

## Chapter Trans 28

### HARBOR ASSISTANCE PROGRAM

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**Note:** Chapter Trans 28 as it existed on February 28, 1985 was repealed and a new chapter Trans 28 was created effective March 1, 1985.

**Trans 28.01 Purpose and scope.** The purpose of this chapter is to set forth the department's administrative interpretation of s. 85.095, Stats., and to prescribe the administrative policies and procedures for implementing the harbor assistance program authorized by s. 85.095, Stats.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 01-117: am. Register March 2002 No. 555, eff. 4-1-02.

**Trans 28.02 Definitions.** As used in this chapter:

(1) "Commercial transportation facility" means a facility used by vessels under construction or repair, by vessels transporting passengers or commodities or by commercial fishing vessels, but does not include a facility used on a regular basis by recreational or sport fishing vessels.

(1m) "Cruise vessel" means a passenger vessel as defined in 46 USC 2101(22) or a small passenger vessel as defined in 46 USC 2101(35) that provides overnight accommodations for at least 50 passengers for hire and operates on a schedule between 2 points of sailing. Cruise vessels are not considered to be recreational vessels.

(2) "Department" means the Wisconsin department of transportation.

(3) "Disposal facility" means containment facilities, diked or undiked disposal sites, or transfer sites for future beneficial reuse.

(4) "Disposal facility costs" means costs of acquisition, construction, operation, or physical maintenance of a disposal facility.

(5) "Dock wall" means any bulkhead, pier or shoreline development used as a commercial transportation facility.

(6) "Dredging" means the excavating of harbor sediment or bottom materials, including the mobilization or operation of equipment for excavation, the sampling and analysis of sediment to determine the composition of material to be dredged or the transportation of dredged material to and placement of dredged material in a disposal facility.

(7) "Dredged material disposal" means placing dredged material in a disposal facility.

(8) "Eligible applicant" has the meaning given in s. 85.095 (1) (a), Stats.

**Note:** Federally recognized tribal governing bodies are also eligible applicants, based on s. 20.002(13), Stats.

(9) "Eligible costs" means costs approved in a grant agreement.

(9m) "Ferry" means a passenger vessel that has provisions for deck passengers or vehicles, or both, and operates on a regular schedule between a minimum of 2 points.

(10) "Maintenance dredging" means dredging in an area previously dredged to the dimensions agreed upon in the grant

agreement, but does not include dredging to greater dimensions than those to which the area has been previously dredged.

(11) "Project priority list" means a ranking by the department, assisted by an advisory council as described in s. Trans 28.06 (3), of various eligible applicant-proposed harbor improvement projects in the rank order in which the department proposes to fund the various projects.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 01-117: cr. (1m) and (9m) Register March 2002 No. 555, eff. 4-1-02; CR 05-019: am. (5), (8) and (11) Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.03 Harbor assistance program objective.**

The objective of the harbor assistance program is to assist the eligible applicant to provide necessary water access and to maintain or improve the economically effective commodity movement capabilities of Wisconsin's harbors on the Great Lakes or the Mississippi River system.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 05-019: am. Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.04 Eligible projects.** (1) **DESCRIPTION.** Every eligible harbor assistance project shall benefit a commercial transportation facility. Eligible harbor assistance projects include dockwall and disposal facility construction, repair, maintenance or rehabilitation; maintenance dredging of materials from a harbor or dredging of new harbor areas; dredged material disposal; and other harbor improvements related to the physical needs of a port that maintain or increase commodity or passenger movement capabilities.

(2) **LOCATION.** Eligible projects shall be located only in Great Lakes or Mississippi River system harbors where vessels take on or discharge a combined total of more than 1,000 tons of commercial cargo per year; where commercial, naval or recreational vessels are built; where passenger or vehicle-carrying ferry service connects the Wisconsin communities along the Great Lakes and Mississippi River, or connects the Wisconsin mainland with other states, Canadian provinces or populated islands in Wisconsin or where commercial fishing vessels unload fish. The U.S. army corps of engineers' annual tonnage figures shall be the basis for the tonnage determination; where tonnage figures are not available, the eligible applicant shall provide tonnage figures based on auditable records.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 01-117: am. (1) and (2) Register March 2002 No. 555, eff. 4-1-02; CR 05-019: am. (2) Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.05 Project selection.** (1) The department shall base its project selection on the following criteria, listed in each paragraph in descending order of importance:

(a) Economic impact of the project:

1. Indicators of expected economic impact shall be determined by a benefit-cost analysis. Benefits must exceed costs for the project to be further evaluated for funding.

2. The expected number of jobs created by a project or lost by not completing a project shall be considered.

(b) Type and urgency of the project:

1. An urgent project shall be given priority. A project is urgent if:

a. Harbor depth is less than, or within 18 months after the application date is projected to be less than, the navigation depth required for harbor usage.

b. A dockwall has deteriorated so that a terminal facility is not, or within 18 months after the application date is projected to be not, usable for terminal purposes.

c. Failure to complete the project would decrease passenger or commodity movement through a harbor or through a commercial, transportation facility by 25% or more.

2. The following project types shall have the following priority order for grant award:

a. Maintenance dredging of materials with its attendant disposal where maintenance is the responsibility of a local government and is performed outside a United States corps of engineers project area.

b. Dockwall repair or maintenance.

c. Maintenance dredging and disposal within a United States corps of engineers project area.

d. New project development of a commercial transportation facility, where the development involves dredging, dredged material disposal and dockwall construction.

e. Maintenance of a commercial transportation facility other than maintenance described in subd. 2. a., b. or c.

f. New project development of a commercial transportation facility other than that development described in subd. 2. d.

(c) Amount of tonnage and waterborne transportation: Higher priority shall be given to projects in harbors with larger amounts of tonnage and waterborne transportation, and a lower priority shall be given to projects in harbors with lesser amounts of tonnage and waterborne transportation. Improvements that benefit cruise vessels shall be of lower priority than improvements benefiting vessels transporting cargo or operating as ferries.

(2) The department may deny funding of otherwise eligible projects if:

(a) The application was submitted by an ineligible applicant or was submitted after the due date.

(b) The application is incomplete.

(c) The project is inconsistent with the criteria in this chapter.

(d) Harbor assistance program funds are inadequate.

(e) The project is speculative; that is, the eligible applicant for a new project development has no firm financial commitment from a potential lessee or operator that ensures future, productive use of the work performed under the project.

(f) The project has a lower priority than others requiring harbor assistance program funding during the current biennium.

(g) The eligible applicant has not met the program planning requirements under s. Trans 28.10.

(h) The project proposed is inconsistent with applicable harbor development plans or local comprehensive plans.

(3) The department shall establish an advisory council, under authority of s. 15.04 (1) (c), Stats., to evaluate harbor assistance program project applications. The advisory council shall include a representative of the Wisconsin Economic Development Corporation and of the Wisconsin coastal management council and shall include 2 or 3 other persons familiar with water transportation. Consistent with this chapter, the advisory council shall

evaluate and rank the proposed projects and shall recommend to the department the priority of the projects to be funded.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; correction in (2) (g) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1987, No. 384; CR 01-117: am. (1) (a) 1., (c), and (3) Register March 2002 No. 555, eff. 4-1-02; CR 05-019: am. (1) (b) 2. d. to f., (2) (e) and (g) Register July 2005 No. 595, eff. 8-1-05; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register February 2012 No. 674.

**Trans 28.06 Grant award. (1)** The department shall annually establish deadlines for filing harbor assistance project applications and shall give appropriate notice of the deadlines. Notice shall be by mail, sent to every eligible applicant that has met the planning requirements under s. Trans 28.10. The department shall issue notice of the grant awards within 180 days after an application deadline. No grant funds may be committed to an eligible applicant until a grant agreement is negotiated and signed by the department and the eligible applicant.

(2) The department may rescind grant awards in whole or in part if:

(a) All legally required permits are not obtained by July 1 of the calendar year for which a grant is awarded;

(b) Local matching funds are not advanced when due;

(c) Funds to be made available from other sources because of the grant are not advanced when due;

(d) Work eligible for grant reimbursement is not begun in the calendar year for which the grant was awarded;

(e) A significant change in the project scope occurs after notice of the grant award is issued; or

(f) The grantee is in default under the grant agreement.

(3) The department shall rescind a grant award if the eligible applicant withdraws its application or is unable to enter a grant agreement in the calendar year for which the grant is awarded.

(4) Recision of a grant award, in whole or in part, shall permit the department to award a grant to the next, most highly ranked, unfunded project on the current project priority list that can be funded under the requirements of this chapter.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 05-019: am. (1) Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.07 Grant amounts. (1)** In accordance with s. 85.095 (2) (a), Stats., the state share of project costs may not exceed 80% of the eligible costs incurred by the eligible applicant for the harbor assistance project.

(2) For projects funded in part by the U.S. army corps of engineers, the state share may not exceed 50% of the non-federal share of the project costs.

(3) For projects with federal funding, other than those projects funded in part by the U.S. army corps of engineers as described in sub. (2), the state share may not exceed 80% of the non-federal share of project costs; furthermore, the minimum eligible applicant share shall be no less than 10% of project costs.

(4) The department may not assume a continuing funding responsibility for any project.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 01-117: am. (4) Register March 2002 No. 555, eff. 4-1-02; CR 05-019: am. (1) and (3) Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.08 Grant agreement. (1)** Harbor assistance projects for which grants are approved shall be formally implemented through grant agreements between the department and the eligible applicant. If the eligible applicant is unable or unwilling to enter into a grant agreement with the department in the calendar year for which the applicant's project is approved, the

applicant shall resubmit another application for the project before the department shall again consider it for funding.

(2) The types and amounts of costs eligible for state assistance shall be negotiated in developing a grant agreement. Eligible costs may include final engineering, construction, and dredging costs and other costs agreed to by the department and the eligible applicant. The following items, however, are not eligible for reimbursement:

- (a) Eligible applicant's general grant administration costs;
- (b) Costs of acquiring permits or of preparing environmental documents, feasibility studies, conceptual project designs or design revisions; and
- (c) Interest on money borrowed by the eligible applicant or interest charged to the applicant for late payment of project costs.

(3) The maximum amount granted by the department shall be stated in the grant agreement for the project.

(4) The grant agreement shall require a grant recipient to:

(a) Save and hold the department harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever related to the project; and provide, at its expense, a comprehensive general liability insurance policy, with per occurrence limits to be determined by the department, naming the department and its officers, employees and agents as additional insureds.

(b) Provide evidence of performance and payment bonds, satisfying all applicable requirements of ss. 30.32 and 779.14, Stats., for the full amount of any and all construction contracts let by the eligible applicant in connection with the project.

(c) Maintain project-related books and records as required by the department and make such records available to the department for audit purposes. In addition, grant recipients shall make periodic progress reports to the department. The content and timing of these reports shall be specified in the grant agreement.

(5) In the grant agreement, the department shall require repayment of grant funds advanced to an eligible applicant if:

(a) The project for which the grant funds are awarded is not completed in accordance with all terms of the grant agreement, including required completion dates; or

(b) Any commercial transportation facility for which the grant is awarded is converted during that time established in the grant agreement to a use inconsistent with the purposes of the harbor assistance program or inconsistent with the terms of the grant agreement or is converted during that period to a use not approved in writing by the department. Conversion to a use approved in writing by the department may, nonetheless, require repayment of all or a portion of the grant funds to the department.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 05-019: am. (2) (intro.), (a), (c), (4) (b) and (5) (intro). Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.09 Application process.** (1) Applications for harbor assistance program grants shall be submitted to the department in a manner and form prescribed by the department. Forms shall be available without charge.

(2) Each application shall include the following information:

(a) A resolution officially adopted by the eligible applicant containing:

- 1. A formal request for assistance.
- 2. The name of the eligible applicant's representative authorized to sign forms or claims. The representative shall be the applicant's contact person for the project. If there are more than one, all their names shall be included in the application.
- 3. A statement that the eligible applicant will accept respon-

sibility for operation and maintenance of the proposed project after completion of the work funded.

4. A statement that the proposed project is consistent with the harbor development plan or with the comprehensive plan of the local government if a plan or plans have been adopted. A copy of any plan shall be attached to the application.

5. A statement that the proposed project is consistent with the 3-year harbor development statement of intentions submitted by the eligible applicant as required by s. Trans 28.10.

6. A statement that the eligible applicant agrees to provide the department, in a timely manner, additional analysis or documentation supporting the application, whenever the department considers it necessary during the application review process.

7. A statement that the eligible applicant agrees to provide required matching funds up to a stated maximum at the time and in the manner specified in the grant agreement.

(b) A narrative description of the project which, at a minimum, shall include:

1. A detailed description of the work to be performed including plans, drawings, sounding reports or other information necessary to fully describe the project.

2. A detailed description of the means by which the work is to be performed.

3. A statement of justification and reasons for accomplishing the project, including a discussion of possible alternatives in type and scope to the project.

4. A map, sketch, or other depiction of the project site.

5. A statement of current ownership of the project site and facilities and of the ownership proposed upon completion of the project.

6. A time schedule for performing major project tasks.

(c) A detailed estimate of project cost, indicating the eligible applicant's cost share, amount of state funding requested, other sources or potential sources of funds and full description of timetables and conditions affecting funds other than funds already budgeted by the applicant.

(d) An estimate of project development costs, not included as estimated project costs, that are essential to the success of the project. This may include, for example, the value of existing land and facilities, the cost of additional site development and the cost of storage or transfer facilities.

(e) An estimate of the eligible applicant's annual revenues from the project if completed, or of revenues lost if the project is not completed, and an estimate of the annual costs necessary to maintain the project property.

(f) An estimate of the number and type of jobs directly attributable to the proposed project, or of those jobs lost if the project is not completed. The estimates shall be supported by a description of the means by which the number of jobs is calculated.

(g) A list of commodities and a disclosure of the tonnage of waterborne commerce using the project property and expected to use the project property if the project is completed, with origin and destination information.

(h) A list of permits necessary for the project to proceed and, if the permits have not been obtained, a description of the actions taken or to be taken to obtain the permits.

(i) A description of the probable environmental impact of the project. Copies of environmental reports, environmental screening worksheets, environmental assessments, and environmental impact statements shall be provided.

(j) An estimated annual number of passengers that will be affected by the project.

(3) If an eligible applicant fails to supply required information or supplies erroneous information, the department may disapprove the application.

(4) The eligible applicant shall submit an application to the department by August 1 in order to receive primary consideration for funding during the following calendar year. If funds are available, applications may be submitted by March 15, 1985, and by February 1 of each year thereafter, for funding in the same calendar year. The department may waive the requirements in this subsection for emergency repair projects.

**Note:** Application forms for harbor assistance program grants may be obtained without charge from: Manager, Harbor Assistance Program, P.O. Box 7914, Madison, Wisconsin 53707-7914.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; correction in (2) (a)

5., made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1987, No. 384; CR 01-117: am. (2) (a) 5. and cr. (2) (j) Register March 2002 No. 555, eff. 4-1-02; CR 05-019: am. (2) (a) 3., 6., 7., (e), (3) and (4) Register July 2005 No. 595, eff. 8-1-05.

**Trans 28.10 Planning requirement.** No grant may be made under s. 85.095, Stats., and this chapter, unless the eligible applicant provides the department a description of the harbor projects for which the applicant may request state assistance under s. 85.095, Stats., or federal aid, or both, during the next 3 years. The description shall be submitted prior to April 1 preceding the fiscal year in which the applicant seeks aid under this chapter. The department may waive this planning requirement.

**History:** Cr. Register, February, 1985, No. 350, eff. 3-1-85; CR 05-019: am. Register July 2005 No. 595, eff. 8-1-05.