



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-103

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 January 2005.]

1. Statutory Authority

a. In s. Trans 200.06 (2m) (a) 2., “age” is listed as a prohibited characteristic of discrimination by an “attraction” business. This characteristic is not listed under s. 86.195 (5) (c), Stats.

b. Sections Trans 200.06 (2m) (a) 3., 7., 8., and 10. impose eligibility criteria to “attraction” signs that are not found in s. 86.195 (3), Stats. What is the department’s statutory authority for these provisions? Can some of these requirements be drafted as the agency’s interpretation of the “regional significance” requirement (i.e., the number of visitors, continuous operation requirements). Can the other factors be linked to other statutory requirements which the agency has the authority to interpret?

2. Form, Style and Placement in Administrative Code

a. The following comments relate to the rule preface:

(1) Statutory authority – A reference should be made to s. 227.11, Stats., which provides the department with general authority to interpret statutes that it administers. Any other statutory authority, express or implied, that provides the department with authority to promulgate this rule should also be listed here.

(2) Explanation of agency authority--Under this section, reference should be made to the statutory changes made by 2005 Wisconsin Act 136. An explanation should also be provided on the general authority of the agency to interpret statutory provisions that it administers under s.

227.11, Stats., and any other general rule-making authority that the department is relying upon as its source of authority to promulgate this proposed rule.

(3) Related statute or rule--The reference to s. Trans 200.06 should be removed because this is the section the rule directly affects. The department should list other statutes and rules related to other road sign programs here, including for example the tourist-oriented directional signs program under s. Trans 200.08.

(4) Plain language analysis--The final clause should more specifically state the effect of the rule. For example:

The rule will be amended to include the category of "attractions" within the specific information sign program and establish criteria that a business must meet to qualify for display on an "attractions" specific information sign.

(5) Summary of and preliminary comparison with existing or proposed federal regulation--The references to Act 136 should be removed from this section and the general explanations of what the proposed rule would do also should be removed. These explanations should be placed in the "Explanation of Agency Authority" and "Plain Language Analysis" sections, respectively. The federal regulations related to specific information signs, possibly including reference to the federal Manual on Uniform Traffic Control Devices, should be briefly described and compared to the federal rules.

(6) Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen--The information summarizing the effect of the rule from this section should not be presented here. This section is intended to provide the department with an opportunity to explain the technical basis and reasoning behind the decisions that it made in setting the requirements of the proposed rule. For instance, how did the department categorize the types of "attraction" businesses under s. Trans 200.06 (2m) (b), and how did the department reach its conclusions that only attractions with 2,500 or more visitors per year or attractions providing public restrooms and drinking water would be eligible for display?

(7) Analysis and supporting documentation used to determine the effect on small businesses--This section should instead describe the documentation and analysis that supports the agency's conclusions.

(8) Effect on small business--In this section, the department should explain its conclusion that the effects of this rule will only be on small businesses that are eligible to display a sign and choose to participate in the program and its assumption that the small businesses that choose to display a sign will see a net benefit to participation.

(9) Fiscal effect and anticipated costs incurred by the private sector--This section should be somewhat similar to the section above, as the effects on small business are likely to be similar to the effects on the private sector as a whole.

b. In s. Trans 200.06 (2m) (a) 8., the word “may” should be replaced by the word “does.”

c. In s. Trans 200.06 (2m) (b), the use of slashed alternatives should be avoided. For example, subd. 2. should be rewritten to read: “Aquarium, wildlife facility, wildlife preserve, wildlife sanctuary, or zoo.” Further, in the subdivisions that use the format found in subd. 1. (“Agri-tourism - breweries, gardens, vineyards, wineries”), are the listed entities a subset of the larger category? Or are the listed entities meant to fully describe the larger category? This should be clarified. [See comment 5.c., below.]

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

In s. Trans 200.06 (2m) (a) 6., cross-references to, or definitions of, the terms “supplemental guide sign” and “trailblazing sign” are needed. The department should ensure that this prohibition does not conflict with s. 86.195 (2) (b) 4., Stats., which allows a business to be displayed on a specific information sign and also to advertise under s. 84.30, Stats.

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

a. Section Trans 200.06 (2m) should be numbered (2g). [See s. 1.03 (7), Manual.]

b. Section Trans 200.06 (2m) (a) could be made clearer and would comport with statutory language by including the following revisions:

GENERAL REQUIREMENTS FOR “ATTRACTION”
ELIGIBILITY. To be eligible qualify for display on a specific information sign as an “ATTRACTION,” sign, the facility a business shall meet all of the following criteria:

c. In s. Trans 200.06 (2m) (b), the department should draft stand-alone definitions for the various types of attractions listed under this paragraph. This list of attractions should clearly state whether or not it is an exclusive list. This would allow the department to avoid confusing language like “Sport arena/facility/stadium.” After separately defining the classes of attractions, any additional requirements on specific classes of attractions could simply be added to the list under par. (a) in the following manner: “If the attraction is a (e.g., Sports Attraction), 2,500 seats and” To be consistent with the statute, references in this rule should be to a “business,” not an “activity,” which is undefined.

d. In s. Trans 200.06 (2r), the last clause of the first sentence could read: “to review applications for the display of business signs on specific information signs in the ‘ATTRACTION’ category. (This change makes this subsection consistent with the advisory council provisions for directional signs under s. Trans 200.08 (3).) Are the differences between the council membership requirements related to tourism between this subsection and s. Trans 200.08 (3) intended? (The proposed rule requires a member to be from the *Department of Tourism*, while the directional sign requirements require such members to be from the *tourism industry*.)

e. Section Trans 200.06 (2r) provides that the department must furnish to the advisory council minimum criteria and requirements for the uniform evaluation and assessment of applications. Further, the department, in collaboration with the advisory council, may make revisions to the application evaluation criteria. If these criteria and requirements merely are the standards set forth in ch. Trans 200, then the rule should cite appropriate provisions from ch. Trans 200 when referring to criteria and requirements. However, if the criteria and requirements reflect policies in addition to those stated in ch. Trans 200, they should be promulgated as administrative rules.

f. Section Trans 200.06 (12) appears to be duplicative of language found in s. Trans 200.06 (1) (k) and (L) and (7) (a) 4. If so, s. Trans 200.06 (12) is not necessary and should be deleted. If there is material in this subsection that is not duplicative, perhaps the new material should be incorporated into existing language and be made applicable to all specific information signs. If the department intends that sub. (12) be applied only to specific information signs containing information relating to attractions, than it should clearly so state. Further, s. Trans 200.015 (2) contains definitions for four types of signs. Section Trans 200.06 (12), and all of ch. Trans 200, should make use of the appropriate definitions in order to clarify the rule. Finally, in the last sentence of sub. (12) (a) the phrase "bumped off" should be replaced by the phrase "removed from" and the phrase "out of" should be replaced by the word "from."