

4/20/92



Minnesota  
Department of Transportation  
Transportation Building  
395 John Ireland Boulevard  
Saint Paul, Minnesota 55155

April 24, 1992

The Legislative Commission to Review Administrative Rules  
Maryanne Hurby, Director  
55 State Office Bldg.  
St. Paul, Mn. 55155

Dear Ms. Hurby:

I have enclosed a copy of the Statement of Needs and Reasonableness that you requested. I am continuing to review this document and if there are any changes I will send you an updated copy.

I am not familiar with all the Minnesota Statutes, and I am sorry that I did not send you a copy earlier. Thank You.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Duwayne D. Elliott'.

Duwayne D. Elliott  
Senior Waterways Planner  
Office of Ports & Waterways  
Minnesota Department of Transportation

The Legislative Commission to  
Review Administrative Rules

APR 27 1992



STATE OF MINNESOTA  
DEPARTMENT OF TRANSPORTATION  
PROGRAM MANAGEMENT DIVISION

STATEMENT OF FACTS  
ESTABLISHING NEEDS AND  
REASONABLENESS OF  
RULES

In the matter of the Proposed  
Adoption of Rules, Governing the  
Rules for the PORT DEVELOPMENT  
ASSISTANCE PROGRAM

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These are Rules for a program created by the 1991 legislature titled Port Development Assistance. These rules need to be promulgated for the program to operate in an equitable and efficient manner.

Pursuant to Laws of Minnesota 1991, chapter 298, article 3, section 5, the Commissioner of Transportation has the authority to adopt rules to manage the Port Development Assistance Program.

Solicitation of outside opinion concerning the possible adoption of rules relating to Laws of Minnesota 1991, chapter 298, article 3, section 5, (Port Development Assistance Program) was published in the State Register on Monday August 12, 1991.

Individual announcements requesting comments were sent to interested parties during the week of August 5, 1991.

**Under 8895.100 Definitions:**

Subpart 1. **Scope.** The terms used in parts 8895.0100 to 8895.1000 have the meanings given them in this part.

Subp. 2. **Assistance agreement.** Because the term "assistance agreement" is used elsewhere in the rules a definition of the term is needed.

Subp. 3. **Commercial navigation facility.** Because the term "commercial navigation facility" is used elsewhere in the rules a definition of the term is needed.

Subp. 4. **Commercial vessel.** Because the term "commercial vessel" is used elsewhere in the rules a definition of the term is needed.

Subp. 5. **Commissioner..** Because the term "commissioner" is used elsewhere in the rules a definition of the term is needed. It clearly identifies the commissioner as being the commissioner of transportation and avoids any confusion with other commissioners of public office.

Subp. 6. **Mn/DOT.** Because the term "Mn/DOT" is used elsewhere in the rules a definition of the term is needed. It identifies the Mn/DOT as being the Minnesota Department of Transportation and avoids any confusion with other departments.

Subp. 7. **Disposal facility.** Because the term "disposal facility" is used elsewhere in the rules a definition of the term is needed.

Subp. 8. **Disposal facility costs.** Because the term "disposal facility costs" is used elsewhere in the rules a definition of the term is needed.

Subp. 9. **Dock.** Because the term "dock" is used elsewhere in the rules a definition of the term is needed.

Subp. 10. **Dredging.** Because the term "dredging" is used elsewhere in the rules a definition of the term is needed.

Subp. 11. **Dredged material disposal.** Because the term "dredged material disposal" is used elsewhere in the rules a definition of the term is needed.

Subp. 12. **Eligible applicants.** Because the term "eligible applicants" is used elsewhere in the rules a definition of the term is needed.

Subp. 13. **Final engineering costs.** Because the term "final engineering costs" is used elsewhere in the rules a definition of the term is needed. the term is needed.

Subp. 14. **Maintenance dredging.** Because the term "maintenance dredging" is used elsewhere in the rules a definition of the term is needed.

Subp. 15. **Navigation system.** Because the term "navigation system" is used elsewhere in the rules a definition of the term is needed.

Subp. 16. **Program.** Because the term "program" is used elsewhere in the rules a definition of the term is needed. This clearly identifies the program as meaning the Port Development

Assistance Program and avoids any confusion with other public programs.

Subp. 17. Port. Because the term "port" is used elsewhere in the rules a definition of the term is needed.

Subp. 18. Terminal. Because the term "terminal" is used elsewhere in the rules a definition of the term is needed.

**Under 8895.0200 PURPOSE AND AUTHORITY:**

Subp. 1. This part establishes the purpose of the Port Development Assistance Program as stated in the of Laws of Minnesota 1991, chapter 298, article 3.

Subp. 2. This is written into the rules to avoid misunderstanding and to identify the Commissioner as being authorized to adopt rules necessary to carry out the provisions in Laws of Minnesota 1991, chapter 298, article 3, section 1, paragraph 1.

**Under 8895.0300 ELIGIBLE PROJECTS:**

Subp. 1. This part is written to clarify what a project needs to accomplish to be eligible for assistance. To avoid misinterpretation Subp. 1, identifies certain projects that may be eligible for assistance.

Subpart 2 clarifies where projects can be located in Minnesota. This section should eliminate applicants from applying for assistance that do not operate a port on a qualified waterway. This will allow the department to award funds in a consistent and equitable manner.

**Under 8895.0400 COST ELIGIBILITY**

Subp. 1. The Port Development Assistance law was instituted to improve the handling of cargo and passengers, costs that are eligible for funding are mandated in chapter 457A.04, Subd. 2, of the law. These cost must be identified in the assistance agreement to satisfy the law and allow the commissioner to manage the program.

Subp. 2. The Port Improvement Assistance law was instituted to improve the handling of cargo and passengers, costs not directly related to the improvement of a facility or costs of dredging an existing facility are prohibited. The project costs not allowed are mandated in chapter 457A.04, Subd. 2, of the Port Development Assistance law.

**Under 8895.0500 PROJECT SELECTION, MINIMUM QUALIFICATION, AND RANKING:**

Subpart 1, item A, project selection, item A, numbers 1 through 5 contains economic conditions which will be considered by the commissioner in selection, funding and ranking an application to obtain financial assistance for a project. These criteria are intended to insure that funds available for this purpose will be used in the most cost effective manner possible through financial analysis of the port. This will ensure that all projects will be evaluated for selection, funding and ranking by the commissioner using the same criteria and that funds will be dispensed equitably.

Subpart 1, item B, numbers 1 through 3 contains safety considerations which will be considered by the commissioner in selection, funding and ranking an application to obtain financial assistance for a project. This will allow all proposed projects in this category to be evaluated by the commissioner using the same considerations and that funds will be allocated fairly.

Subpart 2. This section contains minimum requirements under which the commissioner will not approve funding for a project. Items A, B, and C describe specific instances when the commissioner will not approve funding. This section was included to avoid possible misunderstanding of the commissioner's decision to deny the funding of a project.

Subpart 3. Projects will be ranked by the commissioner and a project priority list established. It is necessary and reasonable to have a list of projects ranked in the order of their importance for the purpose of being considered for funding.

Subpart 4. Items A, B, C, D and E are the criteria for ranking projects. Items A, B, and C are the purposes for the program, listed in section 457A.02 of the law. Items D and E are added criteria which will allow the commissioner to rank projects on their regional benefit and their ability to repay the state investment. These criteria will allow the commissioner to be consistent in decisions regarding the funding of projects and be consistent in the requirements of an applicant to repay a loan. These criteria will protect the states interest in a project.

**Under 8895.0600 ASSISTANCE AWARD:**

Subpart 1. To be consistent the commissioner shall establish annually a deadline for filing applications for the program. The deadlines and schedules shall be published in the State Register for the benefit of all potential recipients. This part was written to allow potential recipients an equal

opportunity to be informed and meet the established deadline and schedules.

Subpart 2 contains the criteria that will guide the commissioner in making the decision on a project qualifying for a grant or loan or a combination of both. These criteria are mandated in section 457A.03, Subd. 2 and 457A.02, Subd. 1 clauses 1 and 2, of the Port Development Assistance law.

Subpart 3. contains the commitment of funds procedures. This will allow the commitment of funds by the commissioner to be consistent. This is a part of Chapter 457A.04, Subd. 1 of the Port Development Assistance law.

Subpart 4 contains the three conditions that must be satisfied before the funds will be made in whole or part. This section was needed to make it clear to applicants that projects must be in compliance with other governmental requirements, have matching funds committed, and when funds will be dispensed. To avoid legal action against the state and conflicts with other government agencies all permits must be obtained. To protect the state investment and assure that a project has a high potential for success matching funds shall be formally committed.

Subpart 5 defines the commissioners action when an applicant has withdrawn an application or is unable to enter into a project assistance agreement. This is mandated in chapter 457A.04, Subd. 5, of the Port Development Assistance law.

Subpart 6 clarifies what may be done with an award after it has been rescinded. This part was written to allow the commissioner to reissue rescinded project funds to the next highest ranking project in a timely and equitable manner.

Subpart 7 clarifies how a loan must be repaid and gives the maximum repayment schedule in years. This part was written to avoid any misunderstanding about the repayment of a loan and the maximum time that a recipient has to repay a loan.

**Under 8895.0700 STATE PARTICIPATION, LIMITATIONS:**

Subp. 1. This part contains the maximum percentage (50%) of the total cost of a port development assistance project which can be funded by grant, loan or a combination grant and loan. This is mandated in Chapter 457A.03. Subd. 3, of the Port Development Assistance law.

Subp. 2. This part states that the commissioner's shall have no continuing funding responsibility for any project. This is mandated in chapter 457A.03, Subd. 3, of the Port Development Assistance law.

Subp. 3. This part prohibits the use of port improvement assistance funds as a required match with other state funds, regardless of source. This is mandated in Chapter 457A.03, Subd. 3, of the Port Development Assistance law.

**Under 8895.0800 APPLICATION PROCESS:**

Subpart 1 defines the applications process for requesting Port Development Assistance funds. This section was written to inform the potential applicants who to submit an application with, and avoid possible misunderstanding regarding the application process.

Subp. 2. Under Subp. 2, items A through G defines the information that shall be included on the application. This section was included to inform the applicants on what information the commissioner will need to protect the states investment and be consistent in determining funding.

A. A completed application will be considered a formal request for assistance. An application will be provided by the commissioner upon request. To satisfy the Port Development Assistance law and allow the commissioner to evaluate the project for assistance a formal request for assistance is needed.

B. It may be necessary for the commissioner to correspond with the applicant on matters pertaining to the application or the project. Therefore, a representative of the applicant must be listed in the application. This will eliminate communication problems and enable the project evaluation process to work in an efficient manner.

C. To protect the states investment the commissioner must know who will operate the facility after the development is complete.

D. To legally protect the state all plans must be cleared with other regulatory agencies.

E. To administer the program the commissioner must know that the matching funds have been committed. This will enable program funds to be used in an efficient and effective manner.

F. The commissioner requires a financial statement, prepared by the applicant which includes a credit history. This is needed to demonstrate the ability of the applicant to repay a loan and protect the states investment.

Item G stipulates that the applicant shall include a description of the project as part of the application. This will aid the commissioner in understanding the project and allow the

commissioner to oversee the project and its goals. Under G, items 1 through 8 indicates the minimum information to be included in the description. These items are necessary to avoid possible misunderstanding of what information is required and allow the commissioner to be consistent with applicants on information requirements used to authorize projects.

1. Because not all work and costs are eligible for funding and to protect the states investment a detailed description of the work to be performed is required.

2. To accomplish the project in an efficient manner and protect the states investment a description of the means by which the work is to be performed is necessary.

3. To fund a project the commissioner must determine a need. The applicant is the best qualified and the appropriate person to provide the commissioner with a statement of justification and reasons for undertaking the project.

4. To identify the project geographic location and its relation to other transportation facilities and its ability to provide an improvement in the transportation of commodities or people maps and sketches are necessary.

5. To protect the states investment and act within the laws of Minnesota it is necessary for the applicant to provide the commissioner with proof of ownership of the project site and facilities.

6. To make the best use of funds a work schedule must be provided by the applicant for the commissioners approval.

7. To justify a projects viability an operating plan may be provided the commissioner.

Item H is a full discussion of the anticipated economic impacts that a project has.

1. Numbers one and two will provide information needed by the commissioner to make decisions on the viability and necessity of the project. Any use of state funds must be justified.

2. Numbers three and four will provide the commissioner with revenue information about the port. This information will assist the commissioner in making a decision on the economic potential of any project. To qualify for funding the Port Development Assistance law states that a project must have potential economic benefits. In addition this information will help the commissioner to allocate funds to the most needed projects as they relate to economic impacts.



3. Number five, a list of the commodities and a disclosure of the tonnage of the waterborne commerce using the project property and expected to use the facility is needed by the commissioner to determine the economic potential of the project. This information will help justify the need for improving a facility and predict the ability of the facility to generate enough revenue to repay loans protecting the states investment.

4. Numbers six and seven are needed by the commissioner to protect the states investment by assuring that the project satisfies environmental concerns and laws.

5. Number eight, a loan repayment plan is needed by the commissioner to protect the states investment.

**Under 8895.0900 ASSISTANCE AGREEMENT, FORMAL IMPLEMENTATION:**

For any funds to be distributed a formal agreement must be implemented. This formal agreement is the assistance agreement. This section was included to avoid any misunderstanding by the applicant on what constitutes a formal agreement. To maintain control of the program and give the applicant a reasonable time to get the project coordinated, a time limit of one year was established for an applicant to inter into a formal agreement with the commissioner. In addition a vehicle was needed that would allow the applicant to reapply for funds if this time frame could not be satisfied. This section allows for that possibility.

**Under 8895.1000 ASSISTANCE AGREEMENT:**

Subpart 1 contains the maximum project funds agreed to by the commissioner. For accounting purposes it is necessary to know what total dollar amount is committed to each project.

Subpart 2 contains the insurance and liability requirements for an assistance recipient. The Port Development Assistance Law requires that the applicant must provide insurance liability that hold the commissioner harmless from and against all liability, damage, loss, demands, and actions related to the project being assisted.

Subpart 3 contains the bond requirement of an assistance recipient as prescribed in the law.

Subpart 4 specifies that records must be kept by the recipient for audit purposes. Also, for project control, progress reports must be filed periodically with the commissioner. This section was included to allow the

commissioner to monitor the project funds and to make sure that the project satisfies the purpose of the program as stated in the law.

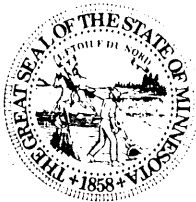
Subpart 5 allows the commissioner the right of project inspection. Since the law limits the state participation to three areas, the commissioner needs the authority to inspect or have the project inspected for compliance.

Subpart 6 contains the circumstances under which the commissioner shall require repayment of assistance funds. This section was written to prevent possible misunderstanding regarding when assistance funds must be repaid. This section is part of the Port Development Assistance law.

**Under 8895.1100 VARIANCE FROM RULES:**

Projects that comply with a majority of the rules may be granted a variance from full compliance of the rules in cases such as area hardships. This will allow the commissioner to consider projects that have merit and comply with a majority of the rules but cannot satisfy all rules. A rule variance is reasonable and necessary because it will allow the program to satisfy one of its purposes, by providing funds to economically stressed port areas in an efficient manner.

LCRAR



**Legislative Commission**

**to Review Administrative Rules**

**Representative Peter Rodosovich**  
Chair

**Senator Phil Riveness**  
Vice Chair

55 State Office Building  
St. Paul, Minnesota 55155-1201  
Telephone 612/296-1143

**Maryanne V. Hruby, Director**

April 23, 1992

DuWayne Elliott  
Office of Railroads and Waterways  
Minnesota Department of Transportation  
925 Kelly Annex, Transportation Building  
395 John Ireland Boulevard  
St. Paul, Minnesota 55155

Dear Mr. Elliott:

I write to request a copy of the Department of Transportation's Statement of Need and Reasonableness (SONAR) for recently published rules relating to the port development assistance program.

As you may know, Minnesota Statutes, sections 14.131 and 14.23 now require state agencies to provide copies of SONAR's to the LCRAR when they become available for public review.

If you have not already done so, please send a copy of the SONAR for these proposed rules to:

The Legislative Commission to Review Administrative Rules  
Maryanne Hruby, Director  
55 State Office Building  
St. Paul, Minnesota 55155

Please contact me at 296-1143 if you have any questions.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Swanson".

Michele Swanson  
Commission Secretary

