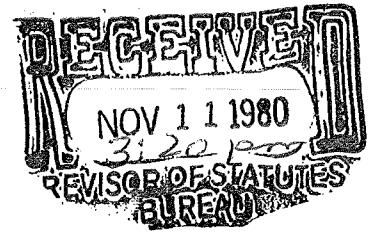


TRANS 28.

CERTIFICATE



STATE OF WISCONSIN )  
 )  
DEPARTMENT OF TRANSPORTATION ) SS


TO ALL TO WHOM THESE PRESENTS COME:

I, Lowell B. Jackson, Secretary of the Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rule relating to the Harbor Assistance Program (CR 80-99) was duly approved and adopted by this Department on November 10<sup>th</sup>, 1980.

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 at the Hill Farms State Office Building in the City of Madison, this 10<sup>th</sup> day of November, 1980.



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

## OFFICE OF THE SECRETARY

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IN THE MATTER OF CHAPTER	:	
TRANS 28, WIS. ADMIN. CODE,	:	ORDER ADOPTING
RELATING TO THE HARBOR	:	RULE
ASSISTANCE PROGRAM	:	

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Analysis by the Department of Transportation

Wisconsin Statute 85.095 directs the Wisconsin Department of Transportation to administer a harbor assistance program which provides grants to eligible applicants for harbor projects which will maintain or improve the capabilities of Wisconsin's harbors. This new state program resulted from a recognition that problems have developed in harbors that are beyond the funding capabilities of traditional federal and local programs. Dredging, dredge disposal and dock wall repair were the items specified in this program which was created by Ch. 34, Laws of 1979 (July 1, 1979). As amended by Ch. 221, Laws of 1979 (April 30, 1980), the program scope was expanded to include other harbor projects. This change to the statutes also requires that priority be given to applicants based on the amount of tonnage and waterborne transportation handled in the harbor. The department has interpreted this to mean that the program will apply to Wisconsin harbors on the Great Lakes and the Mississippi River that handle commodity movements.

The program is currently financed with two million dollars in bonding authority. This state money can be used to finance up to 80% of the cost of a harbor improvement project. Eligible applicants, as defined in the statute, means a county, municipality, town or agency thereof or a board of harbor commissioners organized under s. 30.37, Stats. Recognizing the diverse nature of potential projects, the program is flexible enough to allow projects to be undertaken solely by the eligible applicant or by the eligible applicant in conjunction with the U.S. Army Corps of Engineers or other governmental agencies.

The actual state share of a project cost may vary from project to project and will be negotiated as part of the contract for that project, within the maximum 80% limitation. Other items that will be included in the contract include types of costs, a reimbursement procedure and a time schedule for completion of the project. The department will not guarantee a continuing funding responsibility for any project funded under this program.

Applications from eligible applicants will be made to the department. The application must contain: a detailed description of the project, including its feasibility from economic, environmental and engineering perspectives; a discussion of its probable state and local economic and environmental impacts; a detailed cost estimate, including the amount of state funding requested, the applicant's share, and other funding sources which will be used; the time schedule for completion; the status of permits and approvals necessary to proceed

with the project; a description of ownership of lands and facilities associated with the project. The application must also contain a resolution from the eligible applicant formally requesting assistance and designating the project representative.

Applications for calendar year 1981 projects must be submitted to the department within 30 days of the effective date of this rule. Projects which could begin during 1980 will also be considered. For future years, applications must be submitted to the department by July 1 in order to be considered for funding during the following calendar year.

The department will establish and use an advisory council established under s. 15.04(1)(c), Stats. to evaluate the applications. The council will include a representative of the Wisconsin Coastal Management Council, the Department of Development and two or three other individuals familiar with water transportation. The council will evaluate and rank proposed projects and make a recommendation to the department on the priority of projects to be funded.

The evaluation will consider the amount of tonnage and waterborne transportation activity in the harbor, giving high priority to these items as mandated by the enabling legislation. It will also consider: the type of project-giving priority to dredging and disposal projects, then projects involving dock walls, then new project development; the economic impact of the project-giving priority to those which will prevent the system from failing to maintain its intended purpose. The department may deny funding of eligible projects because of a lack of program funds or if significant adverse economic or environmental impacts are noted.

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#### Statement of Fiscal Effect

The harbor assistance program established under s. 85.095, Stats. authorizes a program of state financial assistance to support harbor projects. State grants may be made to project applicants. Eligible applicants are defined as a county, municipality, town or agency thereof or a board of harbor commissioners organized under s. 30.37, Stats.

The amount of state funds available for grants is \$2.0 million. Grants may not exceed 80% of the cost of a harbor project. The actual percentage of state money for an individual project may be less than the 80%. The local applicant may propose a funding package which could include a combination of funding sources for a specific project. Each project will be implemented by a contract with the eligible applicant. In the event that the actual cost of a funded project exceeds the amount provided for in the grant contract, the state will provide only the amount specified in the grant contract.

The department does not know how many applications will be received. However, preliminary inquiries from possible applicants suggest that more than the \$2.0 million available will be sought. The state money is made available under a bonding authorization and the department will have to finance repayment of the bonds from traditional revenue sources.

Given the scope, complexity, and number of potentially eligible projects, it is not possible to accurately predict the specific long-range fiscal implications.

Given the variety of potential funding arrangements that could be used on the harbor assistance program projects, it is not possible to estimate the long-range fiscal impact on local units of government. To the degree that local public funds are required, local taxes will either have to be raised or expenditures on other programs will have to be reduced.

### Text of Rule

Pursuant to authority vested in the Wisconsin Department of Transportation by secs. 110.06(1) and 227.014, Wis. Stats., the Department of Transportation hereby creates rules interpreting sec. 85.095, Wis. Stats., as follows: Chapter TRANS 28 of the Wisconsin Administrative Code is adopted to read:

#### CHAPTER TRANS 28 HARBOR ASSISTANCE PROGRAM

TRANS 28.01 Purpose and scope. The purposes of this chapter are to establish 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 under s. 85.095, Stats.

TRANS 28.02 Definitions. As used in this chapter.

- (1) "Department" means the Wisconsin department of transportation.
- (2) "Dredging of materials" means the excavating of harbor sediment and bottom materials, including the mobilization and operation of equipment for such excavation, and sediment sampling and analysis to determine the composition of material to be dredged.
- (3) "Dock wall" means any publicly owned bulkhead or shoreline developed to accommodate the loading or discharge of commercial cargoes from ships.
- (4) "Eligible applicant" 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 on s. 20.002(13), Stats.]

- (5) "Harbor" means the area and related support facilities on the Great Lakes or Mississippi River System where ships (in total) take on or discharge more than 1,000 tons of commercial cargo per year. U. S. army corps of engineers annual tonnage figures shall be the basis for this determination. In those instances where these figures are not available, the applicant will provide tonnage figures. Harbor also means the location where vehicle-carrying ferry service connects the Wisconsin mainland with populated islands in the state.
- (6) "Harbor improvements" means any dock wall repair and maintenance, construction of new dock walls, dredging of materials from a harbor or placement of dredged materials in containment facilities or disposal sites.

- (7) "Placement of dredged materials in containment facilities" means not only the act of placing dredged materials within a designated site or structure but also the acquisition, construction, operation, and maintenance of such site or structure as well as costs associated with the transportation of dredged materials to the containment facility or disposal site.
- (8) "Project" means a specific harbor improvement or package of concurrent improvements, as defined in sub. (6) or other harbor assistance and improvement projects related to the physical needs of the port. Bridge construction, repair or maintenance are not considered projects within the scope of this program.
- (9) "Project priority list" means a ranking by the department of the various applicant-proposed harbor improvement projects in the order of the proposed receipt of program funds. The department will be assisted in the development of this ranking by an advisory council as described in s. TRANS 28.07.

TRANS 28.03 Harbor Assistance Program objectives. The goals of this program are to maintain or improve the commodity movement capabilities of Wisconsin's harbors located on the Great Lakes or the Mississippi River system.

TRANS 28.04 Eligible projects. Projects eligible for financing under this harbor assistance program are those harbor improvements located in harbors as defined in s. TRANS 28.02(5). The projects may be undertaken solely by the eligible applicant, or may be undertaken by the eligible applicant in conjunction with the U. S. army corps of engineers or another government agency.

TRANS 28.05 State share of the project costs. (1) The state share of a project cost shall not exceed 80% of the monies expended by the eligible applicant for the harbor improvement project in accordance with s. 85.095(2)(a), Stats. For a project in which the applicant is also using federal funds, the state share will not exceed 50% of the non-federal funded amount. The maximum state dollar amount shall be stated in the contract for that project.

- (2) The actual level of funding may vary from project to project and shall be based on consideration of the criteria expressed in s. TRANS 28.07 and the amount of monies available to the department to finance projects.
- (3) The types and amounts of costs that are eligible for state assistance shall be negotiated in developing the project contract.
- (4) Grant recipients shall be reimbursed in accordance with specific procedures prescribed in each grant contract.
- (5) The department does not assume a continuing funding responsibility for any project funded under this program.
- (6) The time period for completion of a project shall be specified in the project contract.

TRANS 28.06 Application for harbor improvement funding. (1) Applications from eligible applicants for harbor improvement grants are to be submitted to the department in a manner and form prescribed by the department. Forms shall be made available without charge.

[Note: A form has not been developed at the present time. When it is, it will be provided to the revisor for insertion.]

- (2) The application, at a minimum, shall contain the following information.
- (a) A resolution officially adopted by the eligible applicant containing:
1. A formal request for assistance.
  2. The name of the representative of the applying, eligible applicant who is authorized to sign forms or claims and who will be the contact person for the project. If more than one, all names shall be included.
  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 master plan for harbor development where such a master plan has been developed. A copy of the plan should be attached.
- (b) A statement, supported by appropriate documents, that the project is feasible from economic, environmental, and engineering standpoints, including factual evidence of the probable state, regional and local economic and environmental impacts of the project. Such documents shall include those engineering plans, drawings, and specifications necessary to carry out the project.
- (c) A detailed estimate of the cost of the project, indicating the eligible applicant's share, the requested amount of state funding and the extent of each other source or potential source of funds.
- (d) A proposed time schedule for the project.
- (e) A description of the ownership of lands and facilities associated with the project.
- (f) Permits received that are necessary for the project to proceed and if the permits have not been received, the actions taken to obtain such permits.

[Note: An example of such a permit is that required from the department of natural resources for disposal of dredged material.]

- (3) Except as provided in sub. (4), applications shall be submitted to the department by July 1 in order to be considered for funding during the following calendar year.
- (4) Applications for calendar year 1981 projects or for projects which could be started during 1980 shall be submitted to the department within 30 days of the effective date of this chapter.

TRANS 28.07 Application evaluation. (1) The department shall establish an advisory council, under authority of s. 15.04(1)(c), Stats., to evaluate the applications. This council shall include a representative of the Wisconsin department of development, a representative of the Wisconsin coastal management council and two or three other individuals familiar with water transportation, but not associated with any eligible applicants. The responsibility of the advisory council shall be to evaluate and rank the proposed projects and make a recommendation to the department on the priority of projects to be funded.

- (2) The evaluation shall be based on the following criteria. In each topic area the most important criterion is listed first and the least important is listed last:

(a) Urgency of project:

1. Harbor depth is now, or within 18 months of application date will be, less than the required navigation depth if dredging is not accomplished.
2. A dock wall has deteriorated to the extent that the terminal facility is not, or within 18 months will not be, useable.
3. Failure to accomplish other projects will result in decreased ability to move commodities.

(b) Economic impact of project:

1. Existing jobs will be lost if the project is not accomplished or an opportunity to attract new employment will be lost if the project is not accomplished.

(c) Types of projects:

1. Maintenance dredging of materials and attendant disposal which is the responsibility of the local government and which is outside a U. S. army corps of engineers (corps) project area.
2. Maintenance dredging and disposal from within a corps project area.
3. Dock wall repair or maintenance.
4. New project development of publicly owned facilities, limited to dredging, dredge disposal and dock walls.

5. Maintenance of other publicly owned harbor facilities.
  6. New project development of other public harbor facilities.
- (3) Higher priority shall be given to those projects in harbors with larger amounts of tonnage and waterborne transportation than those with lesser tonnage and waterborne transportation.
  - (4) The department may deny funding of eligible projects for the following reasons:
    - (a) Available program funds are inadequate.
    - (b) Significant adverse economic or environmental impacts are noted with the proposed project. The permits discussed under s. TRANS 28.06(2)(f) must be available before a project will be funded.
    - (c) The application has been submitted by an ineligible applicant.
    - (d) The project is not consistent with the master plan for harbor development where such a plan has been developed.

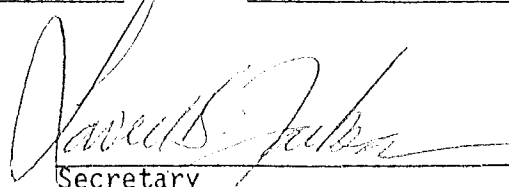
TRANS 28.08 Grant contract. Selected harbor assistance projects shall be implemented through formal contracts between the department and the eligible applicant. In the event that the eligible applicant is not able to enter into a contract with the department in the calendar year for which that applicant's project is approved, the applicant will have to resubmit the project for a future funding cycle.

TRANS 28.09 Reporting requirements. All grant recipients are required to maintain project-related books and records as required by the department and to make such records available for audit purposes. In addition, grant recipients shall make periodic progress reports to the department. The content and timing of these reports will be specified in the grant contract.

(End)

The rules contained in this order shall take effect upon publication as provided in sec. 227.026(1), (Intro), Wis. Stats.

Signed at Madison, Wisconsin this 10<sup>th</sup> day of November, 1980.



Secretary  
Wisconsin Department of Transportation