IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES AMENDMENTS TO RULES GOVERNING THE AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM, PARTS 9500.2060 TO 9500.2880.

MINNESOTA DEPARTMENT OF HUMAN SERVICES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The above-entitled rule amendments are authorized by Minnesota Statutes, section 256.851 which requires the commissioner of human services to adopt rules necessary to implement the AFDC program.

The proposed amendments incorporate changes in federal and state law and clarify certain provisions that have been the source of some confusion in the past. The proposed rules also bring the AFDC program into conformity with food stamp policy to the extent permitted by federal law. Consistency between the AFDC and food stamp programs is necessary and reasonable because of the statewide automated eligibility project (MAXIS) that the department is developing. This project will computerize eligibility determination for the AFDC and food stamp programs. The greater the similarity between the two programs, the simpler and less costly it will be to program the MAXIS system and administer the AFDC program.

The proposed rule amendments 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 twice to discuss various drafts of the proposed amendments. The language of the proposed rules reflects input received from this committee.

SPECIFIC RULE PROVISIONS

The above-entitled rules are affirmatively 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.

9500.2060 DEFINITIONS.

Subpart 35. County of financial responsibility. This amendment simply adds a reference to Minnesota Statutes, chapter 256G, the Minnesota Unitary Residence and Financial Responsibility Act. This Act was enacted in 1987. The reference is necessary to ensure consistency between the AFDC rule and the state statute.

Subpart 39. Dependent child. This amendment changes the definition of a dependent child who is 18 years of age or older. The amended definition continues to limit dependency status to full-time students. The changes to this definition are necessary and reasonable because they make the definition consistent with federal regulations. These regulations permit a state to consider 18 year old children as dependents only if the children are "full-time students in a secondary school, or in the equivalent level of vocational or technical training . . .." 45 CFR §233.90(b)(3). The language of the proposed amendment is identical to the language in federal law.

Subpart 58. Full-time student. The proposed amendment to this definition deletes the language that specifies the attendance requirements for full-time student status. The deleted language identifies 20 hours per week of classroom attendance or some combination of classroom attendance and employment activity as the minimum threshold of full-time student status. As amended, this subpart defines full-time attendance in accordance with the standard in place at the school the recipient is attending. This change is necessary to simplify administration of the AFDC program and make it consistent with food stamp policy. The change is reasonable because it simplifies adminstration of the AFDC program and makes the rule consistent with food stamp policy in a manner that is consistent with federal law and acceptable to the advisory committee.

Subpart 90. Minor caretaker. Currently, this subpart defines minor caretaker to include both individuals under age 18 and 18-year-olds who are full-time students. This is inconsistent with federal regulations which define minor caretaker as someone "under the age selected by the state pursuant to section 233.90(b) **without regard to school attendance** (emphasis added)." 45 CFR §233.20(a)(3)(xviii). Therefore, the proposed amendment to this definition deletes the language that includes 18-year-old full-time students as minor caretakers. This change is necessary to make the AFDC rule consistent with federal regulations.

Subpart 113. Recipient. Currently, this subpart defines recipient to exclude individuals who return "uncashed assistance checks." The proposed amendment expands the exclusion slightly to include the failure to access an assistance payment by electronic transfer. This expansion is necessary to bring the rule up to date with current operating procedures which permit the payment of assistance by electronic transfer. Failure to access cash assistance by electronic transfer is analogous to failure to cash a benefit check. As such, the proposed amendment is reasonable because it accords the same treatment to both situations in defining the term recipient.

Subpart 118. Residence. This entire subpart defining the term residence is deleted. This change is necessary and reasonable because residency is an eligibility factor. As such, residency is more properly explicated in the eligibility section of the rule (part 9500.2140). A definition of the term in the definition section of the rule is potentially confusing to the extent it differs from the more complete description of residency in the section on eligibility. The current definition in this subpart is also inaccurate because of the 1987 enactment of the Minnesota Unitary Residence and Financial Responsibility Act. This Act repealed the statute referenced in the current definition and replaced it with residency provisions that are applicable to all income maintenance programs administered by the commissioner.

9500.2100 APPLICATION FOR ASSISTANCE.

Subpart 4. Assessment of and issuance for initial needs. This subpart requires a local agency to determine whether an applicant has emergency needs that must be met through emergency assistance before determining whether the applicant is eligible for AFDC. The proposed amendment to this subpart deletes language that specifies when emergency assistance payments must be counted as AFDC payments. Deletion of this language is necessary and reasonable because the statutory authority on which the language is based was eliminated in the 1988 legislative session. See Laws 1988, chapter 689, article 2, section 135.

Subpart 6. Processing application. This subpart currently requires local agencies to process AFDC applications within 45 days of the date of application. The proposed amendment to this subpart changes the time period to 30 days. This change is necessary and reasonable because the 30 day period is now required by state statute as amended in the 1988 legislative session. Id.

Subpart 9. Additional applications. The proposed amendment to this subpart permits the use of addendums to existing AFDC applications as a way of adding mandatory and non-mandatory individuals to an assistance unit. The amendment also provides for different eligibility dates depending on whether the new assistance unit member is a mandatory or non-mandatory individual. Eligibility for a mandatory member of the assistance unit begins with the date the new member entered the home or the date the new member was required to be included in the assistance unit. Eligibility for a non-mandatory individual begins with the date the signed addendum is submitted to the local agency. The proposed language is necessary and reasonable because it makes the rule consistent with federal regulations. Federal regulations define application as a written expression of desire to receive AFDC. As such a written addendum should be sufficient to bring someone into an assistance unit if the person qualifies for AFDC as a part of that assistance unit. See 45 CFR §206.10(b)(2); and exhibit 1 (AFDC Action Transmittal, SSA-AT-86-1).

9500.2140 BASIC ELIGIBILITY REQUIREMENTS.

Subpart 2. Minnesota residence.

This subpart specifies the conditions under which the residency component of AFDC eligibility is satisfied. The proposed amendment to this subpart adds the term "voluntarily" to item B. This addition is necessary and reasonable because voluntary entry into the state is part of the definition of residency under federal law governing the AFDC program. See 45 CFR §233.40.

Subpart 5. Physical presence.

Items A to C of this subpart provide the conditions under which a caretaker's or child's temporary absence from the home will not affect eligibility. Item C, subitem (2) is amended to reference the definition of foster care in state statute. The reference is necessary to clarify the meaning of the term foster care under state law. The reference is reasonable because it ensures that the AFDC program is administered in accordance with applicable state law governing foster care.

Item C, subitem (7) provides for the continued provision of benefits when a recipient child has run away from home and another person has not made application for the child. The amendment to this subitem provides for continued benefits when a recipient child has been taken from home without the consent of the recipient caretaker or a court order and the caretaker has initiated legal action for the return of the child. This amendment is necessary to ensure that the home can be maintained for the return of the child who under the law is expected to return. The amendment is reasonable because the abduction situation is analogous to the runaway situation. In both instances the recipient caretaker is still legally recognized as the party responsible for the care and supervision of the child and in both situations the recipient caretaker does not initiate the child's departure. The two month period of continued benefits enables the recipient caretaker to maintain the home for the child's return and gives the family and/or the family court system time to resolve the situation and provide for the return of the departed child.

9500.2340 PROPERTY LIMITATIONS.

Subpart 2. Real property limitations. Item A, subitem (2) of this subpart specifies the total amount of land that can be excluded in determining eligibility for AFDC. The proposed amendment to this provision makes the provision consistent with statutory changes enacted in the 1988 legislative session. Laws 1988, chapter 689, article 2, section 124.

Subpart 3. Other property limitations. This subpart identifies the property that must be excluded in determining whether the value of an applicant's property exceeds the $1000 limit. Items B, H, J and Q are amended slightly to add clarity and consistency with other laws and policies.

Item B currently provides for the exclusion of personal property needed to produce earned income, including tools, implements, farm animals and inventory. It does not exclude motor vehicles used to provide transportation of persons or goods. The proposed amendment to this item expands the exclusion to encompass checking and savings accounts used exclusively for the operation of a self-employment business and any motor vehicle if the vehicle is essential for the operation of a self-employment business. The amendment is necessary and reasonable because it makes this rule provision consistent with current federal AFDC regulations and state statute. See Minn. Stat. §256.73 subd. 2; and exhibit 2 (November 26, 1986 letter from United States Department of Health and Human Services to Commissioner Levine).

Item H currently provides for the exclusion of money held in escrow under part 9500.2380, subpart 7, item B, by a self-employed person, when the money is used for those purposes at least quarterly. The proposed amendment to this item requires use of the escrow money "annually" rather than quarterly. The amendment is necessary and reasonable because the expenses for which the money would be retained in escrow under part 9500.2380, subpart 7, item B are generally annual expenses. The expenses listed include employee tax withholding, property taxes and "other costs which are commonly paid at least annually . . . ." The amendment to this item makes it consistent with part 9500.2380, subpart 7, item B which it references.

Item J currently provides for the exclusion of income received in a budget month until the end of a corresponding payment month. The proposed amendment expands the exclusion to apply to income received during the course of the budget month, without regard to the payment month. This change is necessary and reasonable because it makes the AFDC rule consistent with the practice in other public assistance programs and will reduce quality control errors in the AFDC program.

Item Q is added to the list of exclusions in this subpart. The proposed item excludes lump sums from resources. Lump sums that create a period of ineligibility are excluded from the date of receipt through the period of ineligibility. Lump sums that do not create a period of ineligibility are excluded only through the budget month.

Lump sums are treated as income in the month they are received. As such, the receipt of a lump sum can make a recipient ineligible for AFDC by placing a recipient above the income limits of the AFDC program. When a lump sum exceeds a recipient's standard of assistance for more than one month then the lump sum is budgeted over successive months until it is exhausted. This can result in an ineligibility period that can span several months or more. See 45 CFR §233.20(a)(3)(ii)(F)(months of an AFDC family's ineligibility is "derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size.")

The exclusion of lump sums as proposed in this item is necessary and reasonable because, under federal law, money cannot be considered both income and a resource simultaneously. Since lump sums are treated as income, it is necessary to exclude lump sums from resources when determining whether a person is eligible for AFDC. See 45 CFR §233.20(a)(3)(ii)(E)(income and resources must be reasonably evaluated).

A lump sum that does not create a period of ineligibility is treated as income through the end of the budget month. As such, it is reasonable to exclude the lump sum from resources only for that month. A lump sum that creates a period of ineligibility is budgeted as income over more than one month. Therefore, it is reasonable to apply the resource exclusion for lump sums accordingly so that a lump sum is excluded from resources for the entire time during which it is counted as income but no longer.

9500.2380 INCOME.

Subpart 2. Excluded income.

Items M of this subpart currently excludes insurance payments that are designated as compensation for the loss of function or a body part or for the payment of medical bills. The proposed amendment to this item would limit the exclusion to the portion of an insurance settlement that is designated and used to pay medical, funeral and burial expenses, or to repair or replace insured property. The amendment is necessary and reasonable because it makes this provision consistent with Minnesota Statutes, section 256.74, subdivision 1, clause (7). It also brings this provision into conformity with governing federal regulations. See 45 CFR {233.20(a)(3)(ii)(F) (nonrecurring income received to cover medical, funeral, burial or resource replacement costs is excluded from the AFDC income calculation only if the income is "used for the purpose for which it is paid".).

Items F through H currently exclude certain types of educational grants and loans from income. The proposed amendments to these items would exclude all educational grants and loans, including income from work study programs. These amendments are necessary and reasonable because of statutory changes to Minnesota Statutes, section 256.74, subd. 1, item 2, enacted in 1987. The statutory changes broadened the exclusion relating to educational grants and loans to include all such income. The rule changes merely conform to these statutory changes.

Item M of this subpart currently excludes insurance payments that are designated as compensation for the loss of function or a body part or for the payment of medical bills. The proposed amendment to this item would limit the exclusion to the portion of an insurance settlement that is designated and used to pay medical, funeral and burial expenses, or to repair or replace insured property. The amendment is necessary and reasonable because it makes this provision consistent with Minnesota Statutes, section 256.74, subdivision 1, clause (7). It also brings this provision into conformity with governing federal regulations. See 45 CFR §233.20(a)(3)(ii)(F) (nonrecurring income received to cover medical, funeral, burial or resource replacement costs is excluded from the AFDC income calculation only if the income is "used for the purpose for which it is paid.").

Item O currently excludes assistance payments made to correct underpayments in a previous month. The amendment to this item requires local agencies to exclude such a corrective payment when determining an assistance unit's income and resources in the month when the payment is made and in the following month. This amendment is necessary to make the rule provision consistent with statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 128. The amendment is reasonable because it is identical to the language in the 1988 legislation.

A new item AA is added to this subpart. This new item excludes family subsidy program payments made from state funds to cover the special needs of families with children with mental retardation or related conditions. This addition is necessary and reasonable because federal regulations require the exclusion of state-funded family subsidy payments. See 45 CFR §§233.20(a)(4)(iv) and 233.20(a)(3)(vii).

Subpart 6. Self-employment deductions.

Items A through N of this subpart specify the costs that cannot be deducted as self-employment expenses. The proposed amendment to item F of this subpart would specify the "maximum standard mileage rate" in the Internal Revenue Code as the limit on deductible transportation costs. The amendment is necessary to clarify that the standard mileage rate referred to in this item does not include other IRS adjusted rates. The amendment is reasonable because it codifies department intent and current practice. It also ensures that this provision will be applied uniformly throughout the state as required by federal regulations. See 45 CFR §233.10(a)(1)(iv).

Subpart 7. Self-employment budget period.

This subpart currently provides that gross receipts from self-employment must be budgeted in the month in which they are received. The subpart also provides that, with certain exceptions, self-employment expenses must be budgeted against gross receipts in the month in which the expenses are paid.

The proposed amendment to this subpart adds language that delineates the start of the self-employment budget period. The amendment identifies the month of application as the beginning of the budget period for AFDC applicants and identifies the first month of self-employment as the beginning of the budget period for recipients. The department has received a large number of policy interpretation requests concerning the meaning of the self-employment budget period for AFDC clients. Therefore, the amendment to this subpart is necessary to clarify the meaning of self-employment budget period. The amendment is reasonable since it codifies current practice. Moreover, the amendment ensures that the budget period reflects the actual period of time during which the applicant or recipient is receiving self-employment income.

Subpart 9. Rental income.

This subpart currently provides that income from rental property must be considered self-employment earnings when "effort is expended by the owner to maintain or manage the property." The proposed amendment equates income from rental property with self-employment earnings when the owner spends an average of 20 hours per week on maintenance or management of the property. The change is necessary to make AFDC policy consistent with food stamp policy. The amendment is reasonable because it will enable department and county staff to coordinate the implementation of the AFDC and food stamp programs. It is also reasonable inasmuch as it will provide a meaningful, enforceable standard to apply in determining whether a recipient is really maintaining or managing rental property.

9500.2420. DOCUMENTING, VERIFYING AND REVIEWING ELIGIBILITY.

Subpart 4. Factors to be verified.

The amendments to this subpart are all based on the recommendations of the AFDC Client Verification Committee. Creation of this committee was mandated by Minnesota Statutes, section 256.73, subdivision 7. This committee is composed of state and county workers, legal services staff and a former and current AFDC client. The committee's statutory purpose was to recommend and implement ways to reduce verification procedures at the local level.

Item A, subitem (2) currently requires verification of the age and citizenship or resident alien status of each adult and child applying for assistance. The amendment to this provision eliminates verification of age unless age is required to establish eligibility. The amendment also eliminates verification of citizenship and resident alien status. These changes are necessary to expedite the eligibility determination process and make procedures in the AFDC program consistent with those in the food stamp program. The changes are reasonable because they were recommended by the AFDC Client Verification Advisory Committee and are within the parameters of federal law and state statute. Age verification will still be required when age is a basis of eligibility such as in the case of an 18 year old who is eligible until age 19 on the basis of full-time student status. See 45 CFR §233.10(b)(2)(ii)(a)(1). Verification of citizenship may still be required under certain conditions pursuant to item C.

Item A, subitem (3), as proposed, requires verification of the identity of each adult applying for assistance. This verification requirement is necessary to ensure that AFDC procedures are consistent with procedures in the food stamp program. The requirement is reasonable because it was recommended by the AFDC Client Verification Advisory Committee and is consistent with state and federal laws governing the AFDC program.

Item A, subitem (4), as proposed, restates the current requirement of subitem (2) that the resident alien status of each adult and child applying for assistance be verified. However, the proposed rule adds to the current requirement by limiting mandatory verification of alien status to applicants/recipients who indicate that they are not U.S citizens. The addition is reasonable because resident alien status is not relevant to AFDC eligibility if the applicant for assistance is a U.S. citizen. The addition is also reasonable inasmuch as it was recommended by the verification committee and is consistent with the department's statutory mandate to reduce verification procedures. Minn. Stat. §256.73 subd. 7.

Item A, subitems (7), (11), (12) and (13) of the current rule are all WIN-related requirements. The proposed rule deletes these requirements. The deletions are necessary and reasonable because the WIN program has been eliminated.

Item A subitem (9) requiring the verification of marital status is deleted by the proposed rule amendments. This deletion is reasonable because it was recommended by the verification committee.

Item A, subitem (11), as proposed, requires verification of residence. This requirement is necessary because residence is a condition of eligibility for AFDC under federal law. See 45 CFR §233.40. The requirement is reasonable because it is acceptable to the verification committee and will help ensure accurate eligibility determinations, thereby reducing the risk of quality control errors and the loss of federal financial participation.

Item B, subitem (6) currently requires verification of dependent care costs of an employed caretaker when the costs are acknowledged by the applicant/recipient or obtained through a federally mandated verification system. The proposed amendment to this subitem limits verification of these costs to the time of AFDC application or eligibility redetermination or at the time a change in provider is reported. This change is necessary to eliminate unnecessary verification. The change is reasonable because dependent care costs determined at the time of application or redetermination are unlikely to change unless the recipient's provider changes. The verification committee approved this proposed amendment as a reasonable means of expediting the eligibility determination process.

Item B, subitem (7) currently requires verification of the number of hours a person is absent from a child when the person is exempt from WIN on the basis of child care responsibilities. The proposed rule deletes this provision because the WIN program has been eliminated. The deletion is necessary and reasonable in light of the elimination of the WIN program.

Item C currently permits the verification of certain eligibility factors not identified in item A or B if the verification is based on (1) reasons documented in the case file, or (2) written procedures that identify the circumstances which may require additional verification. The proposed

amendment to this item allows verification of a factor not identified in item A or B if based on reasons documented in the case file or if based on unique circumstances that the Department has approved as justifying verification of the factor on a county-wide basis.

The factors that may be verified under item C are listed in subitems (1) through (6). The proposed rule replaces residence with citizenship as a permissible verification factor under subitem (4). This change is necessary to make the provision consistent with item A which, as proposed, eliminates citizenship as a mandatory verification factor. The change in this item is reasonable because it recognizes that citizenship is a condition of AFDC eligibility under federal law. 45 CFR §233.50. As such, verification of citizenship may be necessary in specific instances where false claims of citizenship are suspected or in some counties where false claims of citizenship have been a problem. The amendment to subitem (4) ensures that counties have the authority to verify citizenship where justified and, consequently, to avoid quality control errors that could result in the loss of federal financial participation.

The proposed rule leaves marital status subject to possible verification under subitem (5). However, the proposed rule eliminates the reference to mandatory verification of marital status under item A, subitem (9). Elimination of this reference is necessary and reasonable because mandatory verification of marital status is eliminated by the proposed rule. The reasons for eliminating mandatory verification of marital status are discussed above in reference to item A, subitem (9).

9500.2440 FAMILY COMPOSITION AND ASSISTANCE STANDARDS.

Subpart 2. Filing unit composition.

This subpart identifies who must be included in the filing unit for AFDC application purposes. The subpart provides for the inclusion of "all blood related and adoptive minor siblings of the dependent child." The proposed amendment to this subpart lists half-siblings for inclusion in the filing unit. This addition is necessary because the department has received a large number of policy interpretation requests asking whether half-siblings should be included in the filing unit. It is reasonable to include half-siblings in the filing unit since federal law requires the inclusion of "any blood-related or adoptive brother or sister." 45 CFR §206.10(a)(1)(vii)(B). Half-siblings are, by definition, blood-related relatives. Listing half-siblings in this subpart will provide needed clarification on filing unit composition.

Subpart 5. Application of standards.

Item D of this subpart currently applies the child standard of assistance to an assistance unit that has no adult member because the parents do not have income to meet the needs of the children and are excluded from the assistance unit due to noncooperation with WIN or child support enforcement. The proposed amendment to this subpart changes the cross-references to the rule's WIN provisions. This change is necessary because of previous rule changes which repealed the rule parts referenced in this item and replaced them with new rule parts which contain substantially the same language. The change is reasonable because it ensures the continued implementation of the language formerly contained in the rule parts that have

been repealed. The proposed amendment also eliminates the parents' income as a determinant of the applicable standard of assistance. This change is necessary and reasonable because the United States Department of Health and Human Services (federal agency) has indicated to the department that the payment standard cannot be based on the income of certain family members, including sanctioned parents.

9500.2500 AFDC ELIGIBILITY TESTS.

Subpart 2. When to terminate.

This subpart currently provides for the termination of assistance when an assistance unit is prospectively ineligible for AFDC for at least two consecutive months. The proposed amendment to this subpart requires a local agency to apply the payment eligibility and gross income tests to determine whether an overpayment was made during one or both of the two months prior to the payment month in which a recipient was terminated because of excess income. The amendment is necessary to clarify how overpayments should be determined. The amendment is reasonable because it is consistent with federal regulations as interpreted by the federal agency in a letter from Kay Willmoth to Commissioner Levine dated August 19, 1986. See exhibit 3.

Subpart 4. Gross income test.

Items A to G of this subpart identify the income that must be considered in the gross income test. Under item G, subitem (3), the gross income test must consider a stepparent's income minus $75 for work expenses when employment equals or exceeds 30 hours per week or $74 when employment is less than 30 hours per week. The proposed amendment to item G eliminates the $74 deduction for employment of less than 30 hours and simply requires the deduction of $75 for work expenses regardless of the number of hours worked. This change is necessary to ensure compliance with federal law which provides for the disregard of $75 dollars of a stepparent's work expenses. See AFDC Action Transmittal, FSA-AT-87-4; and Public Law 99-514, section 1883(b), Exhibit 5. The change is reasonable because it is consistent with governing federal law.

9500.2580, B. EMPLOYMENT DISREGARDS

This part currently allows parents who are part of the assistance unit to receive monthly deductions for care of dependents. A parent may deduct $160 per dependent when employment equals or exceeds 30 hours per week, or $159 per dependent when employment is less than 30 hours per week.

The proposed amendment to this part does three things: 1) it classifies dependents into those two and older and those under age two. 2) it increases the deductible amount for a parent who works 30 or more hours per week to $175 per dependent age two or older and $200 per dependent under age two. 3) it increases the deductible amount for a parent who works less than 30 hours per week to $174 per dependent age two or older and $199 per dependent under age two. This amendment is necessary to make the rule consistent with the Family Support Act of 1988 (Public Law 100-485) and Minnesota Statutes section 256.74, subd. 1(5). The amendment is reasonable because it fully and accurately reflects the language of the Family Support Act of 1988 and the language of 1988 state legislation.

9500.2640 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS.

Subpart 4. Recouping overpayments from a current recipient.

This subpart currently provides for recoupment of an overpayment by reducing monthly assistance payments to an amount which, when added to anticipated net income and liquid assets, equals 95% of the AFDC family allowance. This subpart provides for a reduction to 99% of the family allowance when the overpayment was due in whole or in part to agency error.

The proposed amendments to this subpart do three things: (1) they provide expressly for voluntary repayment of an overpayment; (2) they remove liquid assets from the recoupment calculation; and (3) they provide for reduction of a client's payment by 3% of the assistance unit's AFDC family allowance for recoupment purposes once a state computerized client eligibility and information system is implemented in one or more counties. The 3% reduction level applies regardless of whether responsibility for the overpayment rests with the client or the agency. The amendments to this subpart are necessary to make the rule consistent with legislative changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 126. The amendments are reasonable because they fully and accurately reflect the language in the 1988 legislation.

Subpart 5. Determining net income.

This subpart specifies how to calculate a client's net income for purposes of recoupment. The amendment to this subpart simplifies the calculation such that net income is determined by deducting the following from earned income: (1) the first $75 of each individual's earned income; (2) expenses directly related to and necessary for the production of goods and services; and (3) an amount equal to the actual expenditures, not to exceed the $175 or $200 limit as stated in part 9500.2580, subpart B, for persons not engaged in full-time employment, for the care of each dependent child or incapacitated individual living in the same home and receiving aid. The amendment is necessary to make the rule consistent with statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 126. The amendment is reasonable because it provides for the determination in accordance with this 1988 legislation.

9500.2680 PAYMENT PROVISIONS.

Subpart 1. Payments.

This subpart sets forth time limits for mailing monthly assistance payments and replacement checks. The amendment to this subpart extends these timeliness requirements to payments that are made by means other than check.

The amendment is necessary because of the advent of the electronic benefit system in some counties which provides AFDC assistance by dispensing cash electronically. The amendment is reasonable because the need for prompt timely payment of benefits is no less when benefits are provided by electronic transfer than when payment is by check.

Subpart 2. Protective, vendor and two-party payments; when allowed.

See justification under subpart 4 below for the reason why a review of the need for and method of payment (protective, vendor or two-party agreement) is extended from 6 months to 12 months. This subpart has simply been changed to be consistent with the change in subpart 4.

Subpart 3. Choosing payees for protective, vendor and two-party payments.

This subpart currently requires the local agency to consult with a caretaker regarding the selection of a protective payee. The amendment to this subpart requires the local agency to notify the caretaker of a consultation date. It permits the local agency to choose a protective payee without client consultation if the client fails to respond to the request for consultation by the effective date of the notice. The amendment is necessary to ensure the appropriate use of protective payees when a caretaker fails to respond to a notice requesting consultation. Currently, the AFDC rule permits the use of protective payees under certain specified circumstances, including situations where the caretaker has exhibited a continuing pattern of mismanaging funds. Without the proposed amendment, caretakers can avoid the otherwise authorized use of protective payees simply by refusing to meet with local agency staff to consult on the choice of a payee. The amendment is a reasonable means of ensuring that counties can exercise their authority to use protective payees.

Subpart 4. Discontinuing protective, vendor, and two-party payments.

This subpart specifies when protective, vendor or two-part payments must be discontinued. The amendments to this subpart (1) change the rule part references to the WIN program, and (2) change the mandatory review of a protective payee's performance from once every six months to once every twelve months. The change in rule part references is necessary and reasonable because of the adoption of rule amendments in 1988 which placed the WIN provisions in different rule parts. The actual language of the WIN provisions has not been altered. The change in the review requirement is necessary because mandatory six month reviews were excessively burdensome and unnecessary. The twelve month interval for reviews is reasonable because twelve months is the time period specified in federal regulations. 45 CFR §234.60(a)(9).

9500.2700 APPLICANT AND RECIPIENT RESPONSIBILITIES.

Subpart 6. Late household report forms.

The amendment to this subpart provides for the reinstatement of benefits without reapplication when the recipient submits a complete household report form within a calendar month after the month in which assistance was received. This amendment is necessary and reasonable because of statutory changes enacted by the 1988 legislature. See Laws 1988, chapter 689, article 2, section 125. The amendment to this subpart simply inserts the language added to statute in 1988.

Subpart 9. Requirement to provide social security numbers.

This subpart currently requires an applicant or recipient to provide the local agency with his or her social security number. The amendment to this subpart extends this requirement to all members of the assistance unit. The amendment is necessary to make the rule consistent with federal regulations

which define "applicant or recipient" for purposes of providing social security numbers as "the individuals seeking or receiving assistance and any other individuals whose needs are considered in determining the amount of assistance". 45 CFR §205.52(e). The amendment is reasonable because the definition of assistance unit in part 9500.2060, subpart 15 of the rule is essentially identical to the definition of applicant or recipient in the relevant federal regulation. Moreover, a letter from Kay Willmoth to Commissioner Levine dated May 16, 1986 indicates that the federal agency believes that the federal regulation requires the social security numbers of all assistance unit members. See exhibit 4

9500.2740 APPLICANT AND RECIPIENT RIGHTS AND LOCAL AGENCY RESPONSIBILITIES TO APPLICANTS AND RECIPIENTS.

Subpart 7. Mailing of notice.

This subpart currently provides for a notice of action to be sent to a recipient no later than the effective date of the action when a recipient submits a monthly or quarterly household report form that requires an adverse action be taken. The amendment to this subpart consists of deletion of the quarterly household report form. This amendment is necessary as it has not been shown to reduce the error rate among recipients who have no earned income and to reduce county expenditures incurred processing household report forms. This amendment is consistent with the requirements of 45 CFR 233.28 (a).

Subpart 13. Right to protection.

This subpart currently provides for the referral of a minor caretaker to the local agency's social services unit when the caretaker does not live with his or her parent or legal guardian. It also requires the local agency to inform the caretaker that assistance is not conditioned on the caretaker's cooperation with the social services unit. The amendments to this subpart exempt minor caretakers from referral if they live in a group or foster home licensed by the Department. The amendments also require the local agency to inform minor parents that their assistance may be paid in the form of protective or vendor payments if they do not cooperate in the development of or participate in a social service plan. These changes are necessary to make the rule consistent with changes in state statute enacted in 1988. See Laws 1988, chapter 689, article 2, section 132. The amendment that extends the exemption from referral to minor caretakers in licensed foster care is reasonable because the exemption was extended in this way by the 1988 changes in state statute. The amendment that requires local agencies to inform parents of the protective/vendor payment sanction for noncooperation in the development of a social service plan is reasonable because these sanctions are applicable under the 1988 statutory changes. It is reasonable to inform recipients of the sanctions that could be imposed on them.

9500.2800 AFDC PAYMENTS FOR FUNERALS, HOUSING AND SPECIAL NEEDS.

Subpart 3. State appropriation for special needs.

This subpart currently provides for the quarterly reallocation of remaining special needs funds to counties that spent special needs funds in excess of their allocations. The amendment to this subpart does three things. First, when the statewide allocation is underspent it provides for reallocation to

all counties once counties that exceeded their allocations have been compensated. Second, when the statewide allocation is overspent, it provides for the reallocation of unspent funds from counties that underspent to counties that exceeded their allocations. Third, the amendment requires counties that exceed their allocations to reimburse the state for the state share of the overexpenditure at the end of the fiscal year.

The amendment to this subpart is necessary because of a 1988 legislative audit report which found that the department was not determining special needs payments according to agency rules as it should be. Although there is currently some language in this subpart on reallocation, the current language does not provide sufficient direction to ensure compliance. The current language is silent on what to do when the special needs allocation is overspent and it says nothing about reimbursement for the state share of an overexpenditure. Furthermore, the current language does not provide any guidence on what to do with any excess funds once the overspent counties have been compensated.

The amendment to this subpart is reasonable because, unlike the current language, it provides for the proportionate reallocation of special needs funds to local agencies according to AFDC assistance units served by each local agency. Moreover, the amendment will be administratively more efficient since it will allow reallocation to be done in one step instead of the current four step process. The amendment will ensure that all counties are treated fairly. A county that overspends its special needs allocation does so because of a greater demand in that county for the use of special needs funds. Therefore, it is reasonable to allocate excess special needs funds to these counties before distributing the excess statewide. Similarly, it is reasonable to redistribute funds from counties that underspend to counties that overspend since those that overspend clearly have a greater demand for special needs funds than the counties that do not exceed their allotment.

Subpart 8a. Employment preparation expenses.

Part 9500.2800 is amended by adding this subpart. The subpart permits local agencies to pay for child care, transportation, tuition, and other incidental expenses related to employment preparation if funds for the non-federal share of employment special needs expenses are available. The subpart, however, also imposes a number of restrictions on special needs payments for employment preparation. Items A to G specify these restrictions.

The authority for local agency payment of employment preparation expenses out of the non-federal share of the employment special needs funds is necessary to ensure that available special needs funds are used to help recipients prepare for employment. It is reasonable to pay a recipient's employment preparation expenses out of the special needs funds because preparation is critical to obtaining the permanent, self-sustaining employment that can end the recipient's dependence on AFDC. It is necessary to specify the restrictions on the use of these special needs fund to comply with federal law which requires the state agency to "describe [the special needs] that will be recognized and the circumstances under which they will be included." 45 CFR §233.20(a)(2)(v).

Item A restricts payments under this subpart to expenses that are the obligation of the recipient. This item is necessary to ensure that special needs payments go only to those who are actually entitled to special needs benefits. The restriction is reasonable because special needs payments are part of the AFDC grant and therefore cannot be provided to individuals who are not AFDC recipients.

Item B requires the local agency to determine whether other funding sources are available to cover all or part of the recipient's special needs expense. The item then restricts the special needs fund to expenses that cannot be met through other funding sources. The item further provides that educational grants and scholarships are considered available resources only when considering an employment special need payment for tuition. Restricting the fund to expenses that cannot be met through other funding sources is necessary to ensure that services are not duplicated and that employment special needs funds are used only as a last resort. The restriction is reasonable because the special needs program was designed as a supplemental program of last resort. It is reasonable to consider educational grants and scholarships available only for tuition because the special needs program is intended to help recipients obtain the services and training needed to become self-sufficient. Applying educational assistance to non-tuition related special needs could discourage recipients from seeking such assistance and ultimately from seeking further education. This would undermine the purpose of the special needs program.

Item C requires that the expense be documented in an employability plan developed by an individual or agency approved by the local agency to develop employability plans. This requirement is necessary to ensure that the expense is truly related to employment and that the service being purchased will be appropriate for the recipient's situation and skill level and will have a reasonable chance of improving the recipient's employability. The requirement is reasonable because it promotes the efficient, effective use of resources available for employment special needs.

D. Item D requires the local agency to provide pre-payment approval for the expense. This item is necessary to ensure that payments are made for services that are allowable under this subpart and likely to help prepare the recipient for employment. The item is reasonable because it helps prevent the waste of limited resources in the special needs fund.

E. Item E prohibits a local agency from making special needs payments for expenses directly related to on-the-job activities, including work study jobs of an employed recipient. This item is necessary to ensure compliance with federal regulations which prohibit the use of special needs for expenses resulting from employment or participation in CWEP or employment search. 45 CFR §233.20(a)(2)(v). This item is reasonable because it incorporates the requirement contained in federal regulations.

F. Item F prohibits a local agency from making special needs payments for expenses resulting from participation in the Community Work Experience Program (CWEP) or the Employment Search Program (ESP). This item is necessary to ensure compliance with federal law which provides that "work expenses and child care . . . resulting from employment or participation in a CWEP or an ESP cannot be special needs." 45 CFR §233.20(a)(2)(v). This item is reasonable because it essentially recapitulates the federal regulation that it seeks to implement.

G. Item G requires the local agency to make payment for employment preparation expenses directly to the recipient unless the recipient requests vendor payment. Item G also identifies the specific employment preparation expenses covered by employment special needs under this subpart. It is necessary to identify these expenses to comply with federal law which requires the state agency to "describe [the special need items] that will be recognized and the circumstances under which they will be included". 45 CFR §233.20(a)(2)(v). It is reasonable to include the expenses listed in subitems 1 to 6 because payment for these expenses is commonly recognized as a barrier which prevents recipients from participating in employment preparation activities.

Subpart 10. Post payment verification.

The addition of this subpart does two things: 1) it ensures that the special need payments are used by recipients as authorized by the county agency; 2) it also provides that any special need payment be considered an overpayment if verification as described above is not received by the county agency. This amendment is reasonable and necessary because it assures that special need payments are treated as assistance payments and therefore subject to the overpayment provisions as described in federal regulations. See CFR 45 233.20 (a)(2)(v), and 233.20 (a)(13).

9500.2820 EMERGENCY ASSISTANCE.

Subpart 15. Termination of utility service.

This subpart provides for the payment of assistance on an emergency basis when one of more of a recipient's utilities is terminated or threatened with termination. The subpart also sets forth limitations in items A and B on the provision of emergency assistance for utilities. The amendments to this subpart consist of the deletion of subitems (1) and (2) in item B and the addition of an item C. The deletions in item B are necessary and reasonable because by their terms they are effective only between October 1, 1986 and September 30, 1988. The proposed item C provides that the limitations in items A and B cannot be construed to prevent the issuance of emergency assistance when the assistance is necessary to protect the life or health of a child. This is necessary and reasonable because the overriding purpose of the state statute and federal law providing for emergency assistance is to protect the life and health of children. This proposed item ensures that the purpose of emergency assistance as intended by Congress and the State Legislature takes precedence over the limitations on emergency assistance imposed by items A and B.

Subpart 16. Amounts of payment.

The deletions in this subpart are necessary and reasonable because the language being deleted is, by its terms, no longer effective.

9500.2880 COUNTY OF RESPONSIBILITY POLICY AND DISPUTES.

Subpart 1. Determining the county of financial responsibility.

This subpart deals with situations where an assistance unit includes members who have been the financial responsibility of a number of different

counties. The current rule assigns financial responsibility in these situations based on the number of children in the assistance unit and the relative age of the children. The proposed rule changes the basis for assigning financial responsibility. It assigns financial responsibility to the county initially responsible for the assistance unit member with the earliest date of application. This change is necessary to comport with the change made to state statute in 1987 with the passage of the Minnesota unitary residence and financial responsibility act. The change is reasonable because it incorporates this statutory change. See Minnesota Laws 1988, chapter 719, article 8, section 26.

Subpart 2. Change in residence.

This subpart is amended to incorporate provisions of the Minnesota unitary residence and financial responsibility act concerning nonexcluded status. This subpart is necessary to ensure compliance with the act. It is reasonable because it makes clear that a county assumes financial responsibility for a recipient only if the recipient has resided in the county in "nonexcluded status" for two calendar months as required by statute. See Minn. Stat. §256G.07 subd. 1. It is also reasonable not to apply the two month delay in transfering financial responsibility when the dependent child is simply moving from one caretaker to another. If the delay were applied to such a situation the caretaker without the child would receive assistance meant to benefit the child.

Subpart 4. Excluded time.

The current subpart 4 is entitled "out-of-county placement." It addresses financial responsibility for recipients who move from one county to another because of placement in residential treatment or care. It assigns financial responsibility to the county of residence at the time the recipient's plan was developed and provides for the transfer of financial responsibility two months after the plan is completed. The amendment to this subpart changes the title of the subpart and replaces the current language with language that assigns financial responsibility based on the recipient's county of residence outside an excluded time facility. The amendment is necessary to make this subpart consistent with the Minnesota unitary residence and financial responsibility act. The amendment is reasonable because it is consistent with the unitary residence act which bases financial responsibility on residence in nonexcluded status and provides for the transfer of financial responsibility two months after nonexcluded residency in the new county. Minn. Stat. §256G.07 subdivision 1.

Subpart 5. Settlement of disputes.

This subpart provides the procedures for disputes between counties concerning financial responsibility for assistance to recipients. The amendment to this subpart necessarily deletes language that is inconsistent with the Minnesota unitary residence and financial responsibility act. The amendment is reasonable because it replaces the deleted language with language that incorporates the procedures in the unitary residence act. See Minn. Stat. §256G.09.

Expert Witnesses/Small Business

If this rule is heard in public hearing, the Department does not intend to have outside expert witnesses testify on its behalf. The proposed rule amendments do not affect small businesses as defined in Minnesota Statutes, section 14.115.

Date: 1/5/90

ANN WYNIA
Commissioner