

CR 90-185

CERTIFICATE

RECEIVED

DEC 7 1990  
2:55 pm  
Revisor of Statutes  
Bureau

STATE OF WISCONSIN )  
 ) ss.  
DEPARTMENT OF TRANSPORTATION )

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to the **Railroad and Utility Alteration and Relocation Loan Program**, was duly approved and adopted by this Department on December 6<sup>th</sup>, 1990.

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 6<sup>th</sup> day of December, 1990.

*for* Donald H. Janssen, Deputy  
RONALD R. FIEDLER, P.E.  
Secretary

IN THE MATTER OF a rule to create ch.  
Trans 30, relating to the Railroad and  
Utility Alteration and Relocation Loan  
Program

**ORDER ADOPTING RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 84.065(5) Stats.

STATUTE INTERPRETED: s. 84.065, Stats.

General Summary of Rule. 1989 Wisconsin Act 31 established the Railroad and Utility Alteration and Relocation Loan Program, s. 84.065, Stats. The statute authorizes the Secretary of the Department of Transportation to establish rules and administer a loan program to assist public utilities and railroads with the costs of utility and railroad alterations and relocations that are associated with state trunk and connecting highway improvement projects and that are not subject to reimbursement by the department.

This program was created to promote the state's interest in preserving and improving state trunk and connecting highways by providing loans for non-reimbursable railroad and public utility alterations and relocations associated with highway improvement projects.

The purpose of this rule is to set forth the policies of the Department of Transportation regarding the Railroad and Utility Alteration and Relocation Loan Program.

The rule provisions establish and prescribe policies and procedures for administering the program. These provisions include:

- Loan application procedures
- Initial screening and evaluation criteria
- Program management requirements

Fiscal estimate. 1989 Wisconsin Act 31 provides that loans under this program may be made from appropriations under s. 20.395(3)(bv), (cv) (dv) and (gr), Stats. The total outstanding balance of loans may not exceed \$500,000.

Regulatory Flexibility Analysis. No regulatory flexibility analysis was prepared since the rule will have no adverse effect on small businesses beyond any effect imposed by 1989 Wisconsin Act 31.

Contact Person. This analysis was prepared by Ronald M. Nohr, P.E., Chief Utilities Engineer, Wisconsin Department of Transportation, Room 651, P.O. Box 7913, Madison, Wisconsin, 53707, 608/266-3030.

**TEXT OF RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by s. 84.065(5), Stats., as created by 1989 Wisconsin Act 31, the department of transportation hereby adopts a rule interpreting s. 84.065, Stats., establishing the procedures and requirements for determining the eligibility of public utility and railroad companies to receive interestfree loans to alter or relocate their facilities in advance of state trunk and connecting highway improvement projects.

SECTION 1. Chapter Trans 30 is created to read:

**CHAPTER TRANS 30**

**RAILROAD AND PUBLIC UTILITY ALTERATION AND**

**RELOCATION LOAN PROGRAM**

**Trans 30.01 PURPOSE AND SCOPE.** The purpose of this chapter is to provide loans to railroad and public utility companies to encourage them to alter or relocate their facilities in advance of the department awarding contracts on state trunk and connecting highway improvement projects where such alteration or relocation work is not otherwise reimbursable by the department. Loans shall be repaid with or without interest, as prescribed in s. 84.065(3)(d), Stats.

**Trans 30.02 DEFINITIONS.** (1) The definition of words and phrases in s. 84.065(2), Stats., apply to this chapter. In this chapter:

(2) "Alteration" means changing, modifying or adjusting railroad or public utility facilities.

(3) "Applicant" means a railroad company or a public utility company applying for a loan under this chapter.

(4) "Connecting highway" has the meaning given in s. 340.01(9), Stats.

(5) "Department" means the department of transportation.

(6) "Improvement" has the meaning given in s. 84.06(1), Stats.

(7) "Loan agreement" means a signed document which sets forth the understandings between an applicant and the department for alteration or relocation of facilities and disbursement and repayment of funds.

(8) "Loan ceiling" means the maximum amount of money that the department will loan to a single applicant.

(9) "Recipient" means a railroad or public utility company granted a loan under this chapter.

(10) "Relocation" means establishing an existing railroad or public utility facility in a new place.

(11) "Secretary" means the secretary of transportation.

(12) "State trunk highway" has the meaning given in s. 340.01(60), Stats.

**Trans 30.03 ELIGIBILITY.** (1) STATE TRUNK OR CONNECTING HIGHWAY IMPROVEMENT PROJECT. Only a railroad or a public utility is eligible for a loan under this chapter. An alteration or relocation project shall be part of a planned state trunk or connecting highway improvement project to qualify for a loan under this chapter.

(2) EXCLUSIONS. (a) Alteration or relocation work which is reimbursable by the department under other policies or programs is not eligible for a loan under this chapter.

(b) Alteration or relocation projects not adversely affecting the ability of the department's highway contractor to start, progress, and complete a highway improvement in accordance with the programmed highway construction schedule are not eligible for a loan under this chapter.

**Trans 30.04 APPLICATION PROCEDURES.** (1) APPLICATION PACKET.

Applicants may contact either the department's chief utilities engineer or the utilities engineer of a department district office for an application packet containing the application requirements and a description of the application screening, evaluation and loan availability process.

**NOTE:** The central office address is Chief Utilities Engineer, Wisconsin Department of Transportation, P.O. Box 7916, Madison, WI 53707.

(2) REVIEW PROCESS. Completed applications shall be sent for initial review and recommendation to the department's district office in which the alteration or relocation work is to take place. Applications shall be accepted by the department throughout the year. Applications will not be evaluated for eligibility unless all information required in the application packet is complete. The district office's review shall be completed within 45 days of the receipt of the application material and the district office's recommendation shall be reported to the applicant within 10 days following completion of the district office's review. Applications recommended for approval by the district office shall be forwarded to the department's state design engineer for highways within 10 days following completion of the district office's review. The department shall notify the applicant of its final decision within 30 days of receipt of the district office's recommendation by the state design engineer for highways.

(3) INFORMATION REQUIREMENTS. (a) An application shall demonstrate an applicant's need to alter or relocate its facilities consistent with s. Trans 30.01, and include the following minimum information:

1. An acknowledgement that the applicant will comply with all federal and state laws and local ordinances relating to the alteration or relocation of its facilities.

2. A narrative description, supported by exhibits, plats, maps and an estimate of cost with manhours, quantities, bill of materials and unit costs, of all work to be performed with the loan funds.

3. A statement indicating whether additional land interests are required to accomplish the alteration or relocation work. If additional land interests are required, the applicant shall provide plats, maps and descriptions of the required land interests, and shall indicate whether it will acquire the additional land interests or whether it will occupy lands acquired by the department for highway purposes.

4. A schedule, including specific calendar dates, for starting and completing the work, including dates for completion of significant intermediate phases of the work.

(b) The department may require supplemental information to complete its review of an application. The department shall notify an applicant in writing of any supplemental information required and shall set reasonable deadlines for the receipt of this information. If the supplemental information is not received by the deadlines established, the department may remove the application from consideration.

**Trans 30.05 STANDARDS FOR THE APPROVAL OF LOANS.** (1) CRITERIA. The department may approve applications that satisfy the following criteria:

(a) The eligibility requirements of s. Trans 30.03.

(b) The applicant has been in business in Wisconsin for a continuous period of not less than 5 years prior to the date of the loan application.

(c) The loan request is for at least \$20,000 but not more than \$200,000.

(d) A demonstration of the ability of the applicant to repay the loan within the time frame prescribed in s. Trans 30.09.

(e) An applicant may not have a total of more than \$200,000 in loan funds outstanding under this program at one time.

(f) Sufficient funds are available.

(2) COMPATIBILITY WITH IMPROVEMENT PROGRAM. (a) The department may not grant a loan unless it determines that an application is compatible with the department's highway improvement program construction schedules.

(b) The department shall consider loan applications on the basis of state-wide needs and importance.

(c) The department may not loan funds more than 2 years before, or within 90 days of, the scheduled letting of a highway construction contract.

(d) The department may not loan funds to finance work to be carried out concurrent with highway construction.

**Trans 30.06 LOAN AGREEMENT.** (1) An applicant with an approved loan application shall execute a loan agreement with the department on a form approved by the department.

(2) A loan agreement is void unless it is executed by an applicant and by the department within 60 days of approval of the loan application by the department.

(3) Recipients are subject to all relevant statutes, rules, and agreements of the department, including the obligation to obtain a permit from the department to occupy highway rights-of-way.

(4) The amount of loan provided by the department shall be stated in the loan agreement.

(5) Recipients shall make periodic progress reports to the department if required by the agreement.

(6) The department shall require repayment of loan funds advanced to a recipient if the railroad or public utility alteration or relocation project for which the loan funds are granted is not completed in accordance with all terms of the loan agreement.

**Trans 30.07 DISBURSEMENT OF FUNDS.** After a loan agreement is executed in accordance with s. Trans 30.06, the department shall disburse the full amount of the approved loan to the recipient within 30 days of receipt of written notice from the recipient that the relocation or alteration work for which the loan was approved will commence within 30 days after receipt of the loan funds.

**Trans 30.08 PROSECUTION OF WORK.** (1) Upon receipt of loan funds, the recipient shall carry out the alteration or relocation work for which the loan was approved to completion in a timely and expeditious manner in accordance with a schedule approved by the department.

(2) The recipient may not suspend or delay work without approval of the department.

(3) The department may not unreasonably withhold approval for suspension or delay of the recipient's work if there is just cause for the delay or suspension.

**Trans 30.09 LOAN REPAYMENT.** (1) Loans may be repaid with or without interest, as prescribed in the loan agreement. The interest rate shall be as prescribed in s. 84.065(3)(d), Stats.

**Note:** Principal and interest, if any, shall be repaid within one year of the date the highway construction improvement contract is awarded, s. 84.065(3)(d), Stats.

(2) In the event alteration or relocation work for which the loan was approved is suspended or delayed for more than 90 days as approved under s. Trans 30.08, the recipient shall, upon the department's request, refund to the department the outstanding balance of any loan, plus interest as prescribed in s. 84.065(3)(d), Stats.

(3) The recipient shall refund to the department the outstanding balance of any loan after completion of the alteration or relocation work for which the loan was approved, plus interest as prescribed in s. 84.065(3)(d), Stats.



**Trans 30.10 INSPECTION OF WORK.** The department may inspect the alteration or relocation work for which the loan was approved, without prior notice and at reasonable times, for compliance with the provisions of the loan application and the loan agreement.

**Trans 30.11 AUDIT AND INSPECTION OF RECORDS.** The department may audit and inspect the records of a recipient to ascertain that the costs for the alteration or relocation work for which the loan was approved are in substantial conformity with the approved loan application. Recipients shall retain all records related to a loan granted under this chapter for at least 3 years from the date the loan was repaid, and shall make these records available for inspection and copying by the department upon request.

**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 6<sup>th</sup> day of December, 1990.

*for* Donald H. Fonghewer, Deputy  
Ronald R. Fiedler, P.E.  
Secretary  
Wisconsin Department of Transportation



RECEIVED

DEC 7 1990

**Wisconsin Department of Transportation**

Revisor of Statutes  
Bureau

Tommy G. Thompson  
Governor

Ronald R. Fiedler, PE  
Secretary

OFFICE OF GENERAL COUNSEL  
P. O. Box 7910  
Madison, WI 53707-7910

December 7, 1990

Mr. Gary Poulson  
Assistant Revisor of Statutes  
119 Martin Luther King, Jr. Blvd.  
2nd Floor  
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 90-185**

In the Matter of the Adoption of **TRANS 30**, Wisconsin Administrative Code, relating to the **Railroad and Utility Alteration and Relocation Loan Program.**

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-185**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

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

Julie A. Johnson  
Paralegal

Enclosures

cc: Tom Walker  
Linda Thelke  
Sandy Beaupre  
Marv Schaeffer  
Joe Dresser  
Ron Nohr  
Jim Bolitho