

OCT 09 2000

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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-137

AN ORDER to create Trans 4.09 (1) (title), (2) (title), (3) (title) and (4), relating to the state public transit operation assistance program.

Submitted by **DEPARTMENT OF TRANSPORTATION**

09-15-00 RECEIVED BY LEGISLATIVE COUNCIL.
10-05-00 REPORT SENT TO AGENCY.

RS:WF:jal;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-137

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. Trans 4.09 (4) (b), each subdivision should be renumbered from 1. to 6. In other words, the notation "(1)" should be replaced by the notation "1."
- b. "Pars." should be substituted for "subs." in s. Trans 4.09 (4) (e), (f) and (g) and "par." should be substituted for "sub." in s. Trans 4.09 (4) (d).
- c. In s. Trans 4.09 (4) (f) 1., the phrase "shall be responsible for paying" should be replaced by the phrase "shall pay."

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. Section Trans 4.09 (4) (c) is not clear concerning how cost efficiency measurements for transit systems will be determined. First, read literally, transit systems that *exceed* mean cost efficiency standards by more than one standard deviation would be judged not in compliance under the fifth sentence of s. Trans 4.09 (4) (c). Second, s. Trans 4.09 (4) (c) is not clear concerning what transit systems will be used to establish performance standards. For Milwaukee, Madison and medium bus systems, will data for all mass transit systems contained in the national transit data base be used, including data for small and commuter bus systems and shared ride systems? For the small and commuter bus and shared ride taxi systems, will data from only comparable in-state systems be used to establish performance standards or will data

from Milwaukee, Madison and medium bus systems also be used? Section Trans 4.09 (4) (c) should be redrafted to address these ambiguities.

b. In s. Trans 4.09 (4) (g), the word "they" in the second sentence, should be replaced by the word "it."

The Wisconsin Department of Transportation proposes an order to create TRANS 4.09(1)(title), (2)(title), (3)(title) and (4), relating to the state public transit operating assistance program.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1) and 227.11(2), Stats., and interpreting s. 85.20, Stats., the Department of Transportation will hold a public hearing in **Room 951** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **19th** day of **October**, 2000, at **10:00 AM**, to consider the amendment of ch. Trans 4, Wisconsin Administrative Code, relating to the state public transit operating assistance program.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business, October 19, 2000, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room. 951, P. O. Box 7913, Madison, WI 53707-7913.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 85.20, Stats.

General Summary of Proposed Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment. The Department is proposing to use the six performance measures recommended by the Transit advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on liabilities of any county, city, village or town, except if the county, city, village or town is operating a transit system that is not in compliance with the cost efficiency standards set forth in this rule. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis. The proposed rule will have no adverse impact on small business.

Copies of Proposed rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Hearing-impaired individuals may contact the department using TDD (608) 266-3351. Alternative formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.20, Stats., relating to the state public transit operating assistance program.

SECTION 1. Trans 4.09(1)(title), (2)(title) and (3)(title) are created to read:

Trans 4.09(1)(title) TRANSIT DEVELOPMENT PROGRAMS.

(2)(title) PERFORMANCE GOALS.

(3)(title) QUARTERLY PERFORMANCE GOALS.

SECTION 2. Trans 4.09(4) is created to read:

Trans 4.09(4) COST EFFICIENCY STANDARDS. (a) The department shall assess the performance of each transit system receiving aid under the program on an annual basis, using the 6 performance indicators defined in sub. (2).

(b) For purposes of analysis, transit systems are divided into the following peer groups:

1. (1) Milwaukee.
2. (2) Madison.
3. (3) Medium bus systems.
4. (4) Small bus systems.
5. (5) Commuter bus systems.
6. (6) Shared-ride taxi systems.

~~1. (a)~~ For the Milwaukee, Madison and medium bus tiers, transit systems external to the state will be used to establish performance standards. Data used will be the most recent available from the national transit database. For the small bus, commuter bus, and shared-ride taxi systems, standards shall be established using only in-state systems. Data used will be the data from the preceding calendar year. Standards for each performance measure shall be set for each tier using a standard deviation. *MAE*

(5) Systems that are within one standard deviation of the arithmetic mean shall be judged as in compliance with the standard for the measure. Systems that meet the standards

for 4 of the 6 performance measures shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

② (d) If a transit system does not meet the cost efficiency standards as defined under sub. (c), a time-trend analysis shall be performed, analyzing the 6 performance measures over the most recent 5-year period. Data used will be the data from the preceding calendar year. A system showing improvement in 4 of the 6 indicators would be deemed in compliance with the cost efficiency standards, and no further action will be taken. ?

② (e) If a transit system does not meet the cost efficiency standards as defined under subs. (c) and (d), an assessment shall be made of the implementation status of recommendations made in the system's most recent management performance audit. A system which has made significant progress in implementing the majority of recommendations targeted at improving efficiency shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

② Pass (f) If a transit system does not meet the cost efficiency standards as defined under subs. (c) to (e), the following actions shall be taken:

1. If management performance audit recommendations have not been implemented, the department shall provide technical assistance to aid in the implementation of the recommendations. If consultant services are necessary, the transit system shall be responsible for ~~paying~~^{pay} the nonfederal share of the costs.

2. If a management performance audit has not been conducted within the last 3 years, the department shall schedule an audit as soon as possible.

(g) Systems deemed out of compliance with the cost efficiency standards as defined in sub. (c) to (e) shall be given a 3-year period in which to comply before being

assessed a revenue penalty. After 3 years of noncompliance, a 10% revenue penalty shall be imposed, which will limit state aids to 90% of the state aid the system would have been entitled to if ~~they~~^{it} were in compliance with the cost efficiency standards. The penalty shall remain in effect until the system comes into compliance.

exclusion
of
costs 7

(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 15 day of September, 2000.



TERRENCE D. MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

OCT 31 2000



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

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October 30, 2000

The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 4**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-137

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **00-137**, relating to the **state public transit operating assistance program**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

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

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Ernie Wittwer/Linda Lovejoy/Dick Martin

CR 00-137

The Wisconsin Department of Transportation proposes an order to create TRANS 4.09(1)(title), (2)(title), (3)(title) and (4), relating to the state public transit operating assistance program.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOE MAASSEN
Deputy General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 85.20, Stats.

General Summary of Proposed Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment, the Department is proposing to use the six performance measures recommended by the Transit Advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on liabilities of any county, city, village or town, except if the county, city, village or town is operating a transit system that is not in compliance with the cost efficiency standards set forth in this rule. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351. Alternative formats of the proposed rule will be provided to individuals at their request.

PART 2

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.20, Stats., relating to the state public transit operating assistance program.

SECTION 1. Trans 4.09(1)(title), (2)(title) and (3)(title) are created to read:

Trans 4.09(1)(title) TRANSIT DEVELOPMENT PROGRAMS.

(2)(title) PERFORMANCE GOALS.

(3)(title) QUARTERLY PERFORMANCE GOALS.

SECTION 2. Trans 4.09(4) is created to read:

Trans 4.09(4) COST EFFICIENCY STANDARDS. (a) The department shall assess the performance of each transit system receiving aid under the program on an annual basis, using the 6 performance indicators defined in sub. (2).

(b) For purposes of analysis, transit systems are divided into the following peer groups:

1. Milwaukee.
2. Madison.
3. Medium bus systems.
4. Small bus systems.
5. Commuter bus systems.
6. Shared-ride taxi systems.

(c) For the Milwaukee, Madison and medium bus tiers, peer groups of similar sized transit systems with similar operating characteristics external to the state will be developed to establish performance standards. Data used for these peer groups will be the most recent available from the national transit database. For small bus, commuter bus, and shared-ride taxi tiers, standards shall be established using data from only in-state systems in these tiers, because no national database information is available for these types of systems. Data used will be from the preceding calendar year. Standards for each of the 6 performance measures defined in sub. (2) shall be set for each tier using a standard deviation. Systems that are within one standard deviation of

the arithmetic mean shall be judged as in compliance with the standard for the measure. Systems whose performance is better than the one standard deviation shall also be judged as in compliance with the standard for the measure. Systems that meet the standards for 4 of the 6 performance measures shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(d) If a transit system does not meet the cost efficiency standards as defined under par. (c), a time-trend analysis shall be performed, analyzing the 6 performance measures over the most recent 5-year period. Data used will be the data from the preceding calendar year. A system showing improvement in 4 of the 6 indicators would be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(e) If a transit system does not meet the cost efficiency standards as defined under pars. (c) and (d), an assessment shall be made of the implementation status of recommendations made in the system's most recent management performance audit. A system which has made significant progress in implementing the majority of recommendations targeted at improving efficiency shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(f) If a transit system does not meet the cost efficiency standards as defined under pars. (c) to (e), the following actions shall be taken:

1. If management performance audit recommendations have not been implemented, the department shall provide technical assistance to aid in the implementation of the recommendations. If consultant services are necessary, the transit system shall pay the nonfederal share of the costs.

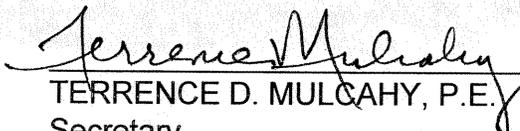
2. If a management performance audit has not been conducted within the last 3 years, the department shall schedule an audit as soon as possible.

(g) Systems deemed out of compliance with the cost efficiency standards as defined in pars. (c) to (e) shall be given a 3-year period in which to comply before being assessed a revenue penalty. After 3 years of noncompliance, a 10% revenue penalty shall be imposed, which will limit state aids to 90% of the state aid the system would have been entitled to if it were in compliance with the cost efficiency standards. The penalty shall remain in effect until the system comes into compliance.

(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 27 day of October, 2000.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

PART 4
CR 00-137

ANALYSIS OF FINAL DRAFT OF TRANS 4

(a) **Need for Amended Rule.** 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment. The Department is proposing to use the six performance measures recommended by the Transit advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 19, 2000. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following two persons appeared/registered at the hearing:

Robert C. Johnson, Chairman, Wisconsin Urban Transit Association, 2311 Badger Drive, Waukesha, WI 53188—spoke in favor of the rule and submitted written testimony.

Gary R. Goyke, Legislative Representative, Wisconsin Urban Transit Association, 354 West Main Street, Madison, WI 53703—registered in favor of the rule.

Written comments were also received from the following persons:

Steven A. Billings, Director of Parking and Transit, City of Sheboygan, 608 S. Commerce Street, Sheboygan, WI 53081.

Ann Gullickson, Transit Service Manager, Madison Metro Transit System (in support of the rule).

Alan Meindel, Transit Meindel, City of Fond du Lac, City-County Government Center, 160 South Macy Street, P. O. Box 150, Fond du Lac, WI 54936-0150 (in opposition to the rule).

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council recommendations have been incorporated into the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** The proposed rule will have no adverse impact on small business.



SEP 27 2000

Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

Office of the Secretary
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P.O. Box 7910
Madison, WI 53707-7910

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September 26, 2000

Senator Judy Robson
Room 15 South, State Capitol
P. O. Box 7882
Madison, WI 53707-7882

Dear Representative Robson:

Several legislators have expressed interest in the proposed administrative rule relating to cost-efficiency standards for urban public transit systems.

Because this is a major administrative rule affecting transit in Wisconsin, I want to make the proposed rule available to you as we begin the formal rule making process. This rule was developed to implement statutory language that was enacted in the last biennial budget bill pertaining to cost-efficiency standards for transit.

The Department has met with the Wisconsin transit community on several occasions to solicit their input prior to drafting the proposed rule. A public hearing on the rule is scheduled for October 19 at 10:00 a.m. in Room 951 of the Hill Farms State Transportation Building.

If you have questions regarding this proposed rule, I hope you will contact me at (608) 266-1114, or Linda Lovejoy at (608) 266-1379.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Cook".

Robert J. Cook
Executive Assistant

Enclosure

SEP 18 2000



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

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E-Mail: ogc.exec@dot.state.wi.us

The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

September 15, 2000

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to the **state public transit operating assistance program, Trans 4**

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

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

Julie A. Johnson
Paralegal

Enclosure

cc: Alice Morehouse
Mike Goetzman
Ernie Wittwer
Linda Lovejoy
Richard Martin



Wisconsin Department of Transportation

www.dot.state.wi.us

JUL 28 2000

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

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July 27, 2000

Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 4**

Dear *Gary* Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 4. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

Jewels
Julie A. Johnson
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director
Senator Judy Robson, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Alice Morehouse
Mike Goetzman
Ernie Wittwer
Richard Martin

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes the administrative policies and procedures for implementing the State Urban Mass Transit Operating Assistance Program. The purpose of this rule making is to establish cost-efficiency standards for all transit systems participating in the state aid program, as required by 1999 Wisconsin Act 9.

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

Under current policy, there are several cost-efficiency measures which have been created to assess transit system performance. These were formulated as an outgrowth of the Transit Advisory Council in 1997. 1999 Wisconsin Act 9 prohibits the Department from entering into contracts to distribute state aid until cost-efficiency standards have been incorporated into an administrative rule.

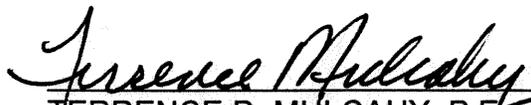
STATUTORY AUTHORITY FOR THE RULE:

ss. 85.16(1), 85.20 and 227.11(2), Stats.

ESTIMATE OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

200 person hours

Signed at Madison, Wisconsin, this 25 day
of July, 2000.



TERRENCE D. MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

MAR 20 2000



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

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March 16, 2000

The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
15 North, State Capitol
Madison, Wisconsin 53702

RE: **ORDER ADOPTING EMERGENCY RULE ON TRANS 4**, relating to **establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program**

Gentlepersons:

Enclosed is a copy of the above-referenced emergency rule for your information. Pursuant to sec. 227.24(1)(c), Stats., the rule will take effect upon publication in the Wisconsin State Journal, scheduled for March 23, 2000.

Sincerely,

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

Julie A. Johnson
Paralegal

Enclosure

cc: Mike Goetzman
Alice Morehouse
Ernie Wittwer
Richard Martin

The Wisconsin Department of Transportation proposes an order to create TRANS 4.09(1)(title), (2)(title), (3)(title) and (4), relating to the state public transit operating assistance program.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1) and 227.11(2), Stats., and interpreting s. 85.20, Stats., the Department of Transportation will hold a public hearing in **Room 951** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **19th** day of **October**, 2000, at **10:00 AM**, to consider the amendment of ch. Trans 4, Wisconsin Administrative Code, relating to the state public transit operating assistance program.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business, October 19, 2000, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room. 951, P. O. Box 7913, Madison, WI 53707-7913.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 85.20, Stats.

General Summary of Proposed Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment. The Department is proposing to use the six performance measures recommended by the Transit advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on liabilities of any county, city, village or town, except if the county, city, village or town is operating a transit system that is not in compliance with the cost efficiency standards set forth in this rule. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis. The proposed rule will have no adverse impact on small business.

Copies of Proposed rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Hearing-impaired individuals may contact the department using TDD (608) 266-3351. Alternative formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.20, Stats., relating to the state public transit operating assistance program.

SECTION 1. Trans 4.09(1)(title), (2)(title) and (3)(title) are created to read:

Trans 4.09(1)(title) TRANSIT DEVELOPMENT PROGRAMS.

(2)(title) PERFORMANCE GOALS.

(3)(title) QUARTERLY PERFORMANCE GOALS.

SECTION 2. Trans 4.09(4) is created to read:

Trans 4.09(4) COST EFFICIENCY STANDARDS. (a) The department shall assess the performance of each transit system receiving aid under the program on an annual basis, using the 6 performance indicators defined in sub. (2).

(b) For purposes of analysis, transit systems are divided into the following peer groups:

- (1) Milwaukee.
- (2) Madison.
- (3) Medium bus systems.
- (4) Small bus systems.
- (5) Commuter bus systems.
- (6) Shared-ride taxi systems.

(c) For the Milwaukee, Madison and medium bus tiers, transit systems external to the state will be used to establish performance standards. Data used will be the most recent available from the national transit database. For the small bus, commuter bus, and shared-ride taxi systems, standards shall be established using only in-state systems. Data used will be the data from the preceding calendar year. Standards for each performance measure shall be set for each tier using a standard deviation. Systems that are within one standard deviation of the arithmetic mean shall be judged as in compliance with the standard for the measure. Systems that meet the standards

for 4 of the 6 performance measures shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(d) If a transit system does not meet the cost efficiency standards as defined under sub. (c), a time-trend analysis shall be performed, analyzing the 6 performance measures over the most recent 5-year period. Data used will be the data from the preceding calendar year. A system showing improvement in 4 of the 6 indicators would be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(e) If a transit system does not meet the cost efficiency standards as defined under subs. (c) and (d), an assessment shall be made of the implementation status of recommendations made in the system's most recent management performance audit. A system which has made significant progress in implementing the majority of recommendations targeted at improving efficiency shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(f) If a transit system does not meet the cost efficiency standards as defined under subs. (c) to (e), the following actions shall be taken:

1. If management performance audit recommendations have not been implemented, the department shall provide technical assistance to aid in the implementation of the recommendations. If consultant services are necessary, the transit system shall be responsible for paying the nonfederal share of the costs.

2. If a management performance audit has not been conducted within the last 3 years, the department shall schedule an audit as soon as possible.

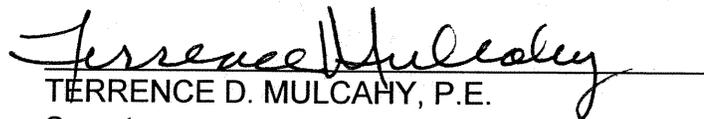
(g) Systems deemed out of compliance with the cost efficiency standards as defined in subs. (c) to (e) shall be given a 3-year period in which to comply before being

assessed a revenue penalty. After 3 years of noncompliance, a 10% revenue penalty shall be imposed, which will limit state aids to 90% of the state aid the system would have been entitled to if they were in compliance with the cost efficiency standards. The penalty shall remain in effect until the system comes into compliance.

(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 15 day of September, 2000.



TERRENCE D. MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

IN THE MATTER OF an Order Adopting an Emergency Rule to create TRANS 4.09(4), relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

**NOTICE OF EMERGENCY
RULE HEARING**

NOTICE

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 85.20(3) and 227.11(2), Stats., interpreting s. 85.20(7)(c), Stats., as created by 1999 Wis. Act 9, section 1849g, the Department of Transportation will hold a public hearing on **April 12, 2000** at the Hill Farms State Transportation Building, Room **951**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the amendment of ch. Trans 4, Wisconsin Administrative Code, relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter no later than 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

IN THE MATTER OF an Order Adopting an Emergency Rule to create TRANS 4.09(4) , relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

**ORDER ADOPTING
EMERGENCY RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 85.20(3) and 227.11(2) Stats.

STATUTE INTERPRETED: s. 85.20(7)(c), Stats., as created by 1999 Wis. Act 9, section 1849g

General Summary of Emergency Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats. and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program. The purpose of this emergency rule is to amend Chapter Trans 4 by adding a section that establishes cost-efficiency standards for all urban transit systems participating in the state aid program. 1999 Wisconsin Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a condition of receiving state aid. The Department will promulgate an emergency rule using the procedure under Section 227.24 of the Statutes so that state aid contracts can be executed prior to the scheduled first quarter payment date in calendar year 2000, to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

Fiscal Estimate. While not possible to know the exact fiscal impact at this time, it is anticipated that promulgation of this proposed rule will have a negative fiscal impact on those transit systems not able to meet the minimum established cost-efficiency standard.

Initial Regulatory Flexibility Analysis. This proposed rule has no significant impact on small businesses.

Copies of Emergency Rule and Contact Person. Copies of this emergency rule are available without cost upon request by writing to Richard A. Martin, Department of Transportation, Division of Transportation Investment Management, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, Room 933, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Alternate formats of the proposed rule will be

provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351.

TEXT OF EMERGENCY RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 85.20(3) and 227.11(2), Stats., the department of transportation hereby amends ch. Trans 4, Wisconsin Administrative Code, interpreting s. 85.20(7)(c), Stats., as created by 1999 Wis. Act 9, section 1849g, relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

SECTION 1. Trans 4.09(4) is created to read:

Trans 4.09(4) Cost efficiency standards. (a) The department of transportation establishes cost-efficiency standards in accordance with s. 85.20(7), Stats. The performance indicator used to establish cost-efficiency standards for all urban transit systems participating in the program will be annual operating expense per revenue passenger.

(b) For purposes of establishing minimal acceptable cost-efficiency standards, the state's public transit systems will be divided into the following peer groups based on system size and service characteristics:

1. Milwaukee County
2. Madison
3. Medium sized bus systems, including all bus systems operating in federally defined urbanized areas with populations between 50,000 and 200,000, plus the bus system operating in the city of Waukesha.

4. Commuter bus systems, including the peak-hour oriented systems sponsored by Waukesha, Washington and Ozaukee counties and Racine.

5. Small bus systems, including all bus systems operating in urban areas with populations of less than 50,000, plus Monona.

6. Shared-ride taxi systems, including all systems participating in the state aid program that operate "shared-ride taxicabs" as defined in Trans 4.02(7).

(c) The minimum established standard shall be calculated for each tier by applying the arithmetic mean plus one standard deviation. Any system whose cost per passenger exceeds the mean for the tier by more than one standard deviation shall be judged as failing to meet the performance standard. Since the Milwaukee County and Madison systems have no peers within the state, external peer groups of comparable size and operating characteristics shall be established for each of these systems. These peer groups shall be established based upon those included in the most recent management performance audit conducted for each system.

(d) No penalties shall be imposed in calendar year 2000. Beginning in calendar year 2001, systems not meeting the minimum established standard shall be penalized by eliminating costs that exceed the standard when calculating state aid. If either the Milwaukee or Madison systems do not meet the minimum established standard, they shall be penalized by calculating the percentage of operating costs covered by their state appropriation, and applying that percentage to operating costs that have been reduced to meet the minimum established standard. No penalties shall be imposed on new systems for their first 3 years of operation.

(d) Data used in calculating the cost-efficiency standards will be data for the second calendar year preceding the calendar year for which state aid is being paid for

all systems with the exception of the Milwaukee County and Madison systems. Data used to calculate cost-efficiency standards for the Milwaukee County and Madison systems will be the most recent data available from the national transit database.

(END OF RULE TEXT)

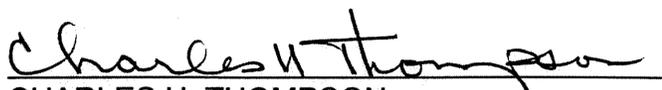
FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1999 Wisconsin Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a condition of receiving state aid. The Department is promulgating this emergency rule making so that state aid contracts can be executed prior to the scheduled first quarter payment date (March 31) in calendar year 2000 to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 15 day of March, 2000.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

FAX TRANSMISSION REPORT

MAR 13 2000

DATE: 3-13-00 NUMBER OF PAGES INCLUDING THIS PAGE: 6

PLEASE DELIVER THIS TRANSMISSION TO:

NAME: David Austin

ORGANIZATION: Sen. Judy Robson

TELEPHONE NO.: 6-2253 FAX NO.: 75171

FROM:

NAME: Jewel Johnson Admin. Rules Coord.
WISCONSIN DEPARTMENT OF TRANSPORTATION - OFFICE OF GENERAL COUNSEL
P.O. BOX 7910, MADISON, WI 53707-7910
PHONE: (608) 266-8810 FAX: (608) 267-6734

MESSAGE: F. Y. I.

MAR 13 2000



Wisconsin Department of Transportation

Office of General Counsel

(608) 266-8810 [Phone]

(608) 267-6734 [FAX]

James S. Thiel
Joe Messen
Barbara Bird
Alynn Lepeske
Mike Kernals
Fred Wisner
John Bobotik

MEMORANDUM

Date: March 13, 2000

To: Senator Judy Robson/ATTN: David Austin
Representative Glenn Grothman/ATTN: Steve Krieser

From: Jewels Johnson
Administrative Rules Coordinator
Office of General Counsel

Re: **AN ORDER ADOPTING EMERGENCY RULE AMENDING TRANS 4,
Wisconsin Administrative Code**

Pursuant to the January 27, 1989 memo written by the JCRAR co-chairs to all rule making agencies, it is requested that advance notice be given when promulgating emergency rules. Accordingly, the Wisconsin Department of Transportation provides you with this advance notification of its intent to promulgate the attached **draft** of emergency rule amending ch. Trans 4, relating to **establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program**. This emergency rule is mandated by 1999 Wis. Act 9. Pursuant to section 1849g of the Act, the Department may not enter into a contract for payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the urban mass transit system to comply with those rules as a condition of receiving aid.

This emergency rule is scheduled for publication during the week of March 20, 2000. If you have any questions about this emergency rule, please contact Richard Martin, Bureau of Transit and Local Roads, at 266-6812.

JJ/dim

cc: Richard Martin

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STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

IN THE MATTER OF an Order Adopting an Emergency Rule to create TRANS 4.09(4) , relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

**ORDER ADOPTING
EMERGENCY RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 85.20(3) and 227.11(2) Stats.

STATUTE INTERPRETED: s. 85.20(7)(c), Stats., as created by 1999 Wis. Act 9, section 1849g

General Summary of Emergency Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats. and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program. The purpose of this emergency rule is to amend Chapter Trans 4 by adding a section that establishes cost-efficiency standards for all urban transit systems participating in the state aid program. 1999 Wisconsin Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a condition of receiving state aid. The Department will promulgate an emergency rule using the procedure under Section 227.24 of the Statutes so that state aid contracts can be executed prior to the scheduled first quarter payment date in calendar year 2000, to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

Fiscal Estimate. While not possible to know the exact fiscal impact at this time, it is anticipated that promulgation of this proposed rule will have a negative fiscal impact on those transit systems not able to meet the minimum established cost-efficiency standard.

Initial Regulatory Flexibility Analysis. This proposed rule has no significant impact on small businesses.

Copies of Emergency Rule and Contact Person. Copies of this emergency rule are available without cost upon request by writing to Richard A. Martin, Department of Transportation, Division of Transportation Investment Management, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, Room 933, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Alternate formats of the proposed rule will be

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provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351.

TEXT OF EMERGENCY RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 85.20(3) and 227.11(2), Stats., the department of transportation hereby amends ch. Trans 4, Wisconsin Administrative Code, interpreting s. 85.20(7)(c), Stats., as created by 1999 Wis. Act 9, section 1849g, relating to establishing cost-efficiency standards for all urban transit systems participating in the State Urban Mass Transit Operating Assistance Program.

SECTION 1. Trans 4.09(4) is created to read:

Trans 4.09(4) Cost efficiency standards. (a) The department of transportation establishes cost-efficiency standards in accordance with s. 85.20(7), Stats. The performance indicator used to establish cost-efficiency standards for all urban transit systems participating in the program will be annual operating expense per revenue passenger.

(b) For purposes of establishing minimal acceptable cost-efficiency standards, the state's public transit systems will be divided into the following peer groups based on system size and service characteristics:

1. Milwaukee County
2. Madison
3. Medium sized bus systems, including all bus systems operating in federally defined urbanized areas with populations between 50,000 and 200,000, plus the bus system operating in the city of Waukesha.

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4. Commuter bus systems, including the peak-hour oriented systems sponsored by Waukesha, Washington and Ozaukee counties and Racine.

5. Small bus systems, including all bus systems operating in urban areas with populations of less than 50,000, plus Monona.

6. Shared-ride taxi systems, including all systems participating in the state aid program that operate "shared-ride taxicabs" as defined in ^{v. 5.} Trans 4.02(7).

(c) The minimum established standard shall be calculated for each tier by applying the arithmetic mean plus one standard deviation. Any system whose cost per passenger exceeds the mean for the tier by more than one standard deviation shall be judged as failing to meet the performance standard. Since the Milwaukee County and Madison systems have no peers within the state, external peer groups of comparable size and operating characteristics shall be established for each of these systems. These peer groups shall be established based upon those included in the most recent management performance audit conducted for each system.

(d) No penalties shall be imposed in calendar year 2000. Beginning in calendar year 2001, systems not meeting the minimum established standard shall be penalized by eliminating costs that exceed the standard when calculating state aid. If either the Milwaukee or Madison systems do not meet the minimum established standard, they shall be penalized by calculating the percentage of operating costs covered by their state appropriation, and applying that percentage to operating costs that have been reduced to meet the minimum established standard. No penalties shall be imposed on new systems for their first 3 years of operation.

(d) Data used in calculating the cost-efficiency standards will be data for the second calendar year preceding the calendar year for which state aid is being paid for

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all systems with the exception of the Milwaukee County and Madison systems. Data used to calculate cost-efficiency standards for the Milwaukee County and Madison systems will be the most recent data available from the national transit database.

(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1999 Wisconsin Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a condition of receiving state aid. The Department is promulgating this emergency rule making so that state aid contracts can be executed prior to the scheduled first quarter payment date (March 31) in calendar year 2000 to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this ____ day of
March, 2000.

CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

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