

OCT 24 2001



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 01-117

AN ORDER to amend Trans 28.01, 28.04 (1) and (2), 28.05 (1) (a) 1. and (c) and (3), 28.07 (4) and 28.09 (2) (a) 5; and to create Trans 28.02 (1m) and (9m) and 28.09 (2) (j), relating to the harbor assistance program.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-09-01 RECEIVED BY LEGISLATIVE COUNCIL.

10-23-01 REPORT SENT TO AGENCY.

RS:PC:jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

The Wisconsin Department of Transportation proposes an order to amend TRANS 28.01, 28.04(1) and (2), 28.05(1)(a)1, (c) and (3), 28.07(4) and 28.09(2)(a)5; and create TRANS 28.02(1m) and (9m) and 28.09(2)(j), relating to the Harbor Assistance Program

**NOTICE OF INTENT TO ADOPT RULE  
WITHOUT PUBLIC HEARING  
AND  
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of s. 85.095, and 227.11, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 28 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Ellen Fisher, Department of Transportation, Bureau of Rails and Harbors, Room 155B, P. O. Box 7914, Madison, WI 53707-7914.

**Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** s. 85.095, Stats.

**STATUTES INTERPRETED:** s. 85.095, Stats.

**General Summary of Proposed Rule.** This rule making will enable communities where cruise ships are a port of call to apply for Harbor Assistance Program (HAP) funds to construct/improve docking and terminal facilities to accommodate these ships. It will also enable communities that have already received HAP funding to use these previously-constructed facilities for cruise ships.

**Fiscal Effect.** There are potentially twelve communities likely to be affected by this change in policy: Milwaukee, Green Bay, Manitowoc, Sturgeon Bay, Sheboygan, Marinette, Northport, Washburn, Superior, Bayfield, LaCrosse and Prairie du Chien. Six of these communities may seek an amendment to their current HAP agreement for projects that have already been constructed (Green Bay, Northport, Superior, Marinette, Milwaukee and LaCrosse). Other than a few hours of HAP staff time, there would be no cost associated with this change.

The communities most likely to seek HAP funding within the next 8-10 years to construct new facilities for cruise ships are Manitowoc, Sturgeon Bay, and Milwaukee. The current HAP budget is \$4 million for the biennium. If these projects are economically justified and compete favorably against applications to improve cargo-handling facilities, almost half of the current HAP budget could be spent for this type of project over the next 8-10 years.

**Initial Regulatory Flexibility Analysis.** This proposed change is not expected to have a significant direct affect on small businesses.

**Copies of Proposed Rule.** Copies of the proposed rule may be obtained upon request, without cost, by writing to Ellen Fisher, Department of Transportation, Bureau of Railroads and Harbors, Room 155B, P.O. Box 7914, Madison, WI 53707-7914, or by calling (608) 267-9319. Hearing-impaired individuals may contact the Department by using TDD (608) 266-3096. Alternate formats of the proposed rule amendment will be provided to individuals at their request.

---

### TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.095, Stats., the department of transportation <sup>Y</sup> hereby proposes to amend a rule interpreting s. 85.095, Stats., relating to the Harbor Assistance Program.

**SECTION 1.** Trans 28.01 is amended to read:

**Trans 28.01 Purpose and scope.** The purpose of this chapter is to set forth the ~~department of transportation's~~ 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.

**SECTION 2.** Trans 28.02(1m) and (9m) are created to read:

Trans 28.02(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.

(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.

**SECTION 3.** Trans 28.04(1) and (2) are amended to read:

Trans 28.04(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, an applicant shall provide tonnage figures based on auditable records.

**SECTION 4.** Trans 28.05(1)(a)1., (c) and (3) are amended to read:

Trans 28.05(1)(a)1. <sup>delete this</sup> 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.

(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.

(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 commerce 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.

**SECTION 5.** Trans 28.07(4) is amended to read:

Trans 28.07(4) <sup>3</sup> The department shall may not assume a continuing funding responsibility for any project.

**SECTION 6.** Trans 28.09(2)(a)5<sup>X</sup> is amended to read:

Trans 28.09(2)(a)5. A statement that the proposed project is consistent with the ~~three-year~~ 3-year harbor development statement of intentions submitted by the eligible applicant as required by s. Trans 28.10.

**SECTION 7.** Trans 28.09(2)(j) is created to read:

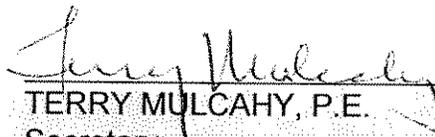
Trans 28.09(2)(j)<sup>X</sup> An estimated annual number of passengers that will be affected by the project.

**(END OF RULE TEXT)**

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**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this <sup>(CENTRO.)</sup> 04 day of October, 2001.



TERRY MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

JUN 18 2001



## Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

Terrence D. Mulcahy, P.E.  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: ogc.exec@dot.state.wi.us

June 14, 2001

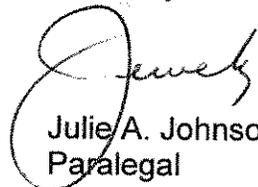
Mr. Gary L. Poulson, Deputy Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street  
Suite 800  
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 28**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 28. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

  
Julie A. Johnson  
Paralegal

Enclosures

cc: David Schmiedicke/DOA State Budget Director  
Senator Judy Robson, Co-Chair/JCRAR  
Representative Glenn Grothman, Co-Chair/JCRAR  
Alice Morehouse  
Mike Goetzman  
Ellen Fisher

## **STATEMENT OF SCOPE**

### **DESCRIPTION OF THE OBJECTIVE OF THE RULE:**

This rule making will amend Chapter Trans 28 to consider port facilities/improvements used by cruise ships to be eligible for funding consideration through the Harbor Assistance Program (HAP) under s. 85.095, Stats. It would allow communities that have HAP-funded facilities to use them for cruise ships.

### **DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:**

The definition of a "commercial transportation facility" in ch. Trans 28 "does not include a facility used on a regular basis by recreational or sport fishing vessels." Since the HAP began, the Department has interpreted passenger cruise boats and seasonal ferries to be "recreational vessels" and, therefore, not eligible for HAP funding. Grant agreements between the Department and communities that have received HAP funding to construct or repair port facilities specifically prohibit them from use by recreational vessels.

It has been Department policy to consider publicly-owned facilities serving the ferry operations to Washington Island and Madeline Island not to be "recreational" because they operate year-round, carry vehicles as well as passengers, and most of the freight needed by the island communities, essentially serving as an extension of the state highway system to the islands.

There are no other programs within Wisconsin that finance the construction or repair of facilities used by cruise vessels. There are also no federal programs that finance the construction of these types of facilities if the routes are not designated on the National Highway System and the service doesn't serve a "commuter" function.

**Affected Communities.** The following twelve communities are likely to be affected by the requested change in policy: Milwaukee, Green Bay, Manitowoc, Sturgeon Bay, Sheboygan, Marinette, Northport, Washburn, Superior, Bayfield, LaCrosse and Prairie du Chien.

**Potential Fiscal Impact.** Six of these communities would likely seek an amendment to their current HAP agreement for projects that have already been constructed (Green Bay, Northport, Superior, Marinette, Milwaukee and LaCrosse). Other than a few hours of HAP program staff time, there would be no cost associated with this change.

The communities most likely to seek HAP funding within the next 8-10 years to construct new facilities for cruise ships are Manitowoc, Sturgeon Bay, Milwaukee and possibly Bayfield. The current HAP budget is \$4 million for the biennium. If these

projects are economically justified and compete favorably against applications to improve cargo-handling facilities, almost half of the current HAP budget could be spent for this type of project over the next 8-10 years.

**Policy Alternatives.** The two policy alternatives are either to amend Chapter Trans 28 to include cruise ship facilities to be eligible for HAP funding, or to maintain the existing policy that defines cruise ships as recreational vessels. The Department has received, and agreed with, requests from the Wisconsin Commercial Ports Association and several legislators for this policy change; therefore, it would appear inconsistent not to proceed with this rule change.

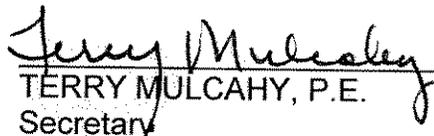
**STATUTORY AUTHORITY FOR THE RULE:**

s. 85.095, Stats.

**ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:**

Approximately 40 hours, which represents the collective time expected to be spent by Department staff.

Signed at Madison, Wisconsin, this 14 day of  
June, 2001.

  
TERRY MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation



## Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

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Secretary

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Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: [ogc.exec@dot.state.wi.us](mailto:ogc.exec@dot.state.wi.us)

The Honorable Judy Robson  
Senate Chairman  
Joint Committee for Review  
of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin 53702

October 5, 2001

The Honorable Glenn Grothman  
Assembly Chairman  
Joint Committee for Review  
of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin 53702

RE: **NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING** and Text  
of Proposed Rule, relating to the **Harbor Assistance Program, Trans 28**

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Intent to Adopt Rule Without Public Hearing and Text of Proposed Rule making relating to the above-entitled matter. This document has also been filed with the Legislative Council and with the Revisor of Statutes in accordance with the requirements of ss. 227.15(1) and 227.16(2)(e), Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson  
Paralegal

Enclosure

cc: Alice Morehouse/Mike Goetzman/Ellen Fisher

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The Wisconsin Department of Transportation proposes an order to amend TRANS 28.01, 28.04(1) and (2), 28.05(1)(a)1., (c) and (3), 28.07(4), and 28.09(2)(a)5; and create TRANS 28.02(1m) and (9m) and 28.09(2)(j), relating to the Harbor Assistance Program

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**NOTICE OF INTENT TO ADOPT RULE  
WITHOUT PUBLIC HEARING  
AND  
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of s. 85.095, and 227.11, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 28 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Ellen Fisher, Department of Transportation, Bureau of Rails and Harbors, Room 155B, P. O. Box 7914, Madison, WI 53707-7914.

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**Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** s. 85.095, Stats.  
**STATUTES INTERPRETED:** s. 85.095, Stats.

**General Summary of Proposed Rule.** This rule making will enable communities where cruise ships are a port of call to apply for Harbor Assistance Program (HAP) funds to construct/improve docking and terminal facilities to accommodate these ships. It will also enable communities that have already received HAP funding to use these previously-constructed facilities for cruise ships.

**Fiscal Effect.** There are potentially twelve communities likely to be affected by this change in policy: Milwaukee, Green Bay, Manitowoc, Sturgeon Bay, Sheboygan, Marinette, Northport, Washburn, Superior, Bayfield, LaCrosse and Prairie du Chien. Six of these communities may seek an amendment to their current HAP agreement for projects that have already been constructed (Green Bay, Northport, Superior, Marinette, Milwaukee and LaCrosse). Other than a few hours of HAP staff time, there would be no cost associated with this change.

The communities most likely to seek HAP funding within the next 8-10 years to construct new facilities for cruise ships are Manitowoc, Sturgeon Bay, and Milwaukee. The current HAP budget is \$4 million for the biennium. If these projects are economically justified and compete favorably against applications to improve cargo-handling facilities, almost half of the current HAP budget could be spent for this type of project over the next 8-10 years.

**Initial Regulatory Flexibility Analysis.** This proposed change is not expected to have a significant direct affect on small businesses.

**Copies of Proposed Rule.** Copies of the proposed rule may be obtained upon request, without cost, by writing to Ellen Fisher, Department of Transportation, Bureau of Railroads and Harbors, Room 155B, P.O. Box 7914, Madison, WI 53707-7914, or by calling (608) 267-9319. Hearing-impaired individuals may contact the Department by using TDD (608) 266-3096. Alternate formats of the proposed rule amendment will be provided to individuals at their request.

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### TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.095, Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.095, Stats., relating to the Harbor Assistance Program.

**SECTION 1.** Trans 28.01 is amended to read:

**Trans 28.01 Purpose and scope.** The purpose of this chapter is to set forth the ~~department of transportation's~~ 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.

**SECTION 2.** Trans 28.02(1m) and (9m) are created to read:

Trans 28.02(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.

(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.

**SECTION 3.** Trans 28.04(1) and (2) are amended to read:

Trans 28.04(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, an applicant shall provide tonnage figures based on auditable records.

**SECTION 4.** Trans 28.05(1)(a)1., (c) and (3) are amended to read:

Trans 28.05(1)(a)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.

(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.

(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 commerce 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.

**SECTION 5.** Trans 28.07(4) is amended to read:

Trans 28.07(4) The department shall may not assume a continuing funding responsibility for any project.

**SECTION 6.** Trans 28.09(2)(a)5. is amended to read:

Trans 28.09(2)(a)5. A statement that the proposed project is consistent with the ~~three-year~~ 3-year harbor development statement of intentions submitted by the eligible applicant as required by s. Trans 28.10.

**SECTION 7.** Trans 28.09(2)(j) is created to read:

Trans 28.09(2)(j) An estimated annual number of passengers that will be affected by the project.

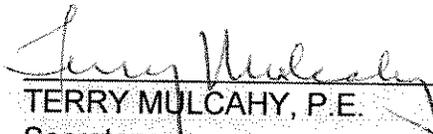
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**(END OF RULE TEXT)**

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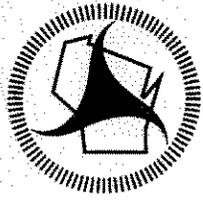
**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 04 day of October, 2001.

  
TERRY MULCAHY, P.E.  
Secretary

Wisconsin Department of Transportation

12/12/01



# Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

Terrence D. Mulcahy, P.E.  
Secretary

**Office of General Counsel**  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: ogc.exec@dot.state.wi.us

The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53707

December 11, 2001

The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
Room 315 North, State Capitol  
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 28**  
Notification of Legislative Standing Committees  
**CLEARINGHOUSE RULE 01-117**

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **01-117**, relating to the **Harbor Assistance Program**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

  
Julie A. Johnson  
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson (Deputy Revisor of Statutes)/Senator Judy Robson/  
Representative Glenn Grothman/Ellen Fisher

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**CR 01-117**

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**REPORT OF THE DEPARTMENT OF TRANSPORTATION  
ON THE FINAL RULE DRAFT**

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This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

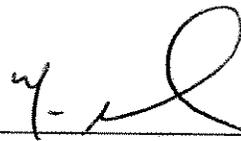
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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MATT SCHEMMEL  
Assistant General Counsel  
Office of General Counsel  
Department of Transportation  
Room 115-B, Hill Farms State  
Transportation Building  
P. O. Box 7910  
Madison, WI 53707-7910  
(608) 266-8752

## PART 1

### Analysis Prepared by the Wisconsin Department of Transportation

**STATUTORY AUTHORITY:** s. 85.095, Stats.

**STATUTES INTERPRETED:** s. 85.095, Stats.

**General Summary of Proposed Rule.** This rule making will enable communities where cruise ships are a port of call to apply for Harbor Assistance Program (HAP) funds to construct/improve docking and terminal facilities to accommodate these ships. It will also enable communities that have already received HAP funding to use these previously-constructed facilities for cruise ships.

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## PART 2

### TEXT OF PROPOSED RULE

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(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.

**SECTION 3.** Trans 28.04(1) and (2) are amended to read:

Trans 28.04(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, an applicant shall provide tonnage figures based on auditable records.

**SECTION 4.** Trans 28.05(1)(a)1., (c) and (3) are amended to read:

Trans 28.05(1)(a)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.

(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.

(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 commerce 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.

**SECTION 5.** Trans 28.07(4) is amended to read:

Trans 28.07(4) The department shall may not assume a continuing funding responsibility for any project.

**SECTION 6.** Trans 28.09(2)(a)5. is amended to read:

Trans 28.09(2)(a)5. A statement that the proposed project is consistent with the ~~three-year~~ 3-year harbor development statement of intentions submitted by the eligible applicant as required by s. Trans 28.10.

**SECTION 7.** Trans 28.09(2)(j) is created to read:

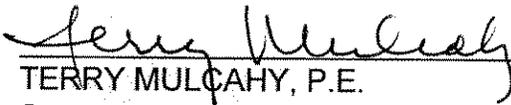
Trans 28.09(2)(j) An estimated annual number of passengers that will be affected by the project.

**(END OF RULE TEXT)**

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**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 10 day of December, 2001.

  
TERRY MULCAHY, P.E.  
Secretary  
Wisconsin Department of Transportation

**PART 4**  
CR 01-117

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ANALYSIS OF FINAL DRAFT OF TRANS 28

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(a) **Need for Amended Rule.** This rule making will enable communities where cruise ships are a port of call to apply for Harbor Assistance Program (HAP) funds to construct/improve docking and terminal facilities to accommodate these ships. It will also enable communities that have already received HAP funding to use these previously-constructed facilities for cruise ships.

(b) **Modifications as a Result of Testimony at Public Hearing.** Notice of intent to adopt this proposed rule without public hearing was given under the procedure set forth in s. 227.16(2)(e), Stats. No one petitioned for a public hearing and no public hearing was held.

(c) **List of Persons who Appeared or Registered at Public Hearing.** Because there was no hearing, there were none.

(d) **Response to Legislative Council Recommendations.** The Legislative Council made no recommendations to the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** This proposed change is not expected to have a significant direct affect on small businesses.