

## CHAPTER 7190

### HARMFUL SUBSTANCE COMPENSATION BOARD PROCEDURES

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#### DEFINITIONS

##### 7190.0001 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in Minnesota Statutes, chapter 115B and in this part.

Subp. 2. **Board.** "Board" means the Harmful Substance Compensation Board created by Minnesota Statutes, section 115B.27, subdivision 1.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Director.** "Director" means the executive director of the Harmful Substance Compensation Board.

Subp. 5. **Professional member.** "Professional member" means the attorney, physician, or health professional member of the board.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077; L 1989 c 325 s 41*

#### BOARD

##### 7190.0002 OFFICERS AND DUTIES.

Subpart 1. **Officers.** At the regular meeting in July, the members shall elect a chair and vice-chair. Each officer shall serve a term of one year. The vice-chair shall discharge the duties of the chair during the absence or disability of the chair.

Subp. 2. **Vacancies.** Upon a vacancy in the office of chair of the board, the vice-chair shall become the chair until the election of new officers at the regular meeting in July. Upon a vacancy in the office of vice-chair, a special election shall be held at the next regular meeting, for a term to end with the election of new officers at the regular meeting in July.

Subp. 3. **Removal.** The chair or vice-chair may be removed from office by the affirmative vote of the majority of members.

Subp. 4. **Execution of documents.** Contracts and other documents approved by the board pursuant to law shall be executed on the board's behalf by the chair. The chair may delegate to the director authority to execute documents approved by the board. Any delegation shall be filed with the Secretary of State.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0003 BOARD MEETINGS.**

Subpart 1. **Regular meetings.** The board shall meet monthly at a date, place, and time set by the board. The chair may direct that any regular meeting be canceled, postponed, or advanced.

Subp. 2. **Special meetings.** The chair may call a special meeting of the board when the chair deems it necessary. The chair shall call a special meeting when two board members request it.

Subp. 3. **Quorum.** A majority of members of the board shall constitute a quorum, and a quorum must be present for the transaction of business.

Subp. 4. **Presiding officer.** The chair shall preside at board meetings and shall determine the limits of time and the relevancy of discussion or debate on any matter before the board. If both the chair and vice-chair are absent, the members present shall elect a presiding officer to serve for that meeting or until the chair or vice-chair arrives.

Subp. 5. **Voting.** A majority vote of the entire board is necessary to make any decision. All members present shall vote or abstain on every matter presented for decision.

Subp. 6. **Public participation at meetings.** Meetings of the board shall be open to the public, except during the time protected information is to be discussed. Participation by persons other than members of the board and its staff and attorney shall be at the request of the board or with prior authorization from the chair or director.

Subp. 7. **Parliamentary procedure.** Except as specifically provided in this chapter, Robert's Rules of Order shall govern any question of parliamentary procedure that may arise at any meeting of the board.

Subp. 8. **Record of meetings.** The board shall keep full and accurate minutes of meetings, including a record of votes of individual members.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0004 CONFLICT OF INTEREST.**

A member of the board who has a direct and substantial financial or employment interest relating to any matter before the board shall make known this interest and refrain from participating in or voting upon the matter. If nonparticipation by board members results in the loss of a quorum, the entire board shall select from among themselves a majority of members whose interests are least likely to affect their impartiality or judgment, and these members shall vote upon the matter before the board.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

### **CLAIM APPLICATION**

#### **7190.0005 REPRESENTATION.**

A claimant may authorize a representative to complete the application for compensation and represent the claimant in all communication and proceedings involving the board. The representative may be an attorney or other individual which the claimant has authorized in writing to the board to act in that capacity. The board will notify the claimant and the claimant's representative of actions pertaining to a claim.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0006 APPLICATION FOR COMPENSATION.**

A claimant must apply for compensation within the time limits established by Minnesota Statutes, section 115B.30, subdivision 3. The application must be on a form supplied by the board, containing substantially the following:

- A. the name, address, telephone number, social security number, and age of the claimant;
- B. the name, address, and telephone number of the claimant's employer if the claimant is seeking compensation for personal injury or claiming hardship;
- C. the name, address, telephone number, and relationship to the claimant of any representative;
- D. the identity of the harmful substances to which the claimant was exposed;
- E. a description of the property damage or personal injury;
- F. the date the claimant discovered the property damage or the personal injury;
- G. the date the claimant discovered the connection between the injury or property damage and the exposure to harmful substances and an explanation of how the connection was discovered;
- H. the name, address, and phone number of any medical practitioner who examined the claimant regarding the personal injury;
- I. in the case of death as a personal injury, the cause of death on the death certificate and the report of an autopsy if performed;
- J. the identity of any government agency or official that the claimant contacted concerning the presence of harmful substances;
- K. the identity, if the claimant knows, of the source of the harmful substances related to the exposure, including the location of the source and the person responsible for the release;
- L. the duration and location of the exposure to the substances;
- M. the amount of compensation the claimant seeks from the board for the property damage or personal injury including losses for medical expenses, lost wages, or income and lost household labor;
- N. the amount of reimbursement the claimant has received for losses and identification of the sources of reimbursement;
- O. a description of actions the claimant has taken if any to recover compensation from the person responsible for the release of the harmful substance;
- P. a statement signed by the claimant, certifying under oath the accuracy and completeness of the information provided;
- Q. an authorization signed by the claimant for access to medical and financial records if the compensation requested is for personal injury or hardship; and
- R. other relevant information the board or director deems essential to a determination on the application.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077; L 1989 c 325 s 78*

**7190.0007 CLAIM ACCEPTANCE.**

Subpart 1. **Claim acceptance.** A claim shall begin when the director accepts for filing an application for compensation. The director shall accept for filing an application that the director determines is from an eligible person, and cites injury or damage described as eligible for compensation in Minnesota Statutes, chapter 115B.

Subp. 2. **Refusal to accept.** If the director determines that the application is ineligible, the director will forward the application to a professional board member. The board member will review the application and the director's determination and render a written decision on the eligibility of the application within 14 days. If the board member determines the application is ineligible, the director will notify the applicant in writing of the refusal to accept the application for filing and the reasons for finding it ineligible. The director shall report at the regular meeting of the board on the number of applications determined since the previous meeting to be ineligible and the reasons for ineligibility.

Subp. 3. **Refiling an application.** An applicant may not appeal a determination of ineligibility but may submit another application if that application contains new information relevant to determining eligibility.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0008 CLAIM REVIEW.**

Subpart 1. **Director's review.** The director shall review a claim to assure the claimant has provided the information required by part 7190.0006.

Subp. 2. **Claims with required information.** If the director determines the claim contains the required information, the director will notify the claimant in writing that the claim has been accepted for filing, and will forward the claim with recommendations for investigation to the chair.

Subp. 3. **Claims lacking required information.** If the director determines the claim lacks required information, the director will provide the claimant written notice describing the required information, the time limits for providing the information, and the consequences of not providing the required information.

Subp. 4. **Extensions of time for providing required information.** If a claimant cannot provide the required information within the designated time limits, the claimant may request from the board an extension of time. The request must be made as soon as reasonably practicable and be in writing. It must give the reasons the extension is needed and the date the information will be provided. The director may approve a request for extension of time. If the director determines a request for extension of time should be denied, the director will submit the request and the director's determination to a professional board member. The board member will issue a written decision to grant or deny the extension. The director will notify the claimant in writing of the decision to grant or deny as soon as practicable after the claimant makes the request.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0009 CLAIM ACCESS.**

During the time a claim is pending before the board, the application, supporting documents, and information gathered by the board shall be available only to members of the board, the board's staff, attorney, and authorized consultants. Claim data in summary form or other form that does not identify the claimant may be distributed. The final decision of the board shall be available to the public.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0010 CLAIM AMENDMENT.**

A claimant must promptly notify the board in writing upon learning of additional personal injury or property damage potentially related to a pending claim. The board will determine whether to permit an amendment of the pending claim.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

#### **7190.0011 CLAIM CONSOLIDATION.**

The chair may consolidate two or more related claims if:

- A. the claims arise from the same release; or
- B. the claims present substantially the same issues; and
- C. the consolidation would not prejudice the rights of any claimant; and
- D. the consolidation is administratively practical.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0012 CLAIM DISMISSAL.**

The board may dismiss a claim when:

- A. the claimant refuses to supply requested information, including undergoing mental or physical examination;
- B. the claimant receives an award from the responsible person;
- C. the claimant has falsified or withheld information relevant to the claim; or
- D. the claimant refuses to appear before the board when ordered.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0013 EMERGENCY COMPENSATION.**

A claimant may submit a written request to the board for emergency compensation for expenses related to a pending claim. The board must respond to the request within 30 days. The board shall determine whether to grant emergency compensation as described in Minnesota Statutes, section 115B.28, subdivision 2, clause (3), using the following criteria:

A. the failure to receive the emergency compensation may create a life-threatening or other seriously disruptive situation such as loss of critical medical care, loss of residence, or loss of other basic necessities; and

B. the emergency compensation is not likely to be provided by other sources of assistance available to the claimant.

The board may award emergency compensation only to the extent necessary to meet immediate expenses.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0014 CLAIM INVESTIGATION.**

Board members other than the member assigned to the investigation shall not discuss with the claimant outside a board meeting the status of the investigation.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0015 CLAIM DETERMINATION.**

Subpart 1. **Challenge of preliminary decision.** A board member or claimant who challenges a preliminary decision on a claim must indicate in writing what findings are disputed. Within 14 days after the board receives notice of the challenge the claimant shall be notified of the date of a special meeting of the board at which the claimant shall appear. No later than five days preceding the special meeting the claimant shall provide the board with a list of written material that the claimant will supply at the meeting and the names and addresses of the witnesses that the claimant has asked to speak at the meeting.

Subp. 2. **Claimant appearance.** The member who wrote the preliminary decision shall not preside at the meeting. The claimant and any witnesses at the special meeting shall speak under oath.

Subp. 3. **Claimant review of protected information.** Within 30 days of receiving the final decision of the board, a claimant may request to review protected information relevant to the final determination of the claim. The claimant must agree in writing to maintain the confidentiality of such information under Minnesota Statutes, section 115B.35.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0016 REOPENING A CLAIM.**

Within a reasonable time, not to exceed six years from the final determination of a claim, the board by majority vote may reopen the investigation of a claim upon the presentation of new material evidence which with reasonable diligence could not have been found and produced at the time of the claim determination.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**7190.0017 PAYMENT OF COMPENSATION.**

Subpart 1. **Claimant payment.** Payment of all compensation shall be directly to the claimant.

Subp. 2. **Subrogation.** An offer of compensation from the board shall be subject to the claimant assigning to the board the claimant's rights to recover losses from other sources. The claimant shall agree to cooperate fully with the board in any subrogation action brought by the board.

Subp. 3. **Acceptance deadline.** A claimant must accept or reject in writing an offer of compensation from the board within 30 days of receiving the offer. If the board receives no response from the claimant, the board shall consider the offer rejected.

**Statutory Authority:** *MS s 115B.28*

**History:** *11 SR 2077*

**ATTORNEY FEES FOR PROPERTY DAMAGE CLAIMS****7190.0020 ATTORNEY FEES.**

Subpart 1. **Entitlement.** An attorney is entitled to a fee for representing a claimant in a property damage claim before the board if the claimant accepts an award from the board. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the board and appearances before the board.

Subp. 2. **Maximum fee.** The fee must not exceed 15 percent of the amount the board awards the claimant for the property damage.

Subp. 3. **Variance not binding.** An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

**Statutory Authority:** *MS s 115B.37*

**History:** *12 SR 1710*

**HOUSEHOLD LABOR COMPENSATION****7190.0100 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in parts 7190.0100 to 7190.0108 have the meanings given them in this part.

Subp. 2. **Board.** "Board" means the Harmful Substance Compensation Board created by Minnesota Statutes, section 115B.27, subdivision 1.

Subp. 3. **Children.** "Children" means household members under the age of 18.

Subp. 4. **Claimant.** "Claimant" means a person whom the board determines has an eligible claim for personal injury.

Subp. 5. **Disability.** "Disability" means an impairment in the ability to produce goods and services necessary for the household to function.

Subp. 6. **Household.** "Household" means a single housekeeping unit. A household may consist of a single person or several persons, usually but not necessarily, related by blood or marriage.

Subp. 7. **Household labor.** "Household labor" means the production of goods and services necessary for the household to function, including marketing, recordkeeping, food preparation, house cleaning, house maintenance, yard care, clothing care, and physical and other care of household members.

Subp. 8. **Houseworker.** "Houseworker" means a person who performs household labor in a household.

Subp. 9. **Minimum wage.** "Minimum wage" means the amount set in United States Code, title 29, section 206.

Subp. 10. **Primary houseworker.** "Primary houseworker" means the person who contributes the majority of time spent in a household on household labor.

Subp. 11. **Secondary houseworker.** "Secondary houseworker" means a person who contributes a significant amount of time but less than the majority of time spent in a household on household labor.

Subp. 12. **Teenage houseworker.** "Teenage houseworker" means a person from the ages of 12 to 17 who produces goods or services necessary for the household but is not primarily responsible for the household labor, and is a financially dependent household member.

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846; L 1989 c 325 s 41*

#### **7190.0101 HOUSEHOLD LABOR LOSSES ELIGIBLE FOR COMPENSATION.**

Subpart 1. **Scope.** The board shall compensate a claimant for the value of past, current, and future household labor lost due to the claimant's injury or disease.

Subp. 2. **Past years.** The board shall calculate the number of eligible years of losses in the past beginning with the date on which the claimant's injury was diagnosed by a physician.

Subp. 3. **Future years.** The board shall calculate the number of eligible years of losses in the future using the claimant's average remaining lifetime as determined by United States Life Tables, Volume 43A Minnesota Statutes Annotated, which is incorporated by reference. This publication is available for loan or inspection through the Minitex interlibrary loan system.

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

#### **7190.0102 FACTORS AFFECTING THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.**

In calculating the hours spent on household labor, the board shall consider whether the claimant:

- A. is in a living arrangement with other persons;
- B. is a primary, secondary, or teenage houseworker;
- C. resides in a household where the primary houseworker is employed outside the household 15 or more hours per week; or
- D. provides services and care for children, and, if so, the number and ages of the children.

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

#### **7190.0103 CALCULATION OF THE AMOUNT OF HOURS SPENT ON HOUSEHOLD LABOR.**

Subpart 1. **Base hours.** The board shall determine the number of household labor hours contributed by the claimant by using part 7190.0108, schedule A or B.

Subp. 2. **Schedule A.** Schedule A applies to a claimant who lives in a household where the primary houseworker is not employed outside the household or employed less than 15 hours per week outside the household.

Subp. 3. **Schedule B.** Schedule B applies to a claimant who lives in a household where the primary houseworker is employed 15 or more hours per week outside the household.

Subp. 4. **Applicable living arrangement.** The board shall determine the hours eligible for compensation from the appropriate schedule as follows:

A. if the claimant is part of a married couple, or demonstrates the claimant is part of a married couple equivalent, the number of hours in the schedule for the claimant's houseworker role (primary or secondary houseworker, with or without children) is the number of hours eligible for compensation;

B. if the claimant is a single parent, the only adult in a household with children, the total of the hours for a primary and secondary houseworker is the number of hours eligible for compensation;

C. if the claimant lives alone, the number of hours for a primary houseworker is the number of hours eligible for compensation;

D. if the claimant lives with one or more other adults, the number of hours for a secondary houseworker in part 7190.0108, subpart 2, is the number of hours eligible for compensation; and

E. if the claimant is a teenage houseworker, the number of hours for a teenage houseworker is the number of hours eligible for compensation. When a teenage houseworker becomes 18 years old, the number of hours for a secondary houseworker is the number of hours eligible for compensation.

The board shall consider that children under the age of 12 produce no hours eligible for compensation.

**Subp. 5. Exception to schedule.** The board may determine the number of hours eligible for compensation without using a schedule when:

A. the claimant's living arrangement is not covered by the schedule;

B. the claimant provides evidence that the division of household labor in the claimant's household significantly deviates from the schedule's division; or

C. the claimant demonstrates that special circumstances in the claimant's household such as a disabled spouse, child, or parent significantly increase the total amount of hours spent on household labor.

**Subp. 6. Determination of yearly hours spent.** The board shall calculate the number of hours spent on household labor in any year by multiplying the schedule base value by 12. For partial years, the board shall calculate the actual number of months where household labor was lost and multiply the schedule base value by that number.

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

#### **7190.0104 CALCULATION OF HOURLY WAGE FOR HOUSEHOLD LABOR.**

**Subpart 1. Salary determination.** For each year in which the board calculates an adult claimant has hours eligible for compensation, the board shall determine the hourly wage for household labor using the state median monthly salary for janitors as determined in the annual salary survey conducted by the Department of Economic Security. For each future year, the board shall calculate the hourly wage using the current year's salary survey data.

**Subp. 2. Formula.** For each year in which a claimant has hours eligible for compensation, the board shall calculate the hourly wage using the following formula:

$$W = \frac{S}{173.33}$$

Where:

W = hourly wage for that year

S = state median monthly salary for janitors for that year

173.33 = the number of hours in a work month

**Subp. 3. Teenage houseworker.** For each past year in which a teenage houseworker has eligible hours, the board shall use the minimum wage in that year as the hourly wage for household labor; for the current year and future years until the year the teenage houseworker becomes 18 years old the board shall use the current minimum wage.

**Statutory Authority:** *MS s 115B.34*

**History:** *12 SR 846; L 1994 c 483 s 1*

#### **7190.0105 DISABILITY.**

For each past year in which the board calculates a claimant has hours eligible for compensation, the board shall determine to what extent the claimant's injury or disease impaired the claimant's ability to perform household labor. For the current year and future years in which a claimant has hours eligible for compensation, the board shall determine to what extent the claimant's injury or disease presently impairs the claimant's ability to perform household labor.

In making the determination of disability, the board shall consider the quality and quantity of household labor services the claimant:

A. can or could no longer perform;

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- B. performs or performed with assistance;
- C. continues or continued to perform.

The board shall set a claimant's disability for any year at 100 percent, 75 percent, 50 percent, 25 percent, or zero.

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

## 7190.0106 CALCULATION OF LOSS IN HOUSEHOLD LABOR.

For each year in which the claimant has a loss in household labor, the board shall determine the claimant's loss using the following formula:

$$V = H \times W \times D$$

Where:

V = value of the household labor lost in that year

H = number of hours eligible for compensation in that year

W = hourly wage for household labor for that year

D = percent disabled in that year

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

## 7190.0107 PAYMENT OF COMPENSATION.

Subpart 1. **Payment limit.** The total compensation the board shall pay to a claimant for household labor lost shall not exceed the limits in Minnesota Statutes, sections 115B.34, subdivision 1, and 115B.36.

Subp. 2. **Payment in lump sum.** The board will calculate the total lump sum amount of compensation to be paid to a claimant using the following formula:

$$A = P + C + F$$

Where:

A = award amount in current dollars

P = the sum of all past years' losses

C = the loss for the current year

F = the sum of all future years' losses, with each year discounted to current value according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2)

Subp. 3. **Payment in installments.** When the board chooses to pay the award in installments, it shall adjust future payments by the cost of living rate for the current year as described in Minnesota Statutes, section 604.07, subdivision 4, clause (2).

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

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## 7190.0108 PRIMARY EMPLOYMENT SCHEDULES.

Subpart 1. **Schedule A: Primary Houseworker Not Employed Outside Household or Employed Less Than 15 Hours Per Week.**

		Base Hours Spent in Household Labor Per Month													
		15	30	45	60	90	120	150	180	210	240	270	300	330	360
# Children in Family	Age in Years														
	Primary Houseworker														
0	under 25		S					P							
	25-39		S						P						
	40-54			S					P						
	55 & over				S			P							
1	Youngest Child														
	12-17		T		S					P					
	6-11			S						P					
	2-5				S					P					
	1					S					P				
	under 1					S					P				
2	12-17		T	S						P					
	6-11		T	S						P					
	2-5		T		S						P				
	1					S						P			
	under 1					S							P		
3	12-17		ST							P					
	6-11		T	S						P					
	2-5		T		S						P				
	1					S						P			
	under 1					S							P		
4	12-17		ST						P						
	6-11		T	S							P				
	2-5		T		S							P			
	1		T			S						P			
	under 1					ST								P	
5-6	6-11			T	S							P			
	2-5		T		S							P			
	1		T			S					P				
	under 1		T			S							P		
7-9	2-5		T		S							P			
	1							—n/a—							
	under 1		T			S									P

P denotes primary houseworker  
 S denotes secondary houseworker  
 T denotes teenage houseworker

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**Subp. 2. Schedule B: Primary Houseworker Employed 15 or More Hours Per Week Outside Household.**

		Base Hours Spent in Household Per Month													
		15	30	45	60	90	120	150	180	210	240	270	300	330	360
# Children in Family	Age in Years														
	Primary Houseworker														
0	under 25			S			P								
	25-39			S			P								
	40-54		S				P								
	55 & over		S				P								
	Youngest Child														
1	12-17		T		S			P							
	6-11		S						P						
	2-5					S		P							
	1					S			P						
	under 1					S			P						
	12-17		T	S				P							
2	6-11		T	S				P							
	2-5		T			S			P						
	1					S			P						
	under 1					S					P				
	12-17		T	S			P								
	3	6-11			ST					P					
2-5				T		S					P				
1						S					P				
under 1						S					P				
12-17			S	T					P						
4	6-11		TS					P							
	2-5														
	1														
	under 1														
	6-11														
5-6	2-5														
	1														
	under 1														
7-9	2-5														
	1														
	under 1														

P denotes primary houseworker  
 S denotes secondary houseworker  
 T denotes teenage houseworker

**Statutory Authority:** *MS s 115B.34 subd 1 para (e)*

**History:** *12 SR 846*

## DEATH BENEFITS

**7190.1000 DEFINITIONS.**

Subpart 1. **Board.** "Board" means the Harmful Substance Compensation Board established by Minnesota Statutes, section 115B.26.

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the board use the date of the exposure to the harmful substance to calculate the wage, if the dependents document the date of exposure.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710; L 1989 c 325 s 41,78*

**7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.**

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim so that it seeks compensation for the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the board dies, the board shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the board shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the board for future loss of wages and household labor due to the injury that caused the death, the board shall not accept a claim for death benefits.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

**7190.1010 PRIORITY FOR DEATH BENEFITS.**

The board shall pay death benefits to eligible dependents of a claimant in the following order:

- A. allowances to presumed dependents;
- B. allowances to wholly supported established dependents in the order in part 7190.1015; and
- C. allowances to partially supported established dependents in the order in part 7190.1015.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

**7190.1015 ELIGIBLE DEPENDENTS.**

Subpart 1. **Presumed dependents.** The board shall presume that the following persons are wholly supported dependents of the claimant:

- A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;
- B. a child under 18 years old;
- C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The board shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant contributed regularly to their support:

- A. a child 18 years old or older;
- B. a parent;
- C. a grandparent;
- D. a grandchild;
- E. a sibling; and
- F. a parent-in-law.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

### 7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The board shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The board shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, paragraph (d) and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The board shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The board shall determine the eligibility of a dependent based on the facts existing on the date of the board's decision.

Subp. 4. **Lump sum payment.** When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value based on real rates of return obtainable through conservative investment.

Subp. 5. **Installment payment.** When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year.

Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the board shall subtract from the award losses recouped by the dependents from any government survivor program to the extent that the combined total of government survivor benefits and death benefits paid under this chapter exceeds 100 percent of the wage earned by the claimant.

Subp. 7. **Cessation of compensation.** The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

### 7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the board shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the board shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the claimant's household labor. If the child is not dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the board shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. **Spouse, two or more dependent children.** If the claimant leaves a spouse and two or more dependent children, the board shall pay to the spouse for ten years, for the benefit

of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the board shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

**Subp. 4. Dependent children, no spouse.** If the claimant leaves a dependent child and no spouse, the board shall pay to the guardian of the child 55 percent of the claimant's wage and 55 percent of the value of the claimant's household labor; and for two or more children, the board shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

### 7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

**Subpart 1. Parents.** If the claimant leaves both parents wholly dependent on the deceased, the board shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the board shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the board shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the board shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

**Subp. 2. Other established dependents.** If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the board shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the board shall pay 35 percent of the claimant's wage divided among them in equal shares.

**Subp. 3. Partial support.** If an established dependent regularly received only partial financial support from the claimant, the board shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$$b = A \times c/w$$

Where:

b is the benefit to be awarded;

A is the eligible allowance to the dependent;

c is the amount of weekly contribution to the dependent by the claimant; and

w is the wage of the claimant.

**Statutory Authority:** *MS s 115B.34 subd 1 para (d)*

**History:** *12 SR 1710*

### PROPERTY DAMAGE LOSSES

#### 7190.1100 DEFINITIONS.

**Subpart 1. Scope.** The terms used in parts 7190.1110 to 7190.2010 have the meanings given them in this part.

**Subp. 2. Contamination.** "Contamination" means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health or for agricultural chemical contamination, as determined by the Department of Agriculture or the Department of Health.

**Subp. 3. Date of discovery of contamination.** "Date of discovery of contamination" means the date a claimant discovered or should have discovered the contamination of the property.

Subp. 4. **Harmful substance.** "Harmful substance" has the meaning given in Minnesota Statutes, section 115B.25.

Subp. 5. **Residential homestead.** "Residential homestead" means property that qualifies as the owner's homestead under Minnesota Statutes, section 273.124. If the homestead is also a family farm as defined in Minnesota Statutes, section 500.24, subdivision 2, paragraph (b), the property includes one acre of the land surrounding the residence, but does not include any other structures that may be located on it.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.1110 PRINCIPAL RESIDENCE.

For purposes of identifying property losses eligible for compensation under Minnesota Statutes, section 115B.34, the principal residence of the claimant is the property that is:

- A. the claimant's current principal residence under part 7190.1120;
- B. a residence owned but not occupied by the claimant under part 7190.1130;
- C. a residence that was purchased by the claimant after the date of discovery under part 7190.1140;
- D. the claimant's intended principal residence under part 7190.1150;
- E. the claimant's past principal residence under part 7190.1160; or
- F. sold by the claimant under part 7190.1170.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.1120 CURRENT PRINCIPAL RESIDENCE.

The current principal residence of the claimant is the property that is the claimant's residential homestead, except that the residence must be owned and occupied by the claimant, and used for the purposes of a homestead as of the date of discovery of contamination, not the date of assessment.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.1130 RESIDENCE OWNED BUT NOT OCCUPIED.

A residence owned but not occupied by the claimant is eligible as the claimant's principal residence if it otherwise qualifies under part 7190.1120 and:

- A. the claimant no longer resides at the residence because of marital separation or divorce; or
- B. the claimant is a resident of a nursing home or boarding care facility.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.1140 PROPERTY PURCHASED AFTER DATE OF DISCOVERY.

A residence purchased by the claimant for use as a residential homestead after the date of discovery of contamination is eligible as the claimant's principal residence if it is used as the claimant's residential homestead and the claimant can show that:

- A. a written purchase agreement or contract which committed the claimant to purchase the property was made prior to the date of discovery of contamination; or
- B. the property was purchased with the reasonable expectation that the property damage would be fully remedied by public or other funding sources without cost to the claimant.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.1150 INTENDED PRINCIPAL RESIDENCE.

Subpart 1. **Description.** Property purchased by the claimant for the purpose of owning and occupying a residence including construction of a new residence on that property is eligible as the claimant's principal residence if the claimant:

A. had purchased the property, or contracted for the purchase of the property, as shown by a written purchase agreement, before the date of discovery of contamination; and

B. can demonstrate to the board that before the date of discovery of contamination the claimant intended to occupy a home as a residential homestead on the property.

Subp. 2. **Claimant's intent.** The intent to occupy a principal residence on the property before the date of discovery of contamination, as required in subpart 1, item B, may be demonstrated by construction contracts or plans, a public listing or advertisement to sell the current residence, or other documents or actions that make a similar showing.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### **7190.1160 PAST PRINCIPAL RESIDENCE.**

Residential property owned by the claimant that is unoccupied and actively on the market for sale at the time of the discovery of contamination is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant immediately before or at the time of placing the property on the market; and

B. the commitment to change residence and sell the property, evidenced by a purchase agreement, contract for sale, contract with a realtor, or other documentation of active sale listing by the claimant, was made before the date of discovery of contamination.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### **7190.1170 RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.**

Residential property that has been sold by the claimant is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant on the date of discovery of contamination; and

B. the claimant was assessed or otherwise realized the loss before the sale or at the time of the sale, or the claimant expressly agrees in the sale agreement to reimburse the buyer when the amount of loss becomes known.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### **7190.1180 TWO PROPERTIES MAY QUALIFY.**

If a claimant owns both a current principal residence under part 7190.1120 and an intended principal residence under part 7190.1150, both properties are eligible as the claimant's principal residence.

If a claimant owns both a current principal residence under part 7190.1120 and a past principal residence under part 7190.1160, both properties are eligible as the claimant's principal residence.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### **7190.1190 ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.**

Subpart 1. **Limitation.** Property damage losses related to the replacement or decontamination of the primary source of drinking water are limited to the costs of replacement or decontamination of the system that:

A. services the individual claimant's property only; or

B. extends distribution of an existing municipal water supply to the property.

The cost of construction of a system that provides for the expansion of the community water system or that provides benefits to the community in general is not eligible.

Subp. 2. **Operational as of date of discovery.** Except as provided in subpart 3, to be eligible for replacement or decontamination expenses, the primary source of drinking water

for a claimant's property as described in subpart 1 must be operational and in use by the property owner on the date of discovery of contamination.

Subp. 3. **Private wells under construction.** A private drinking water well located on property that qualifies as the claimant's principal residence under part 7190.1110 is eligible for replacement or decontamination expenses that exceed the anticipated contract costs for construction of the well if at the time of discovery of contamination:

- A. the well is under construction on the property; or
- B. a binding contract for construction of the well has been entered into.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.2000 HARDSHIP.

For purposes of determining eligibility for compensation for losses incurred in the sale of a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (2), or losses incurred as a result of the inability of an owner to sell a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), the factors in item A or B constitute a hardship to the owner.

A. An urgent need to sell the residence based on a special circumstance, including the following:

- (1) loss of household income;
- (2) owner's job relocation;
- (3) catastrophic medical expenses for which the owner is responsible; or
- (4) owner's physical disability.

B. An urgent need to sell a property due to a commitment to purchase a new residence, if the claimant:

- (1) committed in writing to the purchase of the new residence and publicly listed or advertised to sell the property before the date of discovery of contamination; and
- (2) the discovery of contamination occurred during the time the property was on the market.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*

#### 7190.2010 ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.

Subpart 1. **Eligible losses.** Losses eligible for reimbursement under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), include all essential utilities, property tax, necessary homeowner's insurance, mortgage interest expenses, and other property maintenance expenses. The claimant must have incurred the expenses on the principal residence after it had been on the market for a time equal to the average days on the market for comparable home sales outside the area of contamination. Average days on the market shall be determined from the multiple listing service data of the local real estate association for the listing year and locale.

Subp. 2. **Additional expenses.** Additional property maintenance expenses are compensable to the extent that they are determined by the board to be necessary to maintain the property value and marketability.

**Statutory Authority:** *MS s 115B.34*

**History:** *16 SR 2162*