

Clearinghouse Rule 96-170

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

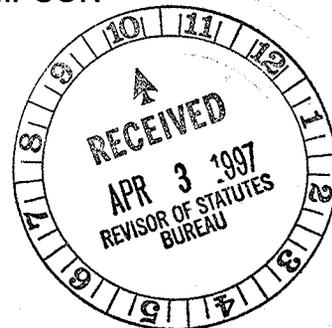
I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **granting of state aid to airport owners**, was duly approved and adopted by this Department on April 2, 1997.

I further certify that this 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 at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 2 day of **April**, 1997.


CHARLES H. THOMPSON
Secretary



6-1-97

The Wisconsin Department of Transportation adopts an order to create ch. TRANS 55, relating to the granting of state aid to airport owners.

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

STATUTORY AUTHORITY: s. 114.31(7), Stats.

STATUTES INTERPRETED: s. 114.31(7), Stats.

General Summary of Rule. Section 114.31(7), Stats., directs that the Secretary shall, by rule, establish the conditions necessary for the granting of state aid for airport development projects and for other related purposes. The purpose of this rule is to assure that state funded investments in public-use airports, once constructed, are operated in a way consistent with sound public policy goals. These goals include:

- Protection of the public investment in airport facilities
- Operation of facilities in a safe manner
- Providing facilities to the general public in a non-discriminatory form
- Maintenance of facilities to assure maximum useful life and value

In addition to assuring that funded facilities meet public policy expectations, the rule will provide provisions for compliance assistance and a progressive process for dispute resolution.

The rule will replace the existing process of preparing written project grant assurances and have those assurances adopted by municipal resolutions for each project requested. The rule will thereby reduce state and local administrative activity and reduce incrementally the cost, time and effort required to conduct an airport improvement project. The rule will also provide potential project sponsors with public notice of the requirements (conditions) attached to a grant of state funds for airport improvement.

In addition, the adoption of Trans 55 will give the Department the authority to use federal standards governing the subsection on safe runway protection zones. The office of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of this FAA advisory circular under the provision of § 227.21(2), Stats.

Fiscal Impact. The state airport aid program is currently funded at \$10 mil/yr. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized tribes or bands.

Final Regulatory Flexibility Analysis. This rule will have no adverse impact on small businesses.

Preparation and Copies of Rule. This analysis was prepared by Keith W. Gerard, J.D., Room 751, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, WI 53707. Copies of the rule may be obtained upon request, without cost, by writing to Tomas Thomas, Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Aeronautics, Room 701, P. O. Box 7914, Madison, WI 53707-7914, or by calling (608) 266-2023. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351. Alternate formats of the rule 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. 114.31(7), Stats., the department of transportation hereby creates a rule interpreting s. 114.31(7), Stats., relating to the granting of state aid to airport owners.

SECTION 1. Chapter Trans 55 is created to read:

CONDITIONS OF STATE AID FOR AIRPORT IMPROVEMENT

Trans 55.01 PURPOSE. The purpose of this chapter is to identify the conditions necessary to the granting of state aid as required in s. 114.31, Stats. This chapter describes owner responsibilities at airports developed with state funding assistance. These conditions protect the public investment and assure that airport improvements developed with state funds are managed to provide maximum public benefit.

Trans 55.02 DEFINITIONS. The words and phrases defined in ch. 114, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

- (1) "Airport improvement project" means a physical improvement to an airport.

(2) "Airport owner" means a county, city, village or town, either singly or jointly with one or more counties, cities, villages or towns, or an owner of a public-use airport desiring to sponsor an airport improvement project to be constructed with state aid.

(3) "Conditions" means the requirements listed in s. Trans 55.06.

(4) "FAA" means federal aviation administration.

(5) "Finding" means a document prepared by the secretary and approved by the governor which authorizes funds for an airport improvement project.

(6) "Force account" means airport construction work that is accomplished through the use of material, equipment, labor, and supervision provided by the sponsor or by another public agency pursuant to an agreement with the sponsor.

(7) "Runway protection zone" means an area off the end of the runway, the use of which is restricted in order to enhance the protection of people and property on the ground.

Trans 55.03 APPLICABILITY. The conditions set forth in s. Trans 55.06 apply to airport owners who sponsor a project developed with state aid.

Trans 55.04 DURATION. (1) Conditions of state aid shall commence on the date of issuance of a finding by the governor providing state funds for an airport improvement project and shall remain in effect for 20 years.

(2) There is no limit on the duration of conditions with respect to real property interests acquired with state funds.

Trans 55.05 REQUEST FOR STATE AID. (1) An airport owner may request state aid by resolution of the airport owner's governing body or board of directors as provided in s. 114.33(2), Stats.

(2) The secretary may enter into an agreement with an airport owner in accordance with s. 114.32, Stats., for the following:

(a) To accept and disburse federal, state and local funds for a project and to make arrangements for the development of the project by contract, agreement, force account or otherwise.

(b) To acquire property.

(c) To administer the project including the execution of documents and contracts.

(3) The secretary may require a written commitment of required airport owner funds before forwarding a finding to the governor for approval.

Trans 55.06 CONDITIONS OF STATE AID. (1) GOOD TITLE TO AIRPORT.

(a) An airport owner shall maintain good title to the airport and may not dispose of or encumber its fee title or other property interests as shown on the exhibit "A", or airport property map, for the duration of these conditions without the written approval of the secretary. Ordinary airport tenant leases for direct, supportive or complementary aviation activities are not considered an encumbrance by the secretary and not subject to review.

(b) An airport owner may dispose of land when it is no longer needed for airport purposes, after receiving approval from the secretary. The airport owner shall dispose of the land at fair market value. The secretary may authorize that portion of the proceeds, which is proportionate to the state's share of the cost of acquisition of such land shall be invested in an airport improvement project or be paid to the secretary for deposit in the transportation fund. Disposition of land shall be subject to the retention or reservation of an interest or right necessary to ensure that the land shall only be used for purposes which are compatible with the operation of the airport.

(2) AIRPORT OPERATION AND MAINTENANCE. (a) An airport owner shall safely operate and maintain all airport facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States.

(b) An airport owner may not permit an activity on airport property that would interfere with air transportation provided that nothing contained in this chapter shall be construed to require that an airport be operated during temporary periods when snow, flood or other conditions beyond the control of the owner prevent its use.

(c) An airport owner shall promptly notify pilots of conditions affecting the safe aeronautical use of the airport.

(d) An airport owner shall establish and maintain a program of both preventative and remedial pavement maintenance. The program shall contain, as a minimum, all of the following:

1. An inventory of pavements.
2. A pavement inspection schedule.
3. A systematic repair schedule to maintain performance and extend pavement life.
4. A budget sufficient to accomplish the repair schedule.

(e) An airport owner shall operate the following minimum airfield lighting during periods of darkness, when such facilities exist at the airport:

1. Low-intensity lighting on one runway.
2. Airport beacon.
3. Windsock lighting.
4. Obstruction lighting.

(3) MAINTAIN CLEAR AND SAFE APPROACHES. (a) An airport owner shall maintain clear and safe runway protection zones as described in FAA advisory circular 150/5300-13, Airport Design, as amended, except for runway lighting fixtures, markers and metrological instruments whose locations are fixed by their functional purposes or a structure approved by the FAA. The owner shall establish positive control of the runway protection zones through the acquisition of fee title or avigation easement. The owner shall prevent the erection or creation of a structure or place of public assembly in the runway protection zone.

NOTE: The FAA advisory circular may be obtained from the United States Department of Transportation, Distribution Unit, TAB 443.1, Washington, D.C. 20590, and is on file with the Attorney General's office and the Revisor's of Statutes Bureau.

(b) An airport owner shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) ORDINANCES. (a) A public airport owner shall adopt the following ordinances within 6 months after receipt of a sample ordinance from the secretary:

1. A height limitation zoning ordinance adequately restricting the height of objects near the airport in accordance with s. 114.136, Stats.

2. An ordinance to provide for the control of vehicular and pedestrian traffic on the surface of the airport.

(b) A private airport owner shall:

1. Adopt and enforce a rule to provide for the control of vehicular and pedestrian traffic on the surface of the airport.

2. Make application for and pursue the passage and acceptance of a compatible ordinance using s. 114.136, Stats., as the primary guide.

(5) SURVEYS. An airport owner shall cooperate with the secretary in surveys which may be conducted on topics that include the following:

(a) Airport rates and charges.

(b) Airport operations.

(c) Based aircraft.

(6) PUBLIC ACCESS. An airport owner shall provide suitable aircraft-parking areas so that aircraft and passengers, scheduled and general aviation, have reasonable access to the airport facilities consistent with security requirements.

(7) LEGAL RELATIONS. An airport owner shall indemnify and hold harmless the state and all its officers, employes, and agents from and against a suit, cause, action, claims costs, and expenses, including legal fees, and the state's attorneys fees, in connection with bodily injury to a person or damage to property caused directly or indirectly by failure, malfunction, lack of maintenance, or construction of the airport and its facilities.

(8) AIRPORT LAYOUT PLAN. An airport owner shall maintain a current layout plan showing all of the following:

(a) The boundaries of the airport and all proposed additions, together with the boundaries of all off-site areas owned or controlled by the airport owner for airport purposes and proposed additions.

(b) The location and nature of all existing and proposed airport facilities and structures, such as runways, taxiways, aprons, terminal buildings, hangars and roads, including all proposed extensions and reductions of existing airport facilities.

(c) The airport layout plan and each amendment, revision or modification to the plan shall be subject to the approval of the secretary, which approval shall be evidenced by the signature of a duly authorized representative of the secretary on the face of the airport layout plan. The airport owner may not make or permit a change or alteration in the airport or in any of its facilities other than in conformity with the airport layout plan as approved by the secretary if the changes or alterations might adversely affect the safety, utility or efficiency of the airport.

(9) PRESERVING AIRPORT RIGHTS AND POWER. (a) An airport owner may not enter into transactions which would deprive it of the rights and powers necessary to perform these conditions without the written approval of the secretary. The owner shall act to acquire, extinguish or modify outstanding rights or claims of the right or rights of others which would interfere with such performance by the airport owner.

(b) The obligation to perform these conditions may be assumed by another public agency found by the secretary to be eligible to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the airport by an agency or person other than the airport owner or an employe of the owner, the owner shall reserve sufficient rights and authority to ensure that the airport shall be operated and maintained in accordance with these conditions.

(10) SPECIAL CONDITIONS. In addition to the conditions under this section, the secretary may establish, by written agreement, special conditions in the public interest where required by specific project or airport site circumstances.

Trans 55.07 COMPLIANCE ASSISTANCE. If the department becomes aware of an instance where an airport owner is not in compliance with this chapter, the following steps shall be taken:

(1) The department shall initiate an informal meeting with the airport owner to clarify the compliance issue and recommend corrective action, if required.

(2) If the informal meeting fails to resolve compliance disputes, the secretary shall issue a notice to the airport owner detailing such alleged disputes and requesting corrective action.

(3) An airport owner shall have 45 days to resolve discrepancies or reply in writing explaining a proposed course of action to resolve the discrepancy in a timely fashion.

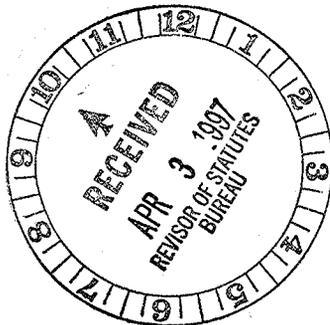
(4) If an airport owner's response does not resolve the issue, the secretary shall then make a compliance determination and issue an appropriate order. The department may pursue appropriate administrative or legal action including suspension from state airport aid eligibility and the recovery of state funds invested in the airport.

(5) Airport owners in disagreement with the secretary's order may request an administrative hearing in accordance with ch. 227, Stats.

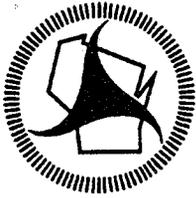
(END OF RULE TEXT)

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 2 day of April, 1997.



Charles H. Thompson
CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
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April 3, 1997

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Deputy Revisor of Statutes
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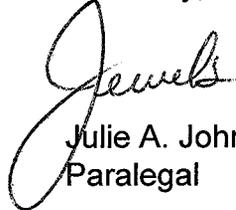
RE: **CLEARINGHOUSE RULE 96-170**

In the Matter of the Adoption of **TRANS 55**, Wisconsin Administrative Code, relating
to **granting of state aid to airport owners**

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 96-170**, an administrative rule relating to the above-mentioned matter.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Gene Kussart
Dorothy Kapke
Jim McDonnell
Jim Gruendler
Bob Kunkel
Keith Gerard
Tom Thomas

