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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-132

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.]

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

a. Section Comm 33.02 uses “locations” to state the scope of the rules. It would appear to be more accurate to state that the rules apply to passenger ropeways rather than to the locations where passenger ropeways are found.

b. The rules use “installations” and “proposed installations” to describe the objects and actions that are subject to regulation. [See s. Comm 33.03 (1) (title) and 33.10.] This term appears to be used as a synonym for “passenger ropeway” although the use of a different term in legal drafting always raises the question of whether a different meaning is intended. The department should carefully consider whether these terms are merely a substitute for “passenger ropeways” and should use the latter term consistently if that is the intent.

c. The rule uses a variety of terms to describe the actions that are subject to regulation. The rule includes at least the following: installed, constructed, altered, added to, erected and relocated. There appears to be considerable overlap among these terms and the terms do not appear to have a precise meaning. The department should carefully consider how these terms are used and whether a simpler and clearer statement of rule applicability can be drafted. For example, the difference between “alteration and addition to” is unclear: these terms could have the same meaning. The same observation can be made for “installed” and “constructed.”

d. In s. Comm 33.05, should “nonstatutory” be inserted before “provision”? Presumably, the department would not be granting variances from any statutory requirements that are repeated or referenced in the rule.

e. The rule uses “applicable” in a number of places to describe the requirements that apply to a particular type of passenger ropeway. [See ss. Comm 33.03 (3), 33.10 (1) (c) (intro.) and 33.13 (2).] If it is clear under the rule which provisions apply to a particular type of passenger ropeway (for example, provisions regarding new ropeways do not apply to existing ropeways), then this term is unnecessary. If it establishes a substantive requirement (that is, it dictates that some but not all provisions of the rule apply), this term does not provide enough information to determine which provisions apply and which do not. Either this term should be eliminated or it should be clarified.

f. Section Comm 33.10 (1) (b) requires copies of “plans” to be submitted to the department but “prints” is used in the note. Should these terms be the same?

g. The use of “conditional” regarding the approval under s. Comm 33.10 (2) is confusing. Normally, a conditional approval is expected to be followed by a final approval. However, this is not the case in the rule. Either “conditional” should be deleted as surplusage, or the conditions of the approval should be stated.

h. The last sentence of s. Comm 33.10 (2) (a) relates to the department’s legal liability for its actions. Why does this provision appear only in connection with the plan approval and not with other actions of the department under the rule? Can this provision be placed in a separate section?

i. Section Comm 33.10 (2) (a) and (b) relate to plans for a “proposed” passenger ropeway, suggesting that this applies only to new passenger ropeways. However, s. Comm 33.10 (1) applies also to additions to existing passenger ropeways. [See also, s. Comm 33.10 (3) (a), which requires plans only for a “new” passenger ropeway to be kept at the installation site.]

j. In s. 33.10 (4), “the requirements of” is unnecessary.

k. Section Comm 33.11 requires “complete information” regarding certain alterations to be made available. Is this different from plans and specifications? Should this also apply to relocations?

l. Section Comm 33.11 also requires that the information be “available” to the department or a third-party independent inspector. It is not clear what this means. Who is required to make this information available and where is it required to be kept?

m. Section Comm 33.12 establishes two time periods as calendar days while other provisions of the rule refer to business days. Is there a reason for the difference?

n. Section Comm 33.12 (1) (c) provides that the department “may” issue a temporary permit. However, the department is required to complete the inspection within 14 days. Should

this provision be redrafted to require the department to issue a temporary permit if the inspection is not completed within 14 days after installation, or is some other meaning intended?

o. Section Comm 33.12 (2) (a) and a number of other provisions in the rule allow inspections by third-party independent inspectors. However, the rule does not establish any requirements for qualifications of third-party inspectors. Is this omission intentional?

p. The note after s. Comm 33.12 (2) (a) refers to standards that existed prior to July 1, 1984. This note is useful, but could be improved by stating what requirements were applicable between July 1, 1984 and the effective date of this proposed rule.

q. Section Comm 33.15 requires bodily injury that results from malfunctions of ropeways to be reported to the department. Fatalities must be reported, but are not limited to fatalities caused by malfunctions of a ropeway. Is this difference intended? Does this provision mean that an accident resulting in bodily injury that is not the result of malfunction does not have to be reported to the department? If so, will the operator determine whether or not it was a malfunction that caused the injury?