

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIM BTLRRH 70

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 70, USC 49 CFR Part 37.131(c), a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBTLRRH70>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707- 7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsindot.gov to allow for ongoing comment.

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Frequently Asked Questions: WisDOT Agency Fares

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Question 1: What is an agency fare?

Answer 1: An agency fare is an amount charged to human service organizations purchasing transit services on behalf of their clients.

Question 2: Who is involved in an agency fare?

Answer 2: Agency fares are determined by the local public sponsor of the transit service (i.e. city, county, etc.). The Wisconsin Department of Transportation (WisDOT) does not need to approve the agency fare rate, although WisDOT requires systems to report the number of riders and total revenue gained from agency fare riders. WisDOT also requires systems using an agency fare to include it among fares reported in annual management plans.

Question 3: How is an agency fare structured?

Answer 3: Each public transit service sponsor determines whether to charge agency fares and at what amount. The agency fare rate is higher than those for the general public (i.e. full adult, elderly, disabled, child, student, veteran, etc.) due to regulatory language (see below) stating revenues from the incidental use of Federal Transit Administration (FTA) vehicles for agency rides should at least cover the federal share of the incurred expenses.

The average cost per ride on shared-ride taxi systems statewide in 2017 was about \$9.00, and federal funds cover about 40% of expenses for rural transit systems each year. Charges in the \$5.00-\$9.00 range are, therefore, reasonable. Agency fares for paratransit service, intercity trips, and other special services may be higher to cover the cost of the service.

WisDOT requires transit systems to list their agency fare rate on the BlackCat Grants Management System.

Question 4: How is an agency fare permissible?

Answer 4: Agency fares are permitted under USC 49 CFR Part 37.131 (c):

(c) Fares: The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e. without regard to discounts) for a trip of similar length at a similar time of day on the entity's fixed route system.

(1) in calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length at a similar time of day on the fixed route system.

(2) The fares for individuals accompanying ADA paratransit eligible individuals who are provided service under 37.123 (f) of this part shall be the same as for the ADA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e. trips guaranteed to the organization.)

Moreover, FTA Circular 5010.1D (“ Grant Management Requirements”), page IV-16, reinforces the federal regulatory language above:

(3) Incidental Use. Any incidental use of project property will not exceed that permitted under applicable Federal laws, regulations, and directives. Incidental use requires prior FTA approval except when it involves coordinated public transit human services transportation. Consult your FTA regional or metropolitan office prior to incorporating incidental use activities in projects. Incidental use will be permitted if:

(a) The incidental use does not interfere with the grantee’s project or public transportation operations;

(b) The grantee fully recaptures all costs related to the incidental use from the nontransit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;

(c) The grantee uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation; and

(d) Private entities pay all applicable excise taxes on fuel.

Question 5: How is agency fare collected and counted?

Answer 5: Agency fares are typically collected directly from the human service organization for which the service is to be delivered, not the individual passenger. Moreover, agency fares collected as the result of a contract for individual rides must be counted as fare revenue, not local share.

Rides paid for via agency fares must be reported as “agency trips” on the quarterly operating statistics report submitted to WisDOT. Agency fares (and any corresponding administrative fees) are recorded as “agency fare revenue” on those same reports.

Question 6: May transportation systems charge an administrative fee to collect agency fares?

Answer 6: Yes. Publicly-operated transit systems are allowed to charge a reasonable administrative fee to accumulate data on the human service organization passengers. The administrative fee must be included as part of total revenue reported to WisDOT and FTA, however, as the fee is gained through the provision of the service.

Private operators under contract with a local public body may charge an administrative fee if the local public body agrees, and the language on the Request for Proposals (RFP) under which they were hired does not account for such expenses.

Beginning with RFPs issued in CY2017, (contracts with start dates in CY2018), the WisDOT template (Appendix E of SRT procurement toolkit) included language that stated “[t]he hourly rate shall cover all operating and administrative costs of performing the service.” Therefore, administrative expenses related to the collection and reporting of agency fares would be not allowed if that language is stated in the RFP; these expenses must be included in the total hourly rate submitted by the bidder.

Private providers must also report administrative fees collected with agency fares on their reports to their local sponsor and to WisDOT.

Question 7: Why are there agency fares?

Answer 6: Both public transit systems and human service agencies face fiscal constraints on the services they provide. Agency fares allow public transit systems to recoup the full expense of providing rides to human service agency clients, ensuring that such rides do not reduce state and federal aids designated for providing transit service to the public at large. In the absence, municipalities made counties may also end up paying more local share due to the lost revenue; that could also lead to service cuts *for all riders* if the local tax levy isn’t able to cover that share.

In effect, agency fares represent a compromise so that public transit systems can recover service costs while human service organizations can utilize public transit for a lower cost than would be paid to private providers.

Other Key Considerations

Primacy of Public Transit – Staff (e.g., drivers, dispatchers, municipal staff, etc), equipment and vehicles funded with federal Section 5311 and Wis. Stats. 85.20 transit funds must first be used for the provision of public transit service. Only after the needs of public transit riders are met can these resources be used to meet the transportation needs of social service agency clients (e.g., Medicaid recipients), providing this incidental use does not interfere with the public transit service. There cannot be a reduction in the service quality or availability of public transit as a result of transporting human service clients. However, in many instances NEMT Medicaid riders, for example, can be accommodated by adding them as extra riders to pre-existing routes.

Demonstrate Excess Capacity – Transit systems must establish that they have excess capacity (empty seats, idle vehicles, etc.) before agreeing to accommodate new human service agency clientele ridership. They must consider how many human service rides are expected, at what times of the day, and on which routes, and then negotiate how many and which trips it will accommodate. Human service clientele riders may easily be accommodated with minimal impacts to schedules and for little additional costs by adding these riders to pre-existing routes with empty seats or those with minimal route deviation.

Further, contracted service providers are not allowed to use FTA-funded vehicles for a service contract with managed care organizations or other agencies. The provider can have a memorandum of understanding with agencies to utilize vehicles for service agency rides at times when it will not affect public transit service, but may not have a competing contract using FTA-funded vehicles.

For more information, please contact Chad Reuter at the Wisconsin Department of Transportation at 608-267-7345 or chadwic.reuter@dot.wi.gov.