

Report From Agency

DEPARTMENT OF ADMINISTRATION REPORT TO LEGISLATURE

Ch. Adm 70, Wis. Admin. Code Relating to Updating Standards to Implement the Uniform Real Property Electronic Recording Act

Clearinghouse Rule 22-003

I. PROPOSED RULE AND SUMMARY:

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

II. REFERENCE TO APPLICABLE FORMS:

There are no references to new forms.

III. FISCAL ESTIMATE AND ECONOMIC IMPACT STATEMENT:

The fiscal estimate and economic impact analysis are attached. The Department is proposing this rule to adopt updated standards implementing the Uniform Real Property Electronic Recording Act. The rule will have no fiscal or economic impact on small businesses or the State's economy as a whole.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Wisconsin Statutes provide explicit authority for the Electronic Recording Council to adopt standards implementing the Uniform Real Property Electronic Recording Act (URPERA), codified at Wis. Stat. § 706.25, and for the Department of Administration to promulgate these standards by rule. Specifically, § 706.25(4)(a) provides that the Council "shall adopt standards to implement this section" and further provides that the "[Department] shall promulgate by rule the standards adopted, amended, or repealed by the council under this paragraph." Additionally, Wis. Stat. § 227.11(2)(a) provides explicit authority for an agency to "promulgate rules interpreting the provisions of any statute enforced or administered by the agency."

Section 706.25(4)(b) states, "To keep the standards and practices of registers of deeds in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by registers of deeds in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the electronic recording council . . . shall consider all of the following:

1. Standards and practices of other jurisdictions.
2. The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association.
3. The views of interested persons and governmental officials and entities.
4. The needs of counties of varying sizes, populations, and resources.
5. The need for security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.”

Adm 70 was promulgated in 2009 pursuant to § 706.25(4)(a). The Council has not reviewed or updated the rules since then, despite the Property Records Industry Association (PRIA)’s publication of updated standards/guidelines and the development of improved technological tools. For example, over time, eRecording has proven that less is more: Indexing and formatting rules have changed, as fewer prescriptive rules for indexing and formatting can make things easier for both submitters and recorders. Additionally, current technological tools provide more effective image processing and improved quality of electronic documents using PRIA-MISMO XML Data Standards.

After reviewing updated PRIA standards/guidelines and legislative changes to Wisconsin law, the Council has chosen to adopt the updated standards to continue to implement the URPERA; update contact information in a few note sections, and update statutory citations. This rulemaking accomplishes those goals.

Finally, this rulemaking incorporates the updated PRIA standards by reference. Section 227.21(2)(a) permits an agency, with the attorney general’s consent, to “adopt standards established by technical societies and organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full.”

The Department of Justice has consented to this incorporation of the newer technical standards by reference.

V. SUMMARY OF PUBLIC COMMENTS, APPEARANCES AT THE PUBLIC HEARING, AND MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

A public hearing was held remotely on February 3, 2022. Comments could be submitted at the hearing, by postal mail, or by email to Sharon.Martin@washcowisco.gov. The published deadline for submission of comments was 5:00 p.m. on February 3, 2022.

No members of the public attended the hearing, and the Department received no comments by mail or email.

VI. CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE:

No changes to the Fiscal Estimate and Economic Impact Analysis were made.

The Rule Analysis was updated to reflect changes made in response to the Legislative Council Rule Clearinghouse Report, as described below.

VII. RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT:

The Legislative Council Rules Clearinghouse sent its report to the Department of Administration on Jan. 27, 2022, containing comments and suggestions relating to “Statutory Authority,” “Form, Style, and Placement in Administrative Code,” “Adequacy of Reference to Related Statutes, Rules and Forms,” and “Clarity, Grammar, Punctuation and Use of Plain Language.”

The suggested changes in the report mostly comprised minor stylistic and proofreading changes. The Department revised the proposed rule to address and incorporate all but one of the recommendations in the Clearinghouse Report.

The Department had proposed amending § Adm 70.07 by adding a reference to Wis. Stat. ch. 140, for the requirements for how a document must be authenticated. The Clearinghouse Report suggested referencing the specific section in ch. 140 that details the requirements for how a document must be authenticated.

Originally, the Department had considered revising this part of § Adm 70.07 by adding a reference to Wis. Stat. § 706.07. However, § 706.07 was repealed by 2019 Act 125, its contents were dispersed throughout the newly created ch. 140, and references to § 706.07 were replaced with “ch. 140” more broadly. Therefore, after considering the suggestion in the Clearinghouse Report, the Department believes it is accurate and sufficient to refer to ch. 140.

For the sake of completeness, the Department does plan to leave the current reference to § 706.06 in § Adm 70.07 which it had previously planned to remove.

VIII. ADDITIONAL INFORMATION:

No additional information is required to be submitted under s. 227.19 (3) (e) to (h), Stats., because the proposed rule will not have an effect on small business, no energy impact report was required under s. 227.117 (2), Stats., no housing report was required under s. 227.115, Stats., and the Small Business Regulatory Review Board did not prepare a report on this rule proposal under s. 227.14 (2g), Stats.