

Chapter Trans 6

RURAL AND SMALL URBAN AREA PUBLIC TRANSPORTATION ASSISTANCE PROGRAM

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Note: Chapter Trans 6 was created by emergency rule effective April 17, 1979. Chapter Trans 6 was repealed and recreated by emergency rule effective April 20, 1983. Chapter Trans 6 as it existed on October 31, 1983 was repealed and a new chapter Trans 6 was created effective November 1, 1983. Chapter Trans 6 was repealed and recreated by emergency rule effective November 30, 1983. Chapter Trans 6 as it existed on April 30, 1984 was repealed and a new chapter Trans 6 was created effective May 1, 1984.

Trans 6.01 Purpose and scope. The purposes of this chapter are to prescribe the department’s administrative interpretation of ss. 85.20 and 85.23, Stats., and to prescribe the administrative policies and procedures for implementing the federal program for public transportation projects in rural and small urban areas. This program is authorized by 49 USC 5311, as amended. The goal of this program is to enhance access of people in rural and small urban areas for purposes such as health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement and use of public transportation services.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; CR 18–065: am. Register October 2020 No. 778, eff. 11–1–20.

Trans 6.02 Definitions. (1) “Capital equipment” means non–expendable personal property for use in the provision of public transportation service and having all of the following:

- (a) A useful life of one year or more.
- (b) An acquisition cost of \$5,000 or more per unit.

(1g) “Capitalized maintenance project” means vehicle and facility related maintenance which a mass transit system has classified as a capital project as allowed under 49 USC chapter 53.

(1r) “Department” means the Wisconsin department of transportation.

(2) “Eligible applicant” means a local public body or federally recognized Indian tribal governing body.

(2m) “Eligible project cost” means an expense that an eligible applicant incurs in the operation or capitalization of a public transportation service for which it is eligible to receive federal section 5311 funds.

(3) “Eligible public transportation service” means a public transportation service operating or designed to operate in rural or small urban areas.

(4) “Federal section 5311 funds” means all funds appropriated to the state for use in the federal program for public transportation projects in small urban, rural and intercity areas.

(4m) “Federal section 5307 funds” has the meaning given in s. Trans 8.02 (4).

(5) “Intercity bus service” means regularly scheduled bus service for the general public that operates over routes connecting 2 or more urbanized areas and serving rural or small urban areas, or both.

(5g) “Job access and reverse commute project” means a transportation project to finance planning, capital, or operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and

low–income individuals to and from jobs and employment–related activities, including transportation projects that facilitate the provision of public transportation services from rural and urbanized areas to suburban employment locations.

(5r) “Local contribution” means operating deficit less federal and state operating assistance received.

(6) “Local public body” means one the following:

(a) A county or a municipality as defined in s. 59.001 (3), Stats., or an agency thereof.

(b) A transit or transportation commission or authority, or a public corporation established by law or by interstate compact to provide mass transportation services and facilities.

(c) Two or more of any such bodies acting jointly under ss. 66.0301 to 66.0303, Stats.

(6m) “Low–income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in section 673 (2) of the Community Services Block Grant Act, 42 USC 9902 (2), including any revision required by that section.

(7) “Operating deficit” means the difference between the costs of operating an eligible public transportation service and the revenues derived therefrom. User subsidies such as transportation stamps are not considered to be operating project costs for purposes of this chapter.

(7m) “Operating project cost” means a cost accruing to a public transportation service by virtue of its operations, including a cost to subsidize fares paid by individuals with disabilities for transportation within the urban area of the eligible applicant, or its maintenance activities.

(8) “Private provider” means a privately owned (for–profit or nonprofit) entity that provides public transportation service.

(8m) “Project” means operation of a public transportation service or subsystem thereof during a project year, or purchase of capital equipment for use in a service or subsystem thereof.

(9) “Project year” means a calendar year.

(10) “Public transportation service” means a passenger transportation service that is provided to the general public on a regular and continuing basis by a public agency or private firm, and that is authorized by the office of the department secretary under ch. 194, Stats., unless exempt under s. 85.20 (5), Stats., or under ch. 194, Stats. The service may be provided by bus, rail, shared–ride taxicab or other conveyance. The service may constitute an entire public transit system or may be an individual route or a segment of a route provided by a common carrier of passengers. A transportation service provided exclusively for a subgroup of the general public is not considered to be a “public transportation service” for purposes of this chapter, unless it is part of an overall public transit service.

(10m) “Rural area” means an area that has not been designated as an “urban area” by the U.S. bureau of the census.

(11) “Small urban area” means any area that includes a city or village having a population of at least 2,500, but not more than 49,999. The department shall determine the population of a city

or village within a small urban area using the most recent estimates prepared by the department of administration.

(12) “Station revenues” means those revenues which are derived from the operation of a public transportation facility. Such revenues include concessions, storage rentals, parking, office space rental, and other miscellaneous sources.

(13) “Through revenue” means revenue derived from passengers whose trips begin and end outside an eligible project route but whose route of travel includes the eligible project route.

(14) “Urbanized area” means an area of the state so defined by the U.S. bureau of the census.

(14m) “Useful life” means a minimum time period, specified by the department, during which an asset is expected to remain in suitable operating condition for continued use in its intended capacity.

(15) “User-side subsidy” means a program whereby users of a transit service are permitted to purchase transportation vouchers at prices substantially below the fares charged by the transit provider, or are given ride vouchers free of charge. Users may exchange these vouchers for transportation services, and the provider may then redeem them for the full fare.

(16) “Welfare recipient” means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act, 42 USC 601 et seq., at any time during the previous three-year period.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg. am. (2), renum. (8) to (13) to be (9) to (14), cr. (8), eff. 2-12-85; emerg. am. (2), renum. (8) to (13) to be (9) to (14), cr. (8) eff. 6-5-85; am. (2), Register, November, 1985, No. 359, eff. 12-1-85; cr. (4m), Register, December, 1987, No. 384, eff. 1-1-88; am. (10), renum. (12) and (13) to be (13) and (14), cr. (12), Register, October, 1989, No. 406, eff. 11-1-89; am. (10), Register, December, 1989, No. 408, eff. 1-1-90; renum. (5) to (14) to be (6) to (15), cr. (5), Register, January, 1993, No. 445, eff. 2-1-93; **CR 18-065: renum. (1) to (1) (intro.) and am., cr. (1) (a), (b), (1g), (1r), am. (2), cr. (2m), am. (3) to (5), cr. (5g), (5r), renum. (6) to (6) (intro.) and am., cr. (6) (a) to (c), (6m), am. (7), cr. (7m), am. (8), cr. (8m), am. (10), cr. (10m), am. (12), (14), cr. (14m), am. (15), cr. (16) Register October 2020 No. 778, eff. 11-1-20; correction in (1g) made under s. 35.17, Stats., Register October 2020 No. 778.**

Trans 6.03 Federal share of project costs. (1) The federal share of an eligible public transportation service’s operating project costs shall not exceed 50% of its operating deficit, except for projects where the department uses capital cost of contracting procedures to determine the service’s reimbursement amount. On applicable projects, the capital cost of contracting reimbursement rate shall be based on allowances specified in federal transit law or guidance. The following operating revenues and expenses shall be used to establish the project operating deficit:

(a) Operating revenues shall consist of all passenger revenue derived from the project service, including the portion of through revenue attributed to eligible project routes, station revenues derived from the project service and any unrestricted federal, state or local funds received as a result of providing the project service that are not used to match federal section 5311 funds. Operating revenues also may include income generated through approved job access and reverse commute type projects, consistent with 49 USC 5311.

Note: Charter, package delivery, and package express operating expenses and revenues for all applicants are assumed to be equal and, therefore, shall not have any net financial effect on the project.

(b) Eligible operating costs are those transportation and overhead expenses associated with the provision of public transportation service including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation service, license fees and certain lease expenses. They also may include other expenses associated with approved job access and reverse commute type projects, consistent with 49 USC 5311. The following are not eligible project costs:

1. Depreciation and amortization for publicly owned facilities and equipment;

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;

3. Interest expense, except that privately owned systems may include interest on short-term debt obligation;

4. Return on investment, except that a private provider that negotiates all or part of a transportation service contract with an eligible applicant is eligible for a return on its investment. Its 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 provider’s equipment and facilities used in providing the contracted transportation service;

5. Lease-purchase payments;

6. Lease payments to a related party which are made under less than an arm’s length agreement. Only actual eligible project costs of owning the property, including depreciation and taxes, shall be allowed;

7. Lease payments by small urban area systems for revenue passenger vehicles unless, and only for the term, pre-approved by the department;

8. Entertainment costs;

9. Fines and penalties;

10. Bad debts;

11. Charitable deductions;

12. User-side subsidies except those specifically funded under an intercity bus project;

13. Payments to members of advisory committees, transit commissions or transit boards;

14. Federal, state and local income taxes;

15. Expenses related to contractual agreements for special planning studies;

17. Expenses for contingencies or capital acquisitions, including contributions to a capital reserve account or fund. The cost of materials and supplies utilized in facility or vehicle repairs, regardless of cost, shall be considered as eligible operating costs so long as the repairs involve replacement of existing items.

18. Fees imposed upon a contracted service provider by the grant recipient, such as taxicab license fees.

19. Job access and reverse commute project expenses, except in cases where the recipient’s grant agreement with the department explicitly authorizes use of federal funds for such project(s).

(c) An eligible applicant that contracts with a provider for eligible public transportation service shall use the competitive procurement process set forth in this paragraph to choose a provider. An eligible applicant shall follow this competitive procurement 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 procurement process need not be used. Eligible applicants shall use the following competitive procurement process:

1. An eligible applicant shall prepare a “request for proposals” document that solicits proposals from providers and that describes essential provider qualifications and criteria for evaluating proposals. The eligible applicant shall send the document to the department for its approval and, after receiving departmental approval, shall post it along with any ancillary documents on the department of administration’s statewide goods and services electronic purchasing system website. The eligible applicant shall also cause an appropriate notice of the request for

proposals to be published in a local newspaper of general circulation.

2. If only one qualified provider submits a proposal to provide the eligible public transportation service, and the proposal satisfies all requirements of the eligible applicant's request for proposals, the eligible applicant may negotiate a contract with that provider. The negotiated contract shall be subject to the department's approval.

3. If 2 or more qualified providers submit proposals to provide the eligible public transportation service and the proposals satisfy all requirements of the eligible applicant's request for proposals, the eligible applicant shall rank each provider on the criteria set forth in the request for proposals, and may negotiate a contract with the highest-ranking provider.

4. An eligible applicant shall establish an appropriate procedure for resolving bid proposal complaints and conflicts. The department shall consider procedural complaints or conflicts that include, but are not limited to, complaints that allege that established proposal evaluation procedures have not been followed. The department shall not review the substance of an eligible applicant's decision to select a particular service provider. This subdivision may not limit the department's authority to review an eligible applicant's actions or inactions under this section or under other state or federal law.

(d) Paragraph (c) applies only to eligible applicants filing applications due on or after November 15, 1988.

(2) The federal share of capital project costs shall not exceed 80% of eligible costs, except that the federal share of vehicle-related equipment required by the Clean Air Act or the Americans with Disabilities Act of 1990 may, at the department's discretion, be up to 90% of the net project cost of such equipment. The department shall establish the appropriateness of each capital expenditure. Where capital equipment is to be shared with parties not directly involved in the provision of the project service, the department will consider the equipment eligible for funding only if the applicant satisfactorily demonstrates that it will be used for the project service at least 50% of the available time. In such cases, the project cost shall be prorated according to the use percentage.

(3) No eligible applicant may use funds received from the United States department of transportation as part of its local contribution towards operating and capital project costs. This includes federal section 5311 operating assistance funds received in past calendar years.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; emerg. am. (1) (b) 1., 3., 4., and 6., eff. 2–12–85; am. (1) (b) 1., 3., 4., 6. and 7., Register, November, 1985, No. 359, eff. 12–1–85; am. (1) (a) and (b) 4., r. and recr. (1) (b) 2., cr. (1) (c) and (d), Register, December, 1987, No. 384, eff. 1–1–88; reprinted to restore dropped copy in (1) (b) (intro.), Register, May, 1988, No. 389; am. (1) (a), (c) 3. and (2), cr. (1) (b) 18., Register, October, 1989, No. 406, eff. 11–1–89; am. (1) (b) 12. and 17., (c) and (2), Register, January, 1993, No. 445, eff. 2–1–93; **CR 18–065: am. (1) (intro.), (a), (b) (intro.), 4., 6., 7., r. (1) (b) 16., am. (1) (b) 17., 18., cr. (1) (b) 19., am. (1) (c) 1. to 4., (2), cr. (3) Register October 2020 No. 778, eff. 11–1–20.**

Trans 6.04 Distribution of federal aids. (1) The state's annual apportionment of federal section 5311 funds shall be distributed as follows:

(a) Up to 10% will be reserved by the department for administrative and technical assistance purposes. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs and research the department deems appropriate to promote effective means of delivering public transportation services in rural and small urban areas. Any uncommitted balance of the state's apportionment of administrative funds from a preceding project year may be used during subsequent years until the balance is depleted.

(b) Apportionments are initially available for operating assistance grants to eligible applicants, but when combined with state s. 85.20, Stats., operating assistance funds are limited to the lesser of either the operating deficit or 65% of the total eligible

operating project costs. No city, village, or town may receive federal section 5311 funds to operate a municipal bus transportation system unless the system is approved by action of its governing body and by referendum vote of its electorate pursuant to s. 66.0803 (2) (a), Stats.

(c) Any balance remaining in the apportionment referred to in par. (b) after operating assistance limits are met under par. (b) shall be available to all eligible applicants for capital grants awarded in accordance with criteria set forth under s. Trans 6.06.

(d) Any balance remaining in the apportionment after capital assistance needs are met under par. (c) shall be available to all eligible applicants for operating assistance beyond the 65% limitation initially imposed in par. (b), not to exceed allowable limits under 49 USC 5311.

(e) Not less than 15% of the apportionment made available to the state shall be used for the development and support of intercity bus service. Eligible activities under this program may include planning and marketing, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers. This requirement is effective unless the governor certifies that the intercity bus service needs of the state are adequately being met.

(2) Any uncommitted balances of the state's apportionments or any unexpended balances from previous obligations shall be carried forward to the following year.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; emerg. am. (1) (c), eff. 2–12–85; emerg. am. (1) (c), eff. 6–5–85; am. (2), Register, November, 1985, No. 359, eff. 12–1–85; am. (1) (c), cr. (1) (d), Register, December, 1989, No. 408, eff. 1–1–90; emerg. r. (1) (b), renum. (1) (c) and (d) to be (1) (b) and (c) and am., cr. (1) (d), eff. 2–20–92; r. (1) (b), renum. (1) (c) and (d) to be (1) (b) and (c) and am., cr. (1) (d), Register, June, 1992, No. 438, eff. 7–1–92; cr. (1) (e) Register, January, 1993, No. 445, eff. 2–1–93; am. (1) (e), Register, July, 1996, No. 487, eff. 8–1–96; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675; **CR 18–065: am. (1) (intro.), (a), (b), (d), (e) Register October 2020 No. 778, eff. 11–1–20.**

Trans 6.05 Operating grants to rural and small urban areas. Subject to the limitations set forth in s. Trans 6.03 (1), the operating assistance funds available in s. Trans 6.04 (1) (b) and (d) shall be allocated among eligible applicants in proportion to each applicant's share of the projected operating project costs of all applications.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; emerg. am. eff. 2–20–92; am. Register, June, 1992, No. 438, eff. 7–1–92; **CR 18–065: am. (title) Register October 2020 No. 778, eff. 11–1–20.**

Trans 6.06 Capital grants. (1) When awarding capital assistance funds under s. Trans 6.04 (1) (c), the department shall consider the age and condition of items for which eligible applicants request funding, and the following funding hierarchy:

(a) Urgent capital needs that, based on available information, the department deems critical to transportation safety, operations, or asset management;

(b) Replacement of vehicles operated by existing systems;

(c) Projects to initiate a public transportation service;

(d) Replacement of maintenance and storage facilities of existing systems;

(e) Purchase of vehicles by existing systems for expansion of transit services;

(f) Expansion and rehabilitation of maintenance and storage facilities of existing systems;

(g) Purchase and installation of passenger amenities for existing systems such as shelters and bus stop signs;

(h) Capitalized maintenance projects for existing transit systems;

(i) Mobility management projects;

(j) Job access and reverse commute projects, except where the department evaluates these projects through a stand-alone process using a set-aside of section 5311 funds; and

(k) Other capital projects for which the use of section 5311 is permitted under 49 USC chapter 53.

(2) The department shall make awards until all allocated funds are committed. If available funds are not sufficient to fund all capital requests, then the department may, after consulting with applicants, reduce the scope or modify the timing of proposed projects to fit available funding.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. (1) (a), renum. (1) (b) to (g) to be (1) (a) to (f) and am. (1) (b), Register, November, 1985, No. 359, eff. 12-1-85; emerg. am. (1) (intro.), eff. 2-20-92; am. (1) (intro.), Register, June, 1992, No. 438, eff. 7-1-92; **CR 18-065: r. and recr. Register October 2020 No. 778, eff. 11-1-20; correction in (1) (a) made under s. 35.17, Stats., Register October 2020 No. 778.**

Trans 6.07 Application for federal aids. (1) Eligible applicants may apply to the department for federal section 5311 funds. If more than one local public body will financially participate in the project, one body shall submit a single application on behalf of all. In those cases, the federal aids received shall be allocated among all local public bodies in proportion to each one's share of eligible project costs.

(2) Applications shall be submitted to the department no later than December 15 of the year immediately preceding the project year. The department may accept revisions to a submitted application during the application review period. No application for operating assistance or capital assistance received after December 15 of the year immediately preceding the project year may be funded unless the department secretary determines that a later date is appropriate in order to properly respond to an emergency.

(3) The transit services receiving financial assistance may be operated for less than a calendar year.

(4) Applications shall be made in a manner and form prescribed by the department in accordance with governing federal regulations.

(5) All applicants shall submit their applications to the department's bureau of transit, local roads, railroads and harbors.

(7) The department reserves the right to reject applications for any of the following reasons:

(a) The proposed project is not consistent with the intent of the federal section 5311 program;

(b) Insufficient federal funds are available;

(c) The application is incomplete;

(d) The proposed project is not effective and efficient when compared to projects of a similar type. Such measures as the ratio of operating revenues to operating expenses, passengers per mile of service, operating expenses per passenger, and passengers per population served may be used to determine effectiveness and efficiency.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; emerg. am. (2) eff. 6-5-85; am. (2), Register, November, 1985, No. 359, eff. 12-1-85; am. (2), Register, December, 1987, No. 384, eff. 1-1-88; am. (2) and (5), Register, January, 1993, No. 445, eff. 2-1-93; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register March 2012 No. 675; corrections in (5), (6) made under s. 13.92 (4) (b) 6., Stats., Register February 2013 No. 686; **CR 18-065: am. (1) to (3), (5), r. (6), am. (7) (a), (b) Register October 2020 No. 778, eff. 11-1-20.**

Trans 6.08 Reporting requirements. All grant recipients 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 governing federal regulations. If the reports are not filed as required, the department may withhold grant payments due the recipient until the recipient's reports are filed as required.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; am. Register, January, 1993, No. 445, eff. 2-1-93.

Trans 6.09 Labor protection requirements. Each eligible applicant, through formal resolution by its governing body, shall assume all responsibility and liability for all labor protection requirements imposed by the federal government to implement section 13 (c) of the urban mass transportation act of 1964, as amended. The department shall not fund any applicant that fails to comply with this section.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84.

Trans 6.10 Property management and disposition.

(1) Grant recipients shall retain ownership of, and exercise continuing control over, equipment and facilities purchased with federal section 5311 funds throughout their useful life. Grant recipients shall ensure that equipment and facilities so purchased are maintained consistent with manufacturer instructions, sound asset management practices, and the terms of their grant agreements with the department.

(2) Grant recipients shall report on equipment and facilities purchased with federal section 5311 funds in a manner, format, and timeframe that the department specifies.

(3) Grant recipients shall request disposal instructions from the department when they are ready to dispose of any equipment or facilities purchased with federal section 5311 funds.

(4) Proceeds received from the disposition of equipment and facilities may be retained by the grant recipient subject to the provision of sub. (4m) below but shall be used for public transit purposes consistent with applicable federal transit administration guidelines, such as the following:

(a) To purchase additional capital equipment.

(b) To pay expenses of the operating assistance project.

(c) To pay the local share of capital assistance projects.

(d) To pay the local share of operating assistance projects.

(4m) For each disposition of a federally funded asset that generates proceeds in excess of \$5,000, the federal transit administration is due the federal share of the proceeds.

(5) Any use by the grant recipient of proceeds from the disposal of equipment or facilities requires prior approval of the department. Records shall be maintained by the grant recipient to permit tracking of the use made of the disposal proceeds.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. Register, October, 1989, No. 406, eff. 11-1-89; **CR 18-065: r. and recr. (1), (2), am. (3), (4) (intro.), cr. (4m), am. (5), r. (6) Register October 2020 No. 778, eff. 11-1-20.**

Trans 6.11 Federal aid grant agreements. No eligible applicant shall receive federal section 5311 funds without full execution of a grant agreement with the department, and continuing adherence to the terms therein.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; **CR 18-065: r. and recr. Register October 2020 No. 778, eff. 11-1-20.**