

OFFICE OF THE SECRETARY

IN THE MATTER AMENDING ss.	*	
TRANS 6.03(1)(a) and (b)4 and	*	
6.07(2), REPEALING AND RECREA-	*	
TING s. TRANS 6.03(1)(b)2, AND	*	ORDER
CREATING ss. TRANS 6.02(4m),	*	ADOPTING
6.03(1)(c) and (d), 6.10 and	*	RULE
6.11, WISCONSIN ADMINISTRATIVE	*	
CODE RELATING TO THE RURAL AND	*	
SMALL URBAN AREA PUBLIC TRANS-	*	
PORTATION ASSISTANCE PROGRAM	*	

Analysis Prepared by the Wisconsin Department of Transportation

General Summary of Proposed Rule. The Wisconsin Department of Transportation (Department) has authority to adopt and revise administrative rules concerning the distribution of funds available to Wisconsin under the federal rural and small urban area public transportation program. This program is commonly known as the federal section 18 program; it is a program to distribute funds apportioned to Wisconsin under section 18 of the Urban Mass Transportation Act of 1964, as amended.

The rule changes first proposed on June 1, 1987, about which hearings have been held, would revise or create rule provisions concerning the following:

- (1) A competitive procurement procedure that applicants who contract for all or part of their transportation services must follow at least once every three years.
- (2) A method for determining the maximum profit included as an eligible operating expense by private transportation providers that negotiate all or part of a transportation service contract with an eligible applicant; that maximum profit would be a return on investment of 10 percent of the net book value of the provider's equipment and facilities used in providing the contracted for transportation service.
- (3) A 45-day, rather than only a 30-day, application filing deadline extension.

- (4) The effect nonproject expenses, such as charter, package delivery, and package express, have on the development of a project budget.
- (5) Establishing 100,000 miles as the useful life for vans, sedans, and station wagons purchased new with program funds.
- (6) Adopting the federally allowed transfer of section 18 funds to supplement funds available under section 9 of the Urban Mass Transportation Act of 1964, as amended, for urban areas with populations between 50,000 and 200,000.

After the three public hearings held to receive comments about the proposed rule and after further Department consideration, the Department has revised its original rule proposals as follows:

- (1) Respecting (1) above, the new competitive procurement procedure will not become effective until the 1989 application cycle, and it will be required once every five years, not once every three years as originally proposed.
- (2) Respecting (2) above, the return on investment percentage applied to the net book value of the provider's equipment and facilities used in providing the contracted service will not simply be 10 percent but will instead be 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.

Final Regulatory Flexibility Analysis. This rule change does not affect small businesses directly. Instead it affects local public body and Indian tribe administration of a federal program. As such, the rule is expressly exempt from the small business consideration provisions of sec. 227.114, Stats. See sec. 227.114(8)(b), Stats. Nonetheless, small businesses are the primary providers of the contracted for transportation services. Hence, the department sought the participation of affected small businesses in the rulemaking process. To do that the department sent a copy of the proposed rule to every provider presently providing contracted for service and notified the secretary of development and the small business ombudsman clearinghouse pursuant to sec. 227.114(5), Stats.

Fiscal Estimate. The only fiscal effects this rule may have on local public bodies will result from an increase in the administrative time it takes to complete the competitive procurement process when required and from the need to place newspaper ads and pay postage expenses. The increased expenditures, however, will be minimal. Increased competition may, in fact, reduce the operating losses for which program funds are required.

Preparation. This analysis was prepared by Ron Morse of the department's Bureau of Transit (608) 266-9637 and by Philip Peterson of the department's Office of General Counsel (608) 266-8810.

Under authority vested in the state of Wisconsin, department of transportation, by s. 85.16(1), Stats., the department of transportation hereby amends, repeals and recreates, and creates rules interpreting s. 85.23, Stats., as follows:

RULE TEXT

SECTION 1. Trans 6.02(4m) is created to read:

Trans 6.02(4m) "Federal section 9 funds" has the meaning given in s. Trans 8.02(4).

SECTION 2. Trans 6.03(1)(a) is amended to read:

Trans 6.03(1)(a) Operating revenues shall consist of all passenger and station revenue derived from the project service and any unrestricted federal, state or local funds received as a result of providing the project service, ~~which~~ that are not used to match federal section 18 funds. ~~Package-express-revenue received-by-private-intercity-applicants-is-not-operating-revenue for-the-purpose-of-this-chapter.~~

NOTE: Charter, package delivery, and package express operation operating expenses and revenues for all applicants ~~and package--delivery--expenses--and--revenues--for--all--public--body applicants--can--be~~ are assumed to be equal and, therefore, ~~will~~ shall not have any net financial effect on the project.

SECTION 3. Trans 6.03(1)(b)2 is repealed and recreated to read:

Trans 6.03(1)(b)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.

SECTION 4. Trans 6.03(1)(b)4 is amended to read:

Trans 6.03(1)(b)4. ~~Profit~~ Return on investment, except ~~for that privately--owned--systems. Private--systems~~ a private transportation provider that negotiates all or part of a transportation service contract with an eligible applicant ~~are is~~ eligible for ~~profit~~ a return on its investment. which Its return on investment shall be a fixed ~~fee~~ amount and may not exceed 10% 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 ~~of to the gross-contract-costs~~ net book value of the private transportation provider's equipment and facilities used in providing the contracted for transportation service;

SECTION 5. Trans 6.03(1)(c) and (d) is created to read:

Trans 6.03(1)(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 department 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 two 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.

SECTION 6. Trans 6.07(2) is amended to read:

Trans 6.07(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 applicants applicant may request up to a ~~30~~ 45-day extension of this date, and the department may grant ~~these requests~~ that request. No

application for operating assistance or capital assistance received after ~~December-15~~ January 1 of the ~~year-preceding-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 ~~situation~~.

SECTION 7. Trans 6.10 is created to read:

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

SECTION 8. Trans 6.11 is created to read:

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.

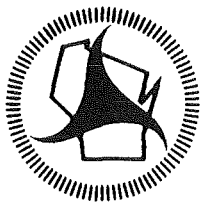
(END OF RULE TEXT)

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin this
10th day of November, 1987.

Ronald R. Fiedler

RONALD R. FIEDLER, P.E.
Secretary
Wisconsin Department of
Transportation



Wisconsin Department of Transportation

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Revisor of Statutes
Bureau

November 10, 1987
OGC 86-289

Mr. Gary Poulson
Assistant Revisor of Statutes
30 West Mifflin Street
Suite 702
Madison, Wisconsin 53703

RE: Clearinghouse Rule 87-72
In the Matter of Rulemaking Affecting Trans 6,
Wisconsin Administrative Code, relating to the
Rural and Small Urban Area Public Transportation
Assistance Program.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of CR 87-72, an administrative rule relating to the rural and small urban area public transportation assistance program. An additional, uncertified copy of CR 87-72 is enclosed to be used as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script that reads "Philip Peterson".

Philip Peterson
Deputy General Counsel

PPP:dlm
Enclosures

CC: Tom Walker
John Evans
John Hartz
Toya McCosh
Ron Morse