

Ind 85

Filed July 12, 1972
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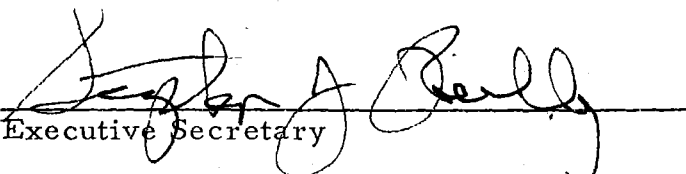
STATE OF WISCONSIN)
) SS.
DEPARTMENT OF INDUSTRY,)
LABOR AND HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Stephen J. Reilly, Executive Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said Department, do hereby certify that the attached rules to Wisconsin Administrative Code Chapter Ind 85, Workmen's Compensation--Apprenticeship--Equal Opportunities, were adopted by the Department of Industry, Labor and Human Relations on July 10, 1972.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Capitol, in the City of Madison, this 10 day of July, A.D., 1972.


Executive Secretary

ORDER OF

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by sections 101.01 to 101.25, Wis. Stats., the Department of Industry, Labor and Human Relations hereby repeals, amends, and adopts rules of Wisconsin Administrative Code Sections Ind 85.11 through Ind 85.17 and Sections Ind 85.18 through Ind 85.27, Workmen's Compensation--Apprenticeship--Equal Opportunities.

The following identified list of rules attached hereto shall become effective on the first day of the month following publication in the Wisconsin Administrative Code as provided in Section 227, Wis. Stats.:

Section Ind 85.11 Equal opportunity standards is repealed.

Section Ind 85.12 Selection of apprentices is repealed.

Section Ind 85.13 Prior application lists is repealed.

Section Ind 85.14 Formal nondiscrimination provisions is repealed.

Section Ind 85.15 New registrations is repealed.

Section Ind 85.16 Complaints is repealed.

Section Ind 85.17 Violations of rules is repealed.

Sections Ind 85.11 through Ind 85.17 are recreated and Sections Ind 85.18 through Ind 85.27 are created to read as follows:

Ind 85.11 Scope and Purpose

- (1) This plan sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the State Apprenticeship Agency. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship and the procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs.
- (2) The purpose of this plan is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin, or sex in apprenticeship programs by requiring affirmative action to provide equal opportunity in such apprenticeship programs and by coordinating this part with other equal opportunity programs.

Ind 85.12 Definitions

- (1) "Agency" means the Department of Industry, Labor and Human Relations, Division of Apprenticeship and Training.
- (2) "Department" means the U. S. Department of Labor.
- (3) "Employer" means any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization or with some other person or organization.
- (4) "Apprenticeship Program" means a program operated in accordance with Chapter 106 of the Wisconsin State Statutes.
- (5) "Sponsor" means any person or organization operating an apprenticeship program, irrespective of whether such person or organization is an employer.
- (6) "Commission" means the Wisconsin Department of Industry, Labor and Human Relations' Commissioners or any person specifically designated by them.
- (7) "Registration" means the approval of an apprenticeship program or indenture by the Commission in accordance with Wisconsin Statutes.
- (8) "Deregistration" means the cancellation of an apprenticeship program or indenture by the Commission in accordance with Wisconsin Statutes.
- (9) "Secretary" means the Secretary of Labor, the Assistant Secretary of Labor for Manpower or any person specifically designated by either of them.

- (10) "Minority Count" means, for the purpose of determining underutilization, the combinations of race, color, and national origin as used by EEOC identification, of four major minority groups should be used, namely, Negro, American Indian, Oriental and Spanish-American. The latter minority group includes persons of Latin American, Mexican and Puerto Rican origin. In determining underutilization and establishment of goals, minorities are treated as one group, i.e., the numbers of Negro, American Indian, Oriental and Spanish-American are combined for a minority count. This applies to both data or minority count in the labor market area and in the sponsor's work force.

Ind 85.13 Authority to Adopt State Plan

The authority for the implementation and adoption of these policies and procedures affecting the registration of apprenticeship programs with the Wisconsin Department of Industry, Labor and Human Relations, Division of Apprenticeship and Training is vested in the Commission under the authority of Wisconsin Statutes 106 and 101 and other applicable statutes and regulations.

Ind 85.14 Equal Opportunity Standards

- (1) Obligation of sponsors. Each sponsor of an apprenticeship program shall:
- (a) Recruit, select, employ, and train apprentices during their apprenticeship, without discrimination because of race, color, religion, national origin, or sex; and
 - (b) Uniformly apply rules and regulations concerning apprentices, including but not limited to, equality of wages, periodic advancement, promotion, assignment of work, job performance, rotation among all work processes of the trade, imposition of penalties, or other disciplinary action, and all other aspects of the apprenticeship program administration by the program sponsor; and
 - (c) Take affirmative action to provide equal opportunity in apprenticeship, including adoption of an affirmative action plan as required by this State Plan.
- (2) Equal opportunity pledge. Each sponsor of an apprenticeship program shall include in its standards the following equal opportunity pledge:
- "The recruitment, selection, employment and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin or sex. The sponsor will take affirmative action to provide equal opportunity in

apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30, and the equal employment opportunity regulations of the State of Wisconsin."

- (3) Programs presently registered. Each sponsor of an apprenticeship program registered with the Agency as of September 30, 1971 shall, by no later than March 31, 1972, take the following actions:
 - (a) Include in the standards of its apprenticeship program the equal opportunity pledge prescribed by Ind 85.14 (2), and
 - (b) Adopt an affirmative action plan required by Ind 85.15, and
 - (c) Adopt a selection procedure required by Ind 85.16. A sponsor adopting a selection method under Ind 85.16 (2)(a), (b) or (c) shall prepare, and have available for submission upon request, copies of its amended standards, affirmative action plans, and selection procedure. A sponsor adopting a selection method under Ind 85.16 (2)(d) shall submit to the Agency copies of its standards, affirmative action plan and selection procedure in accordance with the requirements of Ind 85.16 (2)(d) 1.
- (4) Sponsors seeking new registration. A sponsor of a program seeking new registration with the Agency shall submit copies of its proposed program, affirmative action plan, selection procedures, and such other information as may be required.
- (5) Programs subject to approved equal employment opportunity plans.

A sponsor shall not be required to adopt an affirmative action plan under Ind 85.15 or a selection procedure under Ind 85.16 if it submits to the Agency satisfactory evidence that it is subject to an equal employment opportunity program providing for the selection of apprentices and for affirmative action in apprenticeship which has been approved as meeting the requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) or Executive Order 11246, as amended (30 F.R. 12319, 32 F.R. 14303, 34 F.R. 12986) and the implementing regulations published in Title 29 of the Code of Federal Regulations, Chapter XIV, and Title 41 of the Code of Federal Regulations, Chapter 30 October 2, 1971.
- (6) Program with fewer than five apprentices. A sponsor of a program in which fewer than five apprentices are indentured may not be required to adopt an affirmative action plan under Ind 85.15 or a selection procedure under Ind 85.16.

Ind 85.15 Affirmative Action Plans

- (1) Adoption of affirmative action plans. A sponsor's commitment to equal opportunity in recruitment, selection, employment, and training of apprentices shall include the adoption of a written affirmative action plan.
- (2) Definition of affirmative action. Affirmative action is not mere passive nondiscrimination. It includes procedures, methods, and program for the identification, positive recruitment, training, and motivation of present and potential minority group apprentices. It is action which will equalize opportunity in apprenticeship so as to follow full utilization of minority manpower potential. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to Wisconsin's labor force.
- (3) Outreach and positive recruitment. An acceptable affirmative action plan must include adequate provision for outreach and positive recruitment that would reasonably be expected to increase minority and women participation in apprenticeship by expanding the opportunity of these persons to become eligible for apprenticeship selection. In order to achieve these objectives, sponsors shall undertake activities such as those listed below. It is not contemplated that each sponsor necessarily will include all of the listed activities in its affirmative action program. The scope of the affirmative action program will depend on all the circumstances including the size and type of the program and its resources. However, the sponsor will be required to undertake a significant number of appropriate activities in order to enable it to meet its obligations under this Part. The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below.
 - (a)
 1. Dissemination of information concerning the nature of apprenticeship, availability of apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor.
 2. For programs accepting applications only at specified intervals, such information shall be disseminated at least 30 days in advance of the earliest date for application at each interval.
 3. For programs customarily receiving applications throughout the year, such information shall be regularly disseminated but not less than semiannually.
 4. Such information shall be given to the Agency, local schools, employment service offices, community organizations which can effectively reach minority and women's groups, and published in newspapers which are circulated in the minority

community as well as the general areas in which the program sponsor operates. When apprenticeship openings are advertised in the newspapers, the "Help Wanted--Male or Female" column should be used.

- (b) Participate in annual workshops conducted by employment service agencies for the purpose of familiarizing school, employment service and other appropriate personnel with the apprenticeship system and current opportunities therein.
- (c) Cooperation with local school boards, vocational education systems, and other agencies to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.
- (d) Internal communication of the sponsor's equal opportunity policy in such a manner as to foster understanding, acceptance and support among the sponsor's various officers, supervisors, employees and members and to encourage such persons to take the necessary action to aid the sponsor in meeting its obligations under Section 85.15.
- (e) Engaging in programs such as outreach for the positive recruitment and preparation of potential applicants for apprenticeships; where appropriate and feasible, such programs shall provide for pretesting experience and training. If no such programs are in existence, the sponsor shall seek to initiate these programs, or when available to obtain financial assistance from the Department. In initiating and conducting these programs, the sponsor may be required to work with other sponsors and appropriate community organizations.
- (f) To encourage the establishment and utilization of programs of preapprenticeship, preparatory trade training, or others designed to prepare candidates for apprenticeship, a sponsor shall make appropriate provision in its affirmative action plan to assure that those who complete such programs are afforded full and equal opportunity for admission into the apprenticeship program.
- (g) Utilization of journeymen to assist in the implementation of the sponsor's affirmative action program.
- (h) Granting advance standing or credit on the basis of previously acquired experience, training, skills or aptitude for all applicants equally.
- (i) Admitting to apprenticeship programs persons whose age exceeds the maximum age for admission to the program, where such action is necessary to assist the sponsor in achieving its affirmative action obligations.

- (j) Such other action as to insure that the recruitment, selection, employment, and training of apprentices during apprenticeship, shall be without discrimination because of race, color, religion, national origin, or sex; such as: general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, etc.; use of present minority or women apprentices and journeymen as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between the sponsor and employers of apprentices to insure that equal employment opportunity is being granted including reporting systems, on-site reviews, briefing sessions, etc.

(4) Goals and timetables.

- (a) A sponsor adopting a selection method under Ind 85.16 (2)(a) or (b) which determines on the basis of the analysis described in subsection (5) of this section that it has deficiencies in terms of underutilization of minorities in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the admission of minority applicants into the eligibility pool.
- (b) A sponsor adopting a selection method under Ind 85.16 (2)(c) or (d) which determines on the basis of the analysis described in subsection (5) of this section that it has deficiencies in terms of the underutilization of minorities in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the selection of minority applicants for the apprenticeship program.
- (c) "Underutilization" as used in this paragraph refers to the situation where there are fewer minorities in the particular craft or crafts represented by the program than would reasonably be expected in view of an analysis of the specific factors in subsection (5)(a) through (e) of this section. Where, on the basis of the analysis, the sponsor determines that it has no deficiencies, no goals and timetables need be established. However, where no goals and timetables are established, the affirmative action plan shall include a detailed explanation why no goals and timetables have been established.
- (d) Where the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and the Agency determines that the sponsor has deficiencies in terms of underutilization of minorities within the meaning of this section, the Agency shall establish goals and timetables applicable to the sponsor for the admission of minority applicants into the eligibility pool or selection of apprentices, as appropriate. The sponsor shall make good faith efforts to attain these goals and timetables in accordance with the requirements of this section.

- (5) Analysis to determine if deficiencies exist. The sponsor's determination as to whether goals and timetables shall be established, shall be based on an analysis of at least the following factors, which analysis shall be set forth in writing as part of the affirmative action plan.
- (a) The minority population of the labor market area in which the program sponsor operates;
 - (b) The size of the minority labor force in the program sponsor's labor market area;
 - (c) The percentage of minority participation as apprentices in the particular craft as compared with the percentage of minorities in the labor force in the program sponsor's labor market area;
 - (d) The percentage of minority participation as journeymen employed by the employer or employers participating in the program as compared with the percentage of minorities in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices;
 - (e) The general availability of minorities with present or potential capacity for apprenticeship in the program sponsor's labor market area.
- (6) Establishment and attainment of goals and timetables. The goals and timetables shall be established on the basis of the sponsor's analysis of its underutilization of minorities and its entire affirmative action program. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work.

Compliance with these requirements shall be determined by the Agency as to whether the sponsor has met its goals within its timetable, or failing that, whether it has made good faith efforts to meet its goals and timetables. Its "good faith efforts" shall be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals.

- (7) Data and information. The Secretary or a person or agency designated by him, shall make available to program sponsors data and information on minority population and labor force characteristics for each Standard Metropolitan Statistical Area, and for other special areas as appropriate.

(1) Obligation of sponsors. In addition to the development of a written affirmative action plan to insure that minorities and women have an equal opportunity for selection as apprentices and otherwise insure the prompt achievement of full and equal opportunity in apprenticeship, each sponsor shall further provide in its affirmative action program that the selection of apprentices shall be made under one of the methods specified in Ind 85.16 (2)(a) through (d).

(2) Selection methods. The sponsor shall adopt one of the following methods for selecting apprentices prior to March 31, 1972:

(a) Selection on basis of rank from pool of eligible applicants.

1. Selection.

a. A sponsor may select apprentices from a pool of eligible applicants created in accordance with the requirements of subparagraph 3. of this paragraph on the basis of the rank order of scores of applicants on one or more qualification standards where there is a significant statistical and practical relationship between rank order of scores and performance in the apprenticeship program.

b. In demonstrating such relationship, the sponsor shall follow the procedures set forth in the Department of Labor Order of September 9, 1968 (33 F.R. 14392, September 24, 1968) covering the validation of employment tests of contractors and subcontractors subject to the provisions of Executive Order 11246, as amended.

2. Requirements. The sponsor adopting this method of selecting apprentices shall meet the requirements of 3. through 7. of this paragraph.

3. Creation of pool of eligibles.

a. A pool of eligibles shall be created from applicants who meet the qualifications of minimum legal working age and the sponsor's minimum physical requirements; or from applicants who meet qualification standards in addition to minimum legal working age and the sponsor's minimum physical requirements, provided that any additional qualification standards conform with the following requirements:

b. Qualification standards. The qualification standards, and the procedures for determining such qualification standards, shall be stated in detail and shall provide criteria for the specific factors and attributes to be considered in evaluating applicants for admission to

the pool. The score required under each qualification standard for admission to the pool shall also be specified. All qualification standards, and the score required on any standard for admission to the pool, shall be directly related to job performance, as shown by a significant statistical and practical relationship between the score on the standards, and the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall follow the procedures set forth in the Department's testing order of September 9, 1968. Qualifications shall be considered as separately required so that the failure of an applicant to attain the specified score under a single qualification standard shall disqualify the applicant from admission to the pool.

- c. Aptitude tests. Any qualification standard for admission to the pool consisting of aptitude test scores shall be directly related to job performance, as shown by significant statistical and practical relationships between the score on the aptitude tests, and the score required for admission to the pool, and performance in the apprenticeship program. In determining such relationships, the sponsor shall follow the procedures set forth in the Department's testing order of September 9, 1968. These requirements shall also be applicable to aptitude tests utilized by a program sponsor which are administered by a State employment service agency, a private employment agency, or any other person, agency or organization engaged in the selection or evaluation of personnel.
- d. Educational attainments. All educational attainments or achievements as qualifications for admission to the pool shall be directly related to job performance, as shown by a significant statistical and practical relationship between the score, and the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall meet the requirements of the Department's testing order of September 9, 1968. School records or the results of general education development tests recognized by the State or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.

- 4. Oral interviews. Oral interviews shall not be used as a qualification standard for admission into an eligibility pool. However, once applicants are placed in the eligibility pool, and before they are selected for apprenticeship from the pool, they may be required to submit to an

oral interview. Oral interviews shall be limited only to such objective questions as may be required to determine the fitness of applicants to enter the apprenticeship program, but shall not include questions relating to qualifications previously determined in gaining entrance to the eligibility pool. When an oral interview is used, each interviewer shall record his questions, the general nature of answers, and shall prepare a summary of any conclusions. Applicants rejected from the pool of eligibles on the basis of an oral interview shall be given a written statement of such rejection, the reasons therefor, and the appeal rights available to the applicant.

5. Notification of applicants. All applicants who meet the requirements for admission shall be notified and placed in the eligibility pool. The program sponsor shall give each rejected applicant notice of the rejection, including the reasons for the rejection, the requirements for admission to the pool of eligibles, and the appeal rights available to the applicant.
6. Goals and timetables. The sponsor shall establish, where required by Ind 85.15 (4), percentage goals and timetables for the admission of minority persons into the pool of eligibles in accordance with the provisions of Ind 85.15 (4), (5), and (6).
7. Compliance. A sponsor shall be deemed to be in compliance with its commitments under 6. of this paragraph if it meets its goals or timetables or if it makes a good faith effort to meet these goals and timetables. In the event of the failure of the sponsor to meet its goals and timetables, it shall be given an opportunity to demonstrate that it has made every "good faith effort" to meet its commitments of Ind 85.15 (6). All the actions of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.

(b) Random selection from pool of eligible applicants.

1. A sponsor may select apprentices from a pool of eligible applicants on a random basis. The method of random selection is subject to approval by the Agency. Supervision of the random selection process shall be by an impartial person or persons selected by the sponsor, but not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, shall be announced. The place of the selection shall be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the program sponsor's place of business.

2. The sponsor adopting this method of selecting apprentices shall meet the requirements of 3. through 5. of (a) of this subsection relating to the creation of pool of eligibles, oral interviews and notification of applicants.
3. Goals and timetables. The sponsor shall establish, where required by Ind 85.15 (4), percentage goals and timetables for the admission of minority persons into the pool of eligibles in accordance with the provisions of Ind 85.15 (4), (5), and (6).
4. Compliance. Determinations as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of Ind 85.16 (2)(a) 7.

(c) Selection from pool of current employes.

1. Selection. A sponsor may select apprentices from an eligibility pool of the workers already employed by the program sponsor in a manner prescribed by a collective bargaining agreement where such exists, or by the sponsor's established promotion policy. The sponsor adopting this method of selecting apprentices shall establish goals and timetables for the selection of minority apprentices, unless the sponsor concludes, in accordance with the provisions of Ind 85.15 (4), (5), and (6) that it does not have deficiencies in terms of underutilization of minorities in the apprenticeship of journeymen crafts represented by the program.
2. Compliance. Determination as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of Ind 85.16 (2)(a) 7.

(d) Alternative selection methods.

1. Selection. A sponsor may select apprentices by means of any other method, including its present selection method, provided that the sponsor meets the following requirements:

Selection method and goals and timetables: Within six months of the effective date of this plan, the sponsor shall submit to the Agency a detailed statement of the selection method it proposes to use along with the rest of its written affirmative action program including where required by Ind 85.15 (4), its percentage goals and timetables for the selection of minority applicants for apprenticeship and its written analysis, upon which such goals and timetables, or lack thereof, are based. The establishment of goals and timetables shall be in accordance with the provisions of Ind 85.15 (4), (5), and (6). The sponsor may not implement any such selection method until the Agency has approved the selection

method as meeting the requirements of Qualification standards of subsection Ind 85.16 (2)(d), and has approved the remainder of its affirmative action program including its goals and timetables. If the Agency fails to act upon the selection method and the affirmative action program within 30 days of its submission, the sponsor may implement the selection method on the effective date of this plan.

Qualification standards: Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards as fair aptitude tests, school diplomas, age requirements, occupationally essential physical requirements, fair interviews, school grades, and previous work experience. Where interviews are used, adequate records shall be kept including a brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, and willingness to accept direction which are part of the total judgment.

2. Compliance. Determination as to the sponsor's compliance with its obligations under these regulations shall be in accordance with the provisions of Ind 85.16 (2)(a) 7. Where a sponsor uses this selection method and despite its good faith efforts, fails to meet its goals and timetables, the sponsor may be required to make appropriate changes in its affirmative action program to the extent necessary to obtain maximum effectiveness towards the attainment of its goals. The sponsor may also be required to develop and adopt an alternative selection method, including a method prescribed by the Agency, where it is determined that the failure of the sponsor to meet its goals is attributable in substantial part to the selection method. Where the sponsor's failure to meet its goals and timetables is attributable in substantial part to its use of a qualification standard the sponsor may be required to demonstrate that such qualification standard is directly related to job performance, in accordance with the provisions of Ind 85.16 (a) 3.

Ind 85.17 Existing List of Eligibles and Public Notice

A sponsor adopting a selection method under Ind 85.16 (2)(a) or (b), and a sponsor adopting a selection method under Ind 85.16 (2)(d) who determines that there are fewer minorities on its existing lists of eligibles than would reasonably be expected in view of the analysis described in Ind 85.15 (5) shall discard all existing eligibility lists upon approval and adoption of their selection methods and affirmative action plan. New eligibility lists shall be established and current copies will be provided the Agency. The sponsor shall provide at least 30 days of public notice in advance of the earliest date applicants may apply and establish a reasonable period of not less than two weeks for accepting applications for the eligibility lists. Notification procedures shall be outlined in the sponsor's affirmative action plan.

Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of two years.

Applicants may be removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by registered return receipt mail notice.

Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of the customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such period of time.

It shall be the responsibility of the applicant to keep the sponsor informed of his current mailing address. A sponsor may restore to the list of eligibles an applicant who has been removed from the list at his request or who has failed to respond to an apprenticeship job opportunity.

Ind 85.18 Records

- (1) Obligations of sponsors. Each sponsor shall keep adequate records including a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, the records pertaining to interviews of applicants, the original application for each applicant, information relative to the operation of the apprenticeship program, including but not limited to job assignment, promotion, demotion, lay-off, or termination, rates of pay, or other forms of compensation or conditions of work, and any other records pertinent to a determination of compliance with these regulations, as may be required by the Agency. The records pertaining to individual applicants, whether selected or rejected shall be maintained in such manner as to permit identification of minority and women participants.
- (2) Affirmative action plans. Each sponsor must retain a statement of its affirmative action plan required by Ind 85.15 for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analyses made pursuant to the requirements of Ind 85.15. Sponsors shall periodically review their affirmative action plan and update it where necessary.
- (3) Qualification standards. Each sponsor must maintain evidence that its qualification standards have been validated in accordance with the requirements set forth in Ind 85.16 (2).
- (4) Maintenance of records. The records required by this plan and any other information relevant to compliance with these regulations shall be maintained for five years and made available upon request to the Agency or the Department.

- (5) Records of the agency. The Agency will keep adequate records, including registration requirements, approved individual program standards, registration actions, deregistration actions, program compliance reviews and investigations, individual program minority count, total apprenticeship minority count, individual sex count, and total sex count pertinent to a determination of compliance with this plan. The Agency will make reports to the Department that are reasonably pertinent to the compliance of this plan as required.

Ind 85.19 Compliance Reviews

- (1) Conduct of compliance reviews. The Agency will regularly conduct systematic review of apprenticeship programs in order to determine the extent to which sponsors are complying with these regulations and will also conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to Ind 85.21 (2)(a) 1, so warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this plan. Compliance reviews will consist of comprehensive analyses and evaluations of each aspect of the apprenticeship program, including on-site investigations and audits.
- (2) Reregistration. Sponsors seeking reregistration shall be subject to a compliance review by the Agency as part of the reregistration process.
- (3) New Registrations. New sponsors seeking registration shall be subject to a compliance review by the Agency as part of the registration process.
- (4) Voluntary compliance. Where the compliance review indicates that the sponsor is not operating in accordance with this plan, the Agency shall notify the sponsor in writing of the results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking sanctions under Ind 85.23. In the case of sponsors seeking new registration, the Agency will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

Ind 85.20 Noncompliance with Federal and State Equal Opportunity Requirements

A pattern or practice of noncompliance by a sponsor (or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with Federal or State laws or regulations requiring equal opportunity may be grounds for the imposition of sanctions in accordance with Ind 85.23 if such noncompliance is related to the equal employment opportunity of apprentices and/or graduates of such an apprenticeship program under this plan. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal employment opportunity obligations.

Ind 85.21 Complaint Procedure

(1) Filing.

- (a) Apprentices or applicants for apprenticeship who believe that they have been discriminated against on the basis of race, color, religion, national origin, or sex with regard to apprenticeship or that the equal opportunity standards have not been followed in the operation of an apprenticeship program may, personally or by an authorized representative, file a complaint with the Agency or with a private review body established pursuant to Ind 85.21 (1)(c). The complaint shall be in writing and shall be signed by the complainant. It must include the name, address and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances causing the complaint.
- (b) The complaint must be filed not later than 90 days from the date of the alleged discrimination of specified failure to follow the equal opportunity standards; and, in the case of complaints filed directly with review bodies designated by program sponsors to review such complaints, any referral of such complaint by the complainant to the Agency must occur within the time limitation stated above or 30 days from the final decision of such review body, whichever is later. The time may be extended by the Agency for good cause shown.
- (c) Sponsors are encouraged to establish fair, speedy and effective procedures for a review body to consider complaints of failure to follow the equal opportunity standards. A private review body established by the program sponsor for this purpose should number three or more responsible persons from the community serving in this capacity without compensation.
- (d) Members of the review body should not be directly associated with the administration of an apprenticeship program. Sponsors may join together in establishing a review body to serve the needs of programs within the community.

(2) Processing of complaints.

- (a) 1. When the sponsor has designated a review body for reviewing complaints, and if the Agency determines that such review body will effectively enforce the equal opportunity standards, the Agency, upon receiving a complaint shall refer the complaint to the review body.
- 2. The Agency shall, within 30 days following the referral of a complaint to the review body, obtain reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily adjusted, and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties appropriately informed.

3. When a complaint has not been resolved by the review body within 90 days or where, despite satisfactory resolution of the particular complaint by the review body, there is evidence that the equal opportunity practices of the apprenticeship program are not in accordance with this plan, the Agency may conduct such compliance review as found necessary, and will take all necessary steps to resolve the complaint.

(b) Where no review body exists, the Agency may conduct such compliance review as found necessary in order to determine the facts of the complaint, and obtain such other information relating to compliance with these regulations as the circumstances warrant.

Ind 85.22 Adjustments in Schedule for Compliance Review or Complaint Processing

If, in the judgment of the Agency, a particular situation warrants and requires special processing and either expedited or extended determination, it shall take the steps necessary to permit such determination if it finds that no person or party affected by such determination will be prejudiced by such special processing.

Ind 85.23 Sanctions

- (1) Agency actions. Where the Agency, as a result of a compliance review or other reason, determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with this plan and voluntary corrective action has not been taken by the program sponsor, the Agency shall institute proceedings to deregister the program or institute court action under the applicable state statutes and it shall refer the matter to the Department for referral to the Attorney General with recommendations for the institution of a court action by the Attorney General under Title VII of the Civil Rights Act of 1964.
- (2) Deregistration. Deregistration proceedings shall be conducted in accordance with the following procedures:
 - (a) The Agency shall notify the sponsor, in writing, that a determination of reasonable cause has been made under Ind 85.23 (1) and that the apprenticeship program may be deregistered unless, within 15 days of the receipt of the notice, the sponsor requests a hearing. The notification shall specify the facts on which the determination is based.
 - (b) If, within 15 days of the receipt of the notice provided for in Ind 85.23 (1), the sponsor mails a request for a hearing, the Commission shall convene a hearing in accordance with Ind 85.23 (3).

(c) The Commission shall make a final decision on the basis of the record before it, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted pursuant to Ind 85.23 (3), the proposed findings and recommended decision of the hearing officer. In its discretion, the Commission may allow the sponsor a reasonable time to achieve voluntary corrective action. If the Commission's decision is that the apprenticeship program is not operating in accordance with this plan, it will implement action as referred to in Ind 85.23 (1) of this section. In each case in which such action is ordered, the Commission shall make public notice of the order and shall notify the sponsor and the complainant, if any, and the Department. The Agency shall inform any sponsor whose program has been deregistered that it may appeal such deregistration to the Department in accordance with procedures of 29 CFR, Section 30.15.

(3) Hearings. Hearings shall be conducted in accordance with the following procedures:

- (a) Within 10 days of its receipt of a request for a hearing, the Commission shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by registered mail, return receipt requested, to the sponsor. Such notice shall include a reasonable time and place of hearing; a statement of the provisions of this plan pursuant to which the hearing is to be held; and a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.
- (b) The hearing officer shall regulate the course of the hearing. Hearings shall be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his case including such cross-examination as may be appropriate in the circumstances. Hearing officers shall make their proposed findings and recommended decisions to the Commission upon the basis of the record before them.

Ind 85.24 Reinstatement of Program Registration

Any apprenticeship program deregistered pursuant to this plan may be reinstated upon presentation of adequate evidence to the Commission that the apprenticeship program is operating in accordance with this plan.

Ind 85.25 Intimidatory or Retaliatory Acts

Any intimidation, threat, coercion, or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or privilege secured by Wisconsin's Apprenticeship or Fair Employment Practices Laws, Title VII of the Civil Rights Act of 1964, Executive Order 11246 of September 24, 1965, or because he has made a complaint, testified,

assisted, or participated in any manner in an investigation proceeding, or hearing under this plan shall be considered noncompliance with the equal opportunity standards of this plan. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this plan, including the conduct of any investigation, hearing or judicial proceeding arising therefrom.

Ind 85.26 Nondiscrimination

The commitments contained in the sponsor's affirmative action program are not intended and shall not be used to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin, or sex.

Ind 85.27 Exemptions

Requests for exemption from these regulations, or any part thereof, shall be made in writing to the Commission and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause. The Agency will immediately notify the Department of any such exemptions granted affecting a substantial number of employees and the reasons therefor.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

TO: Revisor of Statutes

FROM: Stephen J. Reilly, Executive Secretary

NOTICE IS HEREBY GIVEN That pursuant to sections 101.01 to 101.29 Wis. Stats., and according to the procedure set forth in section 227.02(1)(e), Wis. Stats., the Department of Industry, Labor and Human Relations will repeal and recreate the following rules, without public hearing thereon unless, within 30 days after publication of this notice it is petitioned for a public hearing on said proposed rules by 25 persons who will be affected by the rules, a municipality which will be affected by the rules, or an association which is representative of a farm, labor, business or professional group which will be affected by the rules:

Section Ind 85.11 Equal opportunity standards is repealed.

Section Ind 85.12 Selection of apprentices is repealed.

Section Ind 85.13 Prior application lists is repealed.

Section Ind 85.14 Formal nondiscrimination provisions is repealed.

Section Ind 85.15 New registrations is repealed.

Section Ind 85.16 Complaints is repealed.

Section Ind 85.17 Violations of rules is repealed.

Sections Ind 85.11 through Ind 85.17 are recreated and Sections Ind 85.18 through Ind 85.27 are created to read as follows: