



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 12-015

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 November 2011.]

2. Form, Style and Placement in Administrative Code

a. Section Tax 11.07, created in this rule, pertains to sales and use tax exemptions for certain tangible personal property related to biotechnology. As currently drafted, the provision is placed in subch. II of ch. Tax 11, titled “Exempt Entities”, which contains provisions relating to exempt *entities* such as schools and related organizations and governmental units. It might more appropriately be placed in subch. III, titled “Exemptions”, which relates to exemptions for certain equipment, drugs, facilities, and other items that are not entities.

b. The effective date provision should be in a separate numbered SECTION. [s. 1.02 (4) (d), Manual.]

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

a. As a general comment, this rule lacks clarity and organization and contains numerous statutory citations in the rule text, which do not aid the reader in understanding the rule’s contents. The entire rule should be reviewed and revised to improve its readability.

b. The explanation of agency authority should not simply recite the statutory definition of “biotechnology business”, but rather should explain how that provision, and any other relevant statutory provision, authorizes the department to promulgate this rule.

c. The plain language analysis does not provide an adequate explanation of the rule. The analysis included as part of the fiscal estimate is actually more instructive. The plain

language analysis should be rewritten to explain the rule contents in sufficient detail to enable the reader to understand what the rule does. For example, the first sentence states that the rule prescribes the manner in which a biotechnology business will be certified, but does not indicate for what purpose the certification is made. The second sentence states, in convoluted language, that the rule “prescribes the manner of determining the percent needed to establish if the definition of “primarily”, which is defined as “more than 50% under s. 77.54 (57) (a) 4., Stats., is met”. What does this mean, in plain English?

d. It is suggested that the definitions be placed in sub. (1), to facilitate understanding of the terminology used throughout the rule. Also, while it is generally not inappropriate to refer to the statutory definitions of terms used in the rule, it is cumbersome for the reader to have to refer to eight statutory definitions located in multiple statutory provisions. It would be preferable to provide the definitions in the rule text, or, at the very least, briefly explain the defined terms in the analysis. Finally, s. Tax 11.07 (2) (intro.) should be rewritten to read: “In this section”, because the definitions apply to s. Tax 11.07, rather than to “the exemptions in s. 77.54 (57) (b), Stats., and sub. (1)”.

e. It is also suggested that the rule be reorganized to group in one subsection all of the language relating to the exemption for property used in qualified research and to group in another subsection all of the language relating to the exemption for property used to raise research animals. Currently, the rule comingles some general language about the two exemptions in sub. (1), without using titles to clarify which provisions pertain to which exemption, and in addition has a separate provision for each of the two exemptions [currently subs. (3) and (4), respectively]. If some requirements apply to both exemptions, they should also be grouped.

f. Section Tax 11.07 (1) (intro.) states that s. 77.54 (57) (b), Stats. “provides exemptions for the following”. If this language is retained in any reorganization of the rule, language should be inserted following “exemptions” to indicate what is being exempted. Further, the phrase “all of” should be inserted before “the following”. Also, s. Tax 11.07 (1) (a) to (d) recites statutory language about the various exemptions and includes a number of statutory citations, without explaining what those provisions require. For example, sub. (1) (d) refers to exemptions for “the items listed in s. 77.54 (3m) (a) to (m), Stats.”, which forces the reader to refer to the statutes for the list. It would be more helpful if this provision stated simply in plain language, without citing statutory provisions, the items exempted from taxation under the statutes.

g. In s. Tax 11.07 (1) (a), the word “that” should be inserted after “and” on line 3. Also, here and elsewhere in the rule, “persons who are” should be replaced by “a person who is”.

h. The following comments pertain to s. Tax 11.07 (3):

(1) In general, sub. (3) is drafted in an awkward and wordy manner. For example, the first sentence could more simply be stated as: “To claim the exemption under sub. (x), a person must be engaged primarily in manufacturing or biotechnology in

this state.” The entire subsection should be reviewed and the language simplified and clarified.

- (2) In sub. (3) (b), how does fuel or electricity “lose its identity”?
- (3) In sub. (3) (c), an explanation should be given of what “Treas. Reg section 1.41-4” provides, and how to find it. This could be done in a note following the provision.
- (4) In sub. (3) (d), “both” should be inserted after “be” on line 1. Also, what is meant by “a consistent application of a reasonable measure of activity”?
- (5) The example following sub. (3) (d), and subsequent examples, should be rewritten and numbered so it is clear they are not part of the rule text. Each example should be indented and clearly labeled “Example 1.”, “Example 2.”, and so forth. Without the word “Example” before each one, they read as if they are part of the rule text. This comment applies throughout the rule. For instance, see the examples following s. Tax 11.07 (4). Also, are all of these examples necessary?
- (6) In sub. (3) (e), the language is awkwardly worded, making its meaning unclear. The first clause (“When property or an item purchased exempt under...”) appears to be missing one or more words.

i. In s. Tax 11.07 (4) (a), the language should not begin by stating that the subsection will explain how a person qualifies for certain exemptions, the information that must be presented, and the documentation that must be kept. Rather, the language should simply set forth all of that information. To better organize the material in this subsection, it is suggested that each paragraph under sub. (4) be given a title.

j. The language in sub. (4) (c) is awkward and should be rewritten to more simply state the requirement to obtain specified information.

k. The following comments pertain to s. Tax 11.07 (5):

- (1) In the title, the word “BUSINESS” should be plural.
- (2) In sub. (5) (a), it is unnecessary to state what information the provision is going to contain. It should simply convey the information, by stating something like: “A person seeking to claim an exemption under [insert appropriate rule citation] shall first obtain certification from the department that the person’s business is a biotechnology business”.
- (3) Subsection (5) (b) (intro.) should simply state something like: “In order to be certified as a biotechnology business, a business shall meet all of the following conditions:”.
- (4) In sub. (5) (b) (intro.) and 1., it is not instructive to say that a business is a biotechnology business if the business is engaged primarily in biotechnology.

Also, what is meant by “more than 50% of the business’ activities....are devoted to *the application of biotechnologies*”? (Emphasis added.)

- (5) Subsection (5) (b) and (c) should simply list the criteria that go into the department’s determination that a business should be certified as a biotechnology business and should clarify whether, if all of the conditions are met, the department *shall* certify, or *may* certify, the business.
- (6) Subsection (5) (d) seems to be out of order. Information about how a business may apply for certification should come at the beginning of the subsection. Also, it appears that “may” should be changed to “shall” and “with” should be changed to “on”. A note should be inserted indicating where the form may be obtained.
- (7) In sub. (5) (e) 1., what is meant by revoking a certification granted “with respect to a period under par. (c) 1.”?
- (8) Subsection (5) (e) 2. provides that the department may require any business seeking certification “to submit additional information, as determined by the department, prior to the department granting or denial of the applicant’s request for certification”. What types of additional information might be required? It would be helpful to businesses to have at least some examples of the types of additional information they may be required to present.
- (9) In sub. (5) (e) 3., what is meant by requiring any business seeking certification to “be certified only with respect to its previous tax years, until the department determines otherwise”?
- (10) Is there any timeline for the department’s decision on certification? Does the business have any recourse if the department denies the certification?