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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-083

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 October 1994.]

1. Statutory Authority

The Note to s. RR 1.12 (3) provides in part that a minimum \$3 fee will be charged for locating a record at the Office of the Commissioner of Railroads and a minimum \$15 charge will be imposed for locating a record stored outside of the office. Section 19.35 (3) (c), Stats., provides generally that an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct costs of location, if the cost is \$50 or more. The Note to s. RR 1.12 (3) should be amended.

2. Form, Style and Placement in Administrative Code

a. The list of statutes interpreted by the rule is too broad. Specific statutory sections should be cited.

b. The introductory clause of the rule-making order does not contain a relating clause and should be redrafted to include one. [See s. 1.02 (1), Manual.]

c. Because s. RR 1.001 is expanded from a single definition to include two additional definitions, it is suggested that SECTIONS 1 and 2 of the draft be combined into a single SECTION to *repeal and recreate* s. RR 1.001 in its entirety. [See s. 1.06 (5), Manual.] Other SECTIONS of the draft should be renumbered accordingly. Also, the second and third sentences of s. RR 1.001 (3) should be rewritten to read:

“Party” includes the railroad and maintaining highway authority and the department of transportation when a highway project

which encompasses a highway or rail crossing involves the expenditure of federal funds.

d. In s. RR 1.01, the word “should” should be amended to read “shall.”

e. In SECTION 4 of the draft, all of the material following the treatment clause should be deleted. If a SECTION simply renumbers existing rule subsections without further amendment, it is not necessary to include the text of the renumbered subsections following the treatment clause.

f. In s. RR 1.025 (1) and (2), substitute “highway or rail,” for “highway/rail.” Slashed alternatives are not appropriate in drafting administrative rules. [See s. 1.01 (3), Manual.] Also, in s. RR 1.025 (2) (intro.), the phrase “all of the following” should be inserted after the word “include.” The entire rule should be reviewed for the inclusion in introductory material phrases such as “all of the following” or “any of the following” in order to ensure that a reader can discern whether all of the material in a list is required or whether any alternative will suffice.

g. In SECTION 8 of the draft, the treatment clause should be revised to insert “(intro.)” after “(7).” Also, in the body of the SECTION, insert “(intro.)” after “(7)” and delete all of the remaining material after the colon. It is not necessary to include pars. (a) to (c) because only the introductory clause to sub. (7) is amended. Also, in s. RR 1.04 (1), the phrase “shall disqualify” should be replaced by the word “disqualifies.”

h. In s. RR 1.11 (1), should the last sentence also include “transmitted by facsimile” in order to be consistent with amended ss. RR 1.01 and 1.08 (3)?

i. SECTION 14 should be redrafted in its entirety. The treatment clause should provide: “SECTION 14. RR 1.13 (2) (a) to (d), (f) and (g) are repealed.” A new SECTION should then be created to renumber s. RR 1.13 (2) (e), (h) and (i) as pars. (a), (b) and (c), respectively, and to amend s. RR 1.13 (2) (b), as renumbered. Another SECTION should then be created to amend s. RR 1.13 (4) and (5).

j. SECTIONS 15 and 16 purport to create ss. RR 1.14 and 1.15. However, the text of the rule indicates that ss. RR 1.15 and 1.16, respectively, are created. This typographical error should be corrected.

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

a. In s. RR 1.02 (2), the purpose and meaning of the third sentence is unclear. What does the word “affect” refer to? Should the word “effect” be substituted? Furthermore, the reference to “its nature, duration and degree” is unclear and needs additional explanation.

b. In s. RR 1.025 (3), it appears that the phrase “. At the time of filing,” should be replaced by the word “or.”

c. In SECTIONS 15 and 16, what is the difference between “specific findings of fact” and “findings of ultimate fact”? The rule should clarify and explain the difference or these terms could be defined in s. RR 1.001.

d. In s. RR 1.16 (3) (a), it appears that the provision would be clearer if the words “designate” and “designation” were replaced by the words “direct” and “direction,” respectively.