

CR 85-80

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Performance Based Contracting were duly approved and adopted by this department on (Subject) (Date).

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 1:15 in the city of Madison, this 5th day of February A.D. 19 86.

Howard S. Bellman
Secretary

ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 14.28(1), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. ILHR 811 Performance Based Contracting
(Number) (Title)

The attached rules shall take effect on The first day of the month following publication in the Wisconsin Administrative Register, pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 5th

day of February, A.D., 1986.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard B. Bellman
Secretary

Pursuant to the authority vested in the ss. 101.26 and 101.02(1), Stats., the Department of Industry, Labor and Human Relations hereby creates rules interpreting s. 14.28, Stats. as follows:

SECTION 1. Chapter ILHR 811 of the Wisconsin Administrative Code is created to read as follows:

Chapter ILHR 811
Performance-Based Contracting

ILHR 811.01 DEFINITIONS. In this chapter:

- (1) "Full performance" means meeting all of the requirements stated in the contract for receiving full payment.
- (2) "Partial payment" means any amount less than full payment.
- (3) "Performance-based contract" means a contract in which payment is based wholly on the delivery of some service, that is, performance by the contractor.
- (4) "Program Operator" means any agency, organization or individual receiving Job Training Partnership Act funds which originally came into the state of Wisconsin through the Division of Employment and Training Policy in DILHR.
- (5) "Training" is the cost category required for reporting purposes, and identified at 20 CFR 629.38(a).

ILHR 811.02 PARTIAL PAYMENTS. Partial payments made by program operators to their subcontractors or subgrantees for less than full performance in a performance-based contract may be charged entirely to training, if the contract meets the requirements contained in 20 CFR Part 629.38(e)2.

NOTE: FEDERAL REQUIREMENTS. According to the requirements at 20 CFR 629.38(e)2, "Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training when the agreement:

- (i) is for training;
- (ii) is fixed unit price; and
- (iii) (A) stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement; or
- (B) in the case of youth, payment for training packages purchased competitively pursuant to section 141(d)3 of the Act shall include payment for the full unit price if the training results in either placement in unsubsidized employment or the attainment of an outcome specified in section 106(b)2 of the Act."

ILHR 811.03 PERFORMANCE-BASED CONTRACTS WHICH DO NOT MEET REQUIREMENTS OF 20 CFR 629.38(e)(2). Payments made by program operators to their subcontractors or subgrantees under a performance-based contract which does not meet the requirements contained in 20 CFR Part 629.38(e)(2) is allocated or prorated among the several cost categories. This allocation is based on a reasonable estimate of the actual costs incurred in performing the contract. Where necessary detail cannot be provided to determine actual costs, such as for tuition fees, a reasonable breakdown of the single unit charge among cost categories is sufficient.

NOTE: 20 CFR 629.37(c) states:

"The Governor shall issue guidelines on allowable costs for SDA and statewide programs . . ."

SECTION 2. Effective Date. Pursuant to s. 227.026(1) (intro.) Stats. this rule shall take effect on the first day of the month following the date of publication in the Wisconsin administrative register.

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The Wisconsin Department of Industry, Labor and Human Relations

February 5, 1986

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Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 85-80

RULE NO. Chapter ILHR 811

RELATING TO: Performance Based Contracting

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

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cc: Agency Contact Person

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