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CLEARINGHOUSE RULE 00-021

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The analysis to the rule refers to 1999 Wisconsin Act 11 withstanding judicial review. In fact, implementation of Act 11 has been enjoined. It is presumed that the changes the rule proposes will not be submitted for promulgation until such time as Act 11 is upheld by the Wisconsin Supreme Court. However, the rule only provides for a general effective date of the first day of the month following publication. If it is the department’s intent to submit the rule for publication only after Act 11 is upheld, the analysis should indicate that fact. Otherwise, if the rule is promulgated prior to Act 11 being upheld, the changes made by the rule would be without any statutory basis.

b. The second sentence of s. ETF 10.31 (1) seems to imply that participants who canceled participation in the variable fund after January 1, 1999 may not elect to participate in the fund. Section 40.04 (7), Stats., as affected by 1999 Wisconsin Act 11, does not seem to provide authority for such treatment. The rule should identify its authority for this treatment.

2. Form, Style and Placement in Administrative Code

The renumbering of s. ETF 10.35 should follow the repeal and recreation of s. ETF 10.31.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The “Authority for Rule” portion cites s. 227.24, Stats. That provision governs emergency rule-making. This rule is not an emergency rule. This citation should be revised to one that provides the department with authority for this rule. Perhaps the citation should be to s. 227.11 (2) (a), Stats.

b. It might be helpful if notes were added to the rule in s. ETF 10.31 (3) identifying the statutory conditions specified in s. 40.04 (7) (a) 1. and 2.

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

a. The notice of the hearing attached to the rule indicates that the public record on the “emergency rule” will be held open. The rule submitted to the Clearinghouse is not an emergency rule. The notice should not refer to an emergency rule.

b. In several places, the analysis to the rule refers to “1999 WA 11.” It should refer to “1999 Wisconsin Act 11.”

c. The title to s. ETF 10.31 (1) does not seem to fit with the substance of the subsection, in that a “purpose” section typically identifies what the purpose of the provision is. [See, for example, s. ETF 11.01 (1).] A more accurate title may help make the rule more clear for readers not familiar with the rule.

d. The first sentence of s. ETF 10.31 (1) is awkward and, apparently, partially redundant. To clarify the sentence, the first portion could be rewritten substantially as follows: “Pursuant to s. 40.04 (7), Stats., an election to participate, or to cancel participation, in the variable trust fund shall” In addition, in light of the last sentence of the subsection, it appears that the material following the first use of the word “department” in the first sentence can be deleted. If necessary, the last sentence could be modified to more clearly apply to future contributions. Also, the phrase “Participants that” in the second sentence should be changed to “Participants who.”

e. In s. ETF 10.31 (3) (a), the term “elected” should be changed to “elects” and the term “cannot” should be changed to “may not.” In par. (b) (intro.), the phrase “one of the following bases” should be inserted before the colon. In subd. 1., “; or” should be replaced by a period. Also, because of the “exception” in par. (a), par. (c) may be clarified by replacing the term “cannot” with “may” and the word “unless” with “only if.” Finally, the word “become” in par. (c) should be changed to “becoming.”

f. The rule renumbers s. ETF 10.35, which refers to an election to “terminate” participation. The portion of the rule into which that provision is renumbered, however, refers consistently to an election to “cancel” participation. Is there a difference between terminating and canceling participation? If not, consistent terminology should be used throughout the rule.