
The Wisconsin Department of Transportation adopts 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

ORDER ADOPTING RULE**Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: s. 85.095, Stats.

STATUTES INTERPRETED: s. 85.095, Stats.

General Summary of 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.

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

Copies of Rule. Copies of the 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. Deaf individuals may contact the Department by using TDD (608) 266-3096. Alternate formats of the rule amendment will be provided to individuals at their request.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.095, Stats., the department of transportation hereby amends 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.

(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), Stats.

Signed at Madison, Wisconsin, this ____ day of
January, 2002.

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