

Clearinghouse Rule 19-073

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

PROPOSED ORDER AMENDING PERMANENT RULE

The Wisconsin Department of Transportation proposes an order to: **Create** ss. Trans 2.015 (8), (9); **Amend** ss. Trans 2 (title), 2.01, 2.015 (3), (6), 2.02 (title), (1), 2.03, 2.04 (intro.), (4), 2.045, 2.05 (1) (intro.), 2.055 (1), (2), (3), (7), (8), (9), 2.06 (3), 2.09, 2.10 (1) (b) (intro.), 1., 2., 4., (2) (a), (b), 2.11; **Repeal** ss. Trans 2.015 (1), (7), 2.05 (1) (a), (b), (c), (d), (3), 2.07, 2.10 (1) (b) 5.; and **Repeal and recreate** ss. Trans 2.02 (2), 2.05 (title), (2), 2.06 (1), (2),

The State of Wisconsin Department of Transportation (Department) proposes an order to amend Wisconsin Admin. Code. ch. Trans 2 relating to the Administration of Grant Programs to Administer Federal and State Funds for Transportation for Seniors and Individuals with Disabilities. The analysis below was prepared by the State of Wisconsin Department of Transportation.

The Statement of Scope for this Trans 2 Rule, SS 036-14, was approved by the Governor on April 16, 2014, published in Register No. 701A on May 14, 2014, and approved by Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by s. 227.135 (2), Stats, on January 1, 2014.

ANALYSIS

Statutes Interpreted: Section 85.22, Stats.

Statutory Authority: Sections 85.16, 85.22 (3) (h) and 227.11, Stats.

Explanation of Agency Authority: Section 85.16 (1), Stats., authorizes the Department's Secretary to "make reasonable and uniform orders and rules deemed necessary to the discharge preamble of powers, duties, and functions vested in the department." Additionally, s. 85.22 (3) [preamble], Stats., states: "The Department shall administer the grant program and shall have all

the powers necessary and convenient to implement this section,” and s. 85.22 (3) (h), Stats. expressly authorizes the Department to “establish, by rule, standards for the coordination of transportation services to seniors and individuals with disabilities.” Section 227.10 (1), Stats., states: “Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.”

Related Statute or Rule: Chapter Trans 2, Wis. Admin. Code derives from s. 85.22, Stats., which establishes a statewide program to provide specialized transportation assistance to seniors and to individuals with disabilities. Chapter Trans 2 authorizes the Department of Transportation to administer this program. Several other statutes (ss. 20.002, 51.42, 51.437, 85.20, 85.21, 340.01, Stats. and chs. Trans 300 and 301) bear on the administrative rules subject to this proposed order. However, the proposed changes to ch. Trans 2 do not affect how these other statutes and rules regulate transportation services for seniors and individuals with disabilities in Wisconsin.

Plain Language Analysis: This rulemaking updates ch. Trans 2 which addresses the Department’s administration of state and federal specialized transit competitive grant programs. Chapter Trans 2 currently only allows capital vehicle projects to be awarded under it. This rulemaking removes or replaces obsolete language and provides a broader definition of allowable transit projects to serve seniors and individuals with disabilities which will allow for funding of operating assistance and mobility management projects in addition to vehicles. This change will bring the state program into conformity with the federal program which it provides supplemental funding.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: Chapter Trans 2 establishes the Department’s process for implementing and

managing federal transit operating and capital funding programs established under 49 U.S.C. § 5310 and the state capital assistance program for specialized transportation established under s. 85.22, Stats. The Department compared the language in ch. Trans 2 governing the federal program (Section 5310 circular / FTA C 9070.1) to ensure the changes to ch. Trans 2 would conform to all projects allowed under the federal program.

The federal Section 5310 program administered by the Department provides funding to providers of specialized transit (seniors and individuals with disabilities) in rural areas (municipalities with populations fewer than 50,000) and small urban areas (municipalities with populations totaling 50,000 – 199,999). Specialized transit providers can be private non-profit organizations or local public bodies and must predominantly provide rides and other transportation services to residents aged 65 or older and/or to residents with temporary or permanent physical or intellectual disabilities.

Projects typically funded under Section 5310 include accessible vehicles, operating costs, staff salaries for providers, and mobility manager positions. Specialized transit operating projects are reimbursed at 50 percent of deficit. Capital projects (vehicles and mobility management projects) are reimbursed at 80 percent net deficit. This program is administered as a discretionary program. Annually an application is released for organizations to apply for funding for the following calendar year. Awards are typically announced in December each year.

The state Capital Assistance Program for Specialized Transportation, s. 85.22, Stats., mirrors the federal Section 5310 program and allows state funds to be used on transit projects geared towards seniors and individuals with disabilities. The reimbursement rules, and program administration are the same as the Section 5310 program. Grant recipients are generally unaware whether their award is made with federal Section 5310 or s. 85.22, Stats. funds.

Comparison with Rules in Adjacent States:

Illinois. Illinois does not currently have any state money that is paired with their federal Section 5310 Enhanced Mobility for Seniors and Individuals with Disabilities program. Illinois did have a state program in the past.

Iowa. Iowa has three statewide funding programs available to transit providers, but differ significantly from how Wisconsin uses funds appropriated under s. 85.22, Stats. Two of Iowa's funds are used for transit infrastructure projects (PTIG Fund) and a capital match revolving loan fund (Amoco Loan). The other (State Transit Assistance) is similar to what the proposed change to ch. Trans 2 and funds transit operating and capital projects throughout the state that improve public transit. These funds can also be used for training purposes.

Michigan. Michigan has state funds through their Comprehensive Transportation Fund (CTF) that assist in funding specialized transit. Under part 247.660e of the Michigan Compiled Laws, not less than \$3,600,100 goes to specialized services assistance programs. In FY2016, \$3,853,900 went to Michigan's specialized services public transportation development projects.

Minnesota. Minnesota does not currently have any state money paired with their federal Section 5310 Enhanced Mobility for Seniors and Individuals with Disabilities program.

Summary of the Factual Data and Analytical Methodologies that the Agency Used in Support of the Proposed Rule and How Any Related Findings Support the Regulatory Approach Chosen for the Rule:

The Department's approach to update ch. Trans 2 mirrored the changes in the federal Section 5310 circular (FTA C 9070.1) to comply with the Moving Ahead Progress in the 21st Century Act (MAP-21) of July 2012, the Fixing America's Surface Transportation (FAST) Act passed in December 2015, and any future federal changes to the Section 5310 program. By

comparing state funding rules in Michigan and Iowa, the Department believes it will be best for its program managers and grant recipients if Wisconsin's rule was less restrictive so the rules can more easily reflect any future federal changes to the program.

Analysis Regarding Rule's Effect on Small Businesses:

By broadening the type of projects allowed under ch. Trans 2, the proposed changes would allow s. 85.22, Stats. funds to be awarded to small private non-profit agencies that provide specialized transportation service to seniors and individuals with disabilities. Currently, s. 85.22, Stats. funds are restricted to funding only accessible vehicle purchases. These rules changes would allow a greater variety of projects using s. 85.22, Stats. funds; projects could include: staff costs associated with mobility management grants; and, voucher programs, volunteer driver programs, and service operating costs with operating assistance grants.

Fiscal effect: There are no additional funds being requested by the changes to ch. Trans 2. No fiscal effects are anticipated.

Anticipated costs incurred by private sector: No additional costs in the private sector are anticipated. By broadening the projects allowed under ch. Trans 2, non-profit organizations may be awarded additional funding for their operating and non-vehicle capital projects. The only cost incurred by a private non-profit applying for s. 85.22, Stats. funds would be the local match required towards an awarded project.

Agency Contact Person:

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Place Where Comments Should Be Submitted and Deadline:

Comments may be submitted to the agency contact person listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PERMANENT RULE

Trans 2 (title) is amended to read:

~~ELDERLY AND DISABLED TRANSPORTATION CAPITAL ASSISTANCE PROGRAM~~ ENHANCED MOBILITY FOR SENIORS AND INDIVIDUALS WITH DISABILITIES GRANT PROGRAM

Trans 2.01 is amended to read:

Trans 2.01 **Purpose and scope.** The purposes of this chapter are to establish the department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program, and to prescribe administrative policies and procedures for implementing the ~~elderly and disabled~~ specialized transportation ~~capital assistance~~ program authorized under s. 85.22, Stats.

Trans 2.015 (1) is repealed.

Trans 2.015 (3) and (6) are amended to read:

SECTION 4.

Trans 2.015 (3) "Federal sec. 5310 program" means the federal assistance program under 49 USC 5310 as amended.

Trans 2.015 (6) "Other transportation ~~providers~~ provider" ~~include~~ means a public, private ~~nonprofit and nonprofit, or private for-profit businesses~~ business or ~~organizations~~ organization, other than a ~~given~~ an eligible applicant, which ~~operate~~ operates passenger transportation services using the same mode of transportation as an applicant.

SECTION 5.

Trans 2.015 (7) is repealed.

SECTION 6.

Trans 2.015 (8) and (9) are created to read:

Trans 2.015 (8) "Program cycle" means a one or two year period, whose start and end dates are specified by the department, for which the department accepts applications and issues awards for projects authorized under s. 85.22, Stats.

SECTION 7.

Trans 2.015 (9) "Project" means operation of a transportation service for seniors or individuals with disabilities, or purchase of capital equipment for use in a service.

Trans 2.02 (title) and Trans 2.02 (1) are amended to read:

Trans 2.02 ~~Eligible Applicants~~ Program eligibility.

Trans 2.02 (1) An eligible applicant may apply for ~~capital project~~ assistance under s. 85.22, Stats. All applicants shall comply with federal regulations governing the federal sec. 5310 program.

Trans 2.02 (2) is repealed and recreated to read:

Trans 2.02 (2) Applicants may request assistance for any operating projects or capital acquisitions that are consistent with the specialized transportation program purpose specified in s. 85.22 (1), Stats.

Trans 2.03 is amended to read:

Trans 2.03 ~~Capital costs~~ Aid allocation. Commencing with the highest ranking application as determined under s. Trans 2.06 and to the extent that federal and state moneys are available, the department shall offer to each eligible applicant an amount of state aid such that the sum of federal and state aid received by an applicant does not exceed ~~80% of estimated capital~~ the proportion of project costs permitted under the federal sec. 5310 program.

Trans 2.04 (intro.) and 2.04 (4) are amended to read:

Trans 2.04 Coordination. It is the department's policy to encourage the coordination of ~~elderly and disabled~~ transportation for seniors and individuals with disabilities among providers of such services. To that end, each eligible applicant receiving aids under this chapter shall:

Trans 2.04 (4) Include in its application evidence that the transportation service proposed for ~~the general elderly and disabled public~~ seniors and individuals with disabilities was designed with the cooperation of the appropriate county committees or commissions on aging and boards created under ss. 51.42 and 51.437, Stats.

SECTION 11. Trans 2.045 is amended to read:

Trans 2.045 ~~Private provider participation~~ **Provider notification**. Every application shall include evidence that all other transportation providers in the applicant's service area have been afforded an opportunity to comment on the service for which an applicant ~~proposes to furnish with the vehicles to be purchased with~~ requests assistance under this chapter. This evidence shall include copies of all correspondence between the applicant and other transportation providers, except that the evidence shall include one copy of the notice required under s. Trans 2.05 (1) (d) and a certified list of all other transportation providers to which the notice was mailed rather than copies of all the notices actually mailed and any additional evidence the department specifies in its application instructions. The department may reject an application for failure to comply with this requirement.

SECTION 13. Trans 2.05 (title) is repealed and recreated to read:

Trans 2.05 Application schedule

Trans 2.05 (1) (intro.) is amended to read:

Trans 2.05 (1) (intro.) Each application for ~~capital~~ assistance under this chapter shall be considered valid only for ~~during~~ the program cycle in ~~for~~ which it is submitted. ~~Except as provided~~

in s. ~~Trans 2.06 (3)~~, an applicant for capital assistance shall prepare an application according to the following schedule:

Trans 2.05 (1) (a), (b), (c), and (d) are repealed.

Trans 2.05 (2) is repealed and recreated to read:

Trans 2.05 (2) The department shall specify the duration of the upcoming program cycle in the corresponding application guidelines.

Trans 2.05 (3) is repealed.

Trans 2.055 (1), (2), (3), (7) (8) and (9) are amended to read:

Trans 2.055 (1) ~~A person~~ An applicant adversely affected by a violation of s. Trans 2.045, 2.05 or 2.10 may request the department to review an whose application for capital assistance under this chapter is not awarded funding may request that the department review the process by which it reviewed the application.

Trans 2.055 (2) A request for department review under sub. (1) shall be made in writing and shall be filed with the department within ~~10~~ 14 days of ~~the application filing deadline~~ in s. Trans 2.05 (1) (a) the department's notification of non-award.

Trans 2.055 (3) If the department receives a request for review of an application for ~~capital~~ assistance under this chapter, the chief of the ~~specialized~~ transit section shall conduct the department review.

Trans 2.055 (7) In conducting its review, the department may ~~request~~ ask interested parties to provide additional written information. The failure of any interested party to provide information requested by the department, or to cooperate with the department in its review, may result in dismissal of a request for review or denial of an application for ~~capital~~ assistance.

Trans 2.055 (8) The chief of the ~~specialized~~ transit section shall submit a written recommendation to the director of the bureau of ~~transit and transit~~, local roads, railroads and harbors, who shall issue a written decision. A copy of the director's decision shall be provided to the applicant and to the person requesting the department review.

~~SECTION 18~~ Trans 2.055 (9) The decision of the bureau of ~~transit and transit~~, local roads, railroads and harbors, shall be the final decision of the department and is not subject to further appeals or judicial review.

Trans 2.06 (1) and (2) are repealed and recreated to read:

Trans 2.06 (1) The department shall assess whether all applications are consistent with the program purpose set forth in s. 85.22 (1), Stats. Any application determined to be inconsistent

with the program purpose shall be excluded from further consideration for award of aids administered under this chapter.

Trans 2.06 (2) The following evaluation criteria, used consistent with the federal Section 5310 program:

Trans 2.06 (2) (a) The extent of service coordination through:

1. Evidence of written agreements with other agencies to supply or receive transportation;
and

2. Evidence that the applicant agency is willing to structure its activities in order to effect coordinated transportation.

Trans 2.06 (2) (b) The extent that service can be provided to the general elderly and disabled public through:

1. A capability to provide such service within the project area;

2. The development of a reasonable schedule of service to these nonclient individuals; and

3. Evidence of a financial plan by which to provide this service.

Trans 2.06 (2) (c) The extent to which transportation needs of elderly and disabled persons are identified through:

1. Estimate of elderly and disabled population and sources or methodology used to derive the figure.

2. Percentage of the elderly and disabled population in need of service and the methodology used to arrive at the percentage.

3. The percentage of the elderly and disabled population which the applicant proposes to serve and how that percentage was derived.

4. How applicant's proposed service will meet the identified needs of the elderly and disabled population.

Trans 2.06 (2) (d) The extent to which financial and technical capabilities are identified:

1. Evidence of financial capabilities of the applicant in assuring that adequate operating funds will be available to support the proposed project objectives.

2. Evidence of managerial capabilities of the applicant in assuring that adequate personnel, experience, training, safety and other practices will be available to support the project objectives. Applicant experience with previous capital assistance under this chapter may be considered.

Trans 2.06 (3) is amended to read:

Trans 2.06 (3) If available state and federal aids exceed the amount requested by applications receiving scores at or above the minimum, the department may accept for evaluation and funding consideration additional applications or revised applications for the remaining aids. The department may ~~waive the schedule specified in s. Trans 2.05 (1) and~~ establish alternative deadlines as it determines to be appropriate for applications submitted under this subsection.

Trans 2.07 is repealed.

Trans 2.09 is amended to read:

Trans 2.09 Vehicle registration. A recipient of federal sec. 5310 funds or s. 85.22, Stats. funds shall at all times maintain human service vehicle, ~~school~~ bus, or municipal registration, as appropriate, on every vehicle purchased in part with assistance under this chapter whether the ~~vehicles are~~ vehicle is operated by the recipient or by other transportation providers. If a recipient fails to comply with this ~~registration~~ requirement, the department may reassign ~~the vehicles~~ any vehicle not properly registered to other eligible applicants ~~specified in s. Trans 2.02 (1) and~~ may reject pending or future applications of the recipient for assistance under this chapter.

Trans 2.10 (1) (b) (intro.), 1., 2. and 4. are amended to read:

SECTION 22.

Trans 2.10 (1) (b) (intro.) Has ~~at least~~ the following duties:

Trans 2.10 (1) (b) 1. Monitor the expenditures of transportation funds being expended on transportation services for ~~the elderly~~ seniors and ~~disabled~~ individuals with disabilities in the service area;

Trans 2.10 (1) (b) 2. Review ~~passenger~~ transportation plans for the service area;

Trans 2.10 (1) (b) 4. Review and comment on ~~capital~~ assistance applications under s. 85.22, Stats.;

SECTION 23.

SECTION 24.

Trans 2.10 (1) (b) 5. is repealed.

Trans 2.10 (2) (a) and (b) are amended to read:

Trans 2.10 (2) (a) Is determined by the department to be eligible for assistance under the federal sec. 5310 program after first certifying to the department that no private, nonprofit organizations as specified in s. Trans 2.015 (2m) are readily available to provide transportation services to ~~elderly~~ seniors and ~~disabled persons~~ individuals with disabilities in a proposed service area and providing all of the following or similar documentation supporting such certification:

1. Copies of letters sent to all known private, nonprofit organizations specified in s. Trans 2.015 (2m), both within the county wherein such organizations are situated and in adjacent counties, soliciting interest in providing transportation services for ~~elderly~~ seniors and ~~disabled~~

~~persons~~ individuals with disabilities in the proposed service area, along with copies of any resulting correspondence.

2. A certified copy of a public notice published in the appropriate official county newspaper soliciting responses from private, nonprofit organizations as specified in s. Trans 2.015 (2m), both within the county wherein such organizations are situated ~~and in adjacent counties~~, interested in providing transportation services to elderly seniors and ~~disabled persons~~ individuals with disabilities in the proposed service area, along with copies of any resulting correspondence.

Trans 2.10 (2) (b) Is approved by the department to be the coordinator of transportation services to elderly seniors and ~~disabled persons~~ individuals with disabilities in the proposed service area. A local public body shall be approved by the county board and a transportation coordinating committee which satisfies the membership requirements in sub. (1) (a). The department may waive the membership requirements in sub. (1) (a) if the county board provides satisfactory evidence that the county board made a reasonable attempt to include members of all groups identified in sub. (1) (a). The applicant shall provide all of the following or similar documentation to the department verifying such approval:

1. Copies of documentation showing that a transportation coordinating committee approved the local public body as the coordinator of transportation services for elderly seniors and ~~disabled persons~~ individuals with disabilities in the proposed service area.

2. A certified copy of the resolution, passed by the county board, approving the local public body as the coordinator of transportation services for elderly seniors and ~~disabled persons~~ individuals with disabilities in the proposed service area.

SECTION 25.

Trans 2.11 is amended to read:

Trans 2.11 Reporting requirements. All recipients shall maintain records in the manner required by the department for all ~~vehicles purchased~~ expenditures made with program funds and shall make ~~semi-annual~~ scheduled reports on each vehicle or project as well as special reports as required by the department. If required ~~semi-annual~~ reports are not current at the time of the application filing deadline, the department may deny that recipient's application.

SECTION 26.

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) (intro.), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2019.

Craig Thompson, Secretary
State of Wisconsin Department of Transportation