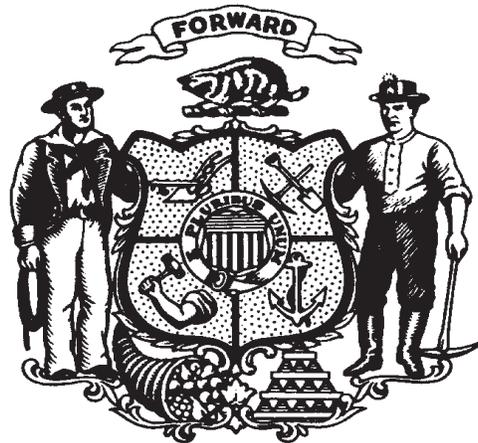


# Wisconsin Administrative Register

No. 613



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## Emergency rules now in effect

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*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](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade & Consumer Protection

Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited “grandfather” exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources (“DNR”). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is “not less than the acreage subject to the deer farm license on December 31, 2002.” This rule clarifies that the “acreage subject to the deer farm license on December 31, 2002” means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The “grandfather” exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006. DATCP must act on applications within 90 business days. Action may affect an operator’s ability to operate during the

2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

**Publication Date:** October 9, 2006  
**Effective Date:** October 9, 2006  
**Expiration Date:** March 7, 2007  
**Hearing Date:** November 13, 2006

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### Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

#### Finding of Emergency

The board finds that failure to delay the effective date of CR04–095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

**Publication Date:** December 21, 2006  
**Effective Date:** December 29, 2006  
**Expiration Date:** May 28, 2007  
**Hearing Date:** January 31, 2007  
 [See Notice this Register]

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### Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

#### Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid–2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

**Publication Date:** September 25, 2006  
**Effective Date:** October 1, 2006  
**Expiration Date:** February 28, 2007  
**Hearing Date:** December 13, 2006

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### Insurance (2)

1. Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan

applicability dates and affecting small business plan limited exemption.

### 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:

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated ch. Ins 9, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

**Publication Date:** August 31, 2006  
**Effective Date:** September 1, 2006  
**Expiration Date:** January 29, 2007  
**Hearing Date:** December 12, 2006

- Rules adopted revising s. Ins 6.77, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

### 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:

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s. 632.32 (4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

**Publication Date:** September 29, 2006  
**Effective Date:** September 29, 2006  
**Expiration Date:** February 26, 2007  
**Hearing Date:** December 11, 2006

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## Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising chs. NR 660 to 665, relating to hazardous waste management.

### Exemption from Finding of emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as state regulatory program staff. This could interfere with interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

**Publication Date:** September 2, 2006  
**Effective Date:** September 5, 2006  
**Expiration Date:** February 2, 2007  
**Hearing Date:** September 26, 2006

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## Optometry Examining Board

A rule was adopted creating ch. Opt 8, relating to continuing education.

### Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph 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 this paragraph.”

#### Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

**Publication Date:** November 8, 2006  
**Effective Date:** November 8, 2006  
**Expiration Date:** April 7, 2007  
**Hearing Date:** December 7, 2006

## Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

#### Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department 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 a rule promulgated under this subsection.”

#### Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

**Publication Date:** November 27, 2006  
**Effective Date:** December 1, 2006  
**Expiration Date:** April 30, 2007

## Transportation (2)

1. Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

#### Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

#### Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s.

84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

**Publication Date:** July 1, 2006

**Effective Date:** July 1, 2006

**Expiration Date:** See section 8 (2) of 2005 Wis. Act 89

**Hearing Date:** August 8, 2006

2. Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

#### Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

#### Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65-foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65-foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65-foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65-foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the state’s long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new “default” 75-foot overall length limit applies on state highways that are neither designated as 65-foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department’s view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state’s long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats.,

by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

**Publication Date:** September 15, 2006  
**Effective Date:** September 15, 2006  
**Expiration Date:** See section 7 (2) of 2005 Wis. Act 363  
**Hearing Date:** October 4, 2006

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### Workforce Development

Rules adopted amending s. DWD 290.155 (1), relating to

the adjustment of thresholds for application of prevailing wage rates.

#### Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

**Publication Date:** December 28, 2006  
**Effective Date:** January 1, 2007  
**Expiration Date:** May 31, 2007

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## Scope statements

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### Revenue

#### Subject

Section Tax 1.12, relating to electronic funds transfer.

#### Policy Analysis

*Objective of the rule.* The objective of the proposed rule is to create a provision specifying that withholding payments by an employer of the delinquent tax of an employee under s. 71.91 (7), Stats., are required to be made by electronic funds transfer (EFT).

A new policy is being proposed, whereby the department may require that certain payments be made by electronic funds transfer (EFT), as authorized under s. 73.029, Stats.

If the rules are not changed, they will not reflect proposed department policy.

#### Comparison with Federal Regulations

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

#### Entities Affected by the Rule

Employers that withhold delinquent tax of employees under s. 71.91 (7), Stats.

#### Statutory Authority

Section 227.11 (2) (a), Stats.

#### Staff Time Required

The department estimates it will take approximately 100 hours to develop this rule order

### University of Wisconsin System

#### Subject

Clarification and restructuring of Board of Regents rules relating to conduct on university lands and student non-academic disciplinary procedures.

*Objective of the rule.* The objective of the proposed rule-making is to reorganize, update and clarify Board of Regents rules governing traffic, parking, and conduct on land under control of the Board of Regents, currently codified in ch. UWS 18, Wis. Adm. Code; and to update and clarify the scope of conduct subject to Board of Regents rules on student non-academic misconduct, currently codified in ch. UWS 17, Wis. Adm. Code, as well as applicable disciplinary sanctions for such misconduct, and hearings and appeals regarding such disciplinary sanctions.

#### Policy Analysis

Ch. UWS 17, Wis. Adm. Code: Chs. UWS 14 and 17, Wis. Adm. Code, establish standards of conduct for students of

UW System institutions, with ch. UWS 14 addressing academic misconduct, and ch. UWS 17 addressing non-academic misconduct. Both chapters are updated periodically. As a result of a recent review of ch. UWS 17, the Board is considering changes in the rules to address issues on campuses and in the broader university community that have arisen since the rules were last revised in May 1996. Specifically, increased use of electronic communications on campus has expanded the scope of behavior such as hacking, identity theft, and email harassment that may constitute non-academic misconduct, but which is not adequately described in the current rule. The availability of electronic communications also may improve and streamline notice and communication during the disciplinary process by allowing certain notifications to occur electronically rather than by personal delivery or first-class mail as currently provided. In addition, it is also desirable to clarify at this time certain terms in the provisions relating to disciplinary sanctions for non-academic misconduct, including situations in which the misconduct occurs away from the campus, and to hearings and appeals of disciplinary sanctions.

Ch. UWS 18, Wis. Adm. Code: Ch. UWS 18 addresses operation of motor vehicles, parking, and other conduct on land under the control of the Board of Regents. The Board proposes several amendments to better organize the chapter, and to clarify the scope of prohibitions related to particular kinds of conduct on campus such as operating motor vehicles, parking, dumping, bicycle riding, selling and soliciting goods and services, smoking, using sound-amplifying equipment, and using computers. Prohibitions on certain types of conduct will be grouped according to categories that will make the rule easier to read and understand.

#### Comparison with Federal Regulations

Not applicable.

#### Entities Affected by the Rule

This rule will affect students and staff of University of Wisconsin System institutions, as well as university guests, visitors, and members of the public who enter a campus of the University of Wisconsin System for the purpose of conducting business, participating in university-sponsored activities, or for other reasons.

#### Statutory Authority

Sections 36.09 (1), 36.11 (1) and (2), and 36.35, Wis. Stats.

#### Staff Time Required

The Board estimates that it will take approximately 30 hours of staff time to develop the proposed rule, and 20 hours to finalize the rule following public hearing.

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## Submittal of rules to legislative council clearinghouse

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

### **Elections Board**

On December 21, 2006, the State Elections Board submitted proposed rules to the Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed rule creates s. ElBd 3.04, relating to voting by provisional ballot for election-day registrants. Section 303(a)(5)(A)(i) of the Help America Vote requires the adoption of this rule. To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that number on their registration form, the Board proposes to adopt this rule, providing for the issuance of a provisional ballot, pursuant to s. 6.97, Stats., to those election-day registrants.

#### **Agency Procedure for Promulgation**

The Elections Board is following the 30-day notice procedure, under s. 227.16 (2) (e), Stats., for the promulgation of these rules. The agency person responsible for internally processing this rule is George A. Dunst, legal counsel for the State Elections Board.

#### **Contact Person**

George A. Dunst, Legal Counsel  
Telephone: (608) 266-0136.

### **Public Service Commission**

On December 22, 2006, the Public Service Commission submitted proposed rules to the Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule creates ch. PSC 137, which establishes procedures and criteria for energy efficiency and renewable resource programs to be implemented under s. 196.374, Stats., beginning July 1, 2007.

#### **Agency Procedure for Promulgation**

A public hearing will be held on January 26, 2007. The Gas and Energy Division of the Commission is the organizational unit responsible for the promulgation of the rule.

#### **Contact Person**

Carol Stemrich, Project Coordinator  
Telephone: (608) 266-8174

### **Workforce Development**

On December 21, 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed rules affect ch. DWD 277, relating to notice to home care consumers and workers and affects small businesses.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on January 25, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

#### **Contact Person**

Elaine Pridgen  
Telephone: (608) 267-9403  
Email: elaine.pridgen@dwd.state.wi.us

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## Rule-making notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 06–136]

(Reprinted from 12/31/06 Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapter ATCP 30, Wis. Adm. Code, relating to chloropicrin and metam sodium soil fumigants.

DATCP will hold two public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, February 9, 2007 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to [jeff.postle@datcp.state.wi.us](mailto:jeff.postle@datcp.state.wi.us) or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this 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) 224-4503 or emailing [jeff.postle@datcp.state.wi.us](mailto:jeff.postle@datcp.state.wi.us). Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

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@datcp.state.wi.us](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by January 12, 2007, by writing to Jeff Postle, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4503. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

#### Hearing Dates and Locations

**Tuesday, January 23, 2007**

2:00 p.m. to 5:00 p.m.

Wis. Dept. of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53718

**Tuesday, January 30, 2007**

3:00 p.m. to 7:00 p.m.

Elizabeth Inn  
Highway 54 and 51  
Stevens Point, WI 54481

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

This rule regulates the use of soil fumigant pesticides containing chloropicrin or metam sodium active ingredients. This rule does all of the following:

Creates new rules to regulate the use of chloropicrin soil fumigants.

Modifies current rules regulating the use of metam sodium soil fumigants. Among other things, this rule relaxes current post-application monitoring requirements and current setback requirements for "tarped" applications.

#### Statutory Authority

Statutory authority: ss. 93.07 (1), and 94.69 (1) (i), Stats.

Statutes interpreted: s. 94.69 (1) (i), Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07 (1), Stats.). DATCP is specifically authorized to adopt rules under s. 94.69 (1) (i), Stats., to regulate the use of pesticides.

#### Background

DATCP administers Wisconsin's pesticide laws. Chloropicrin and metam sodium are soil fumigant pesticides, used mainly by potato growers to control nematodes. Under current DATCP rules, persons using *metam sodium* soil fumigants must take certain steps to prevent human exposure to volatilized fumigant (there are no equivalent rules for *chloropicrin* applications). Under current *metam sodium* rules:

Applicators must be properly certified.

No agricultural application may be made within ¼ mile of a hospital, nursing home, jail or prison, or within ¼ mile of a school that will be in session during the application or within 48 hours after the application.

Agricultural application sites must be covered by a tarp or other impermeable barrier, except when the soil fumigant is injected into the soil or applied by specified chemigation procedures. Application by knife rig injection is prohibited when soil temperatures are too high.

Applicators must pre-notify county public health authorities, and neighbors within ¼ mile, prior to any "chemigation" application. "Chemigation" applications must comply with specific rule standards.

Applicators must monitor application sites after the application, and must take appropriate steps to prevent pesticide drift. Applicators must notify Wisconsin emergency management if it appears that pesticide drift may contact residences or public buildings.

Applicators must keep specified records related to metam sodium applications.

#### Rule Contents

This rule regulates *chloropicrin* applications in the same way that current rules regulate *metam sodium* applications (*see* above). This rule also modifies current metam sodium regulations as follows (the same regulations will apply to chloropicrin):

For "tarped" agricultural applications, this rule reduces the required minimum setback from schools, hospitals, nursing

homes, jails and prisons from 1/4 mile to 1/8 mile. For “untarped” agricultural applications, the required minimum setback remains at 1/4 mile.

The setback requirements applicable to schools are also made applicable to licensed daycare facilities. An exception is provided for an application to a plant nursery that was in existence prior to the first date the daycare facility was licensed if the nursery operator provides at least 24 hours prior notice of the application to the daycare facility operator.

This rule relaxes current follow-up monitoring requirements. Under current rules, a certified applicator must inspect the application site 4–6 hours after the application is completed and again 9–12 hours after the application is completed. Under this rule, a certified applicator must only conduct one follow-up inspection, within one hour of sunset on the day of application.

This rule updates current emergency government references, and makes other minor editorial changes.

#### Federal Regulations

The U.S. Environmental Protection Agency (EPA) regulates pesticides under the Federal Insecticide, Fungicide and Rodenticide Act. Pesticides must be registered with EPA. EPA registers pesticides and pesticide labels for specific uses. The pesticide manufacturer must provide safety, environmental and other data to support the registration. Pesticide labeling must conform to the EPA registration. Federal and state law prohibit sale or use inconsistent with label directions. Wisconsin and other states work with EPA to assure proper use and handling of pesticides.

States may regulate pesticide applications within their own territory. States may act on their own authority (independent of EPA), and may establish use restrictions that go beyond federal label restrictions. Wisconsin currently has restrictions on the use of metam sodium pesticides that go beyond federal label restrictions.

#### Surrounding State Regulations

Other states, like Wisconsin, regulate pesticide applications generally. However, none of the states surrounding Wisconsin has adopted specific requirements for metam sodium or chloropicrin applications, beyond requirements specified on the federally-approved pesticide labels.

#### **Business Impact**

##### Businesses Affected

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

##### Effects on Business

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for “tarped” applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for offsite movement.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats.

#### **Fiscal Impact**

This rule will not have a significant fiscal impact on Wisconsin state or local government. DATCP will incur some costs for compliance monitoring. However, DATCP expects to absorb those costs. The fiscal estimate is based on the current use of chloropicrin in Wisconsin.

#### **Environmental Impact**

This rule regulates chloropicrin soil fumigant applications to prevent potentially hazardous off-site movement of volatilized chloropicrin. This will help prevent harm to human beings and sensitive animal species.

This rule will relax some current regulations related to applications of metam sodium soil fumigant (post-application inspection requirements and setbacks for “tarped” applications). However, this relaxation will not significantly reduce current safety protection, and will not have a significant adverse environmental impact.

## **Notice of Hearing Dentistry Examining Board**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (b), Stats., and interpreting s. 447.02 (2) (b), Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below on emergency rules to amend the effective date of CR 04-095, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

#### **Hearing Date, Time and Location**

<b>Date:</b>	<b>January 31, 2007</b>
Time:	9:00 a.m.
Location:	1400 East Washington Avenue Room 121C Madison, Wisconsin

## Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 31, 2007, to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

## Analysis

Statute interpreted: Section 447.02 (2) (b), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 447.02 (2) (b), Stats.

Explanation of agency authority: The Dentistry Examining Board has the authority under s. 447.02, Stats., to establish the standards, conditions, and any educational requirements that must be met by a dentist in order to induce anesthesia in connection with the practice of dentistry. Presently, those standards are set forth in Ch. DE 11. The adopted rules better identify the different levels of anesthesia, including nitrous oxide, anxiety, conscious sedation—enteral, conscious sedation—parenteral, deep sedation, and general anesthesia, and the requirements for each level. The rule is intended to ensure that practitioners are adequately trained before they induce anesthesia and that the public is sufficiently protected.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain language analysis: The purpose of this rule is to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007. That rule establishes and modifies the training, certification and staffing requirements for administering sedation and anesthesia at all levels performed in the course of dental practice. A system of permits issued by the Department of Regulation and Licensing, which designates by class the various levels of sedation and anesthesia practice, was established. Office facility and equipment prerequisites for safe and effective administration are delineated, the applicable standards of care are specified, and the procedure necessary for reporting adverse occurrences related to anesthesia administration is described.

These requirements emerged from recent efforts by state licensing boards to regulate “oral conscious sedation.” Oral conscious sedation drugs are being marketed to dentists for the purpose of managing patient anxiety surrounding dental work in patients that remain conscious throughout the procedure.

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

No proposed or existing federal regulation intended to address oral conscious sedation currently exists.

Comparison with rules in adjacent states:

### Illinois

The Illinois Dental Practice Act contains specific provisions governing anesthesia. Permits are required for the administration of conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Permits must be renewed biennially. Additional information is available at the Illinois website: <http://www.ildpr.com/WHO/ARprospd/WEBdentrules.pdf>

### Indiana

The Indiana State Board of Dentistry requires dentists to obtain a permit prior to administering general anesthesia, deep sedation, or light parenteral conscious sedation. Education and training are required to obtain such permits. Permits must be renewed biennially. Five hours of continuing education are required for permit renewal. Certain emergency equipment is also required. Additional information is available at Indiana’s website: <http://www.ai.org/legislative/iac/T08280/A00030.PDF>

### Iowa

The Iowa Board of Dental Examiners requires a permit for the administration of deep sedation, general anesthesia, and conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Six hours of continuing education are required for permit renewals. Additional information is available at Iowa’s website:

<http://www.legis.state.ia.us/Rules/Current/iac/650iac/65029/65029.pdf>

### Michigan

The Michigan Board of Dentistry has rules governing general anesthesia and intravenous conscious sedation. The Michigan Board is currently contemplating a rules’ revision to include specific rules for conscious sedation. Additional information is available at Michigan’s website: [http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=33811101&Dpt=CH&RngHigh](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33811101&Dpt=CH&RngHigh)

### Minnesota

The Minnesota Board of Dentistry has rules governing general anesthesia and conscious sedation. Education and training are required for both. However, no special permit is issued. Additional information is available at Minnesota’s website:

<http://www.revisor.leg.state.mn.us/arule/3100/3600.html>

Summary of factual data and analytical methodologies:

The Dentistry Examining Board gathered information from various entities involved in promoting oral conscious sedation and others experienced in regulating the practice. Dr. Joseph Best, Clinical Assistant Professor at Marquette University School of Dentistry, presented information to the board in March, 2003. Dr. Jason Goodchild, representing The Dental Organization for Conscious Sedation, delivered a presentation to the board in May, 2003. Initially, the board decided its focus in regulating oral conscious sedation should be on how it is advertised, how it is titrated so that overdosing is prevented, and how many hours of adequate training and what level of clinical experience should be required to administer it. The subject was further discussed at the American Association of Dental Examiners’ 2003 annual meeting in San Francisco. The board held open session discussions as the rules process advanced, and legal counsel reviewed the rules of other states. Eventually the focus of the board broadened, resulting in revision of the board’s anesthesia rule with sedation levels identified and a system of permits for various levels of anesthesia.

Anticipated costs incurred by private sector:

The Department of Regulation and Licensing has determined that this rule has no significant fiscal effect on the private sector.

Fiscal Estimate

See attached.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats. The Department’s Regulatory Review Coordinator

may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

Agency contact person

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Email [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before January 31, 2007, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Rules adopted by the Dentistry Examining Board under CR04-095 shall be effective July 1, 2007.

This emergency rule shall take effect on December 29, 2006.

**Notice of Proposed Rule**  
**Elections Board**  
**[CR 06-137]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., and interpreting ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, on **January 15, 2007**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis Prepared by State Elections Board

1. Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a):
2. Statutes interpreted: ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats.
3. Explanation of agency authority: In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes ? in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number." To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that number on their registration form, the Board has adopted EIBd s.3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s. 6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant casting a provisional ballot provides his or her driver's license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board's policy had been to process the election day registration of those registrants who failed to list their driver's license number on their registration application, if they had provided, on their registration form, a Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. To assure that Wisconsin's practice complies with federal law, the Elections Board proposes to promulgate the following rule providing for the issuance of a provisional ballot to those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that license number on their registration form. This rule is consistent with both federal and state law and has been approved by the U. S. Department of Justice.

4. Related statute(s) or rule(s): Subchapter II of chapter 6, Stats. and EIBd chapter 3, Wis. Adm. Code, Voter Registration.

5. Plain language analysis: The proposed rule provides the method by which persons who are not registered and who do not provide their driver's license number, for whatever reason, may register and vote on election day.

6. Summary of, and comparison with, existing or proposed federal regulations: The rule is consistent with Section 303(a)(5)(A)(i) of the Help America Vote Act, which provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes ? in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."

7. Comparison with rules in adjacent states: The rule is consistent with the requirements in Illinois, Iowa, Michigan and Minnesota, similar to those in federal law, that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes ? in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."

8. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule will have no effect on small business nor any economic impact.

10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person (including e-mail and telephone): George A. Dunst, Legal Counsel, State Elections Board, 17 West Main Street, P.O. Box 2973, Madison, Wisconsin 53701-2973; Phone 266-0136; ([george.dunst@seb.state.wi.us](mailto:george.dunst@seb.state.wi.us))

12. Place where comments are to be submitted and deadline for submission: State Elections Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; ([elections.state.wi.us](mailto:elections.state.wi.us))

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby creates Rule EIBd 3.04 interpreting ss. 5.02 (6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, and 6.56, Stats., as follows:

SECTION 1. EIBd 3.04 is created to read:

ELBD 3.04 Requiring provision of certain information by election-day voter registration applicants. (1) A qualified elector registering to vote at a polling place on election day, who has been issued a current and valid Wisconsin driver's

license, shall list his or her Wisconsin driver's license number on the voter registration application before the registration may be accepted or processed and before the person is allowed to vote at any election in Wisconsin. A Wisconsin driver's license that has expired, or has been suspended or revoked, is not a current and valid driver's license.

(2) If a current and valid Wisconsin driver's license has been issued to the registration applicant, but the registration applicant does not list the driver's license number on the registration application, the applicant will be allowed to vote a provisional ballot under s. 6.97, Stats. Individuals voting provisional ballots shall be given the written information required under s. 6.97 (1), Stats. If the person voting a provisional ballot provides his or her driver's license number to the municipal clerk, by any means feasible, including but not limited to in person, email, facsimile or telephone, not later than 4:00 p.m., on the day following the day of the election, the person's ballot will be counted.

(3) If a current and valid Wisconsin driver's license has not been issued to the applicant, the applicant shall list on the registration application either the last four digits of the applicant's Social Security Number, or the Wisconsin Department of Transportation identification card number if one has been issued to the applicant. If neither a driver's license nor a Social Security Number has been issued to the applicant, the applicant shall check the appropriate box on the application before the application may be accepted or processed and the registrant is allowed to vote.

#### **Initial Regulatory Flexibility Analysis**

The creation of this rule does not affect business.

#### **Fiscal Estimate**

The creation of this rule has no fiscal effect.

#### **Contact Person**

George A. Dunst  
 Legal Counsel, State Elections Board  
 17 West Main Street, P.O. Box 2973  
 Madison, Wisconsin 53701-2973; Phone 266-0136

### **Notice of Hearing Public Service Commission [CR 06-139]**

Hearing Date: **Friday, January 26, 2007** – 1:30 p.m.

Hearing Location: Public Service Commission, 610 North Whitney Way, Madison, WI (Amnicon Falls Hearing Room – 1st Floor)

This docket uses the Electronic Regulatory Filing system (ERF)

Comments Due: Friday, January 26, 2007 – 4:00 p.m.

FAX Due: Thursday, January 25, 2007 – 4:00 p.m.

Address Comments to:

Sandra J. Paske, Secretary to the Commission

Public Service Commission

P.O. Box 7854

Madison, WI 53707-7854

FAX (608) 266-3957

The Public Service Commission of Wisconsin proposes an order to create ch. PSC 137 relating to energy efficiency and renewable resource programs.

#### **Analysis Prepared by the Public Service Commission of Wisconsin**

Statutory authority: ss. 196.02 (1) and (3), 196.374 (3) (f), and 227.11, Stats.

Statute interpreted: s. 196.374, Stats.

2005 Wisconsin Act 141 substantially revised Wisconsin law regarding the energy efficiency programs and renewable resource programs that public utilities offer to their customers and retail electric cooperatives offer to their members. This act, whose general effective date is July 1, 2007, replaces the programs that the Department of Administration had previously been administering, which were commonly known as the "Focus on Energy." The Department contracted with third parties to implement these programs and the customers of electric and gas utilities paid for the programs either through public benefits fees or mandatory utility contributions.

Act 141 provides that the investor-owned electric and gas utilities must collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities must contract with one or more program administrators to develop and run the programs, soliciting for program administrators on a competitive basis. The proposed rules specify the application requirements and procedures for conducting such a solicitation. The rules prescribe the procedures the energy utilities must use for contracting with program administrators, identifying the criteria for evaluating responses to their solicitation and discussing methods by which the energy utilities may appeal decisions of the Commission concerning their selection criteria and their contracts with program administrators.

The proposed rules also set forth minimum requirements for the portfolio of statewide programs. These programs must: serve all customers (except those served by a utility-administered program or by a large energy customer's self-directed program); deliver environmental benefits; allocate at least 10 percent of the available funds for energy efficiency programs that serve local government and agricultural producers; establish performance goals, collect appropriate data for tracking performance, and report on performance results; include strategies to overcome market barriers and support the effective delivery of statewide programs; fund research and development projects; ensure equal opportunities for eligible customers to participate; and deliver programs that pass a portfolio test of net cost-effectiveness. The energy utilities must notify the Commission of their intent to sign a collective contract for statewide programs. The proposed rules explain the minimum requirements of such a contract and provide a method by which the energy utilities can dispute Commission decisions to modify or reject a proposed contract.

Under Act 141, municipal electric utilities and retail electric cooperatives must charge monthly fees to continue their "Commitment to Community" programs. Act 141 also permits these energy providers to contribute the fees to statewide programs and substitute the statewide programs for the Commitment to Community programs. A municipal utility or retail electric cooperative that does so makes a 3-year commitment to the statewide programs. The proposed rules explain the procedures for delivering these fees to a fiscal agent and tracking the contributions of municipal utilities and retail electric cooperatives.

Act 141 allows an energy utility, with the Commission's approval, to administer energy efficiency programs that it provides to large commercial, industrial, institution, or agricultural customers. Act 141 provides that the funding available for such a "utility-administered" program will come from moneys that would otherwise be available for

statewide programs. The proposed rules state that funding for a utility-administered program must equal the revenues collected from the energy utility's customers who are eligible for the program, less any funds set aside for statewide renewable resource programs. Act 141 further provides that an energy utility can voluntarily choose to administer or fund additional energy efficiency or renewable resource programs, above and beyond its legal requirements. The law requires that these programs also require the Commission's approval. The proposed rules set forth minimum criteria for the utility-administered programs and for voluntary utility programs, and explains how an energy utility can contest Commission decisions to modify or deny an energy utility's request to initiate either of these programs.

Act 141 prescribes a method by which a "large energy customer" can conduct its own energy efficiency program, which is funded out of moneys the customer would otherwise pay to finance the statewide programs. By law, a large energy customer is defined as a customer whose facility consumes at least 1,000 kilowatts of electricity per month or at least 10,000 decatherms of natural gas per month and who is billed at least \$60,000 in a month for electric and gas services. Under the proposed rules the Commission will determine the annual funding level for each large energy customer. The law requires the Commission's prior approval of a large energy customer program; the proposed rules establish the minimum requirements for these programs and the method by which a large energy customer can dispute Commission decisions to modify or deny a request to implement such a program.

### Initial Regulatory Flexibility Analysis

The rule will have no effect on small businesses.

#### TEXT OF PROPOSED RULE

The text of the proposed rule is set forth at [psc.wi.gov](http://psc.wi.gov). Use the docket number 1-AC-220 to find the proposed rule order attached to notice of hearing.

### Fiscal Estimate

the proposed rules will replace the existing statewide Energy Efficiency and Renewables Program at DOA and move the monitoring of the new Program to the PSC. It is expected there will be the same number of state staff, at about the same costs, working on the programs as there are now at DOA. Therefore, the result of the creation of these rules do not increase or decrease state expenditures. WI Act 141 provides for certain expenditures by local governments, however, the rules merely implement these requirements and in and of themselves do not increase or decrease local costs.

There is also no financial impact on the private sector.

### Notice of Hearing

NOTICE IS GIVEN that pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing on these proposed rule changes on Friday, **January 26, 2007**, at 1:30 p.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the docket coordinator listed below.

### Written Comments

Any person may submit written comments on these proposed rules. The hearing record will remain open for written comments from the public until January 26, 2007. All

written comments must include a reference on the filing to docket 1-AC-220. File by one mode only.

Industry: File comments using the Electronic Regulatory Filing system. This can be accessed from the Commission's website [psc.wi.gov](http://psc.wi.gov).

#### Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these can be accessed from the Commission's website [psc.wi.gov](http://psc.wi.gov).

If filing by mail, courier, or hand delivery: Address your comments as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet must state "Official Filing", the docket number 1-AC-220, and the number of pages (limited to 25 pages for fax comments).

### Contact Peron

Questions regarding this matter may be directed to docket coordinator Carol A. Stemrich at (608) 266-8174. Media questions should be directed to Linda Barth, Director of 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 (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

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 Carol Stemrich, as indicated in the previous paragraph, as soon as possible.

## Notice of Hearing Workforce Development (Labor Standards)

[CR 06-138]

NOTICE IS HEREBY GIVEN that pursuant to Section 105.115 (5), Stats., as created by 2005 Wisconsin Act 197, and s. 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to notice to home care consumers and workers and affecting small businesses.

### Hearing Information

Thursday, January 25, 2007 at 1:30 p.m.

G.E.F. 1 Building, B103

201 E. Washington Avenue

Madison

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.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the 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 audiotape format will be made available on request to the fullest extent possible.

### **Analysis Prepared by the Department of Workforce Development**

Statutory authority: Sections 105.115 (5), Stats., as created by 2005 Wisconsin Act 197, and 227.11 (2) (a), Stats.

Statutes interpreted: Section 105.115, Stats., as created by 2005 Wisconsin Act 197

Explanation of agency authority. Section 105.115, as created by 2005 Wisconsin Act 197, requires a home care placement agency that places a home care worker in the residence of a home care consumer to provide the following notices:

- Notice to the home care consumer of the consumer's duties, responsibilities, and liabilities with respect to the home care worker, unless the worker is temporarily substituting for the consumer's regular home care worker.
- Notice to the home care worker stating the worker's employment status, specifically, whether the worker is an employee of the home care placement agency, an employee of the home care consumer, or an independent contractor.

Section 105.115, Stats., specifies additional information that must be included in each of the notices and requires that the notices be on forms prescribed by the Department. Among other things, the notice to the home care consumer must contain a statement acknowledging that the home care consumer has received and understands the notice and a line for the home care consumer's signature located immediately below that statement. The home care placement agency must give the home care consumer one copy of the notice signed by the home care consumer and retain one copy in its files. Among other things, the notice to the home care worker must contain a statement acknowledging that the home care worker has received and understands the notice and a line for the home care worker's signature located immediately below that statement. The home care placement agency must also give the home care worker one copy of the notice signed by the home care worker and retain one copy in its files.

Section 105.115 (4), Stats., allows a home care consumer or worker who is not provided with a required notice to either file a complaint with the Department or commence an action in circuit court to recover specified incurred liabilities and damages from the home care placement agency. The complaint must be filed with the Department or the action commenced in circuit court no later than 3 years after the date on which the home care placement agency was required to provide the notice.

If the consumer or worker files a complaint with the Department and the home care placement agency does not pay the amount determined by the Department within 30 days after demand by the Department, the Department may commence an action in circuit court to recover that amount, and the circuit court may order the home care placement agency to pay to the consumer or worker that amount, plus an additional amount equal to 50% of that amount, together with costs and reasonable attorney fees.

Summary of the proposed rules. The proposed rules provide that the home care placement agency must have in its files a copy of the required notice to the home care consumer signed by the consumer and the required notice to the home care worker signed by the worker before the agency refers a home care worker to a home care consumer. "Refer" is defined as to bring to the attention of a potential home care consumer the qualifications of a potential home care worker.

Section 105.115 (2) (intro.), Stats., provides that the agency is not required to provide the notice to the home care consumer when placing a home care worker who is temporarily substituting for the regular home care worker of a home care consumer. The proposed rules define

"temporarily substituting" as no more than 2 weeks per incident.

A home care placement agency shall retain the required notices at least 4 years from the date that the home care agency referred the home care worker to the consumer if the home care worker and home care consumer enter into an employment agreement or contract for services.

Summary of factual data and analytical methodologies. The proposed rule requires that the home care placement agency provide the required notices and have the signed copies in its files before the placement agency refers the worker to the consumer because the agency refers potential workers to a potential home care consumer for an interview, but is not generally involved further. The home care consumer and home care worker would not likely have incentive to return the signed notice to the agency after the referral has occurred. The home care placement agency must retain copies of the notices for 4 years to ensure proper record retention until after the 3-year statute of limitations has passed.

Comparison with federal law. There is no comparable federal law on the issues in the proposed rule.

Comparison with adjacent states. Illinois. Before January 1, 2008, the Illinois Department of Public Health must adopt standards for the licensure and operation of home services agencies operated in the state. "Home services agency" is defined as an agency that provides services directly, or acts as a placement agency, for the purpose of placing individuals as workers providing home services for consumers in their personal residences, except agencies licensed under specified other laws or services provided through specified government programs.

As one of the requirements for licensure, a home services agency must provide notification, in a form and manner established by the Department of Public Health by rule, to home services workers and consumers as to the party or parties responsible under state and federal laws for payment of employment taxes, Social Security taxes, and workers' compensation, liability, the day-to-day supervision of workers, and the hiring, firing, and discipline of workers with the placement arrangement for home services.

The department is not aware of comparable requirements in other adjacent states.

Effect on small business. The proposed rule may affect small businesses. The rule is designed to assist home care placement agencies in fulfilling their statutory obligation to have signed copies of the required notices in their files and to retain the notices long enough that they are available as a defense to a complaint or action in circuit court filed alleging a violation of s. 105.115, Stats. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, [jennifer.jirschele@dwd.state.wi.us](mailto:jennifer.jirschele@dwd.state.wi.us).

### **Fiscal Impact**

The proposed rule will have no fiscal impact on state or local government.

Agency contact person. Bob Anderson, Labor Standards Bureau Director, Equal Rights Division, Dept. of Workforce Development, [bob.anderson@dwd.state.wi.us](mailto:bob.anderson@dwd.state.wi.us), (608) 266-3345.

Written comments. An electronic copy of the proposed rules is available at:

<http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also 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:

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Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than January 25, 2007, will be given the same consideration as testimony presented at the hearing.

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