

3/4/91 ✓

STATE OF MINNESOTA  
DEPARTMENT OF JOBS AND TRAINING

In the Matter of Proposed  
Rules Relating to Community  
Action Agencies and Community  
Action Programs

Statement of Need  
and Reasonableness

INTRODUCTION

These proposed rules are presented by the Department of Jobs and Training in accordance with the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. These rules interpret Minnesota Statutes, sections 268.52 through 268.54, which designate and recognize community action agencies and define the activities and projects funded as community action programs. These rules have been developed as authorized by Minnesota Statutes, sections 268.0122, subdivision 5, and 268.021 which permit the Commissioner to adopt rules governing programs the Commissioner administers under Minnesota Statutes, Chapter 268.

The proposed rules are all new rules to be codified as Minnesota Rules, Parts 3350.0010 through 3350.0200.

The department began drafting these rules in March, 1989. After a notice to solicit outside opinion was published in the State Register an advisory group was formed in March, 1989. The advisory group was composed of the Rules and Regulations Subcommittee of the Minnesota Community Action Program Directors' Association and staff members of the Economic Opportunity Office in the Department of Jobs and Training. The group last met in November, 1989.

These proposed rules embody existing departmental policy and practice and represent the input of the advisory group convened to review and draft rule language. The rules are consistent with state and federal law. In promulgating portions of the rules, the department has drawn on the past and present national experience in administering community action programs. The major portions of these rules address (1) the process of selecting community action agencies through designation on the local level and recognition on the state level; (2) the annual application process for funding community action programs; (3) reporting and planning requirements for receipt of funds; (4) voluntary cessation of program operations; (5) participation of low income people; (6) withholding and termination of funds under specialized circumstances; and (7) procedures for appealing the termination of funding, as well as designation or recognition.

## DISCUSSION

### 3350.0010 PURPOSE

This proposed part is necessary and reasonable because it describes the intent of the proposed rules. This part clarifies that community action agencies become eligible to receive funding for their programs and activities after both designation and recognition occur. This part also makes clear that the sources of funding are both the state and federal governments.

### 3350.0020 DEFINITIONS

Subpart 1. Scope. This proposed subpart is necessary and reasonable because it introduces the subject matter of this part.

Subpart 2. Act. A definition of "act" is necessary and reasonable in order to reference the Minnesota statutory authority for operating community action programs as distinguished from federal sources of authority. The use of the term "act" is reasonable to abbreviate the Minnesota statutes referenced throughout these rules.

Subpart 3. Applicant. A definition of "applicant" is necessary because the term is used in the application procedure of part 3350.0170. This definition is reasonable because it clarifies that qualified entities must apply annually for grant monies. The term "applicant" is distinguished from the term "grantee" in subpart 16 in that a grantee is an applicant whose application has been approved. The definition reasonably refers to Indian reservation governments and the Minnesota Migrant Council as types of community action agencies eligible for annual grants because they are specifically mentioned in the act.

Subpart 4. Cessation. A definition is necessary to differentiate the term "cessation" from the broader term "termination" as defined in subpart 22. Cessation is a procedure a community action agency may voluntarily utilize in order to end its program operations in a service area. It is reasonable to provide for such a voluntary halt to service delivery when circumstances change. Community action agencies should be permitted to cease program operations for whatever reason as long as there is no resulting disruption in program services for low income people.

Subpart 5. Commissioner. A definition of "commissioner" is necessary and reasonable because the term is used in the act and throughout these proposed rules. It is reasonable to abbreviate the commissioner of the Minnesota Department of Jobs and Training for purposes of concise internal referencing.

Subpart 6. Community. The term "community" needs to be defined

because it is used in the act. The term is also used in part 3350.0060, subpart 4, where it is crucial for determining who may petition a governing body to terminate a community action agency for cause. The term "community" reasonably refers to the people in the boundaries of a service area who, by the fact of their presence, may potentially be served by a community action program.

Subpart 7. Community action agency (CAA). A definition of "community action agency (CAA)" is necessary because such entities are the subject matter of these rules. Item A of the definition is reasonable because it summarizes the language of Minnesota Statutes, section 268.54, subdivision 1. Item B is reasonable because it refers to the eligibility requirements under federal law and regulations. Item C is reasonable because it specifies that to become a CAA an entity must be both designated and recognized. In general, the definition permits "grandfathering" in CAAs which have already been designated and recognized. Relying on previous procedures takes administrative notice of the validity of those procedures and is consistent with section 673 (1) of the CSBG Act and section 268.54, subdivision 1 of the act. The use of the acronym of "CAA" is reasonable in order to abbreviate the term throughout the rules.

Subpart 8. Community action program. A definition of this term is necessary and reasonable in order to reference the statutory language in Minnesota Statutes, section 268.54. This definition is needed to distinguish community action agencies from the activities they pursue through their programs.

Subpart 9. Community services block grant (CSBG). The definition of the term "community services block grant" is necessary and reasonable in order to reference the federal statutory authority for operating community action programs as distinguished from state statutory authority. The use of the acronym of "CSBG" is reasonable to abbreviate the federal laws referenced throughout the rules.

Subpart 10. Denial. A definition of "denial" is necessary because the term is used in part 3350.0170. This term reasonably provides that there are circumstances where an application for grant funds may be rejected. This definition of the term reasonably refers to the requirements of an annual application process. Annual applications are needed so that the department may periodically exercise its oversight function and may assure compliance with requirements for annual work plans, fiscal management and budgets.

Subpart 11. Department. This term is necessary and reasonable in order to abbreviate "Minnesota Department of Jobs and Training" throughout these rules and identify it as the administrative entity with statutory authority over CAAs.

Subpart 12. Designation. A definition of this term is necessary

because it is statutorily provided for under Minnesota Statutes, section 268.53, subdivision 1a, and under part 3350.0030 of these proposed rules. This definition specifies that designation is the portion of the CAA selection process which is conducted at the local level. This definition is reasonable because it provides for the interaction of the local governing body and the public in the selection of a CAA as statutorily mandated. Designation is distinct from recognition which is the other part of the process and which occurs at the state level.

Subpart 13. Designee. A definition of "designee" is necessary to indicate that an entity is nominated by a governing body to become designated. This term is reasonable in order to identify the status of a nominee before official designation occurs.

Subpart 14. Governing body. A definition of "governing body" is necessary and reasonable in order to establish the entity with the authority to designate CAAs. The act gives political subdivisions authority over designation and, in a representative democracy, the exercise of a political subdivision's authority rests with the elected governing body. Therefore, it is reasonable to specify governing bodies as the locus of designation authority in political subdivisions. "Governing body" is a general term chosen because it can encompass the city councils, Indian government boards and county boards of political subdivisions.

Subpart 15. Grant. A definition of "grant" is necessary and reasonable because CAAs receive funding on a conditional basis year-to-year. Therefore, the term highlights the fact that CAAs must meet certain prerequisites as a condition of their funding under the act.

Subpart 16. Grantee. A definition of "grantee" is necessary and reasonable to indicate a recipient of funds as distinguished from an applicant for funds. An applicant becomes a grantee once conditions for receipt of funds have been met.

Subpart 17. Local unit of government. A definition of "local unit of government" is necessary and reasonable in order to distinguish the term from "political subdivision" in subpart 19. "Local unit of government" is the broader term while "political subdivision" has a more specialized meaning. Furthermore, the definition of "local unit of government" is needed to ensure that the widest possible notice is given under part 3350.0030, subpart 3, part 3300.0050, subpart 3, and part 3350.0060, subpart 4.

Subpart 18. Minnesota economic opportunity grant (MEOG). A definition of this term is necessary and reasonable to reference the program's statutory authority at Minnesota Statutes, sections 268.52 through 268.54 and to differentiate state sources of funding from CSBG sources. The use of the acronym of "MEOG" is reasonable to abbreviate the term throughout the rules.

Subpart 19. Political subdivision. A definition of "political subdivision" is necessary because the term is statutorily provided for and needs interpretation by rule. Minnesota Statutes, section 268.53, subdivision 1a, requires that a political subdivision must be as large as the entire area served by the CAA. This definition interprets the statute as permitting local units of government to designate CAAs but reasonably makes counties the expected level at which designation occurs. This expectation is based on twenty five years of experience. Since 1964 only two CAAs have been designated by cities in Minnesota.

Subpart 20. Recognition. A definition of "recognition" is necessary because the term is used in Minnesota Statutes, section 268.53, subdivision 1a, and in part 3350.0040 of these proposed rules. This definition of the term outlines the procedures to be followed as a sequence of steps. Item A is reasonable because it notifies designees of applicable state and federal law and appropriate designation procedures which must be observed. Item B reasonably establishes the department's review for compliance as a prerequisite to submitting a request to the governor. Item C clarifies that the governor may choose to recognize a designee after receiving assurances of compliance from the department.

Subpart 21. Service area. A definition of "service area" is necessary and reasonable in order to delineate the boundaries in which a CAA operates. The community and a CAA must be made aware of the physical extent of the CAA's responsibility for operations. Furthermore, establishing operational boundaries is integral to the designation procedures of part 3300.0030.

Subpart 22. Subgrantee. A definition of "subgrantee" is necessary because the term is used in part 3350.0180. The definition of the term reasonably interprets Minnesota Statutes, section 268.54, as permitting delegation of a CAA's service responsibilities to other service providers who are under contract to the CAA.

Subpart 23. Termination. A definition of "termination" is necessary and reasonable because the term is used in part 3350.0060. A permanent withdrawal of funds from a CAA is the key element in this definition. The definition reasonably provides for appeal by a CAA since the withdrawal of funds triggers both a contested case hearing under the Administrative Procedure Act and federal review under the CSBG Act.

Subpart 24. Withholding. A definition of "withholding" is necessary because the term is used in part 3350.0100. This definition of the term is reasonable because it provides a mechanism to temporarily reserve funds from a CAA for minor infractions. The definition allows a CAA to retrieve these reserved funds by correcting the defect. Therefore, withholding gives the department some administrative flexibility before resorting to the drastic remedy of termination of funds.

3350.0030 DESIGNATION OF COMMUNITY ACTION AGENCIES

Subpart 1. Authority to designate. This subpart is necessary and reasonable because it informs interested parties and the general public that the designation process is the statutory responsibility of political subdivisions. This subpart reasonably provides that two or more political subdivisions may jointly designate a single CAA to provide services in their jurisdictions. Joint designation provides maximum flexibility and fiscal efficiency without necessarily compromising program effectiveness. This subpart makes clear that the power to designate may not be delegated by political subdivisions since there is no statutory authority to do so.

Subpart 2. Notice and documents. This subpart is necessary because of the requirements in Minnesota Statutes, section 268.53, subdivision 1a. Section 268.53, subdivision 1a, requires designees to submit a notice of intent to designate and eligibility documents. It is necessary to define the statutory term "eligibility documents." The eligibility documents listed in Items A through E are reasonable because they have been required by the department in the past, have proved their utility and are widely and generally known. Item A is evidence of a designee's operating structure as a "private nonprofit agency", which is a requirement of Minnesota Statutes, section 268.53, subdivision 1. Item B is evidence of a designee's nonprofit status for income tax purposes. Item C is a statement by the designee of compliance with the act in general and the composition requirements of its board of directors in particular as specified in Minnesota Statutes, section 268.53, subdivision 2. Item D is necessary to inform the department of the precise location and dimensions of the designee's proposed service area. Item E is necessary to advise the department of the designee's overall purposes so the department may be assured they are congruent with the aims of community action programs provided in Minnesota Statutes, section 268.54 and the guidelines provided in part 3350.0110, subpart 1.

Subpart 3. Notice of public hearing. This subpart is necessary because of the requirement in Minnesota Statutes section 268.53, subdivision 1a, for a public hearing before designation may occur. The procedures leading to the public hearing are reasonably calculated to give the widest possible notification of the reason for the hearing as well as its date, time and location. Notifying local units of government 30 days before the hearing permits them a reasonable time to respond and promotes inter-governmental communication and cooperation. Publication of a hearing notice in a newspaper of general circulation during the 30 day period attempts to reach members of the community who may be interested in the proceedings. The department's direct mailing of the hearing notice to low-income households targets members of the community who are most affected. The department is responsible for mailing notice to low-income households because of data privacy considerations.

Subpart 4. Public hearing. This subpart is necessary and reasonable in order to clarify that a political subdivision may not designate a designee until at least 30 days have passed from the hearing date. Thirty days is a reasonably sufficient time for the presiding officer to collect and organize the hearing record and summarize the range of opinion expressed at the hearing. Since joint designation may occur, it is reasonable to hold public hearings in all counties which may be affected by the potential designation so that the widest possible local opinion may be presented and heard.

Subpart 5. Hearing procedure. This subpart is necessary in order to clarify how the hearing will be conducted and what testimony and comments may be presented at the hearing. It is reasonable to stipulate that a presiding officer will be appointed in order to conduct the hearing and move the proceedings forward. The presiding officer should be a neutral and disinterested party so that wide ranging opinion may be presented in an impartial manner. To guard against even the appearance of partiality, it is reasonable to proscribe members of the governing body from serving as a presiding officer. Because a designee is attempting to show why it should become a CAA the burden of proving its qualifications and expertise at the hearing rests with the CAA. Likewise, since the governing body is nominating the designee the governing body's representative must also meet a similar burden of proof at the hearing.

Subpart 6. Official record. This subpart necessarily provides that documentation of the proceedings be made and preserved. A record is necessary and reasonable as an aid to the presiding officer in the preparation of a hearing summary and to the governing body in its decision-making. The requirement of electronic recording is reasonable because such a method is permanent, all-inclusive and readily accessible. Also, electronic recording is part of routine operations for hearings conducted pursuant to the Administrative Procedure Act and should be used in this context as well.

Subpart 7. Summary of hearing. This subpart is necessary and reasonable in order to synthesize the hearing proceedings into a quick reference for the governing body. The official record will generally be lengthy and a digest of the testimony and written comments will be useful in guiding the decision-making of members of the governing body.

Subpart 8. Official resolution. This subpart is necessary because an official resolution is required by Minnesota Statutes, 268.53, subdivision 1a. It is reasonable to require that 30 days pass after the hearing date before a designation resolution can be entertained by a governing body. Thirty days is a reasonable amount of time in order for the governing body to review the official record and summary. In arriving at its decision to

designate or not, the governing body must have time to determine if the hearing record complies with items A through D. Item A is reasonable because the governing body should hear and be influenced by the opinion of the whole community potentially served by the designee as shown by the record. Item B is reasonable because the governing body should be particularly concerned with how the record reflected the opinion of low income people who are the potential consumers of the designee's services. Item C is reasonable because the governing body should be convinced of the designee's qualifications on the record before conferring designation. Item D is reasonable because the record should show how the designee intends to provide services and indicate the community's level of support for the designee's service delivery model.

Subpart 9. Review by department. This subpart is necessary because such a review is required by Minnesota Statutes, section 268.53, subdivision 1a. This subpart reasonably interprets the review to mean compliance with hearing procedures, and evidence of eligibility for designation.

Subpart 10. Costs. This subpart is necessary and reasonable to inform local governing bodies of the costs they will incur during the designation process. Minnesota Statutes, sections 3.981 to 3.983, 14.11 and 14.131 require state agencies to assess the financial impact of proposed rules on local government. It is reasonable for counties to assume the financial obligation for exercising their right of designation. The fiscal impact on local government should be minimal for several reasons. First, the entire state is already covered by designated CAAs so there will be no immediate designation costs. Second, even when designation occurs in the future, the costs involved concern only those associated with announcing and holding public meetings. Third, the State of Minnesota has assumed the greater cost burden under the rules by paying for contested case hearings under part 3350.0060.

#### 3350.0040 RECOGNITION OF COMMUNITY ACTION AGENCIES

Subpart 1. Provisional recognition. This subpart is necessary and reasonable in order to ensure that a designation complies with threshold legal requirements. Such legal compliance is a prerequisite of the governor's recognition. The governor must be assured by the department that minimum legal requirements have been met before deciding whether or not to extend recognition.

Subpart 2. Governor's recognition. This subpart is necessary because the authority for recognition is vested with the governor by Minnesota Statutes, section 268.53, subdivision 1a. This subpart reasonably informs designees, political subdivisions and the general public of the governor's authority in this area.

Subpart 3. Maintenance of recognition. This subpart is necessary to inform CAAs that meeting recognition requirements is on-going



and continuous in order to preserve CAA status. Since these requirements do not go away after recognition is achieved, CAAs should be made aware of their continuing responsibilities. Furthermore, additional requirements beyond threshold legalities are included in this subpart because they address the vitality and business regularity of a CAA and indicate its organizational health, direction and operations. These additional requirements are contained in items D, E and F and can only be addressed after a CAA has been active and operational.

Subpart 4. Failure to maintain recognition. This subpart is necessary to establish sanctions for not observing the requirements of recognition. This subpart notifies CAAs that efforts must be taken to preserve recognition once it is achieved. This subpart reasonably provides for a period of withholding so that a CAA may take corrective action prior to termination of recognition. However, if a CAA has not complied with recognition requirements after both withholding and termination of funding this subpart provides for the withdrawal of recognition and all future funding. The requirements for recognition are of such special significance and are so integral to a CAA's structure and operations that failure to maintain these requirements justifies extreme sanctions.

#### 3350.0050 CESSATION AND CHANGE OF DESIGNATION

Subpart 1. Circumstances for cessation. This proposed subpart recognizes that a CAA may need to voluntarily suspend all the services it delivers. This subpart also establishes that there can be no partial cessation. If partial cessation were permissible, a CAA could pick and choose where to operate in a service area and perform its services only where it saw fit. Service delivery for a community would then become arbitrary and uneven.

Subpart 2. Priority among possible designees. This subpart is necessary in order to achieve an orderly transition after cessation has occurred. This subpart reasonably adopts the priority criteria for nominating designees which were formerly established in section 673, subsection (1) of the CSBG Act. These federal regulations no longer govern the selection of new CAAs but have history, experience and acceptance to recommend them.

Subpart 3. Procedure. This subpart reasonably adopts the regular designation procedure as the one to be followed after a CAA's cessation. Adoption of the existing procedure promotes uniformity and minimizes confusion. Requiring a transition plan for interim service delivery is necessary to ensure that there is no disruption of program services. In the normal course of events, the CAA will continue to provide services until a designee is recognized and designated although circumstances may permit a designee or an agency other than the designee to operate if the approved transition plan so specifies. This subpart reasonably requires that more organizations be notified of the cessation than is

required in the regular designation procedure. This additional notice to other CAAs and to subgrantees is justified because of the large vested interest such organizations would have in the transition from one CAA to another.

Subpart 4. Additional review by the department. This subpart is necessary because cessation cannot be allowed if it means a disruption of services to the community. A CAA should have the option of ceasing program operations but, having become designated and recognized a CAA owes continuity of service to the community it has served until it is replaced by a successor. The people in the community should not be inconvenienced or harmed by the voluntary choice of a CAA. Therefore, this subpart reasonably provides that an approved transition plan is a prerequisite for proceeding to designation and to recognition by the governor.

#### 3350.0060 TERMINATION FOR CAUSE

Subpart 1. Cause. This subpart is necessary in order to specify the grounds for termination. The grounds include generally recognized infractions such as harm of clients and willful contract violation. The grounds also include reasons specific to this program such as unresponsiveness to low income people, failure to remedy short and long term defects, and noncompliance with application requirements. Exhibit A is a chart showing what violations constitute cause, who may initiate termination proceedings, what step, if any, precedes imposition of complete sanctions and which sanctions correspond with particular types of violations. See Exhibit A.

Subpart 2. Termination by governing body. This subpart is necessary in order to provide a governing body with a mechanism for terminating the designation of a dangerous or unresponsive CAA. Authority over designation belongs to a governing body. Therefore, this subpart reasonably limits the grounds for termination of designation to those areas within the governing body's control and purview. This subpart specifies a due process procedure for CAAs aggrieved by a termination of designation. Due to data privacy considerations, the department is responsible for notifying low income households in the service area of the governing body's termination. Provision for a transition plan is reasonably included in the procedure to forestall disruption of program services.

Subpart 3. Termination by the department. This subpart is necessary in order to provide a mechanism for terminating the recognition and funding of a CAA where the circumstances warrant. Responsibility for recognition and funding resides with the department. The department, therefore, should have flexibility in exercising its responsibility according to the situation. This subpart gives the department options concerning termination. One option is for the department to terminate funding and recognition

immediately if the cause is extreme; this option is only available where the CAA is imminently endangering the community or willfully violating its contract with the department. Another option is for the department to first withhold and then terminate funding for a specific period; this option is required for those elements which are specific to this program such as failing to submit reports, failing to maintain recognition, etc. This subpart reasonably gives the department more grounds for terminating a CAA than a governing body because the department's areas of responsibility are broader. However, this subpart reasonably prohibits the department from acting on a petition for termination because a preliminary determination of unresponsiveness should be a local rather than a state matter. This subpart specifies a due process procedure for CAAs aggrieved by a termination of recognition or funding or both. The department is responsible for notifying low income households in the service area of the termination in order to increase their awareness of and participation in the termination process.

Subpart 4. Petition for termination. This subpart is necessary in order to provide low income people with a means to redress grievances and to initiate the removal of an unresponsive CAA. This subpart reasonably adopts, in a modified version, the former procedure at Title 45, Code of Federal Regulations, Part 1060.1-3 (b), for addressing client complaints against a CAA for unresponsiveness. It is reasonable to provide low income people with a means of removing unresponsive CAAs given the purpose and legislative history of the community action program. The community action program was intended to empower low income people and remove the barriers to self-sufficiency. Therefore, if the CAA itself has become a barrier low income people should have an available mechanism for initiating its termination.

Subpart 5. Appeal procedure. This subpart is necessary in order to inform the department that a CAA intends to appeal a notice of termination. A 30-day period in which to exercise the right of appeal is reasonable since that is ample time for a CAA to organize and compile facts and issues relevant to an appeal. A deadline for exercising the right of appeal is necessary so that contested case issues may be addressed in a timely fashion. It is reasonable that the request for a contested case hearing be in writing so that a record may be retained. This subpart conforms the appeal procedure to the Administrative Procedures Act and its adopted rules. This subpart clarifies that the department is potentially an interested party in any termination action commenced by a governing body. Therefore, the department should specifically have the right to present relevant evidence during the proceedings to terminate designation. By permitting this option to intervene the department may immediately terminate funding as well as recognition if it is persuaded that termination is warranted. Otherwise, the department would not normally terminate a CAA's funding until a governing body prevailed against a CAA in the contested case hearing.

Subpart 6. Federal appeal rights. This subpart is necessary and reasonable in order to inform CAAs of their rights to a federal review of a termination of funding under Section 676A of the CSBG Act. This section of the CSBG Act permits funding termination of a CAA if "after notice and opportunity for hearing on the record, the State determines that cause existed for such termination subject to review by the Secretary [of Health and Human Services]."

Subpart 7. Successor. This subpart is necessary and reasonable in order to make clear that once termination occurs an interim agency must be appointed to continue community action program services. The successor may or may not also be the ultimate designee. This subpart establishes that the priority guidelines for choosing among designees after cessation are also applicable after a termination. Furthermore, this subpart establishes that a successor which is also the designee must follow the regular designation procedures in order to become a CAA.

Subpart 8. Costs. This subpart is necessary in order to assign responsibility for the costs of the hearings described in this part. This subpart splits these costs between the department and governing bodies depending on the type of hearing involved. As the final authority for the functioning of the community action program it is reasonable that the department pay for contested case hearings. Contested case hearings are the forum for determining the validity of alleged CAA infractions. Through the contested case procedures the department can monitor the program on a case-by-case basis. As the entities at the local level it is reasonable that governing bodies are in a better position to determine if a CAA is or is not responsive to low income people. Thus, governing bodies should pay the costs associated with the type of public hearing resulting from a petition for termination.

#### 3350.0070 ALLOCATION OF FUNDS

Subpart 1. Formula. This subpart is necessary and reasonable in order to refer to the statutory allocation process at Minnesota Statutes, section 268.52, subdivision 2.

Subpart 2. Poverty level population. This subpart is necessary and reasonable to refer to the provision at Minnesota Statutes, section 268.52, subdivision 4. It is reasonable to use for purposes of defining this term the numbers contained in the U.S. Bureau of the Census' Current Population Reports since they are routinely collected every five years.

#### 3350.0080 MONTHLY, PERIODIC AND FINAL REPORTS

This part is necessary in order to document levels of activity and expenditure by CAAs. As a function of its oversight responsibility the department must be assured that programs are operating smoothly and competently and must be made aware of a CAA's financial

circumstances. Furthermore, the department is required to report to the U.S. Department of Health and Human Services concerning the overall activities of federally funded community action programs in Minnesota and must have current and accurate information from CAAs in order to meet federal reporting mandates. The reports required in this part are those required in the past and which have proven their effectiveness and are used as the basis for generating federal reports.

#### 3350.0090 DUE DATES FOR MONTHLY, PERIODIC AND FINAL REPORTS

This part is necessary in order to fix deadlines for submission by CAAs of the three types of reports to the department. The department must have CAA data and documentation in a timely fashion to meet federal reporting deadlines. The 30 day deadline for periodic reports allows CAAs a reasonable time to collect and tabulate extensive client and fiscal data from a three month period. The 30 day deadline for final reports is a reasonable time for CAAs to distill from the periodic reports the data summarizing the program year and also permits the department to meet its reporting deadlines at the federal level. The ten day deadline is reasonable for monthly reports because the amount of data to be generated is less than periodic or final reports. A five day grace period after deadlines for the three reports reasonably allows CAAs some additional time as a cushion before the department may proceed to withhold funds.

#### 3350.0100 WITHHOLDING OF CASH DISBURSEMENTS

Subpart 1. Circumstances for withholding. This subpart is necessary and reasonable because it introduces the subject matter of this part and lists the defects by a CAA which may trigger the reservation of funds by the department. This mechanism for reserving funds is necessary so that the department has the ability to compel compliance with administrative requirements without resorting to the drastic and permanent remedy of termination. Administrative flexibility is necessary in this area or otherwise the department would be forced to terminate funding for minor, short term infractions. Item A is reasonable as a basis for withholding funds because the department needs financial reports submitted in a timely manner in order to satisfy federal reporting requirements. Item B is reasonable because approval of annual applications is conditioned on CAAs following submitted budgets and work plans. Item C is a reasonable basis for withholding because CAAs are bound to follow the terms of their contracts and where they do not violate their contracts willfully there should nonetheless be a means of compelling contract performance. Item D is reasonable because maintenance of recognition is a prerequisite for continued funding by the department and withholding is a way of compelling compliance with recognition requirements without resorting to termination.

Subpart 2. Notice, conversion option and termination. This part is necessary to inform CAAs of the procedures involved in the withholding of cash disbursements. This part reasonably provides that the department must notify a CAA of a pending withholding of cash. The notice is structured in such a way as to give a CAA the opportunity to remedy the identified defect before actual withholding occurs. Ten working days have been allotted for this purpose, which is a sufficient time for correcting most defects. Withholding can occur for up to 90 days before becoming a funding termination. This short term period of 90 days allows ample time for a CAA to correct even major defects without suffering permanent de-funding. During the 90 days a CAA may choose to convert the withholding into a termination so it may exercise its appeal rights and receive a hearing before an administrative law judge. If a CAA does not convert the withholding to a termination or cure the defect during the 90 days the department will terminate funding. In this way the allegations will be settled and the issues rescued from administrative limbo. The CAA may cure the defect, acquiesce to the validity of the allegations or request a hearing be held on the department's allegations. After a period of funding termination the sanctions for ignoring a defect escalate, depending on the nature of the defect, to denial of the CAA's subsequent applications or termination of its recognition. The escalating sanctions are designed to compel compliance and if compliance is not forthcoming the department will not fund the miscreant.

#### 3350.0110 PROGRAM GUIDELINES AND ELIGIBLE ACTIVITIES

Subpart 1. Program guidelines. This subpart is necessary to interpret the intent of Minnesota Statutes, section 268.54. The four items in this subpart can reasonably be inferred from section 268.54.

Subpart 2. Eligible grant activities. This subpart is necessary and reasonable because it re-states the criteria of Section 675, subsection (c), clause 1, of the CSBG Act. For consistency, this subpart reasonably adopts the federal criteria for both MEOG and CSBG funded activities.

Subpart 3. Federal prohibitions. This subpart is necessary and reasonable because they are referenced in Section 675, subsection (c), clause 2, of the CSBG Act as being a part of the State Plan submitted to the Secretary of Health and Human Services. CAAs should be reminded in these rules of the existence of federal prohibitions to guard against using CSBG funds for prohibited activities.

#### 3350.0120 PARTICIPATION BY LOW INCOME PERSONS

This part is necessary because Minnesota Statutes, section 268.53, subdivision 5, paragraph (d), mandates that each CAA establish ways for low income people to shape the character of community action

programs and the means for carrying out the programs. This part reasonably interprets the statutory mandate to mean that low income people should have input into the generalized planning and evaluating of community action programs and the annual work plan and evaluation report. Input into planning and evaluation are the two most effective ways for low income people to influence community action programs and therefore, to fully participate in the direction and operation of the programs.

#### 3350.0130 LOCAL PLANNING PROCESS

This part is necessary and reasonable because Minnesota Statutes, section 268.53, subdivision 5, paragraph (a), mandates that each CAA plan its community action programs to enhance their maximum effectiveness. Furthermore, the narrative describing a CAA's planning process is necessary in order to guide each year's work plan, which is submitted as part of the application process in part 3350.0170, subpart 1. The planning process is so important to the viability of CAAs that the process has been included as a requirement for maintaining recognition in part 3350.0040, subpart 3, item F. The planning process contemplated in this part is a structure for shaping each CAA's vision of its service delivery system. The structure outlined in items A through H proceeds from the general to the specific. The planning process will help a CAA to map out a strategy of action based on the needs and goals identified in the service area. The planning process is open-ended enough to accommodate the local situation in which each CAA operates. Also, the sequential nature of the process should produce very tangible and practical results if the process is followed to its conclusion.

#### 3350.0140 EVALUATION PROCESS

This part is necessary and reasonable as a self-correcting mechanism incorporated into the planning process to assess actual programmatic results. Once planning has occurred it is reasonable to assess if the planning has achieved the desired effects and, if not, what changes should be made in the planning process as well as in its implementation. The evaluation process has been included as a requirement for maintaining recognition in part 3350.0040, subpart 3, item F, because of its central importance in improving a CAA's performance. It is reasonable to require that a narrative describing the evaluation process be written by each CAA with the active involvement of the CAA's board of directors. A definite written narrative can be readily available as a guide for enhancing CAA performance. A written narrative needs the support of the board of directors in order to become and remain a vital document.

#### 3350.0150 ANNUAL EVALUATION REPORT

This part is necessary and reasonable in order to assess annually the impact and results of program services. The annual report can

be useful in influencing the work plan for the subsequent year. It is reasonable to allow a CAA until December 30 following the close of the state fiscal year to submit the report. This allows a CAA the reasonable time of six months to perform a thorough evaluation. By December 30 of each year a CAA will have submitted its annual application and its monthly, periodic and final reports so there should be ample time to complete an evaluation report. While the audit is also due December 30 its focus on assessing past financial performance is very compatible with the aims of a program evaluation. A grace period of five days is reasonable considering that ample time for completing the report is provided after the close of the state fiscal year. In this situation, withholding is a reasonable sanction because the CAA can correct the situation by submitting a complete and complying report.

#### 3350.0160 ADMINISTRATION OF GRANTS

Subpart 1. Grantee financial control system. This subpart is necessary because the federal Office of Management and Budget (OMB) in its Circular A-102 requires states who receive federal funds as grantees to submit Financial Status Reports. It is reasonable, in turn, to require state grantees to submit such reports to the department. Without these reports from its grantees, the department cannot comply with federal requirements. The federal requirements have been summarized in the DJT Subgrantee Administrative Requirements No. 1, as revised.

Subpart 2. Grantee audit. This subpart is necessary because OMB Circular A-110, Attachment F, requires states who receive federal funds as grantees to perform financial audits. It is reasonable, in turn, to require state grantees to perform and submit their own audits to the department. Without these audits from its grantees, the department cannot comply with federal requirements. Furthermore, OMB Circular A-102 requires state agencies granting federal assistance of \$25,000 or more in a fiscal year to a state grantee to require the state grantee to perform audits in accordance with the Single Audit Act of 1984 and the OMB Circular A-128, "Audits of State and Local Governments."

Subpart 3. Alterations. This subpart is necessary in order to accommodate mid-course changes in a CAA's submitted work plan and budget. This subpart reasonably provides that these changes must first be approved by the department before implementation. Once an application has been approved, a CAA should not be permitted to make unilateral changes to a work plan and budget. Work plans and budgets are the product of mutual agreement and should only be altered where both a CAA and the department agree to the changes.

#### 3350.0170 GRANT APPLICATIONS

Subpart 1. Forms and documents. This subpart is necessary so that CAAs are aware of their responsibilities in the annual



application process. It is reasonable to require CAAs to submit their annual work plans and budgets as part of the application process since both documents give a clear indication of program direction in the forthcoming year.

Subpart 2. Grant application deadlines. This subpart is necessary and reasonable in order for the department to anticipate and plan subsequent funding cycles. The department must be informed of which CAAs are applying for funding and which ones are eligible for funding in order to reserve allocations. Deadlines also provide the department with the opportunity to annually review CAAs on their work plans, the relationship of their work plans to their budgets and their fiscal management capabilities.

Subpart 3. Waiver of application deadline. This subpart necessarily gives some administrative flexibility to meeting application deadlines. However, the circumstances for granting a waiver because of local need are very limited under this subpart. Local need means the occurrence of a catastrophe or a loss of a CAA's key staff. The circumstances for granting a deadline waiver are very limited given the generous 45 day grace period provided in subpart 5. Should the department deny the request for a deadline extension the CAA still has up to 45 days to submit an application before the department would deny the application for the coming program year. It is reasonable to require that the request for waiver be received by the department at least by the year-end deadline so that the department has timely notice of the CAA's intentions.

Subpart 4. Approval of application. This subpart is necessary and reasonable because it adds certainty to the application process by requiring the department's written response to a CAA. This subpart informs CAAs that cash requests under an approved application cannot be processed until a contract between the department and a CAA has been validated by the Department of Finance.

Subpart 5. Late, incomplete or noncomplying application. This subpart is necessary and reasonable because it establishes "grace periods" for the submission of annual applications. While there is an administrative necessity for prompt submission of applications it is also reasonable to allow CAAs a time limited immunity from penalty. Forty five days from the deadline is a reasonable time to allow before denying an application. Forty five days will reasonably accommodate an applicant's difficulties in applying and will also fix an absolute time limit for applying. Incomplete or noncomplying applications are a more complicated situation and require more flexibility. Since applicants must first be notified by the department that their applications are incomplete or noncomplying the grace period should be able to extend beyond 45 days if the department's notification is not timely. Therefore, this subpart reasonably ties the length of the grace period to 30

days beyond the date of department notification or 45 days whichever is most favorable to the applicant.

Subpart 6. Denial of application. This subpart is necessary and reasonable in order to describe the circumstances under which an application may be denied. There are four items under this subpart. Item A concerns late applications which have not been submitted by CAAs who are eligible for funding. Item B concerns submitted applications which need supplementation or correction before they may be approved. Item C contains subitems which describe some examples of noncompliance. These subitems focus on the adequacy of the work plan and its relation to the budget and on the applicant's fiscal management capability because these crucial elements need examination by the department annually. Item D addresses situations where an applicant has not corrected a previously identified and on-going defect. Failure to correct such a defect results in the rejection of a proposed application. If the continuing defect concerns matters relating to recognition an application will be rejected and all future funding and recognition itself will be terminated.

#### 3350.0180 SUBGRANTEES

This part is necessary and reasonable because Minnesota Statutes, section 268.54, subdivision 3, permits a CAA to delegate its service duties to other entities. However, this part highlights reasonable limits on a CAA's power to delegate. First, the CAA must have the department's written permission before delegating its duties so that the department has notice of which entity has responsibility for which service. Second, the CAA must have a contract with the subgrantee so that each party knows the extent of the subgrantee's responsibilities and the subgrantee is legally bound to perform them. Third, the CAA must be made aware of its liability for the acts and omissions of its subgrantees under the law of agency.

#### 3350.0190 RECORD KEEPING

This part is necessary and reasonable in order for the department to comply with federal requirements for the retention of records associated with CSBG grants.

#### 3350.0200 MONITORING

This part is necessary and reasonable in order to inform CAAs of the department's oversight function. This monitoring schedule conforms to the department's policies and procedures manual applicable to all departmental grantees for all programs.

## SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

When proposing rules, an agency must consider methods for reducing the impact of the proposed rules on small businesses potentially affected. The vast majority of CAAs are small business as defined in Minnesota Statutes, section 645.445. The department has considered each of the five methods listed in section 14.115, subdivision 2, clauses (a) to (e).

The first method at clause (a) refers to establishing less stringent compliance or reporting requirements for small businesses. The compliance requirements as regards CAAs are unavoidable given the statutory objectives of determining eligible entities to be designated and recognized as CAAs and maintaining the eligibility of designated and recognized CAAs. Furthermore, the proposed rules must necessarily impose reporting requirements on CAAs as small businesses in order to monitor budgets and work plans, and to meet federal mandates.

The second method is contained in clause (b). The department is required to assess the possibility of establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses. The proposed rules will, in general, retain the same deadlines as is the current practice, although "grace periods" beyond the deadlines are a new feature of these rules. The deadlines are necessary to meet the statutory mandates for reporting and to promote timely administration of the program. There is no compelling basis for exempting CAAs as small businesses from deadlines that will ensure these statutory and programmatic objectives.

The third method at clause (c) requires consideration of a consolidation or simplification of compliance or reporting requirements for small businesses. The compliance requirements are already familiar to most CAAs and CAAs are aware of the need for these requirements. Compliance is necessary for uniform administration of the program and there is no compelling reason to simplify or consolidate just because the vast majority of CAAs are small businesses.

The fourth method at clause (d) is the establishment of performance standards for small businesses to replace design or operational standards. Since there are no design or operational standards contemplated by these rules, this method does not apply.

The fifth method at clause (e) requires the department to consider exempting CAAs as small businesses from any or all requirements of these proposed rules. For all the reasons previously discussed, this is not feasible.

**CONCLUSION**

The Department of Jobs and Training recommends the adoption of these proposed rules.

2-27-91

Date

Frank Schneider

Frank Schneider  
Acting Director  
Economic Opportunity Office  
Department of Jobs and  
Training

TERMINATION FOR CAUSE  
(PART 3350.0060, SUBPART 1)

INFRACTION	INITIATOR		PREREQUISITE FOR COMPLETE SANCTION	COMPLETE SANCTION
	STATE	GOV. BODY		
Imminent Danger (Item A),	X	X	None	Termination of Recognition or Designation and All Funding
Unresponsiveness to Low-Income People (Item B)		X	Petition Followed By Public Hearing (Part 3350.0060, Subpart 4)	Termination of Designation and All Funding
Willful Contract Violation (Item C)	X		None	Termination of Recognition and All Funding
Short-Term Non-Remedied Defect (Item D)	X		Withholding of Funds (Part 3350.0100, Subpart 2)	Termination of Funding for Specific Period
Long-Term Non-Remedied Defect (Item E)	X		Termination of Funding for Specific Period (Part 3350.0100, Subpart 2)	If Concerning Recognition, Termination of Recognition and All Funding (Part 3350.0040, Subpart 4); If Not Concerning Recognition, Denial of Subsequent Application and Termination of Funding for Year (Part 3350.0170, Subpart 6)
Late, Incomplete or Non-Complying Application (Item F)	X		Grace period of up to 45 Days From Deadline	Denial of Current Application and Termination of Funding for Year (Part 3350.0170, Subpart 6)