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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-010

AN ORDER to create NR 45.03 (8p) and 45.045, relating to demonstrations on certain types of department properties.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

- 02-06-01 RECEIVED BY LEGISLATIVE COUNCIL.
- 03-05-01 REPORT SENT TO AGENCY.

RNS:MM:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

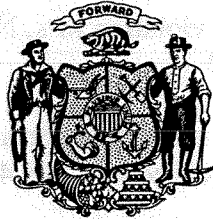
NO

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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 state 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).

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create NR 45.03(8p) and 45.045 relating to demonstrations on certain types of Department properties.

LF-05-01

Analysis Prepared by Department of Natural Resources

Authorizing Statutes: §. 23.09(2)(intro.), 23.11(1), 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats.
Statutes Interpreted: §. 23.09(2)(intro.), 23.28(3), 27.01(2)(i) and (j) and 28.03, Stats.

Many Department properties, such as wildlife and fisheries areas, do not have a Department office or regularly assigned on-site staff. In addition, they are usually some distance from significant law enforcement resources. When protests or demonstrations take place without advance notice on these properties, it is very difficult to provide law enforcement personnel to protect the property and property users or the demonstrators themselves.

These regulations will require that a permit be obtained in advance of demonstrations on most types of Department properties. The rule does not allow for the denial of permits, but does allow the Department to impose reasonable conditions on the demonstration. Department decision based on the content of the speech of the demonstrators is prohibited.

SECTION 1. — NR 45.03(8p) is created to read:

NR 45.03(8p) "Demonstration" means any public display, declaration or gesture expressing an opinion or view which attempts to influence the opinion or conduct of others. "Demonstration" does not include meetings or gatherings held in department meeting rooms, auditoriums, amphitheaters or shelters which have been reserved for that purpose by the applicant.

SECTION 2. NR 45.045 is created to read:

NR 45.045 Demonstrations. (1) REQUIREMENT. No person may engage in demonstrations in state parks, forests, recreation areas, wildlife areas, fisheries areas, natural areas, the Lower Wisconsin state riverway, the Willow flowage and Turtle-Flambeau scenic waters areas or the Chippewa flowage unless a permit has been issued by the department.

(2) APPLICATION PROCESS. An applicant for a demonstration permit shall complete a written application to the department on forms provided by the department at least 3 working days in advance of the demonstration. The application shall state the name, address and phone number of the person applying for the permit, the name of an on-site representative, the date, starting time, duration, requested location and the anticipated number of participants.

Note: Applications may be obtained from any department regional office or from the Office of the Secretary, P.O. Box 7921, Madison, WI 53707.

(3) ISSUANCE. The demonstration permit shall be issued within 2 working days of receipt of an application by the department.

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(4) CONDITIONS. Where necessary for the protection of the property or property users, the permit may limit the demonstration activity to a location in which the demonstrators have a reasonable opportunity to reach the intended audience.

(5) FEES. The department may charge a permit fee to cover the cost of processing a permit, but in no instance may the charge exceed \$25 per demonstration permit. A separate permit is required for each day of demonstration.

(6) NO DISCRIMINATION. The department may not discriminate against any applicant on the basis of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record, conviction record or the content of the applicant's speech in the utilization of department properties for demonstration activities.

(7) PROHIBITIONS. No person engaged in demonstration activities may physically block or restrict entrance to or the exit from a department property.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules 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.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

George E. Meyer, Secretary

(SEAL)