

Clearinghouse Rule 07-052

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to amend TRANS 28.02(5) and (11), and 28.04(1), relating to the harbor assistance program.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 85.095, Stats., as amended by 2003 Wis. Act 208

Statutory authority: ss. 85.095, 85.16(1) and 227.11(2), Stats.

Explanation of agency authority: The Wisconsin Department of Transportation administers the Wisconsin Harbor Assistance Program, pursuant to s. 85.095, Stats. Chapter Trans 28 prescribes the administrative policies and procedures for implementing the Harbor Assistance Program authorized by s. 85.095, Stats.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain language analysis: 2003 Wis. Act 208 amended s. 85.095, Stats., to open the Wisconsin Harbor Assistance Program to private and public owners of harbors operating commercial transportation facilities. When such facilities are taken out of commercial use, there remains a need to maintain the wharf along such a property to ensure the integrity of the harbor's commercial navigation channel. Allowing Harbor Assistance Program grants to be used to rehabilitate such facilities would help protect the navigation channels and enhance public access to waterfront resources.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There are no comparable federal laws or regulations.

Comparison with Rules in the Following States:

Michigan: Harbor assistance in Michigan takes the form of operating and capital assistance to port authorities that oversee ferryboat operations. The capital assistance is found in the marine capital line of the state budget.

Minnesota: Minnesota created a Port Development Assistance Program in 1996. Their program is patterned after the Wisconsin Harbor Assistance Program in that it uses both state funds and bonding authority to fund infrastructure improvement projects.

Illinois: None.

Iowa: None.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: No data or analytical methodology was employed in considering this rule making.

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule should not have a negative impact on small businesses.

Effect on small business: This proposed rule will have no significant adverse impact on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands, unless they sponsor a project and subsequently sign a grant agreement committing themselves to pay the required matching share.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities unless they sponsor a project and subsequently sign a grant agreement committing themselves to pay the required matching share.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Larry Kieck, Department of Transportation, Harbors and Waterways Program, Room 701, P. O. Box 7914, Madison, WI 53707-7914. You may also contact Mr. Kieck by phone at (608) 267-9319.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 28.02(5) and (11) are amended to read:

Trans 28.02(5) "Dock wall" means any bulkhead, pier, wharf or shoreline development previously or currently being used as a commercial transportation facility.

(11) "Project priority list" means a ranking by the department, assisted by an advisory council as described in s. Trans ~~28.06(3)~~ 28.05(3), of various eligible applicant-proposed harbor improvement projects in the rank order in which the department proposes to fund the various projects.

SECTION 2. Trans 28.04(1) is 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 or protects the integrity of the navigation channel.

(END OF RULE TEXT)

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)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of
May, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation