Wisconsin Administrative Register

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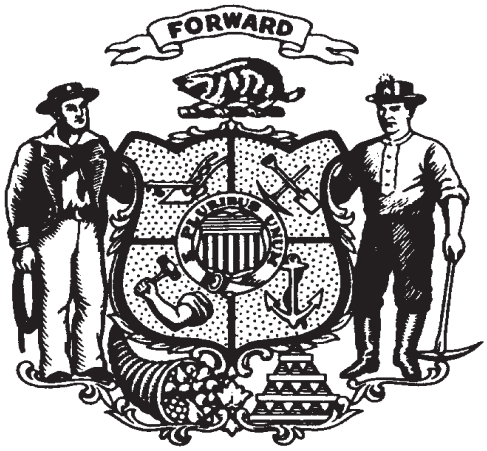

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WISCONSIN ADMINISTRATIVE REGISTER

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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**

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**

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 Dates:	**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, 2011**

(See the 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 Dates:	**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 Dates:	**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**

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**

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 Dates:	**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 Dates:	**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**

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 Dates:	**January 25, 2011**

(See the Notice in this Register)

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 Dates:	**January 25, 2011**

(See the Notice in this Register)

Military Affairs

EmR1030 — Rule adopted to create **Chapter DMA 1**, relating to military family financial aid.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 28, section 9136, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 28 reads as follows:

2009 Wisconsin Act 28, Section 9136. Nonstatutory provisions; Military Affairs.

(2c) EMERGENCY RULE; MILITARY FAMILY FINANCIAL AID. Using the procedure under section 227.24 of the statutes, the department of military affairs shall promulgate the rules described under section 321.45 (2) of the statutes, as created by this act, for the period before the permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, **the department of military affairs is not required to provide evidence that promulgating a rule under this 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 the rules promulgated under this subsection. [Emphasis added]**

Publication Date:	**July 26, 2010**
Effective Dates:	**July 26, 2010 through December 22, 2010**
Hearing Dates:	**October 13, 2010**

Natural Resources (5)

Fish, Game, etc., Chs. NR 1—

1. EmR1028 — Rule adopted to amend **section NR 10.104 (7) (a)**, relating to the use of archery deer hunting licenses.

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. Deer populations are well below goal in much of northeast Wisconsin, causing great concern from hunters and others who value deer. This rule is one of the ways the department is trying to rebuild the populations there. The federal government and state legislature have delegated to the appropriate agencies rule−making authority to control and regulate hunting wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to approximately 250,000 archery deer hunters prior to the start of the season. These regulations must be legally in effect prior to printing nearly 1 million copies of the regulations publication. The timeline for the permanent version of this rule will not have it in effect in time for these deadlines.

Publication Date:	**July 8, 2010**
Effective Dates:	**July 8, 2010 through December 4, 2010**
Hearing Dates:	**August 30, 2010**

2. 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**

3. 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**

4. 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 Dates:	**November 29, 2010**

5. 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 Dates:	**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**

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 Dates:	**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 Dates:	**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 Dates:	**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 Dates:	**September 28, 2010**

Scope Statements

Chiropractic Examining Board

Subject

Creates administrative rules pursuant to 2009 Wisconsin Act 28 and implemented under Chapter 446 of the Wisconsin Statutes, relating to Chiropractic Radiological Technicians and Chiropractic Technicians.

Objective of the Rule

2009 Wisconsin Act 28 has created new statutory provisions in chapter 446 of the Wisconsin Statutes. These new statutory provisions include the establishment of Chiropractic Radiological Technicians and Chiropractic Technicians to be licensed and regulated by the Chiropractic Examining Board. The new statutory provisions also include additions or amendments relating to:

- Continuing education;
- Examination(s);
- Examination fee to applicants for licensure that are associated with the cost of developing and administering an exam;
- Delegation of services to non−licensed persons as well as Chiropractic Radiological Technicians and Chiropractic Technicians;
- Evaluation standards and discontinuance of chiropractic practice regarding patients;
- Waiver of an insured patient's copayments, coinsurance or deductibles;
- Disciplinary action against a license or certificate holders;
- Unprofessional conduct standards by licensees and certificate holders; and
- Penalties associated with disciplinary action against a license or certificate holder.

The new statutory provisions will require the Chiropractic Examining Board to amend or create administrative rules in a host of areas such as its initial licensure registration and renewal requirements, continuing education, examinations, definitions, scope of practice, practice standards, and code of conduct. The promulgation of administrative rules pursuant to chapter 446 of the Wisconsin Statutes is necessary to implement the additional standards regarding the practice of Chiropractic that have been created by 2009 Wisconsin Act 28.

Policy Analysis

None.

Statutory Authority

Sections 446.01; 446.02; 446.025, 446.026, 446.028; 446.03, 446.04, 446.05; 446.07, Wis. Statutes.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule.

Entities Affected by the Rule

Chiropractors, Chiropractic Radiological Technicians, and Chiropractic Technicians.

Estimate of Time Needed to Develop the Rule

240. This estimate is based on the time spent by staff and possibly an advisory committee to prepare documents, coordinate public hearings, prepare fiscal estimates and conduct other work related to the promulgation of the administrative rules within the practice of Chiropractic.

Controlled Substances Board

Subject

Creates Chapter CSB 3 pursuant to section 961.335 (8), (9) of the Wisconsin Statutes relating to the granting of special use authorizations (SUA) including, but not limited to, requirements for keeping and disclosure of records, submissions of protocols, filing of applications, and suspension or revocation of permits.

Objective of the Rule

The rules will further clarify what is required when applying for a special use authorization, record keeping and disclosure requirements and the criteria for suspension or revocation of such authorization.

Policy Analysis

SUA holders frequently exceed the quantities of controlled substances permitted by their SUA or use controlled substances for which they do not have an SUA. They do not file amendments when they are deviating from what the special use authorization allows. The person to whom the special use authorization is issued leaves the organization and the organization continues to operate under the SUA even though they have no authority to do so. Currently, the Board has no authority to take action when an SUA holder acts contrary to the terms of the SUA. The rules will help the Controlled Substances Board more clearly delineate what is required when applying for an SUA, what ongoing responsibilities an SUA holder may have to keep and disclose records, what responsibilities an SUA holder has to amend an SUA, and what actions or lack of action on the part of an SUA holder will result in suspension or revocation of the SUA.

Statutory Authority

Section 961.335 (8) of the Wisconsin Statutes.

Comparison with Federal Regulations

There is no existing or proposed federal legislation that relates to this issue.

Entities Affected by the Rule

The Controlled Substances Board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for the purposes of scientific research, instructional activities, chemical analysis or other special uses. Individuals may be authorized to receive the authorization on behalf of a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision. All such individuals and entities will be affected by these rules.

Estimate of Time Needed to Develop the Rule

120 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection
CR 11−001

(ATCP # 10−R−6)

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that on December 29, 2010 it referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

Analysis

The proposed rules revise Chapter ATCP 21, relating to Thousand Cankers Disease.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 26, 2011. The department's Agricultural Resource Management Division is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Bob Dahl at (608) 224−4573.

Children and Families
Safety and Permanence, Chs. DCF 35—59
CR 10−148

On December 21, 2010, the Department of Children and Families submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules repeal Chapter DCF 38 and revise Chapter DCF 56, relating to foster care.

Agency Procedure for Promulgation

Public hearings are required and will be held on February 8, 2011, in Madison and February 15, 2011, in Milwaukee. The organizational unit responsible for the promulgation of the proposed rules is the Division of Safety and Permanence.

Contact Information

Elaine Pridgen
Telephone: (608) 267−9403
Email: elaine.pridgen@wisconsin.gov

Commerce
Fee Schedule, Ch. Comm 2
Gas Systems, Ch. Comm 40
CR 11−002

The Wisconsin Department of Commerce announces that on January 3, 2011 it referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules revise Chapters Comm 2 and 40, relating to fuel gas systems and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held February 8, 2011. The Department's Division of Safety and Buildings is primarily responsible for promulgation of the proposed rule.

Contact Information

Sam Rockweiler, Department of Commerce
Division of Environmental and Regulatory Services
P.O. Box 14427
Madison, WI 53708−0427
Phone: (608) 266−0797
Email: Sam.Rockweiler@wisconsin.gov

Insurance
CR 10−149

On December 20, 2010, the Office of the Commissioner of Insurance submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create section Ins 3.35, relating to colorectal cancer screening coverage and affecting small business.

Agency Procedure for Promulgation

A public hearing will be held January 25, 2011. This will serve as the public hearing for both the emergency rule that was published November 29, 2010 and the permanent rule attached.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: http://oci.wi.gov/ocirules.htm or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264−8110. For

additional information, please contact Julie E. Walsh at (608) 264−8101 or e−mail at julie.walsh@wisconsin.gov in the OCI Legal Unit.

Insurance
CR 10−150

On December 20, 2010, the Office of the Commissioner of Insurance submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create section Ins 3.375, relating to health insurance coverage of nervous and mental disorders and substance use disorders and affecting small business.

Agency Procedure for Promulgation

A public hearing will be held January 27, 2011. This will serve as the public hearing for both the emergency rule that was published November 29, 2010 and the permanent rule attached.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: http://oci.wi.gov/ocirules.htm or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264−8110. For additional information, please contact Julie E. Walsh at (608) 264−8101 or e−mail at julie.walsh@wisconsin.gov in the OCI Legal Unit.

Insurance
CR 10−151

On December 20, 2010, the Office of the Commissioner of Insurance submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules revise Chapters Ins 2, 7, and 28, relating to life settlements and affecting small business.

Agency Procedure for Promulgation

A public hearing will be held March 17, 2011.

Contact Information

A copy of the proposed rule may be obtained from the Web site at: http://oci.wi.gov/ocirules.htm or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264−8110. For additional information, please contact James W. Harris at (608) 267−2833 or e−mail at james.harris@wisconsin.gov in the OCI Legal Unit.

Public Service Commission
CR 10−147

(PSC # 1−AC−234)

On December 16, 2010, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff for review.

Analysis

The proposed rules revise Chapter PSC 118, relating to renewable resource credits.

Agency Procedure for Promulgation

A public hearing will be held on February 15, 2011, from 9:30 a.m. to 11:30 a.m. at the Public Service Commission building, 610 North Whitney Way, Madison, Wisconsin. The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

Contact Information

The contact person is Preston Schutt, Docket Coordinator, (608) 266−1462.

Rule−Making Notices

Notice of Hearing
Agriculture, Trade and Consumer Protection
CR 11−001

(ATCP # 10−R−6)

NOTICE IS HEREBY GIVEN that the state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its hearing draft rule revising section ATCP 21.21, Wis. Adm. Code, relating to thousand cankers disease of walnut.

Hearing Information

DATCP will hold one public hearing at the time and place shown below.

Date and Time:	Location:
January 26, 2011	Department of Agriculture,
Wednesday	Trade and Consumer Protection
1:00pm−3:00pm	Conference Room 266 (2nd flr)
	2811 Agriculture Drive
	Madison, WI 53718−6777

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by January 12, 2011, by writing to Stacy VanWormer, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4574. Alternatively, you may contact the DATCP TDD at (608) 224−5058. The hearing facility is handicap accessible.

Copies of Proposed Rule

You may obtain a free copy of this hearing draft rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224−4573 or emailing robert.dahl@wisconsin.gov. Copies will also be available at the hearing. To view the hearing draft rule online, go to: https://health.wisconsin.gov/admrules/public/Home.

Submittal of Written Comments

DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **February 9, 2011** for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below or to robert.dahl@wisconsin.gov or at https://health.wisconsin.gov/admrules/public/Home.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule restricts the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees ("thousand cankers disease") into this state. This rule restricts the import of affected materials from states and nations that are known to be infested with thousand cankers disease (there are certain exemptions).

Statute(s) interpreted

Sections 93.06 (1p), 93.07 (12) and 94.01, Stats.

Statutory authority

Sections 93.06 (1p), 93.07 (1), 93.07 (12), 94.01 and 227.24, Stats.

Explanation of agency authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. DATCP is adopting this rule, under authority of s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking process.

Related statute(s) or rule(s)

DATCP has adopted rules regulating a variety of plant pests under ch. ATCP 21, Wis. Adm. Code. This rule amends ch. ATCP 21 by adding restrictions related to thousand cankers disease.

Plain language analysis

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 southwestern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

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. The disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington.

Thousand cankers disease has not yet been found in Wisconsin.

Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. Subject to certain exemptions, this rule restricts the movement of potential host materials into Wisconsin, if those materials originated from or were exposed to the environment in an area where thousand cankers disease is known to exist.

Rule content

Plant Pests; Import Prohibition

Under this rule, no person may knowingly import the walnut twig beetle or the fungal pathogen *Geosmithia morbida sp. Nov* into this state, except pursuant to a special DATCP permit (for controlled scientific research or other limited purposes that pose no significant disease risk).

Host Materials; Import Prohibition

Under this rule, no person may import any of the following host materials into this state from an infested nation, state or area (as determined by the United States department of agriculture):

- Firewood from any species of tree.
- Living or dead plants or plant parts of the genus *Juglans* (walnuts). This prohibition applies, for example, to nursery stock, budwood, scionwood, green lumber, logs, stumps, roots, branches, composted chips and uncomposted chips.

Exemptions

The prohibition against the importation of host materials does *not* apply to any of the following:

- Nuts, nut meats or nut hulls.
- Processed lumber, with square edges, which is 100% bark−free and kiln−dried.
- Finished wood products without bark (for example, finished furniture, musical instruments or gun stocks).
- Materials that are accompanied by a written certificate, signed by a pest control official in the infested area, which describes the materials and states at least one of the following:
  - The materials have not been exposed to thousand cankers disease. The certificate must explain the basis for the official's statement.
  - The materials have been effectively treated to destroy thousand cankers disease. The certificate must specify the date and method of treatment.
  - The materials have been produced, processed, stored, handled or used under conditions, described in the certificate, which effectively preclude the transmission of thousand cankers disease.
- Materials imported in compliance with a written agreement between the importer and DATCP. The agreement must include all of the following:
  - The name and address of the importer.
  - The type and volume of material that may be imported under the agreement.
  - The locations from which the material may be imported under the agreement.
  - The names and addresses of the persons to whom, and the locations to which, the material may be imported under the agreement.
  - The method by which the material may be imported.
  - The time period covered by the agreement.
  - The importer's commitment to keep complete records of each import shipment under the agreement, and to submit those records to DATCP for inspection and copying upon request.
  - Specific import terms and conditions that will, in DATCP's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce thousand cankers disease into this state.
  - A provision authorizing DATCP to terminate the agreement without prior notice, for any reason.

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

The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) has not yet issued any quarantine for thousand cankers disease. APHIS does not restrict imports from other nations, because the walnut twig beetle is native to North America. APHIS is working with the U.S. Forest Service on strategies to limit the spread of the disease. Federal law does not prevent Wisconsin from taking regulatory action to prevent thousand cankers disease from spreading to this state.

Comparison with rules in adjacent states

Several states, including Indiana, Kansas, Missouri, Michigan, Nebraska North Carolina and Oklahoma, have adopted regulations to prevent the spread of thousand cankers disease. The recent disease finding in Tennessee − the first finding in the black walnut's native range east of the Mississippi – has prompted many states (including Wisconsin and some surrounding states) to consider import restrictions to prevent the spread of the disease.

Summary of factual data and analytical methodologies

This rule is based on generally−accepted plant disease information from reliable sources, including APHIS and the U.S. Forest Service.

Environmental Impact

This rule will have a positive impact on the environment, by helping to prevent the spread of thousand cankers disease into this state. This rule will help protect Wisconsin's environmentally−important black walnut forest resource.

Effect on Small Business

This rule will benefit Wisconsin wood industries by helping to preserve Wisconsin's economically important black walnut forest resource. Black walnut is a highly valuable tree, prized for the quality of its wood. Black walnut is used to make furniture and other important value−added wood products. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southwestern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

This rule will not have a significant adverse impact on businesses in this state. This rule restricts the import of certain untreated firewood and untreated black walnut wood products from areas *outside* this state, but does not otherwise restrict the distribution or sale of wood or wood products. This rule will restrict the activities of a small number of businesses in this state, and offers ways for those businesses to minimize any potential adverse impacts.

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator, Keeley Moll, at the address above, by emailing to keeley.moll@wisconsin.gov or by telephone at (608) 224−5039.

Fiscal Estimate

This rule will not have a significant fiscal impact on state government. DATCP will incur some added inspection and monitoring costs, but will minimize those costs by integrating inspection activities under this rule with other plant pest inspection and monitoring activities. DATCP will absorb the added costs with current budget and staff. This rule will have no fiscal effect on local governments.

Agency Contact Person

Bob Dahl at (608) 224−4573 or email at robert.dahl@wisconsin.gov.

Notice of Hearing

Children and Families

Safety and Permanence, Chs. DCF 35—59

CR 10−148, EmR1050

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 2 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
	Madison, WI 53718

Date and Time:	Location:
February 15,	**Milwaukee**
2011	Bureau of Milwaukee Child
Tuesday	Welfare
1:30pm	6111 N. Teutonia Avenue
	Milwaukee, WI 53209

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
(608) 267−9403
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 **February 17, 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.; DCF 37 and 54.

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
Fee schedule, Ch. Comm 2
Gas Systems, Ch. Comm 40
CR 11−002

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (15) (h) to (j), 101.16 (2), 101.17 and 101.19 of the Wisconsin Statutes, the Department of Commerce will hold a public Hearing on proposed rules revising Chapters Comm 2 and 40 relating to fuel gas systems, and affecting small businesses.

Hearing Information

The public Hearing will be held as follows:

Date and Time:	Location:
February 8, 2011	Thompson Commerce Center
Tuesday	3rd flr, Room 3B
10:30 am	201 West Washington Avenue
	Madison, WI 53703

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 and Appearances at the Hearing

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 14, 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@wisconsin.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 Rule

The proposed rules and an analysis of them are available by entering "Comm 40" in the search engine at the following Website:https://health.wisconsin.gov/admrules/public/Hom

e. 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@wisconsin.gov, or at telephone (608) 266−0797, or at Contact Through Relay. Copies will also be available at the public Hearing.

Analysis Prepared by the Department of Commerce

Statute(s) interpreted

Sections 101.02 (1) and (15) (h) to (j), 101.11, 101.16, 101.17 and 101.19.

Statutory authority

Sections 101.02 (1) and (15) (h) to (j), 101.16 (2), 101.17, 101.19 (1) and 227.11 (2) (a).

Explanation of agency authority

Under sections 101.02 (1) and (15) (h) to (j) of the Statutes, the Department is required to establish rules and prescribe safeguards for protecting the life, health, safety and welfare of employees and frequenters of public buildings and places of employment. Under section 101.16 (2) of the Statutes, the Department is required to establish rules relating to design, construction, location, installation, operation, repair, and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gases for fuel purposes, and for the odorization of those gases. Under section 101.17 of the Statutes, installation and use of machines and mechanical devices must comply with the rules of the Department. Section 101.19 of the Statutes authorizes the Department to assess fees for providing services. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Related statute(s) or rule(s)

Some of the fuel gas systems that are addressed by the proposed rule changes are connected to gas piping and appliances or equipment that is addressed by either the Wisconsin Commercial Building Code, which is contained in chapters Comm 61 to 66, or the Uniform Dwelling Code, which is contained in chapters Comm 20 to 25. Some of the gases that are addressed by the proposed changes are also used for other than fuel purposes – and those uses may include storage in pressure vessels, which is then addressed in chapter Comm 41, and mechanical refrigeration, which is addressed in chapter Comm 45.

Plain language analysis

Chapter Comm 40 establishes minimum safety standards for design, construction, installation, operation, testing, inspection, repair and maintenance of liquefied petroleum gas systems, liquefied natural gas systems, compressed natural gas systems, gaseous hydrogen systems, and liquefied hydrogen systems – where these gas systems are used for fuel purposes, such as for heating appliances or engines.

The proposed changes would primarily update this chapter to have it include newer editions of several referenced national standards from the National Fire Protection Association (NFPA), and to make it consistent with current industry and regulatory practices. For example, the changes include more detailed requirements from a recent amendment to a national standard, for purging piping and equipment that use liquefied petroleum gas. The changes would also clarify and refine administrative elements, such as where and how the chapter applies, and where Department−level plan approval and inspection is required, including for vehicle−fuel dispensing systems.

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

An Internet−based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to liquefied petroleum gas, liquefied natural gas, compressed natural gas, gaseous hydrogen and liquefied hydrogen as covered in this update of chapter Comm 40:

- 29 CFR 1910.101 – Compressed Gases (General Requirements). This regulation in the federal Department of Labor applies to the general inspection of compressed gas cylinders.
- 29 CFR 1910.103 – Hydrogen. This regulation in the federal Department of Labor applies to the design and installation of gaseous hydrogen systems and of liquefied hydrogen systems on consumer premises.
- 29 CFR 1910.110 – Storage and Handling of Liquefied Petroleum Gases. This regulation in the federal Department of Labor applies to the design, construction, location, installation and operation of liquefied petroleum gas systems.
- 33 CFR 127 Subpart B – Waterfront Facilities Handling Liquefied Natural Gas. This regulation in the federal Department of Homeland Security applies to the marine transfer area of waterfront facilities handling liquefied natural gas.

These federal regulations were revised July1, 2010, and appear to be similar to the proposed rules. In addition to containing specific requirements for the various gas systems, the federal regulations incorporate by reference several national standards published by the NFPA, the American National Standards Institute, the Compressed Gas Association and the American Society of Mechanical Engineers.

An Internet−based search of the 2009 and 2010 issues of the *Federal Register* did not find any proposed regulations relating to gas systems as covered in this update of chapter Comm 40.

Comparison with rules in adjacent states

An Internet−based search of the four adjacent states' rules found the following requirements relating to gas systems used for fuel purposes:

- Illinois – Under the Illinois Administrative Code (41 Ill. Admin. Code 200), the Office of the Illinois State Fire Marshall adopts the 2008 edition of NFPA Standard 58 for liquefied petroleum gas. The rules also reference the 2006 edition of NFPA 54. Illinois does not have rules for liquefied natural gas, compressed natural gas or hydrogen.
- Iowa – The Division of the State Fire Marshal is responsible for regulating liquefied petroleum gas and liquefied natural gas, in chapter 101 of the Iowa Administrative Code. That chapter adopts NFPA 54, 58 and 59A by reference. Currently, Iowa does not have rules for compressed natural gas or hydrogen.
- Michigan – The Department of Environmental Quality administers rules relating to liquefied petroleum gas and liquefied natural gas. These rules adopt the 2004 editions of NFPA 52, 58 and 59A. The Department of Energy,

Labor and Economic Growth administers rules for compressed and liquefied natural gas and hydrogen. These rules adopt NFPA 52 and federal Occupational Safety and Health Administrations regulations 29 CFR 1910.101 and 1910.103 for compressed gases and gaseous and liquefied hydrogen systems.

- Minnesota – The Minnesota State Fire Code incorporates by reference the 2006 edition of the International Fire Code (IFC). The IFC references NFPA 50A, 50B, 52, 58 and 59A. In addition, chapter 38 of the Minnesota State Fire Code incorporates by reference the 2004 edition of NFPA 58, and states that "the storage, handling, transportation and use of liquefied petroleum gas and the installation of all equipment pertinent to systems for such uses shall be designed, constructed, installed, operated and maintained in accordance with the provisions" in that standard.

Summary of factual data and analytical methodologies

In considering the latest editions of the referenced standards from NFPA, Department staff comprehensively compared these standards to the requirements currently in chapter Comm 40, and concluded that these standards are clearer and provide more detail than the current requirements and standards in Comm 40, and would not impose significant costs or other impacts on a substantial number of businesses. The Department's advisory council for fuel gas systems then reviewed these comparisons and agreed with these conclusions, and similarly assisted with developing the other changes for updating Comm 40. The members of that council represent the stakeholders involved in the fuel gas systems industry, and are members of the following organizations:

ANGI Energy Systems
City of Milwaukee
Cooperative Network
National Propane Gas Association
Wisconsin Agri−Service Association, Inc.
Wisconsin Crop Production Association
Wisconsin Propane Gas Association
Wisconsin State Fire Chiefs Association, Inc.
Wisconsin Utilities Association, Inc.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report

An economic impact report was not prepared or required under section 227.137 of the Statutes. Consideration of the potential effects on small business was based on guidelines produced by the federal Small Business Administration's Office of Advocacy. The advisory council described above did not identify any significant impacts relative to compliance with the proposed changes for updating chapter Comm 40.

Effect on Small Business

The proposed changes are not expected to impose significant costs or other impacts on a substantial number of businesses because the primary effect of the changes is to make chapter Comm 40 consistent with current regional and national standards for fuel gas systems, and with current industry and regulatory practices.

Initial regulatory flexibility analysis

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

Any business involved with the design, construction, installation, operation, inspection, repair or maintenance of liquefied petroleum gas systems, liquefied natural gas systems, compressed natural gas systems, gaseous hydrogen systems, or liquefied hydrogen systems, that are used for fueling purposes.

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

The rules require submittal of some additional plan review information to the Department or a first class city, for any gas system that is newly required to have plan approval.

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

No new professional skills would be needed for compliance with these rules.

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

No − Rules not submitted to Small Business Regulatory Review Board

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

Environmental Impact

Notice is hereby given that 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 fiscal effect

None.

Long−range fiscal implications

None known or anticipated.

Assumptions used in arriving at fiscal estimate

The included changes to where Department−level plan approval and inspection is required should not significantly affect either state or local government costs or revenues.

The anticipated costs that may be incurred by the private sector in complying with any new requirements in the proposed rules are adequately described in the rule summary which immediately precedes the proposed rules.

Agency Contact Person

Sam Rockweiler, Wisconsin Department of Commerce, Division of Environmental and Regulatory Services, P.O.

Box 14427, Madison, WI, 53708−0427; telephone (608) 266−0797; e−mail sam.rockweiler@wisconsin.gov.

Notice of Hearing

Insurance

CR 10−149, EmR1042

Notice is hereby given that pursuant to the authority granted under section 601.41 (3), Stats., and the procedures set forth in under sections 227.18, and 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order and the emergency rule published November 29, 2010, affecting section Ins 3.35, Wis. Adm. Code, relating to colorectal cancer screening coverage and affecting small business.

Hearing Information

Date and Time:	Location:
January 25, 2011	OCI
Tuesday	2nd Floor, Room 227
9:30 am	125 S. Webster St.
	Madison, WI 53703

Submittal of Written Comments

Written comments can be mailed to:
Julie E. Walsh
Legal Unit − OCI Rule Comment for Rule Ins 605
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707−7873

Written comments can be hand delivered to:
Julie E. Walsh
Legal Unit − OCI Rule Comment for Rule Ins 605
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703−3474

Comments can be emailed to:
Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: http://adminrules.wisconsin.gov on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264−8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707−7873.

Analysis Prepared by the Office fo the Commissioner of Insurance (OCI)

Statute(s) interpreted

Sections 600.01, 628.34 (12), 632.895 (16m), Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 632.895 (16m), Stats.

Explanation of agency authority

2009 Wis. Act 346 created s. 632.895 (16m), Stats., and required the commissioner to promulgate rules that specify guidelines for the colorectal cancer screening that must be covered, specify the factors for determining whether an individual is at high risk for colorectal cancer and to update periodically the guidelines as medically appropriate.

Related statute(s) or rule(s)

None.

Plain language analysis

The proposed rule implements s. 632.895 (16m), Stats., mandating coverage for colorectal cancer screening. For flexibility, the proposed rule allows insurers and self−insured governmental plans to select from among the U.S. Preventive Services Task Force, the National Cancer Institute, or the American Cancer Society guidelines it will follow related to colorectal cancer screening intervals and specific screening tests or procedures. Insurers and self−insured governmental health plans are to inform enrollees of the guideline or guidelines they use and if they use more than one guideline, which guideline is primary if a dispute arises.

The proposed rule requires insurers and self−funded governmental plans to provide coverage of at least three of four identified screening tools: fecal occult blood test, flexible sigmoidoscopy, colonoscopy and computerized tomographic colonography. The determination for appropriate screening test or procedure is to be based upon medical necessity or medically appropriate basis and is eligible for internal and independent review.

Additionally, the proposed rule sets forth guidance on determination of persons at high risk for developing colorectal cancer. The proposed guidance is based upon the guidelines of the American Cancer Society as it is the only organization that has detailed standards for high risk categories and screening intervals. However, the rule does permit insurers to utilize additional criteria if the National Cancer Institute or the U.S. Preventive Service Task Force develops high risk criteria.

In light of federal health reform, the proposed rule requires insurers to comply with preventive services contained in the patient protection and affordable care act of 2010, PL 111−148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111−152. Finally, insurers and self−insured governmental health plans are required to annually review the selected guidelines and comply with updates in the subsequent policy year.

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

The patient protection and affordable care act of 2010, PL 111−148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111−152, (“ACA”), includes colorectal cancer screening as a covered preventive health service contained in the 45 CFR Subtitle A §147.130. However, the federal requirements for preventive health are not effective until January 1, 2014. The federal regulation addresses cost sharing limitations that insurers may impose when the service is a preventive health service that supersede the state’s law when implemented in 2014. The federal regulations and the ACA are not as specific as s. 632.895

(16m), Stats., and do not address high risk factors, therefore the state's law would not be preempted.

Comparison with rules in adjacent states

Illinois:

215ILCS5/356x Sec. 356x. Mandate provides coverage for colorectal cancer examination and screening in accordance with the published American Cancer Society guidelines. Illinois law also permits consideration of other existing colorectal cancer screening guidelines issued by nationally recognized professional medical societies or federal government agencies, including the National Cancer Institute, the Centers for Disease Control and Prevention, and the American College of Gastroenterology. The Illinois mandate restricts insurers from imposing deductible, coinsurance, waiting period, or other cost−sharing limitations that is greater than that required for other coverage under the policy.

Iowa:

No similar law.

Michigan:

No similar law.

Minnesota:

Minnesota statutes section 62A.30 mandates coverage for accident and health insurance, health maintenance organizations excluding fixed indemnity and accident only policies. Every policy or plan must provide coverage of routine screening procedures for cancer and the office or facility visit. Among the cancer screenings listed colorectal cancer is included. Reference is made to include other proven ovarian cancer screening evaluated by the federal food and drug administration or the National Cancer Institute.

Summary of factual data and analytical methodologies

OCI surveyed insurers doing business in Wisconsin regarding coverage of screening tests and procedures for colorectal cancer and found that of the insurers surveyed, all insurers currently provide coverage for some form of colorectal cancer screening.

As to guidelines, OCI consulted with the department of health services, representatives and discussed the proposed rule with interested parties including the American Cancer Society, Wisconsin Radiological Society, Wisconsin Association of Health Plans and numerous providers. The guidelines utilized in the rule include not only the American Cancer Society but also National Cancer Institute and the U.S. Preventive Services Task Force.

Analysis and supporting documents used to determine effect on small business

There are no insurers that offer comprehensive health insurance that qualify as small businesses in accordance with s. 227.114 (1), Wis. Stat. Intermediaries that solicit individual health insurance will be required to use the new form but since it is available at no cost from the office, the effect will be minimal.

Effect on Small Business

This rule will require intermediaries to learn about the colorectal cancer benefit but will not have a fiscal impact.

Initial regulatory flexibility analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Insurance agents, LSHO, Town Mutuals, Small Insurers.

b. Description of reporting and bookkeeping procedures required:

Adds the option of electronically filing forms to the OCI and requires attestation of the Flesch score and tool used to determine the Flesch score. No other bookkeeping or reporting requirements other than are currently required.

c. Description of professional skills required:

Some small businesses, not otherwise exempted by rule, will need to update the website to include information on how to request or access the insured's policy. Other than creating the notice, no other professional skills other than are currently required.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266−7843 or at email address eileen.mallow@wisconsin.gov.

Fiscal Estimate

There will be no state or local government effect.

Private sector fiscal effect

There will be no significant fiscal effect on the private sector as the proposed rules add a benefit for consumers with little additional cost since most if not all insurers and self−funded governmental plans currently provide coverage.

Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264−8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI
Mail: PO Box 7873, Madison, WI 53707−7873

Notice of Hearing
Insurance
CR 10−150, EmR1043

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under section 601.41 (3), Stats., and the procedures set forth in under sections 227.18 and 227.24 (4), Stat., OCI will hold a public hearing to consider the emergency rule and the adoption of the attached proposed permanent rulemaking order affecting sections Ins 3.37 and 3.375, Wis. Adm. Code, relating to health insurance coverage of nervous and mental disorders and substance use disorders and affecting small business.

Hearing Information

Date and Time:	**Location:**
January 27, 2011	OCI
Thursday	2nd Floor, Room 227
1:00 pm	125 S. Webster St.
	Madison, WI 53703

Submittal of Written Comments

Written comments can be mailed to:

Julie E. Walsh
Legal Unit − OCI Rule Comment for Rule Ins 3375
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707−7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit − OCI Rule Comment for Rule Ins 3375
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703−3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: http://adminrules.wisconsin.gov on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264−8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707−7873.

Analysis Prepared by the Office fo the Commissioner of Insurance (OCI)

Statute(s) interpreted

Sections 600.01, 628.34 (12), and 632.89, Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), and 632.89, Stats.

Explanation of agency authority

The commissioner is required to promulgate rules to implement recreated s. 632.89, Stats., pursuant to s. 632.89 (4) (b), Stats., ensuring that insurers offering group health benefit plans and self−funded governmental plans include as a covered benefit the treatment of nervous and mental disorders and substance use disorders. In addition s. 632.89 (4) (a), Stats., requires the commissioner to promulgate rules relating to transitional treatment.

Related statute(s) or rule(s)

Section 609.71, Stats., was also created by 2009 Wis. Act 218 requiring defined health plans comply with the requirements contained in s. 632.89 and s. Ins 3.37, Wis. Admin. Code describe coverage for transitional treatment as required by s. 632.89 (4) (a), Stats.

Plain language analysis

The proposed rule implements the recreated s. 632.89, Stats., instituting mental health parity in the treatment of nervous and mental disorders and substance use disorders. The proposed rule amends regulations relating to transitional treatment coverage and creates a new section for implementing requirements for the coverage of nervous and mental disorders and substance use disorders.

The transitional treatment regulation is bifurcated into requirements for plans issued on or after November 1, 2007 and prior to December 1, 2010 and parallel numbered sections for polices issued on or after December 1, 2010. For existing policies or policies for which an employer has requested an exemption pursuant to s. 632.89 (3c) or (3f), Stats., the requirements reflect s. 632.89, 2007 Stats., and updated cites and provisions of regulations contained in the department of health services pertaining to transitional treatment.

For plans issued on or after December 1, 2010, parallel requirements are created within the proposed revisions to s. Ins 3.37 to apply to insurers offering group health insurance plans and for self−insured governmental plans on a going forward basis. The types of services are the same except for removal of minimum dollar limitations and the types of insurers or self−insured governmental plans to which the requirements apply.

Concerns were raised regarding compliance with the PPACA requirement of no annual limits for essential benefits and s. 632.89 (2), 2007 Stat., benefit levels. The concerns were silenced after identifying that the s. 632.89 (2), 2007 Stat., are written as “not less than” so act as benefit floors and do not preclude exceeding the floor amount therefore not volatile of the federal law.

The proposed rule also creates s. Ins 3.375, Wis. Adm. Code, to implement s. 632.89, Stats., for policies issued on or after December 1, 2010, that requires insurers offering group health insurance and self−insured governmental plans to provide coverage for the treatment of nervous and mental disorders and substance use disorders no more restrictively than coverage for the most common or frequent type of treatment limitations that are applied to substantially all other coverage under the plan. This means insurers and self−insured governmental plans cannot impose limited benefits or impose different cost−sharing provisions based upon receiving nervous, mental or substance use disorders treatment. The rule defines “substantially all” to mean that the terms of coverage for nervous, mental and substance use disorders is to be treated no more restrictively than a single type of financial requirements or quantitative treatment limitations that apply to two−thirds of covered medical or surgical benefits.

Pursuant to s. 632.89 (3c), Stats., for employers seeking an exemption based upon increased costs related to the parity requirements, employers may request insurers to have a qualified actuary determine, at the insurer’s cost, whether the employer is eligible for the exemption. Nothing in the rule, however, limits or prohibits an employer or self−funded governmental plan from obtaining, at their cost, a qualified actuarial determination.

Proposed s. Ins 3.375 (5), contains provisions governing insurers offering individual health benefit plans that contain benefits for the treatment of nervous and mental disorders or substance use disorders. Insurers offering these individual health benefit plans shall make available the criteria for determining medical necessity and if the individual health benefit plan denies benefits related to nervous and mental disorders or substance use disorders it shall make the reason for the denial available to the insured, participant, or beneficiary in addition to complying with s. 632.857, Stats.

For eligible employers electing an exemption, Appendix 1 and 2 contain the model notices that insurers are to provide to employers or self−insured governmental plans that the employer is to post and distribute to employees explaining the basis of the exemption as well as a list of the benefits that will be provided to the employees as was contained in s. 632.89, 2007 Stats.

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

The Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"), was effective October 1, 2009 with interim final regulations published in February 2010. Wisconsin's 2009 Wis. Act 218 paralleled many provisions of the federal law in the statute and enhanced coverage benefits for Wisconsin consumers insured through small employers and covered by individual health benefit plans.

Additionally, the Patient Protection and Affordable Care Act of 2010, P.L. 111−148, as amended by the Federal Health Care and Education Reconciliation Act of 2010, P.L. 111−152 (jointly "PPACA"), identifies the treatment for mental health benefits and substance use disorders as an essential benefit that is to be contained in all health plans effective January 1, 2014. Further, as an essential benefit, as of September 23, 2010, insurers are to remove annual limits and phase out lifetime limitations over the next several years.

However, as of the date of this proposed rule, no specific federal guidance has been provided on how the MHPAEA and PPACA will be combined and what affect that combination will have on insurers and consumers. In the absence of such guidance, the commissioner's proposed rule does not interfere with an insurer's ability to comply with Wisconsin law, federal parity and federal health reform.

Comparison with rules in adjacent states

Illinois:

214 Ill. Comp. Stat. Ann 5/370c, SB 1341, and HB 2190 provide minimum mandated benefits affecting group health policies having more than 50 enrolled employees. Covered conditions include serious mental illness, including pervasive developmental disorders and post−traumatic stress disorders. Benefits include a minimum of 45 inpatient days and 35 outpatient visits benefits for serious mental illness; other mental health conditions may be subject to 50% co−pays and the lesser of the annual limit of $10,000.00 or 25% of the lifetime policy limit. Mental illness resulting from the use of controlled substances or cannabis and addictions to controlled substances and cannabis are not required to be covered.

Iowa:

Iowa code 514c.22 and HF420 provide minimum mandated benefits affecting group health policies having more than 50 enrolled employees. There is a 50−employee exemption if no coverage of mental illness is provided. Serious mental illness including pervasive developmental disorders and autistic disorders are covered; the minimum benefits include 30 inpatient days and 52 outpatient visits per plan year.

Michigan:

SB 1209/Act 252 provides a minimum mandated benefit affecting Health Maintenance Organizations (HMOs) that covers broad−based mental health disorders and substance use disorders. Minimum coverage levels include a 3% cost exemption and no fewer than 20 outpatient mental health visits per plan year.

Minnesota:

Minn. Stat. Sec. 62A.152, Minn. Stat. Sec. 62Q.47, and SB 845 provide comprehensive parity for HMOs and Community Integrated Service Networks. Benefits are mandated if offered for individual and group policies. Broad−based mental health disorders and substance use disorders are covered at minimum coverage levels.

Summary of factual data and analytical methodologies

The commissioner appointed a 20−member advisory council that met two times to discuss implementation advice to the commissioner on the parity law, content and delivery of notices to employees and components of the actuarial study. The council membership includes Sen. Hansen and Rep. Pasch, the sponsors of Wisconsin's law as well as representatives from the insurance industry, mental health and hospital providers, consumer mental health and substance use disorder advocates, large and small businesses. The commissioner's staff also met with the Department of Health Services to ensure citations and coverage description reflects current transitional treatment provisions and updated regulations. The proposed rule reflects the results of the council's deliberations and advice.

Analysis and supporting documents used to determine effect on small business

Upon review of insurers affected by the regulation, the office identified no small businesses that would be affected by the regulation.

Effect on Small Business

No significant effect will be imposed on regulated small businesses. No additional technology requirements are necessary to comply with the regulation.

Initial regulatory flexibility analysis

Pursuant to s. 227.14(2g), Stats., the proposed rule may have a significant economic impact on small businesses.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266−7843 or at email address eileen.mallow@wisconsin.gov.

Fiscal Estimate

There will be no state or local government fiscal effect.

Private sector fiscal effect

This rule change will have no significant effect on the private sector regulated by OCI.

Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264−8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI
Mail: PO Box 7873, Madison, WI 53707−7873

Notice of Hearing

Insurance

CR 10−151

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under section 601.41 (3), Stats., and the procedures set forth in under section 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting sections Ins 2.18, 7.02, 7.04, 28.06, Wis. Adm. Code, relating to life settlements and affecting small business.

Hearing Information

Date and Time:	**Location:**
March 17, 2011	OCI
Thursday	2nd Floor, Room 227
10:00am	125 S. Webster St.
	Madison, WI 53703

Submittal of Written Comments

Written comments can be mailed to:

James W. Harris
Legal Unit − OCI Rule Comment for Rule Ins
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707−7873

Written comments can be hand delivered to:

James W. Harris
Legal Unit − OCI Rule Comment for Rule Ins
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703−3474

Comments can be emailed to:

James W. Harris
james.harris@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: http://adminrules.wisconsin.gov on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Copies of Proposed Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264−8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707−7873.

Analysis Prepared by the Office fo the Commissioner of Insurance (OCI)

Statute(s) interpreted

Sections 600.01, 632.69, Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42 (3), 628.34, 628.38, 631.20, 631.23 and 632.69, Stats.

Explanation of agency authority

2009 Wisconsin Act 344 created s. 632.69, Stats., replacing Wisconsin's viatical settlement statute with comprehensive regulation of life settlement transactions. The statute replaces licensing requirements for brokers and providers and establishes pre−licensing and continuing education standards. The statute provides the commissioner with authority to adopt rules implementing and administering the law including appropriate licensing requirements and standards for continuing licensure for providers and brokers, financial accountability for providers and brokers, and the adoption of rules governing the relationship and responsibilities of insurers, providers and brokers during settlement of a life insurance policy.

Related statute(s) or rule(s)

See the statutes interpreted in paragraph 1, above.

Plain language analysis

The proposed rule will assist in implementation of the requirements of s. 632.69, Stat. including those provisions relating to licensure, training, disclosures, reporting, examinations and conduct of licensees. The proposed rule sets forth initial and renewal license application deadlines, fees and requirements, including financial accountability, training, and information to be submitted. The rule lists criteria that may be used in assessing qualification of an applicant for licensure. The proposed rule provides for notification to the commissioner of administrative actions, criminal proceedings and lawsuits that may affect licensure, and reporting of cessation of business activity or change of business address or location of business records. The proposed rule provides detail for fulfilling the form filing and approval requirements of s. 632.69 (5), Stat. as well as providing formats for notices to policyholders, owners and purchasers. The proposed rule incorporates license application forms in to ch. Ins 7, Wis. Adm. Code, and add certain categories of approved training to s. Ins 28.06, Wis. Adm. Code.

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

There are no federal regulations which are intended to address life settlement activities to be regulated by the proposed rule.

Comparison with rules in adjacent states

Illinois:

215 ILCS 159/1, et. Seq., effective 7/01/2010, amended Illinois viatical settlement law. To date there has been no formal adoption of language similar to the proposed rule.

Iowa:

IAC 191−48, effective 4/03/2009, contains provisions for viatical and life settlements comparable to the proposed rule.

Michigan:

Michigan General Insurance Laws, Chapter 550 contains viatical settlement contract regulations. To date there has been no formal adoption of language similar to the proposed rule.

Minnesota:

Minnesota Laws, Chapter 60A.957, et. Seq., effective 8/01/2009, contains viatical settlement contract regulations. To date there has been no formal adoption of language similar to the proposed rule.

Summary of factual data and analytical methodologies

The proposed rule is based upon reference to a model regulation and analysis of the proposed provisions by a working group consisting of representatives of the insurance industry, the life settlement industry, an institutional investment group, life insurance agents, regulators and consumer and senior interest associations. The proposed rule will address regulatory needs of the expanding life settlement industry, add procedures for administrative oversight of licensees operating within the state and provide important disclosures to consumers.

Analysis and supporting documents used to determine effect on small business

The proposed rule continues, and expands existing licensing, reporting and disclosure requirements relating to viatical settlements and life settlements. The rule should have little effect on small businesses.

Effect on Small Business

This rule will have little or no effect on small businesses.

Initial regulatory flexibility analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Insurance agents, Small Agencies

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

None beyond those currently required.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266−7843 or at email address eileen.mallow@wisconsin.gov.

Fiscal Estimate

There will be no state or local government fiscal effect.

Private sector fiscal analysis

This rule will have no significant effect on the private sector regulated by OCI.

Agency Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264−8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI

Mail: PO Box 7873, Madison, WI 53707−7873

Notice of Hearing
Public Service Commission
CR 10−147

(PSC # 1−AC−234)

NOTICE IS GIVEN that pursuant to section 227.16 (2) (b), Stats., the commission will hold a public hearing on proposed revisions to Chapter PSC 118, relating to renewable resource credits.

Hearing Information

Date and Time:	**Location:**
February 15, 2011 Tuesday 9:30am−11:30am	Public Service Commission 610 North Whitney Way Madison, WI 53705

This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the Docket Coordinator, as indicated in the previous paragraph, as soon as possible.

Submittal of Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **March 1, 2011,** at noon (**February 28, 2011,** at noon, if filed by fax). All written comments must include a reference on the filing to docket 1−AC−234. File by one mode only.

Industry:

File comments using the Electronic Regulatory Filing system. This may be accessed from the commission's website, www.psc.wi.gov.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the commission's website, www.psc.wi.gov.

If filing by mail, courier, or hand delivery: Address as shown in the box below.

If filing by fax: Send fax comments to (608) 266−3957. Fax filing cover sheet MUST state "Official Filing," the docket number 1−AC−234, and the number of pages (limited to 25 pages for fax comments).

Analysis Prepared by the Public Service Commission

Agency authority and explanation of agency authority

This rule is authorized under ss. 196.02 (1) and (3), 196.378 (3) (a) 1., and 196.378 (3) (a) 1m., and 227.11, Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its

jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Section 196.378 (3) (a) 1., Stats., grants the commission specific authority to promulgate rules that establish requirements for the creation and use of a renewable resource credit on or after January 1, 2004. Section 196.378 (3) (a) 1m., Stats., grants the commission specific authority to promulgate rules that allow an electric provider to create a renewable resource credit based on use in a year by the electric provider, or a customer or member of the electric provider.

Statutes interpreted

This rule interprets ss. 196.378 (1) (h) 1. h. to j. and (i) and (3) (a) 1. and 1m. and (c), Stats. These statutes deal with the creation, sale, calculation and tracking of renewable resource credits, and specify the manner for aggregating or allocating renewable resource credits.

Related statute(s) or rule(s)

Section 196.374, Stats., defines the term "renewable resource," and deals with energy efficiency and renewable resource programs. Section 196.377, Stats., deals with the promotion of renewable energy sources. Section 196.378, Stats., provides definitions for certain renewable resources that are included in this rule.

Brief summary of rule

2009 Wisconsin Act 406 establishes statewide criteria for the creation of renewable resource credits (RRCs) by electric providers, and the inclusion of certain resources that generate electric power from certain fuel, synthetic gas, or densified fuel pellets in the renewable portfolio standard.

This rule creates definitions for biogas, displaced conventional electricity, non−electric facility, pyrolysis, solar light pipe, solar water heater and synthetic gas, and refines existing definitions to prevent ambiguity. This rule also describes when certain RRCs are considered created and used, and which facilities are eligible for creating RRCs, even in instances where the RRC is created from a renewable resource not produced on site.

Under this rule, an RRC may be created by the displacement of conventional electricity caused by the use of a non−electric facility under certain circumstances. For example, a building with solar light pipes, i.e., a non−electric facility as defined by this rule, displaces conventional electricity and this displacement creates an RRC that can be used by the electric provider or by a customer or member of the electric provider. This rule provides greater detail describing when and how this can be done.

Displaced conventional electricity is calculated by taking the annual average mix of resources used to generate electricity in the entire area served by the Midwest Independent Transmission System Operator. Alternatively, displaced conventional electricity may be calculated by establishing a different percentage for a specific type of non−electric facility if its seasonal or diurnal operating characteristics justify a percentage that differs from the annual average percentage. Electric providers or users of a non−electric facility must determine the net amount of electricity displaced by using methodologies outlined under proposed Wis. Admin. Code § 118.09 (3) (a).

Lastly, this rule provides a procedure for the certification and registration of renewable and non−electric facilities that can issue an RRC; a means of tracking RRCs that have been created, retired or expired; and permits the aggregation and allocation of RRCs by wholesale suppliers.

Comparison with existing or proposed federal regulations

No federal renewable portfolio standard (RPS) exists at this time. Several legislative proposals to establish a federal "renewable electricity standard" have been submitted within the last year. Two have been referred to the Committee on Energy and Natural Resources and the third has been placed on the Senate Legislative Calendar under General Orders (Calendar No. 576).

Two of the three federal legislative proposals establish a minimum annual percentage of the base quantity of electricity that an electric utility sells to electric consumers; one proposal calls for a minimum of 15% by 2021 and the other calls for a minimum of 25% by 2025. The third proposal does not specify a minimum annual percentage to be achieved. The proposed federal regulations include many of the same kinds of renewable resources as does this rule, e.g., biogas, biomass, solar, and wind.

Two of the proposed federal regulations address the issuance of renewable energy credits (RECs), direct the U.S. Secretary of Energy (Secretary) to establish a means to administer RECs and promulgate regulations regarding the measurement and verification of electricity savings. Under these proposals, the Secretary may delegate REC−tracking to a national, state or local entity. One REC is worth one kilowatt hour under the proposed regulations.

Comparison with rules in adjacent states

Like Wisconsin, Illinois, Michigan and Minnesota have adopted renewable portfolio standard (RPS) mandates. Iowa, however, has not adopted an RPS mandate.

Illinois:

Illinois has promulgated rules addressing compliance with and reporting requirements for its RPS. In Illinois, investor−owned utilities (IOUs) that sell outside their service territories to comply with the RPS[1] and alternative retail electric suppliers (ARES) are required to comply with the RPS. Municipal and cooperative utilities are exempt from the RPS. The Illinois RPS requires that renewable resources provide 25% of the overall standard retail electric sales by 2024−2025.

1 Also referred to as ARES in these situations.

For IOUs, wind power must provide a minimum of 75% of the renewable energy and the remaining 25% may come from other eligible renewable resources. ARES must obtain a minimum of 60% of their renewable energy from wind power; the remaining 40% may come from other eligible renewable resources. IOUs and ARES may procure their renewable energy either through energy bundled with renewable energy credits or through the purchase of tradable renewable energy credits on their own. Utilities must retire credits that they use for compliance.

Through 2011, utilities must procure the renewable resources in Illinois. If it is not cost−effective to procure in−state eligible resources, utilities may procure these resources from adjoining states. Utilities may, as a last resort, procure resources from other regions of the country if resources from adjoining states are not cost−effective. After 2011, equal preference is given to in−state resources and adjoining states. IOUs and ARES must submit an annual compliance report by September 1 of each year.

Iowa:

Iowa adopted its alternate energy production (AEP) requirements prior to widespread use of energy−based RPSs in other states. Iowa's AEP differs from an RPS in that the AEP is capacity−based and relates to specific AEP facilities, either owned or contracted by utilities, rather than being an energy−based portfolio requirement. At this time, only two Iowa utilities – Interstate Power and Light Company (IPL) and MidAmerican Energy Company (MidAmerican) − are required by the AEP statutes to own or purchase their share of alternate energy from AEP production facilities or small hydro facilities for a combined total of 105 megawatts. IPL currently fulfills its entire obligation with wind, while MidAmerican fulfills its obligation with wind and a small amount of biogas capacity.

Michigan:

Michigan has an RPS, and while it has not promulgated any rules or issued any technical guidance document outlining the implementation of its mandates, it has begun the process of developing a system to address compliance and REC tracking. The state's renewable energy certification system, MIRECS[2], was developed by APX, Inc., which also developed the Midwest Renewable Energy Tracking System (M−RETS) used by Wisconsin. MIRECS will track all relevant information about renewable energy produced and delivered in Michigan. APX, Inc., designed MIRECS so that it would integrate with M−RETS and the North American Renewables Registry to provide for import and export of certificates across renewable energy markets. Additionally, the Michigan Public Service Commission (MPSC) has hired an auditor who will be responsible for performing inspections of renewable energy facilities to ensure compliance.

2 MIRECS stands for "Michigan Renewable Energy Certification System."

Under Michigan's RPS, IOUs, rural electric cooperatives, municipal utilities and retail suppliers must have 10% of their electricity come from eligible renewable resources by 2015. As the state's two largest IOUs, Detroit Edison Company (DTC) and Consumers Energy (Consumers) have additional obligations beyond those of other utilities. DTC must procure 300 megawatts of new renewable resources by 2013 and 600 megawatts of new renewable resources by 2015. Consumers must procure 200 megawatts of new renewable resources by 2013 and 500 megawatts of new renewable resources by 2015.

Utilities may achieve compliance with the RPS by purchasing RECs. Up to 50% of the RPS may be met with RECs produced by utility−owned facilities. A REC has a three−year lifetime from the end of the month it was generated. The MPSC requires utilities to submit affidavits and a renewable energy plan to verify compliance on a biennial basis.

Minnesota:

Minnesota has not promulgated any rules or issued any technical guidance document outlining the implementation of its RPS mandates; however, the Minnesota Public Utilities Commission (PUC) has an open docket to address implementation issues that have not been fully addressed in previous dockets or that are due to changes in national, state or M−RETS policies and protocols. Only renewable energy credits (RECs) recorded and tracked by M−RETS may be used for compliance with the RPS. Xcel Energy, public utilities providing electric service, generation and transmission cooperative electric associations, municipal power agencies and power districts operating in the state are subject to the RPS mandates.

Under Minnesota's RPS, the standard for Xcel Energy requires that eligible renewable electricity account for 30% of total retail electricity sales, including sales to retail customers of a distribution utility to which Xcel Energy provides wholesale service, in Minnesota by 2020. Xcel must procure a minimum of 24% of its eligible renewable electricity from wind, solar may contribute up to 1%, and the remaining 5% may be generated from other eligible technologies to meet the 2020 standard. Other utilities must obtain 25% of their electricity from eligible renewable electricity by 2020 to meet the RPS, and are not subject to requirements that specify percentages for particular types of renewable resources.

Presently, Minnesota places the burden on its utilities to carry out the RPS mandates. Utilities must report when they retire their RECs and submit a biennial report to the PUC that provides information on retail sales, REC retirements and REC trading activities.

Effect on Small Business

This rulemaking will not negatively affect small businesses. It may benefit small businesses that own or sell the technologies that this rulemaking makes eligible for renewable resource credits or allow small business who use renewable resources to create RRCs that can then be sold to electric providers.

Initial regulatory flexibility analysis

The proposed rule will have no negative impact on small businesses, as defined in s. 227.11 (1), Stats. The proposed rule may have a beneficial impact for small businesses in either of two ways.

1) The proposed rule establishes new ways for Wisconsin electric providers to create renewable resource credits (RRCs), in addition to all of the existing ways in the current rule. RRCs can be used to comply with Wisconsin's Renewable Portfolio Standards (RPS) mandate. By giving electric providers new options for creating RRCs, but not requiring the use of those options, the costs of complying with the RPS mandate may decrease. Electric providers are authorized to recover their RPS compliance costs in the rates they charge customers and members. Thus, if an electric provider's RPS compliance costs are reduced, their customers or members (including small businesses) may indirectly benefit through reduced electric rates.

2) The proposed rule also makes it possible for a small business (or any other customer or member of an electric provider) to benefit more directly, if the business is using a qualifying technology or resource to produce non−electric energy. In such circumstances, the proposed rule allows the electric provider to create RRCs based on energy produced by the small business, but only with the permission of the small business. A small business could request compensation from the electric provider in exchange for granting permission to create those RRCs.

This rulemaking will affect electric generating utilities (EGUs). Because of Wisconsin's Renewable Portfolio Standards mandate, renewable resources must account for a certain percentage of an EGU's electricity generation. This proposed rule expands the types of renewable resources that may be used to create RRCs, thus making it easier for an EGU to meet the RPS requirements.

Fiscal Estimate

State fiscal effect

No state fiscal effect.

Local fiscal effect

No local government costs.

Fund sources affected

PRO.

Affected Chapter 20 Appropriations

20.155 (g)

Assumptions used in arriving at fiscal estimate

State Fiscal Effects

There are no estimated state fiscal effects from the proposed changes to the Renewable Resource Credit Trading Program rule (PSC 118).

The proposed changes to PSC 118 mainly implement changes to state statute enacted under 2009 Wisconsin Act 406. The proposed rule revises the definition of a renewable resource credit to allow electric providers to use additional credits to meet minimum renewable percentage requirements under 196.378 (2) (a). The proposed rule allows electric providers to create renewable resource credits from the electric providers' use and/or their customers' or members' use of solar energy, geothermal energy, biomass, biogas, synthetic gas created by the plasma gasification of waste, densified fuel pellets, and fuel produced by pyrolysis of organic or waste material, if these sources displace electricity from conventional energy sources, as per Act 406. The revised rule specifies how these new sources will be certified by the Commission, how credits from these sources will be calculated, and that displacement of conventional energy by these sources could be verified through an audit. Verification of displacement through a potential audit is consistent with the verification processes in existing rule for existing renewable sources.

In addition to revisions relating to Act 406, revisions to PSC 118 allow the Commission to collaborate with other states to purchase, as a group, program administrator services for tracking renewable resource credits. The proposed rule provides the Commission the option to either contract for a program administrator through a standard competitive procurement, or to access program administration services through participation in a regional renewable energy tracking system group, such as Midwest Renewable Energy Tracking System, Inc. Additional revisions to PSC 118 clarify existing code language where ambiguity or unintended consequences in the original language have been identified.

The revised rule is not anticipated to have a state fiscal effect because revisions to PSC 118 are not anticipated to change state staff workload or program administrator costs. State staff workload does not change due to the revised rule because the rule does not add program requirements above those established under Act 406. Program administrator costs are not anticipated to change because the new option of accessing program administration services through participation in a regional group is not anticipated to decrease program costs. The complexity needed in a contract to administer either a statewide renewable resource credit trading program or a regional program is unlikely to reduce any one state's share of administration costs under a group. The rule also allows the Commission to procure for administrative services through a competitive procurement; so if costs for administrative services under the group are more costly than those anticipated through a standard procurement, the Commission has the option to use the standard procurement and avoid additional costs. Therefore, the revised rule is not anticipated to have a state fiscal effect.

Local Fiscal Effects

There are no estimated local fiscal effects from the proposed changes to PSC 118. Local governments can be electric providers and are subject to the rule, but the rule does not establish new requirements; it only provides direction to operators on how to comply with current state statutes. Therefore, the revised rule is not estimated to have a local fiscal effect.

Fiscal Effect for Electric Providers and Small Businesses

There is no estimated fiscal effect for electric providers. Electric providers are already subject to the state statutes the proposed rule implements. The rule does not add requirements; it only provides direction to operators on how to comply with current state statutes. Small Businesses are also unlikely to experience a fiscal effect under this rule as it is consistent with state statutes. The rule does not change the opportunities provided under Act 406 for small businesses to sell renewable resource credits to utilities. Therefore, the revised rule is not estimated to have a fiscal effect to electric providers or small businesses.

Long−range fiscal implications

Costs to administer a renewable resource credit trading program could be reduced in the long term, under this rule, because it includes an option allowing the Commission to contract for administrative services through a regional renewable resource credit trading program group. If the regional group can implement a regional renewable resource credit trading program that is more streamlined than the current Wisconsin system, and if the Commission can pool its contracting resources with other states in the group, then it is possible that, by contracting through the group for a more streamlined program, administrative service costs will decrease.

Text of Proposed Rule

SECTION 1. PSC 118.02 (1) is renumbered 118.02 (1r) and amended to read:

PSC 118.02 (1r) "Certified renewable facility" means an electric generating facility that the commission certifies ~~has met the definition of a renewable facility~~ under s. PSC 118.05.

SECTION 2. PSC 118.02 (1) and (1g) are created to read:

118.02 (1) "Biogas" means a gas created by the anaerobic digestion or fermentation of biomass, food processing waste or discarded food.

(1g) "Certified non−electric facility" means a non−electric facility that the commission certifies under s. PSC 118.055.

SECTION 3. PSC 118.02 (2) is amended to read:

PSC 118.02 (2) "Compliance period" means a calendar year, beginning January 1, during which an electric provider is required to ~~deliver~~ achieve a renewable energy percentage under

s. 196.378 (2) (a), Stats.

SECTION 4. PSC 118.02 (3m) is created to read:

PSC 118.02 (3m) "Densified fuel pellets" means pellets made from waste material that does not include garbage, as defined in s. 289.01 (9), Stats., and that contains no more than 30 percent fixed carbon.

SECTION 5. PSC 118.02 (4) is amended to read:

PSC 118.02 (4) "Designated representative" means the person authorized by the electric provider to register a renewable facility or non−electric facility with the program administrator, or to purchase or sell RRCs.

SECTION 6. PSC 118.02 (5), (5g) and (5r) are created to read:

PSC 118.02 (5) "Displaced conventional electricity" means electricity derived from conventional resources that an electric provider or a customer or member of the electric provider would have used except that the person used instead a certified non−electric facility that meets the requirements of ss. PSC 118.03 and 118.04.

(5g) "Division administrator" means the administrator of the commission's gas and energy division.

(5r) "Geothermal heating and cooling installation" means a ground source heat pump.

SECTION 7. PSC 118.02 (6) is amended to read:

PSC 118.02 (6) "MWh" means megawatt−hour of electricity.

SECTION 8. PSC 118.02 (6m) and (7m) are created to read:

PSC 118.02 (6m) "Non−electric facility" means any of the following when used by an electric provider or by a customer or member of the electric provider:

(a) A solar water heater.

(b) A solar light pipe.

(c) A geothermal heating and cooling installation.

(d) An installation generating thermal output from biomass, biogas, synthetic gas, densified fuel pellets, or fuel produced by pyrolysis.

(e) Any other installation specified by the commission.

(7m) "Pyrolysis" means an industrial process that heats organic or waste material under pressure in an oxygen−starved environment to break the material down into gases, liquid and solid residues.

SECTION 9. PSC 118.02 (10) is renumbered 118.02 (10) (intro.), and amended to read:

PSC 118.02 (10) (intro.) "Renewable resource credit" means ~~one MWh of renewable energy from a certified renewable facility that is physically metered with the net generation measured at the certified renewable facility's bus bar, that is delivered to a retail customer with the retail sale measured at the customer's meter, that ignores the transmission and distribution losses between the bus bar and the customer's meter, that exceeds the minimum percentage requirement specified in s. 196.378 (2) (a), Stats., and that meets the requirements of ss. PSC 118.03 and 118.04.~~ either of the following:

SECTION 10. PSC 118.02 (10) (a) and (b) are created to read:

PSC 118.02 (10) (a) One MWh of renewable energy from a certified renewable facility that meets each of the following requirements:

1. It is physically metered with the net generation measured at the certified renewable facility's bus bar.

2. It is delivered to a retail customer with the retail sale measured at the customer's meter.

3. It ignores the transmission and distribution losses between the bus bar and the customer's meter.

4. It exceeds the minimum percentage requirement specified in s. 196.378 (2) (a), Stats.

5. It meets the requirements of ss. PSC 118.03 and 118.04.

(b) One MWh of displaced conventional electricity, as calculated under s. PSC 118.09.

SECTION 11. PSC 118.02 (14) to (16) are created to read:

PSC 118.02 (14) "Solar light pipe" means a device that concentrates and transmits sunlight through a roof to an interior space, employing highly−reflective material inside the device to focus and direct the maximum available sunlight to the interior space.

(15) "Solar water heater" means a device that concentrates and collects solar radiation to heat water for domestic use, pool heating, space heating, or ventilation air heating.

(16) "Synthetic gas" means gas created by the plasma gasification of waste.

SECTION 12. PSC 118.025 is created to read:

PSC 118.025 Renewable resource designation. Biogas is a renewable resource under s. 196.378 (1) (h) 2., Stats.

SECTION 13. PSC 118.03 (1) (intro.) and (a) are amended to read:

PSC 118.03 (1) (intro.) An electric provider may create an RRC for renewable energy only if the renewable facility that is the source of the electric provider's renewable energy meets all of the following requirements:

(a) The energy output of the renewable faility is physically metered and the accuracy of the metering is subject to verification by the program administrator or the commission.

SECTION 14. PSC 118.03 (2) is created to read:

PSC 118.03 (2) An electric provider may create an RRC for conventional electricity displaced by the use of a non−electric facility only if the non−electric facility meets all of the following requirements:

(a) The non−electric facility registers with, and is certified by, the commission under s. PSC 118.055.

(b) The non−electric facility was placed in service on or after June 3, 2010.

(c) The non−electric facility will replace or reduce the use of an electric device used at the same location for the same purpose as the non−electric facility.

(d) Any other condition established by the commission.

SECTION 15. PSC 118.03 (3) (b) is renumbered PSC 118.03 (3) and is amended to read:

PSC 118.03 (3) An electric provider may only use the renewable portion of ~~a biomass co−fired facility's energy production~~ the production from a facility using both a renewable and conventional fuel, based on the relative energy content of the fuels, to create RRCs in the applicable reporting period.

SECTION 16. PSC 118.03 (4) is created to read:

PSC 118.03 (4) (a) An electric provider may create RRCs for a facility that has contracted with a producer of biogas, gas from pyrolysis, or synthetic gas for ownership of the gas and that has sufficient contracts to deliver the gas to the facility, according to the resulting number of MWh that the facility generates or the amount of conventional electricity that the facility displaces.

(b) An electric provider may create an RRC for a facility that satisfies par. (a) if the electric provider demonstrates all of the following:

1. The gas producer meters the amount of gas delivered, using metering devices that comply with ss. PSC 134.27 and 134.28.

2. The gas producer measures the heat content of the gas at least monthly.

3. The facility complies with sub. (1) or (2).

SECTION 17. PSC 118.04 (1) is created to read:

PSC 118.04 (1) For purposes of determining how long an RRC is eligible to be used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats.:

(a) An RRC under s. PSC 118.02 (10) (a) is created when the renewable facility generates the renewable energy.

(b) An RRC under s. PSC 118.02 (10) (b) is created on December 31 of the year in which the use of the certified non−electric facility displaces conventional electricity.

(c) An RRC is used in the compliance period for which it is retired, regardless of the date on which the RRC is retired in the RRC tracking program.

SECTION 18. PSC 118.04 (2) (e) and (g) 2. are amended to read:

PSC 118.04 (2) (e) Renewable energy or displaced conventional electricity that would meet the definition of an RRC under s. PSC 118.02 (10), except that it consists of less than one MWh, shall constitute a fraction of an RRC. A fractional RRC may not be smaller than 0.01 MWh.

(g) 2. ~~An RRC created~~ Renewable energy generated on or after January 1, 2004, but produced by a renewable facility that was placed into service before January 1, 2004, may only be ~~sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats., if the RRC~~ used to create an RRC if the renewable energy constituted an incremental increase in output from the renewable facility due to capacity improvements that were made on or after January 1, 2004, as provided in s. 196.378 (3) (a) 2., Stats. The RRCs described in this subdivision may not be used after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats. If the renewable facility was originally constructed prior to January 1, 2004, but is entirely replaced with a new and more efficient facility, all of the output from the new facility constitutes an incremental increase and can be used to create RRCs.

~~EXAMPLE: If the renewable facility was originally constructed prior to January 1, 2004, but is entirely replaced with a new and more efficient facility, all of the output from the new facility constitutes an incremental increase and can be used to create RRCs.~~

SECTION 19. PSC 118.04 (2) (g) 4. is created to read:

PSC 118.04 (2) (g) 4. An RRC created for displaced conventional electricity may be sold or used to meet an electric provider's minimum percentage requirement under s. 196.378 (2) (a), Stats. The RRCs described in this subdivision may not be used after the fourth year after the year in which the credit is created, as provided in s. 196.378 (3) (c), Stats.

SECTION 20. PSC 118.04 (5) is amended to read:

PSC 118.04 (5) Subject to commission approval, the program administrator may establish any procedure necessary to ~~ensure that~~ accurately record the creation, sale, transfer, purchase and retirement of RRCs ~~are accurately recorded~~.

SECTION 21. PSC 118.05 (1) is amended to read:

PSC 118.05 (1) (a) ~~An~~ Except as provided in s. PSC 118.055, an electric provider may only use the energy of a certified renewable facility for creation of an RRC. The commission shall certify renewable facilities or delegate this responsibility to the program administrator. Any electric provider or owner of a renewable facility ~~that is~~ adversely affected by the ~~program administrator's~~ decision to certify or not certify may protest to the commission. Such a protest shall be served in writing on the division administrator within 10 working days after ~~the adversely affected person has received notice of the program administrator's~~ service of the decision. The division administrator may settle and resolve protests brought under this paragraph. If the protest cannot be resolved by mutual agreement, the division administrator shall issue a written decision. Any person adversely affected by the division administrator's written decision may, within 20 working days after its issuance, appeal the decision to the commission by alleging facts that show a violation of a particular statute or provision of this chapter.

(b) The program administrator may not issue an RRC under s. PSC 118.03 (1) before the date that a renewable facility is certified, but the program administrator may issue an RRC for energy that a certified renewable facility produced subsequent to the date it delivered its request for certification.

SECTION 22. PSC 118.055 is created to read:

PSC 118.055 Certification of non−electric facilities. (1) (a) An electric provider may create an RRC under s. PSC 118.03 (2) based on the use of a certified non−electric facility by the electric provider, or by a customer or member of the electric provider, to the extent that the use displaces conventional electricity. The commission shall certify non−electric facilities or delegate this responsibility to the program administrator. Any electric provider or owner of a non−electric facility adversely affected by the decision to certify or not certify may protest to the commission. Such a protest shall be served in writing on the division administrator within 10 working days after service of the decision. The division administrator may settle and resolve protests brought under this paragraph. If the protest cannot be resolved by mutual agreement, the division administrator shall issue a written decision. Any person adversely affected by the division administrator's written decision may, within 20 working days after its issuance, appeal the decision to the commission by alleging facts that show a violation of a particular statute or provision of this chapter.

(b) The program administrator may not issue an RRC for conventional electricity displaced by use of a non−electric facility before the date that the facility is certified, but the program administrator may issue an RRC for displaced conventional electricity subsequent to the date that a certified non−electric facility delivers its request for certification.

(2) To obtain certification of a non−electric facility, the electric provider, or a designated representative, shall provide the following information to the commission in a format approved by the commission:

(a) The non−electric facility's location, owner, technology, and date placed in service.

(b) Information that demonstrates the non−electric facility meets the eligibility criteria under s. PSC 118.03.

(c) The estimated annual amount of displaced conventional electricity and information supporting this estimate.

(d) Any other information the commission determines to be necessary.

(e) The electric provider's affirmation that it has verified all of the information in pars. (a) to (d).

(f) If the electric provider does not own the non−electric facility, a statement signed by the facility owner that affirms the information in pars. (a) to (d) and permits the electric provider to create RRCs from the facility.

(3) The commission or the program administrator shall inform the electric provider, or its designated representative, whether it has certified a non−electric facility for which it has received an application under sub. (2).

(4) The commission may make on−site visits to any certified unit of a non−electric facility to determine its compliance with this chapter and with s. 196.378, Stats., may request copies of all supporting documentation used to comply with this section, and may decertify any unit that it finds not to be in compliance.

(5) Nothing in these rules obligates the owner of a non−electric facility to permit the electric provider to create RRCs from the facility.

SECTION 23. PSC 118.06 (1) is amended to read:

PSC 118.06 (1) The commission shall~~, using a competitive process, contract with a program administrator who shall operate either a statewide or a regional RRC tracking program.~~ do one of the following:

SECTION 24. PSC 118.06 (1) (a) and (b) are created to read:

PSC 118.06 (1) (a) Using a competitive process, contract with a program administrator who shall operate either a statewide or a regional RRC tracking program.

(b) Participate in a regional organization that contracts with a program administrator who shall operate a statewide or regional RRC tracking program.

SECTION 25. PSC 118.06 (2) (b) and (c) (intro.) are amended to read:

PSC 118.06 (2) (b) Create an account for each certified renewable facility or certified non−electric facility that participates in the tracking program and requests a separate account.

(c) (intro.) ~~Register~~ Upon request, register each renewable facility the commission has certified, including the following data about the facility:

SECTION 26. PSC 118.06 (2) (cm) and (d) 1m. are created to read:

PSC 118.06 (2) (cm) Upon request, register each non−electric facility the commission has certified, including the following data about the facility:

1. Its electric provider's account number.

2. Its location, owner, technology, and date placed in service.

3. Its estimated annual amount of displaced conventional electricity.

4. Any additional data the commission deems necessary for proper operation of the tracking program.

(d) 1m. Issues a unique electronic certificate for each MWh of conventional electricity displaced by a certified non−electric facility that complies with ss. PSC 118.03 and 118.04, as calculated under s. PSC 118.09. The certificate shall identify which non−electric facility displaced the MWh, when the facility operated, and any other characteristics the commission finds necessary.

SECTION 27. PSC 118.06 (2) (d) 3. b. is repealed.

SECTION 28. PSC 118.06 (2) (em) is created to read:

PSC 118.06 (2) (em) Audit registered non−electric facilities, as needed, to verify the amount of displaced conventional electricity.

SECTION 29. PSC 118.06 (5) is amended to read:

PSC 118.06 (5) The program administrator may not issue RRCs for energy produced by a decertified renewable facility or for conventional electricity displaced by the operation of a decertified non−electric facility.

SECTION 30. PSC 118.09 and 118.10 are created to read:

PSC 118.09 Calculation of displaced conventional electricity. (1) For each calendar year, the division administrator shall, by order, determine the percentage of electricity from conventional resources for the entire state. The division administrator shall base this determination on the annual average mix of resources used to generate electricity in the entire area served by the Midwest Independent Transmission System Operator. The division administrator may, by order, also establish a different percentage for a specific type of non−electric facility if its seasonal or diurnal operating characteristics justify a percentage that differs from the annual average percentage.

(2) The division administrator may, by order, establish a displacement formula for any type of non−electric facility. The division administrator shall base any such formula on a calculation of the minimum amount of displaced electricity that would be expected in a typical calendar year under realistic operating conditions.

(3) For each calendar year, the electric provider or the user of a non−electric facility shall determine the net amount of electricity displaced by the non−electric facility, using either of the following methods:

(a) 1. The determination may be based upon site−specific measurements and calculations of:

a. The amount of electricity used by the non−electric facility.

b. The amount of electricity that would have been used for the same purposes by the electric device that was replaced by the non−electric facility or that was used less due to the use of the non−electric facility.

2. The net amount of electricity displaced by the non−electric facility in a calendar year is equal to the amount in subd. 1. b. minus the amount in subd. 1. a. If this value is less than zero, the electric provider may not create any RRCs for the non−electric facility for that calendar year.

(b) The determination may be based upon a current displacement formula established under sub. (2) and any site−specific variables necessary to calculate the formula.

(4) The amount of conventional electricity displaced by a non−electric facility in a calendar year is equal to the net amount of displaced electricity determined under sub. (3), multiplied by the applicable percentage of displaced electricity in that calendar year that is from conventional resources as determined under sub. (1).

(5) The electric provider or the user of a non−electric facility shall maintain documentation of all information used in the determination made under sub. (3).

(6) Determinations under sub. (3) are subject to the commission's review and verification.

PSC 118.10 Individual consideration. The commission may consider exceptional or unusual situations and may, by order, apply different requirements to an individual facility than those provided in this chapter.

SECTION 31. EFFECTIVE DATE. This rule takes effect on the first day of the first month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

(End)

Agency Contact Person

Questions regarding this matter, including small business questions should be directed to Docket Coordinator Preston Schutt at (608) 266−1462 or preston.schutt@wisconsin.gov. Media questions should be directed to Teresa Weidemann−Smith, Communications Specialist, Governmental and Public Affairs, at (608) 266−9600. Hearing− or speech−impaired individuals may also use the commission's TTY number: If calling from Wisconsin, use (800) 251−8345; if calling from outside Wisconsin, use (608) 267−1479.

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection
CR 10−100

(ATCP # 09−R−19)

Rule−making order revises Chapter ATCP 16, relating to regulation of dog sellers.

Agriculture, Trade and Consumer Protection
CR 10−110

(ATCP # 9−R−13)

Rule−making order revises Chapter ATCP 30, relating to atrazine restrictions for 2011.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10−114

(DNR # ER−35−10)

Rule−making order revises Chapter NR 27, relating to management of bats with White Nose Syndrome.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10−115

(DNR # IS−41−10)

Rule−making order revises Chapter NR 40, relating control of White Nose Syndrome.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10−123

(DNR # IS−47−10)

Rule−making order revises Chapter NR 40, relating control of White Nose Syndrome.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266−7590 for updated information on the effective dates for the listed rule orders.

Public Service Commission
CR 08−070

(PSC # 1−AC−224)

Revises Chapter PSC 116, relating to a fuel cost rate adjustment process for electric utility service.
Effective 3−1−11.

Public Service Commission
CR 10−057

(PSC # 1−AC−231)

Creates Chapter PSC 128, relating to Wind Energy Systems.
Effective 3−1−11.

Public Notices

Children and Families
Notice of Implementation of Foster Care Levels of Care

Section 48.62 (9), Stats., directs the Department of Children and Families publish a notice in the Administrative Register when the department is ready to implement the rules promulgated under s. 48.62 (8), Stats., relating to foster care levels of care. The department is promulgating these rules to be effective January 1, 2011. Statutory changes in 2009 Wisconsin Act 71, section 25, will also take effect on that date.

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