



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-041

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

In several instances throughout the proposed rule, the department refers to the issuance of “guidance” interpreting ch. Adm 2. For example, in s. Adm 2.04 (1m), the department refers to the publication of “reasonable, content-neutral guidance...”, relating to further interpretation of s. Adm 2.04 (1) and (1r) (a) to (j). Use of the term “guidance” also appears in s. Adm 2.04 (2) and (3). If “guidance”, as the term is used in the proposed rule, meets the definition of a “rule”, the content of the “guidance” should be promulgated in the Administrative Code. [See s. 227.01 (13), Stats.] If the content of any “guidance” is not subject to promulgation as a “rule”, the department should provide information on the manner by which these publications may be accessed or obtained.

2. Form, Style and Placement in Administrative Code

a. An introductory clause should appear at the beginning of the draft rule analysis, immediately preceding the rule summary. [s. 1.02 (1), Manual.]

b. In the introductory clause, the enumeration of provisions treated by the rule should be corrected to read as follows: “The department of administration hereby adopts an order to repeal Adm 2.14 (2) (v) 9. c.; to renumber and amend Adm 2.14 (2) (v) 9. a. and b.; to amend Adm 2.02 (1) (a), 2.04 (1) (intro.), (2), (3), (5), and (7), 2.07 (2), 2.08 (1) (intro.) and (d), 2.11, and 2.14 (2) (intro.) and (v) (intro.) and 5.; and to create Adm 2.03 (3g), (3r), and (6m) and 2.04 (1g) and (1r)”. [s. 1.02 (1), Manual.]

c. In the rule summary, the explanation of agency authority section refers to events occurring in the Capitol building in 2011 and disruptions caused to permitted events and government activities. The explanation implies that the rule revision addresses or ameliorates these events or disruptions, but does not state this proposition explicitly. If the agency is exercising its rule-making authority to gain greater compliance from user groups to protect public safety and prevent disruption to permitted events and normal government activities, this purpose should be stated directly at the outset of the section.

d. In the rule summary, items 8 and 9 should be completed. Item 10 is blank as well, but may be omitted, as it applies only to rules proposed by the Department of Veterans Affairs. [s. 1.02 (2), Manual.]

e. In the rule summary, the comment submission and deadline for submission section should provide an email address where comments may be submitted.

f. In SECTION 2, sub. (3m) should be created as sub. (3g). [s. 1.03 (5), Manual.]

g. In SECTION 2, the newly created definition of “event” employs a semi-colon to separate two items in a list and is missing the word “or” between “elected officials” and “otherwise” in the final sentence. The final sentence could be redrafted as follows: “The term ‘event’ does not include activities such as: informal tourist activities; visits to elected officials by constituents or members of the public; or visits by members of the public to conduct routine business with any state agency or state entity.”. Additionally, the definition uses the phrase, “or the like”. Drafting convention uses the word “includes” to encompass other reasonably related examples not specifically enumerated, rather than “or the like”. [s. 1.01 (7) (c), Manual.]

h. In SECTION 2, the use of the phrase “but not limited to” in the definition of “exhibit” is unnecessary. Additionally, the department may wish to reconcile the use of “includes” and “means” in the same definition. [s. 1.01 (7) (c) and (d), Manual.]

i. In SECTION 2, the department defines the word “rally” to mean “any gathering of people for the purpose of promoting any cause...”. Did the agency intend to omit gatherings for the purpose of *opposing* a cause, or did the agency intend the definition of “rally” to cover these gatherings? If the agency intended to cover these gatherings, the definition should be amended to refer to gatherings “for the purpose of promoting or opposing any cause”.

j. In SECTION 3, the treatment clause of the section refers to: “Adm 2.04 (1)”. The treatment clause should refer to: “Adm 2.04 (1) (intro.)”.

k. SECTION 3 lists the language of pars. (a) to (e) of s. Adm 2.04 (1), but does not amend these paragraphs. The paragraph language should not appear.

l. In SECTION 4, sub. (1m) should be created as sub. (1g). [s. 1.03 (5), Manual.]

m. In SECTION 4, the department should consider providing additional information regarding the denials of permits under s. Adm 2.04 (1) and (1r). In particular, in s. Adm 2.04 (1r), the circumstances regarding exercise of department discretion remain unclear. For

example, in s. Adm 2.04 (1r) (c), if a permit is denied on the grounds that a group has failed to pay an invoice for a past event, under what circumstances may the department nonetheless grant a permit? In s. Adm 2.04 (1r) (e), how is it determined whether a falsehood or misrepresentation is “material” in nature? Are the grounds for denial in s. Adm 2.04 (1r) (g) intended to be permanent as applied to a group that made previous misrepresentations? In s. Adm 2.04 (1r) (h), would there be any circumstance in which a permit may be granted if the proposed use involves activity that is prohibited by law? [See, also, the comment relating to statutory authority, above.]

n. Throughout the proposed rule, underscored material should follow the stricken material. [s. 1.06 (1), Manual.]

o. Throughout the proposed rule, references to other portions of the Administrative Code should use the style prescribed in s. 1.07 (2), Manual.

p. In s. Adm 2.04 (7), the entire word “a” should be struck and “any” should be inserted as a new, underscored word. [s. 1.06 (2), Manual.] The rule should be reviewed in its entirety for conformity with s. 1.06 (2), Manual.

q. In several instances throughout the proposed rule, text is both stricken and underscored. The department should remove one treatment or the other, or the text in its entirety.

r. In SECTION 7, the treatment clause of the section refers to “Adm 2.08 (1)...”. The treatment clause should refer to: “Adm 2.08 (1) (intro.)...”. Additionally, the title and heading are underlined, but are not being amended. The underlining should be removed. [s. 1.06 (1), Manual.]

s. In SECTION 7, par. (d) is amended to read: “Holiday trees or holiday decorations or other displays, decorations, signs or the like...”. Drafting convention uses the word “includes” to encompass other reasonably related examples not specifically enumerated, rather than “or the like”. [s. 1.01 (7) (c), Manual.] Additionally, how do these items (displays, decorations, and signs) differ from “exhibits” as the latter term is defined within the chapter? Similar references were deleted and replaced by “exhibit” in s. Adm 2.07 (2).

t. In SECTION 9, the treatment clause refers to: “Adm 2.14 (2), 2(v), (2) (vm) 5”. The treatment clause should instead refer to: “Adm 2.14 (2) (intro.) and (v) (intro.) and 5.”. Paragraph (vm) should be inserted and referred to as (vg). [s. 1.03 (5), Manual.]

u. In SECTION 9, the rule is amended to include language explaining the purpose or intent of imposing penalties that appear in the subsection. The drafting convention is to avoid use of intent or purpose statements. [s. 7.11 (1), LRB Drafting Manual.]

v. In SECTION 9, the reference to penalties in “sub. (2) (intro.)” should be revised. The underscored material in the sentence containing that reference could be rewritten to relate directly to s. Adm 2.14 (2) (intro.). The penalty in s. Adm 2.14 (2) (intro.) would automatically apply, given the relationship between s. Adm 2.14 (2) (intro.) and the proposed s. Adm 2.14 (2) (vm).

w. In SECTION 9, subd. 5. states that any event may be declared unlawful if its participants “enter or occupy any building or facility managed or leased by the department, without authorization”. The subdivision does not specify whether authorization must be provided by the department, by a state official designed under the proposed s. Adm 2.14 (2) (vr) 2., or whether it may be provided by another entity. The source of authorization should be clarified.

x. In SECTION 10, the treatment clause refers to: “Adm 2.14 (2) (vr) a., b.” and to “Adm (2) (vr) 1., and 2.”. The treatment clause should instead refer to: “Adm 2.14 (2) (v) 9. a. and b.” and to “Adm 2.14 (2) (vr) 1. and 2.”.

y. In SECTION 11, the treatment clause refers to: “Adm 2.14 (2) (vr) c.” The treatment clause should instead refer to: “Adm 2.14 (v) 9. c.”. SECTION 11 includes and strikes the subdivision language being repealed. The stricken language should not appear. [s. 1.057, Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The plain language analysis states that changes made in SECTIONS 1 and 3 seek to clarify the historical interpretation that the Administrative Rules can be applied in areas under the control of the Legislature, at the invitation of the Legislature. However, the amendments to ss. Adm 2.02 (1) and 2.04 (1) do not make reference to the department applying its permit policy or other provisions of the Administrative Rules to areas of the Capitol reserved for use by the Legislature if requested to do so by the Legislature.

b. The plain language analysis of SECTION 7, appearing on page 3, states that “...the prohibition applies to all type so [sic] decorations and the like, and not simply Holiday decorations”. This language should be corrected for readability and consistency with drafting convention employing the word “includes” to encompass other reasonably related examples not specifically enumerated, rather than “or the like”. [s. 1.01 (7) (c), Manual.]

c. The plain language analysis of SECTION 8, appearing on page 3, refers to “cannons” of construction. This reference should be changed to refer to “canons”.