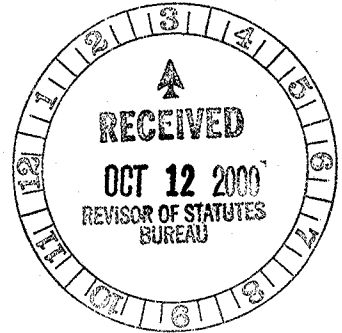


Clearinghouse Rule 00-015

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)



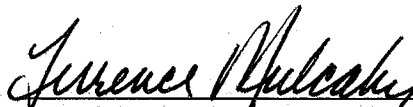
TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, TERRENCE D. MULCAHY, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to the **state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population**, was duly approved and adopted by this Department on October 12, 2000.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 12 day of **October**, 2000.



TERRENCE D. MULCAHY, P.E.
Secretary

00-015
12-1-00

The Wisconsin Department of Transportation adopts an order to repeal TRANS 4.04(3), 4.06(2) and (3), 8.03(2)(b) and 8.05; renumber TRANS 4.02(1), 4.04(4)(b)4. and 5., and 8.03(2)(a)1., 2., 4. and 5.; renumber and amend TRANS 4.06(4) to (6), 8.02(2) and 8.03(2)(a)(intro.) and 3.; amend ch. TRANS 4.04(1), (5)(a), (c), (d), (f), (L), (s) and (u), 4.05(1)(b), 4.06(1), 4.07(1)(note), 4.08(4)(b), 4.09(2)(intro.), (a) to (c) and (e), 4.10, 8.01, 8.02(4), (7) and (10), 8.03(intro.), (1)(b) and (3), and 8.04; repeal and recreate TRANS 4.05(2) and 4.07(5); and create TRANS 4.02(1), (1r), (5m), (6m) and (8m), 4.04(4)(b)4. and 6., and (5)(y) and (z), 4.07(6), 4.09(2)(f), and 8.02(2) and (11m), relating to the state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

ORDER ADOPTING RULE**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 Rule. Ch. 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 Wis. Act 9 requires the Department to amend ch. Trans 4 by adding a section that requires that cost proposals submitted by a mass transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

A mass transit system prepares its cost allocation plan in accordance with the United States Office of Management and Budget Circular A-87. Section 7 of the rule references this document. Consent has been given by the offices of the Attorney General and the Revisor of Statutes to incorporate this document by reference.

In addition, this rule making will clarify existing provisions of ch. Trans 4 as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

These changes consist of the following:

- Removes language relative to state aid distribution that is contradictory to current statutory language.
- Modifies the definition of eligible expenses to include return on investment, short term interest and management fees for private transportation providers.
- Allows public bodies sponsoring shared-ride taxicab systems to charge administrative expenses.
- Prohibits paying for expenses that are already paid for with Federal Transit Administration capital funds.
- Prohibits using state aid to pay for expenses related to services which duplicate those provided by another public transit system.
- Specifies that management performance audits will be conducted for bus systems only.
- Specifies that the cost of services not included in the annual state aid application will not be eligible for aid until the following year.
- Requires that a community planning to implement a new mass transit system notifies the Department by April 15 of even-numbered years in order to be eligible for aid under s. 85.20, Stats., in the upcoming biennium.
- Eliminates the necessity of submitting the original program application to the appropriate transportation district office.
- Modifies performance indicators to agree with those recommended by the Transit Advisory Council in 1997.
- Revises sections to make the rule easier to follow.

Chapter Trans 8 establishes the Department's administrative interpretation of the Governor's apportionment under the Federal Transit Assistance Section 5307 formula grant program for urbanized area transit systems and prescribes administrative policies and procedures for implementing the program. The amendments to ch. Trans 8 will clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

These amendments include:

- Changes all references to Section 9 of the Urban Mass Transportation Act of 1964 to Section 5307;
- Changes all references to Trans 4 to agree with current version;
- Defines "capitalized maintenance costs" and specifies how they can be funded;
- Adds wording to clarify that combined federal and state operating assistance may be limited by s. 85.20, Stats.;
- Changes the date by which the Department is required to provide projections of federal and state funding levels to recipients to as soon as possible after October 1;

- Specifies that capital projects required to comply with the Americans with Disabilities Act can be funded at up to 90% of costs;
- Eliminates the mandatory priority rank order for funding capital projects if available funding for a given year is not sufficient to fund all projects;
- Removes the language that allows for a second distribution of operating assistance if all capital needs have been met;
- Repeals s. Trans 8.05 which calls for the Department to review the policies and procedures established in the rule annually; and
- Eliminates obsolete terminology in various parts of the rule.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of Rule. Copies of the 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 rule will be provided to individuals at their request.

TEXT OF 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 amends rules interpreting s. 85.20, Stats., relating to the state public transit operating assistance program, to the use of fully allocated costs in the competitive bid process, and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

SECTION 1. Trans 4.02(1) is renumbered Trans 4.02(1m).

SECTION 2. Trans 4.02(1), (1r), (5m), (6m) and (8m) are created to read:

Trans 4.02(1) "Department" means the Wisconsin department of transportation.

(1r) "Joint-use facility" means a facility that is shared by the public transit operation and at least one other business.

(5m) "Revenue hours" means hours in which a mass transit vehicle is operating in revenue service, such as being available to pick up or discharge passengers.

(6m) "Secretary" means the secretary of the Wisconsin department of transportation.

(8m) "Unlinked trip" means a trip beginning when a passenger boards the vehicle and ending when the passenger alights from the vehicle, even though the passenger may have to transfer to another vehicle to complete his or her journey.

SECTION 3. Trans 4.04(1) is amended to read:

Trans 4.04(1) Eligible project costs are limited to the operating expenses of an urban mass transit system, including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation services, license fees and lease expenses. For publicly owned mass transit systems, only the wages and fringe benefits of those employees whose activities are directly related to the day-to-day operation of the system shall be considered eligible project costs. If those employees do not work full time on transit, only that portion of their time spent on transit shall be considered. For services provided by private transportation providers operating under mass transit contracts, eligible project costs may include profit, return on investment, interest on short term debt obligation, and depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation costs for only that portion of the facility used in the provision of urban mass transit services are eligible project costs. For shared-ride taxicab services provided by private transportation providers operating under mass transit system contracts, eligible project costs may include management fees.

SECTION 4. Trans 4.04(3) is repealed.

SECTION 5. Trans 4.04(4)(b)4. is renumbered Trans 4.04(4)(b)5.

SECTION 6. Trans 4.04(4)(b)4. is created to read:

Trans 4.04(4)(b)4. When a publicly owned mass transit system responds to a request for proposal issued by a local public body under s. Trans 4.04(4)(b)3., the cost proposal shall include an analysis of fully allocated costs that will be used as the basis for evaluating costs when ranking proposals. The analysis shall include all of the system's costs measured in accordance with generally accepted accounting principles, regardless of whether these costs are otherwise paid for through other public financial assistance, including operating subsidies and capital grants. When the public body which owns the mass transit system has prepared a cost allocation plan in accordance with United States office of management and budget circular A-87, or OMB circular A-87, costs of the mass transit system shall be allocated in accordance with that plan. When the mass transit system has not prepared a cost allocation plan in accordance with OMB circular A-87, costs which are allocable to the mass transit system shall be determined using the principles outlined in OMB circular A-87. Expenses of the mass transit system shall be allocated to segments of service considered using the following categories:

- a. Costs that depend on the number of vehicle hours operated, including particular operators salaries and fringe benefits.
- b. Costs that depend on the number of vehicle miles traveled, including fuel costs, maintenance costs and maintenance personnel salaries and fringe benefits.
- c. Costs that depend on the maximum number of vehicles that are in service during the day, including administrative and capital costs.

NOTE: Copies of the OMB Circular A-87 may be obtained, without cost, by writing to the Division of Transportation Investment Management, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913. A copy of this document is also on file with the offices of the Secretary of State, and the Revisor of Statutes.

SECTION 7. Trans 4.04(4)(b)5. is renumbered Trans 4.04(4)(b)7.

SECTION 8. Trans 4.04(4)(b)6. is created to read:

Trans 4.04(4)(b)6. When a contract is awarded based on bids for purposes of state aids, the proposed costs shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

SECTION 9. Trans 4.04(5)(a), (c), (d), (f), (L), (s) and (u) are amended to read:

Trans 4.04(5)(a) Depreciation and amortization, except as authorized by sub. ~~(4)~~
(1).

(c) Interest expense, except as authorized under sub. (1).

(d) Profit, except as authorized by sub. ~~(4)~~ (1).

(f) Lease payments to a related party which are made under less than an arms-length agreement. Only actual eligible expenses of owning the property, including depreciation and taxes shall be allowed, as authorized under sub. ~~(4)~~ (1).

(L) User-side subsidies, except as authorized by ~~sub. sub. (2) and (3)~~.

(s) For privately owned mass transit systems, the wages and fringe benefits of any public employes, except those employes involved in administration of the mass transit contract or in monitoring the performance of the private transportation provider.

(u) Return on investment, except as authorized by sub. ~~(4)~~ (1). 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 USC 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 services.

SECTION 10. Trans 4.04(5)(y) and (z) are created to read:

Trans 4.04(5)(y) Expenses that are paid for with federal transit administration capital funds authorized under 49 CFR § 53.

(z) For transit systems providing services outside of their jurisdictional boundaries, expenses related to services which duplicate those provided by another public transit system in terms of geographic area served, hours operated, frequency of service and passenger boarding and alighting locations. Decisions on duplication of service shall be made by the department, after consultation with the affected public bodies.

SECTION 11. Trans 4.05(1)(b) is amended to read:

Trans 4.05(1)(b) For privately owned mass transit systems with which a local public body contracts for services on the basis of competitive bids, the department shall conduct contract compliance audits, ~~and shall~~ except that the department may not conduct financial audits of the business records of the private provider. This provision shall apply only for years in which an actual dollar amount was bid. Years for which a definite percentage increase over first year costs has been specified in the bid, or years in which costs are to be increased by the rate of inflation as measured by the consumer price index shall be considered years in which an actual dollar amount was bid.

SECTION 12. Trans 4.05(2) is repealed and recreated to read:

Trans 4.05(2) The state's share of eligible project costs shall be in accordance with s. 85.20(4m), Stats.

SECTION 13. Trans 4.06(1) is amended to read:

Trans 4.06(1) The department shall distribute the state appropriations for this program among eligible applicants in accordance with the procedures set forth in s. 85.20(4m), Stats., and also in accordance with provisions of the annual state contract executed between the applicant and the department.

SECTION 14. Trans 4.06(2) and (3) are repealed.

SECTION 15. Trans 4.06(4) to (6) are renumbered Trans 4.06(2) to (4) and amended to read:

Trans 4.06(2) Except as provided in sub. ~~(5)~~ (3), each eligible applicant shall provide a local contribution, exclusive of user fees, toward operating expenses in an amount equal to at least 20% of all state allocations to that applicant under this chapter. No in-kind services, federal or state categorical financial aids or passenger revenues are allowed as part of the local contribution. No part of the local contribution may be paid by a private transportation provider contracting with the applicant public body. The local contribution shall be determined by audit and calculated by subtracting passenger revenues, federal aids and state aids from eligible operating expenses.

(3) Subsection ~~(4)~~ (2) does not apply to an eligible applicant that is served exclusively by a shared-ride ~~taxi~~ taxicab system.

(4) State aids shall be paid to a recipient on a quarterly basis. If the department's audit establishes that the state aid payment to a recipient has exceeded any limitation on the state's share of eligible project costs under s. ~~Trans 4.05(2)~~ 85.20, Stats., then the recipient shall refund to the department an amount sufficient to reduce the state aid to an amount that is in conformity with s. ~~Trans 4.05(2)~~ 85.20, Stats.

SECTION 16. Trans 4.07(1)(note) is amended to read:

TRANS 4.07(1) NOTE: Standard application forms booklets are available from the DOT Transit Wisconsin Department of Transportation, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, P. O. Box 7914 7913, Madison, Wisconsin 53707-7913.

SECTION 17. Trans 4.07(5) is repealed and recreated to read:

Trans 4.07(5) Costs for services not included in the application for state aids will not be eligible for funding until the following calendar year.

SECTION 18. Trans 4.07(6) is created to read:

Trans 4.07(6) An eligible applicant intending to submit an application to support a new mass transit system shall notify the department of the applicant's intention no later than April 15 of the even-numbered year to be eligible for funding in the next biennium.

SECTION 19. Trans 4.08(4)(b) is amended to read:

Trans 4.08(4)(b) Provide reduced fare programs for elderly and disabled persons during nonpeak hours, except if the mass transit system is a shared-ride ~~taxi~~ taxicab system. Reduced fares may not exceed one-half of the adult cash fare;

SECTION 20. Trans 4.09(2)(intro.), (a) to (c) and (e) are amended to read:

Trans 4.09(2)(intro.) Establish annually service and performance goals for a 4-year period and assess the effectiveness of the applicant's mass transit system in relation to those goals. The goals shall be submitted to the department as a part of the application for state aids. At a minimum, systemwide goals ~~must~~ shall be established for the following performance indicators:

(a) The ratio of ~~operating expenses to total miles~~ passengers, as expressed in unlinked trips to service area population.

(b) The ratio of operating expenses to ~~revenue~~ passengers, as expressed in unlinked trips.

(c) The ratio of operating expenses to ~~platform~~ revenue hours.

(e) The ratio of ~~revenue~~ passengers, as expressed in unlinked trips, to revenue ~~miles~~ hours.

SECTION 21. Trans 4.09(2)(f) is created to read:

Trans 4.09(2)(f) The ratio of revenue hours to service area population.

SECTION 22. Trans 4.10 is amended to read:

Trans 4.10 Management performance audits. The department shall conduct a management performance audit of all urban mass transit systems participating in the program at least once every 5 years. The department shall determine the scope of services for each audit in cooperation with the management of the mass transit system subject to the audit. This section does not apply to shared-ride taxicab systems.

SECTION 23. Trans 8.01 is amended to read:

Trans 8.01 Purpose and scope. The purpose of this chapter is to prescribe the policies and procedures which the department of transportation acting on behalf of the governor will use for the distribution of federal funds apportioned to the state of Wisconsin for ~~1987 and subsequent years for~~ mass transit assistance to urbanized areas of under 200,000 population. This program is authorized by section ~~9 of the Urban Mass Transportation Act of 1964, as amended~~ 5307 of the Transportation Equity Act for the 21st Century, Public Law 105-178.

SECTION 24. Trans 8.02(2) is renumbered Trans 8.02(2r) and amended to read:

Trans 8.02(2r) "Eligible recipient" means local public bodies in urbanized areas under 200,000 population who have been designated as recipients of federal section ~~9~~

5307 funds by the secretary of the department of transportation acting on behalf of the governor.

SECTION 25. Trans 8.02(2) and (2m) are created to read:

Trans 8.02(2) "Capitalized maintenance costs" are costs associated with vehicle and facility related maintenance which a mass transit system has classified as capital costs as allowed by TEA 21. A mass transit system shall classify capitalized maintenance costs identically under both the federal section 5307 program and the state operating assistance program authorized under s. 85.20, Stats.

(2m) "Department" means the Wisconsin department of transportation.

SECTION 26. Trans 8.02(4), (7) and (10) are amended to read:

Trans 8.02(4) "Federal section ~~9~~ 5307 funds" means all federal funds apportioned to the state for distribution by the governor for urban mass transit operating assistance and capital projects in urbanized areas under 200,000 population.

(7) "Operating deficit" has the meaning given in s. Trans ~~4.05(2)~~ 4.05(3).

(10) "Operating revenues" has the meaning given in s. Trans ~~4.05(3)~~ 4.05(4).

SECTION 27. Trans 8.02(11m) is created to read:

Trans 8.02(11m) "TEA 21" means the federal transportation equity act for the 21st century of 1998.

SECTION 28. Trans 8.03(intro.) and (1)(b) are amended to read:

Trans 8.03 Distribution of federal aids. (intro.) The governor's annual apportionment of federal section ~~9~~ 5307 funds shall be distributed as follows:

(1)(b) The department of transportation shall provide to each eligible recipient projections of the amount of state and federal funds for operating assistance which will be allocated to each recipient for the next project year ~~no later than~~ as soon as

possible after October 1 and once state and federal budgeted amounts are known along with reasonable estimates of the operating assistance needs of affected mass transit systems. The projections ~~will~~ shall be based on the best information available at the time. ~~Revised projections shall be provided to each eligible recipient within 10 days following publication of the urban mass transportation administration's official section 9 apportionments in the federal register.~~

SECTION 29. Trans 8.03(2)(a)(intro.) is renumbered Trans 8.03(2)(intro.) and amended to read:

Trans 8.03(2)(intro.) Funds apportioned to the governor and not allocated for operating assistance under sub. (1) shall be made available on an annual basis to eligible recipients to cover up to 80% of the cost of capital projects, or 90% of the costs if the project is required to comply with the Americans with Disabilities Act, included in the final program of projects submitted by each recipient to the secretary of the United States department of transportation as required by 49 USC 1607a(e)(2). In any project year in which requests for capital assistance exceed available funds, ~~the following rank order of priority shall be used for distribution until all funds available are committed~~ the rank order of priorities shall be established by the department in consultation with the eligible recipient. Annually, the rank order shall consider age, condition, transit service needs and urgency among other factors. The rank order shown below may be used, or it may be modified, until all funds available are distributed:

SECTION 30. Trans 8.03(2)(a)1. to 5. are numbered Trans 8.03(2)(a) to (e) and, as renumbered, Trans 8.03(2)(c) is amended to read:

Trans 8.03(2)(c) Projects to purchase and install passenger amenities such as shelters and bus ~~stops~~ stop signs.

SECTION 31. Trans 8.03(2)(b) is repealed.

SECTION 32. Trans 8.03(3) is amended to read:

Trans 8.03 (3) Any uncommitted balances of the governor's apportionment after capital assistance needs are met under sub. ~~(2)(a) shall be available to all eligible applicants for operating assistance beyond the 70% limitation initially imposed in sub. (1) (a), not to exceed 50% of the operating deficit or the federally imposed operating assistance cap. Any uncommitted balances available after this additional operating assistance distribution~~ (2) or any unexpended balances from previous years under this section shall be carried forward to the following year.

SECTION 33. Trans 8.04 is amended to read:

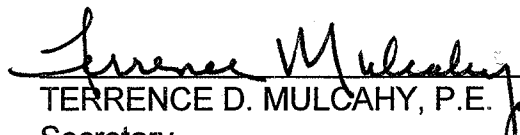
Trans 8.04 Report requirements. All eligible recipients receiving a grant of federal section 9 5307 funds shall maintain books and records in the manner required by the department and shall make periodic and special reports as required by the department or by applicable federal regulations.

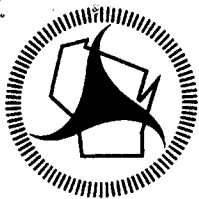
SECTION 34. Trans 8.05 is repealed.

(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 12 day of October, 2000.


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



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
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October 12, 2000

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

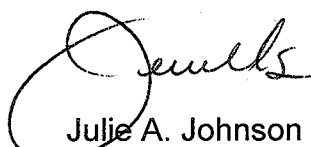
RE: **CLEARINGHOUSE RULE 00-015**

In the Matter of the Adoption of **TRANS 4 & 8**, Wisconsin Administrative Code, relating to the **state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population**

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 00-015**, an administrative rule relating to the above-mentioned matter.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

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

