



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-001

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.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause should enumerate the rule sections treated in the proposed rule. [s. 1.02 (1) (a), Manual.] As such, the introductory clause should be replaced with the following:

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.

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, the definition of “event” states that it “*means* performance, ceremony, festival, reception, presentation, meeting, picket, rally, parade, demonstration, organized tours not led by the department or legislative staff or officials *or the like...*”. However, drafting

convention is to use the word “means” when the definition limits its scope solely to the examples stated. In contrast, the word “includes” is used to encompass other reasonably related examples not specifically enumerated. Therefore, the definition should either: (1) eliminate use of the phrase “or the like” and limit the definition to only those examples specified; or (2) state that the definition of event “includes any performance, ceremony, festival...”. [s. 1.01 (7) (c), Manual.]

e. In SECTION 2, in the definition of “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: “Adm 2.04 (1) (intro.) is amended to read:”. In addition, the text of pars. (a) to (e) should not be shown because those paragraphs are not amended in the proposed rule.

h. In SECTION 3, the rule provides that “advance notice” shall be granted for any event. 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. Adm 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 expenses arising out of the use of state buildings and facilities (i.e. 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:

- SECTION 9. Adm 2.14 (2) (intro.) and (e) are amended to read:
- SECTION 10. Adm 2.14 (2) (fm) is created to read:
- SECTION 11. Adm 2.14 (2) (v) (intro.) is amended to read:
- SECTION 12. Adm 2.14 (2) (v) 1. to 4. are renumbered Adm 2.14 (2) (vm) 1. to 4.

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

- SECTION 14. Adm 2.14 (2) (v) 6. to 9. (intro.) are renumbered Adm 2.14 (2) (vm) 6. to 9. (intro.).

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

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

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

In addition, the text of s. Adm 2.14 (2) (fm) should not be shown with underscoring or strike-throughs because the text is newly created. [s. 1.055, Manual.] In the treatment of s. Adm 2.14 (2) (v) (intro.), the agency should show all the text of the existing rule and strike through the text that it wishes to delete, and, in the treatment of s. Adm 2.14 (2) (vm) (intro.), the agency should show all the text that it wishes to create, without underscoring or strike-throughs. Lastly, in the repeal of s. Adm 2.14 (2) (v) 9. c., no rule text should be shown. [s. 1.057, Manual.]

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 existing s. Adm 2.14 (2) (v). The citation “(v)” should be removed. Also, see comment “l.” above regarding additional rule SECTIONS.

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

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”.