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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-015

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 September 1998.]

1. Statutory Authority

Section Trans 4.02 (9) modifies the definition of the term “urban area” and provides, among other things, that an “urban area” is an area deemed appropriate by the department. However, it appears that s. 85.20 (1) (k), Stats., provides that an urban area must include a city or village having a population of 2,500 or more, or an area that includes two or more American Indian reservations. Under what authority may the department deem another area an “urban area”?

2. Form, Style and Placement in Administrative Code

a. The added language in s. Trans 4.04 (4) (a) provides for a competitive procurement process. Is this the process referred to in par. (b)? If so, an appropriate cross-reference should be provided. In addition, the rule provides that eligible applicants must follow the competitive process not less than once every five years. Must this process be followed every time a contract is let, or just at least once every five years? Although the rule goes on to provide that a contract may not exceed five years, it appears to be implied that the contract could be for less than five years. Thus, the frequency requirement of the competitive bid process should be clarified.

b. In s. Trans 4.06 (3), the notation “Sub.” should be replaced by the word “Subsection” since it begins the sentence.

c. SECTION 37 of the rule indicates that it renumbers s. Trans 8.02 (12) as sub. (12). Should it be renumbered sub. (11)?

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

a. Section Trans 4.04 (5) (y) refers to “federal transit administration capital funds.” What are these funds? Can a cross-reference to an appropriate federal statute or regulation be included in the rule to better identify these funds?

b. Section Trans 4.05 (2) provides that the state share of eligible costs must be in accordance with s. 85.20, Stats. Is it possible to provide a more precise statutory citation within s. 85.20, Stats.?

c. Section Trans 4.06 (1) refers to the “state aid contract.” Is this the state aid contract referred to in s. Trans 4.08? In any event, an appropriate cross-reference or other clarifying material should be provided to better identify the “state aid contract.”

d. The treatment clause of SECTION 40 incorrectly refers to s. Trans 803.02 (2) (c). The reference should be to s. Trans 8.03 (2) (c).

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

a. The term “TRANS” in the title of s. Trans 4.01 should not be in all capital letters.

b. In s. Trans 4.01, and elsewhere throughout the rule, the term “department of transportation” is changed to the term “department.” However, it does not appear that for purposes of ch. Trans 4 or 8, the term “department” is defined. If “department” is going to be used alone, the definitional portion of the rule ought to define the term. See also the use of the term “secretary” in s. Trans 4.07 (2).

c. In s. Trans 4.04 (1), and elsewhere throughout the rule, the term “public body contracts” is used. It is presumed that this term refers to a contract with a public body, although this interpretation is not entirely clear from the rule itself. Would it be possible to change the phrase “providers operating under public body contracts” to “providers operating under contracts with a public body”? If not, the term “public body contracts” should be better defined.

In addition, s. Trans 4.04 (1) also refers to a “joint-use facility.” What is this? The term should be better defined in the rule.

d. Throughout the rule, the term “mass transit” is changed to “public transit.” However, in the newly created s. Trans 4.04 (4) (b) 4., the term “mass transit” is used on numerous occasions. Should the term “mass transit” in this provision be changed to “public transit”? There is a larger question. Why is the term altered when the statute continues to use the phrase “mass transit”?

e. In s. Trans 4.05 (1) (b), it appears that the word “and” between the words “audits” and “~~shall~~ may” should be changed to the phrase “except that the department.” In addition, the last sentence of par. (b) is confusing. Does the sentence mean that in other years the department may conduct financial audits of the business records of the private provider? Also, what does it mean to have “an actual dollar amount bid”? The rule should be clarified.

f. Section Trans 4.09 (2) (a) to (e) introduce two new terms to the rule: “unlinked trips” and “revenue hours.” These terms, however, are not defined. In addition, their meaning is not readily apparent from the text of the rule. To enhance the rules clarity, these terms should be defined.

g. The final sentence of s. Trans 4.10 should be clarified and simplified as follows: “This section does not apply to shared-ride taxi systems.” Also, what is a “shared-ride taxi system”?

h. In s. Trans 8.02 (2), “TEA 21” is used. However, this term is not defined. It should be. In addition, the first clause of the second sentence should be deleted. Accordingly, the second sentence should begin: “A transit system shall classify” Finally, the word “these” should be replaced by “capitalized maintenance.”

i. Should the word “long” in s. Trans 8.03 (1) (b) be changed to “along”? The word “will” in the second sentence of that paragraph should be changed to “shall.”

j. To help clarify the provision, it appears that the word “or” should be inserted before “90%” in s. Trans 8.03 (2) (intro.). In addition, the provision states that the “rank order” will be determined by the department, and need not be reflective of the order provided for in the existing rule. If some other “rank order” is determined, how will individuals learn of it? Will it be published? The rule should be clarified.