



Clearinghouse Rule 13-041

DRAFT RULE ANALYSIS FOR CHANGES TO ADM 2

Rule Summary

- 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.” Section 16.84(1), Wis. 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.” Section 16.846(1), Wis. 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.” Section 16.845(1), Wis. 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.”

The Legislature has vested management authority over various state buildings and grounds, including those of the Wisconsin State Capitol, in the Department of Administration since 1979. Section 16.84(1), Wis. Stats. Since 1979 the Department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. Section 16.845, Wis. Stats., and s. Adm 2.04, Wis. Adm Code.

Beginning February 2011, groups of persons began to occupy the Wisconsin State Capitol Building without permits. This included appropriating rooms and hallways in the Capitol building for purposes such as camping and storage of bulk supplies. To restore order to the building and return the building to a point where the work of the Wisconsin State Legislature and the Supreme Court of Wisconsin could perform their constitutionally authorized functions without undue disruption, the Department expended funds in excess of \$7,400,000 for law enforcement personnel. The continuous occupation of the State Capitol was formally terminated in March of 2011.

Groups of persons continue to occupy rooms in the Wisconsin State Capitol building without permits, including the Capitol rotunda. These groups constitute an exception to the norm.

The Wisconsin State Capitol Police (WSCP) issue more than 400 permits annually for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable or commercial. Permits are issued regardless of political party, affiliation or content.

Occupation of the Capitol rotunda and other areas has caused disruptions to properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The State does not refuse permits for the lawful and safe use of State facilities by any group or groups. Neither can the State allow any group to occupy the Capitol in disregard of the rights of permit holders, public employees or visitors. It is imperative that the Department continue to gain greater compliance from user groups in order to protect the public safety and welfare.

The Department of Administration hereby adopts an order to repeal Adm 2.14(2)(vr) c.; to renumber and amend Adm 2.14(2)(vr) a. and b.; to amend Adm 2.02(1)(a), 2.04(1), 2.04(2), (3), (5) and (7), 2.07(2), 2.08(1) and (1)(d), 2.11, 2.14(2), (2)(v), (2)(vm) and (2)(vm) 5.; and to create Adm 2.03(3m), (3r) and (6m), 2.04(1m) and (1r).

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

5. Plain language analysis:

The objective of the rule is to obtain greater compliance from user groups regarding facility use. 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 – The proposed change, in combination with a change in Section 3, seeks to clarify the historical interpretation of the Wisconsin State Capitol Police, that the Administrative Rules can be applied in areas under the control of the Legislature, at the invitation of the Legislature.

Section 2 – The proposed changes incorporate definitions found in the Department’s Facilities Access Policy, and harmonizes those definitions with existing rules.

Section 3 – There are three proposed changes occurring in this section. The first proposed change, in combination with the change in Section 1, seeks to clarify the historical interpretation of the Wisconsin State Capitol Police, that the Administrative Rules can be applied in areas under the control of the Legislature, at the invitation of the Legislature. The second proposed change expands the types of persons who are allowed by rule to apply for a permit from only the listed persons (governmental bodies, non-profits, etc.) to any person, in accordance with the historical practice of the Wisconsin State Capitol Police. The third proposed change incorporates the use of the terms “event” and “exhibit,” as found in Section 2, above.

Section 4 – There are two proposed changes in this section. The first proposed change codifies the ability of the Department to set reasonable time, place and manner restrictions for particular buildings and facilities. Due to the fact that there are dozens of buildings and facilities under the jurisdiction of the department, and due to the potential for changes to the use of those buildings and facilities, it would not be practicable to incorporate all such time, place and manner restrictions into the administrative code. The second proposed change codifies additional restrictions on the exercise of discretion by the Wisconsin State Capitol Police and creates a severability clause.

Section 5 – There are five proposed changes in this section. The first proposed change codifies the ability of the Department to waive the 72 hour application requirement on a neutral basis. The second proposed change removes from the code a provision giving the Department unlimited discretion to resolve conflicts between competing uses. The third proposed changes allows the Department to provide additional explanation to the public regarding how costs are applied under the Administrative Code for informational purposes. The fourth change extends protection to persons based upon sexual orientation, which is not found in the existing rule. The fifth change incorporates the use of the terms “event” and “exhibit.”

Section 6 – There are two proposed changes in this section. The first change incorporates the use of the terms “event” and “exhibit.” The second change seeks to further clarify the distinction between when a person is simply holding a sign as part of an event, as opposed to creating an exhibit, by creating a size distinction between the two.

Section 7 – There are two proposed changes to this section. The first change clarifies that a person who creates a hazard in a state building or facility may receive a citation if they refuse to correct or remove the hazard. The second change clarifies that the prohibition applies to all type so decorations and the like, and not simply Holiday decorations.

Section 8 – The proposed change is meant to clarify what occurs with confiscated materials given that there are two administrative code provisions dealing with this topic; the clarification is intended to follow the cannon of construction that the more specific rule applies over the more general rule.

Section 9 – The proposed changes are organizational in nature, and are designed to clarify that there were multiple potential citations created under one administrative code sub-section in the existing code, Wis. Admin. Code sec. 2.14 (2) (v), in accordance with recent judicial interpretations of that sub-section. By dividing the existing sub-section into multiple pieces, and by arranging the use of some language more appropriately, the new code section should require less technical expertise to interpret. Additionally, defined terms are incorporated and used in the new code sections.

Section 10 – The proposed changes in this section again continue the clarification of Wis. Admin. Code sec. 2.14 (2) by improving the organization of the sub-section.

Section 11 – The proposed change eliminates language now rendered superfluous by improved organization of Wis. Admin. Code sec. 2.14 (2).

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.

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 agreements to be reached regarding topics including, “security, police protection, liability for damages, and cleanup of areas” prior to issuance of a permit. 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:

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

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

11. Comments and Opinion by Board of Veterans Affairs for Rules by Department of Veterans Affairs.

12. Agency contact person:

Wendy Coomer
Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702
(608) 266-1741

13. Place for Comment Submission and Deadline for Submission:

Department of Administration
101 E. Wilson Street, 10th Floor
Madison, WI 53702

The deadline for submission shall be July 15, 2013.

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

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

(3r) “Exhibit” means 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 which are not held by an individual or which are larger than 28” in length or width; and historical displays and other similar items.

(6m) “Rally” means any gathering of people for the purpose of actively promoting any cause, whether by conducting a picket, parade, demonstration or the like.

SECTION 3: Adm 2.04(1) 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 ~~The~~ department, as managing authority of the state office buildings and facilities, may permit 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 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) and (1r) are created to read:

(1m) The department may publish reasonable, content-neutral guidance regarding the application of this chapter to individual buildings and facilities, including but not limited to reasonable time, place or manner limits on permitted activities, consistent with the factors set forth in sub-sections (1) and (1r).

(1r) Permits shall be granted for any event or exhibit, subject to the discretion of the department. The department's exercise of discretion shall be limited by the contents of this chapter, and the following:

(a) Permits may not be denied based upon the content of the event or exhibit.

(b) Permits may be denied or limited if the requested use conflicts with a previously granted permit.

(c) Permits may be denied if the person, group or organization requesting the permit has failed to pay any uncontested invoice for expenses or damages arising out past events or exhibits, whether the event or exhibit occurred with or without a permit.

(d) Permits may be denied or limited 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.

(e) Permits may be denied if the permit request contains a material falsehood or misrepresentation.

(f) Permits may be denied or limited if the requested use conflicts with planned programs organized and conducted by the department, any state agency, or any state official or body or state officials.

(g) Permits may be denied if the person, group or organization requesting the permit has made material misrepresentations regarding the nature or scope of an event or exhibit in the course of receiving a permit in the past.

(h) Permits may be denied or limited if the proposed use involves activity that is prohibited by law.

(j) 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 chapter or other guidance issued under it, which shall remain in force and not be affected by such holding.

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

(2) An applicant for the 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. The department may establish guidance for the waiver of this sub-section for the state capitol building or grounds. ~~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.~~

(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" 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) 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 sec. 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 sec. Adm 2.08 (1).

Section 9: Adm 2.14(2), 2(v), (2)(vm), (2)(vm)5, are amended to read:

Adm 2.14 Rules of conduct.

(2) 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, and pursuant to s. 16.846, Stats., whoever does any of the following shall be subject to a forfeiture of not more than \$500:

(v) Without approval of the department, 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.

~~(vm) 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, a~~ Any participant or spectator within a group constituting an unlawful assembly, who intentionally fails or refuses to withdraw from the assembly after it has been declared unlawful, shall be subject to the penalties identified in sub. (2) (intro.). Any picketing, rally, parade, demonstration, other assembly, or congregation of spectators to the activity event may be declared unlawful if its participants:

5. Enter or occupy any building or facility managed or leased by the department, without authorization ~~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 10: Adm 2.14(2)(vr) a., b. are renumbered to Adm (2)(vr) 1., and 2., and as renumbered amended to read:

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~~ these paragraphs. 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 assembly, the official may then declare the ~~assembly~~ event unlawful. Any declaration of illegality or prescription of limitations shall be effective and binding upon the participants in the ~~assembly~~ event, unless and until modified or reversed.

SECTION 11: Adm 2.14(2)(vr) c. is repealed.

~~c. Any participant or spectator within the group constituting an unlawful assembly, who intentionally fails or refuses to withdraw from the assembly after it has been declared unlawful, shall be subject to the penalties identified in sub. (2) (intro.)~~

EXECUTIVE ORDER #50 STATEMENT REGARDING REQUIREMENTS

Requirements for ensuring accuracy, integrity, objectivity and consistency of data were met in preparing the proposed rule and related analysis by internal review.

By: _____

Date: _____

Mike Huebsch, Secretary

Wisconsin Department of Administration