

CR 10-073

**State of Wisconsin
Department of Workforce Development
Division of Employment and Training**

Apprenticeship

DWD 295

The Wisconsin Department of Workforce Development proposes to repeal DWD 295.0001(4), DWD 295.05, DWD 295.07(4), (5) and (6), and DWD 295.09; to renumber DWD 295.001(2); to renumber and amend DWD 295.02, DWD 295.03, DWD 295.04, and DWD 295.07(7) and (8); to amend DWD 295.0001(1), DWD 295.06, DWD 295.07(1) and (2), DWD 295.08, DWD 295.10(2) and (3), DWD 295.15, and DWD 295.20; to repeal and recreate DWD 295.01, and DWD 295.07(3); and to create DWD 295.001(2) to (6) and (8) to (25), DWD 295.02, DWD 295.21, DWD 295.22, and DWD 295.23, relating to the state apprenticeship program and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005(1), 106.01(9), and 227.11, Stats.

Statute interpreted: Section 106.01, Stats.

Related statutes or rules: Sections 106.001, 106.02, 106.025, 106.03 and 106.04, Stats.; Chapter DWD 296, Wis. Admin. Code.

Explanation of agency authority. Under secs. 106.01 to 106.04, Stats., the Department of Workforce Development (DWD) is responsible for the establishment and supervision of apprenticeship standards for sponsors, employers and employees. Under sec. 106.01(9), Stats., “(t)he department may investigate, fix reasonable classifications, issue rules and general or special orders and, hold hearings, make findings and render orders upon its findings as shall be necessary to carry out the intent and purposes of this section.”

Summary of the proposed rule. On October 26, 2008, the US Department of Labor published 29 CFR 29 (Volume 29 of the Code of Federal Regulations, Part 29) in the Federal Register. 29 CFR 29 is a final rule designed to modernize the National Apprenticeship System. This rule, which took effect on December 29, 2008, provides State Apprenticeship Agencies with up to two additional years to implement the required changes in order to continue federal recognition of Wisconsin’s apprenticeship program.

On May 12, 2010, the Governor signed 2009 Wisconsin Act 291, previously 2009 Senate Bill 586, which makes conforming changes to the Wisconsin Statutes which are designed to ensure that the U.S. Department of Labor will continue to recognize Wisconsin's program as in conformance. This proposed rule is intended to carry forward the intent of Act 291 and make similarly conforming changes to the administrative rules of the apprenticeship program.

The proposed amendments to DWD 295 implement the changes provided in 29 CFR Part 29 and include the following changes: three different approaches for apprentices to complete a program, allowance for technology based learning by defining electronic media and explicitly allowing its use in the provision of related instruction, sets the components of program standards and introduces completion rates as a critical factor in the evaluation of program quality, provides increased program quality and options for apprentice sponsors changes, introduces provisional registration which will increase quality and success rates by providing for newly registered programs to be reviewed and the end of the provisional registration and sets forth components which must be included in an Apprentice Contract.

Summary of analytical methodology. This proposed rule has been developed by reviewing the new federal National Apprenticeship System standards and drafting amendments to the existing rules on apprenticeship to bring the state rules into conformance with the federal regulations.

Comparison to federal law. As described above, federal law has been amended to create a National Apprenticeship System. State programs which meet the federal standards will be recognized as in conformance by the U.S. Department of Labor.

Comparison with statutes and rules in adjacent states. Minnesota has a state apprenticeship statute and is going through a process similar to Wisconsin to update its statutes and rules to be consistent with the federal regulations. Illinois, Michigan, and Iowa are "federal" apprentice registration states which follow the federal regulations in the absence of state statutes and rules.

Effect on small business. The rule changes affect small businesses as defined in s. 227.114 (1), Stats., but do not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small business. The nature of the revisions to federal and state law and the proposed rule has been such that employers and employees will not be subject to any burdensome or costly changes.

Summary of comments by legislative review committees. No comments were received from either legislative review committee.

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SECTION 1. DWD 295.001(1) is amended to read:

DWD 295.001(1) “Apprentice” has the meaning specified in s. ~~406.04~~ 106.001(1), Stats.

SECTION 2. DWD 295.001(4) is repealed.

SECTION 3. DWD 295.001(2) is renumbered DWD 295.001(7) and amended to read:

DWD 295.001(7) “Department” means the department of workforce development, which is the state registration agency for the purposes of 29 CFR 29.

SECTION 4. DWD 295.001(2) to (6) are created to read:

DWD 295.001(2) “Assignment” means the initial placement of an apprentice with an employer.

NOTE: See also the definitions in this section of “reassignment” and “unassignment.”

(3) “Cancellation” means the termination of the registration or approval status of a program at the request of the sponsor, or the termination of an apprentice contract at the request of any party to the contract.

(4) “Certificate” or “certification” means documentary evidence that:

(a) The department has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(b) The department has registered an apprenticeship program as evidenced by a certificate of registration;

(c) The department has determined that an apprentice has successfully met the requirements to receive an interim credential; or

(d) The department has determined that an individual has successfully completed apprenticeship.

(5) “Competency” means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

(6) “Completion rate” means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within 1 year of the projected completion date. An “apprenticeship cohort” is the group of individual apprentices registered to a specific program during a 1 year time frame, except that a cohort does not include the apprentices whose apprentice contract has been cancelled during the probationary period or transferred.

Section 5. DWD 295.001(8) to (25) are created to read:

DWD 295.001(8) “Employer” has the same meaning as in s. 106.001(5), Stats.

(9) “Electronic media” means media that utilize electronics or electromechanical energy for the end user to access the content; and includes electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic media or interactive distance learning.

(10) “Federal purposes” includes any federal contract, grant, agreement or arrangement dealing with apprenticeship; and any federal financial or other assistance,

benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

(11) “Interim credential” means a credential issued by the department, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

(12) “Journeyworker” means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

Note: The use of this term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

(13) “Local apprenticeship committee” means an apprenticeship committee to which the department has delegate the authority to act under ss. DWD 295.02 and 295.03.

(14) “Office of Apprenticeship” means the office designated by the employment and training administration of the U. S. department of labor to administer the national apprenticeship system or its successor organization.

(15) “Provisional registration” means the initial approval of a newly registered program that meets the required standards for program registration.

(16) “Quality assurance assessment” means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program’s performance, including determining if apprentices are receiving on-the-job learning in all phases of the apprenticeable occupation, scheduled wage increases consistent with the registered standards, and related instruction through appropriate curriculum and delivery systems, and that the department is receiving notification of all new registrations, cancellations, and completions as required in this chapter.

(17) “Reassignment” means the assignment of an apprentice from one employer to another within the same apprenticeship program.

(18) “Registration of an apprentice contract” means the acceptance and recording of an apprentice contract by the department as evidence of the apprentice’s participation in a particular registered apprenticeship program.

(19) “Registration of an apprenticeship program” means the acceptance and recording of such program by the department as meeting the basic standards and requirements of the department for approval of such program for federal and state purposes, as shown by a certificate of registration.

(20) “Related instruction” means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice’s occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

(21) “Sponsor” means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is or will be registered or approved.

(22) “Technical assistance” means guidance provided by department staff in the development, revision, amendment, or processing of a potential or current program sponsor’s standards of apprenticeship or apprentice contracts; or advice or consultation with a program sponsor to further compliance with this chapter; or guidance from the department on how to remedy nonconformity with this chapter.

(23) “Transfer” means a shift of apprenticeship registration from one program to another, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

(24) “Unassignment” means the temporary interruption of an apprentice contract.

(25) “Wisconsin apprenticeship advisory council” means the council created by s. 15.227(13), Stats.

SECTION 6. DWD 295.01 is repealed and recreated to read:

DWD 295.01 Eligibility and procedure for registration of an apprenticeship program. (1) The eligibility for registration of an apprenticeship program for federal and state purposes is conditioned upon a program’s conformity with the apprenticeship program standards published in this chapter. For a program to be determined by the department as being in conformity with this chapter, the program shall apply for registration and be registered with the department. The determination by the department that the program meets the apprenticeship program standards is made only through such registration.

(2) An apprenticeship program or any apprentice contract is eligible for registration by the department if it meets all of the following criteria:

(a) The program or contract is in conformity with the requirements of this chapter and the training is in an apprenticeable occupation having the characteristics set forth in s. DWD295.15(2).

(b) The program or contract is in conformity with the requirements of ch. DWD 296 relating to equal employment opportunity.

(3) Apprentices shall be registered in accordance with s. DWD 295.02. Such individual registration may be effected by completing an apprentice contract in accordance with s. 106.01(1), Stats.

(4) A person applying for the registration of an apprenticeship program or an apprentice contract shall appear personally before a an apprenticeship committee when the committee requests the applicant to appear. If no recommendation is received by the department from the committee within 40 days after receipt of an application by the committee, the department shall act on the application without committee recommendation. This time limit may be extended by the department on a showing of good cause. A recommendation on an individual application shall be subject to review and revision by the department in the event that an applicant is dissatisfied with the committee action.

(5) The sponsor shall notify the department within 40 days of persons who have successfully completed apprenticeship programs, transfers, unassignments, and of apprentice contracts and shall provide a statement of the reasons for any cancellations.

(6) Programs approved by the department shall be accorded registration or approval evidenced by a certificate.

(7) When the department determines that an application for a new program meets the required standards for program registration, the department shall give provisional approval to the program for a period of a full training cycle. The department shall review each new program for quality and for conformity at the end of each year during the training cycle. At the end of the initial training cycle:

(a) A program that conforms with the requirements of this chapter shall be made permanent.

(b) A program not in operation or not conforming to this chapter shall be recommended for deregistration procedures.

(8) The department shall review each program for quality and for conformity at least once every five years. If a program is not in operation or not conforming to the requirements of this chapter, the department shall recommend the program for deregistration procedures.

(9) A proposal or application to modify or change a registered program or established apprenticeship standards shall be submitted to the department. The department shall make a determination which approves or disapproves the proposal or application within 90 days from the date of receipt. If the department approves the modification or change, the department shall record and acknowledge the approval as an amendment to the program within 90 days. If the department does not approve a proposed modification or change, it shall notify the sponsor of the disapproval and the reasons therefore and provide the appropriate technical assistance.

(10) When proposing an individually-sponsored apprenticeship program for registration by an employer or employers' association that provides for participation by a union, the department shall require a written statement of union agreement or no objection to the program. If a program proposed by an employer or employers' association does not provide for union participation, the employer or employers' association shall furnish to any existing union which is the collective bargaining agent of the employees to be trained a copy of its application for registration and of the

apprenticeship program. The department shall allow 45 days for the receipt of union comments, if any, before final action on the application for registration or approval.

(11) When the employees to be trained in an individually-sponsored apprenticeship program have no collective bargaining agreement, an employer or group of employers, or an employer association may propose an apprenticeship program.

SECTION 7. DWD 295.02 is renumbered DWD 295.03 and amended to read:

DWD 295.03 Local committees. (1) The function of ~~joint~~ local apprenticeship committees is to act in an advisory capacity to the department and to be parties to ~~indentures as provided in s. 106.01 (5i) (a), Stats. Equal employer-employee representation is a requirement~~ apprentice contracts. Candidates for membership are nominated by the organizations which the members are to represent. To be recognized as a ~~joint~~ local apprenticeship committee each individual member shall be officially so designated by the department. The geographical jurisdictional area of each such ~~joint~~ local apprenticeship committee shall be determined by the department.

(2) This rule does not apply to shop or plant sponsored apprenticeship programs or to ~~joint~~ local apprenticeship committees created under the terms of a bargaining agreement between the management and its employees within that plant or shop program.

SECTION 8. DWD 295.02 is created to read:

DWD 295.02 Standards. (1) The department may adopt statewide or local apprenticeship standards covering minimum training requirements, procedure in processing apprentice contracts, qualification of applicant employers and apprentices,

functions of local apprenticeship committees, and such other matters as constitute an apprenticeship program in a particular trade.

(2) To be eligible for approval and registration by the department, an apprenticeship program shall conform to the following standards:

(a) The program shall have an organized, written plan, also referred to as program standards, embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation, which meets the criteria in s. DWD 295.15(2) and is subscribed to by a sponsor who has undertaken to carry out the apprentice training program. The term of apprenticeship may be measured either through the completion of the industry standard for on-the-job learning of at least 2,000 hours, known as the time-based approach, the attainment of competency, known as the competency-based approach, or a blend of the time-based and competency-based approaches, known as the hybrid approach.

(b) The program standards shall contain provisions that address:

1. The employment and training of the apprentice in a skilled occupation.
2. For standards using the time-based approach, the measurement of skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

3. For standards using the competency-based approach, the measurement of skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach shall still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards shall address how on-the-job

learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

4. For standards using the hybrid approach, the measurement of the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

5. An outline of the work processes in which the apprentice will receive supervised work experience and learning on the job, and the allocation of the approximate amount of time to be spent in each major process.

6. Provision for organized, related and supplemental instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is required. This instruction in technical subjects may be accomplished through such media as: Classroom, occupational or industry courses, electronic media, or other instruction approved by the department. Apprenticeship instructors shall meet the educational and occupational requirements of the Wisconsin Technical College System Board, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation, and have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction.

7. A progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired. The entry wage shall not be less than the minimum

wage prescribed by the Fair Labor Standards Act, 29 USC 206, or Wisconsin's minimum wage law.

8. Periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records.

9. A numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language shall be specific and clearly described as to its application to the job site, workforce, department or plant.

10. A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship. The probationary period may not exceed 25 percent of the length of the program, or 12 months, whichever is shorter.

11. Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction.

12. The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years.

13. The placement of an apprentice under a written contract that meets the requirements of ch. 106, Stats. The contract shall directly, or by reference, incorporate the standards of the program as part of the contract.

14. The granting of advanced standing or credit for demonstrated competency, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted.

15. The transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected local apprenticeship committees or program sponsors and the department, and shall comply with the following requirements:

a. The transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor;

b. Transfer shall be to the same occupation; and

c. A new apprentice contract shall be executed when the transfer occurs between program sponsors.

16. Assurance of qualified training personnel and adequate supervision on the job.

17. Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the department.

18. Program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation.

19. Identification of the department.

20. Provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the department for approval.

21. Provision for registration of apprenticeship agreements, modifications, and amendments; notice to the department of persons who have successfully completed apprenticeship programs; and notice of transfers, unassignments, and cancellations of apprentice contracts and a statement of the reasons therefor.

22. Authority for the cancellation of an apprentice contract during the probationary period by either party without stated cause; cancellation during the probationary period shall not have an adverse impact on the sponsor's completion rate.

23. Compliance with 29 CFR 30, including the equal opportunity pledge prescribed in 29 CFR 30.3(b); an affirmative action plan complying with s. DWD 296.04; and a method for the selection of apprentices authorized by s. DWD 296.05, or compliance with parallel requirements contained in a State plan for equal opportunity in apprenticeship adopted under ch. DWD 296 and approved by the department. The apprenticeship standards shall also include a statement that the program shall be conducted, operated and administered in conformity with applicable provisions of ch. DWD 296, as amended, or, if applicable, an approved state plan for equal opportunity in apprenticeship.

24. Contact information, including name, address, telephone number and email address, for the appropriate individual with authority under the program to receive, process and make disposition of complaints.

25. Recording and maintenance of all records concerning apprenticeship as may be required by the department and other applicable law.

(3) In trades for which no uniform apprenticeship courses or schedules of training have been adopted by the department, the sponsor may execute an apprentice contract with approved standards, subject to the approval of the department.

SECTION 9. DWD 295.03 is renumbered DWD 295.04 and amended to read:

DWD 295.04 Application forms. Where the department requires application forms to be filled out by applicant employers, applicant sponsors, and apprentices applicants for apprenticeship, the forms shall be approved by the department.

Note: All forms referred to may be obtained at no charge from the Department of Workforce Development, Bureau of Apprenticeship Standards, P.O. Box 7972, Madison, WI 53707.

SECTION 10. DWD 295.04 is renumbered DWD 295.05 and amended to read:

DWD 295.05 Apprentice wages. (1) An apprentice ~~indenture~~ contract wage scale is deemed adequate when, during the term of training, it averages 60% of the current ~~journeyman~~ journeyworker rate or skilled wage rate. The ~~indenture should~~ apprentice contract shall provide for a graduated scale progressing in periods as approved by the department.

(2) In determining the ~~journeyman~~ journeyworker or skilled wage rate, the following formula ~~governs: In trades in which it is common practice to bargain collectively on a community-wide or area-wide basis, the journeyman wage is that rate received by a greater number of journeymen in the same trade and community than any other rate~~ for the construction sector for the apprentices who are covered under a collective bargaining agreement, the specified rate applies. Where apprentices are not covered by the collective bargaining agreement, the skilled wage rate is the rate

average, calculated as the mean, based on the geographical area of the appropriate local committee. The department shall not normally approve a skilled rate for apprenticeship purposes more than 20% below the ~~journeyman~~ journeyworker rate in the area. In controversial cases, growing out of the fact that the committee's jurisdictional area is so great as to extend into communities in which application of this policy proves impracticable, the department reserves the right to make exceptions.

(3) In other ~~trades or trade groups~~ industry sectors in which collective bargaining is on the basis of an individual ~~plan or establishment~~ program, the skilled rate is that rate specified in the bargaining agreement. In ~~establishments~~ individual programs not covered by bargaining ~~agreement~~ agreements, the skilled rate is that rate paid the greatest number of competent ~~journeyman-mechanics~~ journeyworkers in like establishments in the community, or such other rate deemed adequate by the department.

SECTION 11. DWD 295.05 is repealed.

SECTION 12. DWD 295.06 is amended to read:

DWD 295.06 Effect of bargaining agreements. (1) Where conditions of employment of apprentices are stipulated by collective bargaining agreement, the department shall be guided by the terms of such agreement provided such terms are not in conflict with state statutes or this chapter.

(2) The department shall similarly be guided by any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprentice contract, which is not otherwise prohibited by law, executive order, or authorized regulation.

SECTION 13. DWD 295.07(1) and (2) are amended to read:

DWD 295.07 ~~Indenture~~ Apprentice contract. (1) All apprenticeship indentures ~~indentures~~ apprentice contracts shall be made upon the ~~blank~~ forms provided by the department.

(2) No ~~indenture~~ apprentice contract shall be considered in force unless it has had the approval of the department.

SECTION 14. DWD 295.07(3) is repealed and recreated to read:

DWD 295.07(3) The apprentice contract shall contain, explicitly or by reference, all of the following information:

(a) Names and signatures of the contracting parties (apprentice, the program sponsor, and the department), and the signature of a parent or guardian if the apprentice is a minor.

(b) The date of birth of the apprentice, and, on a voluntary basis, the social security number of the apprentice.

(c) Contact information of the program sponsor and the department.

(d) A statement of the occupation in which the apprentice is to be trained, and the beginning date and term constituting the duration of apprenticeship.

(e) A statement showing:

1. The number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

2. The number of hours to be spent in related instruction in technical subjects related to the occupation consistent with s.106.01(6)(a) and (b), Stats.

(f) A statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

(g) A statement of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated.

(h)1. The apprentice contract shall state the length of the probationary period, which may be up to 25% of the contract hours of the apprenticeship but in no case shall it exceed 12 calendar months. The probationary period shall constitute part of the apprenticeship period.

2. During the probationary period, apprentice contracts are voidable by any party to the contract upon written notice to the department.

3. After the probationary period, the apprentice contract may be cancelled consistent with this chapter.

(i) A reference incorporating as part of the contract the standards of the apprenticeship program as they exist on the date of the contract and as they may be amended during the period of the contract, upon approval of the department.

(j) A statement that the apprentice shall be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, sex, sexual orientation, or age.

(k) Contact information of the department when the controversies or differences cannot be resolved locally.

(L) A statement of advance standing including work and related instruction wages shall be commensurate for the credit granted or an amendment thereto.

SECTION 15. DWD 295.07(4), (5) and (6) are repealed.

SECTION 16. DWD 295.07(7) and (8) are renumbered DWD 295.07(4) and (5) and are amended to read:

DWD 295.07(4) ~~Minors indentured~~ A minor with an apprenticeship contract under the provisions of ch. 106, Stats., shall not be subject to the law relating to prohibited employments for minors, ~~insofar as such minors at the time of injury, are to the extent that the minor is~~ performing service within the provisions of ~~contracts of an~~ apprenticeship indenture contract approved by the department.

(5) The terms of an existing ~~indenture~~ apprenticeship contract may be modified subject to approval of the department.

SECTION 17. DWD 295.08 is amended to read:

DWD 295.08 Manual. The department shall keep on record and make available to all interested persons the apprenticeship manual as approved by the department ~~on July 17, 1956~~ effective January 2008, or as thereafter amended.

SECTION 18. DWD 295.09 is repealed.

SECTION 19. DWD 295.10(2) and (3) are amended to read:

DWD 295.10(2) An owner of a family-owned construction business may select any of his or her sons or daughters or any person necessary to an approved affirmative action plan as an apprentice when the person has met the qualification standards for a trade and the business has met the qualification standards for training the type of apprentice involved.

(3) This section may not be used by a family-owned construction business to replace an apprentice already ~~indentured~~ registered and assigned to the business.

SECTION 20. DWD 295.15 is amended to read:

DWD 295.15(1) DUTIES OF THE DEPARTMENT. (a) No ~~indenture~~ apprentice contract or program may be approved pursuant to ch. 106, Stats., unless the occupation involved has been approved by the department as one suitable as an apprenticeable occupation under the criteria provided in this section.

(b) The department shall maintain a list of approved apprenticeable occupations.

(2) OCCUPATIONAL CRITERIA. In order for a new occupation to be approved by the department as an apprenticeable occupation, the department shall find that the occupation:

(a) ~~Involves manual, mechanical or technical skills;~~ skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) ~~Is customarily learned in a practical way through training and on-the-job work;~~ clearly identified and commonly recognized throughout an industry;

(c) ~~Requires related instruction to supplement the on-the-job training;~~ Involves the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least 2,000 hours of on-the-job learning to attain; and:

(d) ~~Is clearly identified and recognized throughout an industry; and~~ Requires related instruction to supplement the on-the-job learning.

~~(e) Is not part of an occupation presently recognized as apprenticeable by the department, unless that part is practiced and recognized industrywide as a separate identifiable trade.~~

~~(3) INDUSTRYWIDE. The department shall determine whether an occupation is practiced and recognized industrywide as a separate identifiable trade by surveying employers in the industry in question.~~

SECTION 21. DWD 295.20 is amended to read:

DWD 295.20 Enforcement of apprentice contracts. (1) COMPLAINTS. The department may accept complaints ~~from any party to the agreement~~ arising under an apprentice contract which cannot be adjusted locally alleging that an indenture agreement apprentice contract entered into under ch. 106, Stats., is not being complied with by another party to the agreement. This section does not apply to any complaint concerning discrimination or other equal opportunity issues covered by ch. DWD 296, or subject matter covered by a collective bargaining agreement.

(2) The complaint shall be in writing and signed by the complainant, or authorized representative, and shall be submitted within 20 days of the final local decision. It shall set forth the specific matters complained of, together with relevant facts and circumstances. Copies of pertinent documents and correspondence shall accompany the complaint.

(3) The department, as appropriate, shall render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the department shall make reasonable efforts to effect a satisfactory resolution between the parties

involved. If so resolved, the parties shall be notified that the case is closed. Where an opinion is rendered, copies shall be sent to all interested parties. Nothing in this section precludes an apprentice from pursuing any other remedy authorized under another federal, state, or local law.

~~(3)~~ **(4)** NOTICE. (a) *Notice of intent to cancel.* If any party to the ~~indenture agreement~~ apprentice contract requests that the department cancel the ~~agreement contract~~, the department shall send a written notice of intent to cancel to the complainant and the other party or parties. The notice shall state that the ~~agreement apprentice contract~~ shall be cancelled 20 days from the date of the notice, unless the department receives a written objection from any party within the 20-day period. An objection shall be on the form provided by the department with the notice.

(b) *No objection to cancellation.* If no party to the ~~agreement apprentice contract~~ objects by the expiration of the 20-day period in the notice of intent to cancel, the ~~agreement apprentice contract~~ is cancelled effective the date of the cancellation notice under par. (d).

(c) *Timely objection.* If the department receives an objection within the 20-day period provided in the notice of intent to cancel, the following provisions apply:

1. The ~~indenture agreement~~ apprentice contract shall remain in the status it is in at the time that the department receives the objection, until the department cancels the ~~agreement apprentice contract~~ under par. (d).

2. The department shall determine whether the information provided by the complainant and the objecting party supports the complainant's allegation that another party is not complying with the terms of the ~~agreement apprentice contract~~ and whether

the ~~agreement~~ apprentice contract should be cancelled. If the information provided is unclear or incomplete, the department shall investigate further.

3. If the department determines that the ~~indenture agreement~~ apprentice contract should be cancelled, the department shall send a cancellation notice under par. (d) and the ~~agreement~~ apprentice contract is cancelled effective the date of the notice. If the department determines that the ~~indenture agreement~~ apprentice contract should not be cancelled, the department shall rescind the intent to cancel notice.

(d) *Cancellation notice.* If the ~~indenture agreement~~ apprentice contract is cancelled, the department shall send a written cancellation notice to the parties. Any party who objects may make a request for a hearing within 20 days from the date of the notice.

~~(4)~~ **(5)** APPROPRIATE SUBJECT MATTER. (a) The department shall hold a hearing if a timely request is made under sub. (3) on any complaint alleging that the provisions of the ~~indenture agreement~~ apprentice contract are not being complied with by a party to the ~~agreement~~ contract. The department may not hold a hearing on complaints which consist of matters which are unrelated to the provisions of the ~~indenture agreement~~ apprentice contract.

(b) Examples of violations of the ~~indenture agreement~~ apprentice contract which may be appropriate subject matter for a hearing on a complaint to the department under this chapter include ~~but are not limited to~~:

1. That the employer or other party to the ~~indenture agreement~~ apprentice contract has not provided to the apprentice the proper ~~training~~ on-the-job learning as required in the ~~indenture agreement~~ apprentice contract;

2. That the employer or other party to the ~~indenture agreement~~ apprentice contract has failed to provide to the apprentice the proper ~~schooling~~ related instruction as required in the ~~indenture agreement~~ apprentice contract;

3. That the employer or other party to the ~~indenture agreement~~ apprentice contract has assigned the apprentice to perform job duties which do not provide the proper ~~training~~ on-the-job learning as required in the ~~indenture agreement~~ apprentice contract;

4. That the employer or other party to the ~~indenture agreement~~ apprentice contract has failed to pay the wages as required in the ~~indenture agreement~~ apprentice contract;

5. That the apprentice is not satisfactorily progressing in the ~~training~~ on-the-job learning or ~~schooling~~ related instruction required under the ~~indenture agreement~~ apprentice contract.

(c) Examples of matters which are unrelated to the provisions of the ~~indenture agreement~~ apprentice contract which are not appropriate subjects for a hearing by the department under this chapter include ~~but are not limited to~~:

1. Employee absenteeism or tardiness at work or school;
2. Employee use of drugs or alcohol on the job at work or school;
3. Insubordination;

4. Refusal to perform work as assigned; or
5. Employee violations of the employer's printed work rules.

(d) If the department's investigation reveals that the dispute between the apprentice and the employer or other party to the ~~indenture agreement~~ apprentice contract is unrelated to the provisions of the ~~indenture agreement~~ apprentice contract, the department may cancel the ~~indenture agreement~~ apprentice contract.

~~(e) This section does not apply to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed and resolved in accordance with DWD 296.~~

~~(5)~~ **(6)** HEARING PROCEDURES. (a) When the department sets a date for a hearing, it shall notify each party to the ~~indenture agreement~~ apprentice contract at least 20 days prior to the date of the hearing.

(b) The person appointed by the department as the hearing examiner may not be any person who has participated in an initial investigation of the complaint.

(c) The hearing examiner shall limit the hearing to the appropriate subject matter under sub. ~~(4)~~ (5) .

(d) The person making the complaint shall present evidence at the hearing to support the allegations in the complaint. If the person making the complaint fails to appear at the hearing without good cause or refuses to present evidence to support the allegations in the complaint, the hearing examiner may dismiss the complaint.

(e) The hearing examiner is not bound by the strict statutory or common law rules of evidence. Evidence shall be admitted as provided in s. 227.45, Stats.

(f) The hearing shall be transcribed. Any party may obtain a copy of the transcript by purchasing a copy from the transcription agency.

(g) At the conclusion of the hearing, the hearing examiner shall make written findings and orders and serve them upon the parties. The hearing examiner may make orders to enforce the ~~indenture agreement~~ apprentice contract as provided in s. 106.01~~(8) and (9)~~, Stats., cancel the ~~indenture agreement~~ apprentice contract, or dismiss the complaint.

(h) If the hearing examiner finds that a penalty as provided in s. 106.01 ~~(8) and (9)~~, Stats., is appropriate, the department may request the attorney general to seek a court order directing the party to pay the penalty. If any party fails to comply with an order of the hearing examiner, the department may request the attorney general to seek enforcement of the order or penalty in the circuit court.

(i) The decision of the hearing examiner is the final order of the department. Any party may seek judicial review of an order of the hearing examiner, as provided in ch. 227, Stats.

~~(6)~~ **(7)** CANCELLATION. This section does not apply to the request of either party that an ~~indenture agreement~~ apprentice contract be cancelled during the probationary period specified in the ~~indenture agreement~~ apprentice contract.

SECTION 22. DWD 295.21 is created to read:

DWD 295.21 Deregistration of a registered program. (1) TYPES OF DEREGISTRATION. Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with sub. (2), or upon reasonable cause, by the department instituting formal deregistration proceedings in accordance with sub. (3).

(2) DEREGISTRATION AT THE REQUEST OF THE SPONSOR. The department may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

(a) The registration is cancelled at the sponsor's request, and the effective date thereof;

(b) That, within 15 days of the date of the acknowledgment, the department shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal and state purposes which require the U. S. Secretary of Labor's approval of an apprenticeship program, and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

(3) DEREGISTRATION BY THE DEPARTMENT UPON REASONABLE CAUSE.

(a) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or with the requirements of this chapter, including: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentices skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions under DWD 296.

(b) For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one

apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the department during a review process as requiring corrective action.

(4) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this chapter, the department shall notify the program sponsor in writing.

(5) The notice sent to the program sponsor's contact person shall:

(a) Be sent by registered or certified mail, with return receipt requested;

(b) State the shortcomings and the remedy required; and

(c) State that a determination of reasonable cause for deregistration shall be made unless corrective action is effected within 30 days.

(6) Upon request by the sponsor for good cause, the 30-day term may be extended another 30 days. During the period for corrective action, the department shall assist the sponsor in every reasonable way to achieve conformity.

(7) If the required correction is not effected within the allotted time, the department shall send a notice to the sponsor, by registered or certified mail, return receipt requested, stating the following:

(a) The notice is sent under this paragraph;

(b) Certain deficiencies were called to the sponsor's attention, enumerating them and the remedial measures requested, with the dates of such occasions and letters, and that the sponsor has failed or refused to effect correction;

(c) Based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing by the department; and

(d) If the sponsor does not request a hearing, the entire matter shall be submitted to the department for a decision on the record with respect to deregistration.

(8) If the sponsor does not request a hearing, the department shall prepare a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The department shall make a final order on the basis of the record presented.

(9) If the sponsor requests a hearing, the department shall prepare a report containing all the data listed in par. (8), and the department shall refer the matter to a hearing officer. The hearing officer shall convene a hearing in accordance with ch. 227, Stats., and issue a decision as required in ch. 227, Stats.

(10) Every order of deregistration shall contain a provision that the sponsor shall, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program, the effective date thereof, that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for federal purposes which require the U. S. Secretary of Labor's approval of an apprenticeship program; and that all apprentices are

referred to the department for information about potential transfer to other registered apprenticeship programs.

SECTION 23. DWD 295.22 is created to read:

DWD 295.22 Reinstatement of program registration. Any apprenticeship program deregistered under s. DWD 295.21 may be reinstated by the department upon presentation to the department of adequate evidence that the apprenticeship program is operating in accordance with this chapter.

SECTION 24. DWD 295.23 is created to read:

DWD 295.23 Hearings for deregistration. (1) Within 10 days of receipt of a request for a hearing, the department shall designate a hearing officer to preside over the hearing. The hearing officer shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. The notice shall include:

- (a) A reasonable time and place of hearing;
 - (b) A statement of the provisions of this chapter pursuant to which the hearing is to be held; and
 - (c) A concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.
- (2) The procedures contained in ch. 227, Stats., shall apply to the disposition of the request for hearing except that:
- (a) The hearing officer shall receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be

made available by the party submitting the documentary evidence to any party to the hearing upon request.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this chapter, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied, where reasonably necessary, by the hearing officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The hearing officer shall issue a written decision within 90 days of the close of the hearing record. The hearing officer's decision constitutes final agency action unless, within 20 days from the date of the decision, a party dissatisfied with the decision files a petition for rehearing with the department, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically noted is deemed to have been waived. A copy of the petition for rehearing shall be sent to the opposing party at the same time. Thereafter, the decision of the hearing officer remains final agency action unless the hearing officer, within 30 days of the filing of the petition for rehearing, notifies the parties that it has accepted the case for rehearing. The hearing officer may set a briefing schedule or decide the matter on the record. The hearing officer shall decide any case that the hearing officer accepts for review within 180 days of the close of the record. If not so decided, the hearing officer's previous decision constitutes final agency action.

SECTION 25. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.