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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (3)

1. EmR1209 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantines of Rock County and Walworth County for emerald ash borer.

This rule was approved by the governor on July 12, 2012.

The scope statement for this rule, SS 019–11, was approved by the governor on August 29, 2011, published in Register No. 669, on September 14, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

Finding of Emergency

(1) On June 11, 2012, APHIS identified EAB in Walworth County, near the village of Walworth. Subsequently, APHIS also positively identified EAB in Rock County in the city of Janesville on June 25, 2012. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Rock County and Walworth County but that it will take six to eight weeks for

APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB: July 16, 2012
Publication Date: July 17, 2012
Effective Dates: July 17, 2012 through December 13, 2012
Hearing Date: August 28, 2012

2. EmR1211 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **section ATCP 21.17 (1) (b)** and to create **section ATCP 21.17 (1) (c)**, relating to the quarantine of Trempealeau County for emerald ash borer.

This rule was approved by the governor on August 30, 2012.

The scope statement for this rule, SS 042–11, was approved by the governor on November 8, 2011, published in Register No. 671 on November 30, 2011, and approved by the Board of Agriculture, Trade and Consumer Protection on December 15, 2011.

Finding of Emergency

(1) On August 16, 2012, APHIS identified Emerald Ash Borer (EAB) in Trempealeau County, at Perrot State Park. EAB is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare quarantines for Trempealeau County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of the county to areas of Wisconsin or other states that are not infested with EAB.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB: September 6, 2012
Publication Date: September 7, 2012
Effective Dates: September 7, 2012 through February 3, 2013
Hearing Date: October 12, 2012

3. EmR1213 (DATCP Docket # 11–R–11) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **sections ATCP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a);** and to create **sections ATCP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c)**, relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

This rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 005–12, was approved by the governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012.

Finding of Emergency

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state–inspected meat establishments that contribute to the vitality of the state’s rural economy, producing many unique, specialty products. Wisconsin’s state–inspected meat and poultry establishments are inspected by Wisconsin’s Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is “at least equal to” federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State–inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state–inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the “same as”, rather than “at least equal to,” USDA’s federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin’s state meat inspection program must adopt in order to establish a regulatory foundation deemed the “same as” the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin’s state–inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending “permanent” rules cannot be adopted in time.

Filed with LRB: September 10, 2012
Publication Date: September 13, 2012
Effective Dates: September 13, 2012 through February 9, 2013
Hearing Date: October 15, 18, 19, 2012

Children and Families

Safety and Permanence, Chs. DCF 37–59

EmR1212 — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 55**, relating to subsidized guardianship.

This emergency rule was approved by the governor on August 28, 2012.

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in

Register No. 678, on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

Finding of Emergency

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

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

Filed with LRB: August 31, 2012
Publication Date: September 3, 2012
Effective Dates: September 3, 2012 through January 30, 2013
Hearing Date: November 30, 2012

Health Services

Health, Chs. DHS 110—

EmR1204 — The Wisconsin Department of Health Services hereby adopts emergency rules to create **section DHS 115.05 (3)**, relating to fees for screening newborns for congenital and metabolic disorders and other services.

This emergency rule was approved by the governor on April 19, 2012.

The statement of scope for this rule, SS 033–11, was approved by the governor on October 25, 2011, published in Register No. 671, on November 14, 2011, and approved by the Department of Health Services Secretary, Dennis G. Smith, effective November 25, 2011.

Exemption from Finding of Emergency

The legislature by 2011 Wisconsin Act 32, SECTION 9121 (9) provides an exemption from a finding of emergency to adopt these emergency rules. The exemption is as follows:

2011 Wisconsin Act 32, SECTION 9121 (9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB: May 1, 2012
Publication Date: May 4, 2012
Effective Dates: May 4, 2012 through September 30, 2012
Hearing Date: May 25, 2012
Extension Through: November 29, 2012

Insurance

EmR1208 — The Commissioner of Insurance purposes an order to amend **section Ins 17.01 (3)** and repeal and recreate **section Ins 17.28 (6)**, relating to the Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

This emergency rule was approved by the governor on May 25, 2012.

The statement of scope SS 001–12, was approved by the governor on January 4, 2011, published in Register No. 673, on January 31, 2012, and approved by the Commissioner of Insurance on February 14, 2012.

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 must be in place with an effective date of July 1, 2012 for the new fiscal year assessments in accordance with s. 655.27 (3), Wis. Stats. The permanent rule making process during an even–numbered year cannot complete the rule–making process prior to the effective date of the new fee schedule. The fiscal year fees were established by the Board of Governors at the meeting held on December 14, 2011.

Filed with LRB:	June 12, 2012
Publication Date:	June 14, 2012
Effective Dates:	June 14, 2012 through November 10, 2012
Hearing Date:	June 19, 2012

Justice

EmR1206 — The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re–create **Chapter Jus 17** and **Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

Governor Walker approved the final draft emergency rules on March 15, 2012. Attorney General Van Hollen signed an order approving the final emergency rules on March 15, 2012, and the emergency rules were published in the Wisconsin State Journal on March 21, 2012.

The statement of scope for these emergency rules, SS 010–12, was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. Emergency rules governing the licensing process were adopted on October 25, 2011, and have been in effect since November 1, 2011.

On November 7, 2011, JCRAR suspended certain portions of the emergency rules adopted on October 25, 2011. Since

that time, DOJ has implemented concealed carry licensing without enforcing the suspended provisions. DOJ is also in the process of developing proposed permanent rules that do not include the substance of any of the provisions in the emergency rules that were suspended by JCRAR.

Under Wis. Stat. s. 227.26 (2) (i), if a bill supporting JCRAR’s suspension action of November 7, 2011, is not enacted into law by the end of the current legislative session on March 15, 2012, then the suspension would be lifted and the original version of the emergency rules — including the previously suspended portions — would go back into legal effect. At that point, the emergency rules in effect would be inconsistent both with the emergency rules as they have been administered by DOJ since November 7, 2011, and with the proposed permanent rules, the scope of which has already been approved by the Governor and the Attorney General. Any such lack of continuity in the operation of DOJ’s concealed carry rules would be confusing and disruptive both for permit applicants and for DOJ staff administering the concealed carry permit program.

In order to prevent such a discontinuity in the operation of the concealed carry rules, it is necessary to re–promulgate the existing emergency rules in their entirety, with the exception of the portions that were suspended by JCRAR on November 7, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the revised emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

Filed with LRB:	May 24, 2012
Publication Date:	March 21, 2012
Effective Dates:	March 21, 2012 through August 17, 2012
Hearing Date:	July 16, 24, 25, 2012
Extension Through:	December 15, 2012

Natural Resources (5)

Fish, Game, etc., Chs. NR 1–

1. EmR1205 (DNR # CF–26–11(E)) — The Wisconsin Department of Natural Resources proposes an emergency order to revise **Chapter NR 64**, relating to All–Terrain Vehicles, as follows: to renumber section NR 64.14 (9) (d); to amend section NR 64.12 (7) (a) and section NR 64.14 (9) (a) 1.; and to create sections NR 64.02 (9m), NR 64.02 (15), NR 64.12 (7) (am), NR 64.14 (2r) (a) and (b), and NR 64.14 (9) (d), relating to the all–terrain vehicle grant programs and trail–route combinations.

This emergency rule was approved by the governor on April 26, 2012.

The statement of scope for this rule, SS 046–11, was approved by the governor on December 2, 2011, published in Register No. 672 on December 31, 2011, and approved by the Natural Resources Board on February 22, 2012.

Finding of Emergency

The department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the department revise Ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail–route combinations – also

called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all–terrain trail commonly called a “troute”, or a trail–route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency rule is needed because we anticipate that the permanent rule revisions to Ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV “troutes” in July 2012, as is our practice. About one–third of the trails in northern Wisconsin are “troutes” and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

Without this Emergency Rule, the integrity and safety of troutes could be severely compromised. Our partners may be forced to close troutes without grant funding to maintain them until the permanent rule is effective. If troutes are closed, riders could be stranded in an unfamiliar location or be forced to turn around and ride back the same way they came instead of continuing onto their destination.

Filed with LRB: May 9, 2012
Publication Date: June 1, 2012
Effective Dates: June 15, 2012 through November 11, 2012
Hearing Date: June 25, 2012

2. EmR1207 — The Wisconsin Natural Resources Board proposes an order to amend **section NR 10.01 (3) (d) 1.**, relating to the bobcat hunting and trapping season.

This emergency rule was approved by the governor on May 4, 2012. This emergency rule, modified to reflect the correct effective date, was approved by the governor on May 25, 2012.

The statement of scope for this rule, SS 009–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on March 28, 2012.

This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2012.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Department of Natural Resources finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

If emergency rules are not promulgated, the season automatically reverts back to a single permit period beginning on the Saturday nearest October 17 and continuing through December 31 in 2012. Frequent change of season dates and regulations for hunting and trapping can be confusing and disruptive to the public, can result in citations being issued, and is not necessary for protection of the bobcat population in this situation. Some people will view a reversion to the single season framework as a reduction of opportunity that is not socially acceptable. Therefore, this emergency rule is needed to preserve the public welfare.

Filed with LRB: May 30, 2012

Publication Date: June 10, 2012
Effective Dates: October 1, 2012 through February 27, 2013
Hearing Date: August 27, 2012

3. EmR1210 — The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25** and to create **sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65**, relating to the wolf hunting and trapping season and regulations and a depredation program.

This emergency rule was approved by the governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

Finding of Emergency

A non–statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: August 15, 2012
Publication Date: August 18, 2012
Effective Dates: August 18, 2012 through January 14, 2013

4. EmR1214 (DNR # WM–02–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u), 10.06 (9) (a) and 10.32**, to amend **section NR 10.01 (1) (v)**, and to create **section NR 10.12 (3) (e)**, relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones.

This emergency rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 011–12, was approved by the governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on May 23, 2012.

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. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes

by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Filed with LRB: September 10, 2012
Publication Date: September 12, 2012
Effective Dates: September 13, 2012 through February 9, 2013

5. EmR1215 (DNR # WM–16–12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate **section NR 10.01 (3) (h) 1.**, relating to the coyote hunting season.

This emergency rule was approved by the governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

Finding of Emergency

A non–statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: September 14, 2012
Publication Date: October 1, 2012
Effective Dates: October 1, 2012 through February 27, 2013

Scope Statements

Justice

SS 086–12

This statement of scope was approved by the governor on October 26, 2012.

Rule No.

The proposed emergency rules will be numbered Wis. Admin. Code sections Jus 17.01 through 17.13 and Jus 18.01 through 18.10 and will replace the existing emergency rules bearing the same numbers.

Relating to

Licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

Rule Type

Emergency.

Description of the Objective of the Rules

The State of Wisconsin Department of Justice (“DOJ”) proposes to promulgate emergency administrative rules relating to the implementation of DOJ’s statutory responsibilities under 2011 Wis. Act 35 regarding licenses authorizing persons to carry concealed weapons, the certification of firearm safety and training instructors, the recognition by Wisconsin of concealed carry licenses issued by other states, and concealed carry certification cards for qualified former federal law enforcement officers.

The proposed emergency rules will correspond to and have the same scope as the emergency rules covering the same subjects that are currently in effect. Those current emergency rules were published by DOJ and effective on March 21, 2012. On August 16, 2012, the Joint Committee for Review of Administrative Rules authorized a 60–day extension of those emergency rules through October 16, 2012. On September 14, 2012, DOJ requested a second 60–day extension of those emergency rules which, if granted, will last through December 15, 2012. Under Wis. Stat. s. 227.24 (2) (a), JCRAR may not extend the existing emergency rules for more than 120 days and thus may not extend them beyond December 15, 2012.

The need for these new emergency rules arises out of the anticipated expiration of the existing emergency rules on December 15, 2012. Since November 1, 2011, DOJ has been processing concealed carry license applications pursuant to Wis. Stat. s. 175.60 and is statutorily required to continue processing such applications on an ongoing basis. In order for DOJ to continue complying with the requirements of Wis. Stat. s. 175.60 and related statutory requirements, it is important that it continuously has in effect administrative rules establishing the procedures and standards that govern the enforcement and administration of those requirements.

DOJ is in the process of promulgating permanent administrative rules for that purpose. On September 5, 2012,

the final draft of the proposed permanent rules and accompanying reports were submitted for legislative review, pursuant to Wis. Stat. s. 227.19 (2). The permanent rulemaking process, however, will not be completed prior to the anticipated expiration of the existing emergency rules on December 15, 2012. The public welfare thus requires that additional emergency rules be promulgated, in order to ensure that there is no interruption in DOJ’s ability to continue to carry out all of its statutory responsibilities in administering and enforcing the concealed carry licensing program. The rules proposed here would prevent such a discontinuity and ensure continuous and uniform operation of the concealed carry program through the completion of the permanent rulemaking process that is already under way.

As previously noted, the proposed emergency rules will cover the same subject areas covered by the existing emergency rules and by the proposed permanent rules. There are five such subject areas:

First, there are rules governing the issuance of concealed carry licenses to qualified applicants by DOJ pursuant to s. 175.60, Stats. These rules govern all aspects of the licensing process and describe the procedures and standards under which DOJ processes applications, sets and collects fees, and verifies that each license applicant meets all of the license eligibility requirements under s. 175.60 (3), Stats., including procedures and standards for certifying that an applicant has satisfied the applicable statutory training requirements and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under state or federal law.

Second, the rules govern the administration of concealed carry licenses that have been issued by DOJ. These rules cover: the maintenance and treatment of licensing records by DOJ; the receipt and processing by DOJ of information from courts regarding individuals subject to a court imposed disqualification from possessing a dangerous weapon; procedures for renewing a license and replacing a license that is lost, stolen, or destroyed; procedures for processing address changes or name changes by licensees; procedures and standards for revoking or suspending a license; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license; and procedures governing DOJ’s cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court.

Third, the rules govern the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., and provide a definition identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats.

Fourth, pursuant to s. 165.25 (12m), Stats., the rules designate those states other than Wisconsin that issue a permit, license, approval, or other authorization to carry a concealed weapon that is entitled to recognition in Wisconsin under s. 175.60 (1) (f), Stats., because the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the type of background check that DOJ is

required to conduct for Wisconsin licensees under s. 175.60 (9g), Stats.

Fifth, the rules govern the procedures and standards under which DOJ issues concealed carry certification cards to qualified former federal law enforcement officers pursuant to s. 175.49, Stats. These rules govern all aspects of the certification process for former federal officers who reside in Wisconsin and describe the procedures and standards under which DOJ processes applications, sets and collects fees, and verifies that each applicant meets all of the certification eligibility requirements under s. 175.49 (3) (b), Stats., including procedures and standards for certifying that an applicant has satisfied the firearm qualification requirement under s. 175.49 (3) (b) 5., Stats., and procedures for conducting the statutorily required background check of each applicant to determine whether the applicant is prohibited from possessing a firearm under federal law. The rules also cover: the maintenance and treatment of certification records by DOJ; procedures for renewing a certification card and replacing a card that is lost, stolen, or destroyed; procedures for processing address changes or name changes by a certified former federal officer; procedures and standards for revoking or suspending a certification; and procedures for the administrative review by DOJ of any denial, suspension, or revocation of a certification.

Description of Existing Policies Relevant to the Rule, and of New Policies Proposed To Be Included in the Rule, and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

In 2011 Wisconsin Act 35, the state of Wisconsin established a new system under which DOJ is required to issue licenses authorizing eligible Wisconsin residents to carry concealed weapons in Wisconsin and to certify firearms safety and training instructors. The legislation also authorizes DOJ to issue concealed carry certification cards to qualified former federal law enforcement officers who reside in Wisconsin. Because the concealed carry licensing and certification programs established by Act 35 are new, there are no existing DOJ practices or policies that cover the subject areas of the administrative rules here proposed other than the licensing policies and practices that have been in effect since November 1, 2011.

Most of the proposed rules simply carry into effect the legislative directives set forth in Act 35. In a few areas, the proposed rules articulate policies which give substance to undefined statutory terms or are needed to ensure that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. Such rules are specifically intended to carry out the legislature's intent reflected in Act 35.

For example, the proposed rules provide definitions of such undefined statutory terms as “firearms safety or training course” and “national or state organization that certifies firearms instructors.” Such definitions are necessary to give substantive content to these otherwise undefined statutory terms so as to carry out the legislative purposes of ensuring that all licensees have been trained in firearms and firearms safety and of ensuring that all certified firearms instructors have demonstrated the ability and knowledge required for providing training in firearms and firearms safety. The policy alternative of not defining such terms in DOJ's administrative rules would be contrary to those important legislative purposes.

Similarly, the proposed rules specify the types of information that must be included in a training certificate or affidavit in order for DOJ to find that certificate or affidavit to be sufficient to satisfy the training documentation requirements in s. 175.60 (4) (a), Stats. Such specification is necessary to give substantive content to the statutory documentation requirements so as to carry out the legislative purpose of ensuring that every successful applicant for a concealed carry license has adequately demonstrated completion of at least one of the forms of statutorily required training. The policy alternative of not specifying the required contents of an acceptable training certificate or affidavit in DOJ's administrative rules would be contrary to that important legislative purpose.

Likewise, the proposed rule designating those states other than Wisconsin that conduct a background check for concealed carry licensees comparable to Wisconsin's background check is necessary to comply with the statutory requirement of s. 165.25 (12m), Stats. That rule enables law enforcement officers and others to determine whether a particular concealed carry license issued by another state is entitled to recognition as an “out-of-state license” as defined in s. 175.60 (1) (f), Stats. The alternative of not promulgating such a rule would violate the requirements of s. 165.25 (12m), Stats. and would be contrary to the purpose of facilitating recognition of out-of-state licenses.

The proposed rules also contain procedures for issuing a new concealed carry license or certification card to an individual who changes his or her name, and procedures under which DOJ will work cooperatively with courts and law enforcement agencies in relation to any emergency concealed carry license that may be issued by a court, pursuant to s. 175.60 (9r). These procedures are not specifically required by statute but are necessary to carry out the legislative purposes of ensuring that licenses and certification cards are issued only to eligible individuals and that all applicants and licensees are properly identified at all times. The policy alternative of not including such procedures in DOJ's administrative rules would be contrary to those important legislative purposes.

Statutory Authority for the Rule (Including the Statutory Citation and Language)

A. Section 175.60 (7), Stats.

Those portions of the proposed rules that establish the amount of the fee to be charged for a concealed carry license are expressly and specifically authorized and required by s. 175.60 (7), Stats., which provides:

SUBMISSION OF APPLICATION. An individual may apply for a license under this section with the department by submitting, by mail or other means made available by the department, to the department all of the following:

...

(c) A license fee in an amount, as determined by the department by rule, that is equal to the cost of issuing the license but does not exceed \$37. The department shall determine the costs of issuing a license by using a 5-year planning period.

B. Section 175.60 (14g), Stats.

Those portions of the proposed rules that establish procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license are expressly and specifically authorized by s. 175.60 (14g), Stats., which provides:

DEPARTMENTAL REVIEW. The department shall promulgate rules providing for the review of any action by the department denying an application for, or suspending or revoking, a license under this section.

C. Section 175.60 (15) (b), Stats.

Those portions of the proposed rules that establish the amount of the fee to be charged for the renewal of a concealed carry license are expressly and specifically authorized by s. 175.60 (15) (b), Stats., which provides:

The department shall renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:

...

4. Pays all of the following:

a. A renewal fee in an amount, as determined by the department by rule, that is equal to the cost of renewing the license but does not exceed \$12. The department shall determine the costs of renewing a license by using a 5–year planning period.

D. Section 227.11 (2) (a), Stats.

Those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., as described above, are authorized by s. 227.11 (2) (a), Stats., which provides:

(2) Rule–making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency’s general powers or duties does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

This statute expressly confers on DOJ the general power to determine whether administrative rules interpreting those statutory provisions in Act 35 that are to be enforced or administered by DOJ are necessary to effectuate the

purpose of those statutory provisions and, if such necessity is found, to promulgate such administrative rules, as long as those rules do not exceed the bounds of correct interpretation of the governing statutes.

DOJ finds that the rules here proposed are necessary to effectuate those portions of ss. 175.49 and 175.60, Stats., that require DOJ to establish and operate procedures governing:

- the issuance of concealed carry licenses to qualified applicants, including verification that each applicant has satisfied the applicable statutory training requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for a license;
- the issuance of concealed carry certification cards to qualified former federal law enforcement officers residing in Wisconsin, including verification that each applicant has satisfied the applicable firearm certification requirements, has passed the mandatory background check, and has met all of the other statutory eligibility requirements for certification;
- the administration of concealed carry licenses and certifications that have been issued by DOJ, including the maintenance and treatment of records; the receipt and processing of information from courts about individuals subject to a court–imposed disqualification from possessing a dangerous weapon; the renewal of licenses and certifications and the replacement of those that are lost, stolen, or destroyed; the processing of address changes or name changes for licenses and certifications; procedures and standards for revoking or suspending a license or certification; procedures for the administrative review by DOJ of any denial, suspension, or revocation of a license or certification; and procedures governing DOJ’s cooperation with courts and law enforcement agencies in relation to emergency licenses issued by a court; and
- the qualification and certification of firearms instructors by DOJ and the identification of those firearm instructors who are certified by a national or state organization.

DOJ further finds that the rules here proposed:

- do not exceed the bounds of correct interpretation of ss. 175.49 or 175.60, Stats.;
- are authorized by the statutes described above and are not based on authority derived from any other statutory or nonstatutory statements or declarations of legislative intent, purpose, findings, or policy;
- are authorized as necessary interpretations of the specific requirements of ss. 175.49 and 175.60, Stats., and are not based on authority derived from any other general powers or duties of DOJ; and
- do not impose any standards or requirements that are more restrictive than the standards and requirements contained in ss. 175.49 and 175.60, Stats.

For these reasons, those portions of the proposed rules that are not specifically authorized by ss. 175.60 (7), (14g), and (15) (b), Stats., are authorized by s. 227.11 (2) (a), Stats.

E. Section 227.24 (1) (a), Stats.

The rules proposed here may be promulgated as emergency rules under s. 227.24 (1) (a), Stats., which provides:

An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and

publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

DOJ finds that the public welfare necessitates promulgating the proposed rules as emergency rules under s. 227.24 (1) (a), Stats. For the reasons already described in Section 1 above, in order to ensure continuity and avoid confusion and disruption in the operation of the concealed carry licensing program, it is necessary that DOJ have emergency rules continuously in effect until the permanent rulemaking process is completed. The preservation of such continuity and the avoidance of such confusion and disruption is plainly in the public interest. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. While these emergency rules are in effect, DOJ will complete the permanent rulemaking process that is under way.

Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule And of Other Resources Necessary to Develop the Rule

It is estimated that state employees will spend approximately 10 hours on the rulemaking process for the emergency rules proposed here, primarily for compliance with required rulemaking procedures.

Description of All Entities that May Be Impacted by the Rule

The proposed rules governing procedures and standards for the issuance and administration of concealed carry licenses under s. 175.60, Stats., directly affect the interests of all Wisconsin residents who wish to apply for a license to carry a concealed weapon. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper training and licensing of concealed carry licensees generally affects public safety.

The proposed rules governing procedures and standards for the issuance and administration of certification cards under s. 175.49 (3), Stats., directly affect the interests of all former federal law enforcement officers residing in Wisconsin who wish to apply for such certification. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper firearm certification of former law enforcement officers generally affects public safety.

The proposed rules governing the procedures and standards for the qualification and certification of firearms instructors by DOJ under s. 175.60 (4) (b), Stats., directly affect the interests of all eligible persons who wish to apply for such certification. The proposed rules identifying those firearm instructors who are certified by a national or state organization, as provided in s. 175.60 (4) (a), Stats., directly affect the interests of all persons who wish to claim such certification as a basis for providing training in firearms and firearm safety under that statute. In addition, the proposed rules also indirectly affect the interest of the general public to the extent that the proper certification of firearms instructors generally affects public safety.

Summary and Preliminary Comparison of Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities To Be Regulated by the Rule

For persons other than current and former law enforcement officers, the regulation of the carrying of concealed weapons is primarily governed at the state level. Numerous federal statutes and regulations restrict the possession of weapons that have been shipped in interstate commerce, but there are no federal regulations that relate to the licensing of concealed carry by such persons, nor are there federal regulations governing the certification of firearms instructors for concealed carry purposes.

For qualified current and former law enforcement officers, state and local laws restricting the carrying of concealed firearms are federally preempted by 18 U.S.C. ss. 926B–926C (commonly referred to as “H.R. 218”). The provisions in 2011 Wis. Act 35 related to qualified current and former law enforcement officers are state–law codifications of the corresponding provisions in H.R. 218. Similarly, the rules proposed here governing procedures and standards for the issuance and administration of concealed carry certification cards for qualified former federal law enforcement officers also codify corresponding provisions in the federal law.

Contact Person

Assistant Attorney General Thomas C. Bellavia, (608) 266–8690.

Safety and Professional Services — Pharmacy Examining Board

SS 083–12

This statement of scope was approved by the governor on October 16, 2012.

Rule No.

Chapter Phar 15.

Relating to

Sterile Pharmaceuticals and Non–Sterile Pharmaceuticals.

Rule Type

Permanent. (Revision)

Finding/Nature of Emergency (Emergency Rule Only):

N/A.

Detailed Description of the Objective of the Proposed Rule

The Wisconsin Pharmacy Examining Board seeks to repeal this rule in its entirety, and to replace it with references to the United States Pharmacopeia (USP) chapters 795 (Pharmaceutical Compounding – Non–Sterile Preparations) and 797 (Pharmaceutical Compounding – Sterile Preparations).

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

The Board seeks to repeal this rule in its entirety and replace it with references to specific USP chapters related to

standards for non–sterile compounding and sterile compounding because Ch. Phar 15, as it currently exists, is an outdated model for sterile pharmaceuticals. Moreover, the board currently does not have any rules which specifically reference the standards to which non–sterile compounding must occur. In order to best protect the public, the board seeks to provide specific references to USP standards pertaining to both sterile and non–sterile compounding. The board concludes that the proposed rule should cover both sterile and non–sterile compounding in a concise manner that is similar to Minnesota’s pharmacy rule under Minn. R. 6800.3300 (2011).

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 450.02 (3) (a), Stats., authorizes the board to promulgate rules “[r]elating to the manufacture of drugs and the distribution and dispensing of prescription drugs.” Moreover, s. 450.02 (3) (e) authorizes the board to promulgate rules “[e]stablishing the minimum standards for the practice of pharmacy.” The “practice of pharmacy” is defined under s. 450.01 (16) (b), Stats., to include the “[c]ompounding, packaging, labeling, dispensing, and the coincident distribution of drugs and devices.” Under s. 450.01 (3), Stats., “[c]ompound” means to mix, combine or put together various ingredients or drugs for the purpose of dispensing.”

Section 15.08 (5) (b), Stats., allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

40 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Pharmacies and pharmacists.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

The United States Pharmacopeia and The National Formulary (USP–NF) is a book of public pharmacopeial standards. It contains standards for chemical and biological drug substances, dosage forms, and compounded preparations. These standards have been recognized in the U.S. Federal Food, Drug and Cosmetic Act since it was first enacted in 1938. The U.S. Federal Food, Drug, and Cosmetics Act designates the USP–NF as official compendia for drugs marketed in the United States. A drug product in the U.S. market must conform to the standards in USP–NF to avoid possible charges of adulteration and misbranding.

USP standards are recognized in a variety of U.S. federal legislation. The USP’s drug standards are referenced throughout the provisions of the Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. ss. 351 – 360 (2010). As it relates to compounding, federal law requires a licensed pharmacist to comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists, and the United States

Pharmacopoeia chapter on pharmacy compounding. 21 U.S.C. s. 353(b)(1)(A)(i)(I) (2010).

Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)

This rule may have a significant economic impact on small business that choose to compound or provide sterile pharmaceuticals.

Contact Person

Sharon Henes, Paralegal, (608) 261–2377.

Safety and Professional Services — Psychology Examining Board

SS 084–12

This statement of scope was approved by the governor on October 18, 2012.

Rule No.

Sections Psy 2.09 and 2.12.

Relating to

Applicant appearance.

Rule Type

Permanent. (Revision)

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

Per s. 455.04 (5), Stats., Applicants for licensure *may* be required to appear before the examining board in person prior to licensure. However, s. Psy 2.09 (4) requires *every* applicant to appear before the board in person prior to licensure as a psychologist. (*emphasis added*) (Note: The board’s rule governing licensure for a private practice of school psychologist retains the discretionary word “may”.)

The board intends the rule to reflect the statute which is permissive rather than being more restrictive than the statute. This change will streamline the application process by not requiring every applicant to make an appearance before the board in order to be licensed.

This change would also require a change to s. Psy 2.12 (2). Under the existing rule, applicants who are licensed in another state which is signatory to the agreement of reciprocity of the Association of State and Provincial Psychology Boards are deemed to meet several of the application requirements.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed To Be Included in the Rule, and an Analysis of Policy Alternatives

The existing policy requires every applicant to make an appearance before the board prior to licensing even though the statute provision for an appearance is discretionary.

This proposed rule will reduce the administrative burden of the resources of the Psychology Examining Board and the Department of Safety and Professional Services. In addition it would significantly reduce the time it takes an applicant to become licensed because they would no longer have to wait until a scheduled meeting.

This change would also necessitate a change to s. Psy 2.12 (2) which allows applicants licensed in a state which is

signatory to the agreement of reciprocity of the Association of State and Provincial Psychology Boards to be recognized as meeting several of the application requirements. The reciprocity agreement requires an appearance before the Board as part of the licensure process. Over the years, many states have decided to no longer participate in the agreement of reciprocity. Currently there are only seven other signatory states (Arkansas, Kentucky, Missouri, Nebraska, Nevada, Oklahoma and Texas) who are participating in the reciprocity agreement. None of these states are neighboring states, therefore the change would not have a significant impact.

The alternative to changing the rule to allow the appearance to be discretionary would be to continue requiring every applicant to appear before the board.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 455.08, Stats. The examining board shall adopt such rules as are necessary under this chapter.

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary To Develop the Rule

40 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Applicants for licensure.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended To Address the Activities To Be Regulated by the Proposed Rule

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

Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)

No or minimal economic impact. It is not likely to have an economic impact on small business.

Contact Person

Sharon Henes, Paralegal, Division of Board Services, (608) 261–2377.

**Safety and Professional Services —
Psychology Examining Board**

SS 085–12

The statement of scope was approved by the governor on October 18, 2012.

Rule No.

Section Psy 4.02.

Relating to

Continuing education.

Rule Type

Permanent. (Revision)

Finding/Nature of Emergency (Emergency Rule Only)

N/A.

Detailed Description of the Objective of the Proposed Rule

Sections 455.065 (1) and (3), Stats., state the examining board shall promulgate rules establishing the minimum number of hours of continuing education, topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for renewal of a license and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses.

Section Psy 4.02 provides that the board may require not more than 20 of the 40 continuing education hours in each biennial registration period be acquired within specified topic areas. However, the current rule does not state the topic areas. This proposed rule would specify the topic areas.

In addition this proposed rule would update s. Psy 4.02 to reflect current continuing education programs, including technological methods of delivery, and to streamline the approval process for the continuing education program and courses.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed To Be Included in the Rule, and an Analysis of Policy Alternatives

Currently the topic areas are not specified in the rule and licensees are confused as to which topic areas, if any, must be addressed by their continuing education. This confusion is evidenced in the recent continuing education audits. Clarification of the topic areas will streamline the process. By reviewing and updating the continuing education requirements we are providing the licensees with more continuing education opportunities.

An alternative is not to change the rule. This would not provide the necessary clarity to the licensees as to what exactly are the required topic areas for continuing education. By not changing the rule, the rule will not be in conformity with the statutory requirement.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 15.08 (5) (b), Stats. Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 455.065 (1), Stats. The examining board shall promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for renewal of a license and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses.

Section 455.065 (3), Stats. The examining board shall promulgate rules establishing the minimum number of hours of continuing education, the topic areas that the continuing education must cover, the criteria for the approval of continuing education programs and courses required for the exemptions from the examination requirements under s.

455.04 (1) (e) and (4) (f), Stats., and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses.

Section 455.08, Stats. The examining board shall adopt such rules as are necessary under this chapter.

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary To Develop the Rule

60 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Licensed psychologists and private practice school psychologists.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that Is Intended To Address the Activities To Be Regulated by the Proposed Rule

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

Anticipated Economic Impact of Implementing the Rule (Note If the Rule Is Likely To Have a Significant Economic Impact on Small Businesses)

No or minimal economic impact. It is not likely to have an economic impact on small business.

Contact Person

Sharon Henes, Paralegal, Division of Board Services, (608) 261–2377.

Submittal of Proposed Rules to Legislative Council Clearinghouse

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

Children and Families *Safety and Permanence, Chs. DCF 35–59* **CR 12–045**

The Department of Children and Families submitted proposed rules to the Legislative Council Rules Clearinghouse on October 19, 2012.

The statement of scope for this rule, SS 029–11, was approved by the governor on October 13, 2011; published in Register No. 670 on October 31, 2011; and approved by Secretary Eloise Anderson on November 23, 2011.

Analysis

The proposed rules create Chapter DCF 55, relating to subsidized guardianship.

Agency Procedure for Promulgation

A public hearing is required and will be held in Madison on November 30, 2012. The organizational unit responsible for the promulgation of the proposed rules is the Division of Safety and Permanence.

Contact Information

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

Higher Educational Aids Board **CR 12–044**

The Higher Educational Aids Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on October 19, 2012.

The Wisconsin Higher Educational Aids Board proposes an order to amend section HEA 5.04 (2) Talent Incentive Grant Eligibility, relating to the Wisconsin Talent Incentive Grant.

The scope statement for this rule, SS 019–12, was approved by the governor on December 2, 2011, published in Register No. 676 on April 14, 2012, and approved by the Executive Secretary of the Higher Educational Aids Board on May 25, 2012.

Analysis

This proposed rule removes from section HEA 5.04 the first item (item a) in Section 2 of the rule, which states an eligibility requirement for the Talent Incentive Grant. Item a

reads, “The student is a member of one of the minority groups defined in s. 39.44 (1) (a), Stats.”

Agency Procedure for Promulgation

A public hearing and notice for this rule are not required under s. 227.16 (2) (b), Stats., however, written comments may be submitted by **4:00 pm on December 7, 2012** to John Reinemann at the Wisconsin Higher Educational Aids Board, 131 West Wilson Street, Suite 902, Box 7885, Madison WI 53707–7885, or by email to john.reinemann@wisconsin.gov with a subject line of HEA 5.04

Agency contact person

Please contact John Reinemann or Sherrie Nelson at 608–267–2206 or mail to: john.reinemann@wisconsin.gov or sherrie.nelson@wisconsin.gov if you have any questions regarding this proposed rule.

Transportation **CR 12–046**

The Wisconsin Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse on November 1, 2012.

The statement of scope for this rule, SS 037–12, was approved by the governor on May 25, 2012, published in Wis. Admin. Register No. 678 on June 14, 2012, and approved by Secretary Mark Gottlieb as required by Wis. Stat. s. 227.135 (2), on November 1, 2012.

Analysis

The proposed rule amends Chapter Trans 200, relating to the erection of signs on public highways.

Agency Procedure for Promulgation

A public hearing will be held November 28, 2012.

Name and Organizational Unit of Agency Contact

John Noll
Division of Transportation Safety Development
Bureau of Traffic Operations
Traffic Design Unit
4802 Sheboygan Avenue, Room 501
P.O. Box 7986
Madison, WI 53707–7986
Phone: (608) 266–0318
Alt. Phone: (608) 246–3271
Email: john.noll@dot.wi.gov

Rule–Making Notices

Notice of Hearing
Children and Families
Safety and Permanence, Chs. DCF 35–59
CR 12–045, EmR1212

NOTICE IS HEREBY GIVEN that pursuant to sections 48.623 (7) and 227.11 (2), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency rules and proposed permanent rules creating Chapter DCF 55, relating to subsidized guardianship.

Hearing Information

Date: Friday, November 30, 2012
Time: 1:30 p.m.
Location: GEF 1 Building
 Room D203
 201 E. Washington Avenue
 Madison, WI 53703

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.

Accessibility

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

Written Comments and Copy of Rule

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

Elaine Pridgen
 Department of Children and Families
 201 E. Washington Avenue
 Madison, WI 53707
 (608) 267–9403
dcfpublichearing@wisconsin.gov

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than **December 3, 2012**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statutory authority

Sections 48.623 (7) and 227.11 (2), Stats.

Statutes interpreted

Sections 48.623, 48.685, and 48.977 (3r), Stats., and s. 48.62 (5), 2009 Stats.

Related statutes and rules

Chapters DCF 50 and 56.

Explanation of statutory authority

Section 48.623 (7), Stats., as created by 2011 Wisconsin Act 32, provides that the department shall promulgate rules to implement s. 48.623, Stats. Those rules shall include all of the following:

- A rule defining the substantial change in circumstances under which a person receiving monthly subsidized guardianship payments may request that an agreement be amended to increase the amount of those payments.
- Rules establishing requirements for submitting a request and criteria for determining the amount of the increase in monthly subsidized guardianship payments that a county department or the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the person receiving those payments.
- Rules establishing the criteria for determining the amount of the decrease in monthly subsidized guardianship payments that the department shall offer if a substantial change in circumstances no longer exists. The criteria shall provide that the amount of the decrease offered by the department may not result in a monthly subsidized guardianship payment that is less than the initial monthly subsidized guardianship payment provided for the child.

Summary of the proposed and emergency rules

The rules implement a new statewide subsidized guardianship program under s. 48.623, Stats., as created by 2011 Wisconsin Act 32. In general, the subsidized guardianship program provides assistance for the care of a child who has been removed from his or her home if returning home or being adopted is not in the child’s best interests and a relative or like–kin individual who is a foster parent has a strong commitment to permanently caring for the child.

The rules include a procedure for agencies to use to inform a prospective guardian of eligibility for assistance and expectations involved with various permanency options for the child. If the prospective guardian decides to pursue subsidized guardianship and the prospective guardian and child are eligible, the agency shall enter into a subsidized guardianship agreement with the prospective guardian before guardianship is established. The rules specify the topics that must be included in the agreement.

The initial subsidized guardianship payment amount that is incorporated into the subsidized guardianship agreement is the same amount that the prospective guardian received as a foster parent in the month before guardianship was established or a lesser amount if agreed to by the prospective guardian. In general, the payment amount may be adjusted based on the circumstances of the guardian and the needs of the child. A payment amount may not be adjusted if the prospective guardian’s foster home was certified at Level 1 on the date that the prospective guardian signed the subsidized

guardianship agreement. A foster parent who operates a Level 1 foster home is not eligible for supplemental payments.

For a subsidized guardianship agreement entered into on or after July 1, 2011, under s. 48.623, Stats., a supplemental payment amount based on the needs of the child is determined under s. DCF 56.23 (2) (a) in a manner similar to a supplemental payment for foster care and an adoption assistance agreement entered into on or after July 1, 2011. For a subsidized guardianship agreement entered into as part of the Bureau of Milwaukee Child Welfare demonstration project that was authorized by a federal waiver and s. 48.62 (5), 2009 Stats., before July 1, 2011, a supplemental payment is determined under the section of the previous version of ch. DCF 56 that was used for determining a supplemental payment before the standardized assessment tool in s. DCF 56.22 was implemented in 2011. The previous method of determining a supplemental payment is incorporated into the proposed rules at s. DCF 55.09. The previous method of determining a supplemental payment is also used for an adoption assistance agreement entered into before July 1, 2011.

Adjusting the supplemental payment based on the circumstances of the guardian and the needs of the child requires an amendment to the subsidized guardianship agreement. The rules provide the process for determining whether the agreement should be amended. An amendment may not be effective for more than one year. The rules also provide a process for reviewing an amendment shortly before it will expire to determine whether it is appropriate to enter into a new amendment or to return to the amount in the initial subsidized guardianship agreement.

The rules provide for review of the guardian and child's continued eligibility for subsidized guardianship at an annual review date, upon receipt of notification from the guardian of a change in circumstances, if the agency knows or suspects that a change affecting eligibility has occurred, and beginning 6 months before the child's 18th birthday to determine whether eligibility is expected to continue when the child turns 18 years old.

Eligibility may continue when the child is 18 years old if the child is enrolled full–time in high school or an equivalent educational program and no other changes affecting eligibility have occurred. Eligibility may continue when the child is 19 or 20 years old if the child is enrolled full–time in high school or an equivalent educational program; the child has a physical, emotional, or behavioral need; the Social Security Administration has determined that the child is ineligible for Social Security disability insurance or Supplemental Security Income for not meeting the disability standard; the agency determines that the child's physical, emotional, or behavioral need warrants the continuation of assistance; and no other changes affecting eligibility have occurred.

The rules also include the process for a person to petition the Division of Hearings and Appeals for review of an agency action or failure to act. In addition, the rules provide the procedures for determining eligibility of an interim caretaker to receive subsidized guardianship payments upon the death or incapacity of the guardian or termination of a guardianship.

Summary of factual data and analytical methodologies

The procedures for determining whether a subsidized guardianship payment should be adjusted based on a

substantial change in circumstances are similar to the procedures used for adoption assistance and foster care. No data was used.

Summary of related federal requirements

The Fostering Connections to Success and Increasing Adoptions Act of 2008 creates an option for states to operate a guardianship assistance program and receive federal reimbursement for a percentage of the expenditures under Title IV–E of the Social Security Act. Once a state adopts the option in the state plan, assistance must be provided to any child who is eligible.

42 USC 671 (a) (28) provides that an agency may enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis.

42 USC 673 (d) provides that a child is eligible for kinship guardianship assistance payments if all of the following apply:

- The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- The child was eligible for foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian.
- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
- With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

An agency may provide kinship guardianship assistance payments for a sibling of a child determined eligible, regardless of whether the sibling meets the eligibility requirements, if the agency and the relative agree on the appropriateness of placing the sibling in the home of the relative.

If kinship guardianship assistance payments are provided, an agency is required to enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian that provides the following:

- The amount of each kinship guardianship assistance payment and the manner in which the payment may be adjusted periodically based on the circumstances of the relative guardian and the needs of the child, in consultation with the guardian. A kinship guardianship assistance payment on behalf of a child cannot exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster home.
- Any additional services and assistance that the child and relative guardian will be eligible for under the agreement and the procedure by which the relative guardian may apply for additional services as needed.
- That the agency will pay nonrecurring expenses associated with obtaining legal guardianship of the child up to \$2,000.
- That the agreement shall remain in effect without regard to the state residency of the relative guardian.

42 USC 671 (a) (20) requires a state to provide procedures for fingerprint–based criminal records checks of relative guardians and child abuse and neglect registry checks of relative guardians and adults living in the guardians’ home before kinship guardianship assistance payments may be made.

42 USC 673 (b) (3) (C) provides that a child for whom kinship guardianship assistance payments are being made is categorically eligible for Medicaid in the same manner as a child for whom foster care maintenance payments are made.

Before the Fostering Connections to Success and Increasing Adoptions Act of 2008 was adopted, 11 states operated subsidized guardianship programs as demonstration projects under federal waivers, including a Wisconsin program administered by the Bureau of Milwaukee Child Welfare. The demonstration projects found that the availability of subsidized guardianship increases the number of children who exit foster care to permanent homes, maintains child safety, and saves money through reductions in out–of–home placement days and subsequent decreases in the administrative costs associated with supervising out–of–home care cases. For a synthesis of the findings of the subsidized guardianship demonstration projects, see

http://www.acf.hhs.gov/programs/cb/programs_fund/cw/wai/ver/2011/subsidized.pdf.

Comparison to rules in adjacent states

Illinois and Michigan have subsidized guardianship programs. In Illinois, payment amounts are determined in the same manner as adoption assistance. In Michigan, payments amounts are determined in the same manner as foster care.

Effect on Small Business

The rules will not affect small businesses. The Department’s Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@wisconsin.gov, (608) 267–9403.

Analysis used to determine effect on small business

The rules will affect children in out–of–home care, relatives of children in out–of–home care, tribes, and county departments of social or human services.

Agency Contact Person

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

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707–7864
FAX: (608) 267–0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
Chapter DCF 55, Subsidized Guardianship

3. Subject
Chapter DHS 163, Certification for the Identification, Removal and Reduction of Lead–Based Paint Hazards

4. Fund Sources Affected	5. Chapter 20, Stats. Appropriations Affected
GPR FED PRO PRS SEG SEG–S	

6. Fiscal Effect of Implementing the Rule	
No Fiscal Effect Increase Existing Revenues Increase Costs	
<input checked="" type="checkbox"/> Indeterminate Decrease Existing Revenues Could Absorb Within Agency’s Budget	
	Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State’s Economy	Specific Businesses/Sectors
<input checked="" type="checkbox"/> Local Government Units	Public Utility Rate Payers
	Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
Yes No

9. Policy Problem Addressed by the Rule
Procedures to implement a statewide subsidized guardianship program, including procedures to adjust the payment amount based on the circumstances of the guardian and the needs of the child.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.
To revise Ch. DHS 163 relating to training, certification and work practice requirements for lead–safe renovation activities in pre–1978 housing and child–occupied facilities.
County Departments of Social Services Directors
Tribal Chairpersons
Tribal Social Service/Indian Child Welfare Directors
Tribal Chairpersons

11. Identify the local governmental units that participated in the development of this EIA.

Walworth County

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule's fiscal impact on counties is indeterminate because it will depend on the number of amendments entered into by the counties.

The department received comments from Patricia Weeden, Ongoing Case Management Supervisor, Walworth County Department of Human Services.

Comment: The level of county responsibility increases over time on cases in which we would normally no longer be involved. The rule requires the county to do a review of eligibility for payments annually or if there is a change of circumstances. This responsibility will increase in number the longer the rule is in effect.

Department response: This is a statutory requirement. The annual review ensures guardians continue to meet eligibility requirements and prevents fraud.

Comment: Counties will be required to continue to enter information in the ewisacwis system and keep open cases that would normally close.

Department response: A subsidized guardianship case remains open for a service payment, not for case management or any other purpose.

Comment: The county may be required to file a subsequent CHIPS petition in cases in which a substitute caregiver does not meet standards.

Department response: A guardian's ineligibility for subsidized guardianship does not mean a CHIPS petition would need to be filed. A county agency is statutorily required to file a CHIPS petition if a guardian is no longer appropriately caring for a child in any circumstance. Implementation of the subsidized guardianship program does not impact this responsibility.

Comment: Counties will also have to pay for background checks for interim caregivers and non–client residents.

Department response: Federal law requires these background checks to be completed. County agencies are provided funds through the Children and Families Allocation that can be used to complete the necessary checks.

Comment: If caregivers are licensed as a Level 2 provider, the costs of placement could increase and it is difficult for the county to anticipate how much and how often this provision would be used for budgetary purposes.

Department response: If the child remained in foster care, the agency would be required to consider an adjustment of the rate every 6 months. For subsidized guardianship, a county is required to consider a rate adjustment on an annual basis if requested by the guardian, and there is a substantial change in the child's circumstances and increased needs as documented by a professional.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Section 48.623 (7), Stats., directs the department to promulgate rules to implement s. 48.623, Stats., including the manner in which those payments may be adjusted periodically, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child. Federal law requires states to adopt a process for guardians to request an adjusted payment amount.

14. Long Range Implications of Implementing the Rule

None.

15. Compare With Approaches Being Used by Federal Government

NA

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Wisconsin, Illinois, and Michigan have subsidized guardianship programs and determine foster care, subsidized guardianship, and adoption assistance payments in a similar manner.

17. Contact Name

Jonelle Brom

18. Contact Phone Number

(608) 264 6933

*This document can be made available in alternate formats to individuals with disabilities upon request.

**Notice of Proposed RuleMaking
Without Public Hearing
Higher Educational Aids Board
CR 12–044**

The Wisconsin Higher Educational Aids Board (HEAB) proposes an order to amend section HEA 5.04 (2) Talent Incentive Grant Eligibility, relating to the Wisconsin Talent Incentive Grant.

Pursuant to section 227.16 (2) (b), Stats., a public hearing is not required as the proposed amendment brings the existing rule into conformity with a statute.

Written Comments

Place Where Comments are to be Submitted and Deadline for Submission: A public hearing and notice are not required under s. 227.16 (2) (b), Stats., however, written comments may be submitted by **4:00 pm on December 7, 2012** to John Reinemann at the Wisconsin Higher Educational Aids Board, 131 West Wilson Street, Suite 902, Box 7885, Madison WI 53707–7885, or by email to john.reinemann@wisconsin.gov at the Higher Educational Aids Board with a subject line of s. HEA 5.04.

Analysis Prepared by the Wisconsin Higher Educational Aids Board

Statutes interpreted

Section 39.435 (2), Stats.

Statutory authority

Section 39.28 (1), Stats.

Explanation of agency authority

Section 39.28 (1) The board shall administer the programs under this subchapter and may promulgate such rules as are necessary to carry out its functions.

Section 39.435 (2) The board shall award Talent Incentive Grants to uniquely needy students enrolled at least half–time as first–time freshmen at public and private nonprofit institutions located in this state and to sophomores, juniors and seniors who received such grants as freshmen. No grant under this subsection may exceed \$1,800 for any academic year. The board may not award a grant to the same student for more than 10 consecutive semesters or their equivalent. The board shall promulgate rules establishing eligibility criteria for grants under this subsection.

Related rule

Section HEA 5.04, Wis. Adm. Code, provides eligibility requirements for Talent Incentive Grants. Section HEA 5.04 (2) provides “Non–traditional student status criteria”.

Plain language analysis

This proposed rule removes from s. HEA 5.04 the first item (item a) in Section 2 of the rule, which states an eligibility requirement for the Talent Incentive Grant. Item a reads, “The student is a member of one of the minority groups defined in s. 39.44 (1) (a), Stats.”

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

Federal law, Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 CFR Part 100, prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.

The change being sought is proposed at the request of the United States Department of Education – Office for Civil Rights, which notified HEAB in December 2008 that s. HEA 5.04 is not compliant with Title VI of the Civil Rights Act of 1964. The nature of the noncompliance is based in the lack of justification within s. HEA 5.04 for use of race and national origin as criteria for determining eligibility for the Talent Incentive Program (TIP).

(This notification resulted from a complaint filed with the Office of Civil Rights in September 2006. The nature of the complaint is that s. HEA 5.04 discriminates against non–minority students on the basis of race, by denying them an equal opportunity to participate in a financial aid program.)

After discussions with the Office of Civil Rights, HEAB achieved a resolution with the Office of Civil Rights by agreeing to eliminate the use of the race element in its non–traditional student status criteria, beginning in the 2010–2011 school year. The remaining criteria in s. HEA 5.04 remain in force, allowing the agency to administer the program. In addition, at the suggestion of the Office of Civil Rights, HEAB made changes to its forms, publications and web site which reflected the change in criteria. As an interim measure, HEAB also required that TIP applications submitted for TIP in the 2010–2011 school year include indication of one of the remaining criteria of disadvantage found in s. HEA 5.04. Finally, HEAB began the process of seeking the change now proposed to s. HEA 5.04, obtaining a signed statement of scope for the proposed change from the Governor in December 2011.

HEAB submitted documentation of its steps to the Office of Civil Rights and was notified in April 2012 that it is in compliance with the Title VI regulation cited in the complaint of September 2006.

Comparison with rules in adjacent states

The change being sought is proposed at the request of the United States Department of Education – Office for Civil Rights. Because the US Department of Education is a national agency, the standard that is driving the change to s. HEA 5.04 is applied nationally. The proposed change to the rule is in keeping with HEAB’s effort to make its own administrative rules comply with federal law.

All the states adjacent to Wisconsin offer need–based grants or scholarships to post–secondary students, as does Wisconsin; each adjacent state has a program that compares to the Wisconsin Higher Education Grant (WHEG) and the Wisconsin Tuition Grant (WTG) as purely need–based grants.

Like its WHEG and WTG programs, Wisconsin’s TIP program offers assistance to students based in part on financial need. The financial–need portion of the TIP program is not at issue and no changes to its criteria are being sought in this proposed rule change.

However, Wisconsin’s TIP program also requires students to meet one criteria from a list of non–traditional (non–financial) student classifications that indicate potential disadvantage facing the student in pursuit of higher education. The non–traditional or non–financial criteria for qualifying for TIP could be a handicap, a shortfall in educational preparation, incarceration in (or recent release from) a correctional institution, a lack of family history of higher education, or an environment or academic background that deters the pursuit of educational plans.

Two of the states adjacent to Wisconsin do offer assistance to students based on potential disadvantages that go beyond simple financial need.

- Iowa offers an “All Iowa Opportunity Foster Care Grant” for students between the ages of 17–24 who age out of Iowa’s foster care system or State Training School and students who are adopted after age 16.
- Michigan offers a “Tuition Incentive Program” or TIP that encourages eligible students to complete high school by providing tuition assistance for the first two years of college and beyond; eligibility requires a history of eligibility for Medicaid. Michigan has also created federally–funded GEAR UP scholarship programs exclusively for qualifying graduates of high schools in three specific urban school districts (Detroit, Flint and Muskegon).

None of the states adjacent to Wisconsin employ race or ethnic minority status as a criteria or consideration for any of their educational–assistance programs, including those programs listed above.

In addition to the programs listed above, Wisconsin, Minnesota, and Michigan all offer scholarships or tuition waivers for students who are of at least ¼ American Indian ancestries. In each state, these programs are distinct from the above–listed programs and eligibility for the American Indian scholarships and tuition waivers depends upon a student’s status as an enrolled member of a federally–recognized tribe or band. These programs are therefore not directly comparable to Wisconsin’s TIP program; further, Wisconsin’s Indian Student Assistance program is separate from TIP (and is not subject to the rule being proposed for change).

Summary of factual data and analytical methodologies

The change being sought was arrived at as part of a series of administrative steps taken by HEAB in consultation with the US Department of Education, Office of Civil Rights.

HEAB has determined that neither eligible nor participating students would be appreciably affected by this proposed change. HEAB arrived at this determination through review of the criteria for the TIP program, and a comparison of demographic data of TIP participants and of successive classes of TIP students over several years.

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

HEAB anticipates no appreciable effect on small businesses as a result of this proposed change.

Anticipated Costs Incurred By Private Sector

This proposed rule does not have a significant fiscal effect on the private sector.

Effect on Small Business

This proposed rule does not have a significant effect on small business.

Initial Regulatory Flexibility Analysis

This proposed rule order will not have an effect on small business.

Agency Contact Person

John Reinemann, Executive Secretary, Wisconsin Higher Educational Aids Board, 131 West Wilson Street, Suite 902, Box 7885, Madison WI 53707–7885, telephone 608–267–2206, email john.reinemann@wisconsin.gov.

Effective Date

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.

Final Regulatory Flexibility Analysis

Not Applicable.

Fiscal Estimate

Attached.

Text of Rule:

SECTION 1. HEA 5.04 is amended to read:

HEA 5.04 Talent incentive grant eligibility. To be eligible for an initial grant award, a uniquely needy student shall be a Wisconsin resident, a first–time freshman and meet at least one criterion under sub. (1) and one criterion under sub. (2). The minimum award a freshman can receive will be \$600 with the maximum being \$1,800.

(1) FINANCIAL NEED CRITERIA.

(a) A dependent student whose expected academic year parent contribution is \$200 or less, or an independent student whose academic year contribution is \$200 or less.

(b) The family of a dependent student or the student, if independent, is receiving Temporary Assistance for Needy Families or Wisconsin Works benefits.

(c) The parents of dependent students or the student, if independent, are ineligible for unemployment compensation and have no current income from employment.

(2) NON–TRADITIONAL STUDENT STATUS CRITERIA.

~~(a) The student is a member of one of the minority groups defined in s. 39.44 (1) (a), Stats.~~

~~(b) (a)~~ The student is or will be enrolled in a special academic support program due to insufficient academic preparation.

~~(c) (b)~~ The student is a first–generation post–secondary student, neither of whose parents graduated from a 4 year college or university.

~~(d) (c)~~ The student is handicapped according to department of workforce development, division of vocational rehabilitation records or according to the Special Needs or Disabilities Office on Wisconsin college or university campuses which use the Americans with Disabilities Act definition under 42 USC 12102 (2).

~~(e) (d)~~ The student is currently or was formerly incarcerated in a correctional institution.

~~(f) (e)~~ The student’s environment or academic background is such that it deters the pursuit of educational plans.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707–7864
FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis					
<input checked="" type="checkbox"/> Original		<input type="checkbox"/> Updated		<input type="checkbox"/> Corrected	
2. Administrative Rule Chapter, Title and Number					
Section HEA 5.04					
3. Subject					
Wisconsin Talent Incentive Grant					
4. Fund Sources Affected				5. Chapter 20, Stats. Appropriations Affected	
<input checked="" type="checkbox"/> GPR	<input type="checkbox"/> FED	<input type="checkbox"/> PRO	<input type="checkbox"/> PRS	<input type="checkbox"/> SEG	<input type="checkbox"/> SEG–S
				20.0005 (fd), 20.235 (1) (fd)	
6. Fiscal Effect of Implementing the Rule					
<input checked="" type="checkbox"/> No Fiscal Effect		Increase Existing Revenues		Increase Costs	
Indeterminate		Decrease Existing Revenues		Could Absorb Within Agency's Budget	
				Decrease Cost	
7. The Rule Will Impact the Following (Check All That Apply)					
State's Economy		Specific Businesses/Sectors			
Local Government Units		Public Utility Rate Payers			
		Small Businesses (if checked, complete Attachment A)			
8. Would Implementation and Compliance Costs Be Greater Than \$20 million?					
Yes		<input checked="" type="checkbox"/> No			
9. Policy Problem Addressed by the Rule					
Section HEA 5.04 is not in compliance with federal law (Title VI of the Civil Rights Act of 1964). See text of rule for details.					
10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.					
Rule has been discussed with representatives from the University of Wisconsin System, the Wisconsin Technical College System, Wisconsin's tribal colleges, and the Wisconsin Association of Independent Colleges and Universities (WAICU).					
11. Identify the local governmental units that participated in the development of this EIA.					
None.					
12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)					
No substantive impact anticipated					
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule					
Implementation would bring s. HEA 5.04 into alignment with federal law. The alternative would be to continue to ignore s. HEA 5.04's non-compliance.					
14. Long Range Implications of Implementing the Rule					
Implementation would bring s. HEA 5.04 into alignment with federal law, forestalling potential challenges to the program.					
15. Compare With Approaches Being Used by Federal Government					
The proposed change would make s. HEAB 5.04 compliant and consistent with federal law.					
16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)					
See text of rule.					
17. Contact Name				18. Contact Phone Number	
John Reinemann, Executive Secretary				608–267–2206	

*This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Not applicable.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Not applicable.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe:

Small business analysis is non–applicable.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Non–applicable.

5. Describe the Rule's Enforcement Provisions

Rule removes a criteria from the current list of criteria used in the program. Removing the affected clause from the rule will prevent the affected criteria from being used in consideration of the program.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

Notice of Hearing

Transportation

CR 12–046

NOTICE IS HEREBY GIVEN that pursuant to sections 86.195 and 227.11 Stats., interpreting section 86.195, Stats., the Department of Transportation will hold a public hearing on an amendment to Chapter Trans 200, Wis. Admin. Code, relating to the erection of signs on public highways.

Hearing Information

Date: Wednesday, November 28, 2012

Time: 1:00 p.m.

Location: Hill Farms Transportation Building
Room 144B
4802 Sheboygan Avenue
Madison, WI 53705

Accessibility

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call John Noll at (608) 266–0318 with specific information on your request **at least 10 days** before the date of the scheduled hearing.

Submitting Comments on the Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. John Noll, SIS/TODS Program Coordinator, Bureau of Traffic Operations, Traffic Engineering Section, Traffic Design Unit, Room 501, P.O. Box 7986, Madison, WI 53707–7986, or by calling (608) 266–0318. You may also contact Mr. Noll via email at: john.noll@dot.wi.gov. Comments may be

submitted in lieu of public hearing testimony or comments supplementing testimony offered at the public hearing until close of business on **November 28, 2012**.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory authority

Sections 86.195 and 227.11 (2) (a), Stats.

Statutes interpreted

Sections 86.195 and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. The department of transportation may authorize the erection and maintenance of a specific information sign upon the request of any person within the right–of–way of a federal–aid primary highway or within the right–of–way of a federal–aid secondary highway under the jurisdiction of the department in accordance with s. 86.195, Stats.

Plain language rule analysis

This proposed rule–making would re–word s. Trans 200.06 (7) (b) 3. a., relating to the number of business logo panels allowed on specific information signs at interchanges when fewer than 6 qualified facilities are available in one or more of the categories of GAS, FOOD, LODGING, CAMPING and ATTRACTIONS. Business logo panels for 2 categories of motorist services may be displayed on the same information sign with certain limitations. Amending this rule increases flexibility, allowing more businesses to participate while making optimal use of existing structures.

Related statute or rule

There are no statutes or rules other than those referenced above or currently under promulgation related to this proposed rulemaking.

Comparison with similar rules in adjacent states

Michigan: The categories allowed in Michigan are Gas/Diesel, Food, Lodging Camping and 24–hour Pharmacies. When displaying logo panels for multiple categories, Michigan complies with the 2009 Federal Manual on Uniform Traffic Control Devices (MUTCD): When 2 types of services are displayed on one sign, the logo sign panels shall be limited to either 3 for each motorist service type (for a total of 6 sign panels), or 4 of one motorist service type and 2 of the other motorist service type (for a total of 6 sign panels).

Minnesota: Logo signs can be installed on Interstate highways and certain freeways in the Minneapolis/Saint Paul area. Other highways are ineligible. The signs are located at interchanges, not intersections.

GAS, FOOD, LODGING and CAMPING businesses may advertise on logo signs. These businesses provide essential motorist services, according to the Federal Highway Administration (FHA).

When displaying logo panels on Interstate highways and certain freeways, Minnesota’s logo program complies with the 2009 Federal MUTCD, which allows 4 of one motorist service type and 2 of the other motorist service type (for a total of 6 sign panels).

Illinois: The Illinois Department of Transportation (IDOT) administers a Business Logo Signing Program along various Interstate highways and other freeways. This program involves mounting gas, food, lodging, camping business, and 24–hour pharmacy signs, referred to as logos, on large blue–background panels in advance of interchange exits and along exit ramps to alert motorists to available motorist services.

The program includes all sections of Interstate highways and other freeways except those passing through densely populated urbanized areas where logo signing would overload motorists with information that is not essential to their safe travel. It does not apply to highways under the jurisdiction of the Illinois State Toll Highway Authority.

Logo panels may be displayed to allow 3 business categories with 2 business logo panels from each category (for a total of 6 sign panels) on a single business sign structure. When 2 business categories are displayed on a single sign structure, 3 logo panels from each of the 2 business categories may be displayed, or 4 logo panels from 1 business category and 2 logo panels from another business category (for a total of 6 sign panels).

TOURIST ATTRACTION signs may be combined with business logo signs (Gas, Food, Camping and 24–Hour Pharmacy) on the same structure, with no more than 6 business logo panels displayed on any one structure. Tourist Attraction panels will not be combined with existing business service signs displaying more than 3 business logo panels. When tourist attraction signs are combined with business logo signs, one space will remain available for each business logo service type displayed on the structure.

This combination is different from what is suggested in the 2009 Federal MUTCD.

Iowa: Iowa DOT requirements for mainline specific service signs erected in advance of an interchange, in a single direction of travel, and limitations regarding the numbers and types of business signs attached to these motorist service signs are as follows: Each mainline specific service sign is limited to 6 business logo panels. This restriction applies regardless

of whether the specific service sign displays a single type of motorist service or a combination of motorist service types.

In general, only one type of motorist service should be displayed on each mainline specific service sign. However, the department may combine motorist service types on one sign for a reason such as, but not limited to, the following:

- (1) Each combination sign is limited to 6 business logo panels.
- (2) No more than 3 motorist service types shall be represented on any combination sign.
- (3) For a combination sign displaying 3 types of motorist services, the number of business logo panels for each motorist service type is limited to 2.
- (4) For a combination sign that will accommodate at least 4 business logo panels, each type of motorist service displayed on the sign must have at least 2 positions designated for that service type. This complies with the 2009 Federal MUTCD.

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

This rule change is consistent with the 2009 Federal MUTCD adopted by WisDOT. By allowing more flexibility, more businesses could participate in the Specific Information Sign (SIS) program.

Summary of factual data and analytical methodologies

The proposed rule change complies with the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD). When 2 types of motorist services are displayed on one sign, the logo sign panels shall be limited to either 3 for each motorist service type (for a total of 6 sign panels), or 4 of one motorist service type and 2 for the other motorist service type (for a total of 6 sign panels). No factual data was required for the rule–making in this proposal, as the changes were made for consistency with the Federal MUTCD previously adopted by WisDOT. For that reason, no analysis was involved in the preparation of this proposed rule.

Anticipated Private Sector Costs

This amendment and the legislation which grants the department rule making authority does not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance with this rule.

Initial Regulatory Flexibility Analysis

The proposed rule change does not have a significant economic impact on small business. The amendment to this rule will have a minor impact on small businesses that fall under the categories of GAS, FOOD, LODGING, CAMPING and ATTRACTIONS, and that participate in the Specific Information Signing (SIS) program. The additional business panel space that this rule will create by permitting two business panels of one category and four business panels of another category (rather than the three categories currently allowed), will give motorists more information about businesses to choose from at these exits.

The degree of economic impact experienced by participating businesses cannot be predicted using data due to the subjective nature of the rule amendment. Giving motorists more choices does not guarantee a positive or negative economic impact for the affected businesses. However, small businesses will likely become more competitive by the addition of more small business advertising. There is no reporting, bookkeeping, or other procedures required for compliance with the rule, nor are any special professional skills necessary for compliance with the

rule. The number of exits or interchanges affected by this rule change statewide is minimal; therefore, the overall economic impact would be insignificant.

Analysis and supporting documentation used to determine effect on small business

By allowing a split of categories, with up to 4 business logo panels for one motorist service type and 2 business logo panels of another motorist service type, more businesses could simultaneously take advantage of using motorist service business logo panels. Subsequently, this would reduce the number of businesses on the waiting list for motorist services business logo panels at those particular interchanges or intersections. If more businesses are able to take advantage of the SIS program, the department anticipates this regulatory change will have a minor fiscal effect on small business.

Pursuant to s. IV, 3. a. of Executive Order #50, the changes proposed herein are posted on the state’s and the department’s administrative rules website and will be posted until close of business on the day of the public hearing to solicit comments regarding their potential economic impact on businesses, business sectors, professional associations, local government units, or potentially interested parties.

Small Business

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a significant economic impact on small business. The Department’s Small Business Regulatory Coordinator, Michele Carter, may be contacted at: (414) 438–4587 or (608) 266–6961, or by emailing her at: michele.carter@dot.wi.gov.

Agency Contact Person

John Noll, SIS/TODS Program Coordinator, Bureau of Traffic Operations, Traffic Engineering Section, Traffic Design Unit, 4802 Sheboygan Avenue, Room 501, P.O. Box

7986, Madison, WI 53707–7986; (608) 266–0318; john.noll@dot.wi.gov.

To view the proposed amendment to the rule, view the current rule, and submit written comments via email/internet, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Environmental Impact

The department has made a preliminary determination that this action does not involve adverse environmental effects and does not need an environmental analysis. No petition has been received requesting an environmental analysis.

Text of Proposed Rule

SECTION 1. Specific Information and Business Signs.

Trans 200.06 (7) (b) 3. a. is amended to read: At interchanges where not more than 3 qualified facilities are available for each of 2 or more types of motorist services, business signs for 2 types of motorist services may be displayed on the same specific information sign. ~~Not more than 3 business signs for each type of motorist service may be displayed in combination on a specific information sign with 2 types of motorist services. When it becomes necessary to display a fourth business sign for a type of motorist service displayed in combination, the business signs involved shall then be displayed in compliance with subds. 1. and 2. When 2 types of motorist services are displayed on one sign, the business sign panels shall be limited to 3 for each motorist service type, or 4 for one motorist service type and 2 for the other motorist service type. Not more than 6 business sign panels may be displayed on one specific information sign.~~

SECTION 11. Effective Date. 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.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
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ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis					
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Original	Updated	Corrected			
2. Administrative Rule Chapter, Title and Number					
Chapter Trans 200 / Specific Information and Business Signs / Section Trans 200.06 (7) (b) 3.					
3. Subject					
Administrative rule language change.					
4. Fund Sources Affected				5. Chapter 20, Stats. Appropriations Affected	
GPR	FED	PRO	PRS	<input checked="" type="checkbox"/>	20.395 (3) (eq)
				SEG	
				SEG–S	
6. Fiscal Effect of Implementing the Rule					
<input type="checkbox"/> No Fiscal Effect		<input checked="" type="checkbox"/> Increase Existing Revenues		Increase Costs	
<input type="checkbox"/> Indeterminate		<input type="checkbox"/> Decrease Existing Revenues		Could Absorb Within Agency’s Budget	
				Decrease Cost	

7. The Rule Will Impact the Following (Check All That Apply)

- State's Economy
 Local Government Units
- Specific Businesses/Sectors
 Public Utility Rate Payers
- Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The current rule language allows two (2) categories of motorist services on the same sign, with a maximum of three (3) business panels for each motorist service category, not to exceed a total of six (6) business panels. The new rule language would allow a combination of two (2) categories of motorist services on the same sign, with a maximum of four (4) business panels from one motorist service category and two (2) business panels from a second motorist service category, not to exceed a total of six (6) business panels.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Motorist services businesses, such as GAS, FOOD, LODGING, CAMPING and ATTRACTIONS that may participate in the Specific Information Signs (SIS) program may be affected by the proposed rule.

11. Identify the local governmental units that participated in the development of this EIA.

WisDOT

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The businesses that this rule language change will affect may increase the number of motorists that take advantage of the services they provide, resulting in a positive economic impact. Statewide economic and fiscal impacts are expected to be minimal, due to the small number of business entities that would likely be affected.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

At certain interchanges throughout the state, more businesses that fall under the categories of GAS, FOOD, LODGING, CAMPING and ATTRACTIONS could be listed on Specific Information Signs (SIS), thereby reducing the number of businesses on the "Waiting List" at those intersections.

14. Long Range Implications of Implementing the Rule

A long-range implication of changing the rule language is the generation of more revenue from the collection of additional permit fees payable to WisDOT.

15. Compare With Approaches Being Used by Federal Government

The Manual on Uniform Traffic Control Devices (MUTCD) 2009 edition adopted by Wisconsin allows the combination described in #9 above.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Iowa, Michigan and Minnesota comply with the 2009 MUTCD by allowing three (3) business logo panels for two (2) motorist service types (for a total of six (6) business logo panels), or four (4) of one motorist service type and two (2) of the other motorist service type (for a total of six (6) panels), which conforms to the intended rule language change in Wisconsin. In Illinois, the approach is different when the "ATTRACTION" category is included on a sign with multiple categories. When the "ATTRACTION" category is included on a sign with multiple categories, one logo panel space must always be available to add another business logo panel from one of the other motorist service types, which include: GAS, FOOD, LODGING, CAMPING or 24-HOUR PHARMACY. This approach differs from the rule language changes Wisconsin wishes to enact.

17. Contact Name

John Noll

18. Contact Phone Number

608-266-0318

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The businesses that this rule language change will affect may increase the number of motorists that take advantage of the services they provide, resulting in a positive economic impact. Statewide economic and fiscal impacts are expected to be minimal, due to the small number of business entities that would likely be affected.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

By counting the number of interchanges statewide where this rule change could be implemented, and assuming the business is open a minimum of 16 hours per day, multiplied by the number of days in a year, multiplied by 1 customer per additional hour per day spending a minimum \$10 for each visit, this rule language change could increase motorist service business sales more than \$11 million per year.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe:

N/A

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The impact will be positive on all businesses, so small businesses will be fully eligible to participate.

5. Describe the Rule's Enforcement Provisions

There are no rule enforcement provisions aside from eligibility.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

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