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.