

STATEMENT OF NEED AND REASONABLENESS

IN THE MATTER OF  
PROPOSED RULES RELATING TO  
VOCATIONAL REHABILITATION SERVICES,  
MINNESOTA RULES, PARTS 3300.5000 TO 3300.5060

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In the Matter of Proposed  
Rules Relating to Vocational  
Rehabilitation Services,  
Minnesota Rules, Parts 3300.5000  
to 3300.5060

Statement of Need  
and Reasonableness

## INTRODUCTION

These proposed rules are presented by the Department of Jobs and Training in accordance with Minnesota Statutes, sections 14.22 To 14.28 of the Administrative Procedures Act. These rules have been developed as authorized by Minnesota Statutes, section 268A.03(n), which permits the Commissioner to adopt rules governing programs the Commissioner administers under Minnesota Statutes, Chapter 268A.

## DISCUSSION

### Background and Need for Rule

Three principal factors led the Department of Jobs and Training, Division of Rehabilitation Services (DRS) to develop the rules we are proposing.

First, in late 1990 the Minnesota Court of Appeals ruled (in *Donald Jongquist v. Minnesota Division of Rehabilitation Services*) that before DRS may require a person to assume a loan for postsecondary training, DRS must first promulgate rules and criteria pursuant to the Minnesota Administrative Procedures Act (Minnesota Statutes 14.06). Shortly after an emergency rule was developed, the United States Department of Education, Rehabilitation Services Administration, issued a federal policy clarification prohibiting a state vocational rehabilitation (VR) agency from requiring a consumer to take out a student loan as a condition for receiving VR services. As a result, a new rule was needed to establish policies for when and how DRS funds postsecondary training and other services in support of such training for persons receiving VR services. The Court of Appeal's decision in the Jongquist decision also stated that DRS needed to develop rules governing the administration of all vocational rehabilitation funds, and DRS therefore decided that a permanent rule needed to deal with many more issues than just postsecondary training.

Second, in 1991 and 1992, it became clear to DRS that, in the process of amending and reauthorizing the federal Rehabilitation Act, Congress and the federal Rehabilitation Services Administration would revise the laws, regulations and federal policies concerning order of selection -- the priority system for

— serving consumers when not all persons who are eligible for vocational rehabilitation services can be served. A report to Congress by the General Accounting Office (GAO) indicated that state VR agencies and the federal Rehabilitation Administration needed to develop and implement policies for an order of selection. As a result of the GAO report and congressional hearings, the Rehabilitation Act amendments of 1992 strengthened the law's requirements for an order of selection: state agencies would have to demonstrate they could serve all eligible consumers who applied, or else establish an order of selection. The House of Representatives Committee report on the Rehabilitation Act amendments of 1992 (House Report 102-822, page 92) states:

" . . . it is vital that all States, , with appropriate participation by consumers and their representatives, develop and utilize an order of selection. The order of selection will greatly assist State vocational rehabilitation personnel in making the difficult decision of whom to serve in a fair and systematic manner when funds run short. An order of selection also gives individuals with disabilities and their advocates an opportunity for input and a clearer understanding, once the order is established, of their likelihood of being served."

Therefore, DRS determined it was necessary to address order of selection in a rule, in the event that DRS could not serve all eligible persons, in order to serve persons fairly and equitably.

Third, DRS considered the recommendations for policy clarification originating from counselors and other DRS staff, from the Client Assistance Project of the Legal Aid Society of Minneapolis, and from consumer groups; in addition, DRS considered issues raised in consumer appeals concerning VR service delivery. DRS determined that rules were needed to clarify or establish policies regarding a number of VR service issues, including consumer financial participation in the cost of services and the terms and conditions under which certain services are provided.

In 1992 DRS established a Focusing Services Phase I work group to recommend policies concerning these issues to DRS management. The work group met for a total of 14 days from January to August, 1992, utilizing a professionally-facilitated process of group consensus-building and decision-making. The group included rehabilitation counselors, first-line supervisors and managers from DRS, and a representative of the Client Assistance Project of the Legal Aid Society of Minneapolis. It also received assistance from a representative of the Minnesota Association of Financial Aid Administrators.

The Focusing Services Phase I group established a process of reviewing draft recommendations with DRS field staff, management staff, the Client Assistance Project, and the DRS Consumer Advisory Council on a regular basis. Before finalizing the policy recommendations, DRS held seven town meetings at locations throughout the state. At each meeting, the morning was set aside for the public to discuss the recommendations and provide written and oral feedback; DRS field staff discussed the recommendations and provided their feedback in the afternoon. Over 400 persons participated in the town meetings. All feedback was summarized and incorporated into the final recommendations that were approved by the DRS Consumer Advisory Council and management staff with minor changes.

In February, 1993, a second Focusing Services group, which included DRS staff, a representative of the Client Assistance Project, and increased representation from consumers, began meeting to clarify the basic policies developed in 1992, to develop modifications to the rules as they were drafted, and to develop procedures for implementing the rule. DRS received specific comments and recommendations from the Client Assistance Project regarding draft rule language, in addition to recommendations from the Focusing Services group. In July and August, 1993, seven more town meetings were held throughout the state to present the policies contained in these proposed rules, to inform interested parties of the process used in developing these proposed changes, and to solicit additional staff and public input before these proposed rules were published. The 1993 town meetings were attended by 149 members of the public and 160 members of the Division's staff.

#### Statutory and Regulatory Background

Under Minnesota Statutes 268A the commissioner of the Department of Jobs and Training is granted the power to administer the vocational rehabilitation program. Vocational rehabilitation services for most persons are provided by the Division of Rehabilitation Services. (Vocational rehabilitation services for persons who are blind are provided by State Services for Blind and Visually Handicapped Persons, a separate division of the Department of Jobs and Training, generally known as SSB.) Each year a state plan for vocational rehabilitation is developed by DRS, in accordance with Minnesota Statutes 268A(i), and in accordance with the federal Rehabilitation Act of 1973, as amended. Federal regulations, Title 34 of the Code of Federal Regulations, part 361, implement the Rehabilitation Act and govern the vocational rehabilitation program. The federal Department of Education's Rehabilitation Services Administration provides policy guidance to state vocational rehabilitation agencies, allocates federal funds to state agencies under the

Rehabilitation Act, and monitors the performance of the vocational rehabilitation program nationwide.

In 1992 the federal Rehabilitation Act was significantly amended. Although the federal regulations for the provision of vocational rehabilitation services have not yet been amended, all state vocational rehabilitation agencies must comply with the amended Rehabilitation Act; the state plan which takes effect October 1, 1993 incorporates the provisions of the amended Act.

#### Small Business Considerations in Rulemaking

The department has determined that these proposed rules do not affect small business as defined by Minnesota Statutes 14.115. The department acknowledges references to "business" or "small business" in the proposed rules, part 3300.5010, subpart 20; part 3300.5060, subpart 3, item C; and 3300.5060, subpart 11. These references are to vocational rehabilitation services provided under an individualized written rehabilitation program in order to assist an eligible consumer to establish a small business. The proposed rules do not establish compliance or reporting requirements, design or operational standards, or other requirements that impact small businesses as described in Minnesota Statutes 14.115.

#### 3300.5000 Purpose and Scope.

In this part, we provide an overview of the purpose and scope of the rules we are proposing. We believe it is reasonable and necessary to specify, in subpart 1, that the rules apply to the vocational rehabilitation program, in order to specify which of the programs operated by the Division of Rehabilitation Services are governed by these rules. We also believe it is necessary and reasonable to state, in subpart 2, that the rules "do not require expenditures for a person if funds are not available to the division from federal and state appropriations for the provision of vocational rehabilitation services," in order to clarify for the public that our ability to provide services is constrained by the resources appropriated for that purpose. Finally, we believe it is necessary and reasonable to specify, in subpart 3, that our proposed rules do not apply to persons who are provided vocational rehabilitation services by State Services for Blind and Visually Impaired Persons. Under Minnesota Statutes 248.07, subdivision 1, State Services for Blind and Visually Impaired Persons provides vocational rehabilitation services for blind and visually impaired persons.

#### 3300.5010 Definitions

In part 3300.5010 we define terms used in the rules.

3300.5010, subpart 2. "Applicant." It is necessary to define this term, which is used in part 3300.5060, in order to distinguish an "applicant" from an "eligible consumer." The definition is reasonable because it implements existing DRS policy, which allows a person to apply for vocational rehabilitation services, and also allows a parent, guardian or legal representative to apply for services on behalf of an individual.

3300.5010, subpart 3. "Assessment for determining eligibility and vocational rehabilitation needs." It is necessary to define this term because services provided under an "assessment for determining eligibility and vocational rehabilitation needs" are exempt from the comparable benefits requirements under part 3300.5050 and are also exempt from the consumer financial participation requirements under par 3300. 5040. The definition is reasonable because it is a concise version of the definition of "assessment for determining eligibility and vocational rehabilitation needs" in section 7(22) of the federal Rehabilitation Act, as amended through the 1992 Rehabilitation Act amendments.

3300.5010, subpart 4. "Books and supplies for postsecondary training." It is necessary to define this term, which is used in Part 3300.5060, subdivision 11, which describes the terms and conditions under which DRS will purchase these items. We recognize that it is not possible to describe every item that could be required for participation in a postsecondary training program; therefore, after giving some examples ("required textbooks, paper, pencils, pens, small calculators") we included the phrase "and similar items." This definition is reasonable because it provides sufficient information to indicate the kinds of items we may purchase as "books and supplies."

3300.5010, subpart 5. "Commissioner." It is necessary to define this term because in Parts 3300.5020 and 3300.5040 the proposed rules place specific responsibilities upon this position. It is reasonable to include a "designee" in this definition in order to indicate that the commissioner may delegate the authority and responsibility for making certain decisions to another individual. DRS considered the alternative of specifying one or more specific staff positions in DRS as the commissioner's designee or designees, but determined that it is more appropriate to allow flexibility to the commissioner in delegating duties.

3300.5010, subpart 6. "Comparable benefits." It is necessary to define this term because section 101(a)(8) of the Rehabilitation Act, as amended, requires the search for and use of comparable benefits before a state vocational rehabilitation agency can provide or purchase most services. Part 3300.5050 of our



proposed rules sets forth the requirements for the search for and use of comparable benefits. We believe our proposed definition is reasonable; while every possible comparable benefit cannot be described, the definition provides a sufficient number of examples to provide the public and DRS staff with an adequate sense of the kinds of sources of benefits and financial assistance that may be available to pay all or part of the cost of vocational rehabilitation services.

3300.5010, subpart 7. "Division." We have chosen throughout the proposed rule to use the shorter term "division" rather than "division of rehabilitation services." Because there are many organizational units in state government known as "divisions," it is necessary to define "division" to make it explicit that for purposes of the proposed rules it means "the Division of Rehabilitation Services in the Department of Jobs and Training."

3300.5010, subpart 8. "Durable medical equipment." It is necessary to define this term, because it is used in the definition of "restoration services." The definition is reasonable; while examples of the kinds of equipment included under this term are provided, the definition, by focusing on the purpose of such equipment ("to enable an individual to perform life functions that, due to the individual's physical or mental impairment, the individual cannot adequately perform without such equipment"), includes the wide variety of existing equipment and will, we believe, include new equipment as it is developed.

3300.5010, subpart 9. "Eligible consumer." It is necessary to define this term, which is used throughout the rule. DRS is using this term as preferred terminology instead of "client," a term often previously used. DRS considered using the term "individual with a disability," which is the term used in the Rehabilitation Act to mean a person who has been determined eligible for vocational rehabilitation services. However, in ordinary conversation and writing the phrase "individual with a disability" does not convey the more limited sense of eligibility for the vocational rehabilitation program, and DRS determined that it would be confusing to give a highly specialized meaning to that term in the proposed rule. The term "consumer" was also considered, because it is frequently used by advocates, persons with disabilities, and public and private programs to refer to an individual who has a disability and is receiving services. DRS was concerned that "consumer" alone also did not adequately convey the concept of having been determined eligible for the vocational rehabilitation program, and therefore has chosen "eligible consumer" as a reasonable alternative.

It is reasonable to reference the relevant section of the amended Rehabilitation Act in the definition. The federal Department of

Education has not yet promulgated regulations concerning eligibility in accordance with the amended Rehabilitation Act. In the absence of federal regulations implementing the amended Act, state vocational rehabilitation agencies have been informed by the Rehabilitation Services Administration that they are to follow the amended Act's provisions. Our reference to the Rehabilitation Act will also encompass the federal regulations implementing the Act when they are issued by the Department of Education.

Section 102(a)(1) of the Rehabilitation Act states the eligibility requirements:

"An individual is eligible for assistance under this title if the individual --

(A) is an individual with a disability under section 7(8)(A); and

(B) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment."

The Act defines "individual with a disability" in section 7(8)(A):

". . .the term 'individual with a disability' means any individual who

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to titles I, II, III, VI, and VII of this Act."

The Act further specifies, in section 102(a)(4)(A):

"It shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services under section 7(8)(A)(ii) unless the designated state unit can demonstrate by clear and convincing evidence that such individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome."

3300.5010, subpart 10. "Employment goal." It is necessary to define this term, which is used throughout the proposed rules, because the purpose of the vocational rehabilitation program is to assist eligible consumers to achieve employment. The definition is reasonable because it is based on key provisions of the Rehabilitation Act of 1973, as amended. Item A in the definition is based on the statement of the purpose of Title I of the Rehabilitation Act, which governs the vocational

rehabilitation program. The purpose statement appears in section 100(a)(2) of the Rehabilitation Act:

"The purpose of this title is to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program of vocational rehabilitation that is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, priorities, concerns, abilities, and capabilities, so that such individuals may prepare for and engage in gainful employment."

Item B of the definition is based on a statement of Congressional findings in section 100(a)(1)(F) of the Rehabilitation Act:

"the provision of vocational rehabilitation services can enable individuals with disabilities, including individuals with the most severe disabilities, to pursue meaningful careers by securing gainful employment commensurate with their abilities and capabilities."

Item B is included in the definition in order to provide a reasonable description of the elements of a "meaningful career": "access to an appropriate occupational field," and the opportunity for the individual "to develop and be productive." The phrase "consistent with the eligible consumer's abilities and informed choice" is included in order to emphasize that an employment goal must be individualized, and that a person has the right to make an informed choice among possible employment alternatives.

Item C is a reasonable restriction, acknowledging the realities of the labor market while respecting the right of eligible consumer to decide where they wish to work.

Item D is based on the definition of "employment outcome" in section 7(5) of the Rehabilitation Act is:

"The term 'employment outcome' means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome the Secretary may determine, consistent with this Act."

3300.5010, subpart 11, "Extreme medical risk." It is necessary to define this term because it is used in Part 3300.5050, subpart 1. The definition is reasonable because it is consistent with the statements concerning "extreme medical risk" in the federal

regulations for the vocational rehabilitation program. The federal regulations define "extreme medical risk":

" 'Extreme medical risk' means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously." [Title 34 Code of Federal Regulations, Part 361.1(C)]

The federal regulations also state:

"A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional." [Title 34 Code of Federal Regulations, Part 361.47(b) (3)]

3300.5010, subpart 12. "Family." It is necessary to define this term, which is used in the definition of "gross family income," and in the proposed rules on the terms and conditions for the provision of maintenance, Part 3300.5060, subpart 5. We believe the proposed definition is reasonable because it reflects a generally-agreed-upon public consensus that parents, spouses and dependent children are considered to be a family unit, with mutual responsibilities to assist each other financially.

At town meetings held in 1992, some members of the public suggested that DRS's definition should recognize alternative "family" situations. It was suggested that in situations where unmarried adults share a household the income of the household should be considered for purposes of family income. We considered this suggestion, but determined that we could find no legal basis for requiring persons in such situations to contribute financially to the costs of vocational rehabilitation services for the eligible consumer in the household.

3300.5010, subpart 13. "Functional area." It is necessary to define this term, which is used in the proposed rules in the definitions of "individual with a most severe disability" and "individual with a severe disability," and in Part 3300.5030, "Priority Categories for Order of Selection." The definition is reasonable because the seven areas included are those listed in the definition of "individual with a severe disability" in section 7(15) of the Rehabilitation Act of 1973, as amended.

3300.5010, subpart 14. "Gift aid." It is necessary to define this term because it is used in the proposed rules on the terms and conditions for tuition, fees, books, supplies, tools and equipment for postsecondary training. The definition is reasonable because it is consistent with the use of the term "gift aid" by financial aid officers in postsecondary training

institutions. It is reasonable to include examples of gift aid in the definition, and to make it clear that gift aid -- unlike loans -- does not have to be repaid.

3300.5010, subpart 15. "Gross family income." It is necessary to define this term, which is used in Part 3300.5040, "Consumer Financial Participation," so that the public and DRS staff understand what financial resources are considered in determining whether an eligible consumer is required to assist in paying all or part of the costs of certain vocational rehabilitation services. Readers are reminded that the term "family" itself is defined separately in Part 3300.5010, subpart 12.

DRS considered several alternatives in developing this definition. One alternative was to limit "gross family income" to the income of the applicant or eligible consumer alone, without considering the income of a spouse or parent. DRS determined that it is appropriate and reasonable to consider the income of a spouse or parent for several reasons. A primary reason is that the financial aid system for postsecondary education considers spousal and parental income, and we wanted our rules on consumer financial participation in postsecondary training to permit harmonious coordination between DRS and financial aid offices in postsecondary institutions. The federal Rehabilitation Services Administration has agreed nationally that state vocational rehabilitation agencies will coordinate with financial aid officers regarding the funding of postsecondary training for persons served by the vocational rehabilitation program. We also believe, as indicated in the discussion in this document of the definition of "family," that there is a public consensus that parents, spouses, and dependent children have mutual financial responsibility for each other.

We believe the proposed definition is reasonable because it is consistent with the definition of "family income" in State Services for Blind and Visually Impaired Person's (SSB's) rules (Minnesota Rules, 3325.0110, subpart 22), it is consistent with the practice of postsecondary training institution's calculations of income for financial aid purposes, and it is consistent with the public expectation of the financial responsibilities of spouses and parents.

In developing this definition of "gross family income" we considered the alternative of limiting "gross family income" to income after taxes and other deductions. However, we were concerned that the detailed examination of the deductions of applicants, eligible consumers and their families would be unduly intrusive and unnecessary. The Minnesota median income, adjusted for family size, serves as the benchmark for determining the degree of consumer financial participation required under Part

3300.5040 of our proposed rules. That benchmark is based on income before deductions; it would be unreasonable to compare income before deductions with income after deductions. In addition, we believe it is reasonable to use income before deductions in our rules, in order to be consistent with the existing Minnesota definition of "income" for purposes of consumer financial participation in the SSB rules (Minnesota Rules, Part 3325.0110, subpart 26).

At town meetings to obtain input on development of our proposed rules we received a few suggestions that eligible consumers and their families with large assets should be required to liquidate some of their assets, if necessary, to assist in paying for vocational rehabilitation services. We considered this alternative, but decided not to include assets in the definition of "income." We believe that requiring individuals and their families to disclose their assets would be unnecessarily intrusive; we also found that there also was no general consensus that we should require the liquidation of assets.

The proposed definition is reasonable; it will not require unduly intrusive examination of individual and family financial records, it is consistent with the definition of "income" in SSB's rule on consumer financial participation, and it was perceived as fair and appropriate by a large majority of the members of the public who attended town meetings on our proposed policies.

3300.5010, subpart 16. "Independent living skills training." It is necessary to define this term because it is used part 3300.5040, subpart 6, to describe one of the services exempt from consumer financial participation. The definition is reasonable because it distinguishes independent living skills training services from other training services without being so detailed and restrictive that it limits the ability of DRS, eligible consumers, and Centers for Independent Living or other service providers to choose and provide independent living skills training services tailored to the specific needs of the individual.

3300.5010, subpart 17. "Individual with a most severe disability." It is necessary to define this term, which is used in part 3300.5030, "Priority Categories for Order of Selection." We are proposing the term "individual with a most severe disability" as the singular form of "individuals with the most severe disabilities," a term that appears in -- but is not defined in -- the Rehabilitation Act of 1973, as amended. The legislative history of the 1992 amendments to the Rehabilitation Act indicates, in the Conference Committee report (House of Representatives Report 102-973, page 166) that each state vocational rehabilitation agency "shall establish criteria for

determining who are individuals with the most severe disabilities."

Our proposed definition was developed by our Focusing Services work group. It is reasonable because it is based on the Rehabilitation Act's definition of "individual with a severe disability," and establishes serious limitations in three or more functional areas as the criterion for "most severe." The proposed definition does not discriminate on the basis of a particular type of physical or mental impairment; the criterion for "most severe" is based only on the number of areas where serious limitations exist. We believe this approach is appropriate because it focuses on the impact of an impairment or impairments on the individual. The list in item C of the definition is reasonable because it is included in the definition of "individual with a severe disability" in the Rehabilitation Act. The list is not intended to be exclusionary; the definition, in accordance with the Rehabilitation Act, provides for situations where "another disability or combination of disabilities" cause "comparable serious functional limitation."

3300.5010, subpart 18. "Individual with a severe disability." It is necessary to define this term, which is used in part 3300.5030, "Priority Categories for Order of Selection." The definition is based on the definition of "individual with a severe disability" in section 7(15(A) of the Rehabilitation Act.

3300.5010, subpart 19. "Individualized written rehabilitation program." It is necessary to define this term, which is used throughout the proposed rules. Under section 102(b) of the Rehabilitation Act, an individualized written rehabilitation program must be developed jointly by each eligible consumer and the eligible consumer's rehabilitation counselor. The definition is reasonable because it describes essential elements of an individualized written rehabilitation program and specifies that an individualized written rehabilitation program must meet the requirements of the Rehabilitation Act. (For readers familiar with the amended Rehabilitation Act, but unfamiliar with the system of referring to federal laws in state rules, we would like to note that "United States Code, title 29, section 722(b), as amended" is section 102(b) of the Rehabilitation Act.)

3300.5010, subpart 20. "Initial stocks, supplies and equipment." It is necessary to define this term, which is used in our proposed rules on the terms and conditions for small business enterprises (Part 3300.5060, subpart 11). Section 103(a)(9) of the Rehabilitation Act of 1973, as amended, specifies that initial stocks, supplies and equipment are included among the vocational rehabilitation services that must be provided when necessary to achieve an individual's vocational goal. However,

the Rehabilitation Act does not define the term "initial stocks, supplies and equipment." Our proposed definition is reasonable because it reflects the Act's emphasis, in its use of the word "initial," on the "start-up" aspect of this rehabilitation service. The definition is also consistent with the time-limited nature of the services provided by the vocational rehabilitation program under the Rehabilitation Act; it is reasonable to exclude ongoing replacement of inventory and equipment because it is the responsibility of the operator of the business, or the self-employed person, to plan and budget for such ongoing regular business expenses, which would most often occur after the consumer was rehabilitated and the consumer's case file was closed. The ongoing replacement of inventory and supplies is one of the customary responsibilities of any business; postemployment services, which may be provided after eligible consumers have been rehabilitated, are provided to assist in overcoming employment barriers resulting from an individual's disability, not to assist with customary expenses that would be incurred by any business.

3300.5010, subpart 21. "Interpreter services." It is necessary to define this term, which is used in our proposed rules for interpreter services for postsecondary training, Part 3300.5060, subpart 4. The definition is reasonable because it reflects the common usage of persons who are deaf, and persons who are hard of hearing. We originally considered the alternative of specifying the method of interpreting in the definition; however, we determined that doing so could be unduly restrictive; the proposed definition allows for the provision of the most appropriate interpreting method to meet the needs of each individual.

3300.5010, subpart 22. "Job coaching." It is necessary to define this term, which is used in part 3300.5040, subpart 6, where job coaching is exempted from consumer financial participation in the cost of vocational rehabilitation services. The definition is reasonable because it describes the purpose of job coaching services and provides examples of such services, without inappropriately restricting the ability of eligible consumers, rehabilitation counselors, and service providers to arrange and provide individualized job coaching to meet unique individual needs.

3300.5010, subpart 23. "Job placement." It is necessary to define this term, which is used in part 3300.5040, subpart 6, and in part 3300.5050, subpart 1. The definition is reasonable because it is consistent with the understanding and use of "job placement" among rehabilitation professionals and advocates. The definition is also consistent with the existing definition of "job placement services" in Minnesota rules governing State



Services for the Blind's vocational rehabilitation program (Minnesota Rules, part 3325.0110, subpart 34).

3300.5010, subpart 24. "Maintenance." It is necessary to define this term, which is used in part 3300.5060, subpart 5. The definition is reasonable because it reflects the intent of Congress regarding maintenance, as expressed in the 1992 amendments to the Rehabilitation Act and the legislative history of those amendments. The language in section 103(a)(5) of the Rehabilitation Act, as amended, dealing with maintenance as a vocational rehabilitation service allows the provision of "maintenance for additional costs incurred while participating in rehabilitation." The amended Act's language regarding maintenance was developed in the Senate; the Senate Committee report notes:

"The Committee wishes to clarify that the provision of maintenance must be tied to other services under an IWRP and is intended to cover only the added costs of participating in rehabilitation, not everyday living expenses." (Senate Report 102-357, page 42.)

3300.5010, subpart 25. "Notetaker services." It is necessary to define this term, which is used in part 3300.5040, subpart 6. The definition is reasonable because it is consistent with the common understanding of the term among persons with disabilities, advocates, and service providers.

3300.5010, subpart 26. "Order of selection." It is necessary to define this term, which is used in parts 3300.5020 and 3300.5030. The definition is reasonable because it is consistent with section 101(a)(5) of the Rehabilitation Act, as amended, which requires state vocational rehabilitation agencies to establish an "order of selection" when "vocational rehabilitation services cannot be provided to all eligible individuals with disabilities who apply for such services," and refers to the "priorities" in an order of selection.

3300.5010, subpart 27. "Paratransit." It is necessary to define this term, which is used in our proposed rules on the terms and conditions for transportation services, part 3300.5060, subpart 12. The definition is reasonable because it is consistent with the use of the term by persons with disabilities, advocates, public and private transportation providers, and other service providers in Minnesota.

3300.5010, subpart 28. "Personal assistance services." It is necessary to define this term, which is used in our proposed rules on the terms and conditions for transportation services, part 3300.5060, subpart 12. The term is reasonable because it is

consistent with the definition of "personal assistance services" that was added as section 7(11) of the Rehabilitation Act by the 1992 amendments.

3300.5010, subpart 29. "Postemployment services." It is necessary to define this term, which is used in our proposed rules on consumer financial participation in the cost of vocational rehabilitation services, part 3300.5040, subpart 6, and in our proposed rules on comparable benefits, part 3300.5050, subpart 1. The definition is reasonable because it is consistent with the 1992 amendments to section 103(a)(2) of the Rehabilitation Act, which indicate that postemployment services are provided to assist eligible consumers "to maintain, regain, or advance in employment." The definition is consistent with the federal regulations for the vocational rehabilitation program, 34 CFR 361.43(b), which specify that postemployment services are provided "after an individual has been determined to be rehabilitated." It is reasonable to indicate that postemployment services are provided only to overcome employment barriers resulting from a person's disability. Section 103(a)(2) of the Rehabilitation Act, as amended, states that postemployment services are for "individuals with a disability"; the term "individual with a disability" is defined in section 7(8)(A) of the Rehabilitation Act, as amended as "(i) . . . any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services . . ." Under the Rehabilitation Act, a person who did not have a barrier to employment resulting from a disability would not be eligible to receive postemployment services.

3300.5010, subpart 30. "Postsecondary training." It is necessary to define this term, which is used in part 3300.5060, the proposed rules for the terms and conditions for several vocational rehabilitation services. The definition is reasonable because it is consistent with the use of the term by professionals in rehabilitation and higher education.

3300.5010, subpart 31. "Postsecondary training institution." It is necessary to define this term, which is used in the definition of "vocational training services," part 3300.5010, subpart 47, and in the terms and conditions for tuition, fees, books, supplies, tools and equipment for postsecondary training, part 3300.5060, subpart 13. The definition is reasonable because it is consistent with the usual use of the term by professionals in rehabilitation and higher education and includes the many types of institutions that provide postsecondary training. The definition is consistent with the examples of "institutions of higher education" given in the federal regulations for the

vocational rehabilitation program, 34 CFR 361.42(a)(4):  
"universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing."

3300.5010, subpart 32. "Public safety officer." It is necessary to define this term, which is used in our proposed rules for priorities under an order of selection, part 3300.5030, subpart 5. The definition is reasonable because it is consistent with the requirement in the federal regulations governing an order of selection for the vocational rehabilitation program, 34 CFR 361.36, for special consideration to be given to be given to

"those individuals with handicaps whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in connection with the enforcement, execution and administration of law or fire prevention, firefighting or related public safety activities."

3300.5010, subpart 33. "Reader services." It is necessary to define this term, which is used in our proposed rules on the terms and conditions for vocational rehabilitation services, part 3300.5060, subpart 8. The definition is reasonable because it is consistent with the use of this term by persons with disabilities, advocates, professionals and service providers; the definition is also consistent with the definition of "reader services" in State Services for the Blind's rules governing vocational rehabilitation services for persons who are blind, Minnesota Rules, 3325.0110, subpart 59.

3300.5010, subpart 34. "Referral." It is necessary to define this term, which is used in our proposed rules part 3300.5040, subpart 6. The definition is reasonable because it is consistent with the use of this term by persons with disabilities, advocates, professionals and service providers working with vocational rehabilitation agencies throughout the nation; the definition is also consistent with the definition of "referral services" in State Services for the Blind's rules governing vocational rehabilitation services for persons who are blind, Minnesota Rules, 3325.0110, subpart 60.

3300.5010, subpart 35. "Rehabilitation counseling and guidance." It is necessary to define this term, which is used in the proposed rules on consumer financial participation in the cost of services and in the proposed rules on comparable benefits, parts 3300.5040, subpart 6, and 3300.5050, subpart 1. This definition is reasonable because it reflects the individualized,

employment-oriented nature of the rehabilitation counseling process and the rehabilitation counselor's professional role in assisting an eligible consumer to determine and reach an employment goal. The definition is consistent with the use of the term by professional rehabilitation counselors.

3300.5010, subpart 36. "Rehabilitation counselor." It is necessary to define this term, which is used throughout the proposed rules. The definition is reasonable because it reflects the use of the term in the Rehabilitation Act [section 100(a)(3)(E), and throughout Title I of the Act] and in federal vocational regulations and federal policy implementing the Act. The definition also recognizes the state Department of Employee Relations' responsibility for employee classification and DRS's responsibility for hiring employees. The Department of Employee Relations currently has established three "rehabilitation counselor" classifications, which are included in this definition: rehabilitation counselor, senior rehabilitation counselor, and career rehabilitation counselor. The definition describes the essential duties of a professional rehabilitation counselor employed by DRS. It is reasonable to include the phrase "provide and coordinate the provision of vocational rehabilitation services" to indicate that certain services (rehabilitation counseling and referral, for example), are directly provided by the rehabilitation counselor, while the provision of other services (those services obtained from other agencies or purchased from service providers) is coordinated by the rehabilitation counselor.

3300.5010, subpart 37. "Rehabilitation technology." It is necessary to define this term, which is used in our proposed rules on comparable benefits and the terms and conditions for the provision of services, parts 3300.5050, subpart 1, and 3300.5060, subpart 9. The definition is reasonable; it is derived from the definition of "rehabilitation technology" in the Rehabilitation Act of 1973, as amended. It is not possible or desirable to list every product or service that could be included under this definition; rehabilitation technology is a rapidly-developing field, and, as the definition indicates, in some instances creative, highly individualized products or pieces of equipment are developed to meet individual circumstances and needs.

3300.5010, subpart 38. "Restoration services." It is necessary to define this term, which is used in the proposed rules on comparable benefits and the proposed rules on the terms and conditions of services, parts 3300.5050, subpart 2, item C, and 3300.5060, subpart 10. The definition is reasonable because it references the definition of "physical and mental restoration services" in the federal vocational rehabilitation program; DRS is required to follow that definition in providing vocational

rehabilitation services. It is reasonable to include "durable medical equipment" in the definition, because the kinds of equipment included in the definition of "durable medical equipment" are similar, in their use by persons with disabilities, to other goods or services, such as "prosthetic, orthotic, or other assistive devices" and "drugs and supplies," that are explicitly included in the federal definition of "physical and mental restoration services."

3300.5010, subpart 39. "Self-help aid." It is necessary to define this term, which is used in our proposed rules on terms and conditions for the provision of tuition, books, supplies tools and equipment for postsecondary training, part 3300.5060, subpart 13. The definition is reasonable because it is consistent with the use of the term by financial aid officers of postsecondary training institutions. "Self-help aid," which requires a student to work to receive it (that is, work-study programs), or requires repayment (that is, student loans) is contrasted with "gift aid."

3300.5010, subpart 40. "Serious functional limitation." It is necessary to define this term, which is used in the proposed rules, part 3300.5030, Priority Categories for Order of Selection, and in part 3300.5010, subparts 18 and 19, the definitions of "individual with a most severe disability" and "individual with a severe disability." The definition is reasonable because it is consistent with the emphasis in the amended Rehabilitation Act's definition of "individual with a severe disability" on the limitations in an individual's functioning resulting from a physical or mental impairment, and on the employment-related effects of those limitations for an individual.

3300.5010, subpart 41. "State Rehabilitation Advisory Council." It is necessary to define this term, which is used in part 3300.5020 of the proposed rules, Conditions for Implementing an Order of Selection. The definition is reasonable because it distinguishes the State Rehabilitation Advisory Council from other bodies by referencing the requirement in the Rehabilitation Act, as amended (United States Code, title 29, section 725, as amended) that each state vocational rehabilitation agency must have a rehabilitation advisory council. Prior to the establishment of the State Rehabilitation Advisory Council, DRS was advised by the Consumer Advisory Council, a body whose duties and composition were similar to those of the new State Rehabilitation Advisory Council.

3300.5010, subpart 42. "Tools and equipment." It is necessary to define this term, which is used in the proposed rules on terms and conditions for vocational rehabilitation services, part

3300.5060, subpart 13, and in the definition of "job placement," part 3300.5010, subpart 24. The definition is reasonable; it provides examples of goods which most people typically refer to as tools or equipment. It is reasonable to specify that such items are "required for participation in an individualized written rehabilitation program," because goods and services provided by the vocational rehabilitation program are provided in accordance with an individualized written rehabilitation program.

3300.5010, subpart 43. "Transportation." It is necessary to define this term, which is used in the proposed rules on terms and conditions for vocational rehabilitation services, part 3300.5060, subpart 12. The definition is reasonable because it clarifies that DRS provides transportation by making payments or purchasing services, and includes payments for public transportation and paratransit as well as payments and purchases of services to assist an eligible consumer to use a personal vehicle for travel.

3300.5010, subpart 44. "Tuition cap." It is necessary to define this term, which is used in the proposed rules on the terms and conditions for tuition, fees, books, supplies, and tools and equipment for postsecondary training, part 3300.5060, subpart 13. The tuition cap will be applied in determining the amount, if any, of DRS payments to meet the cost of postsecondary training for eligible consumers at public and private postsecondary institutions.

Tuition and mandatory fees at the University of Minnesota-Morris is a reasonable standard for the tuition cap for programs leading to a bachelor's degree. The University of Minnesota-Morris is the public institution that most closely resembles private 4-year postsecondary institutions in Minnesota in size, academic offerings and student body profile. Tuition and mandatory fees at the University of Minnesota-Morris are higher than at any other public university in Minnesota; therefore, the use of the cap as provided in part 3300.5060, subpart 13 will allow DRS to make full payment of undergraduate tuition and mandatory fees at any four-year public Minnesota postsecondary institution, in the rare instances where grants, scholarships and consumer financial participation are unavailable to pay all or part of the costs. DRS considered the alternative of establishing a fixed dollar amount as a cap; however, DRS decided that it was preferable and more reasonable for the cap to be tied to the actual tuition and mandatory fees at the most expensive Minnesota public postsecondary institution, to allow for the all but certain annual changes in the amount of tuition and fees. A fixed dollar amount would go out of date rapidly; updating such a cap would require yearly amendments to the DRS rules.

It is reasonable to use tuition and mandatory fees at the University of Minnesota-Morris as the tuition cap for training beyond the bachelor's degree level. This provision assures that the annual level of support from public vocational rehabilitation funds for tuition and fees for graduate school training will not exceed the amount that would be spent for tuition and fees in a bachelor's degree program.

It is reasonable to use the tuition and mandatory fees at Minnesota public community colleges as a tuition cap for undergraduate programs below the bachelor's degree level. Public community college tuition and mandatory fees are higher than tuition and mandatory fees at technical colleges; therefore, the cap will adequately cover eligible consumers' tuition and fees at both community colleges and technical colleges.

It is reasonable to establish the cap at the annual rate of the costs of tuition and mandatory fees needed for a student to complete 45 credits in three quarters. This is a recognized "full-time equivalent" rate; all four Minnesota public postsecondary education systems -- the University of Minnesota, the State University system, the Community College system and the Board of Technical Colleges -- use 45 credits as the basis for determining a full-time equivalent for state budgeting purposes, as do the Department of Finance and the Legislature.

Additional information on the use of the tuition cap in determining DRS purchases of services for postsecondary training is contained in the proposed rules, part 3300.5060, subpart 13. That subpart includes provisions for prorating the tuition cap for eligible consumers who are registered for fewer than 12 credits per term. It also provides for increasing the amount of the tuition cap when the eligible consumer is registered at a postsecondary institution (for example, Gallaudet University or the Rochester Technical Institute for the Deaf) where interpreter services for persons who are deaf are included in the cost of tuition and fees for all students. Finally, part 3300.5060, subpart 13 also contains a provision that the tuition cap is not applied when an eligible consumer's field of study is not available at a Minnesota public postsecondary institution.

3300.5010, subpart 45. "Vehicle adaptations." It is necessary to define this term which is used in the proposed rules on terms and conditions for vocational rehabilitation services, part 3300.5060, subpart 12. The definition is reasonable because it is consistent with the common use of the term by persons with disabilities, rehabilitation professionals, and providers of services and equipment to make modifications to vehicles so they can be used by persons with mobility impairments. Because such modifications are made to meet the needs of each individual, it

is reasonable for the definition to be generic enough to allow for a wide variety of changes; it would not be appropriate to restrict the definition to include only a few kinds of changes.

3300.5010, subpart 46. "Vocational evaluation." It is necessary to define this term, which is used in the proposed rules on consumer financial participation, part 3300.5040, subpart 6. The definition is reasonable because it is consistent with the use of the term by rehabilitation counselors and providers of rehabilitation services. The definition is also consistent with the definition of "work evaluation" in State Services for the Blind's rules governing their vocational rehabilitation program, Minnesota Rules 3325.0110, subpart 90.

3300.5010, subpart 47. "Vocational rehabilitation program." It is necessary to define this term, which is used in the proposed rules on the conditions for implementing an order of selection, part 3300.5020. The definition is reasonable because it is consistent with long-established usage by DRS which is familiar to consumers, advocates and service providers.

3300.5010, subpart 48. "Vocational rehabilitation services." It is necessary to define this term, which is used throughout the proposed rules. The definition is reasonable because it is consistent with the statement in section 103(a) of the Rehabilitation Act, as amended, that "Vocational rehabilitation services provided under this Act are any goods or services necessary to render an individual with a disability employable . . ." It is reasonable for the definition to indicate that these services may be "provided or arranged" by the DRS vocational rehabilitation program. Some services -- for example, rehabilitation counseling and guidance -- are provided directly by DRS counselors; other services, such as training, either may be purchased by DRS or may be arranged by DRS, and provided or purchased by another agency.

3300.5010, subpart 49. "Vocational training services." It is necessary to define this term, which is used in the proposed rules on comparable benefits, part 3300.5050, subpart 1. The definition is reasonable because it is consistent with the use of the term by rehabilitation counselors and providers of training services. The definition is also reasonable because it does not attempt to prescribe the content or method of training; it concentrates on the purpose and employment-related outcome of the services.

3300.5010, subpart 50. "Work adjustment training." It is necessary to define this term, which is used in the proposed rules on consumer financial participation, part 3300.5040, subpart 6. The definition is reasonable because it describes the



essential characteristics and purpose of work adjustment training, and is consistent with the use of the term by rehabilitation counselors and providers of vocational rehabilitation services. The definition is based on the following statement in the description of a "work adjustment program" in the 1992 standards manual of the Commission on Accreditation of Rehabilitation Facilities:

"Utilizing real or simulated work, the intent of the program is to assist persons to understand the meaning, value and demands of work; to learn or reestablish skills, attitudes, personal characteristics, and work behaviors; and, to develop functional capacities."

### 3300.5020 Conditions for Implementing an Order of Selection

The federal Rehabilitation Act, as amended, requires state vocational rehabilitation agencies to implement an order of selection for their vocational rehabilitation programs when they cannot serve all eligible consumers. Federal and state funding for the DRS vocational rehabilitation program is not likely to increase significantly, and the demand for services, including services which require substantial amounts of DRS staff time to plan, coordinate, and deliver, is increasing. The demand for appropriate, and costly, services such as personal care assistants, customized rehabilitation technology, and intensive placement and job coaching services is also increasing. As stated in the Department of Jobs and Training's state fiscal year 1994-95 biennial budget proposal to the Legislature:

"This activity [the DRS vocational rehabilitation program] will need to implement a federally-mandated order of selection, giving priority to persons with severe disabilities. Persons with severe disabilities have historically been dependent on public assistance because of the lack of accessible training and employment opportunities. Focusing our services on consumers with severe disabilities will decrease this dependency on public assistance by providing individuals with the skills needed for employment and community participation. It is anticipated that the cost of providing direct client services will increase as a result of this new focus. However, this increased cost is offset by the person's increased independence and self-sufficiency, with less dependence on public support."

The biennial budget also pointed out:

"The average caseload of 138 is too large for timely and appropriate service delivery, especially since people with

severe disabilities have more complex needs and require more intensive services. We plan to limit caseload size to 90 to 100."

DRS anticipates that it will not be able to serve all eligible persons who apply for services. On August 31, 1993, the DRS vocational rehabilitation program had open case files for 20,206 persons. Of those, 4,100 were persons who had applied for vocational rehabilitation services and were awaiting a determination of eligibility or ineligibility. In addition, another 3,445 persons had been determined eligible, but an individualized written rehabilitation plan had not yet been developed and implemented for them. At times, due to a shortage of funds for case services, DRS rehabilitation counselors have had to delay purchasing needed services for consumers, or delay the planning of services.

Consequently, as discussed at town meetings in 1992 and 1993, and as communicated to the Legislature in our state biennial budget request, DRS intends to establish an order of selection effective October 1, 1993, the beginning of the 1994 federal fiscal year. DRS has included an order of selection in the state plan for vocational rehabilitation, which we have submitted to the federal Rehabilitation Services Administration. Part 3300.5020 is necessary to describe the conditions under which DRS determines that it will serve persons under an order of selection.

An annual determination of the need for an order of selection is necessary and reasonable because a State Plan for vocational rehabilitation must be developed every three years, updated annually if appropriate, and submitted by DRS to the federal Department of Education, Rehabilitation Services Administration. The State Plan, under section 101(a)(5)(A)(i) of the Rehabilitation Act, as amended, must "show and provide the justification for the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided," if vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services. The proposed rule is reasonable because it conforms to the federal statutory requirement in section 101(a) of the Rehabilitation Act, as amended, to make "such annual revisions to the plan as may be necessary."

It is necessary for DRS to obtain consultation and advice from the State Rehabilitation Advisory Council prior to the implementation of an order of selection, or prior to opening or closing priority categories. This consultation and advice is required under the Rehabilitation Act, as amended, in section 105(c)(1)(A):

"FUNCTIONS OF COUNCIL - The council shall -  
(1) review, analyze, and advise the designated state unit regarding the performance of the responsibilities of the unit under this title, particularly responsibilities relating to -  
(A) eligibility (including order of selection)...."

The proposed rule is reasonable because it is consistent with the federal statutory requirement for consulting with, and obtaining advice from, the State Rehabilitation Advisory Council; the final determination regarding order of selection, under the Rehabilitation Act and the proposed rule, is the responsibility of DRS.

The provision in subpart 3 for continuation of services to persons already receiving services under an individualized written rehabilitation program is necessary and reasonable because it is required by the policy of the federal Rehabilitation Services Administration.

#### 3300.5030 Priority Categories for Order of Selection

This part is necessary in order to provide the public and DRS with a description of the priority categories for an order of selection. Under federal law it is necessary to give first priority to individuals with the most severe disabilities. Section 101(a)(5)(A)(ii) of the Rehabilitation Act, as amended, states that an order of selection ". . . shall be determined on the basis of serving first individuals with the most severe disabilities in accordance with criteria determined by the state . . . "

The four priority categories listed in this part are reasonable because they provide for flexibility in response to changes in DRS's resources and ability to serve persons who have applied for vocational rehabilitation services. DRS originally considered the alternative of establishing eight priority categories to provide more flexibility in response to changing resources. (In the eight-category system, persons with serious functional limitations in seven functional areas would have received first priority, persons with serious functional limitations in six functional areas would have received second priority, and so on to the last priority, eligible consumers who did not have a serious functional limitation in any functional area.) We submitted the eight-category system to the federal Rehabilitation Services Administration for input and advice. The Rehabilitation Services Administration recommended establishing fewer priority categories, noting: 1) that eight categories would be difficult to administer, and 2) that the first priority category should include all those persons who would be expected

to require supported employment services paid for with federal funds, because, under the Rehabilitation Act, supported employment services and outcomes are for "individuals with the most severe disabilities." The Rehabilitation Services Administration recommended that DRS's first priority category should include individuals with serious functional limitations in three or more functional areas. As a result of this federal input, DRS determined that the system of four priority categories we are proposing is appropriate and reasonable.

The requirement in subpart 5 for giving priority to public safety officers whose disability was sustained in the line of duty, if not all persons in a priority category can be served, is required by federal regulations for the vocational rehabilitation program, 34 CFR 361.36(c). DRS acknowledges that in Minnesota the availability of rehabilitation services for public safety officers from other, non-DRS, sources under law and collective bargaining agreements has limited the demand for DRS services for this population. We do not anticipate an increase in requests for service from public safety officers with disabilities. However, we are required to establish this special priority.

#### 3300.5040 Consumer Financial Participation in the Cost of Vocational Rehabilitation Services

DRS acknowledges that most individuals receiving vocational rehabilitation services have low family incomes and cannot afford to assist in purchasing the goods or services they need in order to reach their employment goals. At the same time, DRS recognizes that some persons do have family incomes that will permit them to pay part or all of the cost of vocational rehabilitation services. It is necessary, in light of the limited public funds available for vocational rehabilitation services, to require persons who can afford to do so to assist in paying for services.

DRS also recognizes that the consumer financial participation requirement represents a major shift in policy; therefore we are proposing, in the "Effective Date" portion of the rules, that the consumer financial participation requirements will not go into effect until April 1, 1994. It is reasonable to delay the implementation of the consumer financial participation requirements in order to allow time to inform applicants, eligible consumers, and their families of the new requirement, to train DRS staff in procedures for implementing the rules, and to allow time for eligible consumers and rehabilitation counselors to review and, if necessary, redevelop individualized written rehabilitation programs, taking the new consumer financial participation rules into account.

During the course of the development of the proposed rules, an organization questioned whether DRS had the authority to establish rules on consumer financial participation, or whether DRS needed to seek explicit legislative authority to do so. DRS consulted its Special Assistant Attorney General on this issue. In the opinion of the Special Assistant Attorney General, DRS does have the authority to make rules on consumer financial participation. The Special Assistant Attorney General pointed out that:

In Minnesota Statutes 268A.03, the Commissioner of Jobs and Training is required to "provide vocational rehabilitation services to persons with disabilities in accordance with the state plan for vocational rehabilitation" (paragraph b); 'design all state plans for vocational rehabilitation or independent living services required as a condition to the receipt and disbursement of any money available from the federal government" (paragraph c); and "adopt, amend, suspend, or repeal rules necessary to implement or make specific programs that the Commissioner by sections 268A.01 to 268A.10 is empowered to administer" (paragraph m). The Legislature has delegated substantial discretion to the Commissioner in designing the state plan for vocational rehabilitation, limited only by the requirement that the plan meet whatever conditions exist for the state's obtaining federal money.

In Minnesota Statutes 248.07, subdivision 14a, the legislature requires the Commissioner of Jobs and Training to establish rules pertaining to "financial need eligibility" for the provision of services to persons who are blind and visually impaired persons. The Special Assistant Attorney General states, "it would seem an unreasonable result to conclude that the legislature intended that blind persons who are provided rehabilitation services under the same federal act should be subject to financial eligibility requirements whereas other disabled persons are not."

The Special Assistant Attorney General concludes, "It is my opinion, therefore, that the financial participation requirement included in the proposed rules, while not specifically authorized by state law, is within the scope of the delegation of authority to design the rehabilitation plan granted to the Commissioner of jobs and Training by the legislature."

In our state fiscal year 1994-95 biennial budget document, DRS informed the legislature of our intent to implement a consumer financial participation requirement. The biennial budget says:

"Implementation of a client financial participation process will ensure the equitable use of limited funds."

The general conditions when consumer financial participation is required are described in part 3300.5040, subparts 1, 2, and 3. These provisions are necessary in order to establish objective standards for determining whether consumer financial participation is required. The proposed rules are reasonable because they take family size into account and because they establish a "sliding scale" based on the percentage by which the eligible consumer's gross family income exceeds the state median gross income, as adjusted for family size.

It is reasonable to use the state median gross income, as adjusted for family size, as a benchmark for determining consumer financial participation in the cost of vocational rehabilitation services. This federally-determined amount, updated annually, is used by SSB in determining consumer financial participation in the cost of vocational rehabilitation services, as provided in Minnesota Rules 3325.0440, subpart 3, on consumer financial participation in the cost of services provided for persons who are blind.

The state median gross income is a reasonable amount, well above poverty level. The current amounts of the state median gross income, as adjusted for family size, being used by SSB in 1993, are:

| <u>TOTAL NUMBER</u><br><u>IN FAMILY</u> | <u>ANNUAL GROSS</u><br><u>INCOME</u> |
|---|--------------------------------------|
| 1                                       | \$22,376                             |
| 2                                       | 29,261                               |
| 3                                       | 36,146                               |
| 4                                       | 43,031                               |
| 5                                       | 49,916                               |
| 6                                       | 56,801                               |
| 7                                       | 58,092                               |
| 8                                       | 59,383                               |
| 9                                       | 60,674                               |
| 10                                      | 61,965                               |

We anticipate that the dollar amounts will change annually.

Amounts of median gross income as adjusted for family size can be calculated for larger family sizes.

In 3300.5040, subpart 4, the proposed rules establish an automatic exemption from consumer financial participation in the cost of services for eligible consumers if their gross family income includes AFDC, general assistance, if the eligible consumer is receiving Supplemental Security Income (SSI) payments, or if the eligible consumer has been determined

eligible for medical assistance. These rules are necessary to avoid needless duplication of effort by eligible consumers and DRS staff in determining family income levels. They are reasonable because AFDC and general assistance are means-tested programs; families receiving payments under these programs have incomes that are well below the state median income level adjusted for family size that DRS is proposing. SSI is also means-tested.

At town meetings in 1992, a number of persons suggested that recipients of Social Security Disability Insurance (SSDI) benefits should also be automatically exempt from the proposed consumer financial participation requirements. DRS considered this suggestion, but did not incorporate it in the proposed rules because, in contrast to the AFDC, medical assistance, and SSI programs, SSDI benefits are not means-tested; individuals can receive SSDI benefits even if they have substantial income from other sources. DRS acknowledges that most persons receiving SSDI, if they have no other income, will not be required to participate in the cost of vocational rehabilitation services because their incomes will be lower than the state median income adjusted for family size.

In 3300.5040, subpart 6 the proposed rules list the services excluded from the consumer financial participation requirements. DRS originally considered the option of exempting only the following services from the consumer financial participation requirements: assessment for determining eligibility and vocational rehabilitation needs, counseling and guidance, referral, and placement. Under the federal regulations for the vocational rehabilitation program (Title 34 of the Code of Federal Regulations, Part 361.47) consumer financial participation in the cost of these services cannot be required. At town meetings held in 1992 to discuss recommendations for policy change and rulemaking, many persons recommended exempting other services from the consumer financial participation requirements. In response to those comments, DRS is now proposing, in 3300.5040, subpart 6 that no consumer financial participation will be required for the federally-exempt services, plus the additional services identified in public meetings.

Exempting these services is necessary and reasonable because it is consistent with federal regulations and with the expressed wishes of consumer groups, advocates, service providers, and DRS staff. Some of the services exempted from the consumer financial participation requirement -- for example, vocational evaluation, work adjustment training, job placement, job coaching, and independent living skills training -- are services that DRS typically purchases from rehabilitation facilities or other service providers who have never directly collected fees

for services from individual consumers. These service providers have clearly expressed that they do not wish to begin collecting fees for services directly from consumers. DRS also determined that it does not wish to collect fees directly from consumers.

The exemption of "single-time nonrecurring services costing \$300 or less" is particularly important. This \$300 minimum "floor" before consumer financial participation is required is necessary and reasonable because it will simplify the administration of the consumer financial participation rule, and will allow the provision of many services at no cost to consumers, and will not require consumers to pay small amounts for relatively inexpensive services.

In the course of developing the proposed rules, many public comments, as well as comments of DRS staff, expressed concern that in some instance when individuals or families have substantial assets, a portion of those assets (not just the interest or dividend income from them) should be considered in determining if consumer financial participation is required. At the same time, there were expressions of concern that DRS should not require consumers and their families to deplete their assets.

We have considered the comments, and we are not proposing that consumers and their families be required to liquidate part of their existing assets to help pay for vocational rehabilitation services. We believe this approach is reasonable because most consumers want and need to preserve savings and assets for unanticipated emergencies, or for extra expenses due to a disability. In Part 3300.5010, subpart 16, we are defining "income" so that interest, dividends or other income from assets will be considered "income," but the "principal" will not be considered income for purposes of our consumer financial participation rules. This approach is also reasonable because it is consistent with the consumer financial participation rule adopted by State Services for Blind and Visually Impaired Persons, Minnesota Rules, 3325.0440.

Public comments expressed concern that some consumers or their parents might choose only services that are exempt from consumer financial participation, even when they would benefit from other services. There was also concern that the relationship between consumers and rehabilitation counselors might be impaired by inquiries about family income and by requirements to assist in paying for certain services. Therefore, DRS exempted other services from the consumer financial participation requirements, besides the ones exempted by federal regulations.

DRS recognizes the concerns about the consumer-counselor relationship. We intend to make the documentation of family



income as uncomplicated, consistent and non-intrusive as possible. Our Focusing Services Phase II Part A work group is addressing implementation issues, including staff training, to assist counselors in dealing effectively with consumer concerns regarding financial participation.

Part 3300.5040, subpart 7 of the proposed rules is necessary in order for DRS to obtain the information on gross family income needed to determine whether consumer financial participation is required, and, if it is required, to what degree. The proposed rule is reasonable and not overly burdensome or intrusive; it is common in means-tested human services programs to require written verification of income.

Part 3300.5040, subpart 8 is necessary and reasonable in order to inform the public and DRS staff of the method for calculating the dollar amount of consumer financial participation, and the dollar amount of DRS payments to purchase services. It is reasonable because it provides for uniform implementation of the proposed rules.

In Part 3300.5040, subpart 9, the proposed rules establish a variance procedure to allow for unusual individual circumstances that might not be evident from a standardized analysis of family income. Under these proposed rules a variance can be granted when an eligible consumer demonstrates that it is impossible for the eligible consumer to make the expected payments to assist in the cost of vocational rehabilitation services "because of extraordinary costs resulting from illness or disability in areas such as mobility, communication, self care, medical care, shelter, food and clothing."

In developing this variance provision DRS originally considered including "extraordinary expenses due to legal obligations of the eligible consumer" among the expenses that could be considered in deciding to grant a variance. However, in the course of developing the proposed rule, DRS received recommendations that the "legal obligations" language was too broad, and that the rule should only allow for variances when extraordinary costs due to a disability or illness prevented an eligible consumer from making the expected financial contributions to the cost of vocational rehabilitation services. DRS agreed with those recommendations, which are reflected in the proposed rule. The proposed rule is necessary to indicate the kinds of extraordinary expenses that will be considered in granting a variance. The rule is reasonable because, by allowing a variance for expenses resulting to disability or illness, it is consistent with the vocational rehabilitation program's focus on services to persons with disabilities and on removing those barriers to employment that are caused by a disability.

DRS also considered alternatives regarding who was the most appropriate person to grant requests for variances: the commissioner, the commissioner and the commissioner's designee, the director of the DRS vocational rehabilitation only, counseling supervisors in vocational rehabilitation field offices, or the director of the DRS vocational rehabilitation and the director's designee. The proposed rule is reasonable because it provides for uniformity in decision-making while allowing the commissioner sufficient flexibility to delegate decisions concerning variances in the commissioner's absence, or in other circumstances when the commissioner is not able to make the decision personally.

In order to assure that variances, once granted, continue to be appropriate, it is necessary, as provided in Part 3300.5040, subpart 9, items E and F of the proposed rules, to require eligible consumers to report improvements in their financial situations and to allow the commissioner (or the commissioner's designee) to review an eligible consumer's financial situation.

#### 3300.5050 Comparable Benefits and Services

3300.5050, subpart 1. This portion of the proposed rules is necessary and reasonable in order to describe the federal legal requirements for the search for and use of comparable benefits. Under section 101(a)(8) of the Rehabilitation Act, as amended, and the federal regulations for the vocational rehabilitation program, Code of Federal Regulations, Title 34, section 361.47(b), the services listed in subpart 1 are provided without first seeking comparable services and benefits.

3300.5050, subpart 2. It is necessary to state eligible consumers' responsibilities regarding the search for comparable benefits and services in order to administer the comparable benefit requirements in the law with consistency and clarity statewide. In most cases, comparable benefits and services are available only when a person applies to a public or private program or other source for such services or benefits. It is reasonable, therefore, to require eligible consumers to apply for benefits and services to which they are likely to be entitled. This allows us to focus our purchase of services on employment-related items, consistent with the purpose of the vocational rehabilitation program.

Subpart 2, item A, is necessary in order to specify the responsibilities of eligible consumers for seeking comparable benefits for postsecondary training programs. Section 103(a)(3) of the Rehabilitation Act, as amended, states:

". . . no training services in institutions of higher education shall be paid for with funds under this title unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training."

It is reasonable and consistent with the Rehabilitation Act to require eligible consumers to apply for grants and scholarships, which are "grant assistance," before DRS participates financially in the cost of postsecondary training. It is reasonable to require eligible consumers to provide DRS with evidence of the grants and scholarships available to them, or provide evidence that they are not eligible for such benefits. Without that information, DRS would not be able to comply with the Rehabilitation Act's requirements to determine the availability or amount of "grant assistance," and DRS would not be able to determine if the eligible consumer required additional assistance to pay for postsecondary training.

Subpart 2, item B is necessary because some eligible consumers who apply for grants or scholarships are denied such assistance because they are in default on a student loan. The federal Rehabilitation Services Administration, in section 2515.05 of its Rehabilitation Services Manual, has established the policy that

". . . the State agency is not required or obligated to assist a student who is ineligible for student financial assistance because that student is in default of a student loan where hardship is not involved."

The proposed rule is reasonable because it is consistent with the federal policy that the determination of whether a student has made a good-faith effort to repay a student loan must be made by a rehabilitation counselor on an individual case-by-case basis. In policy directive RSA-PD-92-02, dated November 21, 1991, the Rehabilitation Services Administration stated:

"We recognize that true hardship cases may arise where an individual has limited or no financial resources available and cannot work out a satisfactory agreement with the lender. Under such circumstances, where a responsible repayment effort has been made, it can be concluded that maximum efforts have been made to secure grant assistance and that comparable benefits and services are not available. In such an instance, VR assistance may be appropriate. However, such a determination could only be made by a VR counselor on an individual basis, after carefully examining all of the circumstances involving an individual's default status and financial situation, and must be consistent with

the intent that VR resources be used as a last resort to pay for training in institutions of higher education."

Subpart 2, item C is necessary to specify the responsibilities of eligible consumers for participating in the search for comparable benefits for restoration services. It is reasonable to require eligible consumers to pursue coverage of medical expenses from their own insurance providers; the public vocational rehabilitation program should not have to pay for services which are covered by eligible consumers' insurance. If the eligible consumer has no health insurance, it is reasonable to require the individual to apply for medical assistance, because federal and state public policy have established the medical assistance program as a primary source of health care benefits for persons who are not covered by medical insurance plans and who do not have the personal resources to pay for health care.

Subpart 2, item D is necessary to comply with the federal statutory requirement that a search for comparable benefits and services must be carried out before vocational rehabilitation services (other than those listed in subpart 1) are provided or purchased by a state vocational rehabilitation agency. The proposed rule is reasonable because it does not require the eligible consumer to identify possible sources of comparable benefits; DRS staff knowledgeable about public and private programs and other community resources that provide services have that responsibility. It is reasonable to require consumers to apply for comparable benefits because, if an application is not made, there is no way of determining whether a comparable benefit is available to the eligible consumer. It is reasonable to require an eligible consumer to use an available comparable benefit; if a consumer refuses to utilize a comparable benefit which is available, DRS would be expending public funds unnecessarily for services available from other programs.

3300.5050, Subpart 3. This proposed rule is necessary and reasonable because it complies with the federal statutory requirement in section 101(a)(8) of the Rehabilitation Act, as amended, that a search to determine if comparable benefits are available is not required prior to providing vocational rehabilitation services:

"(A) if the determination would delay the provision of such services to any individual at extreme medical risk; or

(B) prior to the provision of such services if an immediate job placement would be lost due to a delay in the provision of such comparable benefits."

3300.5060 Terms and Conditions for Provision of Vocational Rehabilitation Services

In subparts 2 through 15 the requirements for consumer financial participation and the search for and use of comparable benefits are stated, where applicable. We acknowledge that this repeats the provisions in parts 3300.5040, subpart 6, and 3300.5050, subpart 1; however, we believe the redundancy is reasonable to assist readers of the rule in understanding all the terms and conditions applicable to each service without having to cross-check the rules on consumer financial participation and comparable benefits repeatedly. We wish to remind readers that, as stated in the "Effective Date" provision of the proposed rules, the consumer financial participation requirements will not take effect until April 1, 1994.

3300.5060, subpart 1. General conditions. This portion of the proposed rule is necessary in order to inform DRS staff and the public of the general conditions governing the provision of all vocational rehabilitation services. The proposed rule is reasonable because it implements federal and state statutory and regulatory requirements that govern the DRS vocational rehabilitation program.

The provisions in item A are required by section 103(a) of the Rehabilitation Act, as amended, which states that vocational rehabilitation services are provided

"to render an individual with a disability employable, including, but not limited to the following: (1) an assessment for determining eligibility and vocational rehabilitation needs . . . ."

It is also necessary and reasonable to include the provisions in item A in the proposed rules because, in DRS's experience, some individuals with disabilities have received misleading information that causes them to believe the DRS vocational rehabilitation program is a source of services for any purpose, instead of for the purpose of determining eligibility and achieving an employment goal.

The provisions in item B are reasonable because Minnesota Statutes 16A and the policies of the Department of Finance, the Department of Administration and the Department of Jobs and Training apply to purchases made by DRS; compliance with state purchasing requirements is mandated by federal regulations for the vocational rehabilitation program. Title 34 of the Code of Federal Regulations, Part 361.70, states:

"Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies."

The provision in item C is reasonable because federal regulations for the vocational rehabilitation program require written authorization before or at the same time a purchase of vocational rehabilitation services is made. Title 34 of the Code of Federal Regulations, Part 361.44 states

"The State plan must assure that written authorization is made, either before or at the same time as the purchase of services."

Payment of financial obligations previously incurred by an eligible consumer would violate this federal requirement.

The provision in item C is also reasonable because it places responsibility for legal obligations with the individual who incurred them; DRS believes that public funds should not be used to pay individuals' debts.

3300.5060, subpart 2. Child Care. This subpart is necessary in order to inform DRS staff and the public of the terms and conditions governing DRS's purchase of child care for eligible consumers. The child care provisions in the proposed rules, with the exception of the requirement for consumer financial participation, which will take effect April 1, 1994, are a restatement of a DRS interim policy that took effect on July 2, 1993, pending promulgation of DRS rules on child care.

Minnesota public policy recognizes that the primary responsibility for arranging and providing child care belongs to parents or guardians; in circumstances where additional assistance is necessary, the provision of child care is the responsibility of the counties and the Department of Human Services. Items A (consumer financial participation) and B (the search for and use of comparable benefits) are reasonable because they are consistent with these public policies.

Item C is reasonable because, in DRS's experience, short-term purchases of child care can be essential in emergency situations; otherwise, the interruption of services can effectively result in the loss of the investment of time, effort and money by the eligible consumer and DRS in planning, providing and participating in services. Item C, subitem (1) is reasonable because it requires DRS purchases of child care to be consistent

with Minnesota's legislatively-mandated child care provider licensure requirements and the exemptions from those licensure requirements. This provision does not add any additional licensing requirements. Item C, subitem (2) is reasonable because, in DRS's experience, a three-month limit on child care purchases in a 12-month period adequately covers short-term emergencies and provides sufficient time for eligible consumers to make arrangements for funding of child care from other, non-DRS sources, if necessary.

The payment rate for child care services proposed in item D is reasonable; the Department of Human Services (DHS) is authorized to establish rates of payment for child care, and it is appropriate for DRS, as a state agency, to use existing state rates.

3300.5060, subpart 3. Computer hardware and software. This subpart is necessary in order to inform the public and DRS staff of the terms and conditions governing the purchase of computer hardware, software or modems, printers and other peripherals. The provisions in this subpart, with the exception of the requirement for consumer financial participation, which will take effect April 1, 1994, are a restatement of a DRS interim policy that took effect on July 2, 1993, pending promulgation of DRS rules on DRS purchases of computer hardware, software or modems, printers and other peripherals.

Item C establishes a reasonable limitation on the purchase of computers. It is necessary, for prudent use of limited public funds, to limit DRS computer purchases to disability-related reasons; this provision is also reasonable because it is consistent with the vocational rehabilitation program's mission to remove or lessen employment barriers that result from disabilities. The exception for self-employment or small businesses is necessary and reasonable, because it takes into consideration the use, where appropriate, of computers in record-keeping and marketing activities, such as inventory control, accounts payable and receivable, and letters to current and potential customers. It also takes into account the fact that computers can be essential equipment in some businesses (for example, desk-top publishing or accounting services).

Item D is reasonable and necessary for the prudent use of public funds; if a consumer's needs can be met without purchasing computers, software or peripherals, it would be unreasonable to purchase such equipment.

Items E and F are necessary and reasonable; considering the rapidly-changing variety of computer equipment and software available, an independent assessment of the eligible consumer's

needs can assure an appropriate purchase, or can identify other means of meeting the consumer's needs. To obtain an unbiased assessment, it is reasonable to have the assessment conducted by a person with no financial interest in selling computer equipment. It is reasonable for DRS to take any such assessment into account before purchasing computers, software or peripherals; however, DRS does not delegate the responsibility for the final purchasing decision to the person making the assessment.

Item G is reasonable; in DRS's experience, \$3,000 is adequate to purchase the basic computers, software and peripherals that will meet an eligible consumer's needs. Data for federal fiscal year 1992 (October 1, 1991 through September 30, 1992) indicates that DRS purchases of computers, hardware, software and peripherals averaged \$1,180 per consumer for the consumers who received this service; in the period from October 1, 1992 through July 31, 1993, the average purchase per consumer for this service is \$1,011. Personal computers, software, and peripherals continue to decline in price, and therefore DRS believes that the \$3,000 cap on such purchases will continue to be reasonable in the future.

It is reasonable to exempt the purchase of adaptations to hardware, or specialized software required because of the eligible consumer's disability from this \$3,000 limit. Adaptations and specialized software may range from commonly-available, relatively inexpensive software or assistive devices to customized, high-technology modifications. It is appropriate to provide eligible consumers with the adaptations or software they need because of a disability; a dollar limitation could prevent DRS from providing the eligible consumer with the means to utilize the computer to achieve an employment goal.

3300.5060, subpart 4. Interpreter services for postsecondary training. The provisions in this subpart are necessary to establish the terms and conditions for providing interpreter services for postsecondary training. As stated in the "Effective Date" provision at the end of the proposed rules, this subpart will not take effect until April 1, 1994. This delay in implementation is reasonable because rehabilitation counselors and eligible consumers have already made arrangements for postsecondary training services, and support services such as interpreters, for the 1993-94 academic year. It is reasonable to proceed with the arrangements already made, rather than making substantial changes in eligible consumers' individualized written rehabilitation programs and re-negotiating service arrangements with postsecondary training institutions for the 1993-94 school year.



DRS anticipates that under the proposed rules, as in the past, for most eligible consumers, most, if not all, of the interpreter services necessary for postsecondary training will be provided or purchased by the postsecondary institution, not by DRS.

The proposed rules are reasonable because they tie DRS payments to the eligible consumer's need for interpreter services to participate in postsecondary training. The provision for payment to the postsecondary institutions is reasonable because it is consistent with long-standing arrangements between DRS and postsecondary institutions. The proposed rules are also reasonable because DRS's purpose in providing postsecondary training is to assist the eligible consumer to acquire the formal training and skills needed to reach an employment goal; DRS is not required to provide eligible consumers with interpreter services for extracurricular activities.

3300.5060, subpart 5. Maintenance. This subpart is necessary to implement the new requirement concerning maintenance resulting from the 1992 amendments to the Rehabilitation Act, and to clarify the terms and conditions for the provision of maintenance. Item C is necessary and reasonable because it is consistent with stated Congressional intent that maintenance is limited to situations where other vocational rehabilitation services are being provided, and that maintenance is intended to cover only the added costs of participating in rehabilitation, not everyday living expenses. This provision will take effect October 1, 1993, in order to conform to the national implementation of all the provisions of the Rehabilitation Act. (For additional information about this Congressional intent, please see the discussion of the definition of the term "maintenance" in this Statement of Need and Reasonableness.)

Item E, subitem (2) is reasonable: eligible consumers are free to choose where they wish to live; however, they are also responsible for the everyday living expenses incurred as a result of that choice. DRS payments for maintenance are only for additional costs incurred as a result of participation in one or more other vocational rehabilitation services.

Item E is necessary to clarify the circumstances when DRS will pay maintenance to cover living expenses. It is reasonable and consistent with the Rehabilitation Act to limit such payments to situations where the eligible consumer must temporarily live away from the eligible consumer's primary residence in order to receive one or more other vocational rehabilitation services.

It is necessary to describe the special conditions applicable to temporary relocation for postsecondary training. It is reasonable for these provisions to go into effect April 1, 1994,

because eligible consumers and rehabilitation counselors have already developed plans for the provision of vocational rehabilitation services for postsecondary training for the 1993-94 school year. It would be unreasonable to require abrupt changes to those plans, or to attempt to re-negotiate arrangements for maintenance, at the beginning of the school year.

It is reasonable to expect that eligible consumers who can work while in postsecondary training should pay their living expenses from their earnings. An eligible consumer who can work while in postsecondary training is free to choose not to do so, and is free to seek other sources of funds to pay for living expenses; however, in such circumstances it would be unreasonable for DRS to spend public funds to pay the eligible consumer's living expenses. It is reasonable to restrict the payment of maintenance for living expenses to situations where the eligible consumer cannot work for reasons related to the eligible consumer's disability; this provision reflects the vocational rehabilitation program's focus on services to reduce or remove the barriers to preparing for, entering, engaging in or retaining employment. It is reasonable for the determination of the eligible consumer's ability to work to be made by the rehabilitation counselor, because the rehabilitation counselor is responsible for the provision of services by DRS and is knowledgeable about the vocational impact of disabilities on individuals. It is reasonable to indicate that the rehabilitation counselor uses available medical, psychological, and other diagnostic information in making that determination, in order to assure that the rehabilitation counselor is utilizing information from professionals who are knowledgeable about the eligible consumer and the eligible consumer's disability. It is reasonable that the determination is made in consultation with the eligible consumer, because the eligible consumer is a primary source of information about the effects of a disability on his or her ability to work.

Item E, subitem (2), unit (d) is necessary to describe special conditions applicable to temporary relocation for job placement purposes only. It is reasonable for the determination of the need for relocation to be made by the rehabilitation counselor, who is knowledgeable about the labor market; consultation with the eligible consumer is reasonable so that the eligible consumer can provide information about the consumer's preferences about the places he or she wishes to seek a job. It is reasonable for this provision to become effective April 1, 1994, because rehabilitation counselors and eligible consumers have made arrangements for the payment of maintenance in support of temporary relocation for job placement; it would be unreasonable to make abrupt shifts in those service arrangements. Delaying

the implementation of this portion of the proposed rules until April 1, 1994, provides eligible consumers and rehabilitation counselors with adequate time the opportunity to reassess service needs and make appropriate preparations for the implementation of the proposed rule.

The provisions in items F and G for the maximum amount of maintenance payments are reasonable; they are based on state and federal public policy determinations of the amounts needed for basic living expenses made for the General Assistance program and the Social Security Supplemental Income (SSI) program. General Assistance payments are now \$203 per month; SSI payments are \$434 per month. The average of the two, rounded to the nearest \$10, is \$320 per month:

$$\begin{aligned} \$203 + \$434 &= \$637 \\ \$637/2 &= \$318.50 \\ \$318.50 \text{ rounded to the nearest } \$10 &\text{ is } \$320. \end{aligned}$$

1993 dollar amounts are used in this illustration; if General Assistance or SSI federal benefit amounts change, the average will also change.

The provision for maintenance for living expenses due to temporary relocation for job placement is reasonable. In DRS's experience, temporary relocation, especially temporary relocation from Greater Minnesota to the Twin Cities metropolitan area, can require spending more than \$320 per month for basic living expenses for several months. The overall cap of 12 times the usual monthly maximum in a twelve month period provides a reasonable annual maximum for placement-related relocation living expenses, while allowing for situations where it is necessary to exceed the usual monthly limit on a short-term basis.

It is reasonable, as indicated in the "Effective Date" portion of the proposed rules, for items F and G to take effect April 1, 1994. As discussed elsewhere in this subpart, many arrangements have already been made for the provision of maintenance, either for an academic year or for a period of job-searching. It would be unreasonable to abruptly modify planned services; delayed implementation provides eligible consumers and DRS staff with the opportunity to reassess service needs and jointly re-develop the plans to meet those needs, where appropriate.

3300.5060, subpart 6. Notetaker services for postsecondary training. This subpart is necessary to clarify the terms and conditions under which DRS will provide notetaker services for postsecondary training. As stated in the "Effective Date" provision at the end of the proposed rules, this subpart will not take effect until April 1, 1994. This delay in implementation is

reasonable because rehabilitation counselors and eligible consumers have already made arrangements for postsecondary training services, and support services such as notetakers, for the 1993-94 academic year. It is reasonable to proceed with the arrangements already made, rather than making substantial changes in eligible consumers' individualized written rehabilitation programs and re-negotiating service arrangements with postsecondary training institutions for the 1993-94 school year.

DRS anticipates that under the proposed rules, as in the past, for most eligible consumers, a substantial amount of the notetaker services necessary for postsecondary training will be provided or purchased by the postsecondary institution, not by DRS.

The proposed rules are reasonable because they tie DRS payments to the eligible consumer's need for notetaker services to participate in postsecondary training. Item C is reasonable because DRS's purpose in providing postsecondary training is to assist the eligible consumer to acquire the formal training and skills needed to reach an employment goal; DRS is not required to provide eligible consumers with notetaker services for extracurricular activities.

3300.5060, subpart 7. Personal assistance services. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of personal assistance services. The 1992 amendments to the Rehabilitation Act added personal assistance services to the list of vocational rehabilitation services that state vocational rehabilitation agencies must provide, when necessary to assist an eligible consumer to achieve employment. Therefore, DRS will implement the personal assistance services policies described in the proposed rules effective October 1, 1993, in accordance with the federal requirement for compliance with the amendments to the Act by that date. However, the consumer financial participation requirement will not take effect until April 1, 1994.

Item A is reasonable because it is required by section 103(a)(15) of the Rehabilitation Act, as amended, which lists as one of the vocational rehabilitation services that may be provided under the Act: "On-the-job or other related personal assistance services provided while an individual with a disability is receiving services described in this section." Personal assistance services, therefore, can only be provided in connection with other vocational rehabilitation services.

Item D is necessary to assure that DRS purchases personal assistance services from qualified individuals. It is reasonable for to DRS to incorporate in these rules the policies of the

Department of Human Services, which has responsibility for regulating the purchase of personal care attendant services. DRS does not believe it would be appropriate to establish other criteria that would duplicate, or be either more or less restrictive, than existing state policies.

Item E is reasonable because the 90-day period after the first day of employment provides adequate time for eligible consumers, rehabilitation counselors, employers and other appropriate persons to make arrangements for personal assistance services to be provided from another, non-VR source. This provision is necessary because vocational rehabilitation services are time-limited; the vocational rehabilitation program cannot indefinitely fund the provision of personal assistance services (or any other services) for persons who are suitably employed.

Item F is reasonable; the state rule referenced in this item is the Department of Human Services rule on the rate of payment for personal care attendants for home health care. DRS believes it is reasonable to use the existing established state policies, rather than attempting to duplicate the rate-setting responsibilities of the Department of Human Services.

Item G is reasonable because it is consistent with the intent of the "comparable benefits" provision in the Rehabilitation Act that services available to an eligible consumer from other government or private programs should be utilized before vocational rehabilitation funds are spent to purchase services. Equally important, it would be unreasonable for DRS to provide a service which only resulted in reduced services to an eligible consumer.

Item H is reasonable because it is consistent with the provision, in section 102(b)(1)(A) of the Rehabilitation Act, that an individualized written rehabilitation program (which states the specific services to be provided to the eligible consumer) "is jointly developed" by the eligible consumer and the rehabilitation counselor. It is reasonable and necessary to exempt training in the management of personal care attendants from the requirement for the search for and use of comparable benefits because section 101(A)(8) of the Rehabilitation Act exempts "vocational and other training services" (except for postsecondary training) from the comparable benefit requirement.

3300.5060, subpart 8. Reader services for postsecondary training.  
The provisions in this subpart are necessary to establish the terms and conditions for providing reader services for postsecondary training.

The requirement to search for and use comparable benefits, which is DRS's current policy and a long-standing requirement in the Rehabilitation Act, will take effect October 1, 1993. As stated in the "Effective Date" provision at the end of the proposed rules, the rest of this subpart will not take effect until April 1, 1994. This delay in implementation is reasonable because rehabilitation counselors and eligible consumers have already made arrangements for postsecondary training services, and support services such as readers, for the 1993-94 academic year. It is reasonable to proceed with the arrangements already made, rather than making substantial changes in eligible consumers' individualized written rehabilitation programs and re-negotiating service arrangements with postsecondary training institutions for the 1993-94 school year.

DRS anticipates that under the proposed rules, as in the past, for most eligible consumers, a substantial amount of the reader services necessary for postsecondary training will be provided or purchased by the postsecondary institution, not by DRS.

The proposed rules are reasonable because they tie DRS payments to the eligible consumer's need for reader services to participate in postsecondary training. They are also reasonable because DRS's purpose in providing postsecondary training is to assist the eligible consumer to acquire the formal training needed to reach an employment goal; DRS is not required to provide eligible consumers with reader services for extracurricular activities.

3300.5060, subpart 9. Rehabilitation technology. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of rehabilitation technology.

Item B is necessary and reasonable to assure that rehabilitation technology is appropriate to meet the needs of the eligible consumer. In a rapidly-developing field, with many options for goods and services, it is reasonable to obtain an assessment of the eligible consumer's needs if uncertainty exists. A concern frequently expressed in the rehabilitation literature, and at conferences on rehabilitation technology for consumers, service providers, and rehabilitation professionals such as the annual Closing the Gap conferences in Minnesota, is that consumers can be ill-served, frustrated and disappointed by the selection of inappropriate rehabilitation technology. At the same time, the provision in item B is reasonable because it recognizes that the eligible consumer and counselor may both have sufficient information to make a determination regarding appropriate rehabilitation technology, without requiring an unnecessary assessment.

3300.5060, subpart 10. Restoration services. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of restoration services to eligible consumers.

Item D is reasonable because it is consistent with state law and federal regulations, and represents long-standing division policy. The state legislation authorizing the Department of Jobs and Training to operate the vocational rehabilitation program, states that "Persons with disabilities are entitled to free choice of vendor for any medical, medical, dental, prosthetic, or orthotic services . . . ." [Minnesota Statutes, section 268A.03, paragraph (b)]. As discussed previously in this Statement of Need and Reasonableness, under 3300.5060, Subpart 1, federal regulations for the vocational rehabilitation program require DRS to follow applicable state purchasing policies and procedures; in Minnesota, those policies and procedures include the use state contracts where appropriate, and the use of departmental purchasing procedures.

3300.5060, subpart 11. Small business enterprises. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of goods and services to assist an eligible consumer to establish a small business. The provisions in this subpart, with the exception of the requirement for consumer financial participation, which will take effect April 1, 1994, are a restatement of a DRS interim policy that took effect on July 2, 1993, pending promulgation of DRS rules on the provision of goods and services to assist an eligible consumer to establish a small business.

Item C is necessary because small businesses historically have a high failure rate. Since the establishment of a small business will involve the expenditure of public funds and, depending on the degree of consumer financial participation required, the eligible consumer's own funds, it is reasonable and fiscally prudent to require professional evaluation of the likelihood that the business will be viable.

The provisions in item C are also reasonable because they will assist the eligible consumer in making plans for a business that has a much better chance of succeeding; successful gainful employment for individuals with disabilities is the purpose of the vocational rehabilitation program.

Item D is necessary to clarify that the requirement in item C to comply with Small Business Administration loan procedures is for the purpose of obtaining consultation on funding sources for the small business and on the likelihood that the business will be successful. Item D is reasonable because it provide consumers

with the opportunity for choice regarding funding for small businesses. Eligible consumers are free to take out Small Business Administration loans if they qualify, or to seek and use other sources of funding to establish a small business.

Item E is necessary to ensure that the information obtained from an evaluation of viability of the business is considered prior to any DRS purchases to establish the business. The proposed rule is reasonable because it allows the eligible consumer and the rehabilitation counselor flexibility in making the final determination regarding whether to proceed with establishing a small business; that decision is not delegated to the person or organization who made the evaluation.

Item F is necessary to establish a cap on DRS expenditures for small businesses; in the absence of a cap on expenditures, an inordinate amount of the limited public funds available for the vocational rehabilitation program could be spent for the establishment of a few small businesses. The \$5,000 cap is reasonable because it is recognized as a typical amount needed to set up a home office, including computer, printer, telephone and fax, according to a report, "Myths and Realities of Working at Home," prepared by Joanne Pratt for the Small Business Administration. The \$5,000 cap is equal to the maximum amount available under the Small Business Administration's micro loan program, another indicator of the reasonableness of the \$5,000 cap on expenditures for a small business.

It is reasonable to exclude rehabilitation technology purchases from this cap, because rehabilitation technology assists the eligible consumer to carry out job functions that the eligible consumer could not otherwise perform satisfactorily. Although much rehabilitation technology is low-cost, in some circumstances the technology necessary to assist the eligible consumer to work can be expensive. It is reasonable and consistent with DRS's mission to provide the necessary rehabilitation technology without applying the cost of the technology to the \$5,000 cap on small business expenditures.

Item G is necessary to establish appropriate parameters for DRS's participation in paying for costs of a small business. The proposed rule is reasonable because it places responsibility for the ongoing operation of the business on the eligible consumer; while DRS assistance in establishing a small business is appropriate, the use of public funds to subsidize the ongoing costs of the business is not.

Item H is necessary to clarify financial responsibility if an eligible consumer's small business goes bankrupt. Item H is reasonable because it makes explicit for instances of bankruptcy



the DRS policy stated in part 3300.5060, subpart 1, of the proposed rules. This provision places responsibility for legal obligations with the individual or business that incurred them; the provision is reasonable because it ensures that public funds are not used to pay the debts of individuals' small businesses.

3300.5060, subpart 12. Transportation services. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of transportation. The following provisions in this subpart are a restatement of a DRS interim policy that took effect on July 2, 1993, pending promulgation of DRS rules: item D, prohibiting DRS from purchasing vehicles; item H, concerning vehicle adaptations; and item I, concerning vehicle repairs.

The special provision in item B exempting vehicle adaptations from the comparable benefit requirement is necessary: these individualized modifications to vehicles are a form of rehabilitation technology. Section 101(a)(8) of the Rehabilitation Act exempts rehabilitation technology from the comparable benefit search requirement.

Item C is necessary and reasonable because it is required by section 103(a)(10) of the Rehabilitation Act, as amended, which lists as a vocational rehabilitation service "transportation in connection with the rendering of any vocational rehabilitation service."

Item D is reasonable; the purchase of a vehicle is an individual's own decision and responsibility. DRS is not required to purchase vehicles for eligible consumers.

Items E, F and G are necessary to establish rates of payment for transportation services. The proposed rules are reasonable because they tie division payments for transportation to the "actual cost of public transportation or paratransit," recognizing that there are varying rates for public transportation and paratransit in the state. It is reasonable and in keeping with the prudent use of public funds to pay for transportation at the rate for public transportation or paratransit when those means of transportation are available but an eligible consumer chooses to use a private vehicle instead. The rule is reasonable because it assures that public funds will be spent at the rate for the lower-cost transportation alternative that can meet the eligible consumer's needs.

It is reasonable to base payments for gasoline on the Internal Revenue System's rate for charitable deductions; this rate, \$ .12 per mile, is established by federal law and is recognized as providing a reasonable allowance for the cost of gasoline. DRS

considered the alternative of using a lower \$ .09 per mile rate, which is the American Automobile Association's current estimate of gasoline costs, but decided that a rate established in federal law was a better reflection of current public policy decisions regarding gasoline costs.

It is reasonable to indicate that DRS will not pay for the costs of obtaining, maintaining, or insuring a vehicle; those expenses are ones that an eligible consumer would incur whether or not vocational rehabilitation services are being provided, and it is the eligible consumer's responsibility to pay for them.

Item H is reasonable because vehicle adaptations are highly individualized, and because the safe operation of a vehicle is at stake. It is reasonable and necessary to evaluate the consumer's needs and the vehicle before purchasing adaptations to assure that the adaptations are possible, appropriate for the consumer, and will allow safe and legal operation of the vehicle.

Item H, subitem (3) is reasonable in order to provide services equitably to eligible consumers in all areas of the state. Public transportation, paratransit and carpooling are not equally available throughout Minnesota, and it is reasonable to provide vehicle adaptations, when necessary to achieve an employment goal, as a more reliable and versatile means of transportation than other alternatives.

The terms and conditions in Item I are reasonable because they are consistent with the general recognition that maintaining and repairing a private vehicle is the responsibility of the owner, not the responsibility of public agencies. At the same time, the terms and conditions allow for DRS assistance with vehicle repair in emergencies. The \$1,500 cap on vehicle repair in any twelve-month period is reasonable. It will allow DRS to assist in purchasing most needed minor or major repairs.

3300.5060, subpart 13. Tuition, fees, books, supplies, and tools and equipment for postsecondary training. This subpart is necessary to inform DRS staff and the public of the terms and conditions for the provision of tuition, fees, books, supplies, and tools and equipment for postsecondary training. As stated in the "Effective Date" provision at the end of the proposed rules, the following portions of this subpart will not take effect until April 1, 1994:

Item A (consumer financial participation); items C, D, E, F, G (which deal with the method for calculating consumer financial participation and the amount of DRS purchases of services); and item I (which deals with the relationship of

DRS purchases of services to student loans, work -study and other self-help aid).

This delay in implementation is reasonable because rehabilitation counselors and eligible consumers have already made arrangements for postsecondary training services for the 1993-94 academic year. It is reasonable to proceed with the arrangements already made, rather than making substantial changes in funding arrangements for services under eligible consumers' individualized written rehabilitation programs and attempting to communicate revised DRS funding arrangements with postsecondary training institutions for the 1993-94 school year.

The April 1, 1994 implementation date is reasonable since it corresponds to the time when DRS counselors, eligible consumers, and financial aid officers at postsecondary training institutions begin mutual communication about funding arrangements for the next academic year.

This subpart is reasonable because it assures eligible consumers of access to postsecondary training to achieve a suitable employment goal. Under this subpart, the cost of tuition, fees, books, supplies tools and equipment for an eligible consumer's postsecondary training at public Minnesota undergraduate programs will be paid in full, from one or a combination of the following sources: gift aid (for example, grants or scholarships), consumer financial participation where applicable, or DRS purchases of services.

This subpart is reasonable because it allows eligible consumers to choose postsecondary training at private institutions, or at non-Minnesota public institutions. When consumers exercise that choice, this subpart assures that public vocational rehabilitation funds will be spent prudently and in a manner consistent with equitable use of public funds for all consumers.

It is reasonable, as required by items C and H, to obtain from the postsecondary institution the costs for tuition, fees, books, supplies, tools and equipment, as well as the amount of gift aid available to the eligible consumer. The postsecondary institution is the only source of this information. An agreement between DRS and the financial aid officers at Minnesota colleges and universities provides for the exchange of information about costs of training programs and the financial aid available to eligible consumers. The procedures implementing this agreement will be modified to provide DRS and postsecondary institutions with the information necessary to comply with these rules.

It is reasonable, as specified in item D, to prorate the tuition cap for eligible consumers who will attend fewer than three quarters or two semesters. Applying the tuition cap based on a full academic year to a shorter period would be unreasonable, because it could result in DRS expenditures of public funds in excess of the amount needed by the individual.

It is necessary and reasonable, as specified in item E, to prorate the tuition cap for an eligible consumer who is registered for fewer than 12 credits per term. Twelve to 15 credits per term is considered "full-time"; this prorating assures that, for eligible consumers registered for fewer than 12 credits per term, the maximum DRS payments for the cost of tuition and mandatory fees will be consistent with the recognized levels of "three-quarter time," "half-time," and one-quarter time" attendance at a Minnesota public postsecondary institution.

It is reasonable, as provided in item F, for the dollar amount of the tuition cap to be increased when an eligible consumer is attending a specialized postsecondary institution -- for example, Gallaudet University or the Rochester Technical Institute for the Deaf -- where the cost of interpreter services is included in the tuition and fees for all students. The usual dollar amount of the tuition cap does not provide for the cost of interpreter services. For eligible consumers attending most postsecondary institutions, interpreters are provided in accordance with the terms and conditions for interpreter services, 3300.5060, subpart 4. It is, therefore, equitable to base the increase in the dollar amount of the tuition cap on the method of determining DRS payments for interpreters as specified in the proposed rules on the terms and conditions for interpreter services, 3300.5060, subpart 4, items B and C.

Item G is reasonable because it makes allowance for instances when the training needed for an eligible consumer to achieve an employment goal is not available at a Minnesota public institution. DRS recognizes that for most eligible consumers, training available at Minnesota public postsecondary institutions will be adequate to prepare them for employment. However, DRS also recognizes that for some eligible consumers, Minnesota public institutions do not provide the training needed for the employment goal. Examples include training to become a member of the clergy in a particular religion, as well as training in other specialized professional and technical fields. In such instances, it would be unreasonable to apply the tuition cap, which is predicated on the cost of tuition and fees at the most expensive Minnesota public institution, when needed training is unavailable at a Minnesota public institution.

Item I is reasonable; it is required by the Rehabilitation Act, as amended, section 103(a)(3) which states that "no training services in institutions of higher education shall be paid for with funds under this title unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training."

Items J and K are reasonable because they assure an equitable and prudent use of public vocational rehabilitation funds in serving eligible consumers, whether they are receiving training from public Minnesota postsecondary institutions or private or non-Minnesota institutions. For eligible consumers who choose postsecondary training at private or non-Minnesota institutions, if gift aid, consumer financial participation, and DRS purchases of services do not cover the costs of tuition, fees, books, supplies, and tools and equipment, the consumers are free to use additional sources available to them of paying these costs of training.

Item L is reasonable because it is consistent with the requirement in the Rehabilitation Act to make "maximum efforts" to obtain assistance to pay for postsecondary training costs; if DRS payments for services reduced grant assistance, DRS would not have made the required "maximum efforts."

Item M is necessary and reasonable to inform eligible consumers and other members of the public of the relationship between DRS purchases of services and self-help aid available from postsecondary institutions. It would be unreasonable for DRS to limit an eligible consumer's freedom to choose to accept or reject student loans, work-study or other forms of self-help for meeting postsecondary training costs.

The provisions in this item are based on federal policy: the federal Rehabilitation Services Administration, in its policy directive RSA-PD-92-02, indicated that "a VR client cannot be required to take out a student loan as a condition for receiving VR services." That policy directive also notes that persons receiving vocational rehabilitation services cannot be forced to undertake a campus work study arrangement if the serious nature of the client's disability makes work study an unreasonable option." DRS has incorporated the federal policy provision on work-study in the proposed rules on maintenance, 3300.5060, subpart 5, item E, subitem (2). Under DRS's proposed rules, the combination of gift aid (if available), consumer financial participation (if required), and DRS purchases of services will assure eligible consumers of access to appropriate postsecondary training. Eligible consumers who choose training that costs more than the amount those sources will cover are free to use self-help aid or other sources to meet the additional costs; however,

it is not DRS's responsibility to reduce self-help aid resulting from the consumer's choice in such instances.

Item N is necessary and reasonable in order for DRS to comply with its agreement with financial aid officers to communicate the amount of DRS purchases of services to them. Financial aid officers need to know this amount in order to ensure that total funding available for postsecondary training does not exceed the total training costs. It is necessary for DRS to obtain eligible consumer's permission to communicate with financial aid officers to comply with state and federal data privacy laws and regulations.

10/11/93

DEPARTMENT OF JOBS AND TRAINING

September 27, 1993

Maryanne V. Hruby  
Legislative Commission  
to Review Administrative Rules

Michael J. Fratto *MJF*  
Management Planning Office

296-3574

Statement of Need and Reasonableness for Rehabilitation Services Rules

As required by Minnesota Statutes, sections 14.131 and 14.23, I am submitting a copy of the Statement of Need and Reasonableness for the proposed Rehabilitation Services Rules. The Notice of Intent to Adopt Rules will be published in the October 11, 1993 State Register. Beginning today the Statement of Need and Reasonableness will be made available to the public.

cc:  
Enc.

The Legislative Commission to  
Review Administrative Rules

SEP 28 1993



