



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 14

Relating to: Administrative Expenses and Substantial Compliance in the Fire Dues
Program

Clearinghouse Rule No.: 04-070

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to amend Comm 14.48 (1) (a) 1., (2) (a), (3) (c), and (4) (a); and to create Comm 14.02 (10) and 14.50, relating to definitions of administrative expenses and substantial compliance in the Fire Dues program.

ANALYSIS OF PROPOSED RULES

Statutes interpreted:

Sections 101.14, 101.141, 101.573, and 101.575, Stats.

Statutory authority:

Sections 101.573 (5) and 101.575 (4) (a) 1. and 2., Stats.

Explanation of agency authority:

Under sections 101.14, 101.141, 101.573, and 101.575 of the Wisconsin statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering fire inspection and prevention programs. Those programs include a Fire Dues program which is funded by fees from insurance companies, and which provides annual funding to cities, villages, and towns for performing fire inspection and prevention services. Under sections 101.573 (5) and 101.575 (4) (a) 1. and 2. of the statutes, as established in 2003 Wisconsin Act 219, the Department is required to promulgate rules that define “administrative expenses” for the purposes of fire prevention and Fire Dues administration, and that define “substantial compliance” for the purpose of determining whether a municipality is eligible for funding from the Fire Dues program.

Plain language analysis:

The proposed rules would codify the two definitions as required above, and would modify the current rule text to provide consistent references to the definition of substantial compliance. These proposed rules would not reduce the current duty of municipalities to annually inspect 100 percent of public buildings and places of employment, but would provide more flexibility in determining whether that duty has been met, so as to establish eligibility for Fire Dues funding.

Summary of, and comparison with, existing or proposed federal regulation:

An Internet-based search of existing and proposed federal regulations did not identify any that address a fire dues program funded by fees from insurance companies.

Comparison with rules in adjacent States:

The four adjacent states of Michigan, Illinois, Iowa, and Minnesota each have some form of statewide funding for fire prevention. None of these states have a substantial compliance requirement as contained in this proposal.

Michigan collects 2% of fire insurance premiums and deposits that money into their general fund. Funding for fire prevention education comes from that general fund.

Illinois has a 1% tax on all property, that funds the State Fire Marshall's office, and receives an average of \$22-23 million per year from this source. The State Fire Marshall uses approximately \$15 million to administratively run their office. Approximately \$2 million goes to the Illinois Fire Service Institute to fund training, and approximately \$1.5 million goes to the Chicago Fire Department for the training they provide to other departments.

In Iowa, 2% is withheld from insurance premiums. The 2% funds go into the general fund, and the State Fire Marshall's office is funded from the general fund.

The Minnesota Department of Revenue handles a 2% program that is derived from the tax base. The funds are distributed to municipalities that have a fire department or contract with an independent, nonprofit fire fighting corporation.

Summary of factual data and analytical methodologies, analysis and supporting documents used to determine effect on small business or in preparation of economic impact report, anticipated costs incurred by private sector, and effect on small business:

These rules are not expected to result in significant impacts on small business or the private sector in general, because they simply provide more flexibility in determining whether corresponding statutory duties of municipalities have been met, so as to establish eligibility for funding from the Fire Dues program.

Agency contact person:

Joe Hertel, Program Manager – jhertel@commerce.state.wi.us, or 608/266-5649

File reference: Comm 14/AnalysisAd

SECTION 1. Comm 14.02 (10) is created to read:

Comm 14.02 (10) “Substantial compliance,” for the purposes of s. 101.575 (4) (a) 1. and 2., Stats., means an ample amount of the required activity was performed through a concerted effort aimed at total compliance. A determination of substantial compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable statute or code requirements. Substantial compliance is not a specific number or percent of compliance. A determination of substantial compliance in any one year or regulatory standard does not mean that the same amount of compliance or effort in the following year or in another area of the code automatically equals substantial compliance.

Note: Under section 101.575 (4) (a) 1. of the statutes, the Department may not pay fire department dues to a city, village, town or fire department, unless the Department determines that the city, village, town or fire department is in substantial compliance with sections 101.575 (6) and 101.14 (2) of the statutes.

SECTION 2. Comm 14.48 (1) (a) 1., (2) (a), (3) (c), and (4) (a) are amended to read:

Comm 14.48 (1) (a) 1. In order to be eligible to receive a fire department dues payment, a municipality shall ~~ensure that~~ be in substantial compliance with the requirements for fire protection and fire prevention services specified in ss. 101.14 and 101.575, Stats., and this chapter, ~~are provided to~~ throughout the entire municipality.

(2) (a) General. The department shall determine substantial compliance with the fire department dues entitlement program through the self-certification audit process specified in sub. (3) and the onsite audit process specified in sub. (4).

(3) (c) The chief of the fire department that provided the fire protection and fire prevention services and the clerk of the municipality shall sign the self-certification audit form and indicate whether or not the municipality is in substantial compliance ~~or noncompliance~~ with state regulations regarding the fire department dues entitlement program. In first class cities, the commissioner of the building inspection department shall also sign the self-certification audit form.

(4) (a) In addition to the self-certification audit process, the department shall periodically conduct onsite audits of fire department dues entitlement records to determine substantial compliance with the fire department dues entitlement program for the previous calendar year.

SECTION 3. Comm 14.50 is created to read:

Comm 14.50 (1) For the appropriation under s. 20.143 (3) (La), Stats., the term “administrative expenses” means expenditures for the direct costs and indirect costs of administering ss. 101.14, 101.141 and 101.573, Stats.

(2) In this section:

(a) "Direct costs" means the cost of salaries, limited term employees, fringe benefits and supplies to administer ss. 101.14, 101.141 and 101.573, Stats.

(b) "Indirect costs" means the cost, determined on a pro rata basis, of management and administrative services provided to administer ss. 101.14, 101.141 and 101.573, Stats.

(c) "Supplies" means equipment, memberships, postage, printing, rent, subscriptions, telecommunications, travel, utilities and similar outfitting and services, directly related to administering ss. 101.14, 101.141 and 101.573, Stats.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.) and (a), Stats., these rules shall take effect on either December 1, 2004, or on the first day of the month following publication in the Wisconsin administrative register, whichever occurs later.

File reference: Comm 14/rules4, 2003 Act 219