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CLEARINGHOUSE RULE 96-170

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.]

2. Form, Style and Placement in Administrative Code

- a. The term “shall” in s. Trans 55.05 (1) should be replaced with the word “may.” [s. 1.01 (2), Manual.]
- b. In s. Trans 55.06 (2) (b) 1., “such” should be deleted.
- c. In s. Trans 55.06 (10), “conditions under this section” should replace “above conditions.”

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

The term “s. 55.05, Stats.” in ss. Trans 55.02 (3) and 55.03 (intro.) should be replaced with the term “s. Trans 55.06.” The provision cited is a rule rather than a statute.

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

- a. The word “any” in s. Trans 55.02 (1) and (2) should be replaced with the word “a.” All of ch. Trans 55 should be reviewed to correct this problem. In addition, the word “the” in s. Trans 55.02 (1) should be replaced with the word “an.”
- b. The first occurrence of the word “The” in s. Trans 55.05 (1) and (2) should be replaced with the word “An.” All provisions of ch. Trans 55 should be reviewed to correct this problem.

c. It is suggested that the term “runway end” in s. Trans 55.02 (6) be replaced with the phrase “end of the runway” and that the phrase “the use of which is restricted in order” be inserted before the word “to.”

d. In s. Trans 55.04 (2), the statement that “there may be no limit” on the duration of conditions is unclear. [Emphasis added.] If it is intended that conditions with respect to real property interests acquired with state funds are to exist perpetually, the rule subsection should clearly state this.

e. It is suggested that the word “stipulated” in s. Trans 55.05 (1) be replaced with the phrase “provided in.”

f. In s. Trans 55.05 (2) (intro.), the phrase “in compliance with federal and state law” should either be deleted or the specific provisions of federal and state law be specified. In addition, unless there is a difference between signing an agreement with the Secretary of Transportation and signing an “agency” agreement with the Secretary of Transportation, it is suggested that the word “agency” be deleted from s. Trans 55.05 (2) (intro.).

g. Unless it is intended that an applicant for state aid for an airport improvement project be required to agree to accept and disburse federal, state and local funds (i.e., funds from all three sources) in order to receive state aids, it is suggested that the second occurrence of the word “and” in s. Trans 55.05 (2) (a) be replaced with the word “or.” In addition, in this paragraph, it is unclear what is the meaning of the term “force account.” This term should either be defined or explained more clearly.

h. In s. Trans 55.05 (2) (c), it is unclear what is meant by the phrase “execute any required documents.” If it is intended that an applicant be required to comply with the terms of any documents which he or she is required to agree to, this paragraph should clearly state this.

i. Section Trans 55.05 (3) is unclear. First, since the definition of “finding” in s. Trans 55.02 (5) means a document that is approved by the Governor, it is unclear why an airport owner would be required to provide a written commitment of funds prior to the time that the finding is submitted to the Governor for approval. Second, this subsection states that the owner shall provide a written commitment of “required” airport owner funds, but does not specify who may require that these funds be committed. If it is the Secretary of Transportation, the rule subsection should clearly state this.

j. Unless it is clear what the term “exhibit ‘A’” or “airport property map” refers to, it is suggested that the meanings of these terms in s. Trans 55.06 (1) (a) be more clearly explained. In addition, the last sentence of s. Trans 55.06 (1) (a) is unclear. Is it possible to explain better what an “ordinary” airport tenant lease is? In addition, the term “direct, supportive or complimentary aviation activities” is not clear. Also, if the department believes that the types of leases described in the second sentence of s. Trans 55.06 (1) (a) do not constitute the disposal of or encumbrance of the airport owner’s fee title or other property interest, and therefore may be entered into notwithstanding the first sentence of s. Trans 55.06 (1) (a), this subsection should clearly say so.

k. The second and last sentences of s. Trans 55.06 (1) (b) should be drafted as complete sentences written in the active voice. For example, the second sentence should begin: “The

airport owner shall dispose” The third sentence should begin: “The secretary may authorize” In addition, the word “on” in the last sentence of s. Trans 55.06 (1) (b) should be replaced with the word “of.”

l. Section Trans 55.06 (2) (b) states that an airport owner may not permit “any activity” which would interfere with airport purposes. The meaning of this sentence is so broad as to be unclear. Is it intended that the owner may not permit any activity on airport property that would interfere with airport purposes? Is the airport owner’s obligation limited in some other way? This paragraph of the rule should be revised to specify more clearly the airport owner’s obligations.

m. Section Trans 55.06 (2) (b) 2. provides that nothing in ch. Trans 55 requires an airport owner to maintain, repair, restore or replace any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the owner. This statement is so broad as to be unclear. For example, does it mean that airport lighting necessary for safe operation of airplanes need not be repaired, restored or replaced if it is rendered inoperable by high winds? This rule subdivision should be redrafted to be more specific concerning the obligations of airport owners under these circumstances.

n. In s. Trans 55.06 (3), the meaning of the phrase “except for nav aids that are fixed by their functional purposes or any other structure approved by the FAA” is unclear, especially since this exception is to the general rule that an airport owner is required to maintain clear and safe runway protection zones. The department needs to explain better this exception in s. Trans 55.06 (3) (a).

Also, the department should consult s. 2.08, Manual, for incorporating standards by reference. Has the consent required by s. 2.08 (1), Manual, been obtained?

o. Section Trans 55.06 (4), which requires airport owners to adopt ordinances, does not address who is required to make sure that the required ordinances are in effect if the airport owner is a private entity without the authority to adopt ordinances. If it is intended that the municipality with jurisdiction over the airport is required to adopt the ordinances specified in sub. (4), in instances where the airport owner is a private party, the rule subsection should clearly state this.

p. In s. Trans 55.06 (5), it is suggested that the phrase “to include the following” be replaced with the phrase “which may be conducted on topics that include the following.”

q. In s. Trans 55.06 (8) (c), it is suggested that the phrase “non-aviation areas and facilities” be replaced with the phrase “areas and facilities owned or controlled by the airport owner and used for purposes other than aviation.”

r. In s. Trans 55.06 (8) (d), the phrase “to the plan” should be placed after the word “modification.” In the second sentence, “so” should be deleted and “the” should replace “such.”

s. In s. Trans 55.07 (intro.), it is suggested that the phrase “of an instance where an airport owner is not in compliance with this chapter” be substituted for the term “of a compliance issue.”