

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 01-010**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **1. Statutory Authority**

The rule imposes limitations on free speech activities which are protected by the First Amendment to the U.S. Constitution, made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Governmental limitations on protected speech should be narrowly tailored to serve a significant governmental interest. [*Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).] In light of this principle and the stated purpose of rule, the definition of “demonstration” appears to be overly broad. The analysis states that the rule is designed to ensure that law enforcement personnel are present at demonstrations to protect department property, property users or demonstrators. The rule should be rewritten to more closely focus on situations in which the presence of law enforcement personnel may be needed to protect safety and property. Also, in light of the First Amendment concerns raised by the rule, it would be advisable for the department to provide the Legislature with an overall analysis of the rule’s constitutionality.

#### **2. Form, Style and Placement in Administrative Code**

a. Section NR 45.045 (1) states that “no person may engage in demonstrations” on certain property unless “a permit has been issued by the department.” The rule does not require that the permit be in any way related to the individual or to the demonstration in which the individual is participating. To achieve the state purpose of the rule, should this provision specify that no individual may engage in a demonstration unless a permit has been issued that authorizes

the individual to engage in a demonstration at that particular location and time? Also, should the rule specifically address similar issues as they relate to permits granted to groups?

b. Are there any penalties for a violation of s. NR 45.045 (1) or (7)? If so, can they be included or cross-referenced in this rule?

c. The rule should specify what recourse a permit applicant has if the department fails to issue a permit within the time period specified in s. NR 45.045 (3).