

STATEMENT OF SCOPE

Department of Administration

Rule No.: Chapters Adm 1, 2, 21, 30, 50, 89, and 92; Game 4; ER 44

Relating to: Updating Terminology in Administrative Rules

Rule Type Permanent

1. Detailed description of the objective of the proposed rule:

The objective of the proposed rulemaking is to comply with 2019 Executive Order #15, which requires each state agency to review its administrative rules and replace any derogatory or offensive terms with current, inclusive terminology. This includes replacing any usage of “mentally retarded” with “intellectually disabled,” “mental retardation” with “intellectual disability,” and “handicapped” with “disabled.”

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

A review by the Department of its administrative code has determined that several code chapters contain instances where the term “handicapped” or “handicap” is used in a context that should be updated in accordance with EO #15. The proposed rule will explore alternatives for replacing these terms with “disabled,” “disability,” or similar terms, in addition to adjusting other terminology as necessary to achieve that objective, with the intent of minimizing any changes to the substantive requirements of the code.

In some instances, terminology in the relevant statutes has already been updated, providing a roadmap for updating the code provisions. Where the statutes have not been updated, the Department will explore alternatives for interpreting the statutory language consistent with the intent and purpose of EO #15.

The code chapters that the Department intends to revise are as follows:

- **Adm 2 – Use of State Buildings and Facilities.**
- **Adm 21 – Advertising, Bidding, and Award of Construction Contracts.**
- **Adm 30 – Payroll Deductions for Charitable Purposes**
- **Adm 92 – Relocation Assistance**
- **ER 44 – Employment Development and Training**

The above chapters list “handicap” or “handicapped” as a protected status in various provisions related to nondiscrimination requirements or affirmative action objectives. Those terms will be changed to “disability” or similar appropriate terminology. All other instances of “handicap” or “handicapped” in these chapters will also be reviewed and updated as appropriate.

- **Adm 1 – Parking.**

This chapter provides for “handicapped” parking, with cross-references to special permits and license plates under ss. 343.51 and 341.14, Wis. Stats., respectively. However, those statutes use terms such as “physically disabled” and “person with a disability” instead of “handicapped.” The Department will review and update the applicable provisions of ch. Adm 1 accordingly.

- Adm 50 – Contract Compliance

This chapter implements s. 16.765, Wis. Stats., which requires nondiscrimination provisions in state contracts. Several provisions of ch. Adm 50 use the terms “handicap” or “handicapped” in various contexts, and this language will be reviewed and updated where appropriate. It should be noted that s. 16.765 (2), Wis. Stats., sets forth language to be included in state contracts that includes the word “handicap.” The Department will explore alternatives for interpreting this language as it applies to the state’s standard terms and conditions, within the Department’s statutory rulemaking authority under ss. 16.765 (5) and 227.11 (2) (a), Wis. Stats.

- Adm 89 – Housing Cost Grants and Loans

As part of rules interpreting “low or moderate-income” in s. 16.303, Wis. Stats., s. Adm 89.02(5) provides a definition of “handicapped” for purposes of deducting the cost of caring for a disabled family member from the family’s income. *See* s. Adm 89.05(6). This definition will be reviewed updated as appropriate to reflect current terminology.

- Game 4 – Duties and Responsibilities of Associations and Racetrack Operators

This chapter includes a requirement that daily race programs display the “location of facilities for handicapped patrons.” This terminology will be reviewed and updated as appropriate.

The alternative to promulgating the proposed rule would be to leave the above code language unchanged, which would be contrary to the purpose of EO #15.

3. Detailed explanation of statutory authority for the rule (including statutory citation and language):

Section 227.11 (2) (a), Wis. Stats., provides explicit authority for an agency to “promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” Section 227.11 (2) (b), Wis. Stats., provides explicit authority for an agency to “prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.” The proposed rule will interpret the provisions of statutes enforced or administered by the Department and update procedures as necessary to effectuate the purpose of the statutes, consistent with the above statutory authority.

Additional statutes provide the Department’s explicit authority to revise the following code chapters:

Adm 1 – Parking: Section 16.843 (2) (a), Wis. Stats., provides that “Parking of any motor vehicle on the grounds of any of the state office buildings shall be in accordance with rules and orders established by the department.” This provides the explicit authority for the Department to provide regulations governing parking spaces at state office buildings for persons with disabilities.

Adm 2 – Use of State Buildings and Facilities: Section 16.846 (1), Wis. Stats., provides that the Department “shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department,” which includes the state capitol building and numerous other state office buildings. *See* s. 16.84 (1), Wis. Stats. This provides explicit authority for the policies currently codified in s. Adm 2.04, which contains the nondiscrimination provisions that the Department will update in this rulemaking.

Adm 21 – Advertising, Bidding, and Award of Construction Contracts. Section 16.855 (15), Wis. Stats., provides that the Department “shall promulgate rules to implement the advertising and

award of contracts” under s. 16.855. This provides explicit statutory authority for the rules codified in ch. Adm 21, including the requirement that contracts include provisions for affirmative action and equal employment, s. Adm 21.09 (7), which will be updated as part of this rulemaking.

Adm 30 – Payroll Deductions for Charitable Purposes. Section 20.921 (1) (a) 4., Wis. Stats., provides for the approval of groups or charitable purpose eligible to receive donations by payroll deduction, “under rules of the department of administration for state officers or employee.” This provides explicit authority for the Department’s rules in ch. Adm 30.

Adm 50 – Contract Compliance: Section 16.765 (5), Wis. Stats., provides that the “department shall promulgate such rules as may be necessary for the performance of its functions under this section.” This provides the explicit authority for the Department to revise its rules implementing this section, including rules referencing persons with disabilities.

Adm 89 – Housing Cost Grants and Loans. Because the Department intends to update provisions of ss. Adm 89.02 (5) and Adm 89.05 (5) that exist solely to interpret “low or moderate income” in s. 16.304, Wis. Stats., and the Department has deemed this necessary to effectuate the purpose of that statute, this proposed change is authorized by s. 227.11 (2) (a), Wis. Stats.

ER 44 - Employment Development and Training. The provision that the Department intends to update, s. ER 44.09 (1), relates to the DPM administrator’s authority to fill positions with trainees. This rule is authorized by s. 230.04 (5), which explicitly authorizes the administrator to write rules “on all matters relating to the administration of the division and the performance of the duties assigned to the administrator.” Specifically, s. 230.046 (5) (c), Wis. Stats., provides for “rules of the administrator whenever on-the-job trainees are employed.”

Game 4 – Duties and Responsibilities of Associations and Race track Operators. This chapter exists under the authority of s. 562.02 (1) (a), which provides that the Department shall “[r]egulate racing and on-track pari-mutuel wagering in this state and shall promulgate all rules necessary to administer this chapter.” The non-substantive procedures that the Department intends to review and update are authorized by this statute and by s. 227.11 (2) (b), Wis. Stats.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

240 hours

5. List with description of all entities that may be affected by the proposed rule :

Not applicable. The terminology changes in the proposed rule are not expected to result in any substantive impact on any person or entity.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

Not applicable. The rule is neither intended nor expected to result in any substantive change to the activities currently regulated by the Department’s administrative code. The Department is not at this time aware of any existing or proposed federal regulation that mandates the specific terminology used in the administrative code provisions that will be updated as part of this rulemaking.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

At this time there is no anticipated economic impact from promulgating the proposed rule.

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