

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Wisconsin Administrative Code Chapter Adm 2.

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

4/1/98.

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The objective of the rule is to obtain compliance regarding use of State facilities, including the capitol building, as well as to implement aspects of a settlement of a civil lawsuit. This policy objective will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations, and as called for by the settlement agreement. The rule is not directly impacted by changes in technology, economic conditions since promulgation, however, there have been developments in the case law and department practice that create a need for alteration of the rule.

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, defines the categories, and defines “spontaneous event,” which is a mechanism allowing for expressive activity in response to unforeseen and newsworthy events.

Section 3 makes clear that although 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 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 arises 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 constituting 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 size.

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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 s. Adm 2.08 (1) and s. 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 clarifies existing prohibitions against conducting or participating in events occurring without permits. Prohibition against participating in events is redefined in accordance with recent settlement. Clarity to the sub-section is sought by separating the violations for conducting such events from violations for participating in such events into separate sub-sections. The potential offense of occupying space is clarified by removing excess language from the paragraph. Additionally, introductory statements, which do not constitute elements leading to a citation, are moved to the appropriate introductory clause for the section.

Section 10 continues the attempt to clarify existing prohibitions against unauthorized events by simplifying the arrangement and using newly defined terms. Section 10 also improves protections for the public by eliminating an alternative rationale for prosecution.

Section 11 also continues the attempt to clarify existing prohibitions by eliminating language that, substantively, is now located in other portions of this sub-section. The result is a sub-section that is less complicated to read and interpret.

5. Describe the Rule's Enforcement Provisions and Mechanisms

Chapter Adm 2 is enforced by citation authority under existing law.

6. Repealing or Modifying the Rule Will Impact the Following

(Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

None anticipated; permits and other methods of utilizing public space have been, and remain under the rule as modified, generally free of charge.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

Public hearings have not yet been held; public hearings will be held on a dated TBD.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

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- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected

None anticipated.

12. Fiscal Effect of Repealing or Modifying the Rule

- No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

15. Long Range Implications of Repealing or Modifying the Rule

In the long term, modification of existing rules to conform to practice and to expand the legally recognized categories of permitted users should increase the legitimacy of the permitting process for the general public, leading to greater voluntary compliance and reduced costs.

16. Compare With Approaches Being Used by Federal Government

Federal governmental practices vary by facility, building or agency, and are too numerous to permit valid comparison. However, to the extent the rule pertains to the state capitol building, no events are permitted in the U.S. Capitol building.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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. Iowa also requires a written application and approval by written letter or a memorandum of understanding signed by the event director.

18. Contact Name

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