

Existing

Appendix A
Overpayment Rules That Were in Effect Prior to 07/01/98

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5101:1-25-10 ADC: Intentional program violation.

(A) An "intentional program violation" in the ADC program is defined as an action by an individual, for the purpose of establishing or maintaining the family's eligibility for ADC or for increasing or preventing a reduction in the amount of the grant, which is intentionally: A false or misleading statement or misrepresentation, concealment, or withholding of facts; or any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity, as set forth in Chapter [5101:6-20](#) of the Administrative Code.

(B) An intentional program violation can only be established in one of the four circumstances descri?? in paragraphs (B)(1) to (B)(4) of this rule.

(1) A court of appropriate jurisdiction has found that the individual has committed an intentional program violation, as set forth in rule [5101:6-20-50](#) of the Administrative Code.

(2) An administrative disqualification hearing decision finds that the individual has committed an intentional program violation, as set forth in rules [5101:6-20-16](#) and [5101:6-20-17](#) of the Administrative Code.

(3) The individual signs a waiver of the disqualification hearing as set forth in rule [5101:6-20-30](#) of the Administrative Code.

(4) The individual signs a disqualification consent agreement as set forth in rule 5101:6-20-41 of the Administrative Code.

(C) If an intentional program violation is established for an individual in accordance with one of the conditions set forth in paragraphs (B)(1) to (B)(4) of this rule, the individual may be disqualified from the ADC program. Chapter [5101:6-20](#) of the Administrative Code sets forth specific regulations governing disqualification for intentional program violation.

(D) If an individual is found to have committed an intentional program violation and is disqualified, his income is counted in the determination of the remaining assistance group members' eligibility, and payment to the remaining assistance group members shall be made in the form of protective payments. However, as set forth in rule 5101:1-25-013 of the Administrative Code, if all reasonable efforts to locate an individual to whom protective payments can be made have been exhausted, the CDHS may continue to make payments to the disqualified individual on behalf of the remaining assistance group members.

(E) Protective payments are to be terminated, with return to unrestricted money payment status following the expiration of the disqualification period. If the disqualification period is the third occurrence, and the individual is permanently disqualified, payment to the remaining assistance group members will remain protective payments for as long as the disqualified individual resides with the assistance group. If the disqualified individual no longer resides with the assistance group, protective payments shall be terminated with return to unrestricted money payment status. However, if the permanently disqualified individual returns to live with the assistance group, restricted payment status in the form of protective payments must again be imposed.

(F) If the disqualified individual has earned income, the earned income disregards set forth in rules 5101:1-23-033 and 5101:1-23-04 of the Administrative Code shall be deducted from the individual's income prior to counting the income in the remaining assistance group's eligibility determination. After the earned income disregards are applied to the disqualified individual's earned income, the remaining income is counted as unearned income in the determination of eligibility for the remaining assistance group members.

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5101:1-25-31 TANF: Overpayments.

(A) An overpayment is either:

(1) A financial assistance payment received by or for an assistance group for the payment month which exceeds the amount that the assistance group was eligible to receive; or

(2) A financial assistance payment received by or for an assistance group for the payment month when the assistance group was not eligible to receive any financial assistance.

(B) An overpayment may occur because of any change in an assistance group's situation which decreases the level of assistance for which the assistance group is eligible, such as the assistance group receives an increase in income.

(C) A primary objective of the TANF program is the prevention of overpayments. To achieve this objective. The CDHS shall take the following steps:

(1) Provide the assistance group with frequent and complete explanations of program eligibility, the factors that cause ineligibility and overpayment, and the assistance group's responsibility to report changes in income, resources, need, and other circumstances affecting eligibility (As set forth in rule 5101:1-2-23 of the Administrative Code).

(2) Take immediate action to terminate or adjust the grant as soon as it learns of a change in circumstances which affects the assistance group's future eligibility for assistance, with due regard for the hearing provisions of division level designation 5101:6 of the Administrative Code. Paragraphs (F) to (I) of this rule set forth the effective date of the termination or budget adjustment.

(3) Take prompt action to recover all overpayments known to the agency.

Prompt recovery of all overpayments requires the CDHS to take one of the following actions by the end of the quarter of the calendar year following the quarter in which an overpayment is discovered.

(a) Recover the overpayment.

(b) Initiate action to locate a former recipient and/or recover the overpayment from the former recipient.

(c) Execute a monthly recovery agreement which provides for recovery from the income/resources or grant of a current recipient or other party responsible for the overpayment.

(4) Take necessary action in accordance with Chapter [5101:6-20](#) of the Administrative Code in cases involving a potential intentional program violation.

(D) The assistance group shall make an accurate and complete disclosure of all information necessary for a determination of eligibility and for computation of the correct amount of assistance. Such disclosure shall be made at the time of initial application, at redetermination, and within ten days of the date that any change specifically identified as a reporting requirement in rule 5101:1-2-23 of the Administrative Code occurs. Failure by the assistance group to report any change specifically identified in rule 5101:1-2-23 of the Administrative Code as a reporting requirement within ten days from the date that the change occurs could result in disqualification of one (or more) of the assistance group members for intentional program violation as set forth in rule 5101:1-25-10 and Chapter [5101:6-20](#) of the Administrative Code.

(E) As stated in rule 5101:1-2-23 of the Administrative Code, there are certain changes that the assistance group is required to report within ten days from the date of change. The assistance group is not required to report any other changes in circumstances (other than those specifically identified in rule 5101:1-2-23 of the Administrative Code) until the next reapplication.

(F) In situations where the assistance group has a change that is not specifically listed as a reporting requirement in rule 5101:1-2-23 of the Administrative Code, the assistance group must report the change in circumstances at the next reapplication. In these situations, no overpayment exists between the date that the unreported change occurs and the date that the change is reported to the CDHS (or the CDHS otherwise becomes aware of the change). The change could be reported at the next reapplication, or between reapplication periods. Once the CDHS becomes aware of the change, the effective date of the budget adjustment to reflect the change must be effective by the first day of the month following the month in which the change is reported, or the CDHS otherwise becomes aware of the change.

(G) The assistance group's report of an impending change in circumstances does not negate its responsibility to report any change identified in rule 5101:1-2-23 of the Administrative Code as a reporting requirement within ten days from when the change actually occurs.

(H) If it is determined that the assistance group is ineligible or eligible for a lesser amount, and the reduction or termination in benefits is due to one of the changes listed as a reporting requirement in rule 5101:1-2-23 of the Administrative Code, the effective date of the budget adjustment must be effective by the first day of the month in which the change occurred. This applies for all reporting requirements listed in rule 5101:1-2-23 of the Administrative Code, whether the change is due to an income-related or non-income-related eligibility factor.

(I) If an assistance group has a change which is not specifically listed as a reporting requirement in rule 5101:1-2-23 of the Administrative Code, and the change is not reported by the assistance group until the next reapplication (or between reapplication periods), the effective date of the budget change must be effective by the first day of the month following the month in which the change was reported, or the CDHS became aware of the change.

Replaces former rules 5101:1-25-30 and 5101:1-25-325

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Date APR 21 1997

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5101:1-25-32 ADC: Recovery of overpayments.

(A) Overpayments shall be recovered regardless of the date, reason, or cause of the overpayment. Recovery action shall be prioritized in accordance with the provisions set forth in rule 5101:1-25-34 of the Administrative Code and then shall be initiated as outlined in rule 5101:1-25-35 of the Administrative Code for all overpayments that occurred during the following time periods:

(1) ADC overpayments occurring after July 1, 1983.

(2) ADC overpayments that occurred prior to July 1, 1983 but were discovered after July 1, 1983.

(3) ADC overpayments that occurred and were discovered prior to July 1, 1983 and the CDHS had attempted to recover the overpayment following the recovery procedures in effect at that time, but was unable to do so because:

(a) Either the repayment arrangement failed after July 1, 1983; or

(b) The agreement was terminated by the recipient after July 1, 1983.

The provisions of rules 5101:1-25-32, 5101:1-25-322, and 5101:1-25-35 of the Administrative Code are not to be used to recoup overpayments that occurred and were discovered prior to July 1, 1983 when the CDHS has not previously taken some action against the recipient.

(B) In accordance with Chapter 5101:1-27 of the Administrative Code, the CDHS shall refer to the county prosecutor all cases in which there is probable cause to believe that fraud has been committed. In addition, the CDHS may pursue a disqualification penalty due to intentional program violation as defined in rule 5101:1-25-10 and Chapter [5101:6-20](#) of the Administrative Code in those situations in which an intentional program violation may have occurred. In all other cases, the recovery policy as stated in rules 5101:1-25-34 and 5101:1-25-35 to 5101:1-25-354 of the Administrative Code shall be applied.

(C) Overpayment amounts may be waived for former recipients no longer receiving assistance when it is determined the cost of collection exceeds the amount of an individual's outstanding balance. In addition, overpayment balances less than thirty-five dollars shall be waived and no further collection action will be initiated. In determining collection cost for the individual overpayments of thirty-five dollars or more, the anticipated man-hours to be spent locating a recipient, corresponding cost and possible civil court expenses must be calculated. This exception does not apply if the overpayment involves fraud.

(D) Any overpayment resulting from the receipt of an earned income tax credit payment during the period January 1, 1990 through December 31, 1990 shall be waived.

(E) When an overpayment recovery is being waived or suspended, the ODHS 7095 "Overpayment Determination Form" must be appropriately marked in the "Department of Human Services Actions" section.

(F) In all phases of overpayment collection, the CDHS shall provide appropriate notice to the assistance group of all proposed adverse actions that affect the amount or receipt of the assistance grant. The assistance group's right to due process shall not be modified in any manner during the overpayment recovery procedures. Appropriate notice is fully discussed in division level designation 5101:6 of the Administrative Code.

(G) In accordance with rules 5101:1-1-132 and 5101-5-85 of the Administrative Code, the CDHS must retain the case record on any assistance group which has an outstanding overpayment or is the subject of an overpayment claim.

Effective Date: JUN 11 1995

Certification:

Date: JUN 01 1995

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Rule amplifies Revised Code Sections 5107.02, 5107.04

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5101:1-25-322 ADC: overpayment/underpayment offsetting

(A) When an assistance group has both a current overpayment with no repayment agreement, and an underpayment computed, one shall be offset against the other, providing the overpayment is not being challenged under the state hearing procedures. There will be no delay in the issuance of the underpayment in this situation.

(B) An underpayment may be offset against a previous overpayment where the individual has failed to meet the repayment agreement and the repayment account is delinquent more than sixty days.

(C) The CDHS will advise the assistance group containing the individual from whom recovery is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code, when an underpayment occurs concurrently with the discovery of a current overpayment; or where there is an outstanding delinquent overpayment balance from a previous overpayment. The ODHS 7345 "Notice of ADC Overpayment", or corresponding CRIS-E generated notice of ADC overpayment, will be used to advise the assistance group of an underpayment and the amount the CDHS proposes to use to offset the reported or delinquent overpayment balance. The assistance group may exercise its rights to a state hearing if it disagrees with the decision of the CDHS to offset the underpayment against the overpayment using the ODHS 7345, or corresponding CRIS-E generated notice of ADC overpayment. All proposed actions shall be suspended pending the hearing decision.

(D) In a situation where the underpayment amount is greater than the overpayment, the assistance group will be issued the difference.

(E) No offsetting will be initiated by the CDHS when an assistance group has a previous overpayment and a repayment agreement has been made to recover the overpayment by lump sum, grant reduction, or monthly payments, and the account is current. However, the assistance group may request the offsetting to clear an outstanding overpayment balance.

(F) An initial monthly grant payment for an individual found eligible for assistance may not be used to offset an outstanding overpayment. The initial grant must be provided to the assistance group with no restrictions.

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Prior effective dates: 7/11/83, 11/11/83, 7/15/84, 10/1/84 (Emer.), 12/27/84, 4/1/86

5101:1-25-324 Ohio works first (OWF): general rule of eligibility.

(A) When an assistance group is eligible for a certain level of assistance on the first day of the month, as a general rule the assistance group is eligible for at least that level of assistance for the entire month. A change in circumstances during the month does not reduce the level of assistance for which the assistance group is eligible that month. Such a change in circumstances may affect future eligibility for assistance.

(B) When a change in circumstances affects the assistance group's future eligibility for assistance, the CDHS shall proceed to decrease or terminate the grant for the appropriate payment months as stated in rule 5101:1-25-31 of the Administrative Code. In situations of new employment the change occurs the month the assistance group member begins employment rather than the month he receives his first paycheck.

(C) If payment for the future period cannot be decreased or terminated prior to its issuance to the assistance group, an overpayment results since a change in circumstances altered the eligibility prior to the first day of the payment month.

(D) The following are exceptions to the general rule that an assistance group who is eligible for a certain level of assistance on the first day of the month is eligible for at least that level of assistance for the entire month regardless of any change in circumstances during the month.

(1) A nonrecurring lump-sum payment is counted as income to the case in the month in which the payment is received and is apportioned towards future months' eligibility. Receipt of a nonrecurring lump-sum payment during the month may affect the assistance group's eligibility for assistance that month even though receipt of the payment is not discovered until later. The assistance unit may be ineligible for assistance that month or may be eligible for a reduced payment.

Any overpayment must be calculated from the month of receipt of the lump-sum payment. When receipt of the lump-sum payment causes ineligibility for assistance, the period of ineligibility begins with the month in which the lump-sum payment was received.

(2) An overpayment occurs when a child who was eligible for, and receiving OWF benefits on the first of the month, is removed from the family during that month, placed in IV-E foster care, and a prorated IV-E foster payment is made on the child's behalf, only if the provisions as set forth in division (E)(1) of section [5107.10](#) of the Revised Code are not met. If the provisions as set forth in division (E)(1) of section [5107.10](#) of the Revised Code are met, an overpayment does not exist.

For assistance groups where the provisions as set forth in division (E)(1) of section [5107.10](#) of the Revised Code are not met, the OWF overpayment to be recovered for that month shall be computed in the following manner.

- (a) Determine the difference between the OWF payment standard including the child and excluding the child. This represents the amount of assistance authorized for the child's needs for the entire month.
- (b) Divide that figure by the actual number of days in the month to determine the per diem amount.
- (c) Determine the number of days that the child was eligible for OWF, i.e., the number of days preceding removal and IV-E placement of the child.
- (d) Multiply the per diem amount determined in paragraph (D)(2)(b) of this rule by the number of days for which the child was eligible for OWF as determined in paragraph (D)(2)(c) of this rule.

(e) Deduct the amount determined in paragraph (D)(2)(d) of this rule from the amount computed in paragraph (D)(2)(a) of this rule . The remainder represents the amount of the recoverable overpayment for the month of removal.

(3) Assistance cannot be provided for a minor child or parent/specified relative who, without good cause, has been, or is expected to be, absent from the home for a period of forty-five consecutive days. The period of ineligibility begins with the forty-sixth day from the date that the member left the household.

(4) A parent(s) or specified relative who fails to report that the absence of a child will exceed or has exceeded forty-five consecutive days as set forth in rule [5101:1-3-04](#) of the Administrative Code is also ineligible for a specified period of time. The beginning date of ineligibility shall be the same day determined as the beginning day of ineligibility for the absent child. The ineligibility continues until the day that the absence was reported by the parent(s) or specified relative or was discovered by the CDHS.

Replaces part of former rule 5101:1-25-323.

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5101:1-25-33 Calculation of overpayment and payment amount in ADC.

(A) The amount of the overpayment is the difference between the amount of assistance which a recipient was eligible to receive for a particular period of time (payment month) and the greater amount which he actually received for that same period of time (payment month).

(B) Upon notification of a change in the recipient's need, income, or resources, the eligibility determiner shall make the following determinations:

- (1) The date on which the change in income, resources, or need occurred.
- (2) The date on which the change in income, resources, or need was reported to the CDHS.
- (3) The date on which the budget change should have been made.

(4) The dates and amounts of any overpayments by months.

(5) The amount of any outstanding underpayment. When an assistance unit has both an overpayment and underpayment, one shall be offset against the other. Any net overpayment is subject to recovery as an outstanding overpayment.

(C) When there is earned income, the appropriate disregards are allowed in order to compute the amount of the overpayment. The thirty-dollar and one-third disregard may be applied for a period of four consecutive months on or after October 1, 1981. Beginning on or after October 1, 1984, the thirty-dollar disregard may be applied for a period of eight additional months. The eight-month period begins the month following the fourth consecutive month in which the thirty-dollar and one-third disregard was applied and ends with the eighth consecutive month regardless of whether the thirty-dollar disregard is actually applied to the person's earned income. Any month in which the thirty-dollar and/or the one-third disregards are allowed in the overpayment calculation is counted as part of the four- or eight-consecutive-month periods.

(D) When a recipient fails to report earned income in a timely manner as defined in rule 5101:1-25-31 of the Administrative Code, no earned income disregards are allowed from the gross earnings unless there is good cause as set forth in rule 5101:1-23-47 of the Administrative Code. Any month in which the thirty-dollar and one-third disregards are not used due to the above penalty is considered as one of the four-consecutive-month periods.

(E) In particular situations the overpayment is determined as follows:

(1) An overpayment can occur if the CDHS proposes an adverse action but continues payments to the recipient due to a timely hearing request, and the hearing decision affirms the CDHS' proposal. The resulting overpayment is the difference between the amount of assistance which the recipient was eligible to receive and the amount actually received for each month, up to and including the month the decision is implemented. When specific amounts of overpayment are stipulated in the decision, those amounts are binding, in accordance with Chapter 5101:1-35 of the Administrative Code.

(2) A premature or overdue birth will not create an underpayment or overpayment to a pregnant woman who is receiving ADC and/or a pregnancy allowance because of her pregnancy, provided she has met all eligibility requirements for such payments.

(3) When an assistance unit is eligible to receive a monthly payment of at least ten dollars but recovery of an overpayment reduces the monthly payment to less than ten dollars, the assistance unit shall be issued a payment for the amount under ten dollars. Since payment for the month before adjustment is at least ten dollars, payment of less than ten dollars after adjustment is authorized.

The minimum payment policy does not apply because the recipient was eligible to receive a grant of at least ten dollars prior to adjustment of the overpayment.

(4) If recovery of an overpayment reduces the amount payable to the assistance unit to zero, members of the assistance unit are still recipients of ADC and are therefore eligible for ADC-related medicaid.

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5101:1-25-331 Calculation of overpayment after child support adjustment.

(A) Determining an overpayment when child support is assigned to the county department of human services (CDHS) or received by the assistance unit shall be computed on a monthly basis.

(B) The CDHS shall determine the exact amounts for the following categories prior to computing the overpayment:

- (1) Child support collected on current obligation.
- (2) Disregard of child support actually paid to the assistance unit.
- (3) Child support used to reimburse the aid to dependent children (ADC) grant.
- (4) ADC Paid to the assistance unit.
- (5) Actual ADC entitlement.
- (6) ADC Overpayment.

(7) Collectible overpayment after child support adjustment.

(C) The ADC overpayment (paragraph (B)(6) of this rule) will always equal the ADC paid to the assistance unit (paragraph (B)(4) of this rule) minus the actual ADC entitlement (paragraph (B)(5) of this rule).

(D) The collectible overpayment is to be computed using one of the following methods:

(1) When the actual ADC entitlement (paragraph (B)(5) of this rule) is equal to or greater than the child support used to reimburse the ADC grant (paragraph (B)(3) of this rule), the collectible overpayment (paragraph (B)(7) of this rule) equals the ADC paid to the assistance unit (paragraph (B)(4) of this rule) minus the actual ADC entitlement (paragraph (B)(5) of this rule).

(2) When the actual ADC entitlement (paragraph (B)(5) of this rule) is less than the child support used to reimburse the ADC grant (paragraph (B)(3) of this rule), the collectible ADC overpayment (paragraph (B)(7) of this rule) must be reduced by the amount of the child support reimbursement in excess of the actual ADC entitlement.

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5101:1-25-34 ADC: Prioritization of overpayment recovery actions and individuals subject to recovery.

(A) The definitions set forth in paragraphs (A)(1) to (A)(4) of this rule are applicable for the process of the prioritization and applicability of overpayment recovery actions in the ADC program.

(1) "Caretaker relative" refers to an individual with whom a child must be living in order to qualify as a dependent child for ADC eligibility purposes (i.e., a caretaker relative is a specified relative as set forth in rule [5101:1-3-04](#) of the Administrative Code).

(2) "Recipient payee" refers to the recipient parent/caretaker who was the payee for the overpaid ADC assistance group, as that individual is considered to be the individual who receives, manages, and administers the ADC payment.

(3) "Locate" means:

(a) The physical whereabouts of the recipient payee is known; and,

(b) The CDHS is able to obtain a repayment or recoupment from the recipient payee's current ADC grant; or,

(c) The CDHS must be able to "effectuate legal process" as defined in paragraph (A)(4) of this rule, if necessary to collect the overpayment from the recipient payee.

(4) "Effectuate legal process" refers to state law remedies for collecting debts. Effectuating legal process means only that the legal ability to initiate collection action exists. This does not mean that the process has to be successful; the legal ability to initiate the action must merely exist. In effectuating legal process, full pursuit of all state remedies to recover the overpayment from the recipient payee is expected. There are only a few situations in which legal process cannot be effectuated, and they are set forth in paragraphs (A)(4)(a) to (A)(4)(c) of this rule.

(a) The individual from whom collection is sought is deceased, and recovery from the deceased individual's estate is not possible.

(b) The debt has been discharged for the recipient payee by a bankruptcy court and the CDHS legal counsel has concluded that there is no basis on which to challenge the discharge.

(c) The individual from whom collection is sought is residing in a foreign country, and the country in which the individual is residing will not permit or cooperate with the initiation of collection.

(B) When pursuing recovery of an ADC overpayment, the CDHS must first determine whether the caretaker relative was the recipient payee of the overpaid assistance group.

(C) If the caretaker relative was the recipient payee of the overpaid assistance group, the CDHS must attempt to recover the overpayment from the recipient payee (or the recipient payee's current ADC assistance group).

(1) If the recipient payee has been located as defined in paragraph (A)(3) of this rule, the CDHS must not separately pursue recovery of the overpayment from any other member of the overpaid assistance group.

(2) If the recipient payee has not been located as defined in paragraph (A)(3) of this rule, the CDHS must make reasonable attempts to locate the recipient payee, in accordance with the provisions set forth in paragraph (A)(3) of this rule.

(D) In locating a former recipient payee who has an outstanding overpayment balance, the CDHS must make all reasonable attempts to locate the recipient payee. The CDHS shall document the steps taken to locate the recipient payee in the assistance group and/or overpayment record. In making reasonable efforts, the CDHS should use all appropriate data sources such as:

- (1) The state unemployment insurance files;
- (2) State department of revenue information from tax returns;
- (3) State automobile registration;
- (4) Bendex; and
- (5) Other files relating to current or former recipients.

(6) This is not an all inclusive list, and other sources of information during the course of location efforts for purposes of overpayment recovery may be used. However, while location efforts under Title IV-A may in practical application parallel location efforts in Title IV-D, the IV-A and IV-D programs are separate and distinct; thus, any actual use of Title IV-D resources are subject to applicable governing statutes and implementing regulations. For example, the IV-D federal parent locator service provisions specify that the services may only be used "to locate...[an absent] parent for the purpose of enforcing child support obligations against such parent." Therefore, initiation of IV-D federal parent locator service for Title IV-A overpayment location efforts would be prohibited. However, IV-A is not prohibited from accessing any information collected by IV-D for use in the location of the recipient payee.

(E) Until the CDHS determines that recovery of the overpayment cannot be obtained from the recipient payee (or former recipient payee), overpayment collection activities against the other overpaid members of the assistance group are suspended.

(F) In the event that the caretaker relative for the overpaid ADC assistance group was not a recipient payee, the ADC overpayment must be recovered from any member of the overpaid assistance group (or their current assistance groups).

(G) If the CDHS secures a judgment against the overpaid recipient payee, as long as the judgment is in effect so that it is legally enforceable, it does not matter that at the time the judgment is obtained, the recipient payee has no assets from which to recover the overpayment. In addition, as long as the judgment is in effect and legally enforceable, collection activities against the other overpaid assistance group members are suspended. Collection activities against the other overpaid assistance group members remain suspended until:

(1) The recipient payee acquires assets so that the judgment is enforced and the full overpayment is recovered (resulting in the discharge of the overpayment obligation for all members of the overpaid assistance group); or

(2) The judgment is no longer legally enforceable (i.e., the ability to effectuate legal process no longer exists, e.g., the recipient payee dies and leaves insufficient or no assets from which to collect the overpayment, the debt is dismissed for the recipient payee by a bankruptcy court, or the recipient payee is residing in a foreign country that will not cooperate with the collection effort).

(H) If the former recipient payee is deceased and the CDHS becomes aware of the payee's death in time to file a claim against the deceased former recipient payee's estate. The CDHS has an obligation to file a claim against the estate.

(I) Only if the recipient payee cannot be located (as defined in paragraph (A)(3) of this rule), or if the provisions set forth in paragraph (F) of this rule are applicable, may a CDHS proceed to seek recovery of the ADC overpayment from other members of the overpaid assistance group (or their current assistance groups).

(J) Additionally, if the CDHS determines that the recipient payee cannot be located (as defined in paragraph (A)(3) of this rule), recovery must then be sought from the non-payee recipient parent, prior to attempting recovery from any other member of the assistance group containing any of the children. The process of locating and effectuating legal process set forth in paragraphs (A)(3), (A)(4), (B), (C), (D), (E), (G), (H), and (I) of this rule must be followed against the other non-payee recipient parent prior to attempting recovery from any other assistance group containing any of the children who are no longer residing with the non-payee recipient parent.

(K) If the CDHS determines that the non-payee recipient parent cannot be located (in accordance with the provisions set forth in paragraphs (A)(3), (A)(4), (B), (C), (D), (E), (G), (H), and (I) of this rule), or if the provisions set forth in paragraph (F) are applicable, there is no priority regarding the order in which recovery from the children who were members of the overpaid assistance group is to be pursued and failure to recover from one of the children (or his current assistance group) does not discharge responsibility of the remaining children (or their current assistance groups).

(1) The CDHS may recover the overpayment from any other individual who was a member of the overpaid assistance group at the time of the overpayment regardless of whether:

(a) The individual is currently receiving assistance;

(b) The individual is eligible for assistance;

(c) The individual is no longer a member of the overpaid assistance group and did nothing to cause the overpayment.

(2) The CDHS may recover an overpayment from the overpaid assistance group regardless of whether the person responsible for the overpayment is still a member of the overpaid assistance group.

(3) The CDHS may recover an overpayment from another assistance group if one of its current members was a member of the overpaid assistance group at the time of the overpayment.

(4) The CDHS may recover an overpayment from a former recipient with an outstanding overpayment who reapplies and is found eligible for assistance. A former recipient has an outstanding overpayment when the overpayment has not been fully repaid by the recipient payee, the non-payee recipient parent, or any other member of the overpaid assistance group (in the order listed). An outstanding overpayment balance also exists if overpayment recovery activity was waived in accordance with the provisions set forth in rule 5101:1-25-32 of the Administrative Code, because the CDHS determined that the cost of collection exceeded the amount of the outstanding balance for former recipients. However, an initial monthly payment to the newly eligible former recipient shall be provided without restriction.

(L) If the recipient payee is subsequently located (as defined in paragraph (A)(3) of this rule), collection activity against any of the other overpaid assistance group members must cease, and the balance of the overpayment must be collected from the recipient payee. Additionally, if the recipient payee is not subsequently located, but the non-payee recipient parent is subsequently located, collection activity against any of the other overpaid assistance group members must cease, and the balance of the overpayment must be collected from the non-payee recipient parent.

(M) The CDHS shall recover no more than the total amount of the overpayment, regardless of the number of sources from which recovery activity must be initiated in accordance with the provisions set forth in this rule.

Replaces part of former rule 5101:1-25-34

Effective Date: JUN 1, 1995

Certification:

Date ??? 1995

Promulgated under revised code section [111.15](#)

Statutory authority is revised code section [5107.02](#) and [5107.04](#)

Rule amplifies revised code sections [5107.02](#) and [5107.04](#)

Prior effective dates: 7-1-83, 4-1-86

5101:1-25-35 ADC: overpayment recovery action.

(A) When a case involves probable cause to believe the crime of fraud has been committed, action shall be taken in accordance with Chapter 5101:1-27 of the Administrative Code. In addition, when a case involves probable cause to believe that an intentional program violation, as defined in rule 5101:1-25-10 and Chapter [5101:6-20](#) of the Administrative Code, has occurred, action shall be initiated in accordance with the provisions set forth in Chapter [5101:6-20](#) of the Administrative Code. In all other cases, recovery action shall be prioritized in accordance with the provisions set forth in rule 5101:1-25-34 of the Administrative Code and recovery action initiated in accordance with the provisions set forth in this rule.

(B) The CDHS does not have the authority to collect public assistance benefit overpayments through judicial proceedings unless the CDHS is represented by the county prosecuting attorney. Therefore, the CDHS is prohibited from attempting collection of an overpayment in small claims court, except in situations where the CDHS is represented by the county prosecutor.

(C) Immediately upon discovery of an overpayment, the CDHS shall forward an ODHS 7345 "Notice of Overpayment" or the corresponding CRIS-E generated notice of ADC overpayment to the individual from whom collection is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code (hereinafter referred to as the "individual" in this rule), specifying the following:

- (1) The amount of and the beginning and ending dates of the overpayment.
- (2) A clear and understandable statement of the reasons for the overpayments and supporting manual cite.

(D) When an underpayment is to be used to offset an overpayment in accordance with rule 5101:1-25-322 of the Administrative Code, the ODHS 7345 shall also:

(1) Provide notification that an underpayment will be used to offset the overpayment; and

(2) Provide notification of the amount of and beginning and ending dates of the overpayment.

(E) The ODHS 7345 describes three methods of repayment available to the individual. If the individual chooses a repayment method, he shall indicate his choice on the form and shall return the completed form to the CDHS. The methods of repayment are:

(1) Lump-sum repayment as set forth in rule 5101:1-25-351 of the Administrative Code.

(2) Monthly recovery agreement as set forth in rule 5101:1-25-352 of the Administrative Code.

(3) Grant reduction as set forth in rule 5101:1-25-353 of the Administrative Code.

Effective Date: JUN 11 1995

Certification: _____

Date JUN 01 1995

Promulgated under Revised Code Section [111.15](#).

Statutory Authority is Revised Code Section [5107.02](#), [5107.04](#).

Rule amplifies revised code sections 5107.02, 5107.04

Prior Effective Date: 7-1-83, 4-1-86, 11-1-86, 7-1-88 (Emer.) 9-25-88, 9-1-94

5101:1-25-351 ADC: lump-sum repayment of overpayment.

The individual from whom collection is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code, shall agree to repay the entire overpayment in one payment within sixty days from the date the ODHS 7345, or the corresponding CRIS-E generated notice of overpayment was sent.

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Certification: _____

Date JUN 01 1995

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Statutory Authority is Revised Code Section [5107.02](#), [5107.04](#)

Rule amplifies Revised Code Section [5107.02](#), [5107.04](#)

Prior effective dates: 7/1/83, 4/1/86

5101:1-25-352 ADC: monthly recovery repayment agreement.

(A) The individual from who collection is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code (hereinafter referred to as the "individual" in this rule) may agree to repay the entire overpayment in equal monthly payment until repaid. The individual may also elect to make an initial lump-sum repayment followed by equal monthly installments.

(B) When a monthly repayment agreement is selected, the individual may designate the amount and manner of the repayment on the ODHS 7345 or the corresponding CRIS-E generated notice of ADC overpayment. The ODHS 7345 (or the corresponding CRIS-E generated notice of ADC overpayment) must be returned to the CDHS with the "monthly recovery agreement" section completed, signed and dated.

(C) Upon receipt of the ODHS 7345 (or the corresponding CRIS-E generated notice of ADC overpayment), it shall be reviewed by the CDHS. If found to be acceptable, the signed and dated ODHS 7345 (or corresponding CRIS-E generated notice of ADC overpayment) shall become the formal repayment agreement between the CDHS and the individual.

(D) When the repayment offer is not acceptable to the CDHS, the individual shall be contacted by the CDHS and an acceptable agreement shall be negotiated based upon a consideration of the individual's total income, resources and financial obligations. The amount to be recovered each month by such an agreement shall not exceed the amount which would be recovered under grant reduction. This agreement shall be a separate written document which must include all of the following:

(1) The total amount of the overpayment.

(2) The amount of the monthly repayment.

(3) The time period over which the repayment is to be made.

(4) A statement that makes it clear that the agreement is voluntary.

(5) A statement that makes it clear that the monthly recovery agreement is not a binding contract and can be renegotiated if necessary.

(6) A statement that explains that if the individual fails to meet the terms of the agreement or terminates the agreement, he is still responsible for repayment of any unpaid portion of the overpayment.

(E) The individual shall not be required to enter into a monthly repayment agreement unless he understands and agrees with the terms of the agreement.

(F) If the individual cannot meet the terms of an existing agreement he may renegotiate the terms of the agreement with the CDHS. If the individual and the CDHS cannot agree upon the terms of a new monthly recovery agreement, the individual may unilaterally terminate the existing agreement. However, if the individual terminates the repayment agreement with an unpaid balance or if the individual fails to meet the terms of the repayment agreement and a new agreement cannot be reached, other recovery action (i.e., grant reduction, civil action) shall be taken against the individual. Recovery action against any other individual member of the former overpaid ADC assistance group shall be in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code.

Effective Date: Jun 11 1995

Certification:

Date Jun 01 1995

Promulgated under Revised Code Section [111.15](#)

Statutory Authority is Revised Code Section [5107.02](#), [5107.04](#)

Rule amplifies Revised Code Section [5107.02](#), [5107.04](#)

Prior effective dates: 7/1/83, 4/1/86

5101:1-25-353 ADC: grant reduction to recover an ADC overpayment.

The individual from whom collection is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code, agrees to have the ADC grant reduced each month until the total amount of the ADC overpayment is repaid.

(A) Although the assistance payment may be reduced, the CDHS is not authorized to terminate assistance to the individual. Repayment of an overpayment is not a condition of eligibility for ADC.

(B) The grant may be reduced, provided that for any payment month the assistance group shall retain from its combined income (without disregards), liquid assets, and assistance payment an amount equal to ninety per cent of the payment standard for an assistance group of the same composition with no other income (ninety per cent payment standard as defined in rule 5101:1-25-36 of the Administrative Code). The monthly recovery amount shall be computed from the income, liquid assets, and assistance payment available in the payment month.

(C) When it is determined that the income, liquid assets, and assistance payment are stable, the CDHS shall enter the monthly dollar amount of the grant reduction on the ODHS 7345, or the corresponding CRIS-E generated notice of ADC overpayment.

(D) If recovery of an overpayment reduces the amount payable to the assistance group to zero, the members of the assistance group are still recipients of ADC and are eligible for ADC-related medicaid.

(E) All grant reductions shall be accomplished with due regard for the fair hearing provisions, including prior notice, of agency level designation 5101:6 of the Administrative Code.

(F) If the assistance group becomes ineligible for assistance, the overpayment balance shall be recovered in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code.

Effective Date: Jun 11 1995

Certification:

Date Jun 01 1995

Promulgated under Revised Code Section [111.15](#)

Statutory Authority is Revised Code Section [5107.02](#), [5107.04](#)

Rule amplifies Revised Code Section [5107.02](#), [5107.04](#)

Prior effective dates: 7/1/83, 4/1/86

5101:1-25-354 ADC: failure to complete the ODHS 7345, or corresponding CRIS-E generated notice of ADC overpayment, or to comply with the terms of the completed form.

If the individual from whom collection is sought in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code (hereinafter referred to as the "individual" in this rule), does not complete and return the ODHS 7345, or the corresponding CRIS-E generated notice of ADC overpayment, to the CDHS within thirty days from the date the form was sent, or if the individual does not comply with the terms of the completed agreement, the CDHS shall take the following action:

(A) If the individual is a current recipient, the CDHS shall:

(1) Propose grant reduction in accordance with agency level designation 5101:6 of the Administrative Code. Grant reduction must comply with the provisions of this rule rules 5101:1-25-35 and 5101:1-25-37 of the Administrative Code.

(2) In addition to the provisions required in paragraph (A)(1) of this rule, the CDHS may take civil action against the individual. Civil action includes any action allowable under state law for recovery of debts.

(B) If the individual is not a current recipient, the CDHS shall proceed in accordance with the prioritization of overpayment recovery provisions set forth in rule 5101:1-25-34 of the Administrative Code.

Effective Date: Jun 11 1995

Certification: _____

Date Jun 01 1995

Promulgated under Revised Code Section [111.15](#)

Statutory Authority is Revised Code Section [5107.02](#), [5107.04](#)

Rule amplifies Revised Code Section [5107.02](#), [5107.04](#)

Prior effective dates: 7/1/83, 4/1/86

5101:1-25-37 Budget adjustment for ADC recovery of overpayment.

When recovery action is taken against an assistance unit, the following steps shall be taken:

- (A) Calculate the amount of the outstanding overpayment as outlined in rule 5101:1-25-33 of the Administrative Code.
- (B) Compute the assistance unit's countable income as outlined in Chapter [5101:1-23](#) of the Administrative Code.
- (C) Determine the amount of the ADC payment by subtracting the total countable income from the ADC payment standard for the size of the assistance group.
- (D) Total the gross monthly income (both nonexempt gross unearned income and gross earned income without disregards), payment amount, and liquid assets. The sum is the total available income.
- (E) Subtract the ninety per cent payment standard for the size of the assistance unit from the total available income. (The ninety per cent payment standard is the amount which the assistance unit retains.) The difference is the maximum amount available for recovery in that month.

The amount recovered in a given month shall never exceed any of the following:

(1) The maximum amount available for recovery in a given month.

(2) The overpayment balance.

(3) The payment amount.

(F) The maximum amount available for recovery in a given month shall be recovered from the grant, provided the maximum amount does not exceed the overpayment balance nor the payment amount.

(G) When the amount of the overpayment balance equals or exceeds the payment amount but does not exceed the maximum amount available for recovery, payment is not authorized for that recovery month.

(H) When the overpayment balance is less than the payment amount and is equal to or less than the maximum amount available for recovery, the payment amount shall be reduced by the amount of the overpayment balance.

(I) In subsequent months the CWD may recover any overpayment balance by reducing the payment in accordance with the above steps.

Effective Date: 01 JUL 1983

Certification:

Date 21 JUN 1983

Promulgated Under Revised Code Section [111.15](#)

Statutory Authority is Revised Code Sections 5107.02, 5107.04

Appendix B
Rules Regarding Work Allowance Overpayments That Occurred Prior to October 1, 1997

5101:1-47-20 Participant Expense Allowance

5101:6-2-20 Notice of Overpayment/Overissuance

5101:1-47-20 Participant expense allowance.

(A) Participants in jobs program activities approved by the CDHS shall be authorized to receive a monthly expense allowance as payment for cost of participation. Participants in these activities shall be authorized to receive an expense allowance for cost of transportation expense associated with participation. However, individuals participating in a SEP component, an OJT component, or regular unsubsidized employment are not eligible to receive the participant expense allowance.

(1) The transportation allowance is determined by the following criteria:

(a) If publicly available transportation is utilized, the reasonable cost of transportation will equal the transportation costs for the month of participation.

(b) If the individual's own vehicle is utilized, the state standard of twenty-five dollars will be paid for the transportation costs for the month of participation.

(2) LEAP – learning, earning, and parenting program participants who have volunteered to participate in another jobs component, in addition to their mandatory participation in LEAP, pursuant to rule 5101:1-47-11 of the Administrative Code, are also eligible to receive the participant expense allowance.

(B) If a CDHS or authorized provider provides transportation at no cost to the participant, no participant allowance is to be issued. At its option, the CDHS may provide for transportation in the form of daily transportation passes, e.g., tokens, etc.

(1) The CDHS may determine the minimum distance required to receive the participant expense allowance for transportation. A plan shall be submitted to ODHS pursuant to rule 5101:1-47-03 to establish this standard.

(2) When an individual walks to a site or uses a nongasoline, nondiesel, or nonelectric-powered conveyance, or otherwise incurs no expense for transportation, no transportation expense allowance should be paid.

(C) If transportation is not provided, and if a participant can furnish proof of monthly transportation costs exceeding the state standard per month pursuant to paragraph (A)(1)(b), the CDHS shall:

(1) Reassign the participant to another site; or

(2) Excuse the individual from participation until suitable assignment can be made; or

(3) Increase the amount of the participant expense allowance over the state standard of twenty-five dollars by:

(a) Determining the mileage between the participant's residence and the site, and

(b) Multiplying the round-trip mileage by a rate. As established by the CDHS times the number of days assigned.

(c) The result is the new monthly participant expense allowance amount.

(D) The monthly reimbursement shall not exceed a cap of one hundred and fifty dollars per month.

(E) If there are costs directly related to and necessary for jobs participation, an incidental allowance as needed may be issued, not to exceed a total of one hundred twenty dollars for each participant per twelve month period. This cap is to be considered separate from the cap for the transportation allowance in paragraph (D) of this rule.

(1) The need for these incidental expenses shall be documented by the CDHS whenever it is determined to issue an incidental allowance; and

(2) The CDHS shall be the final authority on establishing whether the items are necessary for jobs participation.

(F) Neither the transportation nor the incidental expense reimbursement may be issued in order to allow the individual to purchase a motorized conveyance or insurance.

(G) The expense allowance may be paid as a reimbursement or paid in advance. The participant shall not be eligible for retroactive payments prior to the month of CDHS authorization of the assignment.

(H) The expense allowance check is paid to the assistance group name on behalf of the participant.

(I) If the actual number of hours of participation are greater than zero, no part of the expense allowance shall be considered an overpayment and there will be no adjustment in the amount paid. However, if the hours of participation are zero, the CDHS may recoup the expense allowance as an overpayment after following procedures for prior notice and hearing rights in accordance with chapters [5101:6-1](#) to [5101:6-9](#) of the Administrative Code. The only allowable method of repayment for work allowance claims is cash, as the ADC benefit may not be reduced for recoupment. For food stamp AGs, the food stamp benefit allotment may not be reduced in order to recoup the expense allowance.

(J) A participant may receive other payments which are made by a public or private agency for the purpose of supplementing standards, e.g., the participant expense allowance, so long as there is no duplication of payment. This includes, but is not limited to, payments made by an agency providing vocational rehabilitation, pell grants, etc., issued to the individual that include a portion for transportation and payment made to the individual. When payments made by another agency varies over a time period, the CDHS may prorate or average the participant expense allowance as necessary in accordance with the payments.

(1) If the individual is receiving grant funds, these funds must list transportation as an expense in order for the CDHS to consider these to be a duplicate payment.

(2) For the purpose of this rule, loans are not considered duplicate payments.

(K) The CDHS shall submit a plan to ODHS pursuant to rule 5101:1-47-03 of the Administrative Code to establish participant expense allowance standards.

Effective Date: SEP 29 1996

Certification: _____

Date SEP 18 1996

Promulgated under Revised Code Chapter [119](#).

Statutory Authority is Revised Code Section [5101.81](#).

Rule Amplifies Revised Code Sections [5101.20](#) and [5101.80](#) to [5101.99](#).

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5101:6-2-20 Notice of overpayment/overissuance.

(A) When the local agency has determined that an ADC overpayment has occurred, responsible parties from whom repayment is being sought shall be provided written notice of the overpayment determination.

Notice is also required whenever a previous overpayment determination is revised to change the amount or period of the overpayment.

Notice is not required when the overpayment involves possible fraud and has been referred to the county prosecutor, or when recovery has been waived under the provisions of rule 5101:1-25-32 of the Administrative Code.

(1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overpayment and any offsetting done to reduce it, cite the applicable regulations, explain the available methods of repayment and the individual's right to and the method of obtaining a county conference and a state hearing, unless there has already been a state hearing on the issue, and contain a telephone number to call about free legal services.

(2) "Notice of ADC Overpayment," ODHS 7345, or its CRIS-E equivalent, shall be used.

(B) When the agency has determined that a food stamp overissuance has occurred, assistance groups from which repayment is being sought shall be provided written notice of the overissuance determination.

Notice is also required whenever a previous overissuance determination is revised to change the amount or period of the overissuance or to change the claim type from administrative error (AE) to inadvertent household error (IHE).

Notice is not required when the overissuance involves possible fraud and has been referred to the county prosecutor, or when recovery has been waived under the provisions of rule [5101:4-8-17](#) of the Administrative Code.

- (1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overissuance and any offsetting done to reduce it, cite the applicable regulations, explain the available methods of repayment and the assistance group's right to and the method of obtaining a county conference and a state hearing, unless there has already been a state hearing on the issue, and contain the name and telephone number of the person to contact for more information and a telephone number to call about free legal services.
- (2) For inadvertent household error and intentional program violation claims, the assistance group shall also be informed of the length of time it has to choose a method of repayment and notify the agency of its decision, and that its allotment will be reduced if it fails to agree to make restitution. For administrative error claims, the assistance group shall also be informed of the availability of allotment reduction as a method of repayment if the assistance group prefers to use this method.
- (3) The notice shall provide space for the assistance group to indicate the method of repayment, a signature block, and an explanation of the assistance group's right to request renegotiation of any repayment schedule to which it has agreed should its economic circumstances change.
- (4) "Food Stamp Repayment Agreement," ODHS 7442, or its CRIS-E equivalent, shall be used.

(C) When the agency has determined that a work allowance overpayment has occurred, the assistance group shall be provided written notice of the overpayment determination.

Notice is not required when recovery has been waived under the provisions of rule 5101:1-47-20 or rule 5101:4-8-26 of the Administrative Code.

(1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overpayment, cite the applicable regulations, explain the available methods of repayment and the assistance group's right to and the method of obtaining a county conference and a state hearing, unless there has already been a hearing on the issue, and contain the name and telephone number of the person to contact for more information and a telephone number to call about free legal services.

(2) The notice shall provide space for the assistance group to indicate the method of repayment, a signature block, and an explanation of the assistance group's right to request renegotiation of any repayment schedule to which it has agreed should its economic circumstances change.

(3) "Notice of Work Allowance Overpayment," ODHS 7307, or its CRIS-E equivalent, shall be used.

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Certification:

(Date) SEP 18 1996

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Rule Amplifies: Revised Code Section [5101.35](#)

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HISTORY: Eff 7-1-83; 7-11-83; 11-11-83; 7-15-84; 10-1-84 (Emer.); 12-27-84; 1-1-85 (Emer.); 4-1-85; 4-1-86; 11-1-86; 10-1-87; 4-1-88 (Emer.); 6-10-88; 6-30-88; 7-1-88 (Emer.); 9-25-88; 5-1-91 (Emer.); 7-11-91; 9-1-93; 9-1-94; 6-11-95; 10-1-96 (Emer.); 12-15-96; 5-1-97; 12-30-97; 7-1-98 (Emer.); 9-29-98; 10-1-99

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