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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 & Consumer Protection (2)

1. Rules adopted revising **ch. ATCP 10**, relating to diseases of fish and farm-raised deer.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish

farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

Publication Date: October 31, 2007

Effective Date: October 31, 2007

Expiration Date: March 29, 2008

Hearing Date: January 14, 2008

Extension Through: May 31, 2008

2. **EmR0804** – Creating **subch. IV of ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

Publication Date: February 22, 2008
Effective Date: February 22, 2008
Expiration Date: May 1, 2009

Commerce

Licenses, Certifications, etc., Ch. Comm 5

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules 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.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

Publication Date: June 1, 2007
Effective Date: June 1, 2007
Expiration Date: See section 7 (2), 2005 Wis. Act 456
Hearing Date: June 27, 2007

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104–135

EmR0802 – Creating **ch. Comm 132**, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Finding of Emergency

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

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as “constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015.” Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility 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 2007 Wisconsin Act 20, 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 incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near–term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 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 need to soon file their tax returns for taxable years beginning after December 31, 2006.

Publication Date: February 4, 2008
Effective Date: February 4, 2008
Expiration Date: July 3, 2008

Employment Relations Commission

Rule adopted amending **s. ERC 10.08 (1), (2), (3), (4), and (5)**, relating to increased filing fees.

Finding of Emergency

The Employment Relations Commission finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. 2003 Wisconsin Act 33 eliminated \$400,000 in General Program Revenue (GPR) and 4.0 GPR supported positions from the Commission’s 2003–2005 budget and increased the number of Program Revenue (PR) filing fee supported positions by 2.0, from 3.0 to 5.0. The same legislation also abolished the Personnel Commission and transferred certain of that agency’s former responsibilities to the Employment Relations Commission, without additional staff or funding.

3. The 2005–07 budget maintained the same reduced GPR funding and position levels and the additional PR positions as authorized in 2003 Wisconsin Act 33. The Governor’s proposed budget for 2007–09 maintains the same number of GPR and PR funded positions as the previous two budgets.

4. In order to support the 5.0 PR positions provided in the state budgets since 2003, the Employment Relations Commission doubled its filing fees in August, 2003. Despite that increase, filing fee income has averaged \$381,359 over

the past four fiscal years, an amount that was approximately \$130,350 less each year than the average budget–authorized PR position expenditures for those same years. As a result the Commission’s PR fund balance has been reduced to a level that is wholly insufficient to meet current PR expenditures.

5. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 5.0 positions provided in the PR portion of the Commission’s budget, the Commission’s ability to provide timely and expeditious dispute resolution services will be significantly harmed.

Publication Date: December 19, 2007
Effective Date: January 2, 2008
Expiration Date: May 17, 2008
Hearing Date: November 12, 2007

Government Accountability Board

EmR0803 – Repealing s. Eth 3.01, relating to the filing of all written communications and documents intended for the former Ethics Board; repealing s. Eth 3.04, relating to transcripts of proceedings before the former Ethics Board; and amending s. EIBd 10.01, relating to procedures for complaints with the former State Elections Board.

Finding of Emergency

The Government Accountability Board adopts this rule to clarify the complaint procedure applicable to complaints that will be filed with the Board under ethics, lobbying, contract–disclosure and campaign finance law and the separate complaint procedure applicable to complaints filed under elections law and the Help America Vote Act.

The Government Accountability Board finds that an emergency exists in the 2007 change in Wisconsin law that establishes the Wisconsin Government Accountability Board (effective January 10, 2008). Under 2007 Wisconsin Act 1, a statutory procedure or framework for investigation of complaints related to ethics, lobbying, contract disclosure and campaign finance, was established. That framework does not include the necessity of the filing of a complaint. Under the rules of the former Elections Board, Chapter EIBd 10, however, an investigation will not be commenced without the filing of a verified complaint. The Government Accountability Board finds that an emergency exists in the possible confusion that potential complainants may find in attempting to file a complaint with the Government Accountability Board and, as a result of that confusion, those complainants may be dissuaded from filing a complaint over which the Board has jurisdiction, or, because of that confusion, may fail to file that complaint in a timely fashion.

Publication Date: February 10, 2008
Effective Date: February 10, 2008
Expiration Date: July 9, 2008

Health and Family Services

Health, Chs. HFS 110—

Rules adopted revising s. HFS 115.04, to include the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found under s. HFS 115.04.

Finding of Emergency

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, s. 253.13, Wis. Stats., requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow–up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Advisory Umbrella Advisory Group has recently recommended the Department add the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for and listed in s. HFS 115.04. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated prevalence of 1 in 66,000, and a Wisconsin annual birth rate around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

The Advisory Group also recommended the Department begin screening newborns for SCID and related conditions of immunodeficiency as soon as possible. Before the screening can begin, the Department needs to add these conditions to the list in s. HFS 115.04. Therefore, it is proposed to put an emergency rule in effect first, to be followed by an identical proposed permanent rule to replace the emergency rule.

The Department will immediately promulgate identical permanent rules to replace these emergency rules.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 6, 2008

Natural Resources (2)

Fish, Game, etc., Chs. NR 1—

1. Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species.

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date: November 2, 2007
Effective Date: November 2, 2007
Expiration Date: March 31, 2008
Hearing Date: December 3, 2007
Extension Through: May 31, 2008

2. **EmR0808** – Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species.

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:

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the

VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

This emergency rule amends the emergency rule relating to chs. NR 19 and 20 put into effect on November 2, 2007.

Publication Date: April 4, 2008

Effective Date: April 4, 2008

Expiration Date: These rules shall remain in effect only for 150 days from November 2, 2007, the effective date of Order No. FH–40–07(E), unless extended pursuant to s. 227.24 (2), Stats.

Extension Through: May 31, 2008

Natural Resources

Environmental Protection – Water Regulation, Chs. NR 300—

Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general

permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, 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: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large–scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty–seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007
Extension Through: April 5, 2008

Natural Resources

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

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially 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 rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court–ordered vacatur of the federal regulations. Normal rule–making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

Publication Date: September 13, 2007
Effective Date: September 13, 2007
Expiration Date: February 10, 2008
Hearing Date: October 26, 2007
Extension Through: June 7, 2008

Public Instruction (3)

1. A rule is adopted creating **ch. PI 33**, relating to grants for nursing services.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The school nursing grant program under s. 115.28 (47), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$250,000 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: November 24, 2007
Effective Date: November 24, 2007
Expiration Date: April 22, 2008
Hearing Date: February 21, 2008

2. **EmR0801** – Creating **ch. PI 31**, relating to grants for science, technology, engineering, and mathematics programs.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The STEM program under s. 115.28 (46), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$61,500 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: January 30, 2008
Effective Date: January 30, 2008
Expiration Date: June 28, 2008
Hearing Dates: March 18 and 21, 2008

3. **EmR0805** – Creating ch. PI 16, relating to four–year–old kindergarten grants.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The 4–year–old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008–09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

Publication Date: February 25, 2008
Effective Date: February 25, 2008
Expiration Date: July 24, 2008
Hearing Date: April 17, 2008

Revenue

A rule was adopted revising s. **Tax 8.63**, interpreting s. 125.54 (7), Stats., relating to liquor wholesale warehouse facilities.

Finding of Emergency

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

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: October 29, 2007
Effective Date: October 29, 2007
Expiration Date: March 27, 2008
Hearing Date: January 2, 2008
Extension Through: May 25, 2008

Transportation

Rule adopted creating **ch. Trans 178**, relating to the Unified Carrier Registration System.

Analysis

This chapter establishes in the Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

Exemption From Finding of Emergency

The Legislature, by Section 2927, as created by 2007 Wis. Act 20, provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: December 19, 2007
Effective Date: December 19, 2007
Expiration Date: See Section 2927, 2007 Wis. Act 20
Hearing Date: March 5, 2008

Workforce Development (3)

Family Supports, Chs. DWD 12 to 59

1. Rule adopted amending s. **DWD 56.06 (1) (a) 1.** and creating s. **DWD 56.06 (1) (a) 1. r.**, relating to child care rates.

Finding of Emergency

The Department of Workforce Development 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:

2007 Wisconsin Act 20 reflects that child care rates will not be increased for the 2008–2009 biennium. Chapter DWD 56 currently provides that child care rates shall be set annually in accordance with a market rate survey and procedures described in s. DWD 56.06 (1). Historically, the rate adjustments have been effective January 1 of the new year. This emergency rule is necessary to provide that child care rates will not be adjusted for 2008 in accordance with 2007 Wisconsin Act 20. A corresponding permanent rule will provide that child care rates will not be adjusted for 2008 and 2009.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 10, 2008

2. **EmR0806** – Rule adopted amending s. **DWD 56.08 (1) and (2) (a), (e), and (f)** and repealing and recreating **Table DWD 56.08**, relating to child care copayments and affecting small businesses.

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:

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

Publication Date: February 27, 2008
Effective Date: March 30, 2008
Expiration Date: August 27, 2008
Hearing Date: April 11, 2008

3. **EmR0807** – Rule adopted amending **s. DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c)**; and repealing and recreating **s. DWD 56.04 (2) (d)**, relating to child care enrollment underutilization.

Finding of Emergency

The Department of Workforce Development 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 facts constituting the emergency is:

The Department projects a potential current year budget shortfall in the child care subsidy program of \$18.6 million if no corrective measures are taken. This rule will provide for more efficient use of the program’s limited funding.

Publication Date: March 24, 2008
Effective Date: March 30, 2008
Expiration Date: August 27, 2008

Workforce Development

*Public Works Construction Contracts,
 Chs. DWD 290 to 294*

Rule adopted amending **ss. DWD 290.155 (1) and 293.02 (1) and (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.

Finding of Emergency

The Department of Workforce Development 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:

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. The adjustment of the thresholds for the application of the payment and performance assurance requirements avoids imposing an additional administrative burden on contractors for the same reason. 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 rule–making process.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: February 14, 2008

Scope Statements

Natural Resources

Environmental Protection – Wis. Pollutant Discharge Elimination System, Chs. NR 200—

Subject

Revises ch. NR 207, relating to implementation of the state's antidegradation policy.

Objective of the Rule

The antidegradation policy is found at section NR 102.05 (1) (a), Wis. Adm. Code, and establishes that no waters shall be lowered in water quality unless it has been demonstrated that the change is justified as a result of necessary economic and social development. In no case however, can water quality be lowered to the point where it becomes injurious to any assigned uses (or uses presently possible) to the receiving water. Chapter NR 207, Wis. Adm. Code, establishes procedures to implement the antidegradation policy including when proposed new or increased discharges are significant enough to invoke antidegradation procedures, what procedures must be followed and how the antidegradation analysis will be evaluated.

Policy Analysis

Chapter NR 207 was originally developed to address point source pollution discharges from industrial processes or from municipal wastewater treatment facilities. Since the rule was first promulgated in 1989, changes to federal regulations, and concomitant changes to state regulations require municipal storm water discharges to be permitted through the Clean Water Act, and therefore subject to antidegradation requirements. However, the nature of these discharges are similar to nonpoint source discharges and the definitions and implementation procedures currently in ch. NR 207 do not apply well. The department proposes to add a section in ch. NR 207 to establish implementation procedures and to add or revise certain definitions to allow for application of the state antidegradation policy to municipal storm water discharges. In addition, the public participation process for antidegradation review is not established in ch. NR 207, and the department proposes to add a section to clarify when and how the public may have input into the antidegradation process.

Statutory Authority

Sections 281.15, 283.13 (5), 283.33 (8) and 227.11 (2), Stats.

Entities Affected by the Rule

Municipalities that must obtain Wisconsin Pollution Discharge Elimination System (WPDES) storm water discharge permits (approximately 240) will be required to conform to the revised antidegradation implementation procedures. Builders and developers and environmental organizations may also be affected.

Comparison with Federal Regulations

The counterpart federal regulation is 40 CFR 131.12. This regulation requires antidegradation review for all discharges that have the potential to lower water quality. It imposes a

necessity test and an important social and economic development test before the discharge can be approved. When NR 207 was first promulgated in 1989, municipal storm water discharges were not regulated under federal law, so the rule did not address them. Federal regulations now require permits for municipal storm water discharges, so antidegradation requirements need to be updated to include them. The proposed revision will address this issue as well as to define public participation opportunities required by the Federal Clean Water Act.

Estimate of Time Needed to Develop the Rule

Approximately 600 hrs of staff time, primarily within the Bureau of Watershed Management

Contact Information

Russell Rasmussen, Director
Bureau of Watershed Management
Phone: 608–267–7651
Email: Russell.Rasmussen@Wisconsin.gov

Pharmacy Examining Board

Subject

Amends s. Phar 6.08, relating to pharmacy alarms.

Objective of the Rule

Amend the current rule to require pharmacies located inside another structure to have a separate alarm system for the pharmacy.

Policy Analysis

The current rule does not require pharmacies located inside another structure to be separately alarmed. This presents a security concern in the event a security breach occurs directly to the pharmacy.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (b), (d) and (e), Stats.

Entities Affected by the Rule

Pharmacies licensed in Wisconsin within a larger structure that are not alarmed separate from the larger structure.

Comparison with Federal Regulations

None.

Estimate of Time Needed to Develop the Rule

100 hours.

Pharmacy Examining Board

Subject

Revises s. Phar 7.12 (2) (f), relating to regulations for central fill pharmacies.

Objective of the Rule

Corrects a typographical error in s. Phar 7.12 (2) (f).

Policy Analysis

The current rule refers to drug initialization review. It should read, drug utilization review.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (b), (d) and (e), Stats.

Entities Affected by the Rule

Wisconsin pharmacies and pharmacists.

Comparison with Federal Regulations

None.

Estimate of Time Needed to Develop the Rule

35 hours.

Public Defender**Subject**

Revises ch. PD 1 regarding the certification criteria for private attorneys and the process by which private attorneys are certified.

Objective of the Rule

The objectives of these rules are to permit the State Public Defender (SPD) to consider an attorney's prior disciplinary record, other conduct as an attorney and other behaviors, in addition to experience and education, when making certification, recertification and decertification decisions, to permit discretion in recertifying an attorney who had been excluded from a certification list and to permit the SPD to suspend an attorney pending investigation. Also, the objective of these rules is to permit the SPD to disclose comments made during investigations if those comments are already public.

Policy Analysis

The SPD appoints attorneys to represent financially eligible persons charged with crimes, juveniles facing delinquency proceedings and others who are subject to civil commitments. Due to conflict of interest and workload issues, the SPD assigns some cases to private attorneys who are not employees of the SPD. The SPD does not have direct oversight of the representation of these cases assigned to private attorneys because of Supreme Court Rules governing conflict of interest cases. Therefore, the SPD uses other

means, including certification lists, to ensure that the private attorneys are competent to represent clients in different types of cases.

Currently, the SPD must certify an attorney who meets the experience and education qualifications. The rules permit the SPD to consider conduct as an attorney including prior disciplinary actions by the Wisconsin Supreme Court, sanctions by Client Protection Fund, conduct as an attorney, and prior investigations and actions against certification status by the SPD. The rules permit the SPD to suspend an attorney pending the outcome of an investigation. Additionally, the rules specify that an attorney who has been excluded or decertified must apply for recertification and must be subject to the same criteria as any applicant. Also, any comments made during an investigation can be disclosed if these comments are already public.

Policy Alternatives

The SPD could abolish the certification list procedure and directly oversee the representation provided by the private bar. However, as previously discussed, the Supreme Court Rules governing attorney conduct in conflict of interest cases would prevent that direct oversight.

The SPD could disregard the conduct of an attorney, including disciplinary actions by the Wisconsin Supreme Court and include any attorney who meets the education and experience requirements. This alternative impedes the SPD's ability to ensure the attorneys appointed are competent and qualified.

Statutory Authority

Sections 977.02 (5) and (6), 977.03 (3), 977.08 (1), (2), and (3), Stats.

Entities Affected by the Rule

Clients; private attorneys who seek certification or recertification; circuit court and appellate court judges; District Attorneys' offices; Department of Justice.

Comparison with Federal Regulations

There are no federal regulations relating to the specific certification requirements for appointment of a Wisconsin trial or appellate case.

Estimate of Time Needed to Develop the Rule

The SPD estimates it will take 200 hours of employee time to develop the rule; no other resources will be needed.

Submittal of Rules to Legislative Council Clearinghouse

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

Administration CR 08–025

On April 1, 2008, the Wisconsin Department of Administration submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: Sections 16.004 (1) and 16.855 (15), Stats.

Statutes Interpreted: Sections 16.85 and 16.855, Stats.

The proposed order affects Chapter Adm 21, relating to the requirements for advertising, bidding and awarding of construction projects.

Agency Procedure for Promulgation

Public hearings on the proposed rule are scheduled for May 14 and 15, 2008, in Madison and Eau Claire, Wisconsin. The Department of Administration Division of State Facilities is the organizational unit responsible for the promulgation of the proposed rule.

Contact Information

If you have any questions regarding the proposed rule, please contact:

Donna Sorenson
Department of Administration
101 E. Wilson Street, 10th Floor
P.O. Box 7864

Madison, WI 53707–7864
Phone: (608) 266–2887
Email: Donna.Sorenson@Wisconsin.gov

Government Accountability Board (Formerly Elections Board) CR 08–024

**(Scope statement filed by Elections Board relating to
Ch. EIBd 12, Register August 15, 2007 No. 620)**

On March 31, 2008, the Government Accountability Board submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates chapter GAB 12, relating to the certification and training of municipal clerks.

Agency Procedure for Promulgation

The Government Accountability Board wishes to promulgate this order pursuant to the 30–day notice procedure under s. 227.16 (2) (e), Stats. George A. Dunst, Staff Counsel, is responsible for internally processing this rule.

Contact Information

George A. Dunst
Phone: (608) 266–0136
Email: George.Dunst@wisconsin.gov

Rule–Making Notices

Notice of Hearings

Administration

CR 08–025

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 227.11 (2) (a), and 16.855 (15), Stats., and interpreting ss. 16.85 and 16.855, Stats., the Department of Administration will hold public hearings on a proposed rule order revising ch. Adm 21 relating to construction contracting for facilities owned by the State of Wisconsin.

Hearing Information

Date: May 14, 2008
Time: 3:00 PM to 5:00 PM
Location: Dept. of Administration Building
 101 East Wilson Street
 First Floor, St. Croix Conference Room
 Madison, Dane County

Date: May 15, 2008
Time: 10:00 AM to 12:00 Noon
Location: Eau Claire State Office Building
 718 West Clairemont Avenue
 First Floor Conference Room 105
 Eau Claire, Eau Claire County

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well.

Submission of Written Comments

Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to:

Donna Sorenson
 Department of Administration
 101 E. Wilson Street
 P.O. Box 7864
 Madison, WI 53707–7864
 Phone: (608) 266–2887
 Email: Donna.Sorenson@Wisconsin.gov

Comments may also be submitted via the Wis. Admin. Rules Website at: <http://adminrules.wisconsin.gov>

Written comments must be received by June 15, 2008, to be included in the record of rule–making proceedings.

Analysis Prepared by the Department of Administration

Statutory authority

Sections 16.004 (1) and 16.855 (15), Stats.

Statutes interpreted

Sections 16.85 and 16.855, Stats.

Explanation of agency authority

Pursuant to s. 16.85, Stats., the Wisconsin Department of Administration is responsible for the supervision of all engineering, architectural services or construction work performed by, or for, the state in the construction and acquisition of new buildings or improvements and additions to existing buildings.

Related statute or rule

None

Summary of proposed rule

The Department proposes amending Chapter Adm 21, regarding the Department's requirements for advertising, bidding and contracting construction projects.

The proposed rule amendments would permit bidders and contractors to submit state construction project bids via electronic format. This allows for standardized, fair and equitable bidding statewide while maintaining bid integrity. Projects outside of the Dane County area now requires bidders to prepare bids in advance of bid opening and travel to Madison, or use a mail service to deliver the bid to the department. This practice is not considered equitable to contractors throughout the State to have equal preparation time for submitting bids for state construction projects.

Included in the proposed rule are amendments to provide consistency to Department of Administration references as well as language striking written word bids versus numerical values.

Comparison of rules in adjacent states

The State of Wisconsin surveyed other states through the National Association of State Facility Administrators and received several responses. The States of Montana, Ohio, Kansas and Alaska do not currently utilize electronic bidding practices. The State of Vermont has instituted electronic bidding with success and little adverse affect. Several states responded that electronic bidding was being utilized in their Departments of Transportation for roadway projects.

The State of Wisconsin also used data from the Federal Highway Administration regarding other states and bidding practices. 27 states are using electronic bidding for state DOT projects according to a 2006 survey.

The Illinois Capital Development Board opens sealed bids at four locations, Springfield, Chicago, Carbondale and Peru for state building construction projects.

The State of Minnesota Materials Management Division requires on line registration of vendors, but still does sealed public bid opening in paper format. Minnesota does have an initiative to move to electronic plan distribution to vendors.

The State of Iowa individual departments handle construction independently. With exception of the Iowa Transportation Department, the other departments do individual sealed bid delivery and public bid opening via paper bid submittals.

Comparison with federal regulations

The US Department of Transportation Federal Highway Administration utilizes electronic bidding for highway construction projects. A review of the federal websites appear to indicate that other federal agencies can centrally post requested construction/services to the Federal Business Opportunities website with instructions on bidding independent to each agency within the federal government. A review of most of these federal posted projects indicates bids are to be hardcopy hand/overnight or other service delivered to a specified location. None appeared to have electronic bidding availability.

The US Army Corps of Engineers utilizes the US Central Contractor Registration site for Contractors interested in

doing Business with the Federal Government. The solicitations appear to require submittal of sealed hard copy bids to be submitted at various locations throughout the country.

Summary of factual data and analytical methodologies

The current rule has been in existence since 1979 with little or no updating. Some editorial and dollar threshold changes were made in a 2006 rule package.

The proposed rule permits bidders and contractors to submit state construction project bids via electronic format. This allows for standardized, fair and equitable bidding statewide while maintaining bid integrity. Projects outside of the Dane County area currently require bidders to prepare bids in advance of bid opening and drive to Madison or use a mail service to deliver the bid to the department. This practice is not considered equitable to contractors throughout the state. Business practices since 1979 have radically changed including current practices such as electronic and web based advertisement, electronic document exchange and acceptance and electronic notifications. The proposed rule amendments will expedite the processing of construction documents and enhance the construction of state projects.

Initial Regulatory Flexibility Analysis

The Department foresees a positive and significant impact on small businesses.

It is estimated the majority of bidders on state construction projects are small business contractors and vendors. This change will save contractors and bidders driving and delivery time and associated costs as well as allowing them additional time in the bidding process to prepare bids for submittal to the department.

Fiscal Estimate

State fiscal effect

This rule will have no effect on the revenues received by the department.

The final decision on how the Department will accept electronic bids has not been made. At this time, it is anticipated that bids would be accepted as a secure upload to WisBuild, which is a secure website used for managing data related to State of Wisconsin building projects from design to completed construction. This would require a robust environment as multiple bidders may attempt to upload their bid near the time of the bid opening.

If the Division of Enterprise Technology can not host such an environment, then the Division of State Facilities would need to contract with a hosting service.

There will be one-time programming costs which are estimated to be \$5,200. Also, there will be on-going costs of hosting a database and a file server. Since the size of the database is unknown at this time, it is not possible to identify those on-going costs.

Local fiscal effect

There is no fiscal effect on local units of government.

Private entities fiscal effect

It is unknown at this time as to whether or not there would be any on-going costs to the contractors or bidders as the final decisions on method of transmittal of the bids have not been made.

Text of Proposed Rule

SECTION 1. Adm 21.02 (7), (8) and (9) are renumbered to Adm 21.02 (8), (9) and (10).

SECTION 2. Adm 21.02 (7) is created to read:

(7) “Department” means the Wisconsin department of administration.

SECTION 3. Adm 21.03 (2) is amended to read:

(2) The department of ~~administration~~ shall advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper; or by official department website. The notice shall be published a minimum of 30 days prior to bid opening, unless the department of ~~administration~~ indicates in writing that the bidding period will be for a lesser period of time.

SECTION 4. Adm 21.04 (1) is amended to read:

(1) The department of ~~administration~~ may issue addenda during the bidding period to correct, alter, or to provide clarification for the project being bid or to extend the bidding period. No oral correction, alteration or clarification of said documents shall be considered valid.

SECTION 5. Adm 21.05 is repealed and recreated to read:

Adm 21.05 Submittal and receipt of bids. (1) All bids shall be submitted electronically or in sealed envelopes.

(a) Electronic bids received by the department shall be submitted via a secured, authorized electronic transfer that provides for time and date verification as well as proper security in the transfer of data and information. Bids shall conform to project specification bid forms and include all information required by the specification as well as this section. The bidder shall submit all supporting and original documentation requested by the department within 3 calendar days of the request.

(b) Sealed envelope bids shall be enclosed in distinctly marked special envelopes provided by the department. Should the bidder not possess the special envelope provided by the department, the bidder shall place the following information on the face of the outermost envelope containing the bidder’s proposal:

1. This envelope contains a sealed bid.
2. Project name.
3. Project number.
4. Location of project.
5. Division(s) of work being bid.
6. Bid date.
7. Name and address of bidder.

(2) The bidder is responsible for the bid described in (a) or (b) being delivered to the place designated in the published advertisement for proposals, on or before the date and time specified.

(3) All bids received by the department shall be stamped electronically or upon the face of the envelope indicating the date and time the bid was received.

(4) Bids received by the department after the date and time designated in the advertisement for proposal shall be returned to the bidder unopened.

(5) The department shall determine bids that conform with this section in the best interests of the state.

SECTION 6. Adm 21.06 (1) (b) is amended to read:

(b) Personal appearance of the bidder or the bidder’s authorized representative, whereby the identity and authority

of the person may be ascertained by the department of ~~administration~~. After authority and identity is established, the individual shall be required to sign a receipt for the withdrawn bid.

SECTION 7. Adm 21.07 (1) is amended to read:

(1) A representative of the department of ~~administration~~ shall preside at the bid opening as the bidding officer. At the date and time for bid opening, the bidding officer shall announce the following to those in attendance:

SECTION 8. Adm 21.07 (1) (b) 2. is repealed.

SECTION 9. Adm 21.07 (3) (c) and (d) are amended to read:

(c) The ~~written word~~ price quotation for the base bid and alternate bid(s).

(d) If offered, the ~~written word~~ price quotation of a combined bid and identification of the base bids which constitute the work proposed under the combined bid submitted.

SECTION 10. Adm 21.08 (1) is amended to read:

(1) The department of ~~administration~~ shall reject any bid which evidences any of the following conditions:

SECTION 11. Adm 21.08 (2) is amended to read:

(2) The department of ~~administration~~ may reject any bid if the included documents have any of the following informalities, unless such informalities are waived by the department of ~~administration~~ and corrected by the bidder within 3 working days from the date and time of bidder notification:

SECTION 12. Adm 21.08 (3) is amended to read:

(3) The department of ~~administration~~ may reject all low bids constituting the total lowest construction cost when such amount exceeds the authorized funds available.

SECTION 13. Adm 21.08 (4) is amended to read:

(4) The department of ~~administration~~ reserves the right to reject any of all bids, if in the opinion of the department of ~~administration~~ the best interest of the state will be served.

SECTION 14. Adm 21.08 (7) is amended to read:

(7) The department of ~~administration~~, with the approval of the attorney general, may settle or dispose of cases or issues arising out of errors, omissions, or mistakes contained in a bid which result in the bidder giving written notice of the bidder's intent not to execute the contract. However, if no such settlement is obtained, the bidder proves in circuit court for Dane county that in making the mistake, error or omission the bidder was free from negligence.

SECTION 15. Adm 21.09 (1) is amended to read:

(1) The department of ~~administration~~ will award contracts to the lowest qualified responsible bidder or bidders that result in the lowest total construction cost for the project and such amount does not exceed the available funds authorized for the project. Final determination as to which bidders are the lowest qualified responsible bidders is vested with the department of ~~administration~~.

SECTION 16. Adm 21.09 (2) is amended to read:

(2) In cases where the bidding documents provide a formula for evaluation analysis in conjunction with the base bid or alternate bid(s), the department of ~~administration~~ will award to the lowest qualified responsible bidder(s) whose bid(s) produce the lowest bid when combined with the dollar value derived from the formula for converting evaluation factors. (see s. Adm 21.02(7)(a).)

SECTION 17. Adm 21.09 (4) is amended to read:

(4) Should the total of the proposals submitted by the lowest qualified responsible bidder(s) exceed the limits imposed by authorized funds, the department of ~~administration~~ may negotiate deductive changes in the lowest qualified bid for each contract to bring the bids within funding limits.

SECTION 18. Adm 21.09 (5) is amended to read:

(5) The department of ~~administration~~ may consider any unsolicited material accompanying the bid of the lowest qualified responsible bidder only after contracts have been awarded on the basis of the information contained in the bid form. Such consideration may be given to unsolicited material only if it is in the best interest of the state to do so, and does not warrant rejection due to any of the conditions stated in s. Adm 21.08 (1) (e).

SECTION 19. Adm 21.09 (6) is amended to read:

(6) Award of a contract will not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department of ~~administration~~.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Notice of Proposed Rules
Government Accountability Board
(Formerly Elections Board)
CR 08-024

**(Scope statement filed by Elections Board relating to
Ch. EIBd 12, Register August 15, 2007 No. 620)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., and interpreting ss. 7.15 (1m), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Government Accountability Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, May 15, 2008, the 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. The rule creates ch. GAB 12, relating to the certification and training of municipal clerks.

Submission of Written Comments

Comments can be submitted to the Government Accountability Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

Contact Person

George A. Dunst
Staff Counsel, Government Accountability Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973
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Analysis Prepared by the Government Accountability Board

Statutory authority

Sections 5.05 (1) (f) and 227.11 (2) (a)

Statute interpreted

Section 7.15 (1m), Stats.

Explanation of agency authority

Under s. 7.15 (1m), Stats., “Each municipal clerk shall, at least once every 2 years, attend a training program sponsored by the board under ss. 7.31 and 7.315” and under s. 7.315 (3), “The board shall, by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15 (1m). The board may provide such training directly or arrange for such training to be provided by other organizations. The rules shall provide a method for notifying the relevant municipal governing body if a municipal clerk fails to attend required training.” To comply with these statutory requirements, the Board has adopted Chapter GAB 12, relating to the certification and training of municipal clerks.

Related statute(s) or rule(s)

Section 7.31, Stats. – Training and certification of chief inspectors.

Plain language analysis

The proposed rule provides the requirements that, and the method by which, municipal clerks receive elections training and certification.

Comparison with federal regulations

Federal law does not regulate the training of municipal clerks. Although federal law does not have a comparable provision for the training of municipal clerks, federal law – the Help America Vote Act of 2002 or “HAVA,” (Public Law 107–252, Oct. 29, 2002) – has mandated the training of election officials and poll workers in each of the 50 states. Under HAVA, each state receiving federal funds to improve the administration of elections in the state has to develop a plan that includes “programs for election official education and training, and poll worker training which will assist the state in meeting the requirements of Title III” (*of the Act*). The State of Wisconsin has developed and is implementing such a plan for poll workers and now is implementing a plan for the training of municipal clerks because municipal clerks also act as election officials.

Comparison with rules in adjacent states

Illinois, Iowa, Michigan and Minnesota all statutorily require that persons who conduct elections shall receive election training.

Minnesota’s administrative rule, Chapter 8240, requires all persons conducting elections, including local election officials, to complete a training program and to maintain a current elections training certification.

Neither Illinois nor Michigan has an administrative rule governing the election training of clerks or election officials other than election judges (inspectors/pollworkers).

Iowa’s Administrative Code provides that “all precinct election officials and any other persons who will be employed in or around the polling places on election day and “At least two precinct election officials who will serve on each precinct election board at the forthcoming election shall attend an election training course not later than the day before each primary and general election.” The training is conducted by the County Commissioner of Elections and applies to those persons who actually conduct elections and does not apply to municipal clerks who do not have an elections supervisory function.

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.

Analysis and supporting documents used to determine effect on small business

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

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Text of Proposed Rule

Pursuant to the authority vested in the State of Wisconsin Government Accountability Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Government Accountability Board hereby creates Chapter GAB 12, interpreting ss. 7.15 (1m), 7.31, and 7.315, Stats., as follows:

SECTION 1. Chapter GAB 12 is created to read:

Certification and Training of Municipal Clerks

GAB 12.01 Municipal clerk training. (1) Definitions. As used in this rule:

- (a) “Board” means the government accountability board.
- (b) “Election cycle” begins on January 1 of an odd-numbered year and continues through December 31 of an even-numbered year.
- (c) “Municipal clerk” includes the executive director and deputy director of the Milwaukee City Board of Election Commissioners.

(d) “Municipal election official” means municipal clerk, deputy clerk or any municipal employee charged with duties related to the administration of elections.

(e) “Statewide Voter Registration System” or “SVRS” is the election administration software application provided by the board to enable local election officials to register voters, track absentee voting and administer elections.

GAB 12.02 Certification. (1) Only municipal clerks who meet the training standards established in this chapter shall be certified by the board.

(2) Any other municipal election official who meets the standards established in this chapter may be certified by the board.

(3) The standards for the initial and the renewal certifications of municipal clerks are those set forth in this chapter.

(4) A record of the municipal clerks who meet the training requirements established by this chapter shall be maintained by the board.

(5) To qualify for certification, a municipal clerk shall provide the board with documentation of attendance at any approved training that has not been conducted by board staff.

(6) The records concerning the training qualifications of municipal clerks are public records and shall be provided by the board upon request.

(7) The governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the board.

GAB 12.03 Qualification. (1) Only individuals who have been elected or appointed to the office of municipal clerk, or

who serve as a municipal election official, shall be certified by the board.

(2) Individuals shall attend or view a core curriculum training course conducted under the direction of the board staff to qualify for initial certification.

(3) Training opportunities shall be conducted by the board in several locations throughout the state, and shall be made available on–line and in video or audio format, to enable interested individuals to participate.

(4) Each municipal clerk who attends a training course conducted under the direction of the board’s staff shall register with the board.

(5) The expiration date for training certification shall coincide with the end of the election cycle immediately following attendance at the initial training.

GAB 12.04 Training content. (1) The content of the training curriculum is prescribed by the board.

(2) The training curriculum shall include the following elements:

(a) A core curriculum session that provides an overview of the election–related duties of a municipal clerk.

(b) Instructions on the proper completion of election–related forms and notices, including a requirement that the information on election–related forms be legible.

(c) Review of the applicable statutory deadlines for publishing notices, submitting petitions and ballot access documents.

(d) Directions for the review and completion of election–related forms and petitions, including affixing the signature and certification required by law.

(e) Treatment of confidential voter information and proof of residence documents received from a voter.

(f) Review of the deadlines and procedures for delivering completed election–related documents to the board of canvassers.

(g) A description of the calendar of election events and critical election–related timelines.

(h) Duties of the municipal clerk with respect to candidates for municipal office.

(i) Requirements for ballot design and preparation, including write–in ballots for military and overseas electors.

(j) Duties of the municipal clerk with respect to voters including, absentee, military, overseas and confidential electors and accessibility to the electoral process.

(k) Requirements for recruitment, appointment and training of election inspectors, special voting deputies, special registration deputies and other election officials.

(L) Requirements for acquisition, testing, security and audit of voting equipment.

(m) Procedures for ensuring security of ballots and voting equipment including chain–of–custody documentation, use of serialized, tamper–evident seals and monitoring of security procedures.

(n) Requirements for establishing, equipping, supplying, securing, and preparing polling places for elections, including emergency preparedness.

(o) Election–day responsibilities of the municipal clerk.

(p) Post–election responsibilities of the municipal clerk, including conducting the municipal canvass, issuing certificates of election and conducting a recount.

(q) Requirements for recall and direct legislation.

(r) The consequences for failing to follow prescribed procedures.

(s) Any other information prescribed by the board.

GAB 12.05 Certification renewal. (1) After attending the initial training, individuals seeking to maintain their training certification must attend, in the election cycle, an additional three (3) hours of training approved by the director and general counsel of the board.

(2) To renew their certification for the next election cycle, individuals must attend six (6) hours of training approved by the director and general counsel of the board.

(3) Individuals may not carry over training hours to qualify for renewal of their certification in subsequent election cycles.

(4) The approved training may consist of attendance at any combination of the following training opportunities if that training opportunity covers all or part of the training content described in this chapter:

(a) A certification–training course for municipal clerks or chief election inspectors conducted under the direction of the board staff.

(b) Training on the use of the Statewide Voter Registration System presented under the direction of the board staff. This includes on–line training developed for the board and made available to local election officials.

(c) A workshop conducted by the board staff at a state or district meeting of the Wisconsin County Clerks Association, Wisconsin Municipal Clerks Association, Wisconsin Towns Association or League of Wisconsin Municipalities.

(d) An information presentation conducted by the board staff and sponsored by the University of Wisconsin Extension Local Government Center.

(e) Training conducted by a municipal or county clerk for election inspectors pursuant to ss. 7.10 (9), 7.15 (1) (e) and (11), Wis. Stats.

(f) Attendance at a state, regional or national conference, or a seminar of a professional organization, that serves election officials.

(5) The board shall maintain a record of the approved training event, including the date and location of the approved training.

(6) When the individual has completed the renewal requirements, the individual’s certification shall be extended for the duration of the next election cycle.

GAB 12.06 Certification waiver. (1) In the event of an emergency, the municipal clerk may make a written request to the board for a waiver of the training requirement for a municipal clerk.

(2) The request shall be communicated to the director and general counsel of the board in an expeditious manner.

(3) The request shall describe the facts that establish the basis for the emergency request and the steps that have been taken by the municipal clerk to obtain the required training.

(4) The director and general counsel of the board may grant a waiver of the required training for one election cycle.

The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s. 227.22 (2), Stats.

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 07–061

A rule–making order revising chs. ATCP 10 and 12, relating to animal health fees.

Employee Trust Funds

CR 07–062

A rule–making order that repeals ss. ETF 11.16 (2) (c), 20.14, 20.15, 20.16 and 20.18, amends ss. ETF 10.01 (7), 20.19 (2), 20.35 (3) (d) 2. and 50.50 (2) (b), repeals and recreates s. ETF 29.19 (2) (c) and creates s. ETF 20.17, relating to the purchase of credit for service.

Health and Family Services

*Mgmt. & Technology & Strategic Finance, Chs. HFS 1—
Community Services, Chs. HFS 30—*

CR 08–017

A rule–making order revising chs. HFS 1 and 65, relating to parental payment limits for children’s long term support services and family support services.

Health and Family Services

Health, Chs. HFS 110—

CR 08–005

A rule–making order revising ch. HFS 115, relating to newborn screening for congenital and metabolic disorders.

Insurance

CR 08–006

A rule–making order revising ss. Ins 17.01 and 17.28, relating to fiscal year 2009 fund fees and mediation panel fees.

Transportation

CR 07–081

A rule–making order revising ch. Trans 101, relating to the demerit point system.

Transportation

CR 08–002

A rule–making order revising ch. Trans 178, relating to the unified carrier registration system.

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.

Natural Resources

Environmental Protection – General, Chs. NR 100— CR 06–005

A rule-making order repealing and recreating ch. NR 149, relating to laboratory certification and registration. Effective 9-1-08. [Reprinted from the March 31, 2008 Register to correct effective date]

Public Service Commission CR 07–044

A rule-making order amending ss. PSC 111.71 and 112.073, relating to the information to be included in an electric utility construction application. Effective 6-1-08.

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