

CR 94-185

CERTIFICATE

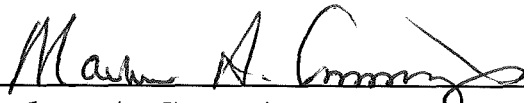
**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

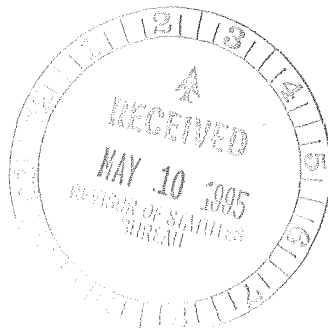
I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 10th day of May, 1995.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 10th day of May, 1995.

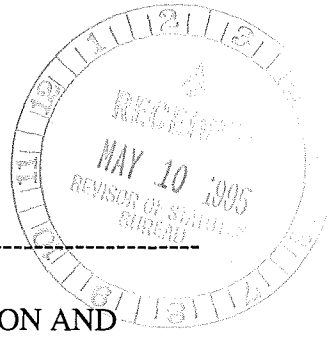


**Marlene A. Cummings, Secretary
Department of Regulation and
Licensing**



7-1-95

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 94-185)

ORDER

An order of the Department of Regulation and Licensing to create chapters RL 120 to RL 126 relating to the regulation of auctioneers and auction companies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 480.06, 480.08 and 480.10, Stats., as created by 1993 Wisconsin Act 102

Statutes interpreted: ss. 480.08, 480.10, 480.14, 480.16, 480.18, 480.20, 480.24 (2) (b) and (d), Stats.

In this proposed rule-making order the Department of Regulation and Licensing implements the provisions of 1993 Wisconsin Act 102, creating Chapter 480, Stats., relating to the registration and regulation of auctioneers and auction companies.

Chapter RL 120 sets forth the definitions of several terms which are used in other rules relating to the regulation of auctioneers and auction companies.

Chapter RL 121 sets forth the requirements for initially obtaining and subsequently renewing a registration as an auctioneer or auction company, as required under s. 480.08, Stats. The Department of Revenue will not issue a seller's permit to auctioneers unless needed, pursuant to s. 77.52 (12), Stats., which provides: ". . . Permits shall be held only by actively operating as sellers of tangible personal property or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department (of revenue for cancellation). . . ."

Chapter RL 122 defines the subjects to be tested in the examination required by s. 480.10, Stats., the manner in which the examination will be scored, the ability for a failed applicant to review the examination and the process by which an applicant may process a claim of examination error.

Chapter RL 123 more specifically defines the terms and requirements in s. 480.24 (2) (d), Stats., and s. 480.20, Stats., relating to and prohibiting registrants from engaging in false, deceptive or misleading advertising and relating to information which must be contained in advertisements that an auction will be conducted.

Chapter RL 124 lists the terms and conditions which must be set forth and addressed within the written contract between a registrant and the owner of goods or real estate to be sold at an auction, as required by s. 480.14, Stats.

Chapter RL 125 sets forth the procedures and requirements in establishing and maintaining trust accounts and records for trust funds received pursuant to auctions.

Chapter RL 126 lists specific conduct which is deemed to constitute grounds for discipline within the meaning of s. 480.24 (2) (b), Stats. This section of the statutes authorizes disciplinary action to be taken against a registrant who engages in conduct evidencing "a lack of knowledge or ability to apply professional principles or skills."

TEXT OF RULE

SECTION 1. Chapters RL 120 to 126 are created to read:

Chapter RL 120

AUTHORITY AND DEFINITIONS

RL 120.01 AUTHORITY. The rules in this chapter are adopted under authority of s. 227.11 (2), Stats., and ch. 480, Stats.

RL 120.02 DEFINITIONS. As used in chs. RL 120 to 126:

(1) "Absolute auction" means an auction in which:

- (a) The goods or real estate are sold to the highest bidder.
- (b) No minimum price will limit the bid.
- (c) The seller may not withdraw the goods or real estate from the auction after the first bid is received.
- (d) The seller may not nullify the sale by bidding himself or herself or through an agent.

Note: An "absolute auction" is also known as an "auction without reserve". The department will construe written statements of an auctioneer or auction company in advertising or in other written materials relating to an auction, such as "everything will be sold" or "everything goes," as being indicative of the auctioneer's intent to conduct an absolute auction.

(2) "Auction with reserve" means an auction where the seller or his or her agent reserves the right to establish a minimum bid, to accept or reject any and all bids or to withdraw

the goods or real estate from sale at any time prior to the announcement of the completion of the sale by the auctioneer.

(3) "Board" means the auctioneer board.

(4) "Buyer's premium or surcharge" means an amount of money, usually based on a percentage of the successful bid, charged to the successful bidder and either added to the successful bid to determine the final selling price or paid separately by the successful bidder in addition to the successful bid.

(5) "Consignor" means the owner or representative of the owner who places goods or real estate with a registrant for sale at auction.

(6) "Department" means the department of regulation and licensing.

(7) "False bid" means a non-existent bid acknowledged by an auctioneer in an attempt to escalate bidding.

(8) "Minimum bid" means the lowest acceptable price at which the seller agrees to complete the sale.

(9) "Registrant" means a person registered as an auctioneer or auction company by the department.

(10) "Shill" means an employee or agent of the registrant who bids against legitimate bidders at an auction to escalate bidding.

(11) "State registration number" means the number issued to a registrant by the department, as indicated upon the certificate of registration.

Chapter RL 121

APPLICATIONS

RL 121.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.03, 440.05, 440.08, 480.06, 480.08 and 480.10, Stats.

RL 121.02 INITIAL REGISTRATION. (1) **AUCTIONEER.** The department may register as an auctioneer an applicant who satisfies the requirements in s. 480.08 (2) or s. 480.08 (2m), Stats. The department shall consider s. 480.08 (2) (d), Stats., as having been satisfied, if the applicant has either received a seller's permit from the department of revenue under s. 77.52 (9), Stats., or the applicant has determined that he or she is not required to have a seller's permit and is, therefore, not eligible to obtain a permit.

(2) AUCTION COMPANY. The department may register as an auction company an applicant who satisfies the requirements in s. 480.08 (3), Stats. The department shall consider s. 480.08 (3) (d), Stats., as having been satisfied, if the applicant has either received a seller's permit from the department of revenue under s. 77.52 (9), Stats., or the applicant has determined that it is not required to have a seller's permit and is, therefore, not eligible to obtain a permit. An auction company is not required to have any of its officers, partners or directors registered as an auctioneer unless such officers, partners or directors engage in acts specified in s. 480.08 (1) (a), Stats.

RL 121.03 CONSENT BY NONRESIDENT FOR SERVICE OF PROCESS. The application of a nonresident person for registration as an auctioneer or auction company constitutes the appointment of the secretary of the department as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or auction company.

RL 121.04 RENEWAL OF REGISTRATION. (1) AUCTIONEER. (a) Except as provided in s. RL 121.05, the department shall renew the credential of an auctioneer who files a completed application for renewal of registration before the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r, Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

(b) Except as provided in s. RL 121.05, the department shall renew the credential of an auctioneer who files a completed application for renewal of registration after the renewal date, as defined in s. 440.01 (1) (dm), Stats., but less than 5 years after the renewal date, if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r, Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

(c) The department shall renew the credential of an auctioneer who files a completed application for renewal of registration 5 years or more after the renewal date, as defined in s. 440.01 (1) (dm), Stats., if the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r, Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

3. The applicant has retaken and passed the licensing examination.

(2) AUCTION COMPANY. (a) Except as provided in s. RL 121.05, the department shall renew the credential of an auction company which files a completed application for renewal of registration before the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14g, Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (3) (a) to (d), Stats.

(b) Except as provided in s. RL 121.05, the department shall renew the credential of an auction company which files a completed application for renewal of registration at any time after the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14g, Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (3) (a) to (d), Stats.

RL 121.05 CAUSE FOR DENIAL OF REGISTRATION. The department may deny an application for registration as an auctioneer or auction company submitted by a person or entity who or which has committed fraud or misrepresentation in the application or who or which has done any acts which are grounds for discipline under s. 480.24, Stats.

RL 121.06 CHANGE OF NAME. If the name of a registered auctioneer or auction company appearing on the current registration certificate changes, written notice of the name change shall be sent to the department within 30 days after the name change:

RL 121.07 USE OF TRADE NAME. (1) In this section, "trade name" means a name other than the name appearing on an auctioneer's or auction company's registration certificate, under which an auctioneer or an auction company advertises or does business.

(2) A registered auctioneer or auction company, before doing business under any trade name, shall notify the department in writing of the trade name.

Chapter RL 122

EXAMINATIONS

RL 122.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 480.06, 480.08 (2) (e) and (2m), and 480.10, Stats.

RL 122.02 PUBLIC NOTICE. The department shall prepare an examination application form and informational materials which list the examination dates which have been scheduled by the department for no less than the 6 months following publication.

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

RL 122.03 SUBJECTS TESTED. The department shall prepare examinations as required under s. 480.10, Stats. The examination shall be a written examination that tests the applicant's knowledge or competence in all of the following areas:

- (1) Solicitation.
- (2) Contracts.
- (3) Pre-auction preparation.
- (4) Conducting an auction.
- (5) Closing and sales records.
- (6) Statutes and administrative rules substantially related to conducting an auction.

RL 122.04 UNAUTHORIZED ASSISTANCE. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the department when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

RL 122.05 PASSING SCORE. The score required to pass the examination shall be based on the department's determination of the level of examination performance required for minimum acceptable competence in the profession. The department shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

RL 122.06 EXAMINATION REVIEW. (1) An applicant who fails the examination may request a review of that examination by filing a written request to the department within 30 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

(a) The time for review shall be limited to one hour.

(b) The examination shall be reviewed only by the applicant and in the presence of a proctor.

(c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.

(d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the department in consultation with a subject matter expert. The applicant shall be notified in writing of the department's decision. If the decision does not result in a passing grade, the applicant may retake the examination.

(e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

RL 122.07 CLAIM OF EXAMINATION ERROR. (1) An applicant wishing to claim examination error must file a written request for department review in the department office within 30 days after the date the examination was reviewed. The request shall include:

(a) The applicant's name and address.

(b) The type of registration applied for.

(c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.

(2) The request shall be reviewed by the department in consultation with a subject matter expert. The applicant shall be notified in writing of the department's decision. If the decision does not result in a passing grade, the applicant may retake the examination.

RL 122.08 EXAMINATION RETAKES. (1) There is no limit to the number of times any applicant may retake the examination.

(2) An applicant who passes the examination and remains unregistered for one year or more after the date of the examination shall again take and pass the examination before being registered.

(3) An applicant who reviews an examination pursuant to s. RL 122.06 may not retake the examination within 30 days after the date on which the examination was reviewed.

Chapter RL 123

ADVERTISING

RL 123.01 AUTHORITY. The rules in this chapter are adopted under authority of ss. 227.11 (2), 480.06, 480.20 and 480.24 (2) (d), Stats.

RL 123.02 FALSE ADVERTISING. No registrant may advertise in a manner which is false, deceptive or misleading.

RL 123.03 CONTENTS OF ADVERTISING. All advertisements that an auction will be conducted shall contain the following information:

(1) If the auction is to be conducted by an auctioneer and managed by an auction company, then the name and state registration number of the auctioneer who will conduct the auction, and the name, address, telephone number and state registration number of the auction company that is managing the auction.

(2) If the auction is to be conducted by an auctioneer, but not managed by an auction company, then the name, address, telephone number and state registration number of the auctioneer who will conduct the auction.

(3) A statement that the auctioneer is a "registered Wisconsin auctioneer."

(4) A statement of the terms and conditions under which the registrant will accept payment by buyers at the auction.

(5) The percentage or other amount of any buyer's premium or surcharge which is a condition to sale.

Chapter RL 124

WRITTEN CONTRACTS

RL 124.01 AUTHORITY. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.06 and 480.14, Stats.

RL 124.02 WRITTEN CONTRACTS; TERMS. No auctioneer may conduct an auction unless the auctioneer or the auction company that is managing the auction has entered into a prior written contract with each owner or consignor of goods or real estate that may be sold at the

auction. The contract shall specify the terms and conditions upon which the auctioneer or auction company accepts the goods or real estate for sale and must contain:

(1) The registrant's name, trade or business name, state registration number, business address and business telephone number.

(2) The name and address of the owner or consignor.

(3) A general description of the property to be sold at auction, any restrictions relating to conducting the auction and a statement indicating whether the registrant is authorized to purchase at the auction.

(4) A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.

(5) A statement of whether a buyer's premium or surcharge will be assessed and, if so, the percentage or other amount to be charged to the successful bidder.

(6) The date, dates or time period during which the items will be sold at auction.

(7) A statement by the seller that he or she has title and right to sell all property to be sold at auction free of encumbrances and liens; or, if some or all of the property to be sold is subject to encumbrances or liens, a specific itemization of such property.

RL 124.03 WRITTEN CONTRACTS; COPIES. An auctioneer or auction company shall give the owner or consignor a legible copy of the contract referred to in s. RL 124.02 at the time of signing.

Chapter RL 125

TRUST ACCOUNTS

RL 125.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 480.06, 480.14, 480.16 and 480.18, Stats.

RL 125.02 DEFINITION. In this chapter, "trust funds" means cash, checks, share drafts, drafts or notes received by an auctioneer or an auction company on behalf of a principal or any other person while acting as an auctioneer or auction company for an auction of goods. "Trust funds" does not include proceeds received by an auctioneer or an auction company on behalf of a principal or any other person pursuant to an auction in which the written contract under s. 480.14, Stats., requires the registrant to pay the owner or consignor within 24 hours after the auction.

RL 125.03 RECEIPT OF TRUST FUNDS. This chapter applies to trust funds received by a registrant, but does not apply to money paid to one of the parties pursuant to an agreement between the parties under s. 480.16, Stats.

RL 125.04 TYPE OF ACCOUNT. An auctioneer or auction company may place trust funds in an interest-bearing or non-interest-bearing account, provided that none of the interest inures to the benefit of the auctioneer or auction company.

RL 125.05 TIME OF DEPOSIT. An auctioneer or auction company shall deposit trust funds in a trust account within 48 hours after receipt by the auctioneer or auction company.

RL 125.06 OPENING AND CLOSING ACCOUNTS. (1) The department may not require an auctioneer or auction company to open a trust account before the auctioneer or auction company receives trust funds which must be deposited, unless the department finds, in a specific case, that an earlier opening of an account is needed in order to assure compliance with this chapter.

(2) An auctioneer or auction company may close a trust account when no trust funds remain in the auctioneer's or auction company's possession.

RL 125.07 ACCOUNT DESIGNATION. An auctioneer or auction company shall:

(1) Include the words "trust account" in the name of the trust account maintained by the auctioneer or auction company.

(2) Imprint the name of the auctioneer or auction company on the trust account checks, share drafts or drafts.

(3) Designate the account with the name appearing on the auctioneer's or auction company's registration certificate or with a trade name submitted to the department under s. RL 121.07.

RL 125.08 NOTIFICATION OF THE DEPARTMENT. (1) An auctioneer or an auction company shall provide the department with the name and number of every trust account maintained by the auctioneer or auction company and the name of the depository institution in which the auctioneer or auction company holds each trust account. The auctioneer or auction company shall provide this notification to the department on a form prepared by the department no later than 10 days after opening a trust account. The auctioneer or auction company shall authorize representatives of the department to examine and audit all of the auctioneer's or auction company's trust accounts.

(2) An auctioneer or an auction company shall obtain the certification of every depository institution in which the auctioneer or auction company maintains a trust account, in which the depository institution attests to the existence of the account and consents to the examination and audit of the account by a duly authorized representative of the department.

Note: A Consent to Examine and Audit Auctioneer Trust Account form may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

RL 125.09 WITHDRAWAL OF TRUST FUNDS. An auctioneer or auction company shall withdraw funds to reimburse the auctioneer or auction company for expenses incurred and commissions and fees earned by the auctioneer or auction company within the 30 days specified in s. 480.14 (3), Stats., or as otherwise provided by the terms of a contract.

RL 125.10 COMMINGLING PROHIBITED. (1) Except as provided in subs. (2) and (3), an auctioneer or an auction company may not commingle the auctioneer's or auction company's personal or company funds which are not trust funds in a trust account maintained pursuant to this chapter.

(2) An auctioneer or auction company may place personal or company funds in a trust account under the following conditions:

(a) Funds equal to the amount of any checks received by the auctioneer or auction company on behalf of an owner or consignor when such funds are deposited by the auctioneer to cover potential or actual "non-sufficient funds" checks received from purchasers.

(b) Funds sufficient to cover service charges relating to the trust account.

(3) An auctioneer or an auction company shall deposit additional personal or other funds in the trust account within 10 business days following receipt of a statement or other notification from a depository institution that the trust account is overdrawn.

RL 125.11 BOOKKEEPING SYSTEM. An auctioneer or an auction company shall maintain a bookkeeping system that enables the auctioneer or auction company to adequately account for all trust funds in a trust account, to maintain an accurate and sufficient balance in the account and to account for all trust funds received from specified buyers and paid to specified sellers for specified purchases.

RL 125.12 USE OF COMPUTERS. An auctioneer or an auction company may maintain trust account records in a computerized system, provided that:

(1) A backup copy of the bookkeeping records is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(2) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

Chapter RL 126

CONDUCT

RL 126.01 AUTHORITY. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.06 and 480.24 (2) (b), Stats.

RL 126.02 UNPROFESSIONAL CONDUCT. Conduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24 (2) (b), Stats., includes, but it not limited to, engaging in or aiding or abetting the following conduct:

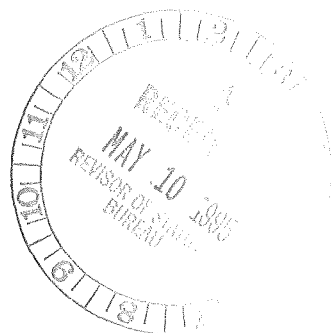
- (1) Performing or offering to perform services for which the registrant is not qualified by education, training or experience.
- (2) Violating a law or rule of any jurisdiction, the circumstances of which substantially relate to the practice under the registration.
- (3) Advertising an auction as an absolute auction if any item or items are to be sold with reserve or with minimum bids.
- (4) Engaging in false, fraudulent, deceptive or misleading billing practices.
- (5) Obtaining or attempting to obtain compensation by fraud or deceit.
- (6) Reporting distorted, false or misleading information or making false statements in practice.
- (7) Discriminating on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability or sexual orientation by means of service provided or denied.
- (8) Knowingly escalating or attempting to escalate bidding through false bids, shills or through collusion with another.
- (9) Violating or attempting to violate any formal disciplinary order of the auctioneer board.
- (10) Knowingly providing false information to the board, the department or their agents.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats., or on March 1, 1995, which is the effective date of ch. 480, Stats., pursuant to s. 480.02 (1), Stats., as created by 1993 Wisconsin Act 102, whichever is later.

Dated May 9, 1995

Agency Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation and Licensing



CORRESPONDENCE/MEMORANDUM

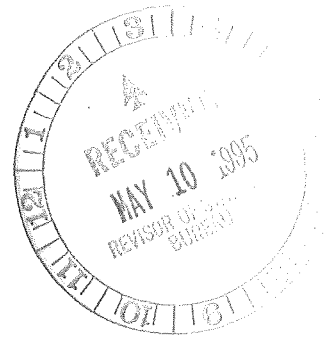
STATE OF WISCONSIN

DATE: May 10, 1995

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Rules Center Coordinator
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Rule-Making Order



Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 94-185

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.