

CR 84-158

RECEIVED

JAN 15 1985

3:50 pm
Revisor of Statutes
Bureau

CERTIFICATE

State of Wisconsin)
) ss.
Department of Transportation)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Lowell B. Jackson, P.E., Secretary of the Wisconsin Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rule relating to the Wisconsin Harbor Assistance Program was duly approved and adopted by this Department on January 15, 1985.

I further certify that the annexed copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation, in the City of Madison, Wisconsin, this 15th day of January, 1985.

Lowell B. Jackson
for LOWELL B. JACKSON, P.E.
Secretary
Wisconsin Department of
Transportation

3-1-85

IN THE MATTER OF THE PROPOSED	:	
REPEAL AND RECREATION OF	:	ORDER ADOPTING
CHAPTER TRANS 28, WIS. ADMIN.	:	RULES
CODE, RELATING TO THE WISCONSIN	:	
HARBOR ASSISTANCE PROGRAM	:	

Analysis Prepared by the Wisconsin Department of Transportation

General summary of rule. This rule repeals and recreates chapter Trans 28, Wis. Admin. Code. It clarifies administrative policies, project selection criteria, grant amount limits, standard terms of grant agreements, and grant application requirements. New section Trans 28.02, Wis. Admin. Code, provides new definitions and modifies some existing definitions to provide greater clarity. New section Trans 28.04, Wis. Admin. Code, describes projects eligible for funding and provides that a 1000-ton commercial cargo requirement does not apply to shipbuilding, vehicle-carrying ferry service, or commercial fishing. New section Trans 28.05, Wis. Admin. Code, sets forth project selection criteria, including the threshold criteria that project benefits must exceed project costs and that an urgent project of any type is given priority. The priority rank among projects is changed to give dockwall repair or maintenance a higher priority ranking than maintenance dredging or disposal from within an Army Corps of Engineers project area. The criteria for denying funding are expanded. New section Trans 28.06, Wis. Admin. Code, sets forth the award timetables and the conditions for rescinding an award, and it permits the Department to award monies from a rescinded grant award to another project. New section Trans 28.07, Wis. Admin. Code, sets forth the criteria used by the Department to establish the maximum percentage of project costs that may be funded by the state. Federal participation in the project shall determine the maximum level of state funding. New section Trans 28.08, Wis. Admin. Code, sets forth the basic grant agreement terms. New section Trans 28.09, Wis. Admin. Code, sets forth the information required and establishes a semi-annual application process. New section Trans 28.10, Wis. Admin. Code, is created in response to the 1983 amendment of sec. 85.095, Stats.; it interprets sec. 85.095(c), Stats., as amended by 1983 Wisconsin Act 27.

Fiscal effect. This rule more extensively declares existing policies and practices than does the existing rule; therefore, the fiscal impact from this rule compared to past practice is negligible. To the extent the changes more clearly explain the Department's application requirements, selection criteria, and grant agreement terms, however, both the applicant and the Department will save time and paperwork. The rule also encourages

multi-source funding: the non-federal portion of Army Corps of Engineers projects are shared equally by the local applicant and by the Department of Transportation. The non-federal portion of non-Army Corps of Engineers projects is paid 80% by the state and 20% by the local applicant.

Final regulatory flexibility analysis. This rule will not have a significant economic impact on a substantial number of small businesses. Thus, under sec. 227.018(3m), Stats., as created by 1983 Wisconsin Act 90, a final regulatory flexibility analysis is not required.

Pursuant to authority vested in the Wisconsin department of transportation by ss. 110.06(1) and 227.014, Stats., the department hereby repeals and recreates rules interpreting s. 85.095, Stats., as follows:

RECREATED RULE TEXT

SECTION 1. Chapter Trans 28, Wisconsin Administrative Code, is repealed and recreated to read:

CHAPTER TRANS 28

HARBOR ASSISTANCE PROGRAM

TRANS 28.01 PURPOSE AND SCOPE. The purpose of this chapter is to set forth the department of transportation'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.

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.

(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) "Dockwall" means any publicly owned 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 applicants" means a county, municipality, town or agency thereof or a board of harbor commissioners organized under s. 30.37, Stats.

[NOTE: Federally recognized tribal governing bodies are also eligible applicants based upon s. 20.002(13), Stats.]

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

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

ment, 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 TRANS 28.06(3), of various applicant-proposed harbor improvement projects in the rank order in which the department proposes to fund the various projects.

TRANS 28.03 HARBOR ASSISTANCE PROGRAM OBJECTIVE. The objective of the harbor assistance program is to assist eligible applicants 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.

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 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 vehicle-carrying ferry service 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, an applicant shall provide tonnage figures based on auditable records.

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 an efficiency analysis known as 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 percent 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 publicly owned commercial transportation facility, where the development involves dredging, dredged material disposal and dockwall construction.

e. Maintenance of a publicly owned commercial transportation facility other than maintenance described in subpars. a, b or c.

f. New project development of a publicly owned commercial transportation facility other than that development described in subpar. 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.

(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 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 applicant has not met the program planning requirements under s. TRANS 28.11.

(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 department of development and of the Wisconsin coastal management council and shall include two or three 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.

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 the clerks of all municipalities having jurisdiction over commercial harbors on the Great Lakes, and on the Mississippi River. The department shall issue notice of the grant awards within 180 days after an application deadline. No grant funds may be committed to an applicant until a grant agreement is negotiated and signed by the department and the 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.

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 percent of the eligible costs incurred by the 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 percent of the non-federal share of 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 percent of the non-federal share of project costs; furthermore, the minimum local share shall be no less than 10 percent of project costs.

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

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 applicant. The following items, however, are not eligible for reimbursement:

(a) 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 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, employes 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 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 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.

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 applicant will accept responsibility 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 three-year harbor development statement of intentions submitted by the eligible applicant as required by s. TRANS 28.11.

6. A statement that the 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 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 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.

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

(4) Applicants shall submit applications 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.]

TRANS 28.10 PLANNING REQUIREMENT. No grant may be made under s. 85.095, Stats., and this chapter, unless the 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 three 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.

(End)

This rule shall take effect upon publication as provided in s. 227.026(1)(intro.), Stats.

Signed at Madison, Wisconsin,
this 15th day of January, 1985.

Lowell B. Jackson
For Lowell B. Jackson, P.E.
Secretary
Wisconsin Department of
Transportation



State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



PLEASE REPLY TO:

OFFICE OF GENERAL COUNSEL

4802 Sheboygan Avenue

P. O. Box 7910

Madison, WI 53707

Telephone: (608) 266-8810

RECEIVED

JAN 15 1985

January 15, 1985

OGC 84-87

Revisor of Statutes
Bureau

Mr. Gary Poulson
Assistant Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Re: Clearinghouse Rule 84-158

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.023, Wis. Stats., is a certified copy of CR 84-158, an administrative rule relating to the Wisconsin Harbor Assistance Program. An additional, uncertified copy of CR 84-158 is enclosed to be used as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

Philip Peterson
Deputy General Counsel

PP:dlm

Enclosures

cc: Sue Gallagher
DOT Office of Transportation Information
Douglas Haist
Paul Heitmann
Carol Cutshall



State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



PLEASE REPLY TO:

RECEIVED

JAN 22 1985

Revisor of Statutes
Bureau

OFFICE OF GENERAL COUNSEL

4802 Sheboygan Avenue
P. O. Box 7910
Madison, WI 53707

Telephone: (608) 266-8810

January 18, 1985
OGC 84-87

The Honorable Douglas LaFollette
Office of the Secretary of State
Government Records Division
201 East Washington Avenue
P.O. Box 7848
Madison, Wisconsin 53702

Mr. Gary Poulson
Assistant Revisor of Statutes
411 West, State Capitol Building
Madison, Wisconsin 53702

Re: Administrative Rule
Clearinghouse Rule 84-158

Gentlemen:

By letters of January 15, 1985, I filed certified copies of Clearinghouse Rule 84-158 with each of your offices. That Administrative Rule is also identified as Chapter TRANS 28, Wisconsin Administrative Code, and relates to the Wisconsin Harbor Assistance Program. The rule has been appropriately adopted by the Department of Transportation. Filing was made under sec. 227.023, Wis. Stats.

The rule text sent to you for filing is that which the Department intended to adopt. By oversight, however, the analysis accompanying the rule was not changed to describe the rule as finally adopted. Although the analysis accurately described the rule as originally proposed, it was not changed to reflect a change made in the rule as a result of comments received during the rulemaking process.

The Department of Transportation wishes to file an accurate analysis with each of your offices pursuant to sec. 227.023, Wis. Stats., and therefore, we have prepared the enclosed corrected copy of the first two pages of the Order Adopting Rules. That corrected copy makes no change in the rule text, but only corrects the analysis in two respects. Please replace the former first two pages with the enclosed corrected copy.

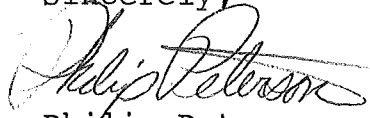
Douglas LaFollette
Gary Poulson

-2-

January 18, 1984

If you or your staffs have questions about this, please call at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Philip Peterson".

Philip Peterson
Deputy General Counsel

PP:dlm
Enclosures
CC: Paul Heitmann
Carol Cutshall