



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Jessica Karls-Ruplinger
Legislative Council Acting Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 18-065

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 December 2014.]

1. Statutory Authority

The department should clarify its statutory authority for s. Trans 6.06 (3) (SECTION 38) of the rule. In that provision, the department grants itself authority “Based on exceptional circumstances, the availability of other state or federal capital funds, or both ... [to] at its discretion deviate from the priorities established in [s. Trans 6.06 (1)].”. This provision appears to grant the department broad authority to deviate from rules promulgated as part of this rulemaking. In addition, what constitutes “exceptional circumstances” as the term is used in this provision?

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, the treatment clause should specify each subdivision treated by the rule. See, for example, SECTION 26, which describes this SECTION simply as amending s. Trans 4.06. Instead, the treatment clause should specify that this SECTION amends s. Trans 4.06 (1), (2), and (4). (Note also that it is not necessary to reproduce the text of s. Trans 4.06 (3) within the text of the proposed rule since it is not treated by the rule.) The department should revise the rule throughout to correct numerous instances in which the treatment clause does not specify each subdivision treated by the rule.

b. In addition, each rule SECTION should include only subdivisions affected by the same treatment. See, for example, SECTION 22, which the treatment clause describes as amending s. Trans 4.04. Not only does the treatment clause not list all of the subdivisions affected in this treatment, it also includes subdivisions that are affected by different treatments within the same

rule section. Within this SECTION, the department has grouped changes that amend s. Trans 4.04 (a), (b) 1., 3., 4. a., 6., and 7., and (c) and repeal s. Trans 4.04 (b) 5. and 4.04 (Note). The department should revise the rule throughout to correct numerous instances in which a proposed rule SECTION includes subdivisions affected by different treatments. When revising the rule SECTIONS to include only subdivisions affected by the same treatment, the department should also be mindful that nonconsecutive subunits may not be placed in the same SECTION if an intervening subunit is affected by a different treatment. [s. 1.04 (2) (a) 4., Manual.]

c. The introductory clause is insufficient and inaccurate for the same reasons as described in the prior two paragraphs. The department should revise the proposed rule's introductory clause to enumerate each of the rule provisions treated by the proposed order and the nature of the treatment. [s. 1.02 (2), Manual.]

d. Throughout the proposed rule, the department should review the use of semi-colons at the end of rule subunits, and consider revising relevant introductory text and replacing such punctuation with periods. [s. 1.03 (4), Manual.]

e. In s. Trans 3.02 (7), underscored text should follow stricken text, rather than appearing between stricken text that would otherwise be contiguous. [s. 1.06 (1) (a), Manual.]

f. The department has described the treatment of SECTION 28 as follows: "Trans 4.07 is amended to repeal Trans 4.07 (Note)". Rule provisions are not "amended to repeal". They may be created; amended; repealed; repealed and recreated; renumbered; renumbered and amended; or consolidated, renumbered, and amended. [s. 1.04 (1) (a), Manual.] The department should revise this treatment clause accordingly.

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

a. In SECTION 6 of the proposed rule, the department might consider placing the cross-reference to s. Trans 4.02 (8m) immediately after the term "unlinked trip"; i.e., "an unlinked trip, as defined by Trans 4.02 (8m), on an urban mass transit system vehicle."

b. In SECTION 11 of the proposed rule, s. Trans 4.02 (1p) creates a definition for "job access and reverse commute project", but then creates two additional definitions as separate paragraphs within that subdivision to define terms used in the definition of "job access and reverse commute project". Each defined term should be defined in a separate subdivision, and the first word in each term should be capitalized.

c. In SECTION 13 of the proposed rule, the way the department has modified the definition of "local public bodies" narrows the definition because the new definition no longer includes agencies of a county, municipality, or town. Is this intended? In addition, if the department's intent is to define "local public body" as a county, city, village, or town, it would be more straightforward to just say that rather than cross-referencing to s. 59.001, Stats. The department should also review s. Trans 6.02 (6) (a), in SECTION 35 of the rule, for similar reasons.

d. The department should revise the definition for "mass transit system" created in SECTION 14 of the proposed rule for clarity. Does the department intend the recreated definition of "mass transit system" to be the same, in substance, to the current definition in s. Trans 4.02 (3)?

It is not clear whether the department intends substantive or only stylistic changes to the definition. If substantive changes were not intended, it may be beneficial to retain the current language.

e. In SECTION 15 of the proposed rule, are the words “derived therefrom” necessary?

f. In SECTION 18 of the proposed rule, the word “times” is imprecise and susceptible to multiple meanings. If the meaning intended is “hours” or “hours of the day during which”, the department should use those terms instead.

g. Also, in SECTION 35 of the proposed rule, is the meaning of the definition the department proposes for “useful life” sufficiently clear? Section Trans 6.02 (14m) defines “useful life” as “an assumed minimum time period during which an asset remains in suitable operating condition for continued used in its intended capacity”. Who decides what the “assumed minimum time” is?

h. SECTION 35 of the proposed rule defines “Rural area” as “an area with a population of under 50,000 people that has not been designated as an urbanized area by the U.S. bureau of census”. Urbanized area is defined as an “area so defined by the U.S. bureau of the census”. “Small urban area” is defined to mean “any area that includes a city or village having a population of at least 2,500 but not more than 49,999”. It would appear, then, that all small urban areas would also be rural areas. Is this intended?

i. In s. Trans 6.06 (SECTION 38), it is unclear why the department has replaced the phrase “rank order of priority” with “prioritization list”. The term “prioritization list” is vague and ambiguous. If the intent is that items in the list be considered in the order in which they are listed, then that meaning is better conveyed with the phrase “rank order of priority”. In general, the department should review wording changes throughout the proposed rule to ensure that any wording changes accurately and precisely convey the department’s meaning and that wording changes that were not intended to substantively change a phrase’s meaning could not be interpreted as substantive changes.

j. In the proposed changes to s. Trans 8.03 (2) in SECTION 48 of the proposed rule, the clause “The department may consider the following hierarchy when selecting projects” is imprecise and confusing. The paragraphs that follow this clause contain factors. If the department wishes certain factors to be given more importance than other factors, it should rewrite this part of the rule to make that clear. However, it is unclear why a rank order would be necessary in conjunction with language that makes consideration of these factors permissive (may consider) rather than mandatory. In addition, is the department’s intent that it is permissible to consider any of the factors listed? Or is it the department’s intent that it is permissible to consider the factors only if considered in the order listed?