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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-041

#### 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**

Section Trans 206.11 (4) (e) and Note assert that the department’s review of a county board’s decision will not be considered a contested case under ch. 227, Stats., and is not subject to the contested case hearing requirement in s. 227.42, Stats. Further, ss. Trans 206.11 (4) (h) and 206.12 (4) similarly assert that various decisions of the department are not subject to judicial review under ch. 227, Stats. The department cannot exempt itself from statutory requirements relating to contested case proceedings and judicial review; if case law supports these provisions of the rule, the department should provide an explanation.

#### **2. Form, Style and Placement in Administrative Code**

a. In s. Trans 206.02 (22), the notation “ss.” should be replaced by the notation “s.” [See also sub. (27).]

b. Section Trans 206.03 (7) (a), (b), and (d) refer to “these requirements.” This phrase should be replaced by a cross-reference to the applicable provision in ch. Trans 206. Also, the introduction in this subsection should conclude with the phrase “comply with one of the following requirements.” The entire rule should be reviewed for the appropriate use of phrases such as “all of” and “any of” in introductory material in order to clarify whether all or one of the requirements in a list of subunits must be met. Finally, sub. (7) (d) does not grammatically follow the introduction in sub. (7). This paragraph should be placed elsewhere in the rule.

c. In s. Trans 206.03 (10) (a) 2., the phrase “may be” should be replaced by the word “is.”

d. Section Trans 206.03 (17) (intro.) states that the department will impose “the following sanctions” for failure to comply with the provisions of ch. Trans 206. However, pars. (f) to (h) do not impose sanctions and should be placed elsewhere in the rule.

e. In s. Trans 206.10 (1), the word “must” should be replaced by the word “shall.” In sub. (8), the word “should” should be replaced by the word “shall.” [See also ss. Trans 206.04 (6) and 206.11 (3) (a) and (b).] Finally, in sub. (10), the words “are” and “is” should be replaced by the phrase “shall be.” [See also the use of the words “are” and “will” in s. Trans 206.12 (1).]

f. In s. Trans 206.11 (3), the second occurrence of the phrase “may request the department to review the decision” should be deleted.

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

Section Trans 206.03 (5) (a) and (8) (b) refer to forms prescribed by the department. If these forms are not the same as the application referred to in s. Trans 206.02 (29), the requirements of s. 224.14 (3), Stats., should be met.

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

a. In the fifth paragraph of the plain language analysis, the number “1997” should be inserted before the notation “Stats.” [See also the 10<sup>th</sup> paragraph of the plain language analysis.]

b. In s. Trans 206.02 (29), the comma should be deleted.

c. Section Trans 206.03 (2) (a) and (b) seems to be duplicative with respect to the transmittal of project applications. The current rule, s. Trans 206.03 (3), simply requires the county highway commissioner to send copies of applications to the department. What is the purpose of requiring, for example, both the highway county commissioner and a village president to send an application to the department?

d. Section Trans 206.03 (3) (c) refers to “existing CHI formula.” Where can this formula be found? Also, in the last sentence, the word “committees” should be replaced by the word “committee.”

e. The repeated modification of the words “city” and “village” with the phrase “with a population of 20,000 or more (or less)” makes this rule difficult to interpret. Consider defining “small city” (under 20,000) and “large city” (over 20,000) or “small municipality,” etc., in the definitions section.

f. In s. Trans 206.03 (2) (d), the following phrase should be explained: “Funds are obligated to a project and cannot be subdivided as a project change.”

g. In s. Trans 206.03 (10) (c), the word “reimbursements” should be replaced by the word “reimbursement.”

h. The first sentence of s. Trans 206.03 (17) (a) should read: “If the recipient fails to comply with...Stats., and if there is entitlement funding...” In par. (b) (intro.), the word “to” should be replaced by the word “on.” [See also sub. (17) (d) (intro.).] Finally, in sub. (17) (d) 5., the word “to” should be inserted between the words “subject” and “review.”

i. In s. Trans 206.03 (17) (e) 2., to what does the phrase “minimum requirements” refer? In general, it is not clear how par. (e) may be integrated with the remaining paragraphs of sub. (17). The department should be clear about the interrelationship of the sanctions in sub. (17). For example, can one project be subject to more than one of the sanctions listed in sub. (17)?

j. The phrase “current odd-numbered year” in ss. Trans 206.04 (1) (b), 206.06 (1) (b), and 206.09 (1) (b) should be replaced with “odd-numbered year in which the chairperson or the designee becomes a member.”

k. In s. Trans 206.06 (1) (b), who selects the membership of the CMSIC?

l. Section Trans 206.10 in general appears to require that cost-effectiveness findings be prepared. However, sub. (7) (a) states that in some instances, the county must decide whether to perform a cost-effectiveness finding. The rule should clearly state whether such a finding is required or is only prepared at the discretion of the county. Further, the rule should make consistent use of either the phrase “cost effectiveness” or the term “cost-effectiveness.”

m. Section Trans 206.11 (1) should begin with the phrase “In this section,”.

n. Section Trans 206.12 (3) refers to the “advisory committee.” What is this body? Also, the word “reviews” should be replaced by the word “shall review.”