

1 Economic Security

2

3 Adopted Permanent Rules Relating to Employment; Extended

4 Employment Programs

5

6 Rules as Adopted

7

EXTENDED EMPLOYMENT PROGRAMS

8 3300.2050 DEFINITIONS.

9 Subpart 1. **Scope.** When used in parts 3300.1950 to
10 3300.3050, the terms defined in this part have the meanings
11 given them.

12 Subp. 2. **Commissioner.** "Commissioner" means the
13 commissioner of the Minnesota Department of ~~Jobs-and-Training~~
14 Economic Security.

15 Subp. 3. [See repealer.]

16 Subp. 4. **Competitive employment.** "Competitive employment"
17 means employment in a position which:

18 A. is paid at a rate equal to or greater than the
19 state or federal minimum wage, whichever is appropriate;

20 B. is not subsidized for training purposes by public
21 funds, excluding any state or federal tax credits available to
22 increase employment among specified groups;

23 C. is full time, unless employment of less than 30
24 hours per week is determined to be appropriate because of the
25 availability of positions in which the worker can be employed or
26 other individual circumstances;

27 D. can reasonably be expected to be available on an
28 ongoing basis or can reasonably be expected to be followed by
29 employment in positions not subsidized for training purposes by
30 public funds;

31 E. has a majority of nondisabled individuals as the
32 working peers of the worker; and

33 F. can reasonably be expected to allow the worker to
34 develop the worker's vocational potential.

35 Subp. 5. **Conversion point score.** "Conversion point score"

1 means a numerical value on a scale of standard deviations above
 2 or below a mean. It is used to provide a uniform scale to which
 3 the quantifiable performance measures, the economic and
 4 geographic factors, and the disability index conversion scores
 5 can be converted for use in allocating funds.

6 Subp. 6. Disability adjusted average hourly earnings
 7 factor. "Disability adjusted average hourly earnings factor"
 8 means an average wage calculation for the extended employment
 9 program. The calculation has as its numerator the sum of the
 10 products which result from multiplying each worker's disability
 11 index conversion score by each worker's total wages in the
 12 reporting period. Total wages include remuneration for paid
 13 holidays and paid sick, vacation, and other paid leave. The
 14 calculation has as its denominator the total number of hours
 15 worked in the reporting period by the total unduplicated number
 16 of workers. Number of hours worked is defined in subpart 20.
 17 The mathematical formula for the wage calculation is represented
 18 as follows:

19 Sum of (the sum of wages in the 20 reporting period for each 21 program worker multiplied by 22 that worker's disability 23 index conversion score) 24 _____ 25 Total number of hours worked by 26 the total unduplicated number of 27 workers in the reporting period 28	=	Disability adjusted average hourly earnings factor
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29 Subp. 7. Disability index. "Disability index" means an
 30 index which measures the effect that disability levels have on
 31 workers in achieving their vocational potential. The disability
 32 index is the total score (sum of 30 ratings) of the Functional
 33 Assessment Inventory (FAI) as revised in August 1990 and
 34 published by the Division of Rehabilitation Services. This
 35 inventory was originally developed and authored by Nancy M.
 36 Crewe, Ph.D., and Gary T. Athelstan, Ph.D. and is published by
 37 the Materials Development Center of the University of
 38 Wisconsin-Stout. The modified inventory is incorporated by
 39 reference and is not subject to frequent change. It is
 40 available for loan and inspection at the State Law Library and
 41 for inspection at the Minnesota Department of ~~Jobs-and-Training~~

1 Economic Security, Division of Rehabilitation Services, 390
2 North Robert Street, First Floor, Saint Paul, Minnesota 55101.

3 Subp. 8. **Disability index conversion score.** "Disability
4 index conversion score" means an expression of workers'
5 disability indexes in terms of their rank among other workers in
6 a program, converted to a continuous scale from one to four.

7 Subp. 9. **Disability levels.** "Disability levels" means the
8 varieties of disabling conditions affecting workers' potential
9 for rehabilitation as measured by the disability index described
10 in subpart 7.

11 Subp. 10. **Economic conditions.** "Economic conditions"
12 means those economic and geographic factors in the primary
13 service areas surrounding rehabilitation facilities which affect
14 extended employment programs in providing placement
15 opportunities, paying wages, and furnishing service hours to
16 workers. The factors are the following:

- 17 A. annual average county unemployment rate;
18 B. average county covered quarterly wages;
19 C. county per capita income; and
20 D. percent of population below the poverty level.

21 Information concerning items A to D is available upon
22 request from the Minnesota Department of ~~Jobs and Training~~
23 Economic Security, Research and Statistics Office (RASO), 390
24 North Robert Street, Fifth Floor, Saint Paul, Minnesota 55101.
25 Item A is computed by RASO. Item B is published by RASO in
26 Minnesota Employment and Wages by County and is available for
27 inspection at RASO. Item C is published in the Minnesota Labor
28 Market Information Directory by RASO and is available for
29 inspection at RASO. Item D is provided to RASO by the Office of
30 the Minnesota State Demographer based on the latest United
31 States Census estimates or actual data. Items A to D will be
32 updated annually. If more than one county is contained in a
33 rehabilitation facility's primary service area, data from the
34 counties will be combined and weighted in proportion to the
35 program workers' counties of residence. The factors in items A
36 to D are given equal weight.

1 Subp. 11. **Extended employment programs.** "Extended
2 employment programs" means programs providing paid work and
3 service hours as a step in the rehabilitation process for those
4 who cannot be readily absorbed in the competitive labor market,
5 or during such time as employment opportunities for them in the
6 competitive labor market do not exist. The programs are
7 reasonably expected to allow workers to develop their vocational
8 potential. The programs provide pay at a rate equal to or
9 greater than the state or federal minimum wage, whichever is
10 appropriate, or at a lesser rate of pay according to a
11 certificate issued under Code of Federal Regulations, title 29,
12 sections 525.1 to 525.24, or other federal regulations providing
13 for exemption from federal minimum wage requirements. Extended
14 employment programs are the following:

- 15 A. long-term employment program as defined in subpart
16 16; and
17 B. work activity program as defined in subpart 33;
18 and
19 C. supported employment program as defined in subpart
20 31a.

21 Subp. 12. **Full-time employment.** "Full-time employment"
22 means employment for an average of 30 hours per week or more in
23 a supported employment program or in competitive employment.

24 Subp. 13. **Full-time equivalent (FTE).** "Full-time
25 equivalent" or "FTE" means the lesser of the following
26 calculations:

27 A. a count resulting when the total annual number of
28 work and service hours for each program produced by a
29 rehabilitation facility is divided by 1,560 hours per year for a
30 long-term employment program or a supported employment program,
31 or by 1,040 hours per year for a work activity program. Service
32 hours may comprise no more than one-quarter of the total hours
33 of participation for each program in a year; or

34 B. a count of workers in a program during a year.
35 For purposes of this subpart, a worker is counted in the program
36 where the worker accrued the most hours of work during the year

1 and where the worker's annual hours of work and service were at
2 least 120 hours in a long-term employment program or a supported
3 employment program, or 80 hours in a work activity program.

4 Subp. 14. **Fundamental personnel benefits.** "Fundamental
5 personnel benefits" means benefits for vacation, sick leave,
6 holidays, and social security provided to workers in a long-term
7 employment program on a proportional basis as provided to the
8 nonexempt, full-time staff of the rehabilitation facility, and
9 benefits for military leave, jury duty, overtime pay, voting
10 time, workers' compensation, and leave as required by the
11 federal Family and Medical Leave Act and Minnesota Statutes,
12 sections 181.940 to ~~181.944~~ 181.943, provided to workers in a
13 long-term employment program as provided to the nonexempt,
14 full-time staff under applicable laws and personnel policies.
15 "Nonexempt" has the meaning given it in the federal Fair Labor
16 Standards Act of 1938, as amended. However, in no event will
17 the workers be entitled annually to less than five days of paid
18 vacation, five days of paid sick leave, and five paid holidays.

19 Subp. 15. **Grievance.** "Grievance" means a claim or
20 complaint brought by a worker in a long-term employment program
21 or a representative of the worker involving the interpretation
22 or application of written personnel policies or other written
23 expression of the terms and conditions of employment.

24 Subp. 16. **Long-term employment program.** "Long-term
25 employment program" means a program which provides paid work to
26 workers on the premises of a rehabilitation facility and service
27 hours to workers on or off the premises.

28 Subp. 18. **Net program costs.** "Net program costs" means
29 the total direct and indirect costs calculated for each extended
30 employment program less the dollar amount of wages paid to
31 workers in each program and the dollar amount incurred for
32 production supplies in each program.

33 Subp. 19. [See repealer.]

34 Subp. 20. **Number of hours worked.** "Number of hours
35 worked" means the hours for which a worker receives pay for
36 performing work, including hours of paid holidays and paid sick,

1 vacation, and other leave, but not including service hours as
2 defined in subpart 30.

3 Subp. 21. Opportunities for workers to participate in
4 decisions affecting their employment. "Opportunities for
5 workers to participate in decisions affecting their employment"
6 means organized activities sponsored by the rehabilitation
7 facility to encourage workers' participation in decisions
8 affecting their employment and must include the following:

9 A. worker representation on safety committees in
10 rehabilitation facilities;

11 B. at least quarterly meetings where workers may
12 discuss with staff matters of concern affecting their
13 employment; and

14 C. at least semiannual consultation with workers'
15 representatives at management staff meetings.

16 Subp. 22. [See repealer.]

17 Subp. 22a. [See repealer.]

18 Subp. 23. Placement. "Placement" means an offer by an
19 employer and acceptance by a worker of competitive employment
20 after a written plan has been developed which specifies the
21 number of hours per week of employment and the provision of
22 services reasonably expected to assure continued employment or
23 work.

24 Subp. 24. Program efficiency. "Program efficiency" means
25 a measurement of the cost of providing a combination of paid
26 work and service hours to program workers in the reporting
27 period. The cost per hour rate results when the allocation for
28 the extended employment program in the reporting period is
29 divided by the combined total of the sum of the number of hours
30 worked by program workers and the sum of the number of service
31 hours provided to program workers in the reporting period. The
32 mathematical calculation is represented as follows:

33 Program allocation
34 = Program efficiency
35 Total hours worked and
36 service hours provided
37

38 Subp. 25. Rate of placement in competitive employment.

1 "Rate of placement in competitive employment" means a ratio in
 2 which the numerator is the sum of the disability index
 3 conversion scores of all workers placed in competitive
 4 employment during a reporting period and in which the
 5 denominator is the total unduplicated number of workers in all
 6 extended employment programs offered by a rehabilitation
 7 facility during that reporting period. The mathematical formula
 8 for the calculation is represented as follows:

9 Sum of disability index conversion 10 scores of workers placed in 11 competitive employment 12 _____ 13 Total unduplicated number of 14 workers in all extended 15 employment programs 16	=	Rate of placement in competitive employment
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17 Subp. 26. Rate of retention in competitive employment.

18 "Rate of retention in competitive employment" means a ratio in
 19 which the numerator is the sum of the disability index
 20 conversion scores of workers for each extended employment
 21 program who were placed during the previous reporting period and
 22 who continued in competitive employment one year or more and in
 23 which the denominator is the total unduplicated number of
 24 workers in all extended employment programs in the previous
 25 reporting period. The mathematical formula is represented as
 26 follows:

27 Sum of disability index conversion 28 scores for all workers placed 29 in competitive employment during the 30 previous reporting period who were 31 employed 12 months or more 32 _____ 33 Total unduplicated number of workers 34 in all extended employment programs 35 in the previous reporting period 36	=	Rate of retention in competitive employment
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37 Subp. 27. Rate of transfer to long-term employment. "Rate

38 of transfer to long-term employment" means a rate derived from a
 39 calculation for the work activity program in which the numerator
 40 is the sum of the disability index conversion scores of the
 41 workers who were transferred to long-term employment during the
 42 reporting period and in which the denominator is the total
 43 unduplicated number of workers in the work activity program of
 44 the rehabilitation facility during the reporting period. The
 45 mathematical formula for the calculation is represented as

1 follows:

$$\begin{array}{l}
2 \quad \text{Sum of the disability index} \\
3 \quad \text{conversion scores for workers} \\
4 \quad \text{transferred to long-term employment} \\
5 \quad \text{in the reporting period} \\
6 \quad \hline
7 \quad \text{Total unduplicated number of} \\
8 \quad \text{workers in the work activity} \\
9 \quad \text{program in the reporting period}
\end{array}
= \frac{\text{Rate of transfer to}}{\text{long-term employment}}$$

10 Subp. 28. Rate of work and service in supported
11 employment. "Rate of work and service in supported employment"
12 means a ratio in which the numerator is the sum in all extended
13 employment programs of each worker's number of hours worked and
14 paid service hours provided in supported settings multiplied by
15 each worker's disability index conversion score and in which the
16 denominator is the total number of hours of work and paid
17 service hours provided in all extended employment programs
18 offered by a rehabilitation facility. The mathematical formula
19 for the calculation is represented as follows:

$$\begin{array}{l}
20 \quad \text{Number of hours worked and paid} \\
21 \quad \text{service hours provided in} \\
22 \quad \text{supported employment multiplied} \\
23 \quad \text{by each worker's disability} \\
24 \quad \text{index conversion score} \\
25 \quad \hline
26 \quad \text{Total number of hours worked and} \\
27 \quad \text{paid service hours provided in} \\
28 \quad \text{all extended employment programs}
\end{array}
= \frac{\text{Rate of work}}{\text{and service}} \text{ in } \frac{\text{supported}}{\text{employment}}$$

30 Subp. 28a. Reconciliation period. "Reconciliation period"
31 means a cycle of three consecutive fiscal years, consisting of:
32 A. the first year of the cycle, during which
33 allocations for that fiscal year are made and data are produced
34 reported;
35 B. the second year of the cycle, during which the
36 reported data produced during the first year are audited by the
37 Division of Rehabilitation Services; and
38 C. the third year of the cycle, in which adjustments,
39 if any, are made to the allocations for the third year of the
40 cycle resulting from reconciliations under part 3300.2550,
41 subpart 7.

42 An example of a reconciliation period is: in fiscal year
43 1995, allocations are made and data are produced and reported;
44 in fiscal year 1996, the data reported for fiscal year 1995 are
45 audited; in fiscal year 1997, the adjustments, if any, to

1 allocations for fiscal year 1997 are made based on the
2 reconciliation of data produced in fiscal year 1995.

3 Subp. 28b. Rehabilitation facility. "Rehabilitation
4 facility" means any entity as defined in Minnesota Statutes,
5 section ~~29A.01~~ 268A.01, subdivision 6, that provides one of the
6 extended employment programs as listed in subpart 11, and that
7 is operated by a city, town, county, nonprofit organization,
8 state regional center, or any combination of these.

9 Subp. 29. Responsiveness to grievances. "Responsiveness
10 to grievances" means that (1) a grievance resolution procedure
11 has been implemented with binding arbitration as its final step,
12 (2) education and training of workers in the use of the
13 procedure has occurred, (3) the procedure has accommodated
14 workers' disabling conditions, and (4) the grievances have been
15 responded to according to approved procedure.

16 Subp. 30. Service hours. "Service hours" means the hours
17 of service which an extended employment program provides to
18 workers to maximize their vocational potential, whether paid or
19 unpaid, which are recognized as an expense incurred by the
20 program. Service hours may be provided either on or off the
21 premises of a rehabilitation facility. Each of the following
22 categories qualifies as hours of service:

- 23 A. money management training;
- 24 B. training in independent living skills;
- 25 C. use of public transportation training and drivers
26 training;
- 27 D. training in grooming and personal care skills;
- 28 E. training in job seeking skills;
- 29 F. job and safety training;
- 30 G. coordination of support services;
- 31 H. behavioral management;
- 32 I. sign language training;
- 33 J. social skill training;
- 34 K. simulated work training; and
- 35 L. orientation, mobility, braille, and electronic
36 communications training.

1 Subp. 31a. **Supported employment program.** "Supported
2 employment program" means a program, as defined in Minnesota
3 Statutes, section 268A.01, subdivision 11, which:

4 A. is under the supervision of a rehabilitation
5 facility that provides supported employment as defined in
6 Minnesota Statutes, section 268A.01, subdivision 13;

7 B. provides workers with the opportunity for social
8 interaction with individuals who do not have disabilities and
9 who are not paid caregivers;

10 C. provides ongoing support services to workers as
11 defined by Code of Federal Regulations, title 34, section 363.6,
12 paragraphs (c)(2)(iv), (c)(2)(v), and (c)(3); and

13 D. provides full-time employment, unless work of less
14 than 30 hours per week is determined to be appropriate due to
15 the availability of work opportunities or other individual
16 circumstances.

17 Subp. 33. Work activity program. "Work activity program"
18 means a program within the meaning of Minnesota Statutes,
19 section 268A.01, subdivision 7, and which complies with state
20 and federal law, including the federal Fair Labor Standards Act
21 of 1938, as amended, which provides paid work and other services
22 and which permits a level of production below that required for
23 a long-term employment program.

24 Subp. 34. [See repealer.]

25 Subp. 35. **Worker.** "Worker" means a person with severe
26 physical, mental, emotional, or behavioral disabilities who
27 receives one or more days of service or paid work in an extended
28 employment program during a reporting period.

29 Subp. 36. **Worker productivity.** "Worker productivity"
30 means the extent to which a worker is using the worker's own
31 current capacity for work in an extended employment program.

32 3300.2150 CERTIFICATION REQUIREMENTS AND TYPES OF CERTIFICATES.

33 Subpart 1. **Scope.** The requirements in this part govern
34 the operation of any extended employment program engaged in, or
35 seeking to engage in, the programs listed in part 3300.2050,

1 subpart 11. Program certification as evidenced by a valid
2 rehabilitation facility certificate is required before the
3 commissioner may provide funding for an extended employment
4 program.

5 Subp. 2. Full certificate. Requirements for a full
6 rehabilitation facility certificate are the following:

7 A. The membership of the rehabilitation facility's
8 governing body must comply with the requirements of Minnesota
9 Statutes, section ~~129A-07~~ 268A.08.

10 B. Accreditation by a national accrediting body for
11 rehabilitation facilities must be acquired and maintained by a
12 rehabilitation facility in order for an extended employment
13 program to be certified. For each program seeking
14 certification, the accrediting body must have been approved by
15 the commissioner as appropriate for each program. The criteria
16 the commissioner will use in determining appropriateness for
17 accrediting bodies is:

18 (1) The accrediting agency is national in the
19 scope of its operations.

20 (2) The accrediting agency performs no function
21 that would be inconsistent with the formation of independent
22 judgment of the quality of a program.

23 (3) The accrediting agency makes available to the
24 public the standards and criteria it uses for accreditation
25 purposes, makes regular reports of its operations, and lists the
26 facilities it has accredited.

27 (4) The agency uses an on-site examination as a
28 basis for securing sufficient and pertinent data concerning the
29 quantitative and qualitative aspects of the program.

30 (5) The accrediting agency has an adequate
31 organization and effective procedures to maintain its operations
32 on an ethical basis.

33 (6) The agency reviews at regular intervals the
34 standards and criteria by which it evaluates facilities.

35 (7) The accrediting agency has had enough
36 experience to indicate its competence to do the job it sets out

1 to do.

2 C. Each rehabilitation facility must have a risk
3 protection program adequate to preserve its assets and to
4 compensate its staff, volunteers, workers, and the public for
5 reasonable claims for which the entity is liable.

6 D. Fundraising activities undertaken by a
7 rehabilitation facility must conform to all requirements of
8 state law.

9 E. Each rehabilitation facility must comply with
10 United States Code, title 42, sections 12101 to 12213, of the
11 Americans with Disabilities Act.

12 F. Each rehabilitation facility must comply with the
13 Employee Right to Know Act of 1983, Minnesota Statutes, chapter
14 182, and the Minnesota State Building Code, chapter 1340.

15 G. Each rehabilitation facility or extended
16 employment program must comply with all applicable regulations
17 of the Minnesota Department of Labor and Industry and the United
18 States Department of Labor.

19 H. Each extended employment program must be in
20 compliance with other applicable state law and federal laws.

21 I. Eligibility for extended employment programs must
22 be established by rehabilitation facilities using appropriate
23 standards and criteria. The standards and criteria must be in
24 writing and be made available to the public. The standards and
25 criteria by which persons with severe disabilities are to be
26 determined eligible for participation in each program must
27 include the following:

28 (1) assurances that persons with severe
29 disabilities, including those with severe behavioral
30 disabilities, will not be categorically denied access to,
31 admission to, full use of, or benefit from any extended
32 employment program because of their severe disabilities;

33 (2) assurances that persons with severe
34 disabilities seeking admission are in need of participation in
35 an extended employment program and are reasonably expected to
36 develop their vocational potential through participation; and

1 (3) assurances that persons with severe
2 disabilities seeking admission to or being served by an extended
3 employment program will not be discriminated against as provided
4 in the Minnesota Human Rights Act, Minnesota Statutes, chapter
5 363.

6 ~~J. Each extended employment program, even if~~
7 ~~statutorily exempt, must develop and implement an affirmative~~
8 ~~action plan for the employment of minority persons, women, and~~
9 ~~persons with disabilities that has been approved by the~~
10 ~~commissioner of the Department of Human Rights.~~

11 ~~K.~~ Each rehabilitation facility must provide its
12 long-term employment program workers with fundamental personnel
13 benefits as defined in part 3300.2050, subpart 14, with a
14 procedure for resolution of grievances which has binding
15 arbitration as a final step and provides responsiveness to
16 grievances as defined in part 3300.2050, subpart 29, and with
17 opportunities for workers to participate in decisions affecting
18 their employment as defined in part 3300.2050, subpart 21.

19 ~~H.~~ K. Each rehabilitation facility must comply with
20 the requirements of United States Code, title 29, sections 2601
21 to 2635, the Family and Medical Leave Act of 1993, and Minnesota
22 Statutes, sections 181.940 to 181.943.

23 ~~M.~~ L. Each rehabilitation facility must provide time
24 off to vote in accordance with Minnesota Statutes, section
25 204C.04.

26 ~~N.~~ M. Each rehabilitation facility must provide leave
27 for jury duty as provided by United States Code, title 28,
28 section 1875, and Minnesota Statutes, section 593.50.

29 ~~O.~~ N. Each rehabilitation facility must comply with
30 the applicable overtime pay provisions of the federal Fair Labor
31 Standards Act, United States Code, title 29, section 207, and
32 Minnesota Statutes, section 177.25, the Minnesota Fair Labor
33 Standards Act.

34 ~~P.~~ O. Each rehabilitation facility must comply with
35 the requirements for military leave and reinstatement in
36 employment as provided by United States Code, title 38, chapter

1 43, sections 2021 and 2024, and Minnesota Statutes, section
2 192.261, subdivision 6.

3 Subp. 3. Provisional certificate. A provisional
4 rehabilitation facility certificate may be issued to new
5 entities for new extended employment programs or to existing
6 rehabilitation facilities for expanded programs for a specified
7 period of time, not to exceed 18 months. In order to obtain a
8 provisional certificate, all new or expanded extended employment
9 programs covered by the certificate must be in full compliance
10 with all the requirements of subpart 2, except item B. However,
11 the extended employment programs must demonstrate that there is
12 a reasonable likelihood that the programs will meet the
13 requirements in subpart 2, item B, within 18 months. If at the
14 end of the 18-month period all of the programs covered by the
15 provisional certificate have not met the requirements in subpart
16 2, item B, or are no longer meeting any of the other
17 requirements of subpart 2, the commissioner will not issue a
18 full rehabilitation facility certificate for the programs.
19 However, a rehabilitation facility has the option of removing
20 any noncomplying program from consideration for inclusion under
21 a full certificate. Denial of a full certificate under this
22 subpart means the termination of program certification as
23 provided in part 3300.2250, subpart 7, for all the programs
24 covered by the provisional certificate.

25 Subp. 4. Probationary certification status. The
26 commissioner may place on probationary certification status any
27 extended employment program that has previously been fully
28 certified where the program no longer completely meets any of
29 the certification requirements in subpart 2, item A or B, or is
30 not fully complying with the applicable nonquantifiable factors
31 in part 3300.2350, subpart 2. If the program is not complying
32 with subpart 2, items A ~~to~~-E or B, through no fault of its own,
33 it may request instead that its full certificate be extended as
34 provided in subpart 5. Probationary certification status
35 permits a noncomplying program to continue to receive state
36 funding. To qualify for probationary certification status, the

1 rehabilitation facility must first submit a written plan which
2 has been approved by the commissioner and which will bring the
3 program into compliance with the certification requirements or
4 the nonquantifiable factors or both within a reasonable time.
5 If the program is not in full compliance within the time
6 specified by a written plan, certification for the program will
7 be terminated as provided in part 3300.2250, subpart 7.
8 Probationary certification status for one program does not
9 affect program certification for any other complying programs
10 under a full certificate.

11 **Subp. 5. Extension of certificate.** Upon written request
12 of any rehabilitation facility, the commissioner may grant an
13 extension of a certificate beyond the certificate's expiration
14 date. The extension may not exceed one year and no consecutive
15 extensions of a certificate may be granted. A request for an
16 extension should normally be made before the certificate's
17 expiration date. The commissioner may grant an extension if the
18 commissioner finds that a program, through no fault of its own,
19 no longer completely meets any of the certification requirements
20 in subpart 2, item A or B, because:

21 A. a natural disaster such as a tornado or a flood,
22 or a material change in circumstances such as a labor strike or
23 the loss of a building lease, has adversely affected or
24 completely halted program operations; or

25 B. convincing evidence is submitted showing that the
26 national accrediting body responsible for accreditation cannot
27 schedule a timely review.

28 **3300.2250 CERTIFICATION PROCEDURE.**

29 **Subpart 1. Purpose.** The purpose of certification is to
30 ensure that all extended employment programs meet minimum
31 requirements for operation.

32 **Subp. 2. Subminimum wage payments.** A rehabilitation
33 facility certificate issued under the certification procedure
34 provided by this part does not replace or modify any
35 certificates issued by the United States Department of Labor or

1 the Minnesota Department of Labor and Industry for purposes of
2 subminimum wage payments.

3 Subp. 3. **Single certificate.** A single rehabilitation
4 facility certificate will be issued to a rehabilitation
5 facility, and the certificate will specify the type and location
6 of all approved programs. Entities seeking a certificate,
7 including a provisional certificate as provided in part
8 3300.2150, subpart 3, must complete an official application form
9 available from the Division of Rehabilitation Services in the
10 Minnesota Department of ~~Jobs-and-Training~~ Economic Security.

11 Subp. 4. [See repealer.]

12 Subp. 5. **Time limitation.** A rehabilitation facility
13 certificate may not be issued for more than three years unless
14 an extension is granted as provided in part 3300.2150, subpart 5.

15 Subp. 6. **Additional programs under certificate.** Programs
16 may be added under a rehabilitation facility certificate.
17 However, any additional program must fully comply with all the
18 requirements of part 3300.2150, subpart 2. Once an additional
19 program has met all applicable requirements and is accepted for
20 state funding, the rehabilitation facility certificate must be
21 amended to reflect its inclusion and to specify the type and
22 location of the approved program.

23 Subp. 7. **Termination of program certification.**
24 Certification for programs not complying with the requirements
25 of part 3300.2150 will be terminated and allocated state funds
26 will be withdrawn as provided in part 3300.2650. The withdrawal
27 of state funds creates the right of appeal as provided in part
28 3300.2650, subpart 3. Once a program's certification has been
29 terminated and any right of appeal has been exhausted, the
30 rehabilitation facility certificate must be amended to show the
31 termination. Termination of program certification occurs where:

32 A. a program covered by a full certificate no longer
33 meets all of the requirements of part 3300.2150, subpart 2; or

34 B. one or more of the programs covered by a
35 provisional certificate is not successfully brought into
36 compliance as provided in part 3300.2150, subpart 3, resulting

1 in termination of certification for all the programs covered by
2 the certificate; or

3 C. a program in probationary certification status is
4 not successfully brought into compliance as provided in part
5 3300.2150, subpart 4.

6 3300.2350 STANDARDS FOR STATE FUNDING.

7 Subpart 1. Evaluation factors in general. After
8 fulfilling the certification requirements of part 3300.2150 and
9 submitting approved plans and budgets as provided in Minnesota
10 Statutes, section ~~29A.08~~ 268A.06, subdivision 2 1, extended
11 employment programs are eligible to receive state funding.
12 Funding of extended employment programs by the commissioner must
13 take into consideration an evaluation of individual program
14 effectiveness. The evaluation factors to be considered are the
15 following:

16 A. the disability adjusted average hourly earnings
17 paid to workers as defined in part 3300.2050, subpart 6;

18 B. the rate of placement in competitive employment as
19 defined in part 3300.2050, subpart 4;

20 C. the rate of work and service in supported
21 employment as defined in part 3300.2050, subpart 31a;

22 D. the rate of retention in competitive employment as
23 defined in part 3300.2050, subpart 26;

24 E. program efficiency as defined in part 3300.2050,
25 subpart 24;

26 F. the disability levels, as defined in part
27 3300.2050, subpart 9, of the workers served, as measured by the
28 average of their disability index conversion scores as defined
29 in part 3300.2050, subpart 8;

30 G. economic conditions as defined in part 3300.2050,
31 subpart 10;

32 H. the rate of transfer to long-term employment;

33 I. whether or not fundamental personnel benefits, as
34 defined in part 3300.2050, subpart 14, are provided to long-term
35 employment program workers;

1 ~~F~~ J. whether or not opportunities for workers to
2 participate in decisions affecting their employment, as defined
3 in part 3300.2050, subpart 21, are provided;

4 ~~F~~ K. whether or not the responsiveness to
5 grievances, as defined in part 3300.2050, subpart 29, of
6 long-term employment program workers is adequate; and

7 ~~K~~ L. the increases in worker productivity as defined
8 in part 3300.2050, subpart 36.

9 **Subp. 2. Nonquantifiable evaluation factors.** Before an
10 individual program offered by a rehabilitation facility, except
11 a new or expanded program as provided in subpart 6, may receive
12 state funding under part 3300.2550, the individual program must
13 be in full compliance with the nonquantifiable evaluation
14 factors listed in subpart 1, items H I to K L. An individual
15 program, except a new or expanded program as provided in subpart
16 6, must remain in full compliance with the nonquantifiable
17 evaluation factors during the reporting period or the program
18 will be placed on probationary certification status as provided
19 in part 3300.2150, subpart 4.

20 **Subp. 3. Quantifiable evaluation factors.** The
21 quantifiable evaluation factors are listed in subpart 1, items A
22 to G H. The quantifiable evaluation factors applicable to a
23 long-term employment program and a supported employment program
24 are those at subpart 1, items A to G. The quantifiable
25 evaluation factors applicable to a work activity program are
26 listed in subpart 1, items A to H.

27 **Subp. 4.** [See repealer.]

28 **Subp. 5. Audit and allocation adjustments.** Using
29 generally accepted auditing standards, the Division of
30 Rehabilitation Services will assess each individual program on
31 its effectiveness as measured by both:

32 A. a comparison of reported and actual data
33 attributable to the quantifiable evaluation factors listed in
34 subpart 1, items A to D; and

35 B. a comparison of reported and actual FTEs, and
36 hours of work.

1 The audit of data from quantifiable evaluation factors will be
2 conducted each fiscal year and will cover the previous 12-month
3 period. The applicable audited figures from the evaluation
4 factors listed in subpart 1, items A to D, and the FAI data will
5 be used to adjust allocations as found in part 3300.2550,
6 subpart 6. The audit of FAI data will be limited to a random
7 sampling of disability index conversion scores of workers who
8 have entered the program since the program's last FAI audit.
9 However, if random samplings of any individual program reveal a
10 pattern of significant deviation from statewide averages, all
11 FAI data on newly entered workers will be audited for all
12 individual programs. A significant deviation means a variation
13 in reported FAI data of ten percent or more plus or minus from
14 statewide averages.

15 Subp. 6. New program evaluation. An entity offering a new
16 or expanded extended employment program must have been issued a
17 provisional certificate as provided in part 3300.2250 and have
18 submitted an approved plan and budget before it may be eligible
19 to receive state funding and be evaluated under this part. A
20 new or expanded program from its start up must be in full
21 compliance with the nonquantifiable factors listed in subpart 1,
22 items ~~H and I~~ I to K, and must remain in full compliance with
23 those factors during the reporting period. As measured at the
24 end of the first year of operation, a new or expanded individual
25 program must also be in full compliance with the nonquantifiable
26 evaluation factor listed in subpart 1, item K L. If a new or
27 expanded program under a provisional certificate is not in full
28 compliance with the nonquantifiable factors in subpart 1, items
29 H I to K L, at the end of the first year of operation, a written
30 plan specifying how and when compliance will be achieved must be
31 submitted to and approved by the commissioner. However, the
32 time specified may not extend beyond the 18-month period
33 authorized by the provisional certificate. If the program is
34 not complying fully with the nonquantifiable factors within the
35 time approved by the commissioner, the program will be denied
36 full certification and be terminated as provided in part

1 3300.2250, subpart 7, item B. If a new or expanded program
2 after the expiration of its provisional certificate is not in
3 compliance with all the certification requirements in 3300.2150,
4 subpart 2, full certification will also be denied and the
5 program terminated. However, a provisional certificate may be
6 extended as provided in part 3300.2150, subpart 5.

7 3300.2450 OPERATIONAL POLICIES FOR FUNDING STANDARDS.

8 Subpart 1. [See repealer.]

9 Subp. 2. Policies for calculating the rate of placement in
10 competitive employment. If a worker is placed twice in
11 competitive employment in a given year, both placements may be
12 included in calculating the placement rate as defined in part
13 3300.2050, subpart 25. Any subsequent placement of that worker
14 in the reporting period will not be considered in calculating
15 the rate of placement. When a worker is placed in competitive
16 employment but also continues on a part-time basis with an
17 extended employment program, the worker will be considered to
18 have been placed in competitive employment if the worker's wages
19 from participation in the extended employment program are at or
20 above 100 percent of the prevailing wage rate for the work
21 performed.

22 Subp. 3. Policies for calculating rate of retention in
23 competitive employment. A worker who changes from one position
24 to another or one employer to another without returning to the
25 status of worker in an extended employment program is considered
26 to have been retained in competitive employment, as long as no
27 period of unemployment intervenes which lasts longer than one
28 month. When a worker returns to the status of worker in an
29 extended employment program, the worker can no longer be counted
30 as retained in competitive employment. When a worker is placed
31 in competitive employment but also continues on a part-time
32 basis with an extended employment program, the worker will be
33 considered to have been retained in competitive employment if
34 the worker's wages from work in the extended employment program
35 are at or above 100 percent of the prevailing wage rate for the

1 work performed.

2 3300.2550 ALLOCATION OF FUNDS.

3 Subpart 1. Statewide program allocation. From the total
4 grant funds available each fiscal year, the commissioner will
5 establish a statewide program allocation for each extended
6 employment program unless otherwise directed by the legislature
7 and will determine the number of full-time equivalents for each
8 individual program. The total of the individual program FTEs
9 will constitute the statewide FTE level. The elements of the
10 statewide allocation for each of the extended employment
11 programs and the weighted relative power of each element in
12 terms of percentages are the following:

13 A. the net program costs for each statewide program
14 in the previous fiscal year, with a relative power of ten
15 percent;

16 B. the net program costs for each statewide program
17 based on budgets submitted for the current fiscal year, with a
18 relative power of ten percent;

19 C. the number of FTEs for each statewide program at
20 the end of the previous fiscal year, with a relative power of 20
21 percent;

22 D. the number of hours worked in each statewide
23 program in the previous fiscal year, with a relative power of
24 ten percent;

25 E. the need for the services of each statewide
26 program in the current fiscal year as demonstrated by periodic
27 surveys of the incidence of disability levels and disability
28 types, by periodic surveys of rehabilitation counselors and
29 staff, by research and by waiting lists maintained by
30 rehabilitation facilities, with a relative power of 40 percent;
31 and

32 F. the effect on services provided to current workers
33 in each statewide program of changes in the level of statewide
34 allocation from the previous fiscal year, with a relative power
35 of ten percent.

1 Subp. 2. Statewide program allocation base rate. The
 2 commissioner will use 50.5 percent of each statewide program
 3 allocation as calculated in subpart 1 to provide a base rate
 4 allocation to each individual program offered by a
 5 rehabilitation facility in direct proportion to the number of
 6 FTEs in these individual programs. The base rate per FTE is
 7 determined by dividing 50.5 percent of the statewide program
 8 allocation by the total number of full-time equivalents for the
 9 statewide program. The mathematical calculation is represented
 10 as follows:

$$\begin{array}{rcl}
 11 & (.505 \times \text{statewide program allocation}) & \text{Uniform} \\
 12 & \frac{\hspace{10em}}{\text{full-time equivalents}} & = \text{per FTE} \\
 13 & & \text{base rate} \\
 14 & \text{The base rate allocation for each individual program is} &
 \end{array}$$

15 determined by multiplying the per FTE base rate from the above
 16 formula by the number of FTEs in the individual program.

17 Subp. 3. Statewide program allocation set aside. The
 18 commissioner will set aside 49.5 percent of each statewide
 19 program allocation in each current fiscal year as determined in
 20 subpart 1 in order to distribute allocations to individual
 21 programs as provided in subpart 4. The distribution in subpart
 22 4, will be based on evaluation factors found in part 3300.2350,
 23 subpart 1. The evaluation factors applicable to each statewide
 24 program will be weighted in terms of percentages of each
 25 statewide program allocation. The factors and percentages
 26 applicable to the extended employment programs are the following:

27 Funding Factor Weightings by Program, Expressed as
 28 Percentages of Total Program Allocation

29	Factor	Long-Term	Program	Supported
30		Long-Term	Work	Supported
31			Activity	
32				
33	1. Disability Level	7	7.5	7
34	2. Economic Conditions	15	15	15
35	3. Program Efficiency	2.5	2.5	2.5
36	4. Hourly Earnings	7.5	7.5	7.5
37	5. Supported Employment	7.5	7.5	7.5
38	Rate			
39	6. Competitive Employment	5	3.5	5
40	Placement Rate			
41	7. Competitive Employment	5	3.5	5
42	Retention Rate			
43	8. <u>Transfer Rate to</u>		2.5	
44	<u>Long-Term</u>			
45				
46	Total	49.5	49.5	49.5

1
2 Subp. 4. Total individual program allocation. The base
3 rate allocation, calculated in subpart 2, will be increased for
4 each individual program by the program's relative share of the
5 set-aside funds as provided in subpart 3. The commissioner will
6 distribute the set-aside funds according to the individual
7 program's relative standing on each applicable factor. The
8 program's conversion point score for each factor will be
9 calculated when budgets are submitted for the current fiscal
10 year and will be based on the program's reported performance in
11 the previous 12-month period. On each factor, the individual
12 programs whose performance or evaluation value is lowest will
13 receive no additional funds, with the funding level for other
14 individual programs related directly to their standing on the
15 factor.

16 Subp. 5. [See repealer.]

17 Subp. 6. New or expanded program funding. The
18 commissioner will consider a new or expanded individual program
19 for funding based upon the following:

20 A. the need for the new or expanded individual
21 program;

22 B. the relationship of the new or expanded individual
23 program to any current programs in terms of defined needs;

24 C. the performance of current individual programs;
25 and

26 D. the geographic distribution of current programs
27 and the new or expanded program in relationship to geographic
28 needs.

29 When a new or expanded individual program offered by a
30 rehabilitation facility is accepted for funding, the
31 commissioner will fund its first and second years of operation
32 based upon its relative percentage of the statewide FTE in that
33 program. A new or expanded program's funding will be determined
34 by dividing its FTE by the statewide FTE, and multiplying that
35 fraction times the statewide allocation for that program. The
36 mathematical calculation is represented as follows:

1	New or expanded	Total program	New or expanded
2	individual program FTE		program
3		allocation	allocation
4	<u>Total program FTE</u>	x	=

5

6 A new or expanded individual program has the right to

7 appeal the commissioner's denial of initial funding as provided

8 in part 3300.3050.

9 Beginning with their third year of operation, new or

10 expanded programs will be funded in the same manner as all other

11 programs.

12 Subp. 7. Reconciliation. Allocations based on the

13 contracted number of FTEs each fiscal year, the reported data on

14 quantifiable evaluation factors each fiscal year, and the

15 reported FAI data will be reconciled with the actual numbers and

16 data at the end of the reconciliation period as provided in part

17 3300.2350, subpart 5. Any rehabilitation facility aggrieved by

18 a decision of the commissioner under this subpart has the right

19 to appeal using the procedures of part 3300.3050.

20 3300.2650 WITHDRAWAL OF ALLOCATED STATE FUNDS.

21 Subpart 1. Criteria for withdrawal of allocated state

22 funds. The commissioner may withdraw allocated state funds from

23 an individual extended employment program which has been

24 accepted for state funding. A program is eligible to receive

25 allocated state funds after it has fulfilled the certification

26 requirements of part 3300.2150 and submitted an approved plan

27 and budget. Allocated state funds will be withdrawn when:

28 A. unencumbered but allocated state funds are not

29 needed for the individual program to which they were allocated;

30 or

31 B. an individual program is not being administered

32 according to its approved plan and budget as provided in

33 Minnesota Statutes, section ~~29A.08~~ 268A.09, subdivision 2; or

34 C. program certification has been terminated as

35 provided in part 3300.2250, subpart 7; or

36 D. an individual program is not being administered in

37 accordance with these rules.

38 Subp. 2. Notice of withdrawal. In situations governed by

1 subpart 1, the commissioner must give written notice at least 45
2 days before allocated state funds may be withdrawn from an
3 individual program or programs in a rehabilitation facility,
4 except where there is an imminent danger to the health or safety
5 of program workers. The notice must state the grounds for the
6 withdrawal of funds and must allow a reasonable period of time
7 to remedy the noncompliance. If program certification is to be
8 terminated in addition to the withdrawal of funds, the notice
9 must also state the grounds for the termination. An opportunity
10 for a remedy must be given except where the withdrawal is based
11 on inadequate past performance that cannot be presently
12 corrected, including situations governed by subpart 1, item C
13 and D.

14 Subp. 3. **Right of appeal.** Any rehabilitation facility,
15 including a new entity or existing rehabilitation facility
16 operating an extended employment program under a provisional
17 certificate, has the right to appeal the commissioner's
18 withdrawal of allocated state funds from any of its individual
19 programs. The appeal procedure is provided for in part
20 3300.3050.

21 Subp. 4. **Reinstatement of eligibility to receive funds.**
22 After allocated funds have actually been withdrawn from an
23 individual extended employment program and any right of appeal
24 has been exhausted, reinstatement of eligibility to receive
25 funds can only occur when at least one calendar year has elapsed
26 from the date of the withdrawal of funds. Furthermore, a
27 program seeking reinstatement, as measured at the end of the
28 calendar year following withdrawal of funds, must fully satisfy
29 parts 3300.2150, 3300.2250, and 3300.2350.

30 Subp. 5. **Reallocation.** Withdrawn funds will be
31 reallocated by the commissioner whenever possible. The
32 commissioner will reallocate by increasing the number of
33 full-time equivalents for extended employment programs capable
34 of serving additional persons.

35 3300.2750 ELIGIBLE APPLICANTS FOR STATE FUNDING.

1 An application for state funding may be submitted at times
2 the commissioner specifies by a city, town, county, nonprofit
3 organization, state regional center, or any combination of
4 those, which operates or proposes to operate a public or
5 nonprofit extended employment program.

6 3300.2850 NET PROGRAM COSTS.

7 The net program costs attributable to each individual
8 program will be derived from each rehabilitation facility's plan
9 and budget. A plan and budget must be submitted at times
10 specified by the commissioner for the commissioner's approval.

11 3300.2950 STATE FUNDING APPLICATION CONTENT.

12 All applications for state funding must be made on official
13 application forms available from the Division of Rehabilitation
14 Services in the Minnesota Department of ~~Jobs-and-Training~~
15 Economic Security. Applicants must use application forms for
16 the appropriate fiscal year. Assistance in completing the forms
17 may be requested directly from the division at its central
18 office.

19 3300.3050 APPEAL PROCEDURE.

20 Subpart 1. **Scope.** The procedure in this part governs all
21 appeals initiated by rehabilitation facilities having a right of
22 appeal under:

23 A. part 3300.2650, subpart 3, which provides for
24 appealing the commissioner's withdrawal of allocated state funds
25 from a rehabilitation facility's individual programs;

26 B. part 3300.2550, subpart 6, which provides for
27 appealing the commissioner's denial of initial funding to a new
28 or expanded individual program; or

29 C. part 3300.2550, subpart 7, which provides for
30 appealing a decision of the commissioner concerning
31 reconciliations.

32 Subp. 2. **Notice of intent to appeal.** A rehabilitation
33 facility appealing under subpart 1, item A, B, or C, must send a
34 written notice of intent to appeal to the Division of

1 Rehabilitation Services in the Minnesota Department of ~~Jobs-and~~
2 ~~Training~~ Economic Security. The written notice of intent to
3 appeal must be received by the Division of Rehabilitation
4 Services within 30 days from the date that the rehabilitation
5 facility received written notice from the Division of
6 Rehabilitation Services of the action that the rehabilitation
7 facility wishes to appeal. If the notice of intent to appeal is
8 not received from the ~~appellant~~ rehabilitation facility within
9 the 30-day period the preliminary determination of the Division
10 of Rehabilitation Services is final. The notice of intent to
11 appeal must state the grounds for the appeal including relevant
12 facts and issues that could be addressed at a contested case
13 hearing.

14 Subp. 3. **Informal contact.** No more than 15 days after the
15 Division of Rehabilitation Services receives a notice of intent
16 to appeal, a representative of the commissioner will contact the
17 rehabilitation facility and discuss the grounds for the appeal.
18 The contact by the commissioner's representative may be oral or
19 written. Before the end of the 15-day period, the
20 commissioner's representative must make a decision concerning
21 the rehabilitation facility's appeal. The decision by the
22 commissioner's representative must be made in writing, must
23 contain a summary of the nature and basis of the decision and
24 must describe the rehabilitation facility's appeal rights under
25 subpart 4.

26 Subp. 4. **Contested case appeal.** If a rehabilitation
27 facility has first informally discussed the appeal as provided
28 in subpart 3 and has not been completely satisfied, the
29 rehabilitation facility may request in writing a contested case
30 hearing before an administrative law judge as provided in
31 Minnesota Statutes, sections 14.57 to 14.62. The written
32 request for a contested case hearing must be received by the
33 Division of Rehabilitation Services no more than 15 days after
34 the date when the rehabilitation facility received written
35 notice of the decision of the commissioner's representative
36 under subpart 3. Within 15 days from the date the Division of

1 Rehabilitation Services receives the rehabilitation facility's
2 request for a contested case hearing, the Division of
3 Rehabilitation Services must request the Office of
4 Administrative Hearings to schedule a hearing. The contested
5 case hearing will be initiated and conducted according to parts
6 1400.5100 to 1400.8500.

7 Subp. 5. **Proposal for decision.** When an initial decision
8 is rendered, the administrative law judge will prepare a
9 proposal for decision that will be recommended for the
10 commissioner's adoption.

11 Subp. 6. **Decision and order.** The commissioner must notify
12 the ~~appellant~~ rehabilitation facility of a final decision as
13 provided in Minnesota Statutes, section 14.62.

14 Subp. 7. **Legal representation.** Any party may be
15 represented by legal counsel at any step of the appeals process.

16 REPEALER. Minnesota Rules, parts 3300.2050, subparts 3, 19, 22,
17 22a, ~~277-337~~ and 34; 3300.2250, subpart 4; 3300.2350, subpart 4;
18 3300.2450, subpart 1; and 3300.2550, subpart 5, are
19 repealed effective October 1, 1994.

20

21 **EFFECTIVE DATE.** These rules are effective October 1, 1994.