inability to obtain the necessary child care ~~and~~ or transportation;

Part 9500.2722, subpart 5, as proposed, excuses failure to attend a scheduled orientation session when a recipient is unable to attend the session because of illness; an inability to obtain the needed transportation or child care; or conflicting employment or educational obligations. Failure to attend orientation under these circumstances would not be sanctioned on the assumption that mandatory attendance in these situations would be unreasonable. Legal Aid argues that mandatory attendance would be equally unreasonable when a recipient is confronted with "emergency" situations that are not related to illness. Required court appearances and attendance at a family member's funeral are given as examples.

An emergency is generally regarded as an unexpected situation of a serious or urgent nature that requires immediate action. American Heritage Dictionary 2nd College Edition (Houghton Mifflin Company 1982). The department agrees that failure to attend orientation in these situations should not be sanctioned. Court appearances, however, are not properly characterized as emergencies since individuals are generally aware of such appearances in advance. Nonetheless, court appearances should also take precedence over orientation. Therefore, proposed part 9500.2722, subpart 5 is modified as follows:

> Subp. 5. **Good cause for failure to attend orientation.** Good cause for failure to attend orientation exists when a recipient cannot attend because of:
>
> ....
>
> E. a judicial proceeding that requires the recipient's presence in court during the hours when orientation is scheduled; or
>
> F. a non-medical emergency that requires the recipient's presence at a different location during the hours when orientation is scheduled. "Emergency", under this item, means a sudden, unexpected occurrence or situation of a serious or urgent nature that requires immediate action.

Item E ensures that recipients will not be sanctioned for making required court appearances. Item F ensures that recipients are permitted to respond to emergencies without sanction. Both items are reasonable and do not substantially change the subpart. They are simply logical extensions of items A to D in that they excuse a recipient's failure to attend orientation when the failure to attend results from significant events beyond the recipient's control that require the recipient's immediate attention.

3. In its second comment, Legal Aid recommends that a reference to part 9500.2740, subpart 6 be added to proposed part 9500.2722, subpart 9. Part 9500.2740, subpart 6 is the provision requiring local agencies to give recipients written notice of proposed sanctions 10 days prior to the imposition of the sanctions. Filing an appeal within 10 days after issuance of the notice delays imposition of a sanction until the end of the appeal process. Proposed part 9500.2722, subpart 6 requires local agencies to provide written notice of orientation prior to the scheduled orientation date.

Legal Aid is concerned that local agencies may interpret the notice requirement in the proposed rule provision as a substitute for the notice requirement of part 9500.2740. The Department agrees with Legal Aid that the notice provided under proposed part 9500.2722, subpart 6 would not be an adequate substitute for the notice required under 9500.2740. As Legal Aid states, no negative action will be pending when the notice under 9500.2722 is received, making it unlikely the recipient will attend carefully to the discussion of appeal rights contained therein. Part 9500.2740, subpart 6 provides clearly that a notice of appeal rights must be issued whenever a local agency decides to terminate or change the payment of benefits. The department had no intention of allowing local agencies to satisfy this requirement by providing the general information notice required under part 9500.2722, subpart 6. Cross-referencing part 9500.2740 as recommended by Legal Aid will clarify this intent. Therefore, proposed part 9500.2722, subpart 9 is modified as follows:

> Subp. 9. **Sanctions for failure to attend orientation.** If a recipient who is required to attend orientation under subpart 2 fails, without good cause, to attend orientation on a scheduled or agreed upon date after issuance of the notice required under subpart 6, the recipient must be sanctioned under items A ~~to~~ C and B.* Before imposing sanctions under item A or B, the local agency must provide the notice required under part 9500.2740, subpart 6.

4. In its third comment, Legal Aid proposes the addition of an item to proposed part 9500.2722, subpart 9. This rule provision requires the vendor payment of a recipient's AFDC benefits as sanction for failing to attend orientation. The item recommended by Legal Aid would permit local agencies to continue payments to caretakers to the extent that no vendor is available. There are very few cases where a vendor is not available. Even benefits to the homeless can be vendored through restaurants and shelters. Nonetheless, there may be cases where vendor payment is impossible. Legal Aid's recommendation is a reasonable approach to those cases. The department is authorized by statute to vendor pay benefits as a sanction for not attending orientation. Withholding benefits in the absence of an available vendor would amount to a sanction more severe than that which is authorized by statute. Therefore, proposed part 9500.2722, subpart 9, item C is modified by deleting the current proposed language* and adding the following:

> C. When a vendor payment is required under item A or B, the local agency may continue payments to the caretaker to the extent that no vendor is available.

5. In its fourth comment, Legal Aid proposes changes to proposed part 9500.2726, subpart 1, items D and E. These changes would 1) remove the language in item D that limits the "temporary illness" exemption from WIN to illnesses or injuries of less than 90 days; and 2) remove the language in item E that requires inclusion of a diagnosis and prognosis in the medical evidence of an incapacity lasting 90 days or more. Legal Aid asserts that federal law does not support the 90 day language or the requirement of a prognosis and diagnosis. Legal Aid also argues that it is often difficult to obtain a diagnosis and prognosis.

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* The sanction identified in item C is eliminated because of legislation passed in the 1988 legislative session that eliminates the statutory authority for the sanction. See H.F. 2126, section 133, p. 119.

Minnesota Rules, part 1400.0500, subpart 1, item C provides that a state agency is not required to justify **existing rules.** The language questioned by Legal Aid has already been adopted in part 9500.2700, subpart 15 and is currently in effect. The proposed amendments do not alter the language or change its meaning; they simply move the language into a new rule part as part of a reorganization of the employment and training sections of the AFDC rule. Therefore, items D and E stand without further justification.

Furthermore, nothing has changed to invalidate the justifications given when these provisions were first proposed and adopted. Federal law still provides two separate medical exemption categories, one for temporary conditions, the other for permanent incapacities. 45 C.F.R §§224.20(b)(3) and (4) (1987). Distinguishing between these two categories is critical since federal regulations permit verification of temporary conditions without medical evidence. The 90 day period specified in items D and E provides an objective basis for differentiating between temporary and permanent incapacities. The diagnosis and prognosis required by item E enable a local agency to determine whether a condition will last 90 days or more. These justifications are contained in appendix A of the statement of need and reasonableness for this proposed rule.

6. In its fifth comment, Legal Aid recommends several changes to proposed part 9500.2728, subpart 1, item A, subitems (2) and (3). These provisions identify two of four exceptions to the employment search participation requirement. Subitem (2), as proposed, exempts a recipient from the participation requirement when the recipient is "currently participating in another employment and training service, other than the employment search component of WIN, which can reasonably be expected to improve the recipient's ability to obtain and keep employment." Subitem (3), as proposed, exempts a recipient from the participation requirement when the recipient's employability plan specifies other activities "that prevent or contraindicate participation in employment search."

Legal Aid recommends deleting all language after the word service in line 29 of subitem (2). Subitem (2) would then exempt from employment search participation all those participating in other employment and training services regardless of the nature of those other services. To support its recommendation, Legal Aid argues that the department does not have legislative authority to place limits on the kinds of employment and training services that may replace employment search participation.

Legal Aid's argument is persuasive as to the language concerning the employment search component of WIN. That language would permit local agencies to require participation in both the WIN and non-WIN employment search programs simultaneously. The result would be contrary to statute which defines WIN as an employment and training service and establishes participation in such programs as an exemption from the employment search requirement. Minn. Stat. §256.736, subd. 1a (d) and subd. 14 (a) (1) (Supp. 1987). Moreover, the department did not intend this result. Indeed, the department was attempting to ensure just the opposite.

State statute does support the other qualifying language that Legal Aid believes should be deleted from subitem (2). That language limits the employment and training services that may replace employment search participation to those which have a reasonable chance of improving a person's employability. Although state statute does not contain this qualifying language, the statute does require that an employment and training service be "approved" if the service is to be an acceptable alternative to employment search participation. Minn. Stat. §256.736, subd. 14 (1) (Supp. 1987). Since the statute does not identify any criteria or standards to use in determining whether a service should be approved, this task necessarily falls on the department under its authority to adopt . . . rules necessary to implement the employment and training section of the statute. Minn. Stat. §256.736, subd. 7 (Supp. 1987). Indeed, without the additional language provided in subitem (2), local agencies would have no guidance in determining whether to approve an alternative to employment search. Therefore, Legal Aid's recommendation with respect to subitem (2) is adopted in part. Accordingly, proposed part 9500.2728, subpart 1, item A, subitem (2) is modified as follows:

> (2) the caretaker is currently participating in another employment and training service~~, other than the employment search component of WIN,~~ which can reasonably be expected to improve the recipient's ability to obtain and keep employment;

Legal Aid's recommendation on subitem (3) is to delete the words "prevent or contraindicate" from line 34 and replace them with the words "conflict with." The alternative language is recommended for purposes of clarity. Adopting Legal Aid's recommendation will add further clarity without changing the essential meaning of the rule provision. Therefore, proposed part 9500.2728, subpart 1, item A, subitem (3) is modified as follows:

> (3) the caretaker's employability plan specifies other activities that ~~prevent or contraindicate~~ conflict with participation in employment search; or

7. In its sixth comment, Legal Aid recommends changes to proposed part 9500.2728, items A and C. Legal Aid's recommended change to item A would permit recipients to request conciliation conferences orally. As proposed, item A requires written requests. Legal Aid's recommended change to item C would allow conciliation conferences to be conducted by telephone only if a telephone conference is requested by a recipient. As proposed, item C permits a telephone conference if both the recipient and service provider agree to conduct the conference by phone.

Legal Aid argues that its recommended change to item A is consistent with the informality of the conciliation process. Legal Aid is correct in noting that the conciliation process is relatively informal; however, it is still important to obtain a recipient's conference request in writing since service providers are required to provide the conference within a specified period of time following the request. Requiring written requests ensures a precise, verifiable record from which to determine whether a conference has been provided within the specified period of time. Therefore, Legal Aid's recommended change to item A is rejected.

Legal Aid argues that its recommendation on item C is needed because recipients will be prone to accept telephone conferences at the suggestion of providers without asserting their right to in-person conferences. There is, however, no evidence that providers will encourage telephone conferences just as there is no evidence that recipients will likely agree to telephone conferences, against their best interests, when suggested by providers. Moreover, there is no basis on the record to support Legal Aid's apparent assumption that phone conferences are inherently inferior to in-person meetings. State statute does not expressly require in-person conferences and no evidence has been presented to show that in-person meetings are more likely to resolve disputes than conferences conducted by phone. See Minn. Stat. §256.736, subd. 4a (Supp. 1987). If a recipient or provider believes that face-to-face contact is needed in a particular case, that party can simply not agree to a phone conference. The proposed rule language was agreed to by the rule advisory committee and ensures that a particular recipient's interest in face-to-face contact is adequately protected. Therefore, Legal Aid's recommended change to item C is rejected.

8. The Scott County Human Services Agency submitted comments in which it makes seven specific recommendations.

9. Scott County's first recommendation is to add language to proposed part 9500.2722, subpart 3 that would require the orientation provider to "inform caretakers of the head start program and encourage caretakers to have their children screened for enrollment in the program where appropriate." This recommendation is based on Minnesota Statutes 1987 Supplement, section 256.736, subdivision 10, clause (9) which requires county boards to provide appropriate caretakers with information on head start and to encourage screening for enrollment in the program. Indeed, the statutory language is identical to the language recommended by Scott County, except the statute does not require counties to carry out these duties as part of the orientation program.

Scott County's recommendation is both necessary and reasonable. The language is needed to ensure that the statutory requirement of section 256.736, subdivision 10, is implemented. Orientation is a reasonable time and place to provide information on and encourage screening for the head start program since orientation is the program designated by statute to provide information on employment and training services. See Minn. Stat. §256.736, subd. 10 (3) (Supp. 1987). Therefore, proposed part 9500.2722, subpart 3 is modified with the addition of the following sentence at the end of the subpart:

> The [orientation] presentation must also inform recipients of the headstart program and encourage caretakers to have their children screened for enrollment in the program where appropriate.

10. Scott County's second recommendation is to delete the reference to good cause on line 36 of proposed part 9500.2722, subpart 8. Scott County maintains that the reference to good cause in this rule provision is redundant since good cause is dealt with in other provisions of the rule. This recommendation is rejected. The redundancy adds needed clarity to the rule.

11. Scott County's third recommendation is to add language to part 9500.2722, subpart 9, item A, referencing the notice of appeal rights required under part 9500.2740, subparts 5 to 10. This same recommendation was made by Legal Aid and will be adopted as indicated in finding 3 above.

12. Scott County's fourth recommendation is to eliminate part 9500.2722, subpart 9, item C and add language to item B that (1) requires continuation of vendor or protective payments to a sanctioned recipient until the recipient has attended orientation; (2) requires the local agency to offer to schedule a sanctioned recipient for an orientation session; (3) requires the sanctioned recipient to contact the local agency to reschedule an orientation session; (4) requires the local agency to schedule a sanctioned recipient for orientation within 30 days after the recipient asks to be scheduled; and (5) requires the local agency to issue any remaining benefits being held for vendor payments after a sanctioned recipient has attended orientation.

The recommendation to delete item C is based on 1988 legislation that eliminates authority for the sanction identified in item C. The department cannot impose the sanction in item C without legislative authority. Therefore, item C of part 9500.2722, subpart 9, as proposed is deleted and replaced with the language on vendor payments identified in finding 4.

The language that Scott County recommends adding to item B is essentially the same language currently in item C. The language specifies how a recipient may end sanctions imposed for failing to attend orientation and what a local agency must do to assist a recipient in ending sanctions. It also specifies what happens when sanctions are ended before the end of a payment month. It is reasonable to move this language into item B since item B now replaces item C as the final level of sanction. Automatic rescheduling for orientation is not appropriate under item B for the reasons given in the statement of need and reasonableness on item C. By the time a recipient has been sanctioned under item B, the recipient has missed two scheduled orientation sessions without good cause. It is reasonable then to require the recipient to initiate scheduling for another orientation to establish some inclination on the part of the recipient to attend. Therefore, item B is modified as follows:

> B. When a recipient fails for the second time to attend an orientation session, the local agency shall issue 100 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. ~~The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time and location of the session under subpart 6.~~ The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The sanction under this item ends when the recipient attends the orientation. The local agency shall then issue to the recipient any remaining benefits being held for vendor or protective payments.

13. Scott County's fifth recommendation is to add language to proposed part 9500.2724, subpart 1 that ensures the subpart is not construed to mean that completion of an AFDC application registers an applicant with the local job service office. Scott County also recommends requiring that the referral to WIN be prompt and that applicants as well as recipients be referred to the WIN office.

Subpart 1, as proposed, incorporates Minnesota Statutes 1987 Supplement, section 256.736, subdivision 3, paragraph (b) which provides that, "to the extent permissible under federal law," a person automatically registers for employment and training services by signing an AFDC application. The department has received permission from the United States Department of Health and Human Services to apply this requirement to WIN. The department has not, however, received permission to apply automatic registration to job service. Moreover, there is no mechanism in place to implement automatic registration in the job service program. Therefore, Scott County's recommendation will be adopted with the understanding that automatic registration can only be applied to job service if the department receives express permission from the federal agency. The first sentence in proposed part 9500.2724, subpart 1 is, therefore, modified as follows:

> Except for registration with the local job service office under part 9500.2300, item F or subpart 2 of this part, ~~C~~completion of the AFDC application form automatically registers the applicant for WIN and for other mandatory employment and training services that require registration.

Scott County's recommendation that the job service referral be made promptly is a reasonable means of ensuring that recipients do not receive AFDC for long periods of time before taking advantage of services that can help them obtain employment. Scott County's recommendation that "applicants" as well as recipients be referred to job service is needed because job service registration is a condition of eligibility under both state and federal law. The referral helps ensure that applicants take the necessary action to satisfy this eligibility requirement. There is no reason to delay referral to job service until after eligibility is determined. Therefore, the last sentence in proposed part 9500.2724, subpart 1 is modified as follows:

> The local agency shall promptly refer to the local job service office applicants and recipients who are principal wage earners residing in non-WIN counties whose program eligibility is based on the unemployment of a parent under part 9500.2300.

14. Scott County's sixth recommendation is to change some of the language in proposed part 9500.2724, subpart 2 to make clear that job service registration is an on-going requirement. As proposed, subpart 2 requires principal wage earners in non-WIN counties whose AFDC eligibility is based on the unemployment of a parent to register with job service as a condition of AFDC eligibility for the entire assistance unit. The language suggested by Scott County would specifically require the

principal wage earner to be "currently registered." If adopted, Scott County's recommendation will add important clarity to the rule. It will also ensure the rule is consistent with the current adopted AFDC rule (part 9500.2700, subpart 14) and with governing federal law which uses the phrase "currently registered" in referring to the job service registration requirement. See 45 C.F.R §233.100 (a) (5) (i) (1987). Therefore, proposed part 9500.2724, subpart 2 is modified as follows:

> Subp. 2. Mandatory employment and training participation. Recipients shall participate in WIN if required under part 9500.2726, subpart 1, in employment search if required under part 9500.2728, subpart 1, and in CWEP if required under parts 9505.1051 to 9505.1065 [Emergency]. ~~When a~~ A principal wage earner who resides in a non-WIN county and whose ~~is eligible~~ program eligibility is based on the ~~basis of~~ unemployment of a parent under part 9500.2300 ~~does not~~ must be currently registered with the local job service~~,~~ office. If an applicant or recipient does not comply with this requirement, the person's entire assistance unit shall be ineligible.

15. Scott County's seventh recommendation is to replace the word "A" in proposed part 9500.2728, subpart 1, line 14 with the word "Each". This recommendation is intended to make sure that all counties provide an employment search program. Since this was the department's intent, Scott County's recommendation is adopted.

16. The Minnesota Department of Jobs and Training (DJT) submitted written comments containing six recommendations.

17. DJT's first recommendation is to add language to proposed part 9500.2722, subpart 1, item A that gives express permission to local agencies to contract with other agencies to provide orientation to AFDC recipients. The advisory committee indicated that local agencies should have the option of contracting with private agencies to provide orientation. The department has assumed that local agencies have the authority to contractually delegate this function absent any provision in statute or rule to the contrary. Consequently, the language recommended by DJT was not included in the proposed rule. The department agrees, however, that the addition of language giving local agencies express authority to contract for the provision of orientation will add important clarity and certainty to the rule, ensuring that local agencies have the authority the department and advisory committee believe they should have. Therefore, proposed part 9500.2722, subpart 1, item A is modified as follows:

> A. provide, or contract with another entity to provide, orientation to AFDC caretakers residing in the local agency's jurisdiction who are required to attend orientation under subpart 2; and

18. DJT's second recommendation is to add the word "services" after the word "training" in proposed part 9500.2722, subpart 3, line 26. The subpart currently requires the presentation of information on "employment and training." The term "services" was inadvertently left out of the sentence. DJT's position is correct. The word "services" must be added to ensure the rule is consistent with state statute which uses the term "employment and training services" and defines the term with a great deal of specificity. Therefore, the first sentence in proposed part 9500.2722, subpart 3 is modified as follows:

> Subp. 3. Orientation content. Orientation must consist of a presentation that tells a recipient of the identity, location, and phone number of available employment and training services, and support services relevant to the recipient's circumstances.

19. DJT's third recommendation pertains to proposed part 9500.2722, subpart 4. Specifically, DJT recommends the addition of language requiring (1) that non-English-speaking recipients be provided with a short written statement in their native languages explaining the importance of orientation and advising them to seek help with language difficulties if necessary; and (2) that "most" of the orientation presentation be presented orally or via videotape and not in writing.

The department rejects DJT's recommendation on the inclusion of information to non-English-speaking recipients. Currently, all AFDC forms sent to applicants and recipients contain what is commonly referred to as a "language block." This block states the following in five languages, including Vietnamese, Hmong and Laotian: "This form has important welfare information. If you can't understand it, get help now." The statement provided in the language block is essentially what DJT recommends requiring by rule. The fact, however, that the statement is already provided as a matter of standard practice indicates it need not be required by rule. Indeed, the language block has already been included in the forms prepared for the orientation program.

To the extent that current practice is shown to be inadequate, it may be necessary to address the language question in rule. In that case, the department could codify current practice in rule or adopt rules requiring additional measures to meet the information needs of non-English-speaking recipients. The department has not, however, received input indicating that its forms fail to adequately address the problem of communicating with non-English-speaking AFDC recipients. Indeed, the issue was not raised by this rule's advisory committee even though the committee membership included representatives from Legal Aid and Lao Family Community Inc, a group representing Southeast Asian residents of Minnesota. Ultimately, any rule provision addressing this area should apply to the entire AFDC program and not just the employment and training provisions at issue here.

The department rejects DJT's recommendation that most of orientation be presented verbally. The department shares DJT's concern that recipients may be overwhelmed by written material provided at orientation and that oral communication is important to ensure full comprehension, particularly among those with poor reading skills. To address this concern, the proposed rule requires that orientation "include the opportunity for face-to-face interaction between the recipient and staff providing orientation." This requirement ensures recipients the

opportunity to obtain information in orientation verbally. A requirement that "most" of the orientation presentation be verbal would be unenforceable since it would be almost impossible to determine whether most of a presentation has indeed been given orally. Would the determination be made by counting the words communicated in writing and comparing that total to the number of words communicated verbally? Would the comparison be between the time spent talking and the time spent distributing written material? Clearly, there is no reasonable means of implementing DJT's specific suggestion.

20. DJT's fourth recommendation is to add language to part 9500.2722, subpart 7 that "absolutely precludes the provision of orientation on the same day a recipient applies for AFDC." DJT argues that permitting orientation on application day will allow the provision of orientation to "applicants" and that state statute prohibits local agencies from providing orientation to applicants. To support its contention, DJT cites Minnesota Statutes, section 256.736, subdivision 10, clause (6) which "requires all caretakers coming into the AFDC program to attend orientation." DJT maintains that the phrase "coming into the program" means recipients.

If DJT's interpretation of this phrase is correct, mandatory participation is limited to recipients. Voluntary participation, however, is not similarly restricted. The statutory provision cited by DJT identifies mandatory participants and limits mandatory participation to caretakers "coming into the program." Clause (3) of the same subdivision, however, requires counties to provide orientation to "all caretakers." The statutory definition of caretaker includes both applicants and recipients. Minn. Stat. §256.736, subd. 1a (c) (Supp. 1987). Therefore, state statute not only permits, but requires counties to make orientation available to applicants.

Part 9500.2722 of the proposed rule is perfectly consistent with the orientation provisions of state statute. Subpart 2 makes orientation mandatory for recipients only, while subpart 6 delays mandatory participation until after issuance of a notice informing the recipient of the orientation requirement. Subpart 7 permits orientation prior to issuance of the notice and allows local agencies to provide orientation to applicants as well as recipients, provided the applicant or recipient agrees. Therefore, under the proposed rule, an applicant's participation in orientation must be voluntary. To ensure that applicants are not required to participate in orientation, subpart 7 is modified as follows:

> Subp. 7. Voluntary ~~E~~early participation in orientation. If the local agency and applicant or recipient agree~~, to have the recipient's~~ orientation may be provided prior to the issuance of the notice under subpart 6. ~~occur within ten days after the recipient is determined eligible for AFDC, no notice of orientation is required.~~ If the applicant or recipient fails to attend orientation on the agreed upon date~~within ten days immediately following the eligibility determination as agreed~~, the local agency shall schedule the recipient for orientation under subpart 8 and issue a notice under subpart 6.

21. DJT's fifth recommendation pertains to proposed part 9500.2728. Specifically, DJT recommends the rule require the provision of notice to mandatory employment search participants informing them of the employment search program and the consequences of failing to participate. DJT argues that this requirement is necessary to make the rule internally consistent since the rule establishes a similar requirement for the orientation program. The department agrees with DJT's recommendation. If participants in orientation are required to receive information on the orientation program, employment search participants should receive information on the employment search program. The requirement can be implemented with relative ease and will not impose an undue hardship on local agencies or the department. The requirement should be of substantial benefit to recipients. Therefore, proposed part 9500.2728, subpart 1, item B is modified as follows:

> B. In the third month after determining that a recipient is required to participate in employment search, the local agency shall refer the recipient to the employment search service provider and inform the recipient of the consequences of failure to participate and the recipient's appeal rights.

22. DJT's sixth and final recommendation applies to part 9500.2728, subpart 1, item A, subitem (2). Specifically, DJT recommends deleting the phrase "other than the employment search component of WIN" from this provision and replacing it with language that exempts individuals from employment search when they are participating in WIN. The phrase referred to by DJT will be deleted as discussed in finding 6, p.4, infra.

As required by state statute, subitem (2) exempts recipients from employment search when they are participating in another employment and training service. Since WIN is specifically defined in statute as an employment and training service, there is no need for language that specifically exempts WIN participants from employment search. However, DJT's real concern seems to be the problem in determining when a WIN registrant is actually "participating" in WIN and consequently exempt from employment search. Indeed, the language now being stricken from this subitem was an attempt to address this concern. Unfortunately, upon close examination that language had the unintended effect of requiring recipients to participate in WIN and employment search simultaneously in violation of state statute. After considering various alternatives, it seems clear that the only reliable basis for determining whether a registrant is actually participating in WIN is specific concrete action by the WIN office. Therefore, part 9500.2728, subpart 1 is modified with the addition of the following item:

> D. A WIN registrant who is suspended from WIN and referred to the employment search program by the local WIN office is not exempt from the employment search program under item A, subitem (2).

23. As proposed, part 9500.2728, subpart 3 provides: "A local agency shall determine good cause by applying the conditions in items A to I." This language is slightly misleading in that it fails to recognize the role of providers in determining whether good cause exists. If fact, both subpart 4 of this rule provision and Minnesota Statutes 1987 Supplement, section 256.736, subdivision 4a give employment and training services providers responsibility for making the initial good cause determination. Ultimately, local agencies will be responsible for determining whether a recipient's failure to participate is justified by good cause such that the recipient should not be sanctioned. The rule must, therefore, be clear that both local agencies and service providers are expected to apply the same criteria in making good cause determinations. To clarify the rule, proposed part 9500.2728 is modified as follows:

> Subp. 3. Good cause for refusing or terminating employment or failing to comply with employment search requirements. A recipient who fails to participate in employment search required under subpart 1 or accept employment as required under subpart 2 shall not be sanctioned if the recipient has good cause for the failure. ~~A local agency shall determine~~ gGood cause shall be determined by applying the conditions in items A to I.

CONCLUSIONS

I hereby conclude that:

1. The commissioner has statutory authority to promulgate these rules.

2. Proper notice of the department's intent to adopt the proposed above-captioned rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed rules.

3. None of the modifications made to the proposed rules are substantial.

4. The rules, as modified, are necessary and reasonable.

5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Adopted Permanent Rules Relating to Aid to Families with Dependent Children; Employment and Training, parts 9500.2720 to 9500.2730 (as modified) is adopted this 26th day of May, 1988, pursuant to authority vested in me by Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7.

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

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ADMINISTRATIVE
HEARINGS

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert St., St. Paul, Minnesota, 55101-2520, telephone (612) 296-5148.

Dated: 14 December 1987

Michael A. Hatch
Comissioner of Commerce

62I.21 ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the *State Register* activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

62I.22 HEARING.

Subdivision 1. ADMINISTRATIVE LAW JUDGE. The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and administrative law judge assigned to the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. NOTICE. The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required. The notice must contain a statement that anyone wishing to oppose activation beyond 180 days for any particular class, must file a petition to intervene with the administrative law judge at least ten days before the hearing date. If no notice to intervene is filed for a class then the class is activated beyond the 180-day period without further action.

Subd. 3. CONTESTED CASE; REPORT. The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. DECISION. The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. WAIVER OR MODIFICATION. If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. CASE PRESENTATION. The department of commerce, upon request by small businesses as defined by section 14.115, subdivision 1, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

Department of Human Services

Assistance Payments Division

Notice of Intent to Solicit Outside Opinion Concerning Proposed Permanent Rules Governing Aid to Families with Dependent Children

Notice is hereby given that the Minnesota Department of Human Services is seeking opinions or information in preparing to propose permanent rules governing the aid to families with dependent children (AFDC) program, *Minnesota Rules*, parts 9500.2000 to 9500.2880.

The adoption of these rules is authorized by *Minnesota Statutes 1987 Supplement*, section 256.736, subdivision 7 and governs the administration of financial assistance to families which meet at least one of the deprivation factors authorized in Minnesota law.

These rules are intended to establish requirements and standards related to employment and training programs which provide AFDC applicants and recipients with the training and job search skills necessary to locate and secure employment.

All interested or affected persons or groups are requested to participate. Statements of information and comment or questions may be made orally or in writing.

Written statements of information and comment should be addressed to:

Dan Lipschultz
Rules Division
Minnesota Department of Human Services
444 Lafayette Road, 2nd floor
St. Paul, Minnesota 55155-3816

Department of Human Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Permanent Rules Governing Child Foster Care Difficulty of Care Payments

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of a permanent rule governing child foster care difficulty of care payments. The adoption of the rule is authorized by *Minnesota Statutes*, section 256.82, subdivisions 3 and 3a, which directs the agency to promulgate a permanent rule establishing a uniform statewide system of difficulty of care payments to child foster care providers. As also directed by the statute, an emergency rule has been promulgated, effective as of January 1, 1987. The Department will consider changes in the emergency rule based on the experience of the counties and foster care providers, and will consider the inclusion of a cost of living index to periodically adjust the payment rates.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Marian Eisner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155. Oral statements will be received during regular business hours over the telephone at (612) 297-2711 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register.* Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Department of Jobs and Training

State Job Training Office

Proposed Redesignation of Benton and Stearns Counties by the Governor Under the Job Training Partnership Act

In accordance with my responsibilities under Section 101 of the Job Training Partnership Act (JTPA), and after having considered the recommendaiton of the Governor's Job Training Council, I am proposing Benton and Stearns County form a joint Service Delivery Area under the JTPA for Program Years 1988 and 1989.

Dated: 15 December 1987

Rudy Perpich
Governor

Written comments and statements concerning this proposal should be sent to:

Don Mohawk, Director
State Job Training Office
Minnesota Department of Jobs and Training
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Written comments and statements will be accepted through 4:30 p.m., January 15, 1988.

Department of Human Services

Proposed Permanent Rules Relating to Aid to Families With Dependent Children; Employment and Training

Rules as Proposed (all new material)

9500.2720 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 9500.2720 to 9500.2730 have the meanings given them in this part and in part 9500.2060 unless otherwise indicated.

Subp. 2. **Employability plan.** "Employability plan" means a plan written for a registrant by an employment and training provider in consultation with the registrant that defines the registrant's employment and training goals and outlines the training, education, and support services the registrant needs to achieve these goals.

Subp. 3. **Employment search.** "Employment search" means the program authorized under the Code of Federal Regulations, title 45, part 240, which provides AFDC recipients with training and assistance in finding and securing regular, unsubsidized employment.

Subp. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services as defined in Minnesota Statutes, section 256.736, subdivision 1a, paragraph (d).

Subp. 5. **Employment and training service provider or service provider.** "Employment and training service provider" or "service provider" means a provider certified by the commissioner of jobs and training under Minnesota Statutes, section 268.0122, subdivision 3, to deliver employment and training services.

Subp. 6. **Priority caretaker.** "Priority caretaker" means a caretaker who:

A. is under age 21;

B. has not graduated from high school or received a

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general equivalency diploma; or

C. has received AFDC for 24 or more months out of the last 36 consecutive calendar months.

9500.2722 ORIENTATION REQUIREMENT.

Subpart. 1. **Local agency responsibilities.** Each local agency shall:

A. provide orientation to AFDC caretakers residing in the local agency's jurisdiction who are required to attend orientation under subpart 2; and

B. provide or pay the reasonable cost of child care and transportation needed to enable a caretaker to attend orientation. A local agency is not required to pay child care costs that exceed limits established by the local agency under Minnesota Statutes, section 268.91, subdivision 8.

Subp. 2. **Mandatory participants.** A recipient shall attend an orientation session if the recipient is:

A. a caretaker who is a principal wage earner in an assistance unit whose eligibility is based on the unemployment of a parent under part 9500.2300;

B. a priority caretaker; or

C. a caretaker who is determined eligible for AFDC on or after July 1, 1988, and who has not attended an orientation within the previous 12 calendar months.

Subp. 3. **Orientation content.** Orientation must consist of a presentation that tells a recipient of the identity, location, and phone number of available employment and training, and support services relevant to the recipient's circumstances. Orientation must encourage recipients to view AFDC as a temporary program providing grants and services to clients who set goals and develop strategies for supporting their families without AFDC assistance. The content of orientation must not imply that a recipient's eligibility for AFDC is time limited.

Subp. 4. **Orientation format.** Videotaped presentations may be used, but orientation must include the opportunity for face-to-face interaction between the recipient and staff of the

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local agency or the entity providing orientation.

Subp. 5. **Good cause for failure to attend orientation.** Good cause for failure to attend orientation exists when a recipient cannot attend because of:

A. illness or injury of the recipient;

B. illness or injury of a member of the recipient's family that requires the recipient's care during the hours when orientation is offered;

C. an inability to obtain the necessary child care and transportation; or

D. employment, school, or employment and training service obligations that are scheduled during the hours when orientation is offered and that cannot be changed to allow participation in orientation.

Subp. 6. **Notice to mandatory participants.** Except as provided in subpart 7, the local agency shall provide written notice of the orientation requirement to a recipient required to attend orientation under subpart 2. The notice must tell the recipient the time, date, and location of the orientation that the recipient is scheduled to attend, the consequences of failing to attend on the scheduled date, and the recipient's appeal rights in part 9500.2740, subparts 8 to 10. The notice must be mailed or delivered to the recipient at least ten days before the recipient's scheduled orientation date.

Subp. 7. **Early participation in orientation.** If the local agency and recipient agree to have the recipient's orientation occur within ten days after the recipient is determined eligible for AFDC, no notice of orientation is required. If the recipient fails to attend orientation within ten days immediately following the eligibility determination as agreed, the local agency shall schedule the recipient for orientation under subpart 8 and issue a notice under subpart 6.

Subp. 8. **Timing of orientation.** A recipient required to attend orientation under subpart 2 must attend orientation on the date scheduled by the local agency under this subpart unless the recipient has good cause for not attending on that date or

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the local agency and recipient agree on a different date. The local agency must schedule a recipient required to attend orientation under subpart 2, item A or B, for an orientation session to be held before January 1, 1989. The local agency must schedule a recipient required to attend orientation under subpart 2, item C, for an orientation session to be held within 60 days after the local agency mails the recipient's notice of eligibility.

Subp. 9. **Sanctions for failure to attend orientation.** If a recipient who is required to attend orientation under subpart 2 fails, without good cause, to attend orientation on a scheduled or agreed upon date after issuance of the notice required under subpart 6, the recipient must be sanctioned under items A to C.

A. When a recipient fails for the first time to attend an orientation session, the local agency shall issue a maximum of 50 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

B. When a recipient fails for the second time to attend an orientation session, the local agency shall issue 100 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

C. When a recipient fails for the third time to attend an orientation session, the local agency shall not take the recipient's needs into account when determining the amount of the next monthly payment to the assistance unit. The amount

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of the monthly payment to which the rest of the assistance unit is entitled, if any, must be issued in the form of a vendor or protective payment. The recipient's needs must not be considered again until the recipient has attended an orientation session. The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. The recipient must contact the local agency to schedule an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The sanction under this item ends when the recipient attends the orientation, and the local agency shall issue prorated benefits for the rest of the payment month following the date the recipient attends the orientation.

9500.2724 GENERAL EMPLOYMENT AND TRAINING REQUIREMENTS.

Subpart 1. **Registration and referral for employment and training services.** Completion of the AFDC application form automatically registers the applicant for WIN and for other mandatory employment and training services that require registration. The local agency shall refer to the local WIN office recipients residing in WIN counties who are not exempt from mandatory WIN registration under part 9500.2726, subpart 1. The local agency shall refer to the local job service office recipients who are principal wage earners residing in non-WIN counties whose program eligibility is based on the unemployment of a parent under part 9500.2300.

Subp. 2. **Mandatory employment and training participation.** Recipients shall participate in WIN if required under part 9500.2726, subpart 1, in employment search if required under part 9500.2728, subpart 1, and in CWEP if required under parts 9505.1050 to 9505.1065 [Emergency]. When a principal wage earner who resides in a non-WIN county and who is eligible on the basis of unemployment of a parent under part 9500.2300 does not register with job service, the person's entire assistance

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unit shall be ineligible.

9500.2726 WIN REQUIREMENTS.

Subpart 1. **Participation in WIN.** A recipient living in a WIN county, regardless of the recipient's basis of program eligibility under parts 9500.2180 to 9500.2300, shall cooperate with the local WIN office as a condition of AFDC eligibility unless the local agency determines that the applicant or recipient is exempt. A recipient who is exempt from mandatory WIN registrant status is:

A. A child under the age of 16.

B. A student who is at least 16 but less than 18 years of age and meets the conditions of part 9500.2060, subpart 58, item A, B, C, or F.

C. A person who is 18 years of age and meets the conditions of part 9500.2060, subpart 39, items B and C.

D. A person who, for up to 90 consecutive days, is ill or injured to the extent that the illness or injury temporarily prevents participation in training or employment. Determination of an exemption under this item must be made by the AFDC unit and may be allowed without medical documentation when the illness or injury is evident. An exemption for an illness or injury that extends for 90 days or more must be documented by medical evidence described in item E.

E. A person who, for at least 90 consecutive days, is physically or mentally incapacitated when the incapacitating factors, by themselves or with the person's age, prevent participation in training or employment. The incapacity must be documented by medical evidence. The medical evidence must include a prognosis and diagnosis of the impairment from at least one licensed physician or licensed psychologist. The local agency shall give the applicant or recipient voluntary referral to the Minnesota Department of Vocational Rehabilitation upon determination of the exemption.

F. A person 65 years of age or older.

G. A person whose round trip commuting time from the

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person's residence to the local WIN office is more than two hours by the means of transportation available to the recipient and exclusive of the time needed to transport children to and from child care.

H. A person needed in the home to care for a physically or mentally incapacitated person living in the household. The incapacity and the need for care must be documented by medical evidence from a licensed physician or licensed psychologist.

I. A parent or caretaker of a child under age six who is providing full-time care for that child. A person who is anticipated to be absent from the child for an average of at least 30 hours per week during the current and following month, exclusive of absences related to providing care for the child, does not qualify for this exemption.

J. A person who is currently employed in unsubsidized employment that is expected to last at least 30 days and that provides a monthly average of at least 30 hours of employment per week.

K. A parent who is not a principal wage earner but who is in an assistance unit whose program eligibility is based on the unemployment of a parent, provided the principal wage earner in the assistance unit is not exempt under the other items of this subpart and is cooperating with WIN.

L. A person, who after applying for AFDC, volunteered to participate under the Volunteers in Service to America (VISTA) program as provided by United States Code, title 42, sections 4951 to 4959 as amended through December 31, 1987.

M. A pregnant woman when the pregnancy has entered the third trimester.

N. A person employed under a work supplement program established under the Code of Federal Regulations, title 45, part 239.

Subp. 2. **Good cause for noncooperation with WIN.** A recipient who has good cause for not cooperating with WIN shall not be sanctioned. Good cause for not cooperating with WIN must

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be determined under the Code of Federal Regulations, title 45, section 224.34.

Subp. 3. **Determination of noncooperation.** The WIN office shall determine whether a WIN registrant has, without good cause, failed to cooperate with WIN. The WIN office shall notify the local agency of a deregistration action taken against a registrant for noncooperation. When notified of deregistration, the local agency shall sanction the recipient under part 9500.2730, beginning with the first payment month following deregistration in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

9500.2728 EMPLOYMENT SEARCH REQUIREMENTS.

Subpart 1. **Participation in employment search.** A local agency shall provide a mandatory employment search program for recipients whose participation is mandatory under item A. A local agency may provide a voluntary employment search program for recipients who are not required to participate under item A. The employment search program must be administered in accordance with items A to C.

A. A caretaker who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under part 9500.2300 must participate in employment search as a condition of AFDC eligibility unless:

(1) the caretaker is exempt from WIN participation under part 9500.2726, subpart 1, items A to F or H to N;

(2) the caretaker is currently participating in another employment and training service, other than the employment search component of WIN, which can reasonably be expected to improve the recipient's ability to obtain and keep employment;

(3) the caretaker's employability plan specifies other activities that prevent or contraindicate participation in employment search; or

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(4) the caretaker cannot secure employment because of an inability to communicate in the English language as determined by the local agency, a specialist in English as a second language, or a vocational specialist as defined in part 9500.1206, subpart 33, and the recipient is attending a program in English as a second language, if available.

B. In the third month after determining that a recipient is required to participate in employment search, the local agency shall refer the recipient to the employment search service provider.

C. The employment search service provider shall specify the number of weeks and hours that a recipient must participate in employment search. The service provider shall not require a recipient to participate in employment search for more than eight weeks in any 12 consecutive calendar months and for more than 32 hours during any week.

Subp. 2. **Offers of employment.** A recipient who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under 9500.2300 must, as a condition of AFDC eligibility, accept any bona fide offer of employment made by an employer.

Subp. 3. **Good cause for refusing or terminating employment or failing to comply with employment search requirements.** A recipient who fails to participate in employment search required under subpart 1 or accept employment as required under subpart 2 shall not be sanctioned if the recipient has good cause for the failure. A local agency shall determine good cause by applying the conditions in items A to I.

A. Good cause exists when a job or employment search is not suited to the physical or mental capacity of the person or when it will have an adverse effect on that person's physical or mental health. Evidence from a licensed physician or licensed psychologist must document a claim under this item.

B. Good cause exists when the round trip commuting time from a person's residence to the employment search or job site is more than two hours by available means of

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transportation, exclusive of the time to transport children to and from child care.

C. Good cause exists when licensed child care is required but not available.

D. Good cause exists when the work or employment search site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Jobs and Training.

E. Good cause exists when a person documents discrimination at the job or employment search site on the basis of age, sex, race, religion, or place of national origin.

F. Good cause exists when the hourly gross employment earnings are less than the federal or state minimum wage for that type of employment, whichever applies.

G. Good cause exists when the gross monthly employment earnings are less than 185 percent of the AFDC family allowance for the recipient's assistance unit.

H. Good cause exists when the job that is offered is vacant due to a strike, lockout, or other bona fide labor dispute.

I. Good cause exists when the recipient incurs unreimbursed out-of-pocket expenses to participate in employment search.

Subp. 4. **Determination of failure to accept employment or participate in employment search.** The employment search service provider shall determine whether a recipient has failed, without good cause, to comply with employment search requirements under subpart 1 or accept employment as required under subpart 2. If the employment search or employment offer is provided through WIN, the WIN office shall make the determination. If the service provider determines that a recipient has failed, without good cause, to comply with the participation or employment requirements of subpart 1 or 2, the provider shall notify the recipient under subpart 5.

Subp. 5. **Notice of failure to participate or accept employment.** If a service provider determines under subpart 4

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that a recipient has failed, without good cause, to participate in employment search or accept employment as required, the provider shall mail a written notice of its determination to the recipient at the recipient's last known mailing address. The notice shall provide a detailed explanation of the reasons for the determination, the consequences of failure to participate or accept employment, the actions the service provider believes are necessary for the recipient to comply with the employment and training requirements, the right to request a conciliation conference within 15 days after the date the notice is mailed, and the right to request a hearing under part 9500.2740, subpart 8.

Subp. 6. **Conciliation conference.** A service provider shall, according to its contract with the local agency, provide a conciliation conference to recipients who request a conference within 15 days after the notice under subpart 5 is mailed. The conciliation conference must be conducted according to items A to D.

A. If a recipient requests a conciliation conference, the service provider shall provide the conference within 30 days after receiving the recipient's written request for a conference. The service provider shall notify the recipient of the conference date at least ten days before the date of the conference.

B. The local agency shall reimburse the recipient for the recipient's reasonable and necessary child care and transportation expenses incurred as a result of the recipient's attendance of the conciliation conference.

C. The service provider shall hold the conciliation conference during regular working hours at the service provider's office. If the service provider and the recipient agree, the conciliation conference may be conducted over the telephone.

D. If a conciliation conference is not requested or if the dispute is not resolved at the conference, the service provider shall provide to the local agency and to the recipient

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written notification of its determination that the recipient failed or refused without good cause to participate in employment search or accept employment.

Subp. 7. **Final determination before sanction.** When WIN does not sanction a recipient for failure to accept employment assigned by WIN or participate in an employment and training service provided through WIN, a local agency shall not apply sanctions for the same failure. The local agency shall make a final determination of whether the recipient has failed, without good cause, to accept employment that has not been assigned by WIN or to participate in employment search program that has not been provided through WIN. Upon final determination of failure to participate or accept employment, the local agency shall apply the sanctions under part 9500.2730.

9500.2730 SANCTIONS FOR FAILURE TO PARTICIPATE IN A MANDATORY EMPLOYMENT AND TRAINING SERVICE OR ACCEPT EMPLOYMENT.

Subpart 1. **Notice.** If a local agency is notified of WIN deregistration under part 9500.2726, subpart 3, or if a local agency determines under part 9500.2728, subpart 7, that a recipient has failed, without good cause, to participate in employment search or accept employment, the local agency shall notify the recipient that the local agency will impose the sanctions of subpart 2, beginning with the first payment month following deregistration or noncompliance in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

Subp. 2. **Sanctions.** The following sanctions apply to recipients who do not comply with WIN, employment search, or employment requirements:

A. When a recipient is also the principal wage earner under part 9500.2300, the entire assistance unit is ineligible for three payment months for the first failure to comply or for six payment months for later failures to comply. When, during the period of sanction, the principal wage earner leaves the home or when either parent becomes incapacitated and eligibility

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is established under parts 9500.2180 to 9500.2260, the sanction period ends for the remaining members of the assistance unit.

B. When a recipient in an assistance unit that qualifies under part 9500.2300 is the parent who is not the principal wage earner, or when the recipient is a parent caretaker in an assistance unit that qualifies under part 9500.2180, 9500.2220, or 9500.2260, the parent caretaker shall be removed from the assistance unit. The parent caretaker shall be ineligible for a period of three payment months for the first failure to comply or for six payment months for later failures to comply. Protective or vendor payments shall be issued for the needs of the remaining members of the assistance unit under part 9500.2680, subpart 2, item A until the period of the sanction ends or the recipient who is under sanction is no longer a member of the assistance unit.

C. When a recipient who is under sanction is a caretaker relative other than a parent or is one of several dependent children, that person must be removed from the assistance unit for three payment months for the first failure to comply or for six payment months for subsequent failures to comply. When the recipient is the only dependent child in the assistance unit, the assistance unit shall be ineligible for AFDC for three payment months following the first occasion of noncompliance or for six payment months following later occasions of noncompliance.

REPEALER. Minnesota Rules, part 9500.2700, subparts 13, 14, 15, 16, 17, 18, and 19, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Aid to Families With Dependent Children; Employment and Training

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9500

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28.[1] The specific statutory authority to adopt the rule is in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged.[2] Each comment should identify[3] the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day[4] comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state[6] his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20.[7] PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 25, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:[5]

Dan Lipschultz
Department of Human Services
444 Lafayette Rd. 2nd Floor South
St. Paul, MN 55155-3816
612/297-4302

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, 444 Lafayette Rd. 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsiblities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

A Statement of Need and Reasonableness 12 that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee upon request.

13 Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to 9 legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Dan Lipschultz.

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/88

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 1A and 1B, 1st Floor, 444 Lafayette Rd., St. Paul, MN 55155 on April 25, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law

Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7. Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsiblities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services (address on page 2). This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Dan Lipschultz at 612/297-4302.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptio... Questions should be directed to the Ethical Practices Board, 625 North ...ert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN; EMPLOYMENT AND TRAINING

AFFIDAVIT OF MAILING

Nancy Bishop, being first duly sworn, deposes and says:

That on the 9 th day of March, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy L. Bishop

Subscribed and sworn to before me

this 9 day of March, 1988

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 1A and 1B, 1st Floor, 444 Lafayette Rd., St. Paul, MN 55155 on April 25, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law

Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7. Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsiblities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services (address on page 2). This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Dan Lipschultz at 612/297-4302.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/66

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 25, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Dan Lipschultz
Department of Human Services
444 Lafayette Rd. 2nd Floor South
St. Paul, MN 55155-3816
612/297-4302

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, 444 Lafayette Rd. 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsiblities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Dan Lipschultz.

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN; EMPLOYMENT AND TRAINING

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Bishop, being first duly sworn, deposes and says:

That on the 9 th day of March, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

.The 87 Minnesota County Human Services Agencies

.Public advisory committee members

Nancy L. Bishop

Subscribed and sworn to before me

this 9 day of March, 1988

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 1A and 1B, 1st Floor, 444 Lafayette Rd., St. Paul, MN 55155 on April 25, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law

Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7. Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsiblities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services (address on page 2). This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Dan Lipschultz at 612/297-4302.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

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The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/66

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Rules Relating to Aid to Families with Dependent Children; Employment and Training

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is in Minnesota Statutes 1987 Supplement, section 256.736, subdivision 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 25, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Dan Lipschultz
Department of Human Services
444 Lafayette Rd. 2nd Floor South
St. Paul, MN 55155-3816
612/297-4302

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, 444 Lafayette Rd. 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

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Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Dan Lipschultz.

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

Dated: 2/23/88

Secretary of State

8200.0300; .0400; .0700; .0800; .1100; .1200; .1500; .1700; .2100; .2200; .2600; .3700; .3800; .5100; .5400; .9910; .9919; 8220.1950; 8235.0200; 8240.2400 (proposed) 1611
8220.0650 (adopted) 1712
8200.1300; .1600; .3800 s.2; .9916; .9922; .9925 (proposed repealer) 1611
8210.3000; .3005; .3010; .3015 (proposed) 1446
8220.0650; .0800 (proposed) 1746

Public Service Department—Energy

8300.2500-.2509 (emergency extended) 2045
8300.2501 s.2,3 (emergency repealer extended) 2045

Teaching Board

8700.7600; .7700 (proposed) 1950

Transportation Department

8850.6900-9050; 8855.0300-.0850 (proposed) 1952
7800.0100 s.2,9,10; .0300; .1200; .1300; .1900; .3500; .3700-.8200; 7805.1400-.3600 (proposed repealer) 1952
8870.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100 (adopted) 1712

Veterinary Medicine Board

9100.0400 (proposed) 1450

Waste Management Board

9200.6000; .6001; .6002; .6003; .6004; .6007; .6008; .6010 (adopted) 1564
9200.6902-.6905 (proposed) 1807
9200.9501; .9502; .9503; .9506; .9508 (adopted) 2044
9220.0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180 (proposed) 1704
9220.0200-.0680 (proposed) 1541

Human Services Department

9500.1100 (adopted) 1611
9500.2720; .2722; .2724; .2726; .2728; .2730 (proposed) 2010
9500.2700 s.13-19 (proposed repealer) 2010
9502.0335 (proposed) 1607
9505.2390-.2500 (proposed) 2018
9505.2250; .2260; .2270; .2280; .2290; .2300; .2310; .2320; .2330; .2340; .2350; .2360; .2370; .2380 (proposed repealer) 2018
9515.1000; .1200; .1300; .1400; .1500; .2200; .2300; .2400; .2500; .2600 (proposed) 1389
9515.1100 (proposed repealer) 1389
9525.1210; .1250 (adopted) 2044
9530.4100; .4120; .4130; .4200; .4210; .4220; .4230; .4250; .4260; .4270; .4280; .4300; .4310; .4320; .4330; .4340; .4350; .4370; .4380; .4390; .4400; .4410; .4450 (adopted) 1451
9530.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200; .3300; .3400; .3500; .3600; .3700; .3800; .3900; .4000 (repealed) 1451
9549.0059;.0060; (proposed) 1649
9553.0020; .0030; .0035; .0040; .0050; .0075 (adopted) 1711
9553.0041; .0050; .0060 (proposed) 1429

Proposed Rules

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Aid to Families With Dependent Children; Employment and Training

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is in *Minensota Statutes 1987 Supplement*, section 256.736, subdivision 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 24, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Dan Lipschultz
Department of Human Services
444 Lafayette Rd., 2nd Floor South
St. Paul, MN 55155-3816
612/297-4302

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 13, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from: Nancy Storelee, Department of Human Services, 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsibilities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

Part 9500.2728 governs the new mandatory employment search program through which recipients are assisted in finding and securing employment.

Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

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A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Nancy Storelee upon request.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Dan Lipschultz.

Sandra Gardebring, Commissioner
Department of Human Services

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Rooms 1A and 1B, 1st Floor, 444 Lafayette Rd., St. Paul, MN 55155 on April 25, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 14 and April 24, 1988 at (612) 297-4302.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 and 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes 1987 Supplement*, section 256.736, subdivision 7. Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Storelee, Department of Human Services, 444 Lafayette Rd., 2nd Floor South, St. Paul, MN 55155-3816 or you may call at 612/296-2854.

These rules are intended to implement statutory employment and training requirements applicable to AFDC recipients. The rules will affect AFDC recipients, local agencies and employment and training service providers.

Part 9500.2700 defines programmatic terms relevant to employment and training for AFDC recipients.

Part 9500.2722 establishes requirements and procedures applicable to orientation, a new mandatory program for most AFDC recipients which will help prepare them for employment and training. Specifically, this rule part identifies both local agency and recipient responsibilities regarding orientation. The rule part also specifies the content and timing of orientation as well as the sanctions imposed on recipients for failing to participate in orientation.

Part 9500.2724 specifies the general registration and participation requirements applicable to AFDC recipients required to register for and participate in employment training programs.

Part 9500.2726 sets forth the WIN requirements applicable to AFDC recipients and local agencies. Specifically, this part requires cooperation with WIN and identifies the conditions under which recipients are exempt from the cooperation requirement. The Department is proposing the repeal of part 9500.2700, subparts 13 to 18 which currently govern WIN.

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Specifically, this rule part identifies those recipients who are required to participate in employment search and who must accept offers of employment. The rule part also defines good cause for failure to participate or accept employment and provides for a conciliation conference to resolve disputes between recipients and providers.

Part 9500.2730 identifies the sanctions for failure to cooperate with WIN, participate in employment search or accept offers of employment as required.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Storelee, Department of Human Services (address on p. 2011). This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Dan Lipschultz at 612/297-4302.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Sandra S. Gardebring
Commissioner

Rules as Proposed (all new material)

9500.2720 DEFINITIONS.

Subpart 1. **Applicability.** The terms used in parts 9500.2720 to 9500.2730 have the meanings given them in this part and in part 9500.2060 unless otherwise indicated.

Subp. 2. **Employability plan.** "Employability plan" means a plan written for a registrant by an employment and training provider

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in consultation with the registrant that defines the registrant's employment and training goals and outlines the training, education, and support services the registrant needs to achieve these goals.

Subp. 3. **Employment search.** "Employment search" means the program authorized under the Code of Federal Regulations, title 45, part 240, which provides AFDC recipients with training and assistance in finding and securing regular, unsubsidized employment.

Subp. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services as defined in *Minnesota Statutes*, section 256.736, subdivision 1a, paragraph (d).

Subp. 5. **Employment and training service provider or service provider.** "Employment and training service provider" or "service provider" means a provider certified by the commissioner of jobs and training under *Minnesota Statutes*, section 268.0122, subdivision 3, to deliver employment and training services.

Subp. 6. **Priority caretaker.** "Priority caretaker" means a caretaker who:

A. is under age 21;

B. has not graduated from high school or received a general equivalency diploma; or

C. has received AFDC for 24 or more months out of the last 36 consecutive calendar months.

9500.2722 ORIENTATION REQUIREMENT.

Subpart. 1. **Local agency responsibilities.** Each local agency shall:

A. provide orientation to AFDC caretakers residing in the local agency's jurisdiction who are required to attend orientation under subpart 2; and

B. provide or pay the reasonable cost of child care and transportation needed to enable a caretaker to attend orientation. A local agency is not required to pay child care costs that exceed limits established by the local agency under *Minnesota Statutes*, section 268.91, subdivision 8.

Subp. 2. **Mandatory participants.** A recipient shall attend an orientation session if the recipient is:

A. a caretaker who is a principal wage earner in an assistance unit whose eligibility is based on the unemployment of a parent under part 9500.2300;

B. a priority caretaker; or

C. a caretaker who is determined eligible for AFDC on or after July 1, 1988, and who has not attended an orientation within the previous 12 calendar months.

Subp. 3. **Orientation content.** Orientation must consist of a presentation that tells a recipient of the identity, location, and phone number of available employment and training, and support services relevant to the recipient's circumstances. Orientation must encourage recipients to view AFDC as a temporary program providing grants and services to clients who set goals and develop strategies for supporting their families without AFDC assistance. The content of orientation must not imply that a recipient's eligibility for AFDC is time limited.

Subp. 4. **Orientation format.** Videotaped presentations may be used, but orientation must include the opportunity for face-to-face interaction between the recipient and staff of the local agency or the entity providing orientation.

Subp. 5. **Good cause for failure to attend orientation.** Good cause for failure to attend orientation exists when a recipient cannot attend because of:

A. illness or injury of the recipient;

B. illness or injury of a member of the recipient's family that requires the recipient's care during the hours when orientation is offered;

C. an inability to obtain the necessary child care and transportation; or

D. employment, school, or employment and training service obligations that are scheduled during the hours when orientation is offered and that cannot be changed to allow participation in orientation.

Subp. 6. **Notice to mandatory participants.** Except as provided in subpart 7, the local agency shall provide written notice of the orientation requirement to a recipient required to attend orientation under subpart 2. The notice must tell the recipient the time, date, and location of the orientation that the recipient is scheduled to attend, the consequences of failing to attend on the scheduled date, and the recipient's appeal rights in part 9500.2740, subparts 8 to 10. The notice must be mailed or delivered to the recipient at least ten days before the recipient's scheduled orientation date.

Subp. 7. **Early participation in orientation.** If the local agency and recipient agree to have the recipient's orientation occur within ten days after the recipient is determined eligible for AFDC, no notice of orientation is required. If the recipient fails to attend

orientation within ten days immediately following the eligibility determination as agreed, the local agency shall schedule the recipient for orientation under subpart 8 and issue a notice under subpart 6.

Subp. 8. **Timing of orientation.** A recipient required to attend orientation under subpart 2 must attend orientation on the date scheduled by the local agency under this subpart unless the recipient has good cause for not attending on that date or the local agency and recipient agree on a different date. The local agency must schedule a recipient required to attend orientation under subpart 2, item A or B, for an orientation session to be held before January 1, 1989. The local agency must schedule a recipient required to attend orientation under subpart 2, item C, for an orientation session to be held within 60 days after the local agency mails the recipient's notice of eligibility.

Subp. 9. **Sanctions for failure to attend orientation.** If a recipient who is required to attend orientation under subpart 2 fails, without good cause, to attend orientation on a scheduled or agreed upon date after issuance of the notice required under subpart 6, the recipient must be sanctioned under items A to C.

A. When a recipient fails for the first time to attend an orientation session, the local agency shall issue a maximum of 50 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

B. When a recipient fails for the second time to attend an orientation session, the local agency shall issue 100 percent of the next monthly payment to which the assistance unit is entitled in the form of a vendor or protective payment. The local agency shall schedule the recipient for another orientation session to be held during the payment month for which the sanction under this item is imposed and shall notify the recipient of the date, time, and location of the session under subpart 6.

C. When a recipient fails for the third time to attend an orientation session, the local agency shall not take the recipient's needs into account when determining the amount of the next monthly payment to the assistance unit. The amount of the monthly payment to which the rest of the assistance unit is entitled, if any, must be issued in the form of a vendor or protective payment. The recipient's needs must not be considered again until the recipient has attended an orientation session. The local agency's notice of sanction under this item must include an offer to schedule the recipient for an orientation session. The recipient must contact the local agency to schedule an orientation session. If the recipient contacts the local agency and asks to be scheduled for orientation, the local agency must schedule the recipient's orientation to be held within 30 days of the request. The sanction under this item ends when the recipient attends the orientation, and the local agency shall issue prorated benefits for the rest of the payment month following the date the recipient attends the orientation.

9500.2724 GENERAL EMPLOYMENT AND TRAINING REQUIREMENTS.

Subpart 1. **Registration and referral for employment and training services.** Completion of the AFDC application form automatically registers the applicant for WIN and for other mandatory employment and training services that require registration. The local agency shall refer to the local WIN office recipients residing in WIN counties who are not exempt from mandatory WIN registration under part 9500.2726, subpart 1. The local agency shall refer to the local job service office recipients who are principal wage earners residing in non-WIN counties whose program eligibility is based on the unemployment of a parent under part 9500.2300.

Subp. 2. **Mandatory employment and training participation.** Recipients shall participate in WIN if required under part 9500.2726, subpart 1, in employment search if required under part 9500.2728, subpart 1, and in CWEP if required under parts 9505.1050 to 9505.1065 [Emergency]. When a principal wage earner who resides in a non-WIN county and who is eligible on the basis of unemployment of a parent under part 9500.2300 does not register with job service, the person's entire assistance unit shall be ineligible.

9500.2726 WIN REQUIREMENTS.

Subpart 1. **Participation in WIN.** A recipient living in a WIN county, regardless of the recipient's basis of program eligibility under parts 9500.2180 to 9500.2300, shall cooperate with the local WIN office as a condition of AFDC eligibility unless the local agency determines that the applicant or recipient is exempt. A recipient who is exempt from mandatory WIN registrant status is:

A. A child under the age of 16.

B. A student who is at least 16 but less than 18 years of age and meets the conditions of part 9500.2060, subpart 58, item A, B, C, or F.

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C. A person who is 18 years of age and meets the conditions of part 9500.2060, subpart 39, items B and C.

D. A person who, for up to 90 consecutive days, is ill or injured to the extent that the illness or injury temporarily prevents participation in training or employment. Determination of an exemption under this item must be made by the AFDC unit and may be allowed without medical documentation when the illness or injury is evident. An exemption for an illness or injury that extends for 90 days or more must be documented by medical evidence described in item E.

E. A person who, for at least 90 consecutive days, is physically or mentally incapacitated when the incapacitating factors, by themselves or with the person's age, prevent participation in training or employment. The incapacity must be documented by medical evidence. The medical evidence must include a prognosis and diagnosis of the impairment from at least one licensed physician or licensed psychologist. The local agency shall give the applicant or recipient voluntary referral to the Minnesota Department of Vocational Rehabilitation upon determination of the exemption.

F. A person 65 years of age or older.

G. A person whose round trip commuting time from the person's residence to the local WIN office is more than two hours by the means of transportation available to the recipient and exclusive of the time needed to transport children to and from child care.

H. A person needed in the home to care for a physically or mentally incapacitated person living in the household. The incapacity and the need for care must be documented by medical evidence from a licensed physician or licensed psychologist.

I. A parent or caretaker of a child under age six who is providing full-time care for that child. A person who is anticipated to be absent from the child for an average of at least 30 hours per week during the current and following month, exclusive of absences related to providing care for the child, does not qualify for this exemption.

J. A person who is currently employed in unsubsidized employment that is expected to last at least 30 days and that provides a monthly average of at least 30 hours of employment per week.

K. A parent who is not a principal wage earner but who is in an assistance unit whose program eligibility is based on the unemployment of a parent, provided the principal wage earner in the assistance unit is not exempt under the other items of this subpart and is cooperating with WIN.

L. A person, who after applying for AFDC, volunteered to participate under the Volunteers in Service to America (VISTA) program as provided by United States Code, title 42, sections 4951 to 4959 as amended through December 31, 1987.

M. A pregnant woman when the pregnancy has entered the third trimester.

N. A person employed under a work supplement program established under the Code of Federal Regulations, title 45, part 239.

Subp. 2. **Good cause for noncooperation with WIN.** A recipient who has good cause for not cooperating with WIN shall not be sanctioned. Good cause for not cooperating with WIN must be determined under the Code of Federal Regulations, title 45, section 224.34.

Subp. 3. **Determination of noncooperation.** The WIN office shall determine whether a WIN registrant has, without good cause, failed to cooperate with WIN. The WIN office shall notify the local agency of a deregistration action taken against a registrant for noncooperation. When notified of deregistration, the local agency shall sanction the recipient under part 9500.2730, beginning with the first payment month following deregistration in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

9500.2728 EMPLOYMENT SEARCH REQUIREMENTS.

Subpart 1. **Participation in employment search.** A local agency shall provide a mandatory employment search program for recipients whose participation is mandatory under item A. A local agency may provide a voluntary employment search program for recipients who are not required to participate under item A. The employment search program must be administered in accordance with items A to C.

A. A caretaker who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under part 9500.2300 must participate in employment search as a condition of AFDC eligibility unless:

(1) the caretaker is exempt from WIN participation under part 9500.2726, subpart 1, items A to F or H to N;

(2) the caretaker is currently participating in another employment and training service, other than the employment search component of WIN, which can reasonably be expected to improve the recipient's ability to obtain and keep employment;

(3) the caretaker's employability plan specifies other activities that prevent or contraindicate participation in employment search; or

(4) the caretaker cannot secure employment because of an inability to communicate in the English language as determined

by the local agency, a specialist in English as a second language, or a vocational specialist as defined in part 9500.1206, subpart 33, and the recipient is attending a program in English as a second language, if available.

B. In the third month after determining that a recipient is required to participate in employment search, the local agency shall refer the recipient to the employment search service provider.

C. The employment search service provider shall specify the number of weeks and hours that a recipient must participate in employment search. The service provider shall not require a recipient to participate in employment search for more than eight weeks in any 12 consecutive calendar months and for more than 32 hours during any week.

Subp. 2. **Offers of employment.** A recipient who is the principal wage earner in an assistance unit whose program eligibility is based on the unemployment of a parent under 9500.2300 must, as a condition of AFDC eligibility, accept any bona fide offer of employment made by an employer.

Subp. 3. **Good cause for refusing or terminating employment or failing to comply with employment search requirements.** A recipient who fails to participate in employment search required under subpart 1 or accept employment as required under subpart 2 shall not be sanctioned if the recipient has good cause for the failure. A local agency shall determine good cause by applying the conditions in items A to I.

A. Good cause exists when a job or employment search is not suited to the physical or mental capacity of the person or when it will have an adverse effect on that person's physical or mental health. Evidence from a licensed physician or licensed psychologist must document a claim under this item.

B. Good cause exists when the round trip commuting time from a person's residence to the employment search or job site is more than two hours by available means of transportation, exclusive of the time to transport children to and from child care.

C. Good cause exists when licensed child care is required but not available.

D. Good cause exists when the work or employment search site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Jobs and Training.

E. Good cause exists when a person documents discrimination at the job or employment search site on the basis of age, sex, race, religion, or place of national origin.

F. Good cause exists when the hourly gross employment earnings are less than the federal or state minimum wage for that type of employment, whichever applies.

G. Good cause exists when the gross monthly employment earnings are less than 185 percent of the AFDC family allowance for the recipient's assistance unit.

H. Good cause exists when the job that is offered is vacant due to a strike, lockout, or other bona fide labor dispute.

I. Good cause exists when the recipient incurs unreimbursed out-of-pocket expenses to participate in employment search.

Subp. 4. **Determination of failure to accept employment or participate in employment search.** The employment search service provider shall determine whether a recipient has failed, without good cause, to comply with employment search requirements under subpart 1 or accept employment as required under subpart 2. If the employment search or employment offer is provided through WIN, the WIN office shall make the determination. If the service provider determines that a recipient has failed, without good cause, to comply with the participation or employment requirements of subpart 1 or 2, the provider shall notify the recipient under subpart 5.

Subp. 5. **Notice of failure to participate or accept employment.** If a service provider determines under subpart 4 that a recipient has failed, without good cause, to participate in employment search or accept employment as required, the provider shall mail a written notice of its determination to the recipient at the recipient's last known mailing address. The notice shall provide a detailed explanation of the reasons for the determination, the consequences of failure to participate or accept employment, the actions the service provider believes are necessary for the recipient to comply with the employment and training requirements, the right to request a conciliation conference within 15 days after the date the notice is mailed, and the right to request a hearing under part 9500.2740, subpart 8.

Subp. 6. **Conciliation conference.** A service provider shall, according to its contract with the local agency, provide a conciliation conference to recipients who request a conference within 15 days after the notice under subpart 5 is mailed. The conciliation conference must be conducted according to items A to D.

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A. If a recipient requests a conciliation conference, the service provider shall provide the conference within 30 days after receiving the recipient's written request for a conference. The service provider shall notify the recipient of the conference date at least ten days before the date of the conference.

B. The local agency shall reimburse the recipient for the recipient's reasonable and necessary child care and transportation expenses incurred as a result of the recipient's attendance of the conciliation conference.

C. The service provider shall hold the conciliation conference during regular working hours at the service provider's office. If the service provider and the recipient agree, the conciliation conference may be conducted over the telephone.

D. If a conciliation conference is not requested or if the dispute is not resolved at the conference, the service provider shall provide to the local agency and to the recipient written notification of its determination that the recipient failed or refused without good cause to participate in employment search or accept employment.

Subp. 7. **Final determination before sanction.** When WIN does not sanction a recipient for failure to accept employment assigned by WIN or participate in an employment and training service provided through WIN, a local agency shall not apply sanctions for the same failure. The local agency shall make a final determination of whether the recipient has failed, without good cause, to accept employment that has not been assigned by WIN or to participate in employment search program that has not been provided through WIN. Upon final determination of failure to participate or accept employment, the local agency shall apply the sanctions under part 9500.2730.

9500.2730 SANCTIONS FOR FAILURE TO PARTICIPATE IN A MANDATORY EMPLOYMENT AND TRAINING SERVICE OR ACCEPT EMPLOYMENT.

Subpart 1. **Notice.** If a local agency is notified of WIN deregistration under part 9500.2726, subpart 3, or if a local agency determines under part 9500.2728, subpart 7, that a recipient has failed, without good cause, to participate in employment search or accept employment, the local agency shall notify the recipient that the local agency will impose the sanctions of subpart 2, beginning with the first payment month following deregistration or noncompliance in which notification and appeal rights under part 9500.2740, subparts 5 to 10, allow application of those sanctions.

Subp. 2. **Sanctions.** The following sanctions apply to recipients who do not comply with WIN, employment search, or employment requirements:

A. When a recipient is also the principal wage earner under part 9500.2300, the entire assistance unit is ineligible for three payment months for the first failure to comply or for six payment months for later failures to comply. When, during the period of sanction, the principal wage earner leaves the home or when either parent becomes incapacitated and eligibility is established under parts 9500.2180 to 9500.2260, the sanction period ends for the remaining members of the assistance unit.

B. When a recipient in an assistance unit that qualifies under part 9500.2300 is the parent who is not the principal wage earner, or when the recipient is a parent caretaker in an assistance unit that qualifies under part 9500.2180, 9500.2220, or 9500.2260, the parent caretaker shall be removed from the assistance unit. The parent caretaker shall be ineligible for a period of three payment months for the first failure to comply or for six payment months for later failures to comply. Protective or vendor payments shall be issued for the needs of the remaining members of the assistance unit under part 9500.2680, subpart 2, item A until the period of the sanction ends or the recipient who is under sanction is no longer a member of the assistance unit.

C. When a recipient who is under sanction is a caretaker relative other than a parent or is one of several dependent children, that person must be removed from the assistance unit for three payment months for the first failure to comply or for six payment months for subsequent failures to comply. When the recipient is the only dependent child in the assistance unit, the assistance unit shall be ineligible for AFDC for three payment months following the first occasion of noncompliance or for six payment months following later occasions of noncompliance.

REPEALER. *Minnesota Rules*, part 9500.2700, subparts 13, 14, 15, 16, 17, 18, and 19, are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Preadmission Screening and Alternative Care Grants

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.091, subdivisions 1 to 9.

In the Matter of the Adoption of the Rule of the State Department of Human Services Relating to Aid to Families with Dependent Children; parts 9500.2720 to 9500.2730.

DECLARATION OF COUNSEL

I, Craig R. Anderson, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0850

Craig R. Anderson

Special Assistant
Attorney General

Dated: 5-26-88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Aid to Families with Dependent Children; Employment and Training, parts 9500.2720 to 9500.2730.

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, May 27, 1988 for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on March 14, 1988, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule is available upon request from:

Dan Lipschultz
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4302

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts of subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Administration/Finance Division
515 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155
Telephone Number: (612) 296-9715

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Dan Lipschultz
Minnesota Department of Human Services
444 Lafayette Road, 2nd Floor
St. Paul, MN 55155-3816

Dan Lipschultz

Dan Lipschultz
Rules Division
Minnesota Department of Human Services

Dated: 5-27-88

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Aid to Families with Dependent Children; Employment and Training, parts 9500.2720 to 9500.2730.

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Dan Lipschultz, being sworn, says:

That on the 27 day of May, 1988, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Dan Lipschultz
(Name)

Department of Human Services
(Title)

Subscribed and sworn to before me
this 27 day of May, 1988.

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN; EMPLOYMENT AND TRAINING

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 9 th day of March, 1988.

Nancy L. Bishop