



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 11-009

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 September 2008.]

1. Statutory Authority

a. Section Comm 102.20 (3) states that the department may designate supply chains as “significant.” The proposed rule describes four factors that the department may consider in making this designation. However, the rule does not provide any details on the specific manner in which these factors will affect the department’s designation. Through its lack of specificity, the rule may generate questions regarding whether the agency has satisfied its statutory obligation under s. 560.799 (6) (g) 2., Stats., to define the term “original equipment manufacturer with a significant supply chain in the state” *by rule*. Generally, statutory instructions to an agency to define a term by rule may be construed as evidence that the Legislature intended to require the agency to act by formal rule, rather than an informal standard or policy, in order to provide the public with the transparency and opportunity to comment afforded by the promulgation of administrative rules.

b. The comment above concerning the need for greater specificity also pertains to s. Comm 102.20 (4) and (5). In sub. (4), the department defines “significant capital expenditure” by reference to the phrase “needed to achieve a specific purpose acceptable to the department”, without providing any details as to specific factors that will affect the department’s acceptance. Subsection (5) states that the department may designate a county or municipality as a “tier I county or municipality” and lists statutory factors (with some modification) from s. 560.799 (6) (g) 1., Stats., that the department may consider in making such a designation, but does not provide any details on the specific manner in which these factors will affect the department’s

designation. Also, with respect to those statutory factors, what is the department's rationale for modifying the language of the statutory factor listed in sub. (5) (e) and adding a factor to the rule in sub. (5) (f) that is not in the statute?

2. Form, Style and Placement in Administrative Code

a. As the first and second sections in a newly created rule chapter, ss. Comm 102.10 and 102.20 should be numbered ss. Comm 102.01 and 102.02, respectively.

b. Section Comm 102.10 does not set forth the "scope" of the rule, but rather the *purpose* of the rule and the *authority* under which it is drafted. Therefore, the reference to "scope" should be eliminated from both the section title and sub. (1).

c. In s. Comm 102.20 (intro.), the phrase "and for designating enterprise zones under s. 560.799, Stats." is redundant, since s. Comm 102.10 already states that the purpose of the chapter is to establish definitions pertaining to those enterprise zones.

d. The following comments pertain to s. Comm 102.20 (2):

(1) In par. (a), the phrase "Except as provided in par. (b)," should be moved to the beginning of the sentence. Further, it is suggested that the language of the statutory definition of "full-time employee" be inserted in the rule text, rather citing the statutory definition and inserting the language in a note. Having the actual language in the rule text makes it easier to compare it to the alternative definition in par. (b).

(2) In par. (b), the department appears to be specifying an exception to the general definition of "full-time employee" in par. (a), whereby an employee could be considered full-time if the person worked at least 1,950 hours per year and met the other criteria set forth in par. (b). However, par. (b) does not specify the circumstances under which the department may use the alternative definition. Section 560.799 (1) (am) 2., Stats., provides that the department may "*by rule specify circumstances under which the department may grant exceptions* to the requirement under [the general definition] that a full-time employee means an individual who, as a condition of employment, is required to work at least 2,080 hours per year, but under no circumstances may a full-time employee mean an individual who, as a condition of employment, is required to work less than 37.5 hours per week" (emphasis added). The department should rewrite par. (b) to clearly specify the circumstances under which a person may be considered a full-time employee without meeting the requirements of par. (a).

(3) Also, in par. (b), it is suggested that "benefit" be defined. Further, the department may wish to consider whether these benefits should be of a specified value (e.g., a specified dollar amount or a value in proportion to salary) in addition to the requirement that the benefits be at least as favorable as the benefits received by other full-time employees.

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

a. In the summary of the proposed rule, the department should briefly explain the enterprise zone program in order to provide context for the necessity of the proposed rule.

b. In s. Comm 102.10 (2), the department should refer to “s. 560.799 (1) (am) 2. and (6) (g), Stats.”

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

a. In the title to ch. Comm 102, “enterprise” is misspelled.

b. In s. Comm 102.20 (2) (a), a period and comma should follow “Stats.” If retained, the note to s. Comm 102.20 (2) (a) should refer to “s. 560.799 (1) (am) 1., Stats.,”.