

Chapter Trans 6

RURAL AND SMALL URBAN AREA PUBLIC TRANSPORTATION ASSISTANCE PROGRAM

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Note: Chapter Trans 6 was created by emergency rule effective April 17, 1979. Chapter Trans 6 was repealed and recreated by emergency rule effective April 20, 1983. Chapter Trans 6 as it existed on October 31, 1983 was repealed and a new chapter Trans 6 was created effective November 1, 1983. Chapter Trans 6 was repealed and recreated by emergency rule effective November 30, 1983. Chapter Trans 6 as it existed on April 30, 1984 was repealed and a new chapter Trans 6 was created effective May 1, 1984.

Trans 6.01 Purpose and scope. The purpose of this chapter is to prescribe the department of transportation's administrative interpretation of ss. 85.20 and 85.23, Stats., and to prescribe the administrative policies and procedures for implementing the federal program for public transportation projects in areas other than urbanized. This program is authorized by section 18 of the urban mass transportation act of 1964, as amended. The goals of this program are to enhance access of people in non-urbanized areas for purposes such as health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement and use of public transportation services. By federal definition, "areas other than urbanized" include small urban and rural areas.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84.

Trans 6.02 Definitions. (1) "Capital project cost" means the cost of acquisition, construction, reconstruction and improvement of facilities, vehicles and equipment for use in the provision of an eligible public transportation service. A public body shall retain ownership of all capital items purchased under this program.

(2) "Eligible applicants" means local public bodies, or federally recognized Indian tribal governing bodies, but does not include private transportation providers.

(3) "Eligible public transportation service" means a public transportation service operating or designed to operate in non-urbanized areas.

(4) "Federal section 18 funds" means all funds appropriated to the state for use in the federal program for public transportation projects in small urban, rural and intercity areas.

(4m) "Federal section 9 funds" has the meaning given in s. Trans 8.02 (4).

(5) "Local public bodies" means counties, cities, villages and towns or agencies thereof.

(6) "Operating project cost" means the difference between the costs of operating an eligible public transportation service and the revenues derived therefrom. User subsidies such as transportation stamps are not considered to be "operating costs" for purposes of this chapter.

(7) "Private transportation providers" means privately owned (for-profit or nonprofit) organizations that operate an eligible public transportation service.

(8) "Project year" means a calendar year.

(9) "Public transportation service" means a passenger transportation service provided to the general public on a regular and continuing basis by a public agency or private firm. Passenger fares shall be collected for the service in accordance with established tariff schedules. The transportation service may be provided by bus, rail, shared-ride taxicab or other conveyance. The service may constitute an entire public transit system or may be an individual route or a segment of a route provided by a common carrier of passengers. The service shall be authorized by the office of the commissioner of transportation under ch. 194, Stats., unless exempt under s. 85.20 (5), Stats., or under ch. 194, Stats. A transportation service provided exclusively for a subgroup of the general public is not considered to be a "public transportation service" for purposes of this chapter, unless it is part of an overall public transit service to the area.

(10) "Small urban area" means any area that includes a city or village having a population of at least 5,000, but not more than 49,999, that is appropriate, in the department's judgment, for an urban mass transit system. The department shall determine the population of a city or village within a small urban area using the most recent estimates prepared by the department of administration.

(11) "Station revenue" means those revenues which are derived from the operation of a public transportation facility. Such revenues include concessions, storage rentals, parking, office space rental, and other miscellaneous sources.

(12) "Urbanized area" means those areas of the state so defined by the U.S. bureau of the census.

(13) "User-side subsidies" means a program whereby users of the transit service are permitted to purchase transportation vouchers at prices substantially below the fares charged by the transit providers. The users can exchange these vouchers for transportation services, and the providers can then redeem them for the full fare.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg. am. (2), renum. (8) to (13) to be (9) to (14), cr. (8), eff. 2-12-85; emerg. am. (2), renum. (8) to (13) to be (9) to (14), cr. (8) eff. 6-5-85; am. (2), Register, November, 1985, No. 359, eff. 12-1-85; cr. (4m), Register, December, 1987, No. 384, eff. 1-1-88.

Trans 6.03 Federal share of project costs. (1) The federal share of operating project costs shall not exceed 50% of those costs. The department has determined that the following operating revenues and expenses shall be used to establish the project costs.

(a) Operating revenues shall consist of all passenger and station revenue derived from the project service and any unrestricted federal, state Register, December, 1987, No. 384

or local funds received as a result of providing the project service that are not used to match federal section 18 funds.

Note: Charter, package delivery, and package express operating expenses and revenues for all applicants are assumed to be equal and, therefore, shall not have any net financial effect on the project.

(b) Eligible operating expenses are those transportation and overhead expenses associated with the provision of public transportation service including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation service, license fees and certain lease expenses. The following expenses are not eligible project expenses:

1. Depreciation and amortization for publicly owned facilities and equipment;

2. Expenses that are offset or that will be offset by means that include, but are not limited to, cash discounts or refunds, tax rebates including fuel tax rebates, insurance proceeds or resale proceeds;

3. Interest expense, except that privately owned systems may include interest on short-term debt obligation;

4. Return on investment, except that a private transportation provider that negotiates all or part of a transportation service contract with an eligible applicant is eligible for a return on its investment. Its return on investment shall be a fixed amount and may not exceed an amount calculated by applying the interest rate the secretary of the treasury specifies under 50 U.S.C. App. § 1215 (b) (2) as applicable to the period ending on December 31 of the year prior to the project year to the net book value of the private transportation provider's equipment and facilities used in providing the contracted for transportation service;

5. Lease-purchase payments;

6. Lease payments to a related party which are a less than arms length agreement. Only actual eligible expenses of owning the property, including depreciation and taxes, shall be allowed;

7. Lease payments by small urban area systems for revenue passenger vehicles, unless situations exist necessitating short-term leases. In this subdivision, 'short-term lease' means a lease of one year or less in duration. If the grantee is actively pursuing a federal grant to purchase vehicles, the eligibility of lease payments may be extended until delivery of the purchased vehicles;

8. Entertainment costs;

9. Fines and penalties;

10. Bad debts;

11. Charitable deductions;

12. User-side subsidies;

13. Payments to members of advisory committees, transit commissions or transit boards;

14. Federal, state and local income taxes;

15. Expenses related to contractual agreements for special planning studies;

16. Indirect transit-related functions or activities of regional or local entities performed as a normal or direct aspect of general public administration;

17. Expenses for contingencies or capital acquisitions, including contributions to a capital reserve account or fund. For the purposes of determining eligible operating expenses, capital acquisitions are defined as the purchase of non-expendable personal property with a useful life of more than one year and an acquisition cost of \$300 or more per unit. A unit is defined as one or more like items. The cost of materials and supplies utilized in facility or vehicle repairs, regardless of cost, shall be considered as eligible operating costs so long as the repairs involve replacement of existing items.

(c) An eligible applicant that contracts with a provider for eligible public transportation service shall use the competitive bid process set forth in this paragraph to choose a provider. An eligible applicant shall follow this competitive bid process for each of its eligible public transportation service contracts not less than once every 5 years. If, however, service is provided by a transit commission formed in accordance with an applicable enabling statute, the competitive bid process need not be used. Eligible applicants shall use the following competitive bid process:

1. An eligible applicant shall prepare a "request for qualifications" document that shall request expressions of interest from providers and describe essential provider qualifications criteria for evaluating those qualifications. The eligible applicant shall send the document to the department for its approval and, after receiving departmental approval, shall send it to all local transportation providers and to all known potential local transportation providers. The eligible applicant shall also cause an appropriate notice of the request for qualifications to be published in a local newspaper of general circulation.

2. If only one qualified provider expresses interest in providing the eligible public transportation service, the eligible applicant may negotiate a contract with that provider. The negotiated contract shall be subject to the department's approval.

3. If 2 or more qualified providers express interest in providing the eligible public transportation service, the eligible applicant shall send each interested provider a department approved "request for proposal" document. That document shall describe the eligible public transportation service requirements and the criteria that shall be used in evaluating the bid proposals.

4. An eligible applicant shall establish an appropriate procedure for resolving bid proposal complaints and conflicts. The director of the department's bureau of transit shall consider procedural complaints or conflicts that include, but are not limited to, complaints that allege that local procedures have not been followed. The director shall not review the substance of an eligible applicant's decision to select a particular service provider. This limitation may not limit the director's authority to review an eligible applicant's actions or inactions under this section or under other state or federal law.

(d) Par. (c) applies only to eligible applicants filing applications due on or after November 15, 1988.

(2) The federal share of capital project costs shall not exceed 80% of eligible costs. The department shall establish the appropriateness of each capital expenditure. Where capital items are to be shared by parties not directly involved in the provision of the project service, it shall be shown to the satisfaction of the department that the applicant will use the item at least 50% of the available time before the item shall be considered eligible for funding. The project cost shall be prorated according to the use percentage.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg. am. (1) (b) 1., 3., 4., and 6., eff. 2-12-85; am. (1) (b) 1., 3., 4., 6. and 7., Register, November, 1985, No. 359, eff. 12-1-85; am. (1) (a) and (b) 4., r. and recr. (1) (b) 2., cr. (1) (c) and (d), Register, December, 1987, No. 384, eff. 1-1-88; reprinted to restore dropped copy in (1) (b) (intro.), Register, May, 1988, No. 389.

Trans 6.04 Distribution of federal aids. (1) The state's annual apportionment of federal section 18 funds shall be distributed as follows:

(a) Up to 10% will be reserved by the department for administrative and technical assistance purposes. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs and research the department deems appropriate to promote effective means of delivering public transportation services in areas other than urbanized areas. Any uncommitted balance of the state's apportionment of administrative funds from a preceding project year may be used during subsequent years until the balance is depleted.

(b) The apportionment from the mass transit account of the federal highway trust fund shall be made available to all eligible applicants for capital grants only. Funds reserved under this subsection shall be expended in accordance with criteria set forth under s. Trans 6.06.

(c) Apportionments from the general fund are initially available for operating assistance grants to eligible small urban and rural/intercity applicants. Eligible applicants within small urban areas shall be local public bodies and shall be found appropriate, in the department's judgment, for an urban mass transit system. In determining whether a small urban area is appropriate for an urban mass transit system for purposes of granting federal section 18 aid, the department shall use the following criteria:

1. All small urban areas receiving state urban mass transit aids and served by urban mass transit systems as of December 31, 1982 shall be deemed appropriate.

2. Except as provided for in subd. 1, a small urban area shall be deemed appropriate if the electorate of its most populous public body approves a referendum question prior to the filing of its second year's application asking whether the public body should subsidize the operations of an urban mass transit system.

3. Any balance remaining in par. (c) after operating assistance needs are met shall be available to all eligible applicants for capital grants to be awarded in accordance with criteria set forth under s. Trans 6.06.

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(2) Any uncommitted balances of the state's apportionments or any unexpended balances from previous obligations shall be carried forward to the following year.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg., am. (1) (c), eff. 2-12-85; emerg. am. (1) (c), eff. 6-5-85; am. (2), Register, November, 1985, No. 359, eff. 12-1-85.

Trans 6.05 Operating grants to areas other than urbanized. Subject to the limitations set forth in s. Trans 6.03 (1), the operating assistance funds available in s. Trans 6.04 (1) (c) shall be allocated among eligible applicants in proportion to each applicant's share of the projected operating project costs of all applications.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84.

Trans 6.06 Capital grants. (1) Capital assistance funds under s. Trans 6.04 (1) (b) and (c) shall be made available according to the following rank order of priority until all of the funds available are committed:

- (a) Projects to replace vehicles operated by existing systems;
- (b) Projects to initiate a public transportation service;
- (c) Projects to replace maintenance and storage facilities of existing systems;
- (d) Projects to expand the number of vehicles operated by existing systems;
- (e) Projects to expand and rehabilitate maintenance and storage facilities of existing systems; and
- (f) Projects to purchase and install passenger amenities for existing systems such as shelters and bus stop signs.

(2) If available funds are not sufficient to fund all applications within a given category, then the department shall, after consultation with the applicants, reduce the scope or timing of proposed projects within that category to fit available funding.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. (1) (a), renum. (1) (b) to (g) to be (1) (a) to (f) and am. (1) (b), Register, November, 1985, No. 359, eff. 12-1-85.

Trans 6.07 Application for federal aids. (1) Eligible applicants may apply to the department for federal section 18 funds. If more than one local public body will financially participate in the project, one body should submit a single application on behalf of all. In those cases, the federal aids received shall be allocated among all local public bodies in proportion to each one's share of eligible project costs.

(2) Applications shall be submitted to the department no later than November 15 of the year immediately preceding the project year. Prior to November 15, an applicant may request up to a 45-day extension of this date, and the department may grant that request. No application for operating assistance or capital assistance received after January 1 of the project year may be funded unless the secretary of transportation determines that a later date is appropriate in order to properly respond to an emergency.

(3) The assisted transit services may be operated for less than a calendar year.

(4) Applications shall be made in a manner and form prescribed by the department in accordance with governing federal regulations.

(5) The applicant shall submit the original of its application to the appropriate transportation district office of the department.

(6) An applicant shall submit a copy of its application for review and comment purposes to the appropriate regional planning commission, to the appropriate area agency on aging, and to the appropriate department of health and social services' division of community services' regional office. In order to be considered by the department, comments by the agencies shall be submitted to the department's appropriate transportation district office within 45 days following the submission of the application to the department. The department shall give appropriate consideration to the review comments of the agencies.

(7) The department reserves the right to reject applications for any of the following reasons:

(a) The proposed project is not consistent with the intent of the federal section 18 program;

(b) The lack of federal funds;

(c) The application is incomplete;

(d) The proposed project is not effective and efficient when compared to projects of a similar type. Such measures as the ratio of operating revenues to operating expenses, passengers per mile of service, operating expenses per passenger, and passengers per population served may be used to determine effectiveness and efficiency.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg. am. (2) eff. 6-5-85; am. (2), Register, November, 1985, No. 359, eff. 12-1-85; am. (2), Register, December, 1987, No. 384, eff. 1-1-88.

Trans 6.08 Reporting requirements. All grant recipients shall maintain books and records in the manner required by the department and shall make periodic and special reports as required by the department or by governing federal regulations.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84.

Trans 6.09 Labor protection requirements. Each eligible applicant, through formal resolution by its governing body, shall assume all responsibility and liability for all labor protection requirements imposed by the federal government to implement section 13 (c) of the urban mass transportation act of 1964, as amended. The department shall not fund any applicant that fails to comply with this section.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84.

Trans 6.10 Disposition of equipment. After a van, sedan or station wagon purchased new with federal section 18 funds has been driven 100,000 miles, there shall no longer be any federal interest in that vehicle. Under this section, a vehicle manufactured or offered for sale as a van is considered a van whether or not it is modified. Prior to disposing of a van, sedan or station wagon, an eligible applicant shall provide the department with a written statement certifying the vehicle's mileage and shall receive the department's approval to dispose of the vehicle. If de-

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partment approval is received, the eligible applicant may retain all proceeds from vehicle disposition.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

Trans 6.11 Transferring federal funds to another program. In the exercise of its reasonable discretion under federal and state law, the department may transfer part of Wisconsin's federal section 18 fund apportionment and use it to supplement Wisconsin's federal section 9 funds received for use in urban areas having populations between 50,000 and 200,000.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.