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LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-027

AN ORDER to create ETF 20.35, relating to dividing WRS accounts and annuities per qualified domestic relations orders (QDROs).

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

02-12-99 RECEIVED BY LEGISLATIVE COUNCIL.
03-09-99 REPORT SENT TO AGENCY.

MAR 12 1999

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RS:JLK:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 99-027

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Under s. 227.15 (1), Stats., an agency may not hold a public hearing on a proposed rule until after it has received the written report of the Legislative Council Staff review or until after the initial review period of 20 working days, whichever comes first. In this case, the report to the agency is due March 11, 1999 and the first possible hearing date is March 12, 1999 unless the Legislative Council Staff submits a report before its due date. However, the agency has scheduled a hearing on March 11, 1999. In order to avoid the necessity of rescheduling the hearing, this report is being submitted before its due date. In the future, unless prior arrangements are made with the Legislative Council Staff for early submission of its report, the agency should avoid scheduling hearings before the statutory due date of the Legislative Council Staff report.

b. The first line of the text of the rule should be: "SECTION 1. ETF 20.35 is created to read:". [See s. 1.04 (1), Manual.]

c. The title of s. ETF 20.35 refers to a "qualified domestic relations order" and then follows it with a parenthetical reference to the acronym "QDRO." The text uses only the acronym and indicates that it is defined in s. 40.02 (48m), Stats. However, s. 40.02 (48m), Stats., defines the term "qualified domestic relations order" without using the acronym. A definition of "qualified domestic relations order" or "QDRO" should be added, either as a subsection of s. ETF 20.35 or as a definition in s. ETF 10.01. [See s. 1.01 (8), Manual.]

d. In s. ETF 20.35 (intro.), the term "Intro:", which should be "(intro.)," is not necessary, since this is a created section, and should be deleted. In addition, unless this material grammatically leads into the following subsections, it should be renumbered as sub. (1) and the remaining subsections and internal cross-references should be renumbered accordingly. [See s. 1.03 (8), Manual.]

e. In the third sentence of s. ETF 20.35 (intro.), "must equal" should be changed to "shall equal." In the fourth sentence of s. ETF 20.35 (intro.), "will determine" should be changed to "shall determine." In the last sentence of s. ETF 20.35 (6) (d), "shall not receive" should be changed to "may not receive." In the first sentence of s. ETF 20.35 (6) (k), "department will delay" should be changed to "department shall delay." In the second sentence of s. ETF 20.35 (6) (k), "department will process" should be changed to "department shall process." In the last sentence of s. ETF 20.35 (6) (k), "QDRO will have no effect" should be changed to "QDRO has no effect." [See s. 1.01 (2), Manual.]

f. Section ETF 20.35 (5) (b) (intro.) and (7) (intro.) would benefit from including introductory language such as "all of the following" or "any of the following."

g. In s. ETF 20.35 (2), the two references to "two" should be changed to "2." [See s. 1.01 (5), Manual.] This comment also applies to s. ETF 20.35 (6) (a) and (7) (b) 1. and 2. Also, in sub. (2), the word "truncate" should be replaced by the word "round," unless there is a specific reason for inconsistency with other provisions of the rule.

h. In s. ETF 20.35 (5), (6) and (7), a title should not be included unless titles are included for all of the subsections of s. ETF 20.35. [See s. 1.05 (1), Manual.]

i. In s. ETF 20.35 (5) (a), "Social Security" and "Social Security Administration" should not be capitalized. [See s. 1.01 (4) (a), Manual.]

j. In s. ETF 20.35 (5) (b) (intro.), "this par.:" should be changed to "this paragraph:". [See s. 1.07 (2), Manual.] Also, in par. (b) 1., the reference "10" should be replaced by the reference "(10)."

k. In s. ETF 20.35 (6) (e), the notation "par." should be replaced by the notation "pars."

l. In s. ETF 20.35 (6) (g), "ch. ETF 11.02 (1)" should be changed to "s. ETF 11.02 (1)." [See s. 1.07 (2), Manual.]

m. In s. ETF 20.35 (6) (L), "ch. ETF 50 subch. III," should be changed to "subch. III of ch. ETF 50." [See s. 1.07 (2), Manual.]

n. In the last sentence of s. ETF 20.35 (7) (b) 3., the reference to "s. 40.23 (2) (c), (2m) (c) or (d), or (3), or under s. 40.23 (2) (b) or (2m) (e), Stats." should be changed to "s. 40.23 (2) (b) or (c), (2m) (c), (d) or (e) or (3), Stats." Also, the introductory material of par. (b) does not grammatically lead into the following subunits. Consequently, the introduction should be renumbered as subd. 1. and the remaining subdivisions renumbered accordingly. Finally, par. (b)

makes references to rounding quotients to two decimal places; this does not appear to be necessary in light of sub. (2).

o. In the last sentence of s. ETF 20.35 (7) (c), the reference to “par. (6) (a)” should be changed to “sub. (6) (a).” [See s. 1.07 (2), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the last sentence of s. ETF 20.35 (6) (k), the reference to “par. (g)” should be to “par. (h).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The close parenthesis symbol should be added before the period at the end of the first sentence in the analysis.

b. In the second sentence of the analysis, “alternate” should be changed to “alternate payee.”

c. In the second and the last paragraphs of the analysis, to avoid ambiguity about the status of the first and last dates, the phrase “between January 1, 1982 and April 27, 1990” should be changed to “on or after January 1, 1982, and on or before April 27, 1990” or “during the period that begins on January 1, 1982, and ends on April 27, 1990.” [See s. 40.08 (1m) (f) 3., Stats.] Alternatively, the phrase could be changed to “on or after January 1, 1982, and before April 28, 1990.” [See s. 40.08 (1m) (k) 2., Stats.] See, also, the title to s. ETF 20.35 (7).

Also, although the analysis refers to various dates with respect to the date a marriage terminates, s. ETF 20.35 does not do so, with the exception of the title of s. ETF 20.35 (7). A reference to those dates should be included in the rule text.

d. In the fourth paragraph of the analysis, the first sentence is difficult to follow. It may be useful to separate it into two sentences.

e. In the last paragraph of the analysis, the references to “degree date” should be changed to “decree date.” Also, in the last sentence, the word “a” should be deleted.

f. In the “Copies of Rule and Contact Persons” provision of the analysis, the last sentence should give the actual name, title and telephone number of the contact person, rather than stating “please call (name, title, phone).” Also, the sentence should end with a period.

g. In s. ETF 20.35 (5) (a), a period should be inserted after “2” in the reference to “s. 40.08 (1m) (f) 2, Stats.”

h. In the second sentence of s. ETF 20.35 (5) (a), “their” should be changed to “his or her.”

i. The first sentence of s. ETF 20.35 (6) (k) is difficult to follow. It may be useful to separate it into two sentences, for example, “The department shall reject a QDRO if it does not meet

all the requirements of s. 40.02 (48m), Stats., or if it is not an original QDRO signed by the judge or family court commissioner or does not have an original certification from the issuing court. If a QDRO is rejected and the department receives a benefit application that would close the participant's account through payment of a lump sum benefit, the department shall delay payment of the lump sum benefit for a period of 30 days after the date the QDRO is rejected."

j. In the last sentence of s. ETF 20.35 (6) (k), a comma should be inserted after "closed" to set off the introductory phrase.

While the title of s. ETF 20.35 (7) refers to QDROs for marriages terminated between January 1, 1982, and April 27, 1990, s. ETF 20.35 (7) (intro.) refers to the division of accounts and annuities divided under QDROs submitted *under the provisions of s. 40.08 (1m) (f) 3., Stats.* Section 40.08 (1m) (f) 3., Stats., applies to marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 *for which the Department of Employee Trust Funds (DETF) receives a QDRO after May 2, 1998.* No reference is made in s. ETF 20.35 (7) to the provision of s. 40.08 (1m) (f) 3., Stats., relating to May 2, 1998.

Moreover, s. 40.08 (1m) (f) 3., Stats., simply provides that for marriages terminated during the period that begins on January 1, 1982, and ends on April 27, 1990 for which DETF receives a QDRO after May 2, 1998, the division of benefits does not apply to any benefits paid to the participant before DETF receives the QDRO. Thus, it may not be appropriate to refer only to QDROs submitted under the provisions of s. 40.08 (1m) (f) 3., Stats. Should there be a reference to s. 40.08 (1m) (k) 2., Stats., or to some other provision?

If a reference to s. 40.08 (1m) (f) 3., Stats., is retained, a period should be inserted following "3."

k. In the last sentence of s. ETF 20.35 (7) (c), a comma should be inserted after the first use of the word "balance" to set off the introductory phrase.

State of Wisconsin
DEPARTMENT OF EMPLOYE TRUST FUNDS -- OFFICE OF THE SECRETARY
and
EMPLOYE TRUST FUNDS BOARD
WISCONSIN RETIREMENT BOARD
TEACHER RETIREMENT BOARD

Clearinghouse Rule #CR

PROPOSED RULE creating ss. ETF 20.35, Wisconsin Administrative Code, relating to dividing WRS accounts and annuities per Qualified Domestic Relations Orders (QDROs)

NOTICE OF HEARING AND PROPOSED RULE

NOTICE OF HEARING

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which creates ss. ETF 20.35, Wisconsin Administrative Code, relating to dividing WRS accounts and annuities per Qualified Domestic Relations Orders (QDROs) in accordance with the provisions of § 227.16 (1), Wisconsin Statutes. The public hearing will be held on Thursday, March 11, 1999 at 1:00 PM in room 2A, 801 West Badger Road, Madison, Wisconsin.

The public record on this proposed rule making will be held open until 4:30 p.m. on Friday, March 12 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Effective April 28, 1990, for marriages that are terminated on or after that date, up to 50% of a participant's WRS account or annuity could be awarded to an alternate payee (the former spouse). Upon receipt of a Qualified Domestic Relations Order (QDRO), the Department creates a separate account or annuity for the alternate. The account or annuity division is effective on the decree date (the first of the month in which the marriage is legally terminated).

Effective May 2, 1998, the law changed to allow the Department to divide a WRS account or annuity per a QDRO for marriages terminated between January 1, 1982 and April 27, 1990. These QDROs do not apply to payments made before the date the Department receives the

QDRO, although the value of the account is still divided as of the decree date. The participant's account status may have changed between the decree date and the date the Department receives the QDRO; for example, the participant may have been actively employed under the WRS on the decree date, but may have been retired for several years by the time ETF receives the QDRO. When the participant status has changed since the decree date, the prospective division of the account or annuity is based on the current account status, but the value of the benefits awarded to the alternate payee is based on a percentage (specified in the QDRO) of the value of the account or annuity as of the decree date.

The purpose of this rule is to clarify how the Department will apply a QDRO to a participant's account or annuity, and how the participant's and alternate payee's benefits will be calculated to assure that to the extent possible, the total actuarial value of their benefits will be equal to the actuarial value of the participant's benefits had the account or annuity not been divided per a QDRO.

General Summary of Rule.

This proposed rule further clarifies how the Department will determine whether a QDRO meets the criteria in § 40.02 (48m), Stats., and if it is necessary to reject a QDRO that does not meet the statutory requirements, the Department will delay processing any application to close the account with a lump sum benefit for 30 days after the QDRO is rejected to give the parties an opportunity to submit a corrected QDRO. It specifies the procedures that the Department will follow if the participant fails to submit the military service certification timely as required by statute, and that the participant may not receive credit for the portion of any active military service that the alternate payee would have received if the participant had submitted the certification timely. Except for certain specified exceptions, once the Department has divided a participant's account according to a QDRO, any subsequent corrections or adjustments to the participant's service, contributions or earnings will be applied only to the participant's account; the alternate payee's account will not be adjusted.

This rule would also specify how retirement, accelerated payment and disability annuities would be divided to assure that the benefit liabilities of the fund after the division are equal to the benefit liability that would have existed if the annuity were not being divided. For marriages terminated on or after April 28, 1990, all account and annuity divisions are retroactive to the decree date. However, for marriages terminated between January 1, 1982 and April 27, 1990, although the portion of the account or annuity being awarded to the alternate payee is based on the account value as of the decree date, the division applies to future payment only. This may result in a different percentage of a current annuity being awarded to the alternate payee than is specified in the QDRO. For example, the participant may have continued to work under the WRS after the decree date, but the alternate payee cannot receive a benefit from service or contributions accrued after the decree date. Consequently, the percentage of the participant's current benefit actually granted to the alternate payee may be lower than the percentage of the account (as of the decree date) awarded to the alternate payee in the QDRO.

Authority for Rule.

§ 227.10

Statutes Interpreted

§ 40.02 (48m) and 40.08 (1m)

Initial Fiscal Estimate. The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Initial Regulatory Flexibility Analysis. The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Copies of Rule and Contact Persons. Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call (name, title, phone)

TEXT OF RULE

ETF 20.35 is hereby created to read:

ETF 20.35 Division of accounts and annuities per a qualified domestic relations order

defining
(QDRO). **Intro:** Upon receipt of a QDRO as defined in s. 40.02 (48m), Stats., the department shall divide WRS accounts and annuities in accordance with the QDRO. The purpose of this

section is to clarify how the department will apply the QDRO to the account or annuity. When an annuity is divided, the total actuarial value for the separate annuities as of the effective date of the annuity division must equal the actuarial value of the participant's annuity on that date if the

annuity were not divided. The department will determine whether a court order meets the definition of a QDRO in s. 40.02 (48m). (1) A marriage that is terminated by a court through

SEPARATE

divorce, legal separation or annulment is considered to be terminated for the purpose of determining a decree date as defined in s. 40.02(18f), Stats.

does this term matter

(2) If the percentage of the participant's account or annuity that is awarded to the alternate payee by a QDRO is expressed to more than two decimal places, the department shall truncate the percentage to two decimal places.

round

(3) The participant's outstanding WRS account receivable balances as of the date the department divides the account shall be divided between the participant and alternate payee in the same proportion as the participant's account or annuity.

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(4) A QDRO received after the participant's date of death shall have no effect on the participant's account or annuity.

(5) **Dividing WRS Annuities.** Annuities divided per a QDRO shall be divided as follows:

(a) If the participant selected an accelerated payment option as provided in s. 40.24 (1) (e), Stats., and the participant's temporary annuity is still in force as of the effective date of the annuity division, using the actuarial tables in effect on the effective date of the annuity division, the department shall calculate the present value of both the temporary and life annuities, divide the total present value based on the percentages specified on the QDRO, and calculate separate annuities for the participant and alternate payee as specified in s. 40.08 (1m) (f) 2, Stats. Unless the participant or alternate payee provides a projection of their ~~Social Security~~ benefits at age 62 from the ~~Social Security Administration~~, the estimated ~~Social Security~~ benefit amount used to calculate the participant's and alternate payee's temporary annuities shall be prorated portions of the participant's temporary annuity amount as of the effective date of the annuity division, calculated based on the respective percentages of the annuity being awarded to the participant

and alternate payee.

(b) Upon division of a disability annuity calculated under the provisions of s. 40.63 (1) or (4), Stats., the alternate payee's annuity shall consist of a portion based on the participant's actual service and a portion based on assumed service. Once the participant's disability annuity has

been divided under this par. 1. The termination or suspension of the participant's disability annuity shall have no effect on the alternate payee's annuity. If the participant's disability annuity is terminated and the participant's account restored under the provisions of s. 40.63 (9) and (10), Stats., the contributions and service credited to the restored account shall be reduced by the same percentage that the participant's disability annuity was reduced based on the QDRO. X

2. The death of the participant shall have no effect on the alternate payee's annuity. X

3. The portion of the alternate payee's annuity based on the participant's assumed service and age shall cease upon the death of the alternate payee. Any benefits payable upon the alternate payee's death shall be based only on the guaranteed portion of the alternate payee's annuity.

(6) **Dividing WRS Accounts.** Accounts divided per a QDRO shall be divided as follows:

(a) If the employer no longer has records available on which to base the employer report of earnings as required by s. 40.02 (48m) (j), Stats., the department shall prorate the participant's service, earnings and contributions for the calendar year. The service and contributions shall be prorated based on the number of months between January 1 of the year in which the marriage is terminated and the decree date, divided by the number of complete and partial months during that calendar year in which the participant was a participating employe, with the quotient rounded to two decimal places. ^{Access}

(b) If the department has received the participant's application and payment to purchase creditable service before the decree date, the purchased service shall be divided in the same proportion as the other portions of the participant's account. Any refunds or billing for supplemental payment due for such purchased service shall be divided between the participant and alternate payee in the same proportion as the service was divided.

(c) If the participant has active military service, the alternate payee shall be granted the percentage specified in the QDRO of the military service for which the participant would be eligible as of the decree date, based on the participant's total creditable service as of the decree date.

(d) Notwithstanding par. (c), if a participant does not provide to the department certification of active military service as provided in s. 40.02 (48m) (f), Stats., the department shall divide the participant's account without the military service. If the participant subsequently provides documentation of active military service, the department shall divide the creditable military service between the participant and alternate payee's accounts on the same basis that the military service would have been divided had the documentation been submitted timely. The participant shall not receive creditable military service for any active military service that would have been granted to the alternate payee had the participant submitted timely to the department the certification of active military service as provided in s. 40.02 (48m) (f), Stats.

(e) Except as provided in par. ^S(d), (f) and (g), the department shall divide the participant's account based on the service and contributions credited to the participant's account as of the date the department divides the account balances. Any corrections and adjustments to service or

earnings for any period prior to the decree date that are made to the participant's account after the department has completed the account division shall be applied only to the participant's account.

(f) If applying the correction or adjustment only to the participant's account would result in a higher benefit liability to the trust fund as prohibited in s. 40.02 (48m) (g), Stats., the correction or adjustment shall also be made to the alternate payee's account.

(g) If the department corrects a departmental administrative error as defined in ch. ETF 11.02 (1), and the error applies to contributions or service reportable prior to the decree date, the department shall correct both the participant's and alternate payee's account.

(h) A QDRO ordering the division of an account that was closed by payment of a lump sum benefit after the decree date shall have no effect, regardless of whether the participant subsequently returned to participating employment. If the participant's account to which the QDRO applies is subsequently restored under the provisions of s. 40.25 (5), Stats., or because the benefit was paid in error, the restored account shall be divided according to the QDRO.

(i) The actuarial reduction applied to the participant's and alternate payee's annuities as provided in s. 40.23 (2m) (f) and (fm), Stats., shall be calculated based on the participant's and alternate payee's actual ages on their respective annuity effective dates, and on the creditable service that would otherwise have been credited to the participant's account on the respective annuity effective dates if the participant's creditable service had not been reduced per a QDRO.

(j) If the participant's account has been reestablished since the decree date under the provisions of s. 40.26 (2), Stats., any memorandum account balance resulting from the annuity payments paid during the period in which the participant was an annuitant between the decree date and the effective date on which the account was reestablished shall be divided in the same

proportion as the other portions of the participant's account.

(k) If the department receives a QDRO that must be rejected because it does not meet all of the requirements in s. 40.02 (48m), Stats., or because it is either not an original QDRO signed by the judge or family court commissioner or does not have an original certification from the court that issued the QDRO, and after the QDRO is rejected the department receives a benefit application that would close the participant's account through payment of a lump sum benefit, the department will delay payment of the lump sum benefit for a period of 30 days after the date the QDRO is rejected. If the department has not received a QDRO that meets the criteria in s. 40.02 (48m), Stats. within 30 days after the date the department rejects the original QDRO, the department will process the application for benefits. Once the account is closed a QDRO will have no effect, as specified in par. (g).

(l) The creditable service used to determine whether a participant whose account has been divided per a QDRO meets the service requirements to qualify for a disability benefit under s. 40.63 (1) or (4), Stats., or ch. ETF 50 subch. III, shall be the creditable service that would otherwise have been credited to the participant's account if the participant's creditable service had not been reduced per a QDRO.

(7) **QDROs for marriages terminated between January 1, 1982 and April 27, 1990.** The division of accounts and annuities that are divided ^(per) QDROs submitted under the provisions of s. 40.08 (1m) (f) 3, Stats., shall be calculated to reflect changes in the participant's account, including but not limited to commencing or terminating an annuity, between the decree date and the effective date of the account or annuity division: (a) If the participant was an annuitant on the decree date and has continued to be an annuitant until the effective date of the annuity

division, the department shall calculate the present value of the participant's annuity as of the effective date of the division based on the actuarial tables in effect on the effective date of the annuity division, and award a share of the total present value to the alternate payee, then calculate separate annuities for the alternate payee as provided in s. 40.08 (1m) (b) 2., (c) and (d), Stats.

(b) If the participant was not an annuitant on the decree date, but is an annuitant on the date that the department receives the QDRO, the participant's annuity shall be divided as provided in sub. (5), except that the portion of the annuity awarded to the alternate payee shall not reflect any service or contributions reportable for any period of the participant's participating employment after the decree date. 1/ If the participant's retirement annuity is a formula annuity calculated under the provisions of s. 40.23 (2) (b) or (2m) (e), Stats., the percentage of the participant's annuity awarded to the alternate payee shall be based on the ratio of the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the QDRO and including any creditable military service, divided by the total creditable service used to calculate the participant's retirement annuity, (with the quotient rounded to two decimal places.)

2/ If the participant's retirement annuity is a money purchase annuity calculated under the provisions of s. 40.23 (2) (c), (2m) (c) or (d), or (3), Stats., the portion of the participant's annuity awarded to the alternate payee shall be based on the ratio of the portion of the account balance awarded to the alternate payee as of the decree date, based on the percentage specified in the QDRO, divided by the total account balance used to calculate the participant's retirement annuity, (with the quotient rounded to two decimal places.)

43. If the participant is receiving a disability annuity under s. 40.63 (1) or (4), Stats., the alternate payee's share of the portion of the participant's disability annuity based on assumed service shall be calculated by dividing the years of creditable service awarded to the alternate payee as of the decree date, based on the percentage specified in the QDRO and including any creditable military service, by the total service that was available to calculate the guaranteed portion of the participant's disability annuity, including any creditable military service, regardless of whether the guaranteed portion of the disability annuity was calculated under s. 40.23 (2) (c), (2m) (c) or (d), or (3), or under s. 40.23 (2) (b) or (2m) (e), Stats.

(c) If the participant was an annuitant on the decree date but the account was subsequently reestablished under the provisions of s. 40.26 (2), Stats., and the participant is not an annuitant on the date the department receives the QDRO, the department shall establish a separate account for the alternate payee consisting of a share of the participant's contributions and creditable service, based on the percentage specified in the QDRO and including any creditable military service, that was available to calculate the participant's original retirement annuity. Interest shall be added to the contribution balances for the period between the decree date and the date the alternate payee's account is reestablished. If the participant has a memorandum account balance the alternate payee's account shall also be credited with a share of the participant's memorandum account balance as provided in par. (6) (a), based on the percentage specified in the QDRO.

(d) If a participant's annuity is divided under the provisions of par. (b), and that annuity was reduced under the provisions of s. 40.23 (2) or (2m) (b), Stats., the percentage of the annuity to be awarded to the alternate payee shall be determined as provided in par. (b), and those percentages shall be applied to the annuity amounts payable on the effective date that the annuity

is divided per the QDRO.

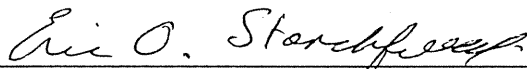
(END OF RULE TEXT)

Proposed Effective Date: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Wis.Stats.

Approved for publication: This proposed rule making is approved for submission to the Legislative Council Staff for review under s. 227.15, Stats., and for submission to the Revisor of Statutes under s. 227.17, Stats., in order to provide notice of the scheduled public hearing.

Signed at Madison, Wisconsin this 11th day of February, 1999 .

WISCONSIN DEPARTMENT OF EMPLOYE TRUST FUNDS


Eric O. Stanchfield, Secretary