

CHAPTER 3300
DEPARTMENT OF ECONOMIC SECURITY
TRAINING; COMMUNITY SUPPORT SERVICES

3300 2005	DEFINITIONS	3300 2035	ALLOCATION OF EXTENDED EMPLOYMENT PROGRAM FUNDS
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3300.1950 [Repealed, 22 SR 2294]

3300.2005 DEFINITIONS.

Subpart 1 **Scope.** When used in parts 3300 2005 to 3300.2055, the terms defined in this part have the meanings given them

Subp 2 **Accreditation.** "Accreditation" means accreditation by The Rehabilitation Accreditation Commission . CARF (CARF).

Subp. 3 **Advocacy organization.** "Advocacy organization" means a public or private nonprofit organization that has a mission statement defining its advocacy for persons with disabilities and does not receive funding for direct employment services to clients

Subp 4. **Annual survey.** "Annual survey" means the yearly survey of department staff, extended employment program providers, consumer and advocacy organizations, organizations representing cultural and racial minorities, and county social service agencies to determine the need for center-based employment, community employment, and supported employment

Subp 5 **Appropriate modes of communication.** "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open- and closed-captioned videos, specialized telecommunications services and audio recordings, Braille and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials

Subp 6 **Center-based employment.** "Center-based employment" means employment which provides paid work on the premises of an extended employment provider and training services or other services necessary for employment on or off the premises of an extended employment provider to persons who, because of the nature and severity of their disabilities, need intensive ongoing employment support services funded by the state unit in order to work

Subp 6a. **Center-based fund.** "Center-based fund" means the extended employment program fund which pays for the center-based employment subprogram

Subp 7 **Certification.** "Certification" means the process used by the department to ensure that extended employment program providers meet the minimum state standards in part 3300 2010.

Subp 8 **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Economic Security

Subp 9 **Competitive employment.** "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

Subp 10 **Community employment.** "Community employment" is paid work in the community requiring intensive ongoing employment support services that does not meet the definition of supported employment only because the worker is paid less than minimum wage or the employment does not meet the criteria of an integrated setting, or the worker is

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compensated at or above the minimum wage but below the customary wage paid by the employer for the same or similar work performed by individuals without a disability

Subp 10a **Community support fund.** "Community support fund" means the extended employment program fund which pays for the community employment subprogram and supported employment subprogram

Subp 11 **Consumer Price Index or CPI.** "Consumer Price Index" or "CPI" means the index of prices of goods and services from the United States Department of Commerce published on a monthly basis and available from the Minnesota Department of Economic Security.

Subp 12 **Day training and habilitation program or DTH.** "Day training and habilitation program" or "DTH" means a program of services as defined in Minnesota Statutes, section 252.41, subdivision 3

Subp 13 **Department.** "Department" means the Minnesota Department of Economic Security

Subp 14 **Expanded program.** "Expanded program" means an expansion of an existing provider's capacity to provide community employment or supported employment to persons with mental illness, traumatic brain injury, or the most severe disabilities, to persons from racial or ethnic minorities, to other unserved or underserved populations, and to persons living in geographic regions of Minnesota unserved or underserved by the extended employment program

Subp 15 **Extended employment program or program.** "Extended employment program" or "program" means an employment program which provides the ongoing employment support services necessary to maintain and advance the employment of individuals with severe disabilities by providing work in center-based employment, community employment, or supported employment subprograms. Work in extended employment should encompass the broad range of employment choices available to all individuals and promote an individual's self-sufficiency and financial independence

Subp 16 **Extended employment provider or provider.** "Extended employment provider" or "provider" means a rehabilitation facility as defined in subpart 34 and certified by the commissioner under part 3300.2010 to provide center-based, community, or supported employment

Subp 17 **Extended employment support plan.** "Extended employment support plan" means the individual service plan developed with the provider, by the worker, based on informed choice, with assistance from the worker's interdisciplinary team if desired by the worker

Subp 18 **Extended employment worker or worker.** "Extended employment worker" or "worker" means an individual with a most severe disability as defined in subpart 22 that results in serious limitations in three or more functional areas as defined in subpart 20 that affect employment, who requires and receives ongoing employment support services as defined in subpart 31 over an extended period of time to maintain and advance in employment, and who is reported to the department by the provider during the contract period. Reference to extended employment worker always includes the worker's legal representative

Subp 19 **Fundamental personnel benefits.** "Fundamental personnel benefits" means personnel benefits provided by an extended employment provider to workers in center-based employment and to workers in supported employment and community employment when the provider is the payroll agent. Fundamental personnel benefits include vacation, sick leave, holidays, and other mandated state and federal benefits. Specific benefit requirements are identified in part 3300.2015, subpart 4

Subp 20 **Functional area.** "Functional area" means communication, interpersonal skills, mobility, self-care, self-direction, work skills, or work tolerance. For the purposes of parts 3300.2005 to 3300.2055

A "Communication" means the ability to effectively give and receive information through spoken words or concepts, such as writing, speaking, and listening, or other means of communicating such as sign language, mime, gesture, or other adaptive methods

B “Interpersonal skills” means the ability to establish and maintain personal, family, and community relationships as it affects, or is likely to affect, job performance and security

C “Mobility” means the physical and psychological ability to move about from place to place inside and outside the home, including travel to and from usual destinations in the community for activities of daily living, training, or work

D “Self-care” means the skills needed to manage self or living environment, such as eating, toileting, grooming, dressing, money management, and management of special health or safety needs, including medication management, as they affect an individual’s ability to participate in training or work-related activities

E “Self-direction” means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to self-care, socialization, recreation, and working independently

F “Work skills” means

- (1) the ability to do specific tasks required to carry out job functions, and
- (2) the capacity to benefit from training in how to perform tasks required to carry out job functions

G “Work tolerance” means the capacity to effectively and efficiently perform jobs requiring various levels of physical demands, psychological demands, or both

Subp 21 **Grievance.** “Grievance” means a claim or complaint brought to an extended employment provider by a worker in the extended employment program or a representative of the worker involving dissatisfaction with the worker’s extended employment program over an issue in which the extended employment program provider has control. A worker who uses the grievance procedure does not give up the right to use a worker appeal as defined in subpart 38

Subp 22 **Individual with a most severe disability.** “Individual with a most severe disability” means an individual

A. who has a severe physical or mental impairment that results in serious limitations to employment in three or more functional areas,

B. whose employment can be expected to require ongoing employment support services over an extended period of time, and

C. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation

Subp 23 **Informed choice.** “Informed choice” means a voluntary decision made by a prospective or current worker or that person’s legal representative, after becoming familiar with worker rights and with alternative service options, and having been provided sufficient relevant written and verbal information at an appropriate comprehension level and in a manner consistent with the appropriate mode of communication and primary language used by the prospective or current worker or that person’s legal representative

Subp 24 **Informed consent.** “Informed consent” means the written agreement with the worker’s extended employment support plan, or an agreement as documented in the worker’s case file, by a legally competent worker or a worker’s legal representative who is making decisions voluntarily and without coercion, and has knowledge to make informed choices

Subp 25 **Integrated setting.** “Integrated setting,” with respect to an employment outcome, means a setting typically found in the community in which an individual with the most severe disabilities interacts with nondisabled individuals, other than nondisabled individuals who are providing services to that individual, to the same extent that nondisabled individuals in comparable positions interact with other persons

Subp 26 **Interdisciplinary team.** “Interdisciplinary team” means the worker, the worker’s legal representative, service professionals, and other individuals chosen by the worker or the worker’s legal representative to develop, implement, and assess the worker’s extended employment support plan

Subp 27 **Legal representative.** “Legal representative” means an individual who is legally authorized to make informed choices on a worker’s behalf. A legal representative may be one of the following individuals: the parent of a minor who has not been emancipated, a court-appointed guardian or conservator of a worker who is 18 years of age or older, in areas where legally authorized to make decisions, a guardian ad litem or special guardian or conservator, in areas where legally authorized to make decisions, legal counsel if so specified by the worker, or other legally authorized individual

Subp. 28 **Natural supports.** “Natural supports” means ongoing employment support services provided under an extended employment support plan by individuals who are agents of the worker’s employer. Community employment or supported employment using a natural supports approach is the process of a provider helping an employer to expand its capacity for training, supervising, and supporting one or more workers with the most severe disabilities. This definition involves the direct hire of a worker in an individual job, the location of which is not isolated by disability

Subp 29 **New program.** “New program” means an extended employment provider funded by the department under part 3300.2030 that meets the certification requirements in part 3300.2010 and that was not funded in the previous state fiscal year

Subp 30 **Nonexempt.** “Nonexempt” means subject to the provisions of the Fair Labor Standards Act as set forth in United States Code, title 29, as amended

Subp 31 **Ongoing employment support services.** “Ongoing employment support services” means any of the following services identified in the worker’s extended employment support plan as related to a worker’s limitations in functional areas as defined in subpart 20 and that are necessary to maintain or advance the worker’s employment:

- A facilitation of natural supports at the work site,
- B rehabilitation technology, job redesign, or environmental adaptations,
- C disability awareness training for the worker, or the worker’s employer, supervisor, or coworkers, and other services to increase the worker’s inclusion at the worksite,
- D job skill training at the work site,
- E regular observation or supervision of the worker,
- F behavior management,
- G coordination of support services;
- H job-related safety training,
- I job-related self-advocacy skills training to advance employment,
- J training in independent living skills, such as money management, grooming and personal care, social skills, orientation and mobility, and using public transportation or drivers’ training,
- K communication skills training such as sign language training, Braille, speech reading, and the use of communication devices or other adaptive methods for the worker, or the worker’s employer, supervisor, or coworkers,
- L follow-up services such as regular contact with the worker’s employer, supervisor, or coworkers, the worker’s parents, family members, advocates, or legal representatives of the worker, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement,
- M training in job seeking skills,
- N career planning, job development, or job placement to advance in employment,
- O transitional employment services, and
- P any other service that is similar to the services in items A to O, that is identified in the worker’s extended employment support plan, and that is needed to maintain or advance the employment of a worker in the extended employment program

Subp 32 **Paid work.** “Paid work” means employment of the person served that results in the production of products or provision of services

Subp 32a **Primary language.** “Primary language,” with reference to an individual with limited English proficiency, means the language normally used by that individual

Subp 33 **Qualified health care professional.** “Qualified health care professional” means a professional holding licensure to diagnose one or more of the disabilities identified in subpart 22

Subp 34. **Rehabilitation facility or facility.** “Rehabilitation facility” or “facility” means an entity as defined in Minnesota Statutes, section 268A 01, subdivision 6, including an entity that meets the definition of community rehabilitation program under the federal Rehabilitation Act, but that has not been certified under part 3300 2010 as an extended employment provider

Subp 35 **Supported employment.** “Supported employment” means competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of the nature and severity of their disabilities, need intensive ongoing employment support services from the designated state unit and extended services after transition in order to perform this work, or transitional employment for individuals with the most severe disabilities due to mental illness

Subp 36 **Transitional employment.** “Transitional employment” means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved

Subp 37 **Work hours.** “Work hours” means the hours for which a worker performs paid work, including hours of paid holidays, paid sick, paid vacation, and other paid leaves A work hour is the basic funding unit for allocating extended employment program funds

Subp 38 **Worker appeal.** “Worker appeal” means an independent due process procedure available to a current or prospective worker or a worker’s legal representative through federal or state statutes, case law, or rules

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A 15*

History: *22 SR 2294*

3300.2010 STATE CERTIFICATION.

Subpart 1 **Scope.** This part governs the operation of any extended employment provider engaged in, or rehabilitation facility seeking to engage in, the programs listed in part 3300 2005, subpart 15 Extended employment program certification issued under these certification procedures does not replace or modify any certificates issued by the United States Department of Labor or the Minnesota Department of Labor and Industry for purposes of subminimum wage payments

Subp 2 **Purpose.** The purpose of certification is to ensure that all providers meet the department’s minimum requirements for extended employment program funding Providers must be certified by the commissioner Program certification as evidenced by a valid provider certificate is required before the commissioner may provide funding for an extended employment program pursuant to Minnesota Statutes, section 268A 15

Subp 3 **Certification procedure.** A rehabilitation facility seeking a certification as a provider, including a provisional certification, must complete an official application form available from the department When a rehabilitation facility has been found in compliance with all certification requirements, a single provider certificate will be issued to a provider The certificate will specify the type and location of all approved programs Provider certification shall be reviewed and reissued, as appropriate, on a yearly basis

Subp 4 **Requirements for certification.** The commissioner shall certify rehabilitation facilities that meet all of the following requirements as eligible extended employment providers

A To be certified as a provider of center-based employment, an organization must achieve and maintain accreditation in the program standards governing center-based employment. To be certified as a provider of community and supported employment, an organi-

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zation must achieve and maintain accreditation in the program standards governing community and supported employment. The provider must notify the department of the upcoming date of each CARF survey, and provide standing written permission to CARF to allow release to the department of the results of the accreditation process and of site surveys, resurveys, supplemental surveys, reviews, and return visits. The provider must maintain compliance each year with the following provisions of the 1997 CARF Standards Manual and Interpretive Guidelines for Employment and Community Support Services, or with comparable sections in subsequent CARF manuals: Section 1, Promoting Organizational Quality, Section 2, Promoting Individual Service Quality, and Section 3, Organizational Employment Services and Community Employment Services. The provider must make its worker records and performance data available to the department for spot checks.

B Providers must provide fundamental personnel benefits, as described in part 3300 2015, subpart 4, to workers in center-based employment and to workers in community and supported employment when the provider is the payroll agent.

C Providers shall have written grievance procedures for workers in center-based, community, and supported employment. Grievances may be appealed to the department for review. The department shall complete its review of a grievance that has been appealed to the department within one month from the date the appeal request is received. The grievance procedure for workers must include, as a final step, binding arbitration as defined in Minnesota Statutes, section 268A 07, subdivision 2. The following must be subject to the grievance procedure:

(1) working conditions in center-based, community, and supported employment sites,

(2) the worker's extended employment support plan,

(3) the worker's access to employment in the community, and

(4) the quality and effectiveness of the worker's ongoing employment support services.

D The provider must comply with the requirements to provide workers with the information on program planning and service delivery in part 3300 2025, subpart 7, in the worker's primary language using appropriate modes of communication.

E The provider must provide the worker with the extended employment support plan in part 3300 2025, subpart 4, in the worker's primary language using appropriate modes of communication.

F The governing body of the provider must comply with Minnesota Statutes, section 268A 08.

G Members of the governing board and management staff of providers shall be provided a minimum of eight hours of continuing education and training each year over a three-year cycle concurrent with the provider's three-year accreditation cycle with CARF. Members of the governing board and management staff of extended employment provider shall complete training in each of the three subject areas listed in subitems (1) to (3) during the course of the three-year training cycle. At a minimum, two-thirds of the members of the governing board and management staff shall complete this training. The provision of this training shall be documented in the record of meetings of the provider's board of directors. Subjects for continuing education and training include, but are not limited to, the following:

(1) legal mandates affecting the provider's programs, such as the federal Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act, and the extended employment program statutes and rules,

(2) practices to improve outcomes and increase the availability of extended employment services to persons with the most severe disabilities, and

(3) understanding the programmatic and ethical responsibilities of nonprofit organizations to the communities they serve.

H In addition to the continuing education requirement in item G, the governing board of providers must provide training for all members on the fiduciary responsibilities of the directors of nonprofit organizations. Training on fiduciary responsibilities shall be provided to new board members within the first year of their term. In addition, members of the board of directors must receive copies of the provider's financial audits and review all man-

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agement letters that accompany the financial audit. The record of board meetings shall document the provision of training on fiduciary responsibilities and the receipt and review of the provider's financial audit and management letter.

I The provider must comply with United States Code, title 42, sections 12101, et seq., of the Americans with Disabilities Act of 1990.

Subp 5 Provisional certification. The commissioner may issue a provisional certification to new providers or to existing providers for expanded programs for a specified period of time, not to exceed 18 months. In order to obtain a provisional certificate, all new or expanded extended employment programs covered by the certificate must be in compliance with all requirements for certification except the requirement for accreditation by CARF. However, if the provider is not accredited by CARF, the provider must demonstrate a reasonable likelihood that the provider will meet the requirements for accreditation by CARF and will receive such accreditation within 18 months. If at the end of the 18-month period, the provider has not been approved for accreditation by CARF, provisional certification will be terminated.

Subp 6 Probationary certification status. The commissioner shall place on probationary certification status any provider that has previously been certified where the provider no longer meets all of the certification requirements, is not being operated in compliance with the rule, or is under investigation by a law enforcement agency. Probationary certification status permits a noncomplying provider to continue to receive state funding while the plan for compliance is implemented. To qualify for probationary certification status, the provider must submit a written plan which has been approved by the commissioner and which will bring the program into compliance with the certification requirements or other requirements of the rule within a reasonable time not to exceed 12 months.

Subp 7 Extension of certification. The commissioner may grant an extension if the commissioner finds that a provider, through no fault of its own, no longer completely meets certification requirements for full or provisional certification because

A a natural disaster such as a tornado or a flood, or a material change in circumstances such as a labor strike or the loss of a building lease, has adversely affected or completely halted operations, or

B convincing evidence is submitted showing that CARF cannot schedule a timely review.

A provider must request an extension in writing and state the reasons for the request. The extension may not exceed one year and no consecutive extensions of a certificate may be granted. A request for an extension should be made before the certificate's expiration date.

Subp 8 Termination of certification. Certification for providers not complying with the requirements for certification will be terminated by the commissioner, and allocated state funds will be withdrawn as provided in part 3300.2052. Withdrawal of state funds is subject to the appeal provisions of part 3300.2055. Extended employment program certification may be terminated when

A a provider no longer meets the requirements for certification under subpart 4,

B a provider granted provisional certification does not meet the requirements for provisional certification under subpart 5, or

C a provider granted probationary certification does not fulfill the conditions of its plan for compliance under subpart 6.

Review of compliance with certification requirements must take place yearly to determine continuation of certification. Review for compliance may take place on occasions not related to the yearly redetermination of certification continuance. The department must give 30 days' notice of intent to remove or change certification except when there is imminent danger to the health or safety of workers or gross failure to comply with CARF or extended employment program rule requirements.

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A 15*

History: *22 SR 2294*

3300.2015 EXTENDED EMPLOYMENT PROGRAM ELIGIBILITY.

Subpart 1 **Scope.** This part governs the eligibility of workers in the extended employment program. Each worker reported to the extended employment program must conform to the criteria in this part. A person with a most severe disability is presumed capable of working in the extended employment program when provided with ongoing employment support services under an extended employment support plan.

Subp 2 **Extended employment program eligibility.** To be eligible for the extended employment program, an individual must be an extended employment program worker as defined in part 3300 2005, subpart 18.

Subp 3 **Social security (FICA).** Workers and their payroll agents shall contribute, via payroll taxes, to the federal Social Security program. Workers in supported employment who are self-employed must pay the FICA self-employment tax for social security benefits.

Subp 4 **Fundamental personnel benefits.** Workers in center-based, community, and supported employment when the provider is the payroll agent, shall receive the following fundamental personnel benefits:

A. vacation, sick leave, and holidays, provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency, at a minimum, workers will be entitled five days of paid vacation, five days of paid sick leave, and five paid holidays per calendar year, or

B. flexible paid leave, provided in lieu of vacation and sick leaves, that is provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency, at a minimum, workers will be entitled ten days of paid leave and five paid holidays per calendar year, and

C. other mandated state and federal benefits including, but not limited to

(1) United States Code, title 29, sections 2601 to 2635, the Family and Medical Leave Act of 1993, and Minnesota Statutes, sections 181 940 to 181 943, as amended,

(2) time off work to vote according to Minnesota Statutes, section 204C 04, as amended

(3) leave for jury duty as provided by United States Code, title 28, section 1875, and Minnesota Statutes, section 593 50, as amended, and

(4) military leave and reinstatement in employment as provided by United States Code, title 28, chapter 43, sections 2021 and 2024, and Minnesota Statutes, section 192 261, subdivision 6, as amended

Workers who are self-employed are exempt from this subpart.

Subp 5 **Comparable benefits.** At the time of placement in community employment or supported employment, the provider shall determine and document in accordance with part 3300 2025, subpart 9, item E, subitem (3), that the benefits for workers for whom the provider is not the payroll agent are comparable to the benefits provided by the employer to its workers without disabilities.

Subp 6 **Fair and equitable pay requirements.** Workers in supported employment shall be paid at a rate equal to or greater than the state or federal minimum wage, whichever is applicable. Workers in center-based and community employment may be paid at a rate equal to or greater than the state or federal minimum wage, whichever is appropriate, or at a lesser rate of pay according to a certificate issued under Code of Federal Regulations, title 29, sections 525 1 to 525 24, or other federal regulations providing for exemption from federal minimum wage requirements. A worker in extended employment who is self-employed must realize net income that is the equivalent or in excess of the hourly rate of pay required under the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, as amended, and the Federal Fair Labor Standards Act, United States Code, title 29, as amended, when the number of hours worked is compared with the income realized.

Subp 7 **Participants in day training and habilitation programs.** Participants in day training and habilitation programs funded under full-day per diem rates by the Department of Human Services are not eligible for extended employment program funding. Participants funded under part-day rates for day training and habilitation services may be reported in the community and supported employment subprograms of extended employment if the following criteria are met:

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A services provided during the hours reported to extended employment comply with the definition and requirements of parts 3300 2005 to 3300 2055,

B ongoing employment support services provided during the hours reported to the extended employment program are provided under an extended employment support plan, as described in part 3300 2025, subpart 4 or 6, and delivered by employees of a certified provider or by agents of the worker's employer in accordance with part 3300 2025, subpart 6, not the employees of a day activity center licensed by the Department of Human Services, and

C the participant's status as a DTH participant is reported to the extended employment program

Subp 8 Other exclusions from eligibility for extended employment program funding. Participants in employment-related programs funded through state, federal, or other sources are also excluded from eligibility for extended employment program funding when

A the funding source is obligated to pay for total program costs for participants, or

B the funding source prohibits concurrent funding of program participants receiving extended employment program services

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A 15*

History: *22 SR 2294*

3300.2020 REPORTING REQUIREMENTS.

Subpart 1 Scope. This part governs the data on workers required by the department

Subp 2 Required data elements. The following data shall be submitted to the department on each worker reported to the extended employment program:

A legal name,

B legal representative, if applicable,

C social security number,

D address,

E disability and categories of functional limitations,

F hours and wages by subprogram, by payroll agent, and by payroll period or month;

G referral source,

H date of birth,

I age at onset of disability,

J gender,

K ethnicity,

L marital status,

M residential status,

N provider's site location,

O job type,

P subprogram center-based employment, community employment, or supported employment,

Q date and reason left provider's program,

R county of financial responsibility,

S years of education,

T special education participation,

U SSI or SSDI recipient status, and

V DTH program status.

Subp 3 Data elements required for payment. Of the data elements listed in subpart 2, payment to providers is based on provider reporting of items A, C, F, and P. When a worker is reported for payment under part 3300 2025, subpart 7, subpart 2, item V, must also be re-

ported to the department Data elements required for payment must be reported in the format prescribed by the department .

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A 15*

History: *22 SR 2294*

3300.2025 PROGRAM PLANNING, SERVICE DELIVERY, AND CASE RECORDS.

Subpart 1 **Scope.** This part governs program planning, service delivery, and case records for the extended employment program

Subp 2 **Standards for program planning, service delivery, and case records.** Standards for program planning, service delivery, and case records for the extended employment program are contained in The 1997 Standards Manual and Interpretive Guidelines for Employment and Community Support Service published by CARF, which are incorporated by reference This publication is updated on a yearly basis and the standards applicable to any state fiscal year for which a provider is funded will be found in the most recent edition of this publication available at the beginning of the state fiscal year Copies are available at the Educational Resource Center, 501 Capitol Square, 550 Cedar Street, Saint Paul, Minnesota 55101 The Educational Resource Center participates in the Mmitex/PALS Interlibrary Loan Consortium

Subp 3 **Additional standards for program planning, service delivery, and case records.** In addition to the standards in subpart 2, providers shall meet the requirements in subparts 4 to 6

Subp 4 **Extended employment support plans.** All workers in center-based, community, and supported employment shall have an extended employment support plan The plan, to be reviewed at yearly intervals, or as required under subpart 8, or if changes in the worker's situation require more frequent reviews, describes the worker's employment goals and the ongoing employment support services to be provided to reach the worker's goal The plan shall include the following

- A the worker's goals and objectives, including
 - (1) employment goals and goals for career advancement,
 - (2) preferences for employment setting, integration, range or level of pay, work hours, and benefits, and
 - (3) when a goal in center-based employment is selected, the plan shall state the reasons for this choice,
- B the timeline for reaching the worker's employment goals and objectives,
- C the worker's vocational strengths, interests and preferences, work skills, and general health status,
- D the worker's functional areas affecting employment that require the provision of ongoing employment support services,
- E an assessment identifying the ongoing employment support services a worker needs to work in the community,
- F the specific ongoing employment support services to be provided, including
 - (1) the relationship of the ongoing employment services to the worker's functional areas affecting employment,
 - (2) how the need for ongoing employment support services will be met with existing services or by a plan arranging for or developing these services,
 - (3) the strategies for providing ongoing employment support services including the consideration of assistive technology and natural supports,
 - (4) who will be providing the ongoing employment support services, and
 - (5) timelines for developing and providing ongoing employment support services and the estimated frequency of these services,
- G measures and procedures to assess the attainment of worker goals and objectives,
- H the names of the participants in the planning and preparation of the worker's extended employment support plan, and

I the signature of the worker designating informed consent

A copy of the plan and any revisions shall be promptly provided to the worker in the worker's primary language using appropriate modes of communication

Subp 5 **Minimum contact by provider.** The extended employment support plan will include assurances that the worker in community and supported employment will receive a minimum of two in-person contacts per month in the provision of planned ongoing employment support services, unless the ongoing employment support is provided through natural supports as described in subpart 6

Subp 6 **Reporting workers receiving natural supports to the extended employment program.** The ongoing employment support services for a worker must be identified in the worker's extended employment support plan and may be provided indirectly through an agent of the worker's employer when

A the worker is in an employer-paid integrated work site as defined in part 3300.2005, subparts 25 and 28,

B there is a written agreement with an employer that specifies

(1) the agent of the employer who will be involved in providing the worker's ongoing employment support services,

(2) the nature of the information, technical assistance, or other support services the provider provides to the agent of the employer,

(3) the specific ongoing employment support services that are provided to the worker by the agent of the employer, and

(4) assurances that the provider will, at a minimum, make two in-person contacts with the agent of the employer, or the worker, or a combination of the employer and worker each month to.

(a) provide information, technical assistance, or other ongoing employment support services, and

(b) evaluate the need for and effectiveness of the ongoing employment services the agent of the employer provides to the worker

Subp 7 **Worker information on program planning and service delivery.**

A The department shall provide information, in the worker's primary language using appropriate modes of communication, on program planning and service delivery in extended employment. This information will be ready for distribution to providers by January 1, 1999, and shall include

(1) individual service planning process provided in the CARF standards, including

(a) the content of a typical plan as identified in the CARF interpretive guidelines,

(b) the ongoing employment support services available in extended employment,

(c) the role and rights of the worker and the worker's legal representative in the development of an extended employment support plan,

(d) fundamental personnel benefits,

(e) examples of persons from social service agencies and others in the community who can be involved in planning services, and

(f) the requirement to assess the worker's potential for working in the community on a semiannual basis and identify in writing the reasons a worker is not working in the community,

(2) worker rights to reasonable accommodation in accessing ongoing employment support services in extended employment,

(3) worker rights to review, appeal, and grievance procedures,

(4) the summary level performance information available on provider outcomes,

(5) worker rights under the federal Rehabilitation Act of 1973, as amended, and

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(6) worker rights under the Americans with Disabilities Act

B Providers shall distribute information on the extended employment program planning and service delivery to the worker and the worker's legal representative on a yearly basis. This information shall be made available to workers using appropriate modes of communication in the primary language of the worker and the worker's legal representative. This information shall include

(1) a description of the provider's center-based, community, and supported employment programs, including

(a) the right to have all program and service information provided in an accessible manner, and the right to reasonable accommodation for accessing the provider's services and activities,

(b) the names of staff persons responsible for key aspects of the worker's center-based, community, or supported employment program,

(c) a statement describing the rights to review records, and descriptions of the processes of grievance and appeal, and examples of the situations in which either or both can be used, and

(d) a summary of the benefits available to the worker, and

(2) the information on program planning and service delivery identified in item A.

Subp 8 **Annual reassessment of extended employment support plans.** Extended employment support plan review with interdisciplinary team involvement, unless waived by the worker, shall occur at least yearly. A plan with a goal of community or supported employment that has not been achieved or maintained shall be reviewed every six months. A written report of this review or an updated extended employment support plan shall summarize this review and shall be maintained in the case file. The record of the reassessment shall include the names of the participants in the reassessment of the worker's extended employment support plan and the signature of the worker designating informed consent. A copy of the reassessment shall be promptly provided to the worker in the worker's primary language using appropriate modes of communication.

This reassessment must address

A the worker's satisfaction with employment and ongoing employment support services,

B the effectiveness of the worker's extended employment support plan in achieving the worker's vocational objective,

C. the worker's continuing need for ongoing employment support services to maintain or advance employment, and

D the worker's interest in changing or advancing in employment

Subp 9 **Case records.** A confidential record shall be maintained for each person served in the extended employment program. The case record of the worker communicates appropriate information in a form that is complete, clear, and current. The case record shall be retained for a minimum of three years after the completion of the audit process for the state fiscal year when the worker was last a reported worker in the extended employment program. The provider shall maintain written documentation of the worker's extended employment services that may include electronic documentation and file systems.

Case records must include the information listed in items A to H. Case records of workers in community or supported employment shall also include the information in either item I or J. The items are

A personal identification data, including social security number, legal status, date of birth, residential status and address, and, if applicable, name of guardian or conservator;

B eligibility for extended employment, using the criteria in part 3300.2015, subpart 2, determined by either

(1) the provider and documented in the provider's intake reports, or

(2) the rehabilitation services branch counselor and documented in the rehabilitation services branch eligibility information and referral reports given to the provider,

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C written diagnosis of a severe disability by a qualified health care professional who is not employed by the rehabilitation facility, and referral source reports, unless eligibility in item B is determined by a counselor from the rehabilitation service branch of the department,

D the worker's extended employment support plan,

E employment data, including employers, supervisors, job duties, rates of pay, benefits, start dates, termination dates, and evidence that the provider maintains compliance with certification requirements by providing to the worker the following

(1) fundamental personnel benefits as described in part 3300 2015, subpart 4,

(2) contribution to the worker's social security account as described in part 3300 2015, subpart 3,

(3) comparable benefits as described in part 3300 2015, subpart 5, and

(4) fair and equitable payment of wages as described in part 3300 2015, subpart 6,

F the reassessment of the worker's extended employment support plan,

G documents of the payroll agents which verify the hours of paid work reported to the extended employment program for the worker,

H program summaries and termination or discharge reports,

I the ongoing employment support services provided to supported employees by the provider that includes, at a minimum, the date and service record of two in-person contacts per month with the worker, and

J the written natural supports agreement between the provider and the agent of the supported worker's employer including, at a minimum, a date and service record of two in-person contacts with the agent of the employer, or the worker as described in subpart 6

Statutory Authority: *MS s 268 021, 268 0122; 268A 03, 268A 15*

History: *22 SR 2294*

3300.2030 NEW OR EXPANDED PROGRAMS.

Subpart 1 **Funding for new or expanded programs.** The department shall provide notice of the availability of funding for new or expanded programs through a request for proposals published in the State Register. The department shall make copies of the request for proposals available to a city, town, county, nonprofit corporation, state regional center, or combination thereof. Applicant organizations shall submit an application for a new extended employment program or for expansion of an existing extended employment program. The commissioner shall use the following criteria in reviewing applications for a new or expanded program.

A the need for the new or expanded program,

B the relationship of the new or expanded individual program to any current programs in terms of identified needs,

C the performance of current programs,

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

E. efforts to foster innovation and promote state-of-the-art best practices in supported employment consistent with Minnesota Statutes, section 268A 15, subdivision 6, and

F the availability or funding for new or expanded programs

Subp. 2 **Department review of proposals.** The department shall base its decisions on proposals upon objective criteria and a review process that includes representatives of affected county social service agencies, the local vocational rehabilitation office, providers outside the affected service area, representation from racial and ethnic minorities, and advocacy organizations as defined in part 3300 2005, subpart 3

Subp 3 **Exception to contract procedures and adjustment of state grant funds for new or expanded programs.** New or expanded programs under this part may be exempt

from the contracting procedures in part 3300 2035, subpart 4, item A, and the adjustment of state grant funds in part 3300 2035, subpart 8, for up to three years

Statutory Authority: *MS s 268 021, 268 0122; 268A 03; 268A 15*

History: *22 SR 2294*

3300.2035 ALLOCATION OF EXTENDED EMPLOYMENT PROGRAM FUNDS.

Subpart 1 Unit of distribution of extended employment program funds. The unit of distribution of extended employment program funding is the payment for one work hour performed by an eligible worker and reported to the department in the extended employment program

Subp 2 Notice of availability of funding. The department will publish a notice of availability of state grant funds in the State Register for each state fiscal year. The notice will include a description of the funds available, the application procedure for these funds, a statement of the funding criteria in parts 3300 2005 to 3300 2055, and the timetable for the allocation of state grant funds

Subp 3 Application and guidelines for funding. The department will make the form of application and guidelines for extended employment program funding available to all interested parties upon request. The department's guidelines shall include information on priorities for program funding, including target populations or geographic distribution of services, that will be addressed in the allocation of state grant funds. Certified providers must apply for grant funds on the form specified by the department.

Subp 4. Procedures for contracts with providers for center-based, community, and supported employment. Each fiscal year, the department will enter into annual contracts with providers for a specific allocation from the center-based fund or the community support fund according to items A to C

A A provider's contract starting point each year will be determined by the previous year's contract and the previous year's reported contract production, as follows: (1) when the provider's reported contract production in the previous year is equal to or greater than 95 percent of the contract, the provider's starting point shall be the previous year's contract, or (2) when the provider's reported contract production in the previous year is less than 95 percent of the contract, the provider's starting point will be the reported contract production plus five percent of the previous contract

(1) The starting point for contracts to providers for state fiscal year 1999 shall be calculated using the following method:

(a) for the community support fund, the lesser of each provider's total contracted or reported hours of work and service in supported employment as defined under the prior extended employment rule in part 3300 2050, subpart 3 1a, in state fiscal year 1998 shall be multiplied by \$2.04 to determine the provider's contract starting point from the community support fund for state fiscal year 1999, and

(b) for the center-based fund, the lesser of each provider's total contracted or reported hours of work and service in center-based employment in state fiscal year 1998 shall be multiplied by \$1.13 to determine the provider's contract starting point from the center-based fund for state fiscal year 1999

B Two and one-half percent of a provider's contracted allocation from either the center-based fund or the community support fund can be earned by reported production that exceeds the provider's contracted allocation in the other fund. This reported contract production cannot be used to adjust the contract starting point under item A. This provision cannot be exercised in the subsequent fiscal year.

C The redistribution of allocation from underproduction to providers is as provided in subitems (1) to (3)

(1) Where a provider's underproduction in the center-based fund or the community support fund is over five percent of the contracted level of allocation, the allocation in excess of five percent shall be redistributed to other providers, unless a variance for economic hardship has been approved under part 3300.2040

(2) Allocation from underproduction shall be redistributed to other providers on the basis of guidelines established by the department for that funding year. The guidelines

shall consider unmet needs of target populations and the geographic distribution of center-based employment, community employment, and supported employment

(3) When the allocation to be redistributed under department guidelines is at least one percent of the total allocation for either the center-based fund or the community support fund, the department shall issue a request for proposals under part 3300 2030, subparts 1 and 2. Alternatively, the allocation to be redistributed may, at the commissioner's discretion, be used to adjust the statewide uniform rates under subpart 6, item B.

Subp 5. Annual survey. The department shall conduct an annual survey of extended employment program needs for center-based, community, and supported employment, including the geographic distribution of these services. The results of this survey shall be considered in the department's application and guidelines for funding in subpart 3, and in the department's issuance of requests for proposals under parts 3300 2030, subparts 1 and 2, and 3300 2052, subpart 1, item C. This information shall be available to public officials, workers, providers, advocacy organizations, and social service agencies.

Subp 6. Statewide uniform rates. Effective July 1, 1998, the allocation and distribution of extended employment program funds to center-based employment, community employment, and supported employment will be based on the work hour rates in items A and B.

A. There shall be three statewide uniform rates. The rate for a work hour in supported employment shall be \$2.40 per hour. The rate for a work hour in community employment shall be \$2.13 per hour. The rate for a work hour in center-based employment shall be \$1.19 per hour.

B. The statewide uniform work hour rates for center-based employment, community employment, and supported employment may, at the commissioner's discretion, be adjusted to account for changes in the Consumer Price Index (CPI).

Subp 7. Statewide allocation of extended employment funds to center-based employment fund and community support fund. For each state fiscal year, the department shall determine the statewide allocation for the center-based fund and the community support fund according to items A to D.

A. From the state appropriation, the department shall reserve for the community support fund an amount of dollars equal to the sum of the allocations for the starting point for all providers with contracts and making application for funding.

B. From the state appropriation, the department shall reserve from the center-based fund an amount of dollars equal to (1) the sum of the allocations for the starting point for all providers with contracts and making application, less (2) any allocation withheld resulting from the request for proposals process, multiplied by the statewide uniform rate for center-based employment. However, no future statewide allocation of extended employment funds to the center-based fund shall exceed \$4,279,000, the funding allocation for center-based employment in state fiscal year 1997.

C. Adjustments to the statewide allocation may be made based on shifts of dollars from the center-based fund to the community support fund as requested by providers. Shifts will be adjusted at the starting point for each provider requesting shifts.

D. The remainder of the state appropriation, after items A to C are completed, will be subject to distribution according to the department's application and guidelines for funding under subpart 3.

Subp 8. Adjustment of state grant funds allocated to providers.

A. The department must distribute state grant funds based on provider reporting of work hours provided to workers in center-based employment, community employment, and supported employment.

B. Beginning in state fiscal year 2000, provider contracts must also be adjusted for the wage level performance incentives in part 3300 2045.

C. Compliance audits of eligible work hours shall be performed and adjustments made to the allocation of state grant funds to providers after the close of the funding year as provided in subitems (1) and (2).

(1) After the close of each funding year, an audit of each provider must be conducted using the department's compliance audit standards according to generally accepted auditing standards as follows:

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(a) The audits must be performed by independent auditors at the expense of the providers

(b) The department must seek input from providers and independent auditors in the development of the compliance audit standards

(c) The department must review the compliance audit standards on an annual basis and seek the input of providers and independent auditors in the review of the standards. The department will make the standards available no later than 30 days prior to the end of each state fiscal year

(d) The extended employment program factors subject to the department's compliance audit must include hours and wages and evidence of ongoing employment support consistent with the worker's extended employment support plan

(e) Completed audits must be submitted to the department within 90 days from the close of the funding year. Audits submitted after the due date will not adjust allocations beyond the allocation earned by the reported work hours during the contract period

(2) Audit adjustments to provider allocations must be made as follows

(a) Within 45 days from the receipt of an accepted final audit report, the department shall make final audit adjustments to provider allocations

(b) Based on the results of the compliance audit, the department must seek repayment from providers for hours of employment in center-based employment, community employment, or supported employment that were not provided according to the provider's contract.

(c) The department's determination of the amount of repayment and the reasons for the repayment is subject to the appeal provisions of part 3300.2055

(d) The funds repaid by providers as a result of the final audit adjustments must be distributed as a wage level incentive under part 3300.2045

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A 15*

History: 22 SR 2294

3300.2040 CONSIDERATION OF ECONOMIC CONDITIONS.

The department must provide a variance to the contract starting point in part 3300.2035, subpart 4, for a provider that establishes that it was unable to produce the number of hours required by the provider's contract during the previous contract period due to circumstances beyond the control of the provider's management

A Circumstances beyond the control of the provider's management include conditions such as fire or natural disaster, the cessation of a major contract, the movement of a major employer out of the area, or a local unemployment level substantially higher than the statewide average

B A provider seeking a variance to the contract starting point must request this variance in the annual application for state grant funds in part 3300.2035. The request for variance to the contract starting point must state the reasons for the request and the plan for corrective action to meet contracted hours during the next contract period

C A provider who requests and is granted a variance to the contract starting point will retain the work hour level from the previous contract period. However, the underproduction of contracted hours is subject to repayment in the adjustment of the allocated state grant funds in part 3300.2035, subpart 8

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A.15*

History: 22 SR 2294

3300.2045 WAGE LEVEL INCENTIVE.

All funds not paid out to providers as a result of underproduction and all funds repaid to the department by providers as the result of final audit adjustments must be used as a performance fund for extended employment providers whose workers' wages meet or exceed the federal minimum wage

The incentive fund must be distributed to each extended employment provider based on the proportionate share of hours of work where the statutory minimum or a higher wage was

paid The ratio is the provider's hours divided by the total hours meeting minimum wage reported by all extended employment providers

The incentives are calculated and paid separately for the center-based fund and the community support fund

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A.15*

History: 22 SR 2294

3300.2050 [Repealed, 22 SR 2294]

3300.2052 WITHDRAWAL OF ALLOCATED FUNDS.

Subpart 1 **Criteria for withdrawal of allocated state funds.** The commissioner may withdraw allocated state funds from a provider when

A an extended employment program is not being administered according to the extended employment program rule,

B program certification has been terminated as provided in part 3300 2010, subpart 8, or

C a review of an existing provider's programs demonstrates a need for new or alternative services The commissioner may then withdraw funding from the existing extended employment provider and issue a request for proposals The commissioner shall consider the following factors in determining the need for new or alternative services

(1) the results of the department's annual survey or program evaluation indicates dissatisfaction with an existing provider's services,

(2) the existing provider has not complied with department requests to implement changes in ongoing employment support services to workers in the extended employment program,

(3) the local vocational rehabilitation office requests new or alternative extended employment program services, and

(4) a request from a county social service agency that the department issue a request for proposals for existing extended employment program funds, the issuance of a request for proposals for extended employment services by a county social services agency, or a change in the vendor for extended employment services by the county social services agency

Where there is a demonstrated need for new or alternative services, the department shall consult with the county social services agency and the local vocational rehabilitation office in developing the request for proposals and issue a request for proposals under part 3300 2030, subparts 1 and 2 The request for proposals shall identify the needs to be addressed by new or alternative services The department shall also notify the existing provider of the request for proposals and of the right of the existing provider to apply for funding under the request for proposals

Subp 2 **Notice of withdrawal.** Except where there is an imminent danger to the health or safety of workers, the commissioner must give written notice at least 45 days before allocated state funds may be withdrawn from a provider The notice must state the reasons for the withdrawal of funds If program certification is to be terminated in addition to the withdrawal of funds, the notice must also state the reasons for termination of certification

Subp 3 **Right of appeal.** A provider has the right to appeal the commissioner's withdrawal of allocated state funds The appeal procedure is provided for in part 3300 2055

Subp 4 **Reallocation.** When the withdrawn allocation to be redistributed is less than one percent of the total allocation for either the center-based fund or the community support fund, the reallocation shall take place under the department guidelines in part 3300 2035, subpart 3 When the reallocation to be redistributed is one percent or more of the total allocation in either the center-based fund or the community support fund, the withdrawn funds shall be reallocated by the commissioner through the request for proposals process in part 3300 2030, subparts 1 and 2 Withdawn funds may be reallocated by the commissioner on an interim basis for up to 120 days when that is necessary to continue the employment of

workers in the extended employment program until the request for proposals process in part 3300 2030, subparts 1 and 2, can be completed

Statutory Authority: *MS s 268 021, 268 0122, 268A.03, 268A 15*

History: 22 SR 2294

3300.2055 APPEAL PROCEDURE.

Subpart 1 **Scope.** The procedure in this part governs all appeals initiated by providers having a right of appeal under

A appeals of the department's withdrawal of allocated state funds from a provider in part 3300 2052, subpart 1, and

B the appeal of a decision of the department concerning the provider's allocation of state grant funds in part 3300 2035, including actions resulting from the department's monitoring of the extended employment program that affect the status of the provider's certification or the provider's funding under the extended employment program

Subp 2 **Notice of intent to appeal.** A provider appealing department decisions must provide a written notice of intent to appeal to the department. The written notice of intent to appeal must be received by the department within 30 days from the date that the provider received notice from the department of the action that the provider wishes to appeal. If the notice of intent to appeal is not received from the provider within the 30-day period, the decision of the department is final. The notice of intent to appeal must state the grounds for the appeal, including relevant facts and issues that could be addressed at a contested case hearing.

Subp. 3 **Informal review.** Within 30 days after the department receives a notice of intent to appeal, the commissioner or the commissioner's designee shall contact the provider and discuss the reasons for the appeal. The contact by the department's representative may be oral or written. Before the end of the 30-day period for informal review, the department's representative must make a written decision concerning the provider's appeal. The decision by the department's representative must state the department's position on the issue under appeal, the basis of that position, and the provider's right to request a contested case hearing under subpart 4.

Subp 4 **Contested case.** If the issue in the informal review as provided in subpart 3 has not been resolved, the provider may make a written request for a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14 57 to 14 62. The written request for a contested case hearing must be received by the department no more than 30 days after the date when the provider received written notice of the decision of the department's representative following the informal review in subpart 3. Within 15 days from the date the department receives a provider's request for a contested case hearing, the department must request the Office of Administrative Hearings to assign an administrative law judge to hear the appeal and schedule a hearing. The contested case hearing must be initiated and conducted according to parts 1400 5100 to 1400 8500.

Subp. 5 **Decision.** The decision of the administrative law judge will be recommended for the commissioner's adoption. The commissioner's decision on the issue under appeal is the final decision of the department.

Statutory Authority: *MS s 268 021, 268 0122, 268A 03, 268A.15*

History: 22 SR 2294

3300.2150 [Repealed, 22 SR 2294]

3300.2250 [Repealed, 22 SR 2294]

3300.2350 [Repealed, 22 SR 2294]

3300.2450 [Repealed, 22 SR 2294]

3300.2550 [Repealed, 22 SR 2294]

3300.2650 [Repealed, 22 SR 2294]

3300.2750 [Repealed, 22 SR 2294]

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3300.2850 [Repealed, 22 SR 2294]

3300.2950 [Repealed, 22 SR 2294]

3300.3050 [Repealed, 22 SR 2294]