

Report From Agency

Department of Administration Report to Legislature Clearinghouse Rule 14-001

Proposed Rule and Summary:

The proposed rule, including analysis and text, are attached.

Reference to applicable forms:

There are no references to new forms.

Fiscal estimate and Economic Impact Statement:

The fiscal estimate and economic impact analysis are attached. The proposed rule will have no material impact upon the State's fiscal obligations. The proposed rule will have no material impact on the economy of the state. The fiscal estimate was updated to reflect that the department did receive one or more comments.

Basis and Purpose of the Proposed Rule:

The basis for the proposed rule changes are the Department of Administration's obligations to manage state facilities, including the capitol building, under ss. 16.84, 16.845, and 16.846, Stats. The purpose of the proposed rule changes are to obtain compliance regarding use of State facilities, including the capitol building, and to meet obligations of the State under a recent court settlement agreement by proposing rule changes in conformance with the agreement. These purposes will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations, as well as by proposing changes in conformance with the settlement agreement.

Department Response to Legislative Council Rules Clearinghouse Recommendations:

A copy of the Rules Clearinghouse Report is attached. The department accepts the recommendation(s) made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested except as follows:

Clearinghouse Comment 2 Form, Style and Placement in Administrative Code:

- a. The summary introductory clause should enumerate rule sections treated in the proposed rule. As such, the introductory clause should be replaced with the following: ...
- b. In the rule summary, the comment submission and deadline for submission section should provide an email address where comments may be submitted.

- c. In SECTION 2, sub. (3m) should be created as sub. (3g). [s. 1.03 (5), Manual.]
- d. In SECTION 2, (when defining “event”) ...either (1) eliminate the use of the phrase “or the like”... or (2) (substitute) “includes” (for the word “means”).
- e. In SECTION 2, when defining “exhibit” use of the phrase “but not limited to” is unnecessary. Further, use of the phrase “and other similar items” should be reconciled with use of the word “means” within the definition. [s. 1.01 (7) (c) and (d), Manual.]
- f. In SECTION 2, in the definition of “spontaneous event” use of the phrase “but not limited to” is unnecessary. Further, parentheses should not be used. Instead, the idea appearing within the parentheses should be set apart with commas. [s. 1.01 (6) and (7) (d), Manual.]
- g. In SECTION 3, the treatment clause should read: ...
- h. In SECTION 3, the rule that provides that “advance notice” shall be granted for any event (sic). However, the rule does not define what constitutes an “advance notice,” or how such notice should be given. It is unclear how an “advance notice” differs from a “permit.” Is the difference that a “permit” requires an application form, while an “advance notice” does not?
- i. In SECTION 4, use of the phrase “but not limited to” is unnecessary and should be removed from s. 2.04 (1m) (g) and L. [s. 1.01 (7) (d) Manual.]
- j. In SECTION 5, sub. (2) states that the Department of Administration may publish “content neutral guidance further limiting or explaining potential imposition of charges.” This guidance may need to be promulgated as a “rule,” under s. 227.01 (13), Stats., depending upon the subject matter addressed within the “content-neutral guidance.” Under statute, guidance may be issued which “fixes or approves rates, prices or charges.” [s. 227.01 (13) (n), Stats.] Therefore, fixed charges for expense arising out of the use of state buildings and facilities (i.e. the cost for replacing a damaged light fixture), may be set out as “guidance.” However, other policy regarding when or why charges may be imposed must be promulgated as a “rule.”
- k. In SECTION 7, the treatment clause should read: Adm 2.08 (1) (intro.) and (d) are amended to read:”.
- l. Sections 9, 10, and 11 should be replaced with the following SECTION and treatment clauses: ... (the Legislative Council recommended that several new sections be created, reducing the size of existing sections, but not altering content).
- m. In Section 9, s. Adm. 2.14 (2), the rule is amended to include language explaining the purpose or intent of imposing penalties. Though the section simply relocates language currently existing within the rule, drafting convention is to avoid use of intent or purpose statements. [s. 7.11 (1), LRB Drafting Manual.]

- n. In SECTION 9, s. Adm 2.14 (2), the new rule language incorporates language from existings. Adm 2.14 (2) (v). The citation “(v)” should be removed. Also, see comment “1.” Above regarding additional rule SECTIONS.

Department Response to Clearinghouse Comment 2:

- a. Changes made as called for by comment.
- b. Changes made as called for by comment. The department notes for the record that e-mail addresses for the submission of comments were included in Notice of Hearing made available to the public, and in the Wisconsin Administrative Register. The department also notes that timely comments were received via the published email addresses.
- c. Changes made as called for by comment.
- d. Changes made as called for by comment.
- e. Changes made as called for by comment.
- f. Changes made as called for by comment.
- g. Changes made as called for by comment.
- h. The department respectfully declines to make changes as called for by comment. The department notes that the current rules do not provide the level of specificity suggested by the comment with respect to the form of submitting permit requests. A form for advance notice can be obtained at the following address:
http://www.doa.state.wi.us/Documents/Capitol%20PD/Advance_Notification_information.pdf.
- i. Changes made as called for by comment.
- j. Comment noted. Please note that the reference to “content neutral guidance” is intended to acknowledge the fact that the imposition of charges may be limited by developments in First Amendment case law.
- k. Changes made as called for by comment.
- l. Changes made as called for by comment. The department appreciates the legislative council’s input regarding treatment clauses. With respect to section Adm 2.14 (2) paragraph (vm) subparagraph (intro.), the legislative council recommended that the treatment clause be “is created to read.” Comment 2.n. recognizes the fact that the language is not newly created. The department presumes that the comment is made to avoid confusion, since the existing paragraph (v) subparagraph (intro.) is effectively being divided in two.

m. The department respectfully declines to make the changes as called for by the comment. Although the department understands that introductory purpose or intent statements are generally disfavored the department agrees with the comment when it notes that the language is found in the current rule. The department prefers to maintain existing language when able to do so in the present case.

n. Changes made as called for by comment.

Clearinghouse Comment 5:

- a. In SECTION 9, s. Adm. 2.14 (2) (fm) 2., the language reads “disturbance of a another lawful use...”. The indefinite article “a” should be removed.
- b. In SECTION 9, s. Adm 2.14 (2) (vm), the new rule language reads: “...shall be subject to the penalties identified in subsection”. The subsection should read “in this subsection”.

Department Response to Clearinghouse Comment 5:

- a. Changes made as called for by comment.
- b. Changes made as called for by comment.

Appearances at the Public Hearing:

The department held a public hearing on the proposed on February 21, 2014, in Madison. Copies of the hearing registration slips and a transcript of hearing testimony are transmitted to the legislature with this document.

Eileen Vander Velden	Jonquil Johnston	Jason Huberty
Nadine Wright	Aidan Johnston	Larry Dupuis
Gregory Gelembiuk	Michael Crute	Shelia Shigley
Bernie Schlafke	Dominic Salvia	Sue Breckenridge
Lisa Wells	Brian Standing	Paula Mohan
Rebecca Alwin	Greg Gordon	Edward Kuharski
Kay Houston	Peppi Elder	James Murray
Nancy (illegible)	Christine A. Taylor	Irving Smith
Bill Dunn	Will Gruber	Johnathan Rosenblum
Jennifer Stone	Kimi Ishikawa	Elaine Pridgen
Timothy Riley	Steve Shirshac	

Summary of Public Comments and Agency Response:

In addition to oral comments received and transcribed, as described above, the department received the attached comments in response to the proposed rule. A summary of all comments appears below

Modifications to the proposed rule resulting from public comments are as follows:

- a. One or more persons commented that the proposed section Adm 2.03 (3r) was unclear. The department has modified the definition so that proper interpretation does not rely upon use of semi-colons alone.
- b. One or more public comments were received concerning the use of the words “may”, “shall”, “deny” and “grant” in the proposed section Adm 2.04 (1m) (a)-(L). The department revisited the use of the words, which occur both singly and in the phrases “may not” and “shall not.” The words “grant” and “allow” are synonymous, as are “deny” and “disallow” and so have been changed in response to the comments. Where the word “may” could be replaced with the word “shall” without changing meaning (e.g. where it appears in the phrase “may not”) or changing the practice the word “may” was replaced with the word “shall.” In other cases the practice of the department might be altered by replacing the word “may” with the word “shall.” For example, at times persons submit requests to use space that conflict with previously granted permits. In those cases sometimes a permit is issued using an alternative date or location after consultation with the person submitting the request. The department would not wish to undercut its flexibility to meet the needs of the public by stating that it “shall” deny a permit where it conflicts with a requested use, when it may be able to grant a permit by engaging in dialog.
- c. One or more public comments were received concerning whether the proposed rules complied with a recent settlement agreement. The department revisited the settlement agreement and compared it to the proposed rules. Following this review the proposed subparagraph (m) of section Adm 2.04 (1m) was eliminated, and paragraph (2m) of section Adm 2.04 was modified to read “two business days” instead of “48 hours” in conformance with the settlement agreement.
- d. One or more public comments were received concerning the proposed sound limit of 85 decibels for events occurring inside the state capitol building under the proposed section 2.14 (2) (fm). More specifically, members of the public were concerned that the proposed standard: 1) set the decibel level too low, particularly to accommodate school bands; 2) contained insufficient input from the expert who conducted an acoustical study for the department of justice concerning testing; and 3) created the potential for a “heckler’s veto”, although no authority for the application of that doctrine in the context of a rule of this type was offered. The department responded to these concerns by: 1) raising the proposed limit from 85 decibels to 90 decibels, see p. C-3 of the acoustical report; 2) contacting the department of justice’s acoustical expert and utilizing more specific language regarding testing as recommended by him; and 3) eliminating the option for a citation based upon a subjective complaint alone.

Summary of other comments not necessarily leading to modifications to proposed rule , and responses:

- a. One or more persons commented that under the terms of the settlement agreement the department should not be able to declare events unlawful under section 2.14 (2) (vm) if they gave advance notice rather than applying for a permit. A brief review of paragraph (vm) demonstrates why this is not a viable option. For example, under subparagraph 9., an event may be declared unlawful if it’s participants, “Intentionally employ force or violence...”. In such a case the department believes

that the operative question is whether the event's participants are intentionally employing force or violence.

- b. One or more persons commented that they believed the rules were unconstitutional and simply designed to stop people from disagreeing with the current administration. The department respectfully notes that the permitting system predates the present administration by decades, and that it has issued numerous permits and advance notices to persons and organizations that do not agree with the current administration.
- c. One or more persons questioned the authority of the department to manage the capitol building. The department respectfully refers to Wis. Stats. secs. 16.84, 16.845 and 16.846.
- d. One or more persons commented that decibels limits should not be applied between noon and 1 p.m., or after 4:30 p.m. or on weekends. A related argument is that simply shutting office doors will be sufficient for "most" spaces and that legislative committees and the like should simply avoid using rooms affected. This line of argument ignores several issues. First, the legislature has reserved the right to assign offices and the use of other rooms to itself. The department is not in a position to dictate to the legislature which rooms it may use and when, or which offices are more or less deserving of a reasonable working environment. Second, given the movement towards allowing more events with shorter notice, it necessarily follows that the legislature will have a decreased ability to avoid scheduling hearings and the like which do not conflict with events. Third, the acoustical report noted that for offices protected by double sets of doors "sound levels *were audible* yet within recommended guidelines *when sound levels on the walkways around the rotunda area were in the 80-85 dB(A) range.*" p.26. In other words, even with the protection of two sets of closed doors sound levels above 80-85 would exceed what is considered generally acceptable for a working environment. Fourth, the department notes that the existing general noise prohibition, found in section Adm 2.14 (2) (f), does not contain an exception for the time periods proposed. Fifth, in response to the comment the department also reviewed the senate and assembly calendars, and found that capital business uses do occur in the proposed time periods. For example, on February 25, 2014, the senate committee on judiciary and labor met at 12:01 p.m. Based upon the foregoing, the department has not created a complete exemption to the sound level of 90 dB(A), but will defer to the judgment of the legislature as to whether such an exemption should be created by rule or otherwise.
- e. One or more persons commented that the language referring to the department's authority was created by s. 16.84, 1967 Stats. The department notes that administrative register no. 278 (February 1979) publishes a version of section Adm 2.04 (1) that is substantially similar to the code's current form.
- f. One or more persons commented on setting the threshold for non-permitted events at twelve. This threshold was arrived at for a variety of reasons including, but not limited to, being part of the settlement agreement with the American Civil Liberties Union.
- g. One or more persons commented that sec. Adm 2.14 (2) (vm) should not continue to apply to spectators. The department agrees that any person has the right to listen to

a person exercising their First Amendment rights. However, if an unlawful event is, for example, moved, then it follows that spectator should move to the event's new location.

- h. One or more persons commented that state capitol police staff should be able to disclose to them who gave advance notice of an event. To the extent that advance notices are made in writing, such documents will be provided in accordance with the Wisconsin Public Records law. The department also notes that the American Civil Liberties Union takes the position that it would be a violation of the settlement agreement for the department to require that it receive such information.

Final Regulatory Flexibility Analysis:

A final regulatory flexibility analysis was not prepared since the proposed rule will not have a significant economic impact on a substantial number of small businesses.

ORDER OF THE DEPARTMENT OF ADMINISTRATION ADOPTING PERMANENT RULES

The statement of scope for this rule, SS 131-13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective November 11, 2013. The department received the Governor's written approval of the Final Proposed Rules on _____, 2014.

The Wisconsin Department of Administration proposes an order to repeal Adm 2.14 (2) (v) 9.c.; to renumber Adm 2.14 (2) (v) 1. to 4. and 6. To 9. (intro.); to renumber and amend Adm 2.14 (2) (v) 5. and 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.), (e), and (v) (intro.); and to create Adm 2.03 (3m), (3r), and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (fm) and (vm) (intro.), relating to the use of state buildings and facilities.

Analysis Prepared by the Department of Administration

- 1. Statute interpreted:** s. 16.846, Stats.
- 2. Statutory authority:** ss. 16.004 (1), 16.846 (1) (a) and 227.11, Stats.

3. Explanation of agency authority:

The department is the managing authority of numerous state properties and is required to "Have charge of, operate and maintain . . . the state capitol building . . . and such other state properties as are designated by law." s. 16.84 (1), Stats. "The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department." S. 16.846 (1),

Stats. Additionally, “the managing authority of any facility owned by the state . . . may permit its use for free discussion of public questions, or for civic, social or recreational activities.” s. 16.845 (1), Stats. Further, “Whoever does or attempts an act for which a permit is required under this section without first obtaining a permit may be fined . . . or imprisoned . . . or both.” S. 16.845 (1), Stats.

4. Related statute or rule: s. 16.84, Stats., and ch. Adm 2

5. Summary of Proposed Rule:

The objective of the rule is to obtain compliance regarding use of State facilities, including the capitol building. This objective will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

Section 1 codifies the historical practice of the state capitol police in enforcing the law in legislative areas upon invitation by the Legislature. *See* 1971 Act 183.

Section 2 codifies historical categories of permits granted by the Wisconsin state capitol police, e.g. “events” and “exhibits”, defines the categories, and defines “spontaneous event,” a mechanism allowing for expressive activity in response to unforeseen and newsworthy events.

Section 3 makes clear that the Wisconsin state capitol police may enforce the law in any area of the building, at the invitation of the legislature. The legislature retains management authority over areas reserved for its use in the capitol building. Additionally, section 3 codifies the historical practice of the Wisconsin state capitol police of granting permits to any person, and not only to any “governmental body or official, or any nonprofit, fraternal, religious, or veterans’ organization.”

Section 4 codifies historical practices and policies with respect to the grant and denial of permits, and extends those same protections to the new category of events held under advance notices, as providing such protections naturally arising out of the recent settlement agreement. Further, section 4 creates as categories of use ‘spontaneous events’ and ‘advance notices’ for the reasons set forth above. Moreover, section 4 allows for use of the capitol building’s rotunda by 12 or fewer persons without notice and without meeting the threshold of a “spontaneous event” within the meaning of this chapter. Finally, section 4 codifies the department’s policy on severance clauses and appeal procedure.

Section 5 codifies the historical practice of the Wisconsin state capitol police of resolving conflicts of use on a first-come first-served basis. This section provides that the department may publish content-neutral guidance limiting or explaining any potential imposition of charges arising out of the use of State facilities. The section codifies the historical practice of the Wisconsin state capitol police of not

discriminating on the basis of sexual orientation in the use management of State facilities.

Section 6 provides that permitting requirements for exhibits shall not be applied to persons who simply wear clothing bearing an expressive message, or who simply hold signs bearing an expressive message, provided that the sign is of a certain reasonable size.

Section 7 clarifies that a person who creates a hazardous condition is subject to citation under the existing code. Section 7 further clarifies that hazardous conditions can be created by the deployment of not only holiday trees and holiday decorations, but by similar exhibit items that are not related to a holiday.

Section 8 clarifies that there is no conflict between Adm 2.08 (1) and Adm 2.11, in accordance with standard rules of legal interpretation, and places a reasonable limitation on the retention of items by the Wisconsin state capitol police.

Section 9 moves introductory language from a particular paragraph to the subsection, and codifies existing prohibitions against utilizing musical instruments without permits.

Section 10 creates a specific noise standard for the state capitol building.

Section 11 and subsequent sections clarify existing prohibitions against conducting or participating unlawful events by reorganizing the paragraph into two separate and distinct paragraphs. Section 11 contains the prohibition against conducting an event without the approval of the department.

Section 12 renumbers several of the grounds for declaring an event to be unlawful.

Section 13 renumbers and amends one of the grounds for declaring an event unlawful, unauthorized entry or occupation, and amends to reflect that approval to use may be obtained by any of the manners set forth in Adm 2.04, namely by obtaining a permit, giving advance notice of an event, or by giving notice of a spontaneous event.

Section 14 continues the renumbering of other grounds for declaring an event unlawful.

Section 15 continues the clarification of the existing Adm 2.14 (2) (v) by renumbering definitions for the prohibited conduct, and conforming the definitions by using terms defined under section 2, above.

Section 16 repeals the current Adm 2.14 (2) (v) 9. c., the effective language of which is now found in the new Adm 2.14 (2) (vm) (intro.).

Section 17 concludes the clarification process by recreating the prohibition against spectators and participants failing to withdraw from an unlawful event currently found in Adm 2.14 (2) (v) (intro.) and (c) 9 in one paragraph.

Section 18 sets out the effective date of the rule.

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

Existing federal regulations vary by agency, state, and facility, and are too numerous to permit meaningful comparative analysis. However, the department notes that no protests or the like are permitted within the United States capitol building, and that persons attempting to do so have been successfully prosecuted under the federal criminal code.

7. Comparison with rules in adjacent states:

All adjacent states have similar administrative code provisions. Illinois requires permits for demonstrations or other events to be submitted at least 48 hours in advance of the use, unless the requestor can prove by a preponderance of the evidence that the cause of the event was unknown or resulted from changed circumstances. Michigan does not permit demonstrations or other activities without written authorization. Michigan also requires written authorization for displays, and requires that such requests “normally” be submitted 30 days in advance. Likewise, Minnesota requires a written permit, with the State and the applicant reaching agreement on topics including, “security, police protection, liability for damages, and cleanup of areas” prior to issuance of a permit. Minnesota imposes a sound limit of 80 decibels. Iowa also requires a written application and approval by written letter or a memorandum of understanding signed by the event director.

8. Summary of factual data and analytical methodologies:

The proposed decibel limit of 90 decibels is based upon an acoustical study commissioned by the Wisconsin Department of Justice in the course of the *Kissick* litigation. In brief, the study finds that the State Capitol building resonates sound more than most buildings, such that sound levels above 85 decibels in the Capitol Rotunda would create background noise levels which are too high for normal use of many rooms in the Capitol building.

9. Effect on small business: The proposed rule changes will have no impact upon small businesses.

10. Agency contact person:

Andrew Hitt
Department of Administration
101 E. Wilson Street, 10th Floor

Madison, WI 53702
(608) 266-1741
Andrew.Hitt@wisconsin.gov

11. Place Where Comments are to be Submitted:

Comments may be submitted to the agency contact person that is listed above until the date given in the upcoming notice of public hearing, as otherwise indicated in the hearing notice, or to donna.sorensen@wisconsin.gov. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov> after the public hearing is scheduled.

SECTION 1: Adm 2.02 (1) (a) is amended to read:

Adm ADM 2.02 Designation of state office buildings and facilities.

(1) The following buildings and facilities are hereby designated as state office buildings and facilities for the purpose of use management under this chapter:

(a) State capitol building, ~~except those rooms reserved by the legislature.~~

SECTION 2: Adm 2.03 (3m), (3r) and (6m) are created to read:

Adm 2.03 Definitions. In this chapter:

(3m) “Event” includes any performance, ceremony, festival, reception, presentation, meeting, picket, rally, parade, demonstration, organized tours not led by department or legislative staff or officials, or the like, held in public areas of state facilities or buildings. The term “event” does not include activities such as: informal tourist activities or constituents or members of the public visiting elected officials or otherwise conducting routine business with any state agency or state entity.

(3r) “Exhibit” includes any display of art work, including but not limited to paintings, sculptures, arts and crafts, photographs or other artistic materials; public service and educational presentations; signs or banners that are not held by an individual; signs or banners which are held by an individual but which are larger than 28 inches in length or width; historical displays; and the like.

(6m) “Spontaneous event” means an event in response to an unforeseen triggering event that has occurred within the previous three (3) calendar days, or is currently occurring. Regularly scheduled events, or events advertised by any means, including but not limited to electronic social media, 3 or more calendar days prior to the starting date are presumptively not “spontaneous events” within the meaning of this chapter.

SECTION 3: Adm 2.04 (1) (intro.) is amended to read:

Adm 2.04 Public meetings and events.

(1) With the exception of areas in the state capitol building reserved for use by the legislature, the use of which shall be as determined by the legislature, the ~~The~~ department, as managing authority of the state office buildings and facilities, may ~~permit~~ allow buildings and facilities to be used by any person governmental body or official, or any nonprofit, fraternal, religious, or veterans' organization for the purpose of governmental business, public meetings for the free discussion of public questions, or for activities of a broad public purpose for an event or to display an exhibit if the use:

(a) Does not interfere with the prime use of the building or facility.

(b) Does not unduly burden the managing authority.

(c) Is not a hazard to the safety of the public or state employees nor detrimental to the building or facility.

(d) Does not expose the state to the likelihood of expenses or damages which cannot be recovered.

(e) Is appropriate to the physical context of the building or facility.

SECTION 4: Adm 2.04 (1m), (2m), (2r), (2z), (9) and (10) are created to read:

(1m) Subject to the discretion of the department, permits shall be allowed for any event or exhibit, and use by a person giving advance notice shall be allowed for any event. The department's exercise of discretion shall be limited and based upon the following considerations:

(a) Events or exhibits, whether based upon permit or advance notice shall not be restricted, denied or disallowed based upon the content of the event or exhibit.

(b) Events or exhibits, whether based upon permit or advance notice shall not be restricted, denied or disallowed on the basis of age, race, creed, color, handicap, marital status, sex, sexual orientation, national origin, ancestry, arrest or conviction record, religion, or political affiliation of the person applying for the permit or giving notice.

(c) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the requested use conflicts with a previously granted permit.

(d) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the person, group, or organization requesting the

permit or providing the notice has failed to pay any uncontested invoice for expenses or damages arising out past events or exhibits.

(e) Permits may be disallowed if the permit application form is not fully completed or signed by a person who is legally competent to contract and to sue or be sued.

(f) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the permit or notice request contains a material falsehood or misrepresentation.

(g) Events or exhibits, whether based upon permit or advance notice may be restricted, denied or disallowed if the requested use conflicts with planned programs organized and conducted by the department, any state agency, or any state official or body of state officials such as tour groups led by department staff.

(h) Events or exhibits, whether based upon permit or advance notice may be restricted, denied or disallowed if the person, group, or organization requesting the permit or providing the notice has, in the course of receiving a permit in the past, made material misrepresentations regarding the nature or scope of an event or exhibit.

(j) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the proposed use involves activity prohibited by law.

(k) Advance notices may be disallowed, limited, or the use relocated if a permit is subsequently granted for use of the space requested in the advance notice.

(L) Conformance with any provision of this chapter, including, but not limited to, s. 2.04 (1).

(2m) The department may allow use of a portion of the interior of the state capitol building to a person providing advance notice to the department of an event at least two business days in advance of the anticipated utilization of the building or facility.

(2r) The department may allow use of a portion of the interior of the state capitol building to a person providing contemporaneous notice of a spontaneous event.

(2z) The department may allow use of the ground floor or first floor of the rotunda of the state capitol building to 12 or fewer persons for an event without any person applying for a permit, without providing advance notice, and without the event being a spontaneous event under this section.

(9) If any word, phrase, section, or other portion of this chapter, or any written guidance issued under this chapter's authority, is held unconstitutional or otherwise invalid by a court of competent jurisdiction, then such holding shall not affect the validity of the remainder of this section or any other section in this chapter, which shall remain in force and not be affected by such holding.

(10) If a person or organization is aggrieved by a decision of the state capitol police staff with respect to the denial, disallowance or limitation of any permit or advance notice, an appeal may be taken to the chief of state capitol police within 3 business days of that decision. The appeal shall be in writing, stating the basis of the appeal and the relief sought, and attaching any relevant information or documents. The chief of state capitol police may deny an appeal, grant an appeal, or grant an appeal subject to conditions consistent with this chapter. Appeal decisions by the chief of state capitol police shall be in writing and shall be made within 3 business days. Appeals not granted by the chief of state capitol police are deemed denied. Decisions of the chief of state capitol police under this sub-section shall be deemed final agency decisions.

SECTION 5: Adm 2.04 (2), (3), (5), and (7) are amended to read:

(2) An applicant for a permit to use of buildings and facilities shall complete a written application to the department at least 72 hours in advance of the anticipated utilization of the building or facility. ~~In the event of a conflict of requests by 2 or more organizations, the department shall have full discretion when permitting use of state office buildings and facilities.~~ In the event of a potential conflict between two or more permit requests each request shall be considered in the order it was received.

(3) An applicant for the use of buildings and facilities shall be liable to the state for injury to the state's property, for any expense arising out of the use, and for such sums as the department may charge for the use as provided in s. 16.845 (1), Stats. The department may publish content-neutral guidance further limiting or explaining potential imposition of charges.

(5) The department and the applicant may not discriminate against any individual on the basis of age, race, creed, color, handicap, marital status, sex, sexual orientation, national origin, ancestry, arrest record or conviction record in the utilization of state office buildings and facilities for government business, public meetings for free discussion of public questions, or for civic activities.

(7) The granting of permission to use a state office building or facility does not obligate the department to furnish the applicant any service or utilities, or render any support with personnel, equipment, or supplies. The department may furnish assistance and may charge for any expense arising out of the use of a building or facility. The department may inspect any equipment or apparatus brought in for

~~any public meeting, event or activity exhibit~~, and may limit or prohibit the use of any items which might affect safety or the normal operation of the building.

SECTION 6: Adm 2.07 (2) is amended to read:

Adm 2.07 Exterior and interior displays and decorations.

(2) Displays and decorations. ~~No displays, signs, banners, placards, decorations or graphic or artistic material exhibit~~ may be erected, attached, mounted or displayed within or on the building or the grounds of any state office building or facility without the express written authority of the department. Any ~~graphic or artistic material exhibit~~ advertising, promoting, or identifying a commercial enterprise or a political activity is prohibited except as indicated in sub. (4). Any unauthorized ~~material exhibit~~ shall be removed and disposed of by the department. This provision shall not be applied to any individual who holds a sign that is not larger than 28 inches in length or width, or to any item of clothing worn by an individual. The department may set reasonable time limits on permitted activities.

SECTION 7: Adm 2.08 (1) (intro.) and (1) (d) are amended to read:

Adm 2.08 Introduction of equipment and hazards.

(1) To provide a place of employment that is safe for employees and frequenters thereof, pursuant to s. 101.11, Stats., the department shall have the right to confiscate and dispose of any hazard to the life, health, safety or welfare of state employees or the public. The department shall have the right to correct or eliminate any hazardous situation arising out of any action by a tenant agency or individual and to charge the tenant agency or individual for costs incurred to correct or eliminate any hazardous situation or practice by a tenant agency. Any person who refuses to remove or correct any hazardous situation at the request of any department employee shall be subject to citation pursuant to s. Adm 2.14 (2) (zd). These hazards include, but are not limited to, the following:

(d) Holiday trees or holiday decorations or other displays, decorations, signs, banners or the like introduced in buildings and facilities managed or leased by the department without the approval of the department or contrary to the manner instructed by the department.

SECTION 8: Adm 2.11 is amended to read:

Adm 2.11 Confiscation of materials. Property confiscated by the department for violation of this chapter shall be stored by the managing authority until the owner provides proof of ownership, unless confiscated pursuant to s. Adm 2.08 (1). Property confiscated pursuant to this chapter may be disposed of 30 days after confiscation if unclaimed.

Section 9: Adm 2.14 (2) (intro.) and (e) are amended to read:

Adm 2.14 Rules of conduct.

(2) (intro.) In order to preserve the order that is necessary for the enjoyment of freedom by occupants of and visitors to the buildings and facilities, and in order to prevent activities that physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public service, or administrative functions, Pand pursuant to s. 16.846, Stats., whoever does any of the following shall be subject to a forfeiture of not more than \$500:

(e) Without the express written approval of the department, uses a public address system or sound amplification system, or any device capable of amplifying sound, including but not limited to musical instruments, in those buildings and facilities managed or leased by the department.

Section 10: Adm 2.14 (2) (fm) is created to read:

(fm) Participates in an event at the Wisconsin State Capitol that engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances where the conduct tends to cause or provoke a disturbance that produces sound in excess of 90 decibels as measured on an “A” weighted decibel scale within 25 feet of the event, and the event hinders or impedes a prime use of the building, including hearings of the Supreme Court of Wisconsin, hearings of any legislative body or committee thereof, meetings between constituents and their constitutional officers, the work of constitutional officers and their respective staffs, educational tours of the building and the like. An officer in determining if the noise exceeds 90 decibels shall use reasonably appropriate testing methods. The department shall first notify the group that their event is not compliant with this subsection and no citation shall be given for a violation of this subsection unless the issuing officer first affords the person an opportunity to stop and disperse. This subsection does not preclude the application of Adm. 2.14(2)(k) in any circumstances.

Section 11: Adm 2.14 (2) (v) (intro.) is amended to read:

(v) Without approval of the department as may be provided for by this chapter, conducts an event ~~picket, rally, parade or demonstration~~ in those buildings and facilities managed or leased by the department or on properties surrounding those buildings. ~~In order to preserve the order which is necessary for the enjoyment of freedom by occupants of the buildings and facilities, and in order to prevent activities which physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public service, or administrative functions, any picketing, rally, parade, demonstration, other~~

assembly, or congregation of spectators to the activity may be declared unlawful if its participants:

Section 12: Adm 2.14 (2) (v) 1. to 4. are renumbered Adm 2.14 (vm) 1. to 4.

Section 13: Adm 2.14 (2) (v) 5. is renumbered Adm 2.14 (vm) 5. and amended to read:

5. Enter or occupy any building or facility managed or leased by the department, except as authorized by s. ~~Adm 2.04 from the person in immediate charge of any room in the building, or by a person designated to approve requests for the use of rooms for meetings.~~

Section 14: Adm 2.14 (2) (v) 6. to 9. (intro.) are renumbered Adm 2.14 (vm) 6. to 9 (intro.).

SECTION 15: Adm 2.14 (2) (v) 9. a. and b. are renumbered to Adm (2) (vr) 1., and 2., and, as renumbered, amended to read:

(vr) 1. ~~a.~~ In ~~this section paragraph (vm)~~ "intentionally" means that the participant or spectator knew, ~~or reasonably should have known,~~ that the participant's or spectator's conduct by itself or in conjunction with the conduct of others had or would have the prohibited effect.

~~2. b.~~ The department may designate a state official or officials who shall have primary authority to implement this paragraph, paragraph (v), and paragraph (vm). The official shall prescribe limitations for any ~~picketing, rally, parade, demonstration or other assembly event~~ in order to meet the requirements of this ~~paragraph chapter.~~ When informed of any ~~event picketing, rally, parade, demonstration, or other assembly,~~ the department official or designee may proceed immediately to the site to determine if there is compliance with ~~this these~~ paragraphs. If the official prescribes limitations or has previously prescribed limitations, and those limitations are not observed by the ~~event participants assembly,~~ the official may then declare the ~~assembly event~~ unlawful. Any declaration of illegality or prescription of limitations shall be effective immediately and binding upon the ~~participants in the assembly event participants,~~ unless and until modified or reversed.

SECTION 16: Adm 2.14 (2) (v) 9. c. is repealed.

SECTION 17: Adm 2.14 (2) (vm) (intro.) is created to read:

(vm) Any participant within or spectator of a group constituting an unlawful event, who intentionally fails or refuses to withdraw from the event after it has been declared unlawful, shall be subject to the penalties identified in this subsection. Any event may be declared unlawful if its participants:

SECTION 18: EFFECTIVE DATE. The rules contained in this order 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.

By: _____ Date: _____
Mike Huebsch, Secretary
Wisconsin Department of Administration