Wisconsin Administrative Register

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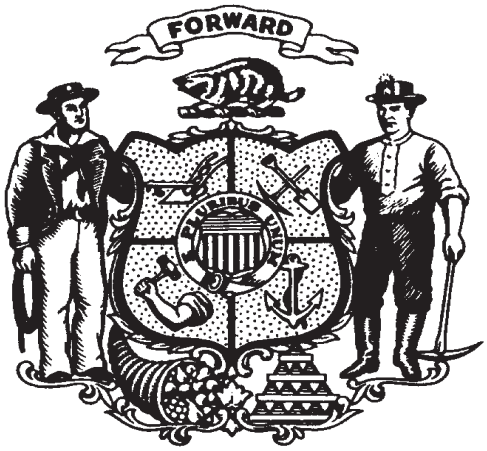

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WISCONSIN ADMINISTRATIVE REGISTER

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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590

email: bruce.hoesly@legis.wisconsin.gov

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Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule−making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule−making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection (3)

1. EmR1038 — Rule adopted to create **section ATCP 21.21,** relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.

Finding of emergency

(1) Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southeastern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

(2) Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in the Knoxville, Tennessee area. The Tennessee infestation is the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(4) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically−important and environmentally important walnut forest resource.

(5) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(6) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a "permanent" rule by the normal procedure.

Publication Date:	**November 1, 2010**
Effective Dates:	**November 1, 2010 through March 30, 2011**
Hearing Date:	**January 26, 2011**

2. EmR1040 — Rule adopted to create **Chapter ATCP 53,** relating to agricultural enterprise areas.

Exemption from Finding of Emergency

Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Publication Date:	**November 9, 2010**
Effective Dates:	**January 1, 2011 until the Department modifies or repeals the rule**

3. EmR1048 — Rule adopted to repeal and recreate **Chapter ATCP 20,** relating to seed labeling and sales.

Finding of Emergency

Pursuant to sections 93.07(1) and 94.45(6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103(3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non−statutory provision, contained in section 9103(3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non−statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed "permanent" seed rules, whichever date is earlier.

Publication Date:	**January 1, 2011**
Effective Dates:	**January 1, 2011 through July 1, 2011**
Hearing Date:	**January 11, 2011**

Barbering and Cosmetology Examining Board

EmR1047 — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

Publication Date:	**December 23, 2010**
Effective Dates:	**December 23, 2010 through May 21, 2011**

Children and Families (2)

Safety and Permanence, Chs. DCF 37−59

1. EmR1034 — Rule adopted to create **sections DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date:	**September 2, 2010**
Effective Dates:	**September 2, 2010 through the date permanent rules become effective**
Hearing Date:	**October 21, 2010**

2. EmR1050 — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster care.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

In the Child and Family Services Review of Wisconsin's child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

Publication Date:	**January 1, 2011**
Effective Dates:	**January 1, 2011 through May 30, 2011**
Hearing Dates:	**February 8, 15, 28, 2011**

(See the **Amended** Notice in this Register)

Commerce (4)

Financial Resources for Businesses and Communities, Chs. Comm 104—

1. EmR1019 —Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31,

2009. In addition, section 71.07 (3rm) of the Statutes includes a $1,000,000 tax−credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009−10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that will be eligible for the allocation that expires on June 30, 2010.

Publication Date:	**June 8, 2010**
Effective Dates:	**June 8, 2010 through November 4, 2010**
Extension Through:	**March 11, 2011**
Hearing Date:	**August 17, 2010**

2. EmR1026 — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date:	**July 2, 2010**
Effective Dates:	**July 2, 2010 through November 28, 2010**
Extension Through:	**January 27, 2011**
Hearing Date:	**October 13, 2010**

3. EmR1041 — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled−veteran−owned businesses, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date:	**November 14, 2010**
Effective Dates:	**November 15, 2010 through April 13, 2011**
Hearing Date:	**February 15, 2011**

(See the Notice in this Register)

4. EmR1044 — Rule adopted to revise **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by SECTION 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date:	**November 28, 2010**
Effective Dates:	**November 28, 2010 through April 26, 2011**
Hearing Date:	**February 16, 2011**

(See the Notice in this Register)

Government Accountability Board (3)

1. EmR1016 — Rule adopted to create **section GAB 1.91,** relating to organizations making independent disbursements.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. ___, (No. 08−205)(January 21, 2010). Within the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in−kind contributions received, this emergency rule order requires organizations to disclose only donations "made for" political purposes, but not donations received for other purposes.

The Board adopts the legislature's policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

Publication Date:	**May 20, 2010**
Effective Dates:	**May 20, 2010 through October 16, 2010**
Extension Through:	**February 13, 2011**
Hearing Date:	**August 30, 2010**

2. EmR1035 — Rule adopted to repeal and recreate **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by "any member of the public" of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Pursuant to s. 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the

administrative rule ElBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the General Election to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date:	**September 24, 2010**
Effective Dates:	**September 24, 2010 through February 20, 2011**
Hearing Date:	**December 13, 2010**

3. EmR1049 — Rule adopted to amend **section GAB 1.28,** relating to the definition of the term "political purpose."

Finding of Emergency

The Government Accountability Board amends s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term "political purpose." Section GAB 1.28 as a whole continues to clarify the definition of "political purposes" found in s. 11.01(16)(a)1., Stats., but repeals the second sentence of s. GAB 1.28(3)(b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28(3)(b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08−205)(January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28(3)(b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language—for example, by G.A.B. issuing an emergency rule—would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10−CV−427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28(3)(b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

Publication Date:	**January 7, 2011**
Effective Dates:	**January 7, 2011 through June 5, 2011**
Hearing Date:	**February 16, 2011**

(See the Notice in this Register)

Insurance (2)

1. EmR1042 — Rule to create **section Ins 3.35**, relating to colorectal cancer screening coverage and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning December 1, insurers offering disability insurance policies and self−insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

Publication Date:	**November 29, 2010**
Effective Dates:	**November 29, 2010 through April 27, 2011**
Hearing Date:	**January 25, 2011**

2. EmR1043 — Rule to amend **sections Ins 3.37 (1) to (5) (intro);** and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, Wis. Adm. Code, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

s. 632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

Publication Date:	**November 29, 2010**
Effective Dates:	**November 29, 2010 through April 27, 2011**
Hearing Date:	**January 25, 2011**

Natural Resources (4)

Fish, Game, etc., Chs. NR 1—

1. EmR1036 — Rule adopted to create **section NR 40.04 (2) (g)** relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date:	**September 29, 2010**
Effective Dates:	**September 29, 2010 through: *See bold text above***
Hearing Dates:	**October 25 to 29, 2010**

2. EmR1037 — Rule adopted to create **section NR 27.03 (3) (a)** relating to adding cave bats to Wisconsin's threatened species list.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Wis. Stats., is necessary and justified in establishing rules to protect the public welfare. The proposed rule change seeks to provide protection to Wisconsin cave bat species, which face the imminent threat of white−nose syndrome. White−nose syndrome has spread across 14 states and 2 Canadian provinces in the last 3 years, spreading up to 800 miles per year. Mortality rates of affected bat colonies reach 100%. The disease was located last spring within 225 miles of the Wisconsin's southern boarder and 300 miles from the northern boarder. Because the known dispersal distance of the little brown bat is 280 miles, an affected cave is now located within the dispersal range of Wisconsin little brown bats. Listing the cave bat species before white−nose syndrome has been detected in Wisconsin will allow the Department time to work collaboratively with stakeholders to ensure that appropriate conservation measures are developed and in place when white−nose syndrome is first detected. Because of the speed of white−nose syndrome, the Department would not have time to develop appropriate conservation measures if normal rule−making procedures were used and listing was delayed until after white−nose syndrome was detected in Wisconsin. Based on the current location and known rate of spread of the disease, we anticipate the presence of white−nose syndrome in Wisconsin as early as January 2011.

Publication Date:	**September 29, 2010**
Effective Dates:	**September 29, 2010 through February 25, 2011**
Hearing Dates:	**October 25 to 29, 2010**

3. EmR1039 (DNR # IS−49−10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)** relating to the identification, classification and control of invasive bat species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date:	**November 3, 2010**
Effective Dates:	**November 3, 2010 through *See bold text above***
Hearing Date:	**November 29, 2010**

4. EmR1045 (DNR # IS−07−11(E))— Rule to repeal **section NR 40.02 (28m);** to amend **section NR 40.04 (3m), and to repeal and recreate section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS−49−10(E)), relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the

department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date:	**December 13, 2010**
Effective Dates:	**December 13, 2010 through See bold text above**

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

EmR1046 (DNR # AM−48−10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend **section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5)** and to create **sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075**, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources. Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected. Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

Publication Date:	**December 15, 2010**
Effective Dates:	**December 15, 2010 through May 15, 2011**
Hearing Date:	**January 21, 2011**

Public Instruction

EmR1051 — Rule adopted to create **Chapter PI 46**, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.29 (6), Stats., requires the department to approve training in administering nonprescription drug products and prescription drugs. The statute also specifies that no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug, use an epinephrine auto−injector, or administer glucagon unless he or she has received such training. Because the statutory requirement becomes effective March 1, 2011, administrative rules must be in place as soon as possible so that training programs can be established prior to the effective date of the statutes.

Publication Date:	**December 28, 2010**
Effective Dates:	**December 28, 2010 through May 26, 2011**
Hearing Date:	**January 12, 2011**

Regulation and Licensing (4)

1. EmR0827 — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date:	**September 10, 2008**
Effective Dates:	**September 10, 2008 through the date on which the final rules take effect**
Hearing Dates:	**November 26, 2008 April 13, 2009**

2. EmR0828 — Rules adopted to amend **section RL 181.01 (2) (c);** and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date:	**September 10, 2008**
Effective Dates:	**September 10, 2008 through the date on which the final rules take effect**
Hearing Date:	**November 26, 2008**

3. EmR1031 — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date:	**August 25, 2010**
Effective Dates:	**September 1, 2010 through January 28, 2011**
Hearing Date:	**September 20, 2010**

4. EmR1032 — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date:	**August 26, 2010**
Effective Dates:	**September 1, 2010 through January 28, 2011**
Hearing Date:	**September 20, 2010**

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional $1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009−11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in−kind matching funds, equal to at least 25% of total approved project costs.

Due to the sustained decline in economic conditions and reduction in business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

Publication Date:	**July 2, 2010**
Effective Dates:	**July 2, 2010 through November 28, 2010**
Extension Through:	**January 27, 2011**
Hearing Date:	**September 28, 2010**

Scope Statements

Dentistry Examining Board

Subject

Amends section DE 2.04 to clarify whether and which examinations taken before 2009 are accepted for licensure.

Objective of the Rule

In 2009, the Dentistry Examining Board passed a rule to accept all the regional examinations for licensure. Since then a number of candidates have applied for licensure who took these, or state examinations, before 2009. The Board needs to determine and write rules outlining how those examinations will be treated in regards to licensing. Currently, the rule is unclear as to how these applicants are treated. The rules would be amended to clarify whether and which examinations will be accepted if the applicant took the examination before 2009.

Policy Analysis

The current policy is that the board currently accepts all regional examinations taken after 2009, but is silent on the same examinations taken before 2009. The board has discussed approving each exam on a case by case basis when an applicant that falls into this category comes before the board.

Statutory Authority

Section 447.04 (1) (b) 1., Stats.

Comparison with Federal Regulations

There are no existing or proposed federal regulations that are intended to establish which dental examinations will be acceptable for licensure by endorsement for dentists in Wisconsin.

Entities Affected by the Rule

Persons who apply for licensure by endorsement in Wisconsin under DE 2.04.

Estimate of Time Needed to Develop the Rule

Total hours: 120.

Dentistry Examining Board

Subject

Amends section DE 3.02 to allow the use of lasers by dental hygienists.

Objective of the Rule

The change in the rule will allow dental hygienists to use lasers. Currently the rule is silent on this issue. The board will amend s. 3.02 to allow dental hygienists to use lasers in a capacity yet to be determined.

Policy Analysis

There is variance in whether states allow dental hygienists to use lasers and in what capacity.

Statutory Authority

Section 447.06 (2) (b), 447.06 (2) (c), 15.08 (5), Stats.

Comparison with Federal Regulations

There is no current or proposed legislation that regulates the use of lasers by dental hygienists.

Entities Affected by the Rule

Dentists and dental hygienists licensed in Wisconsin and their patients.

Estimate of Time Needed to Develop the Rule

120 Hours.

Employee Trust Funds

Subject

Revises Chapters ETF 10 and 20, relating to compliance with the Internal Revenue Code (IRC).

Objective of the Rule

ETF seeks to clarify how the Department administers provisions of the IRC, including §§ 415 (b), 415 (c) and 401 (a) (17) as provided in § 40.03 (2) (t), Stats.

Policy Analysis

As the administrator of the Wisconsin Retirement System (WRS), ETF is responsible for ensuring that the WRS complies with all applicable provisions of the IRC in order to maintain the tax−qualified status of the WRS. IRC § 401 (a) (16) provides that a trust is not a qualified trust under IRC § 401 if the plan of which such trust is a part provides for benefits or contributions that exceed the IRC § 415 limitations. In addition, ETF must ensure that the limits on annual compensation used to calculate benefits are applied in accordance with IRC § 401 (a) (17).

The proposed rule will explain how ETF will treat specific situations under the IRC, such as refunds of contributions to accounts that exceed limits, how ETF will apply the limits when members participate in other qualified plans, and what benefits are taken into account when applying the limits. *Note: This scope statement incorporates and supersedes the ETF scope statement regarding IRC § 401 (a) (17), published in the May 1, 2010 Administrative Register (652B)*

Statutory Authority

Sections 40.03 (2) (i), (t) and 227.11 (2), Stats.

Comparison with Federal Regulations

The IRS published final regulations under IRC § 415 in April 2007. Section 415 provides dollar limitations on benefits and additional contributions under qualified retirement plans. For 2010, the limit on the annual benefit under a defined benefit plan under IRC § 415(b)(1)(A) is $195,000. The 2010 limit for annual additional contributions under IRC § 415(c)(1)(A) is $49,000. Section 415(d) requires that the Tax Commissioner annually adjust these limits for cost−of−living increases. The regulations under IRC § 415 address aggregation of limits, benefits not taken into account for 415 (b) limitations, and situations in which limits are adjusted. The final regulations also provide guidance on treatment of rollover contributions.

IRC § 401 (a) (17) limits the annual compensation on which a WRS participant's benefits and contributions can be

based. The proposed rule would describe how ETF applies the 401(a) (17) limits to partial years of earnings, and how "weighted average" 401 (a) (17) limits are applied to participants whose benefits are based on fiscal year earnings (July 1 – June 30) rather than calendar year earnings.

The contemplated rule changes will be drafted to facilitate compliance with the federal statutes and regulations, and to promote better understanding amongst members and ETF staff of the application of these IRC sections. None of the contemplated rule changes violate or conflict with IRC provisions.

Entities Affected by the Rule

The new rules will affect WRS participating employees whose annual WRS earnings exceed the earnings limitations in IRC § 401(a) (17) and whose benefits are calculated based on a fiscal year annual earnings period, and participating employees who have partial years of earnings that exceed those earnings limitations. The rules will affect WRS participating employees whose benefits or additional contributions exceed limits in IRC § 415. This rule will also affect the WRS employers by which these participants are employed.

Estimate of Time Needed to Develop the Rule

State employees will spend an estimated 80 hours to develop these rules.

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

DNR # AM−08−11

Subject

Revises Chapters NR 404 and 484, relating to ambient air quality standards for sulfur dioxide and nitrogen dioxide.

Objective of the Rule

Under the federal Clean Air Act, the U.S. Environmental Protection Agency (EPA) has responsibility for promulgating National Ambient Air Quality Standards (NAAQS) which are designed to protect public health (primary standards) and public welfare (secondary standards). Under state law, if EPA promulgates a NAAQS, the Department is required to promulgate a similar, but no more restrictive standard. The EPA has recently promulgated NAAQS for Sulfur Dioxide (SO_2), and Nitrogen Dioxide (NO_2). In order to both reflect current air quality health science and to maintain consistency with EPA−promulgated NAAQS, the Department is proposing to adopt the EPA−promulgated NAAQS for SO_2 and NO_2 into ch. NR 404, Wis. Adm. Code, and incorporate the corresponding federal monitoring requirements into ch. NR 484, Wis. Adm. Code.

Policy Analysis

The EPA is replacing the current 24−hour and annual SO_2 standards with a new short term standard of 75 parts per billion (ppb). This standard is based on the 3−year average of the 99th percentile of the yearly distribution of the 1−hour daily maximum SO_2 concentrations. The EPA also established new requirements for an SO_2 monitoring network. These new provisions require monitors in areas where there is an increased coincidence of population and SO_2 emissions. The initial SO_2 designation recommendations from the Governor to the EPA are due June, 2011.

The EPA established a new 1−hour NO_2 standard at 100 ppb and retained the existing annual NO_2 standard of 53 ppb. The U.S. EPA specifies that the new short term standard is based on the 3−year average of the 99th percentile of the annual distribution of daily maximum 1−hour average NO_2 concentrations .The EPA established new monitoring requirements in urban areas that will measure NO_2 levels around major roads and across the community. Monitors must be located near roadways in cities with at least 500,000 residents. Larger cities and areas with major roadways will have additional monitors. Community−wide monitoring will continue in cities with at least 1 million residents. The initial NO_2 designation recommendations from the Governor to the EPA are due January 21, 2011. However, we have notified the EPA that we will be requesting an extension.

As required by s. 285.21 (1) (a), Stats., Wisconsin must promulgate ambient air quality standards similar to the NAAQS for the protection of public health and welfare. Consequently, there are no apparent policy alternatives to this proposed action.

Statutory Authority

Sections 285.11 (1) and (6) and 285.21 (1) (a), Stats.

Comparison with Federal Regulations

A major purpose of this proposed rules package is to amend Wisconsin's ambient air quality standards in order to be consistent with the NAAQS, which are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR part 50). This consistency is required under s. 285.21(1) (a), Stats.

Entities Affected by the Rule

Stationary source facilities that are seeking air permits may potentially be affected by focusing on modeled SO_2 and NO_2 impacts if the area is designated non attainment with these ambient air quality standards. The adoption of these NAAQS has the potential to affect sources that are applying for construction permits and sources obtaining and renewing operation permits.

Estimate of Time Needed to Develop the Rule

Approximately 327 hours of agency staff time is being budgeted to this proposed rule action.

Contact Information

Mike Friedlander
DNR — Bureau of Air Management
P.O. Box 7921
Madison, WI 53704
608−267−0806
Michael.Friedlander@wisconsin.gov

Submittal of Rules to Legislative Council Clearinghouse

Please check the Bulletin of Proceedings − Administrative Rules for further information on a particular rule.

Commerce

Moveable Soccer Goals, Ch. Comm 9

CR 11−003

On January 4, 2011, the Department of Commerce submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create Chapter Comm 9, relating to anchorage of moveable soccer goals.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 15, 2011. The department's Division of Safety and Buildings is primarily responsible for this rule.

Contact Information

James Quast, Program Manager
(608) 266−9292
jim.quast@wisconsin.gov

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 11−004

On January 14, 2011, the Department of Commerce submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create Chapter Comm 103, relating to a Disabled Veteran−Owned Business Certification Program.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 15, 2011. The department's Division of Business Development is primarily responsible for this rule.

Contact Information

Sam Rockweiler, Code Development Consultant
(608) 266−0797
sam.rockweiler@wi.gov

Rule−Making Notices

Amended Notice of Hearing
Children and Families
Safety and Permanence, Chs. DCF 35−59
CR 10−148, EmR1050

(Original Published in Mid−January Register No. 661)

NOTICE IS HEREBY GIVEN that pursuant to sections 48.62 (1) and (8), 48.67 (1) and (4), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold public hearings to consider emergency rules and proposed permanent rules repealing Chapter DCF 38 and revising Chapter DCF 56, relating to foster care.

Hearing Information

Date and Time:	Location:
February 8, 2011	**Madison**
Tuesday	GEF 1 Building
1:30pm	Room D203
	201 E. Washington Ave

Date and Time:	Location:
February 15, 2011	**Milwaukee**
Tuesday	Bureau of Milwaukee Child
1:30pm	Welfare
	6111 N. Teutonia Avenue

Date and Time:	Location:
February 28, 2011	**Eau Claire**
Monday	Western Regional Office
1:30pm	610 Gibson Street, Room 123

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267−9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Copies of Proposed Rule and Submittal of Written Comments

A copy of the proposed rules is available at http://adminrules.wisconsin.gov. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen, Office of Legal Counsel
Department of Children and Families
201 E. Washington Avenue, Madison, WI 53707
Phone: (608) 267−9403
Email: dcfpublichearing@wisconsin.gov

Written comments on the proposed rules received at the above address, email, or through the http://adminrules.wisconsin.gov web site no later than **March 1, 2011**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statute(s) interpreted

Sections 48.62 and 48.67, Stats.

Statutory authority

Sections 48.62 (1) and (8), 48.67 (1) and (4), and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 48.62 (1), Stats., provides that any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

Section 48.62 (8), Stats., as created by 2009 Wisconsin Act 28 and affected by 2009 Wisconsin Act 71, provides that the department shall promulgate rules relating to foster homes as follows:

- Rules providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.
- Rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child's needs are in place and grants an exception to that prohibition.
- Rules providing monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home. Those rates shall include rates for supplemental payments for special needs, exceptional circumstances, and initial clothing

allowances for children placed in a foster home that is receiving an age−related monthly rate under s. 48.62 (4), Stats. In promulgating the rules, the department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of those rules.

- Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

Section 48.67 (1), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (4), Stats., requires that all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The training shall be completed on an ongoing basis, as determined by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules.

Related statute(s) or rule(s)

Chapter 48, Stats.; Chapters DCF 37 and 54, Wis. Adm. Code.

Summary of proposed rule

Section 48.62 (8) (a), Stats., directs the department to create rules providing levels of care for foster homes. The purpose of levels of care is to improve the placement stability, safety, and permanence of children placed in foster homes by matching their assessed needs with the skills, abilities, and capacities of caregivers.

Levels of Care

The Department has implemented the rules on levels of care in two phases. The first level of care rule was effective January 1, 2010, and created a process to certify foster homes at Level 1 or 2 and created training requirements for foster parents who operate foster homes with a Level 1 or 2 certification. A Level 1 foster home is available only to foster parents with a child−specific license. The creation of Level 1 foster homes coincided with implementation of the statutory requirement that relative caregivers of a child placed in the caregiver's home under court order who received kinship care payments under DCF 58 apply for and obtain a foster care license if they are licensable. A Level 2 foster home is a basic foster home.

This rule creates a process to certify foster homes at Level 3 to 5. DCF 38, Treatment Foster Care for Children, is repealed and most of the requirements in DCF 38 are integrated into DCF 56, Foster Home Care for Children, to create a single foster care rule with progressive requirements for all foster parents and agencies. Requirements from DCF 38 that have been integrated into DCF 56 with minor modifications include requirements regarding the characteristics and responsibilities of foster parents, physical environment of foster homes, care of foster children, responsibilities of supervising and licensing agencies, and responsibilities of the treatment team.

Treatment Foster Parent Requirements under DCF 38. Under DCF 38, a treatment foster parent had to have the following qualifications:

- Experience: An applicant had to meet at least 2 criteria from a list of 5 types of education, skills, abilities, and work or personal experience with children.
- Training:
  - 18 hours of pre−placement training.
  - 24 hours of training in the second 12−month period following licensure.
  - 18 hours of ongoing training in every subsequent 12−month period.
- Three favorable references.

Level 3 Moderate Treatment Foster Homes. For new Level 3 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 3 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
  - 36 hours of pre−placement training.
  - 24 hours of training during the initial licensing period, which is generally 2 years.
  - 18 hours of ongoing training in each 12−month period subsequent to initial licensing period.
- Four favorable references.

The rule provides that a licensing agency shall issue a modified license with a certification to operate a Level 3 foster home without determining the eligibility of the foster parent if on December 31, 2010, the foster parent had a license to operate a treatment foster home under ch. DCF 38.

Level 4 Specialized Treatment Foster Homes. For new Level 4 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 4 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
  - 40 hours of pre−placement training.
  - 30 hours of training during the initial licensing period, which is generally 2 years.
  - 24 hours of ongoing training in each 12−month period subsequent to initial licensing period.
- Four favorable references.

The rule provides that no licensing agency may issue a certification to operate a Level 4 foster home without first determining the eligibility of the foster parent under the new Level 4 requirements.

Level 5 Exceptional Treatment Foster Homes. Certification to operate a Level 5 foster home is available only when an exception is granted by the department exceptions panel. An applicant for certification to operate a Level 5 foster home, in conjunction with a licensing agency, may apply for Level 5 certification if the following conditions are met:

- A placement is needed for a child with the following conditions:

- The child has behaviors or conditions that require a high degree of supervision and overnight awake care that is provided by program staff who rotate shifts within a 24−hour period.
- The child will benefit from a home−like environment that has fewer children than a group home or residential care center for children and youth.
- The child is expected to need long−term care or has needs agreed to by the department.

- All other community placement options have been investigated and determined to be unavailable or not in the best interest of the child.

A Level 5 foster home must have a program manager who is the foster parent and licensee of the foster home. An applicant for a program manager position must have specified education or experience and must complete 40 hours of pre−placement training, 30 hours of initial licensing training, and 24 hours of ongoing training in each 12−month period subsequent to the initial licensing period.

A Level 5 foster home must have program staff who are responsible for daily supervision of the children and direct care to the children to ensure their safety and well−being. The minimum staff ratios for program staff are one program staff person for every 2 children during waking hours and one program staff person for every 4 children during sleeping hours. An applicant for a program staff position must have specified education and experience and have a background check, favorable references, and, if hired, a health exam. Before working independently with a child, program staff must complete 40 hours of pre−placement training and work with qualified experienced program staff or similar professionals for at least the first 80 hours of employment Program staff must also complete 24 hours of ongoing training in each year of employment subsequent to the initial year of employment.

The department exceptions panel has been granting exceptions to operate shift−staffed treatment foster homes under DCFS Memo Series 2006−15. Licensing agencies will issue a modified license with a certification to operate a Level 5 foster home to a foster parent who, on December 31, 2010, had been granted an exception to operate a shift−staffed treatment foster home by the department exceptions panel.

Assessment of Needs and Strengths

Section 48.62 (8) (b), Stats., directs the department to create rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs.

The standardized assessment tool prescribed by the department is the *Child and Adolescent Needs and Strengths* (CANS) tool authored by Dr. John Lyons and the Praed Foundation and customized for use in Wisconsin by the department and the author. There is substantial research demonstrating the reliability and validity of the CANS tool. It is used statewide in 15 other states and is used in parts of 22 additional states.

The rule provides that a placing agency shall assess each foster child before placement in a foster home or within 30 days after the child's placement. A placing agency shall assess each foster parent in relation to the child placed within 30 days after the child's placement in the foster home. A placing agency shall reassess each foster child and the child's foster parent within 6 months after the child's last assessment or reassessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently. The person who will administer the tool will first review the child's case record; interview or collect information from an individual who has interviewed the child, child's family, foster parent or other out−of−home care provider, and the child's team or treatment team; and review information gathered in collaboration with the child's team or treatment team. The person administering the standardized assessment tool will rate the child's needs and strengths relative to what is developmentally appropriate for a child of a similar age and the foster parent's needs in relation to that child to determine how to support the placement stability of the child with that foster parent.

The placing agency will use information from the assessment of a child, child's family, and the foster parent of the child for all of the following:

- To communicate information about the needs and strengths of the child and child's family.
- To assist with determining the child's service needs and developing the child's plan of care.
- To determine a level of need of 1/2, 3, 4, 5, or 6 for the child.
- To inform decisions regarding a placement at a level of care that is appropriate to meet the child's level of need.
- To evaluate the match between the knowledge, skills, and abilities of a foster parent and the needs and strengths of a child.
- To assist in the development of services and supports needed for a specific child and foster parent to promote the stability of the placement.
- To provide a mental health screen to all children entering foster care.
- To determine any supplemental payments for a child's special needs.

A placing agency, in accordance with a licensing agency, may place a child in a foster home that is certified to provide a given level of care if the child's level of need is at or below the level of care that the foster home is certified to provide. A placing agency may place a child with a level of need that is higher than the level of care that a foster home is certified to provide if the placing agency grants an exception and documents in the child's electronic case record what services and supports will be provided to meet the child's needs. A child whose level of need is lower than 5 may not be placed in a Level 5 foster home, except for continuation of an existing placement during planning for the child's transition to a less restrictive setting following a reassessment.

Supplemental Payments, Exceptional Payments, and Retainer Fee

Supplemental Payments. A placing agency shall make supplemental payments for a child's special needs to a foster parent who operates a foster home with a Level 2 to 5 certification. The placing agency shall determine the amount of a supplemental payment based on the total of all of the following:

- 'Identified needs and strengths.' A dollar amount determined by the department multiplied by the total points that the placing agency rates a child to determine the presence of special needs on a form prescribed by the department. The placing agency will use information

obtained from the standardized assessment tool to rate the child relative what is developmentally appropriate for a child of a similar age in the following areas:

- Adjustment to trauma.
- Life functioning, including physical, mental, and dental health; relationships with family members; and social skills.
- Functioning in a child care or school setting.
- Strengths.
- Behavioral and emotional needs.
- Risk behaviors.
- Child's language.

- 'Level of care higher than level of need.' An amount determined by the department if a foster home's level of care certification is higher than the level of need of a child placed in the foster home and the foster home has a Level 3 or 4 certification.

Exceptional Payments. A placing agency may make exceptional payments to a foster parent to accomplish any of the following:

- Enable the child to be placed in a foster home instead of being placed or remaining in a more restrictive setting.
- Enable the placement of siblings or minor parent and minor children together.
- Assist with transportation costs to the school the child was attending prior to placement in out−of−home care.
- Replace a child's basic wardrobe that has been lost or destroyed in a manner other than normal wear and tear.
- For a child placed in a foster home before February 21, 2011, and who remains placed in that foster home, equalize the total monthly payment amount lost by the child's foster parent due to implementation of the new method of determining supplemental payments.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 allows the state to claim federal funds for expenses to assist a foster child with transportation costs to the school the child was attending prior to placement in out−of−home care.

Retainer Fee. A placing agency may provide a monthly retainer fee to a foster parent to maintain openings in a foster home for emergency placements. This fee may not be considered part of the foster care payment for a specific child.

Other

- A foster parent may not smoke or allow another person to smoke in a foster home or in a vehicle when a foster child is present.
- The rule incorporates provisions of DSP Memo Series 2009−05 that was jointly issued by the Department of Health Services and the Department of Children and Families. It provides that a foster parent may not use any type of physical restraint on a foster child unless the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe. If physical restraint is necessary, the rule provides certain prohibited practices.

Summary of, and comparison with, existing or proposed federal regulations

Under 45 CFR 1355.32 and 1355.33, the federal Administration for Children and Families conducts a Child and Family Services Review of each state's child welfare system every 5 years. States found not to be operating in substantial conformity with federal requirements shall develop a program improvement plan. The program improvement plan must set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas.

42 USC 671(a)(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

42 USC 675 (1) (G) defines "case plan" to include a plan for ensuring the educational stability of the child while in foster care, including an assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement or if remaining in such school is not in the best interests of the child, assurances by the state agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

42 USC 674 (4) (A) defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 USC 675 (1) (G) was created and 42 USC 674 (4) (A) was amended to add the phrase "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."

Comparison with rules in adjacent states

The assessment tool prescribed by the department is used statewide in Iowa and Illinois and is used parts of Minnesota and Michigan. Michigan and Illinois have a levels of care system for foster homes.

Summary of factual data and analytical methodologies

The non−statutory requirements of the rule are based on recommendations from the Out−of−Home Care/Adoption Committee and the Foster Parent Training Committee. The committees have worked with the department for the past 5 years to incorporate new federal laws into state law and policy by referring to other state models and national standards of child welfare practice. For the past 2 years, both committees have focused on developing policy to implement the levels of care and foster parent training initiatives in 2009 Wisconsin Act 28. Both committees have statewide membership of staff from counties, tribes, private child−placing agencies, foster and treatment foster parents, court personnel, advocacy agencies, and state government.

Analysis used to determine effect on small business

The proposed rule will affect private child−placing agencies, some of which are small businesses. The policies in the rule were developed in collaboration with members of

the Foster Parent Training Committee and the Out−of−Home Care/Adoption Committee, which included representatives from child−placing agencies.

Much of the rule is based on current practices of the majority of agencies supporting treatment foster care. The sections on agency responsibilities were part of DCF 38 and have been rewritten into DCF 56 with few changes. Representatives from child−placing agencies indicated that their agencies already require foster parents to have as much or more than the training hours in the proposed rule. Many agencies that serve treatment foster parents and treatment foster children with higher needs already have a levels or intensity system with different foster parent qualifications, training, and payments. The rule will put structure and consistency to the levels of care that will help counties know what services they are purchasing as they work with different private agencies that provide similar services. Existing treatment foster homes will be grandfathered in as Level 3 foster homes and existing shift−staffed treatment foster homes will be grandfathered in as Level 5 foster homes. Some private child−placing agencies will choose to offer Level 4 foster homes and will certify these foster parents under the emergency and proposed rules. The administrative cost will be minimal.

In addition, the department will be providing 6 hours of the new pre−placement training without charge to the agencies. The department is also creating online training to allow agency staff to receive certification and recertification in administering the standardized assessment tool without charge.

Effect on Small Business

The rule will affect small businesses, but will not have a significant economic effect on a substantial number of small businesses.

The Department's Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@wisconsin.gov; (608) 267−9403.

Fiscal Estimate

State fiscal effect

Indeterminate.

Local fiscal effect

Indeterminate.

Long−range fiscal implications

None.

Assumptions used in arriving at fiscal estimate

This rule incorporates the administrative rule under Chapter 38 into Chapter 56 to create one universal licensing code for foster care and treatment foster care providers. This is the second phase of creating the Levels of Care system passed in 2009 Wisconsin Act 28. This rule establishes the requirements for certification at levels 3, 4, and 5. A foster home is licensed at these levels based on a number of factors, including the level of knowledge, skill, training, and experience of the licensee. This rule establishes the minimum amount of training at each of these levels. In addition, this rule mandates the use of the Child and Adolescent Needs and Strengths (CANS) rating tool. This rating tools is designed to consistently identify the needs of children, ensure that providers are addressing those needs, and determine reimbursements to foster and treatment foster parents.

The rule will affect counties and the Department, which operates the child welfare program in Milwaukee County. The rule is not anticipated to affect current foster care and treatment foster care providers. Most existing providers meet the qualifications in the rule and existing providers are grandfathered into the rule.

The implementation of the CANS rating tool may identify some unmet needs for children, which could increase the costs of providing services to these children. Also, the CANS rating tool could more appropriately identify a lesser level of need for children who already are receiving special services, which may decrease costs to serve these children. Additionally, providing children with adequate services may reduce the length of stay for children in out−of−home care, reducing long−term costs. The net effect of these scenarios cannot be determined.

Agency Contact Person

Jonelle Brom, Bureau of Permanence and Out−of−Home Care, Division of Safety and Permanence, (608) 264−6933, jonelle.brom@wisconsin.gov.

Notice of Hearing
Commerce
Moveable Soccer Goals, Ch. Comm 9
CR 11−003

NOTICE IS HEREBY GIVEN that pursuant to section 167.21 (2), Stats., the Department of Commerce will hold a public hearing on proposed rules to create Chapter Comm 9, relating to anchorage of moveable soccer goals.

Hearing Information

The public hearing will be held as follows:

Date and Time:	**Location:**
February 15, 2011	Conference Room 3B
Tuesday	Tommy G. Thompson Center
10:00 a.m.	201 W. Washington Avenue
	Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266−8741 or (608) 264−8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **February 23, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701−2689, or Email at jim.quast@wisconsin.com.

Copies of Proposed Rules

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Norma McReynolds, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701−2689, or Email norma.mcreynolds@wisconsin.gov, or at telephone (608) 267−7907 or TDD Relay dial 711 in Wisconsin or (800) 947−3529. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 167.21 (2), Stats., 2009 Wisconsin Act 390.

Statutory authority

Sections 101.02 (1) and 167.21 (2), Stats., 2009 Wisconsin Act 390.

Related statute or rule

None known.

Explanation of agency authority

Under 2009 Wisconsin Act 390, s. 167.21, Stats., the Department is directed to develop rules to address the securing of movable soccer goals.

Summary of proposed rules

The proposed rules establish minimum standards for the securing of movable soccer goals to lessen the likelihood of the goals tipping over or overturning. The proposed rules apply to both existing and new movable soccer goals. The proposed rules reflect guidelines of the Consumer Product Safety Commission.

Summary of, and comparison with, existing or proposed federal regulations

The federal Consumer Product Safety Commission's has published *Guidelines for Movable Soccer Goal Safety.* The guidelines include a section on anchoring, securing and counterweighting soccer goals. The guidelines were published in 1995.

Comparison with rules in adjacent states

An Internet−based search of the anchoring or securing of movable soccer goals in the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or programs regarding the subject.

Summary of factual data and analytical methodologies

The proposed rules were developed by reviewing the provisions under 2009 Wisconsin Act 390 in conjunction with the following documents:

- ASTM F 1938, *Standard Guide for Safer Use of Movable Soccer Goals*, 2009.
- ASTM F 2056, *Standard Safety and Performance Specification for Soccer Goals*, 2009.
- ASTM F 2673, *Standard Safety Specification for Special Tip−ResistantMovable Soccer Goals*, 2008.
- Consumer Product Safety Commission's, *Guidelines for Movable Soccer Goal Safety.*

Analysis and supporting documents used to determine effect on small business

The proposed rules implement the mandates of 2009 Wisconsin Act 390 regarding the securing of movable soccer goals. The rules would apply to all existing and future movable soccer goals. The department does not believe that the proposed rules will increase the effect on small businesses over the mandates of the Act.

Effect of Small Business

An economic impact report has not been required pursuant to s. 227.137, Stats.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267−0297, or Email at carol.dunn@wisconsin.gov.

Environmental Analysis

The Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

State fiscal effect

None.

Local government costs

None.

Long−range fiscal implications

No long−range fiscal implications are anticipated.

Assumptions used in arriving at fiscal estimate

Under the mandates of 2009 Wisconsin Act 390, the proposed rules establish minimum standards for the securing of movable soccer goals to lessen the likelihood of the goals tipping over or overturning. The proposed rules apply to both existing and new movable soccer goals. The proposed rules reflect guidelines of the Consumer Product Safety Commission. Owners of moveable soccer goals would be responsible for facilitating proper anchorage. Owners would include any political subdivision of the state, such as school districts, municipal recreational departments and public universities. It is believed that most owners posses the necessary equipment or means to anchor their soccer goals; the unknown variable is whether the necessary time and effort is taken for anchorage when a goal is relocated. The department does not believe that compliance with the rules will impose a significant cost to owners.

Agency Contact Person

James Quast, Program Manager
(608) 266−9292
jim.quast@wisconsin.gov

Notice of Hearing

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

EmR1041, CR 11−004

NOTICE IS HEREBY GIVEN that pursuant to section 560.0335 (4) of the Statutes, the Department of Commerce will hold a public hearing on emergency rules and proposed permanent rules to create Chapter Comm 103 relating to a disabled veteran−owned business certification program, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

Date and Time:	**Location:**
February 15, 2011	Third Floor, Room 3B
Tuesday	Thompson Commerce Center
1:00 p.m.	201 W. Washington Avenue
	Madison, WI

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266−0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e−mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **February 18, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E−mail comments should be sent to sam.rockweiler@wi.gov. If e−mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708−0427.

Copies of Proposed Rules

The proposed rules and an analysis of the rules are available by entering "Comm 103" in the search engine at the following Web site: https://health.wisconsin.gov/admrules/public/Home. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or Email at sam.rockweiler@wi.gov, or at telephone (608) 266−0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 560.0335, as created in 2009 Wisconsin Act 299.

Statutory authority

Sections 227.11 (2) (a) and 560.0335 (4), Stats.

Explanation of agency authority

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.0335 (4) directs the Department to promulgate rules for certifying disabled−veteran−owned businesses.

Related statute or rule

Chapters Comm 104 and 105 contain the requirements for the Department's Woman−Owned Business Certification program and Minority Business Certification program, respectively. Although the statutory directives for those two programs differ somewhat from the statutory directives for certifying disabled−veteran−owned businesses, many of the best practices that the Department has developed in those two programs are extrapolative to certifying disabled−veteran−owned businesses.

Plain language analysis

The proposed rules primarily specify (1) which businesses are eligible for becoming certified in this program; (2) how to apply for certification and recertification; (3) how the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

Summary of, and comparison with, existing or proposed federal regulations.

Title 13 of the Code of Federal Regulations, Part 125, Subparts A thru E, address the definitions, eligibility requirements, contracting requirements, protest procedures, penalties, and records retention requirements under the federal Small Business Administration's Service−Disabled Veteran−Owned (SDVO) Small Business Concern (SBC) program. The purpose of the SDVO SBC program is to assist these businesses in obtaining a fair share of federal−government contracts, subcontracts, and property sales. An SDVO SBC is one in which at least 51 percent of the business is owned, controlled, and actively managed by service−disabled veterans – or in the case of a veteran with a permanent and severe disability, a spouse, surviving spouse, or permanent caregiver of the veteran. The SDVO SBC must also meet the small−size standards corresponding to the federal North American Industry Classification System code assigned to a contract at the time of the contract offer. Verification eligibility is for a 12−month period.

Title 38 of the Code of Federal Regulations, Part 74, addresses the application guidelines, oversight, and records management requirements of the U.S. Department of Veterans Affairs Center for Veterans Enterprise (CVE) VetBiz Vendor Information Pages (VIP) database. Eligibility for the CVE VIP is based on the type of ownership and control, and the absence of (1) debarment or suspension concerns, (2) false application statements, and (3) significant unresolved financial obligations to the federal government. Applications for the VetBiz VIP verification status must be filed electronically in the VIP database located at wwwVetBiz.gov.

Comparison with rules in adjacent states

An Internet−based search of state−level rules in Minnesota, Iowa, Illinois, and Michigan revealed the following information relating to certification of businesses that are owned by disabled veterans.

Minnesota:

Minnesota offers a targeted−group procurement program to help remedy the effects of past discrimination against

members of targeted groups. To be considered under the program, a business must be designated as a targeted business by the Minnesota Commissioner of Administration. The criteria for this designation are included in chapter 1230 of the Minnesota Administrative Rules. This chapter addresses certification of small, targeted−group businesses that are at least 51−percent owned and operationally controlled on a day−to−day basis by socially disadvantaged persons, which by definition include individuals with a physical impairment that substantially limits one or more major life activities. This chapter is also similar to the rules proposed in chapter Comm 103 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; and use of either an informal review or a statutory, contested−case hearing process for appeals. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, and by not being limited to just small businesses.

Iowa:

Chapter 54 of the rules of the Iowa Department of Economic Development establishes a targeted, small−business procurement program for promoting the growth, development, and diversification of small Iowa businesses that are owned by minorities, women and persons with disabilities. Chapter 55 of the rules of that Department establishes a targeted, small−business financial assistance program to assist women, minorities, persons with disabilities, and low−income individuals in establishing or expanding small business ventures in Iowa. Prior to participation in either of these two programs, a business must be certified as a targeted small business under chapter 25 of the rules of the Iowa Department of Inspections and Appeals. Under the definitions in that chapter, a targeted small business (1) is 51−percent or more owned, operated, and actively managed by minorities, women, or persons with disabilities; (2) is located within the state; (3) has an annual gross income of less than $4 million; and (4) is operated for profit. The certification rules in the chapter are similar to the rules proposed in chapter Comm 103 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; on−site audits by the Department; decertification; recertification; and use of a statutory, contested−case hearing process for appeals. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, and by not being limited to just small businesses.

Illinois:

Title 44, Part 10 of the Illinois Administrative Code implements the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575). This Act establishes a goal that at least 12 percent of contracts awarded by state agencies subject to the Act be awarded to businesses which are owned and controlled by minorities, females, or persons with disabilities. These businesses typically cannot have gross sales over the previous three years of $31.4 million or more, including sales from any affiliates. The Act also allows for certain special treatment in contracting with certified businesses; and establishes a Council, Secretary, and, in the Department of Central Management Services, a program function to implement and oversee the Act. Section 10.30 of Part 10 addresses the roles of the State agencies and the Council in achieving compliance with the contract−awarding goals. Under section 10.50, only certified businesses are eligible for the benefits of the Business Enterprise program, and state agencies can count only those expenditures with a certified vendor, or subcontractor, toward meeting the contract−awarding goals. The certification rules in sections 10.50 to 10.72 are similar to the rules proposed in chapter Comm 103 in addressing the application process, documentation of majority ownership and control, issuance or denial of the credential, consideration of certification by another entity, reconsideration, decertification, appeals, and recertification. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, by not being limited to just small businesses, and by not accepting certifications from private−sector entities.

Michigan:

No information was found relating to certification of disabled−veteran−owned businesses.

Summary of factual data and analytical methodologies

The data and methodology for developing these proposed rules were derived from and consisted of incorporating the criteria in section 560.0335 of the Statutes; incorporating many of the best practices the Department has developed in its current, similar programs for certifying minority−owned businesses and woman−owned businesses; and reviewing Internet−based sources of related federal, state, and private−sector information.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 299. This Act requires the Department to promulgate rules for certifying disabled−veteran−owned businesses. However, this Act does not require these businesses to become certified, and the proposed rules do not require this certification.

Effect on Small Business

The proposed rules are not expected to impose a negative effect on small business, because the rules only address applying for, receiving, and maintaining voluntary credentials.

Initial regulatory flexibility analysis

1. Types of small businesses that will be affected by the rules.

Businesses that qualify and want to become certified as a disabled veteran−owned business.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Each applicant must (1) complete and submit a Department−supplied application, (2) subsequently notify the Department of any changes to the information contained in the application, and (3) complete and submit a Department−supplied application for recertification, for continuation of the certification beyond each three−year certification period.

3. Types of professional skills necessary for compliance with the rules.

No new professional skills would be necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Environmental Analysis

The Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

State fiscal effect

Increase existing revenues.

Increase costs — May be possible to absorb within agency's budget.

Local government costs

None.

Fund sources affected

Pro.

Long−range fiscal implications

None known.

Assumptions used in arriving at fiscal estimate

The applications submitted under this program, as established under 2009 Wisconsin Act 299, will include revenues that will offset the Department's costs in administering this new program.

The Department estimates that 300 businesses will maintain the credential under this program, at an annual fee of $50.

The rules are not expected to impose any significant, mandated costs on the private sector, because the rules only address applying for, receiving, and maintaining voluntary credentials.

Agency Contact Person

Aggo Akyea
Wisconsin Department of Commerce
Division of Business Development
201 West Washington Avenue, Madison, WI 53703
Telephone: (608) 261−7729
E−mail: aggo.akyea@wi.gov.

Notice of Hearing

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

EmR1044

NOTICE IS HEREBY GIVEN that pursuant to Section 45 (1) (b) of 2009 Wisconsin Act 265, the Department of Commerce will hold a public hearing on emergency rules to create Chapter Comm 139, relating to rural outsourcing grants, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

Date and Time:	**Location:**
February 16, 2011	Third Floor, Room 3B
Wednesday	Thompson Commerce Center
10:30 a.m.	201 W. Washington Avenue
	Madison, WI

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266−0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the rules. Persons making oral presentations are requested to submit their comments in writing, via e−mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **February 21, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E−mail comments should be sent to sam.rockweiler@wi.gov. If e−mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708−0427.

Copies of Emergency Rule

The rule and an analysis of the rule are available by entering "Comm 139" in the search engine at the following Web site: https://health.wisconsin.gov/admrules/public/Home. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wi.gov in 2009 Wisconsin Act 265., or at telephone (608) 266−0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

SECTION 45 (1) in 2009 Wisconsin Act 265.

Statutory authority

Section 227.11 (2) (a) of the Statutes and SECTION 45 (1) (b) in 2009 Wisconsin Act 265.

Explanation of agency authority

SECTION 45 (1) (b) in 2009 Wisconsin Act 265 requires the Department to promulgate rules for awarding the rural outsourcing grants established in SECTION 45 (1). Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

Related statute or rule

The Department has rules for several other programs associated with economic and business development grants, but those programs are not targeted specifically to grants to businesses for outsourcing work to rural municipalities.

Summary of rule

The rules in this order redefine the businesses that are eligible for the rural−outsourcing grants awarded under SECTION 45 (1) in 2009 Wisconsin Act 265.

Summary of, and comparison with, existing or proposed federal regulations

No similar existing or proposed federal regulations or programs were found through review of the Code of Federal Regulations and pertinent federal agency Web sites – including at the US Department of Agriculture, the US Department of Commerce, the US Economic Development Administration, and the US Small Business Administration.

Comparison with rules in adjacent states

Review of existing rules and programs in adjacent States and review of proposed state legislation through the National Conference of State Legislatures did not reveal any similar rules or programs in the adjacent States.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the applicable criteria in SECTION 45 in 2009 Wisconsin Act 265; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic and business development, and (3) reviewing Internet−based sources of related federal, state, and private−sector information.

Analysis and supporting documents used to determine effect on small business

The primary documentation that was used to determine the effect of the rules on small business was SECTION 45 (1) in 2009 Wisconsin Act 265. This SECTION authorizes the Department to award grants to businesses for outsourcing work to rural municipalities and requires the Department to promulgate rules for administering the program. This SECTION applies its private−sector requirements only to businesses that chose to apply for the grants.

Effect on Small Business

The rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by applicants that choose to pursue grants for outsourcing work to rural municipalities.

Initial regulatory flexibility analysis

1. Types of small businesses that will be affected by the rules.

Businesses that choose to pursue grants for work that is outsourced to rural municipalities, under SECTION 45 (1) (b) of 2009 Wisconsin Act 265.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

An application form prescribed by the Department must be completed and submitted to the Department.

3. Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses.

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Fiscal Estimate

State fiscal effect

None.

Local government costs

None.

Long−range fiscal implications

None known.

Assumptions used in arriving at fiscal estimate

Although the rules will newly result in review of documentation relating to issuing grants to businesses for outsourcing work to rural municipalities, the number of these reviews and grants is expected to be too small to result in significant changes in the Department's costs for administering its business development programs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules address only voluntary submittal of documentation relating to grants for outsourcing work to rural municipalities.

Agency Contact Person

Mary Gage
Wisconsin Department of Commerce
Bureau of Business Finance and Compliance
P.O. Box 7970, Madison, WI 53707−7970
Telephone (608) 266−2766
E−mail Mary. Gage@Wisconsin.gov

Notice of Hearing
Government Accountability Board
EmR1049

NOTICE IS HEREBY GIVEN that pursuant to sections 5.05 (1) (f), 227.11 (2) (a), 227.16, and 227.24 (4), Stats., and interpreting generally Chapter 11, Stats., the Government Accountability Board will hold a public hearing to consider adoption of an emergency rule to amend section GAB 1.28, Wis. Adm. Code, relating to the definition of the term "political purpose."

Hearing Information

The public hearing will be held as follows:

Date and Time:	**Location:**
February 16, 2011 **1:00 p.m.**	Government Accountability Board Office — 3rd Floor 212 E. Washington Avenue Madison, WI

This public hearing site is accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact the person listed below.

Submittal of Written Comments

Comments are to be submitted to the Government Accountability Board, Attn: Shane W. Falk, 212 E.

Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707−7984, no later than **February 16, 2011.**

Statement of Emergency Finding

The Government Accountability Board amends s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term "political purpose." Section GAB 1.28 as a whole continues to clarify the definition of "political purposes" found in s. 11.01(16)(a)1., Stats., but repeals the second sentence of s. GAB 1.28(3)(b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28(3)(b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08−205)(January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28 (3) (b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language—for example, by G.A.B. issuing an emergency rule—would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10−CV−427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28(3)(b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

Analysis Prepared by the Government Accountability Board

Statute interpreted

Section 11.01 (16), Stats.

Statutory authority

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

Explanation of agency authority

Under the existing statute, s. 11.01 (16), Stats., an act is for "political purposes" when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at an election. Such an act includes support or opposition to a person's present or future candidacy. Further, s. 11.01 (16) (a) 1., Stats., provides that acts which are for "political purposes" include "but are not limited to" the making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate.

Under s. 5.05 (1), Stats., the Board is expressly vested with responsibility for the administration of all Wisconsin laws relating to elections and election campaigns, specifically including chapters 5 through 12 of the Wisconsin Statutes. Pursuant to that responsibility, s. 5.05 (1) (f), Stats., gives the Board express statutory authority to promulgate administrative rules "for the purpose of interpreting or implementing the laws regulating the conduct of elections or elections campaigns or ensuring their proper administration." Similarly, s. 227.11 (2) (a), Stats., grants state agencies — including the Board — the authority to "promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute," as long as the rule does not "exceed[] the bounds of correct interpretation." Sections 5.05 (1) (f) and 227.11 (2) (a), Stats., thus give the Board clear and express authority to promulgate rules that interpret and implement the meaning of all Wisconsin laws that regulate or govern the proper administration of election campaigns in this state, including s. 11.01 (16), Stats.

Section GAB 1.28, as promulgated on August 1, 2010, made a number of changes to the Board's interpretation and implementation of the statutory definition of an act "for political purposes" under s. 11.01 (16), Stats. Those changes were fully analyzed and explained in the July 13, 2010, Order of the Government Accountability Board, CR 09−013.

The present amendment involves only the repeal of the second sentence of s. GAB 1.28 (3) (b). All other portions of GAB 1.28, including the first sentence of s. GAB 1.28 (3) (b), are unchanged. Moreover, all of the revisions to GAB 1.28 that were effected on August 1, 2010, remain temporarily enjoined pending further order of the Wisconsin Supreme

Court. The present amendment has no effect on the continued effectiveness of that injunction.

The first sentence of s. GAB 1.28 (3) (b), provides that any communication that "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate" is a communication "for political purposes" within the meaning of s. 11.01 (16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose — subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28 (3) (b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28 (3) (b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28 (3) (b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this emergency rule.

This amendment does not affect the first sentence of s. GAB 1.28 (3) (b), under which individuals and organizations that raise or spend money to make communications that are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate, are subject to campaign finance regulation under ch. 11 of the Wisconsin Statutes. As previously noted however, all of the August 1, 2010, amendments to s. GAB 1.28 — including the first sentence of s. GAB 1.28 (3) (b) — are currently subject to the August 13, 2010, temporary injunction by the Wisconsin Supreme Court.

Related statute(s) or rule(s)

Section 11.01 (16), Stats., and section GAB 1.28, Wis. Adm. Code.

Plain language analysis

The revised rule will subject to regulation communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The revised rule will subject communications meeting this criterion to the applicable campaign finance regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08−205), permitting the use of corporate and union general treasury funds for independent expenditures.

Summary of, and comparison with, existing or proposed federal regulations

The United States Supreme Court upheld regulation of political communications called "electioneering communications" in its December 10, 2003 decision: *McConnell et al. v. Federal Election Commission, et al.* (No.02−1674), its June 25, 2007 decision of: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II),* (No.06−969and 970), and pursuant to its January 21, 2010 decision of: *Citizens United vs. FEC* (No. 08−205).

The *McConnell* decision is a review of relatively recent federal legislation — The Bipartisan Campaign Reform Act of 2002 (BCRA) — amending, principally, the Federal Election Campaign Act of 1971 (as amended). A substantial portion of the *McConnell* Court's decision upholds provisions of BCRA that establish a new form of regulated political communication — "electioneering communications" – and that subject that form of communication to disclosure requirements as well as to other limitations, such as the prohibition of corporate and labor contributions for electioneering communications in BCRA ss. 201, 203. BCRA generally defines an "electioneering communication" as a broadcast, cable, or satellite advertisement that "refers" to a clearly identified federal candidate, is made within 60 days of a general election or 30 days of a primary and, if for House or Senate elections, is targeted to the relevant electorate.

In addition, the Federal Election Commission (FEC) promulgated regulations further implementing BCRA (generally 11 CFR Parts 100−114) and made revisions incorporating the *WRTL II* decision by the United States Supreme Court (generally 11 CFR Parts 104, 114.) The FEC regulates "electioneering communications."

Comparison with rules in adjacent states

Illinois:

Pursuant to Public Act 96−0832, Illinois revised its "electioneering communication" statute in 2009, effective July 1, 2010, to include the "no reasonable interpretation other than an appeal to vote for or against" test, among other revisions. Subject to some delineated exemptions found in 10 ILCS 5/9−1.14, the statute now defines an "electioneering communication" as any broadcast, cable or satellite communication, including radio, television, or internet communication, that:

1) refers to a clearly identified candidate or candidates who will appear on the ballot, a clearly identified political party, or a clearly identified question of public policy that will appear on the ballot,
2) is made within 60 days before a general election or 30 days before a primary election,
3) is targeted to the relevant electorate, and
4) is susceptible to no reasonable interpretation other than an appeal to vote for or against a clearly identified candidate, a political party, or a question of public policy.

As a result of the adoption of Public Act 96−0832, Illinois is undergoing a substantial revision of its administrative code with respect to campaign finance and disclosure rules. (See proposed Illinois Administrative Code, Title 26, Chapter 1, Part 100, Campaign Financing, JCAR260100−101389r01). In the context of excluding "independent expenditures" from the term "contribution," Section 100.10(b)(3)G., of the proposed rules include both electioneering and express advocacy communications as forms of independent expenditures.

Iowa:

Iowa's Administrative Code defines "express advocacy" as including a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or the passage or defeat

of a clearly identified ballot issue. (Chapter 351—4.53(1), Iowa Administrative Code.)

Michigan:

Michigan statutes define a "contribution" as anything of monetary value made for the purpose of influencing the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.204(1), Mich. Stats.) "Expenditure" is defined as a payment of anything of monetary value in assistance of or opposition to the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. (s. 169.206(1), Mich. Stats.) Michigan does not have any additional rules defining political purposes.

Minnesota:

Minnesota statutes define a "campaign expenditure" or "expenditure" as the purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question. (s. 10A.01, Subd. 9, Minn. Stats.) "Independent expenditure" is defined as an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is not coordinated with any candidate or any candidate's principal campaign committee or agent. (s. 10A.01, Subd. 18, Minn. Stats.) Minnesota does not have any additional rules defining political purposes.

Summary of factual data and analytical methodologies

The factual data and analytical methodologies underlying the adoption of the August 1, 2010 amendments to s. GAB 1.28 have been described in the July 13, 2010, Order of the Government Accountability Board, CR 09−013. The adoption of the present amendment to s. GAB 1.28 (3) (b) is predicated on the same data and methodologies and also on developments related to several court cases challenging the validity of the August 1, 2010 amendments to s. GAB 1.28. These developments were discussed by the Board in a closed session meeting with its litigation counsel on December 14, 2010. These developments are also being discussed in an open session, public meeting of the Board on December 22, 2010.

Analysis and supporting documentation used to determine effect on small businesses

The rule will have no effect on small business, nor any economic impact.

Effect on Small Business

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has minimal fiscal effect. There may be additional registrants filing reports with the Board and potentially additional enforcement actions that may require staff action. The extent of this potential fiscal impact is undetermined.

Text of Proposed Rule

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 5.05 (1) (f), 227.11 (2) (a) and 227.24, Stats., the Government Accountability Board hereby adopts an emergency rule amending GAB 1.28, Wis. Adm. Code, interpreting ch. 11, Stats., as follows:

SECTION 1. GAB 1.28 (3) (b) is amended to read:

(b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. ~~A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the 60th day preceding a general, special, or spring election and ending on the date of that election or during the period beginning on the 30th day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate and:~~

~~1. Refers to the personal qualities, character, or fitness of that candidate;~~

~~2. Supports or condemns that candidate's position or stance on issues; or~~

~~3. Supports or condemns that candidate's public record.~~

Agency Contact Person

Shane W. Falk, Staff Counsel
Government Accountability Board
212 E. Washington Avenue, 3rd Floor
P.O. Box 7984, Madison, WI 53707−7984
Phone : (608) 266−2094
E−Mail: Shane.Falk@wisconsin.gov

Notice of Hearing
Regulation and Licensing
CR 10−135

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in sections 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.04, Stats., and interpreting section 440.03, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to revise Chapters RL 80 to 86, relating to licensure and certification requirements if licensed in another state or territory, approved instructors for educational programs and continuing education, examination requirements, rules of professional conduct, and "FIRREA" and AQB criteria.

Hearing Information

The public hearing will be held as follows:

Date and Time:	**Location:**
February 23, 2011 **9:30 a.m.**	1400 East Washington Avenue Room 121A Madison, WI

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, WI 53708 or by email to Kristine1.Anderson@wisconsin.gov. Written comments must be received by **February 18, 2011**, to be included in the record of rule−making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Regulation and

Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Kristine1.Anderson@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 458.03, 458.06, 458.08, 458.085, 458.10, 458.13 and 458.24, Stats.

Statutory authority

Sections 227.11 (2), 458.03 (1) (b), 458.06, 458.08, 458.085, 458.10, 458.13 and 458.24, Stats.

Explanation of agency authority

The Department of Regulation and Licensing is granted rule−making authority pursuant to s. 227.11, Stats., and is specifically granted rule−making authority pursuant to ss. 458.03, 458.06, 458.08, 458.085, 458.13 and 458.24, Stats.

Related statute or rule

There are no other statutes and rules other than those listed.

Plain language analysis

Changes are being made as delineated to be consistent with "FIRREA" and AQB Criteria, to clarify department references, to clarify certification scopes, to simplify the process for applying for licensure and certification in Wisconsin if licensed in another state or territory, to expand the approved instructors for educational programs and continuing education courses, to clarify credit for such courses, and to expand the rules of professional conduct.

SECTION 1 amends the rule to clarify the meaning of "mass appraisal."

SECTIONS 2, 3, 4, 10, 12 and 16 amend the Notes relating to where applications and information is available.

SECTION 5 creates a rule to simplify the process for applying for licensure or certification in Wisconsin if the applicant is already licensed in another state or territory.

SECTION 6 amends rules to clarify the scope of practice of certified general appraisers and certified residential appraisers.

SECTION 7 amends rules to clarify the requirements for examination.

SECTION 8 amends rules to change the experience requirements.

SECTION 9 creates rules to clarify what standards experience must comply with.

SECTION 11 creates rules to simplify the licensing and certification process for applicants who are licensed or certified in other states or territories.

SECTION 13 creates rules to expand available educational instructors and educational courses and to clarify the granting of credit for such courses.

SECTION 14 repeals and recreates rules to clarify the educational course requirements to become a licensed appraiser, a certified residential appraiser, and a certified general appraiser.

SECTION 15 adds a comma in the first sentence.

SECTION 17 creates rules to expand who is qualified to teach continuing education courses and approval for courses already approved by another state or territory, and clarifies credit for courses that qualify for both continuing education and certification.

SECTION 18 amends the rules of professional conduct to shorten the time to respond to investigation requests and to clarify a reference to state.

SECTION 19 creates rules of professional conduct adding three new circumstances which may be considered unprofessional conduct.

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

Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")

The Federal Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a State certified or licensed appraiser for appraisals conducted in connection with "federally related transactions."

Under FIRREA, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council is required to monitor state appraiser certifying and licensing agencies for the purpose of determining whether a state agency's policies, practices, and procedures are consistent with the federal law. The Appraisal Subcommittee may not recognize appraiser certifications and licenses from states whose appraisal policies, practices and procedures are found to be inconsistent with FIRREA. Before refusing to recognize a state's appraiser certifications or licenses, the Appraisal Subcommittee must provide that state's certifying and licensing agency with a written notice of its intention not to recognize the state's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal. A decision of the Subcommittee to refuse to recognize a state's appraiser certifications or licenses is subject to judicial review. 12 U.S.C. 3331 et seq.

In 1997, the Appraisal Subcommittee adopted the *Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers*, which all states must comply with. [The Appraisal Subcommittee's Policy Statements are available at: http://www.asc.gov.]

Appraisal Qualifications

Under FIRREA, the state criteria for the qualifications of certified real estate appraisers must meet the minimum qualifications criteria for certification established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The minimum qualifications criteria established by the AQB are set forth in the *Real Property Appraiser Qualification Criteria and Interpretations of the Criteria* ("Criteria"). The AQB Criteria includes the minimum experience, examination, qualifying education and continuing education requirements that must be satisfied by an individual in order to obtain and maintain a certified appraiser credential. [The AQB Criteria is available on the Internet at http://www.appraisalfoundation.org.]

Under FIRREA, the states may establish their own qualifications and requirements for licensed appraiser credentials. The states are not obligated to adopt the minimum experience, examination, education and continuing education requirements recommended by the AQB for the licensure of real estate appraisers. However, the Appraisal

Subcommittee recommends that all states adopt the AQB Criteria established for the licensure of real estate appraisers.

Comparison with rules in adjacent states

The Federal Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a state certified or licensed appraiser for appraisals conducted in connection with "federally related transactions."

Under FIRREA, all states, including Illinois, Iowa, Indiana, Michigan and Minnesota, that certify real estate appraisers for purposes of conducting appraisals in federally related transactions must assure compliance with the AQB Criteria. In addition, the Appraisal Subcommittee recommends that all states assure compliance with the AQB Criteria for the licensure of real estate appraisers.

Summary of factual data and analytical methodologies

The board reviewed the current federal statutes as well as the rules in adjacent states. The board determined that the current rules needed to be aligned with FIRREA as well as comply with the AQB Criteria for licensure of real estate appraisers. The board considered the suggestions of the Appraisal Subcommittee and board legal counsel to make changes to the current rules.

Analysis and supporting documents used to determine effect on small business

The proposed changes will have an effect on small business. The rule will have a positive impact on small businesses that would like to bring in a real estate appraiser currently licensed in another state. Instead of verifying all of their reports with Wisconsin, the applicant will now be able to have written verification sent from their state of licensure. The businesses will benefit from the increased efficiency of the licensure process which outweighs the additional cost of requesting the verification.

Additionally, the changes will make it easier for licensed appraisers and trainees to meet their educational requirements. These changes increase the number of approved courses and instructors available to licensed appraisers as well as individuals pursuing their licensure. It also lowers the educational requirements for a licensed appraiser or certified residential appraiser to become a certified general appraiser. These educational changes will make it easier for those seeking licensure or to expand their licensure to do so.

The other proposed changes in the rule clarify or eliminate unnecessary sections of the current rules. Therefore, the proposed changes will have little effect, if not a positive effect, on small business.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule−making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on Small Business

These proposed rules were reviewed by the department's Small Business Review Advisory Committee to determine if the rules will have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. It was determined that the rules will not have a significant economic impact on a substantial number of small businesses.

The Department's Regulatory Review Coordinator, John Murray, may be contacted by email at John.Murray@wisconsin.gov, or by calling 608−266−2112.

Fiscal Estimate

Ongoing cost:

These rule changes will increase reciprocal discipline and thus caseloads with the following additional impact to the department:

520 Attorney hours @ $59 per hour . . . . . = $30,680
595 Paralegal hours @ $33 per hour . . . . . = $19,635
520 Investigator hours @ $31 per hour . . . . . = $16,120
520 LTE appraiser hours @ $35 per hour . . . = $18,200
35 Operations Program Assoc. hours @ $31 per hour . . . . . = $ 1,085
4 Program Associate Supervisor hours @ $23 per hour . . . . . = $ 92
Total ongoing costs: $85,812

Agency Contact Person

Kris Anderson, Paralegal
Department of Regulation and Licensing
Division of Board Services
1400 East Washington Avenue, Room 116
P.O. Box 8935, Madison, WI 53708
Phone: 608−261−2385
E−mail: Kristine1.Anderson@wisconsin.gov.

Notice of Hearing
Regulation and Licensing
CR 10−136

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in sections 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.04, Stats., and interpreting section 440.03, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to revise Chapter RL 24, relating to definitions, duties of brokers, broker disclosure requirements, written proposals, ethical requirements, and educational requirements.

Hearing Information

The public hearing will be held as follows:

Date and Time:	Location:
February 17, 2011	1400 East Washington Avenue
10:30 a.m.	Room 121A
	Madison, WI

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but

are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708 or by email to Kristine1.Anderson@wisconsin.gov.. Written comments must be received by **February 14, 2011**, to be included in the record of rule−making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Kristine1.Anderson@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Sections 452.01, 452.133, 452.134, 452.135, 452.139 and 452.14, Stats.

Statutory authority

Sections 227.11 (2), 452.04 (2) and 452.07, Stats.

Explanation of agency authority

The Department of Regulation and Licensing is granted the authority under s. 452.07, Stats., to promulgate rules to define professional conduct and unethical practices and to establish guidance for the real estate profession.

Related statute or rule

There are no other statutes or rules other than those listed above.

Plain language analysis

This proposed rule−making order clarifies the rules relating to the ability to retain records in an electronic format, updates and clarifies the rules to reflect statutory changes and clarifies licensees' duties. This rule−making also proposes to update the rules for conduct and ethical practices for real estate licensees, and creates discipline for licensees who do not respond to information requests from the board or department. This encourages the submission of requested information during an investigation.

SECTION 1 clarifies the definition of "agency agreement" by removing the statutory reference and adding a definition that encompasses any written agreement where a client authorizes a broker to provide brokerage services. Additionally, the statutory reference included in "brokerage service" is amended to encompass the entire statutory definition of "broker."

SECTION 2 repeals a note at the end of a section because the statutory reference no longer exists in the rules.

SECTION 3 amends the definition of "builder" to encompass any contract to build with or without a buyer. It removes speculation and contact homes from the definition of "builder" because these definitions are repealed. Additionally, "buyer's broker" is clarified by including the defined term of "agency agreement."

SECTION 4 repeals the definition of "contract home" because it is no longer included in the rules.

SECTION 5 amends the definition of "party" by referencing "transaction" which is defined in the rules.

SECTION 6 repeals the definition of "speculation home" because it is no longer included in the rules.

SECTION 7 creates a definition for "written proposal," which is used in the amended language of the rules and includes a broad range of documents used in the transactions, including notices, offers, counteroffers, and amendments.

SECTION 8 repeals a provision about a licensee's duties to clients because the amended rules include licensee duties to clients.

SECTION 9 amends the title to "disclosure of compensation and interests" to clarify the content of the rules. The SECTION is amended to read "compensation" to clarify the content of the SECTION.

SECTION 10 extends the licensee's ability to accept a fee or compensation to the licensee's principal broker as well as the client.

SECTION 11 removes the requirement for a licensee to obtain prior written consent before engaging in a transaction on his or her own behalf.

SECTION 12 removes the title of a provision because the provision is moved to a prior section.

SECTION 13 renumbers a provision and adds a writing requirement for licensees to disclose compensation they received, or interest they have, when referring clients to another person or entity. It also clarifies the statutory authority by referencing the exemption in a separate sentence.

SECTION 14 repeals and recreates a provision to emphasize the need for prior written consent from a client when a licensee discloses any compensation received, or incentives, from a listing broker. This clarifies the standards for licensees.

SECTION 15 includes a writing requirement to disclosures in this subsection to clarify standards for licensees.

SECTION 16 repeals and recreates a provision to clarify the required statutory disclosure form and the written consent requirements for parties to transactions of one to 4 dwelling units. The rule also creates the ethical requirements that a broker not negotiate on behalf of a non−client.

SECTION 17 adds two standards for brokers in providing services to clients: the first does not allow the broker to negotiate for a client without the statutory required disclosure form; and the second requires the client in a transaction for a one to 4 family dwelling to sign an acknowledgement that they received a statutory disclosure form statement.

SECTION 18 changes "another licensee" to "listing broker." It also specifies that any change in the licensee's representation comply with the statutory disclosure requirements of initial disclosure, clarifying the duties of the licensee.

SECTION 19 amends the rule to encompass "agency agreements" instead of "listing contracts," and refers to "brokers" instead of "listing brokers." Therefore, the broker has the duty to explain to their clients the responsibilities of buyer's and seller's agents and subagents before entering into this agreement. These disclosure requirements protect the client.

This SECTION also amends "listing broker" requirements to encompass any "broker" or broker's salesperson. It imposes the requirement that they receive authorization before acting as a subagent.

Finally, this SECTION amends specific contracts to encompass "written documents," a definition of which is

included in the amended rules. It clarifies the duty of the licensee to include whom they represent in the written agreement.

SECTION 21 repeals two sections and recreates them to clarify the requirements for listing brokers and licensees.

The first section recreates a provision to require a listing broker to include the statutory disclosure requirements and clarify when a disclosure form is required by splitting the section into four parts: (1) a disclosure form is required for a listing broker when the negotiations are conducted directly with the buyer; (2) a broker is required to provide a disclosure form if negotiations are conducted directly with the seller; (3) a subagent is required to provide a disclosure form to a customer with whom they are working, but not to the principle broker; and (3) a broker does not need to require a broker disclosure form to their subagent's customer.

The second section recreates a provision to include the statutory disclosure requirements and clarify license requirements when negotiating terms of a lease and entering into listings for lease or property management contracts.

SECTION 22 amends a provision to expand the licensee's ethical requirements by forbidding them to mislead in three additional areas: "rented, purchased, or optioned" real estate. It also expands "listing contract" to an "agency agreement," an amended definition of which is included in the proposed rules.

SECTION 23 amends five provisions. The first four are amended to include "written proposals" in lieu of "offers." "Written proposal" is defined in the proposed amendments. In addition to the "written proposals" proposed amendments, the terminology in these five sections was amended for clarification.

The first section changes the terminology to "other party," so a written proposal should not be used if it would be contrary to instructions of the other party. The second section changes the terminology so the licensee should promptly present written proposals to the licensee's client or customer. The third section changes the terminology so that the objective and unbiased manner of presentation should be to the licensee's clients and customers. The fourth section broadens the terminology of "buyer" to "clients and customers" and "written proposal" to that a licensee must inform their clients and customers after any action on a written proposal. The fifth section is amended to add "lease or negotiate." This requirement means a licensee must negotiate with the broker who has an exclusive right to sell, lease or negotiate in these areas. Finally, the Note at the end of this section is updated to reflect the correct form, WB−36.

SECTION 24 amends a provision to allow rules of the department to be "readily available" instead of maintained on file, expanding the way in which rules can be maintained.

SECTION 25 amends a provision requiring a licensee to report offenses. The requirements remove an exemption for certain motor vehicle offenses, and require a licensee to send information about their crime to the department within 48 hours.

SECTION 26 creates a provision requiring the licensees to respond to departmental requests for information within 30 days to encourage compliance with requests.

SECTION 27 amends a provision relating to the educational programs for applicants for licenses. The number of hours a program would be if it were in a classroom was amended from a minimum of 36 hours to a minimum of 72 hours. The second section updates a reference to a rule.

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

None.

Comparison with rules in adjacent states

Illinois:

Conduct and Ethical Practices for Real Estate Licensees: (bureau director) Subparts De, E, and F of Section 1450 of the Illinois Real Estate License Act cover the conduct and ethical practices for real estate licensees.
http://www.ilga.gov/commission/jcar/admincode/068/06801450sections.html

Broker Pre−License Education: Section 1450.60 Educational Requirements to Obtain a Broker's or Salesperson's License: 120 credit hours of instruction in approved courses or a baccalaureate degree including courses involving real estate or related material are required for broker applicants.
http://www.ilga.gov/commission/jcar/admincode/068/06801450/C00600R.html

Iowa:

Conduct and Ethical Practices for Real Estate Licensees: The various regulations of professional and business conduct are found in section 193E of the Iowa Administrative rules, chapters 6, 8, 10, 15 and 19.
http://www.state.ia.us.government/com/prof/sales/PDFs/193EMarch2010/pdf

Broker Pre−License Education: 54315(8) and 193E−sub rule 16.3(1), an applicant for licensure as a real estate broker shall complete at least 72 classroom hours of commission−approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson pre−license course (60 hours).
http://www.legis.state.ia.us/ACO/IAChtml/193e.htm#rule_193e_4_1

Michigan:

Conduct and Ethical Practice for Real Estate Licensees: The various regulations of professional practice and conduct are found in Administrative Rules for Real Estate Brokers and Salespersons, Occupational Code, Article 25, Parts 3 and 4.
http://www.michigan.gov/documents/dleg/rebook_217577_7.pdf

Broker Pre−License Education: Rule 203. (1) An applicant for a broker or associate broker license shall have completed 90 clock hours of qualifying pre−licensure education of which 9 clock hours shall be on civil rights law and fair housing law, as defined in section 2504(1) of the code. The broker pre−licensure education shall be completed not more than 36 months before the date of application, unless the applicant has held a license as a salesperson for that intervening period.
http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33922101&Dpt=LG&RngHigh=

Minnesota:

Conduct and Ethical Practice for Real Estate Licensees: The regulation of professional conduct is found in section 82.48 of the Minnesota Statutes.
https://www.revisor.mn.gov/statutes/?year=2006&id=82.48

Broker Pre−License Education: 82.29 Sub.8(b) An applicant for a broker's license must successfully complete a

course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules. The course must have been completed within 12 months prior to the date of application for the broker's license.

https://www.revisor.leg.state.mn.us/statutes/?id=82.29

Summary of factual data and analytical methodologies

The information received from the states listed in this analysis was obtained directly from a review of the applicable regulations and rules.

Analysis and supporting documents used to determine effect on small business

Data was obtained from the department's credentialing division regarding the number of licensees that would be affected by this regulatory change. As of June 15, 2010, there are 47,823 licensed real estate salespersons and 52,465 licensed real estate brokers. There are 8,539 licensed real estate business entities. The majority of real estate licensees work in small business environments; however, the change in rules regarding professional conduct of licensees will not have a significant impact on their cost of doing business. The rule change seeks to clarify current ethical practices that already exist within the Wisconsin real estate industry.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule−making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on Small Business

These proposed rules were reviewed by the department's Small Business Review Advisory Committee and it was determined that the proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

The Department's Regulatory Review Coordinator, John Murray, may be contacted by email at John.Murray@Wisconsin.gov, or by calling (608) 266−2112.

Fiscal Estimate

The department estimates that this rule will have costs of $128 to create forms and update the department's website.

Agency Contact Person

Kris Anderson
Department of Regulation and Licensing
Division of Board Services
1400 East Washington Avenue, Room 116
P.O. Box 8935, Madison, WI 53708
Phone: 608−261−2385
E−mail: Kristine1.Anderson@wisconsin.gov.

Submittal of Proposed Rules to the Legislature

Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 10−044

Rule−making order creates Chapter Comm 124, relating to the Forward Innovation Fund.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 10−113

Rule−making order creates Chapter Comm 139, relating to Rural Outsourcing grants.

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100—

CR 10−117

Rule−making order creates Chapter Comm 135, relating to a food processing plant and food warehouse investment credit.

Government Accountability Board

CR 10−087

Rule−making order creates section GAB 1.91, relating to organizations making independent disbursements.

Public Defender

CR 10−133

Rule−making order revises Chapter PD 3, relating to the determination of indigency eligibility for the assignment of publicly appointed counsel.

Public Defender

CR 10−134

Rule−making order revises Chapter PD 6, relating to determining, collecting, and processing the payments received from persons as payment for legal representation.

Transportation

CR 10−099

Rule−making order revises Chapter Trans 178, relating to the Unified Carrier Registration System.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in this Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266−3358.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 10−090

Revises Chapter Comm 5, relating to the licensing and registration of individuals who install or alter thermal insulation for heating, ventilating, cooling, plumbing or refrigeration systems. Effective 2−1−11.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the proposed rules to amend chapter Comm 5 will not have a significant impact on a substantial number of small businesses. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 16 regarding the credentialing of thermal insulators. The Act affects individuals involved in the installation, alteration and maintenance of thermal insulation for heating, ventilating, cooling, plumbing or refrigeration systems. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce

Uniform Dwelling, Chs. Comm 20−25

Smoke Detectors and Carbon Monoxide Detectors, Ch. Comm 28

CR 10−089

Revises Chapters Comm 21 and 28 relating to carbon monoxide detectors in dwellings and affecting small business. Effective 2−1−11.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the proposed rules to amend chapters Comm 21 to 28 will not have a significant impact on a substantial number of small businesses. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 158 which affects the owners of one−and two−family dwellings. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance

CR 10−067

Revises section Ins 8.49 Appendix I, relating to small employer uniform employee application for group health insurance. Effective 2−1−11.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance

CR 10−076

Revises sections Ins 6.05 and 6.07, relating to filing of insurance forms and insurance policy language simplification. Effective 2−1−11.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Workforce Development

Public Works Construction Contracts, Chs. 290−294

CR 10−029

Revises Chapter DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses. Effective 2−1−11.

Summary of Final Regulatory Flexibility Analysis

The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Many construction companies are small businesses. The adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **January 2011,** and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266−7590.

Revisions

Commerce

Ch. Comm 5

Comm 5.02 Table 5.02 50r to 50t
Comm 5.06 Table 5.06 45r to 45t
Comm 5.125 (3m)
Comm 5.74
Comm 5.741
Comm 5.742
Comm 5.743

Ch. Comm 20

Comm 20.02 (4)
Comm 20.24 Table 14

Ch. Comm 21

Comm 21.097

Ch. Comm 28

Comm 28 (title)
Comm 28.01
Comm 28.02
Comm 28.04

Insurance

Ch. Ins 6

Ins 6.05 (3) (b), (d), (e), (f) (4) (a), (b), (c), (5), (6), (7), Appendix A, B
Ins 6.07 (3) (b), (4) (a), (b), (d), (5) (a), (c), (6), (8) (d), (9)

Ch. Ins 8

Ins 8.49 Appendix 1

Workforce Development

Ch. DWD 293

DWD 293.02

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Agriculture, Trade and Consumer Protection

Ch. ATCP 53 (Reprinted to correct printing error)

Commerce

Ch. Comm 14

Comm 14.01 (13) (b)

Ch. Comm 28

Comm 28.01

Emergency Management

Ch. WEM 6

WEM 6.02 (7)

Funeral Directors Examining Board

Ch. FD 2

FD 2.10 (2)
FD 2.13

Health Services

Ch. DHS 120

DHS 120.10 (2), (3) (a), (4), (5) (a)

Ch. DHS 127

DHS 127.03 (3) (a)

Insurance

Ch. Ins 5

Ins 5.01 (1)
Ins 5.08 (1), (2) (a)
Ins 5.09 (8)

Natural Resources

Ch. NR 45

NR 45 Appendix A (Corrected page numbering)

Ch. NR 128

NR 128.11 (3) Note
NR 128.39 (2) (b) Note
NR 128.40 (1) (intro.), (a) Notes
NR 128.42 (1 (intro.)

Ch. NR 205

NR 205.07 (3) (b) Note

Ch. NR 217

NR 217.19 (3) (a)

Ch. NR 327

NR 327.06 (17) Note

Ch. NR 502

NR 502.02 (1)

NR 502.04 (3) (e)
NR 502.06 (4) (d) Note
NR 502.07 (2m)
NR 502.08 (2) (c)
NR 502.09 (2) (d), (6) (a)
NR 502.13 (6) (i), (k), (9) (c)

Personnel Commission

Ch. PC 1

PC 1.01
PC 1.05 (1)
PC 1.07

Ch. PC 3

PC 3.01

Regulation and Licensing

Ch. RL 25

RL 25.03 (3) (q)
RL 25.035 (2) (f)

Transportation

Ch. Trans 130

Trans 130.01 (1)
Trans 130.02 (7)
Trans 130.03 (1) (j)
Trans 130.05 (2) (h), (i)
Trans 130.10

Ch. Trans 134

Trans 134.06 (1) (c)

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