

Minnesota Attorney General: Administrative Rules Proceedings

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Our File: #608

ADMIN 1060 (Rev. 1/78)
SF-00005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RICHARD P. BRAUN
Commissioner
Department of Transportation

DATE: July 11, 1980

Attn: GILBERT S. BUFFINGTON

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Adoption of Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
cc: Duane Harves
Susan Robertson

Our File #608

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/24 DUE DATE 7/14

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 7/10 Date Sent Back to Agency 7/11

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 3.4.80
   Sufficiency ✓ but see HE 3 and 8(f) re Errata
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓ copy not submitted but see HE #2
   At least 30 days prior to hearing ✓ 1.28.80
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
    Notice of Error, SR. ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated in #15 - Order Adopting but see also agency's "Post-hearing Comments"
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓ A) 6.4.80
    ✓ B) 6.19.80
17. Order Approving Incorporation by Reference, where applicable ✓ incorporated in 16 B
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

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STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

IN THE MATTER OF THE ADOPTION OF)
RULES PERTAINING TO IMPLEMENTATION)
OF THE MINNESOTA RAIL SERVICE)
IMPROVEMENT PROGRAM)

ORDER ADOPTING
RULES AS AMENDED

The above-entitled matter came on for hearing before Hearing Examiner Harry Seymour Crump for the Department of Transportation on the 4th day of March, 1980, at 10:00 a.m. in the State Capitol Building, Room 125, and after proper notice required by Minn. Stat. §15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced, having made non-substantial changes pursuant to recommendations of the hearing examiner, having confirmed the need for the above captioned rules and the reasonableness thereof upon the record, files and proceedings herein and applicable statutory standards or criteria, and hereby specifically adopting the Findings of Fact, Conclusions and Recommendations of the hearing examiner.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Rail Service Improvement Program, as amended, are adopted this 19th day of June, 1980, pursuant to authority vested in me by Minn. Stat. §222.50, subd. 3(d) (1979 Supp.).

STATE OF MINNESOTA

for RICHARD P. BRAUN
Commissioner of Transportation

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Jerry Anderson
Special Assistant Attorney General
Department of Administration

DATE: July 10, 1980

FROM : Steve Buffington
Special Assistant Attorney General
515 Transportation Bldg. Office

PHONE: 6-6596

SUBJECT: Rules concerning implementation of the Minnesota Rail Service Improvement Program

Upon review of these rules as adopted, I noted that 14 MCAR 1.4001 E.1 contained a possible ambiguity inasmuch as the word "them" in the phrase "The railroad shall reimburse the rail users for funds loaned to them . . ." appears from the sense of the paragraph to refer to the railroad, but, being the plural pronoun, grammatically appears to refer to the rail users.

I further noted that the same use of the word "them" as applied to the railroad was used in 14 MCAR 1.4001 E.2 where the language "The railroad shall repay the commissioner for funds loaned to them . . ." appears.

The correct meaning in both paragraphs is that that word "them" refers to the railroad. You are authorized to change the word "them" to the word "it" to make the sense clear.

SB:jmr

RECEIVED
JUL 10 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

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MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM

Rules as ~~Proposed~~ Adopted

14 MCAR § 1.4000 General provisions.

A. Authority. The Commissioner of the Minnesota Department of Transportation is authorized to adopt rules necessary to carry out the provisions of "the Minnesota Rail Service Improvement Act" pursuant to Minn. Stat., 1979 Supp., § 222.50, subd. 3 (d). ~~(1979 Supp).~~

B. Purpose. The purpose of the Minnesota Rail Service Improvement Program and these rules is to improve rail service by providing state funds in a revolving account to be used in conjunction with funds from the Federal Rail Service Continuation Program for the establishment of contracts ~~according to certain guidelines~~ between the state, rail users, and railroads for rail line rehabilitation and other rail service improvement projects.

C. Definitions. The following terms as they appear in these rules shall have the following meanings:

1. "Act" means the Minnesota Rail Service Improvement Act, Minn. Stat., §§ ~~222.48~~ 222.46 -222.54.

2. "Bankrupt Railroad" means any railroad corporation which has filed a petition in the United States District Court stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a plan of reorganization, which petition has been approved by said United States District Court. ~~all within the meaning of 11 U.S.C. § 205(a).~~

3. "Capital Improvements" means the purchase, rehabilitation, construction or reconstruction of physical facilities

or equipment to improve rail service. Operating expenses are not considered capital improvements.

4. "Collateral" means the security pledged for the loan which ~~may~~ shall include ~~but is not limited to~~ land, buildings, machinery, equipment, furniture, fixtures, accounts receivable, marketable securities, cash surrender value of life insurance, ~~and~~ assignment of leases or leasehold interests~~,~~ and similiar kinds of property and property interests.

5. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

6. "Demonstration Project" means an experimental project to improve rail service that has general application within the state but is not traditionally associated with rail transportation.

7. "Department" means the Minnesota Department of Transportation.

8. "Federal Rail Service Continuation Program" means any federal program created under the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, as amended and as implemented by federal regulations.

9. "Loan" means interest-free money requiring repayment.

10. "Personal Guarantee" means an individual or corporate obligation to repay the loan.

11. "Rail Line" means railroad roadbeds, right-of-way, track structure and other appurtenances of railroad right-of-way~~,~~ including~~, but not limited to,~~ public-use sidings.

12. "Rail User" means any financially responsible shipper, consignor, consignee, or other entity, political subdivisions and their legal entities, that depend upon the movement

of goods by rail service and offer financial assistance in improving and maintaining that rail service.

13. "Railroad" means a common carrier by railroad as defined in § 1(3) of the Interstate Commerce Act, 49 U.S.C. § 1(3).

14. "Rail Rehabilitation" means the rebuilding of a rail line or portions thereof and/or the implementation of other allied projects that will improve rail service.

15. "State Rail Plan" means the plan prepared and adopted by the department as provided for in the act.

16. "State Rail Service Improvement Account" means the special revenue account created in the state treasury by the act.

17. "Subsidy Payments" means the payment for all costs incurred by a railroad which exceed the revenues obtained from operating the line when the line has been abandoned pursuant to Interstate Commerce Commission regulations, 49 CFR 1121. Said costs shall be computed according to Interstate Commerce Commission accounting procedures as set forth in 49 CFR 1121.

HE 13

see CHE A.2 and CHE B

18. For purposes of these rules, certain terms shall be interpreted as follows: The word "shall" is mandatory, not permissive; the word "may" is permissive.

14 MCAR §1.4001 Program criteria, rail rehabilitation.

A. Eligibility.

1. Rail line. A rail line, or portions thereof, ~~that does not meet Class II Track Safety Standards as defined by the Federal Railroad Administration;~~ upon which a train cannot operate safely at 25 miles per hour or that does not

have the required structural capacity to support rail cars of 263,000 pounds gross weight, and that is within the physical boundaries of or predominantly serves rail users in Minnesota, is eligible. ~~At the discretion of the commissioner,~~ rRail lines belonging to a bankrupt railroad requiring rehabilitation to allow continued service of statewide significance ~~may~~ shall HE IS also be eligible for funding.

2. Project. A rehabilitation project is eligible for funding if an agreement has been negotiated which meets the requirements of the act, these rules and, when federal funds are used, applicable federal laws and regulations.

B. Priority criteria. The following criteria shall be used to establish the priority of projects proposed for funding.

1. The availability of state and federal program funds.

2. The probability of the rail line continuing in profitable service after the project is completed.

3. The costs of the project compared to the benefits resulting from the project.

4. The level of commitment of a railroad and rail users to participate financially in the project.

5. The need for the line as part of the overall rail system.

C. Standards and phasing.

1. Rail line rehabilitation shall be performed to the extent that it allows the use of 263,000 pounds gross weight railroad cars and ~~meets Federal Railroad Administration Class II Track Safety Standards;~~ that it allows trains to operate safely at

HE 15

25 miles an hour or more. The commissioner ~~may~~ shall approve rehabilitation to a higher ~~Federal-Railroad-Administration Track-Safety-Standard~~ standard if it is necessary for providing a required level of service.

2. Rehabilitation may be accomplished in separate stages if the final result meets the standards of number 1., above.

D. Project funding.

1. For rail line rehabilitation and related projects on lines not ~~owned-by-bankrupt-railroads,~~ included in section D. 2. of this rule, the division of costs shall be by the following formula:

a. ~~The-commissioner-may-make-a~~ A grant or interest-free loan or combination thereof of state and federal funds shall be made by the commissioner of up to 90% of the total cost of a project. In no event shall the grant exceed 60% of the project cost.

HE 15

2 See HE 8(e)

b. Rail users shall loan the railroad a minimum of 10% of the cost of a project.

c. The railroad shall furnish a minimum of 20% of the cost of a project, and shall repay all loans from the rail users and the state.

2. If a rehabilitation project is on a rail line owned by a bankrupt railroad, previously owned by a bankrupt railroad, or a rail line has been abandoned under Interstate Commerce Commission regulations, 49 CFR 1121, the division of costs shall be by the following formula:

a. ~~The-commissioner-may-make-a~~ A grant or interest-free loan or combination thereof of state and federal funds shall be

HE 15

made by the commissioner of up to 90% of the total cost of a project. ~~In no event shall the grant exceed 60% of the project cost.~~ HE 8(f) + errata sheet

b. Rail users shall loan the railroad a minimum of 10% of the total cost of a project.

c. The railroad ~~may be required to~~ shall furnish a portion of the cost of the project if its financial circumstances permit and shall repay all loans from the rail users and the state.

3. In-kind participation. Participation in a contract by any party may include, ~~but not be limited to,~~ non-monetary contributions such as materials, labor, land or other kinds of contributions if agreed to by all parties ~~of~~ to the contract. The amount and fair market value of all in-kind participation shall be clearly defined in the contract.

E. Repayment requirements.

1. The railroad shall reimburse the rail users for funds loaned to ~~them~~ it in accordance with a formula based on usage of the line, or a pre-determined fixed amount. Repayments shall be made on a quarterly basis. The terms of repayment shall be sufficient so as to assure repayment in ten years or less.

2. The railroad shall repay the commissioner for funds loaned to ~~them~~ it at a pre-determined fixed amount on a quarterly basis. The repayment shall commence upon completion of the requirement to repay the rail users, and extend over a period not to exceed ten years.

3. The rehabilitation contract shall provide for an extension of time in the event of any cessation or reduction of service unless such cessation or reduction is the result of no demand for service.

14 MCAR § 1.4002 Program criteria - post abandonment rail line subsidy programs.

A. Eligibility. ~~If a~~ A rail line that is eligible for subsidy payments under the Federal Rail Service Continuation Program ~~it may also be considered~~ is eligible for funding under the Minnesota Rail Service Improvement Act.

B. Project funding.

1. The ~~commissioner may provide~~ combined state and federal operations subsidy payments ~~of~~ shall be (HE 15) up to 90% of the operational subsidy costs on those lines having priority for funding. In no event shall the state and federal operational subsidy payment exceed an amount equal to the amount of the railroad's retained revenue on the line.

Does this somehow put a limit on Fed funds

2. Rail users shall provide a minimum of 10% of the operational subsidy cost plus any other operational subsidy cost not covered by state and federal operational subsidy payments.

3. Rehabilitation which ~~may be~~ is (HE 15) eligible under federal regulations and which is performed in conjunction with operational subsidy payments, shall conform with 14 MCAR § 1.4001.

C. Priority criteria. The following criteria shall be used to establish the priority of projects eligible for subsidy payments:

1. The availability of state and federal funds.

2. The probability of the rail line becoming profitable upon completion of the project.

3. The costs of the project compared to the benefits resulting from the project.

4. The commitment of rail users to provide their share of the project funding.

14 MCAR § 1.4003 Program criteria - capital improvement projects.

A. Eligibility.

1. The commissioner ~~may~~ shall (HE IS) provide interest-free loans from the Minnesota Rail Service Improvement Account for up to 100% of the cost of a rail transportation related capital improvement project under the following conditions:

a. State funds are available.

b. The capital improvement is directly related to an overall rail line rehabilitation acquisition, or operational subsidy project.

c. The capital improvement project will strengthen the financial condition of the associated rail line.

d. The state's interests are protected by sufficient collateral or personal guarantees acceptable to the commissioner.

e. The commissioner shall be repaid for funds loaned at a pre-determined fixed amount payable quarterly over a period not to exceed ten years.

2. The commissioner ~~may~~ shall (HE IS) provide a grant from the Minnesota Rail Service Improvement Account of up to 50% of the total cost of a capital improvement project if said capital improvement is a demonstration project as defined in these rules, and if the following conditions are met:

a. State funds are available.

b. The project demonstrates unique methods of using rail service or alleviating the impact of abandoments that

is not in common usage throughout the rail industry or that has not been previously funded under this program.

c. The general likelihood that a similar project can be instituted in other locations without the need for public financing.

d. The project includes two or more participant rail users.

e. The benefits resulting from the project exceed the costs of implementing the project.

14 MCAR § 1.4004 Administration of the Minnesota Rail Service Improvement Program.

A. Provision of information. The railroad and rail users shall provide the commissioner any pertinent information necessary to achieve proper evaluation and adequate administration of any project under this program. Said information shall include ~~but not be limited to~~ HE 11 financial data, commodity data, cost data of the project, ~~and~~ operations information, and similar types of HE 11 data and information.

B. Contracts. Executed contracts shall be the documents used to commit funds and implement projects. Contracts shall include ~~but not be limited to~~ HE 11 the following items:

1. The description of and the location of the project.

2. The appropriate plans, standards, specifications, estimated costs, work schedule and completion date.

3. The level of service the railroad will provide during the effective rehabilitation or operations subsidy period, pursuant to applicable Interstate Commerce Commission regulations.

4. Assurances by the railroad that rail line maintenance will be performed during the period of operational subsidy or rehabilitation contract.

5. Provisions for auditing by the commissioner.

6. The requirement to comply with all applicable federal regulations when federal funding is involved in the project.

7. The duration of the contract.

8. Maintenance and availability of records and audits.

9. Payment and repayment schedules when appropriate.

10. The amount of funds and any in-kind participation by each party.

11. Method of administering the contract.

12. A provision for appropriate recapture of state and federal funds.

C. Exceptions. In the event of unusual circumstances, exceptions to these rules ~~may~~ HE5 shall be made for any particular contract if agreed to by all parties. No exception shall be made if such exception would preclude the equal treatment of competing projects.

14 MCAR § 1.4005 Disclosure of information concerning railroad data.

A. Confidential information defined. Information is deemed to be confidential for the purpose of these rules when the information collected contains shipping data or commercial or financial information which is required to be kept confidential by the provisions of 49 U.S.C. § 11910~~.~~, which reads as follows:

PER CHE A P 5

49 U.S.C. § 11910. Unlawful disclosure of information

(a)(1) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowlingly discloses to another person, except the shipper or consignee, or a person who solicits or knowlingly receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this subtitle without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than $1,000.

(2) A motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not knowlingly disclose to another

person, except the shipper or consignee, and another person may not solicit, or knowlingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this subtitle without the consent of the shipper or consignee if that information may be used to the detriment of the shipper of consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(3) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title, or an officer, receiver, trustee, lessee, agent, or employee of that carrier, or another person authorized by that carrier or person to receive information from that carrier, that knowlingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowlingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the

business transactions of the shipper or consignee, shall be fined not more than $2,000. Trial in the judicial district in which any part of the violation is committed.

(4) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title, or an officer, agent, or employee of that freight forwarder, or another person authorized by that freight forwarder, or person to receive information, who knowlingly and willfully discloses to another person, except the shipper or consignee, or a person that solicits or knowlingly and willfully receives (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that forwarder for service provided under that subchapter without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than $100 for the first violation and not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

(b) This subtitle does not prevent a carrier or broker providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title from giving information --

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(c) An employee of the Commission delegated to make an inspection or examination under section 11144 of this title who knowlingly discloses information acquired during that inspection or examination, except as directed by the Commission, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

B. Provision of information.

1. The commissioner shall direct all requests for information under the authority of the act to the corporate office of the railroad company. Such requests shall specify the kind of information, the level of detail, the format to be used, and the required date of submittal.

2. Within 20 days from the receipt of the request, the railroad company may if necessary apply for a revision of the time schedule for preparing the information. The commissioner shall approve or disapprove such revision requests within 20 days of the receipt of such requests.

3. If the requested information is not received within the time schedule, the commissioner may make a final demand. The final demand shall be in writing and sent by certified mail to the corporate office of the railroad company. If the information is not received within 60 days of the receipt of the final demand, the commissioner may issue a subpoena to compel production of the information.

~~4.---If the provision of required information results in substantial and unusual costs for the railroad company, it may petition the commissioner for reimbursement of such costs in conjunction with providing the information.---Cost shall not be a legitimate reason for refusing information.~~ deletion per CHE A.6

C. Use of confidential railroad data. Railroad data entrusted to the department will be used only by department personnel or the authorized agents of the department to implement the purpose set forth in the act.

D. Release of information. Information intended for the restricted use of department personnel will be furnished to persons outside the department only in the following circumstances:

1. The railroad gives written approval to the commissioner to make the information public.

2. The information has already been made public by the action of the railroad or other public authority.

3. The information is aggregated at a sufficient level to obscure the shipping information specific to any individual rail user.

APPROVED AS TO FORM AND LEGALITY

JUL 10 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry S. Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 11 1980
Joan Anderson Growe
Secretary of State

9:45 PM

ERRATA

#3

There are two (2) errors in the text of the proposed amendments to the Minnesota Rail Service Improvement Program. First, on page 7, under 2.a., the sentence "In no event shall the grant exceed 60% of the project cost." should be deleted. Second, on page 11, under E.1., the last two (2) lines on the page should read as follows: ~~generally the same basis as the rail user or as agreed upon in the~~ contract.

Amendments as Proposed

14 MCAR & 1.4000 General Provisions.

A. Authority. The ~~State-Planning-Ageney~~ Commissioner of the Minnesota Department of Transportation is authorized to adopt rules ~~and-regulations~~ necessary to carry out the provisions of "the Minnesota Rail Service Improvement Act" pursuant to ~~Laws of-1976,-ch.-204,-§-5.~~ Minn. Stat., 1979 Supp., § 222.50, subd. 3 (d).

B. Purpose. The purpose of the Minnesota Rail Service Improvement Program and these ~~regulations~~ rules is to improve rail service by providing state funds in a revolving account to be used in conjunction with funds from the Federal Rail Service Continuation Program for the establishment of contracts between the State, rail users, and railroads for ~~rehabilitating-needed rail-lines~~ rail line rehabilitation and other rail service improvement projects.

C. Definitions. The following terms as they appear in these rules ~~and-regulations~~ shall have the following meanings:

1. "Act" means the Minnesota Rail Service Improvement Act, ~~Laws-of-1976,-ch.-204,-§-5.~~ Minn. Stat., § 222.48 - 222.54.

~~2.---"Ageney"-means-the-Minnesota-State-Planning-Ageney.~~

2. "Bankrupt Railroad" means any railroad corporation which has filed a petition in the United States District Court stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a plan of reorganization, which petition has been approved by said United States District Court, all within the meaning of 11 U.S.C. § 205(a).

3. "Capital Improvements" means the purchase, rehabilitation, construction or reconstruction of physical facilities or equipment to improve rail service. Operating expenses are not considered capital improvements.

4. "Collateral" means the security pledged for the loan which may include but is not limited to land, buildings, machinery, equipment, furniture, fixtures, accounts receivable, marketable securities, cash surrender value of life insurance, and assignment of leases or leasehold interests.

5. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

6. "Demonstration Project" means an experimental project to improve rail service that has general application within the State but is not traditionally associated with rail transportation.

7. "Department" means the Minnesota Department of Transportation.

8. "Federal Rail Service Continuation Program" means any Federal program created under the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, as amended and as implemented by Federal Regulations.

9. "Loan" means interest-free money requiring repayment.

10. "Personal Guarantee" means an individual or corporate obligation to repay the loan.

~~3.~~ 11. "Rail Line" means railroad roadbeds, right-of-way, track structure and other appurtenances of railroad right-of-way, including, but not limited to public-use sidings.

~~5.~~ 12. "Rail User" means any financially responsible shippers, consignors, consignees, or other ~~entities~~ entity,

~~including~~ political subdivisions ~~of the state or legal organizations of such entities,~~ and their legal entities, that depend upon the movement of goods by rail service and ~~that~~ offers financial assistance in ~~maintaining or improving that rail service~~ improving and maintaining that rail service.

~~4.~~ 13. "Railroad" means a common carrier by railroad as defined in Section 1(3) of the Interstate Commerce Act, 49 U.S.C. § 1(3).

14. "Rail Rehabilitation" means the rebuilding of a rail line or portions thereof and/or the implementation of other allied projects that will improve rail service.

~~6. "Rehabilitation" means reconstructing a rail line or portions thereof in order to improve rail service or to construct a new rail line to replace the existing one.~~

~~7. "Rehabilitation Program" means the program for providing state funds for establishing contracts to rehabilitate rail lines as provided for in the Act.~~

~~8.~~ 15. "State Rail Plan" means the plan prepared and adopted by the ~~Agency~~ Department as provided for in the Act.

~~9.~~ 16. "State Rail Service Improvement Account" means the special revenue account created in the State treasury by the Act.

17. "Subsidy Payments" means the payment for all costs incurred by a railroad which exceed the revenues obtained from operating the line when the line has been abandoned pursuant to Interstate Commerce Commission regulations, 49 CFR 1121. Said costs shall be computed according to Interstate Commerce Commission accounting procedures as set forth in 49 CFR 1121.

~~10.~~ 18. For purposes of these ~~regulations~~ rules, certain terms ~~of words~~ shall be interpreted as follows: The word "shall" is mandatory, not permissive; the word "may" is permissive.

14 MCAR §1.4001 Program Criteria~~.~~, Rail Rehabilitation.

A. Eligibility.

1. Rail line. A rail line, or portions ~~of the rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more, and if it is within the physical boundaries of Minnesota or predominantly serves rail users in Minnesota.~~ thereof, that does not meet Class II Track Safety Standards as defined by the Federal Railroad Administration, or that does not have the required structural capacity to support rail cars of 263,000 pounds gross weight, and that is within the physical boundaries of or predominantly serves rail users in Minnesota, is eligible. At the discretion of the Commissioner, rail lines belonging to a bankrupt railroad requiring rehabilitation to allow continued service of statewide significance may also be eligible for funding.

2. Project. ~~A rail project is eligible for funding if it has both a responsible rail user and a railroad that are willing to enter into a contract for rehabilitation according to guidelines set down in these rules and regulations.~~ A rehabilitation project is eligible for funding if an agreement has been negotiated which meets the requirements of the Act, these rules and, when Federal funds are used, applicable Federal laws and regulations.

~~6.~~ B. Priority criteria. The following criteria shall be used to establish the priority of projects proposed for funding. ~~until such time as the State Rail Plan, as prepared by the Agency is completed and approved of in formal hearings. At such time, the priority criteria identified in the State Rail Plan shall take effect. Until such time, higher priority shall be given to projects that:~~

~~1. have a higher committed nonstate share of project costs~~

~~2. have greater potential traffic volume per mile of track~~

~~3. have greater potential of repaying the rehabilitation costs~~

~~4. have less available alternative transportation facilities~~

1. The availability of State and Federal program funds.

2. The probability of the rail line continuing in profitable service after the project is completed.

3. The costs of the project compared to the benefits resulting from the project.

4. The level of commitment of a railroad and rail users to participate financially in the project.

5. The need for the line as part of the overall rail system.

~~D.~~ C. Standards and phasing.

~~1. Operation. Railroad service shall be provided by the railroad to adequately meet the needs of the rail users~~

~~within-the-constraints-of-Interstate-Commerce-Commission-(ICC)-regulatory-requirements-and-operational-limitations.--The-Agency-or-rail-users-may-bring-a-complaint-before-the-ICC-to-force-the-provision-of-adequate-service.--The-contract-shall-stipulate-a-desired-level-of-service-on-the-rehabilitated-line-during-the-effective-period-of-the-contract.~~

1. Rail line rehabilitation shall be performed to the extent that it allows the use of 263,000 pounds gross weight railroad cars and meets Federal Railroad Administration Class II Track Safety Standards. The Commissioner may approve rehabilitation to a higher Federal Railroad Administration Track Safety Standard if it is necessary for providing a required level of service.

2. Rehabilitation may be accomplished in separate stages if the final result meets the standards of number 1., above.

~~B.~~ D. Project funding.

~~1.--The-Agency-may,-within-program-fund-limitations,-provide-eligible-projects-with-up-to-two-thirds-of-the-total-amount-of-the-contract.--The-extent-of-state-participation-shall-be-determined-by-the-Agency-according-to-the-following-factors:~~

~~a.---the-ability-of-a-railroad-and-rail-users-to-participate-financially-in-the-project.~~

~~b.---the-probability-of-the-line-profiting-over-a-long-period-of-time.~~

~~c.---the-probable-social-and-economic-impact-on-communities,-regions,-and-state-if-the-rehabilitation-is-not-carried-out.~~

~~d.---the-availability-of-state-program-funds.~~

1. For rail line rehabilitation and related projects on lines not owned by bankrupt railroads, the division of costs shall be by the following formula.

a. The Commissioner may make a grant or interest-free loan or combination thereof of State and Federal funds of up to 90% of the total cost of a project. In no event shall the grant exceed 60% of the project cost.

b. Rail users shall loan the railroad a minimum of 10% of the cost of a project.

c. The railroad shall furnish a minimum of 20% of the cost of a project, and shall repay all loans from the rail users and the State.

~~2.--Rail-users-shall-provide-a-minimum-of-one-third-and and-may-provide-up-to-two-thirds-of-the-total-contract-amount. Railroad-participation-may-be-up-to-two-thirds-of-the-total-contract-amount.--Railroad-participation-may-be-up-to-two-thirds of-the-toal-contract-amount.~~

2. If a rehabilitation project is on a rail line owned by a bankrupt railroad the division of costs shall be by the following formula:

a. The Commissioner may make a grant or interest free loan or combination thereof of State and Federal funds up to 90% of the total cost of a project. ~~In no event shall the grant exceed 60% of the project cost.~~ deleted - see errata + HE 8(f)

b. Rail users shall loan the railroad a minimum of 10% of the total cost of a project.

c. The railroad may be required to furnish a portion of the cost of the project and shall repay all loans from the rail users and the State.

3. In-kind participation. Participation in a contract by any party may include, but not be limited to, non-monetary contributions such as materials, labor, land or other contributions if agreed ~~of~~ to by all parties to the contract. The amount and fair market value of all in-kind participation shall be clearly ~~set-out~~ defined in the contract.

~~E.--Rehabilitation.--Rail-rehabilitation-shall-be carried-out-to-the-extent-that-it-allows-the-use-of-263,000 pound-gross-weight-railroad-cars-and-meets-Federal-Railroad Administration,-Class-II,-Track-Safety-Standards.--The-state shall-not-participate-in-contracts-that-allow-for-less-than the-above-standards-and-shall-not-contribute-to-the-additional cost-of-rehabilitating-the-line-in-excess-of-these-standards.~~

E. Repayment requirements.

1. The railroad shall reimburse the rail users for funds loaned to them in accordance with a formula based on usage of the line, or a pre-determined fixed amount. Repayments shall be made on a quarterly basis. The terms of repayment shall be sufficient so as to assure repayment in ten years or less.

2. The railroad shall repay the Commissioner for funds loaned to them at a pre-determined fixed amount on a quarterly basis. The repayment shall commence upon completion of the requirement to repay the rail users, and extend over a period not to exceed ten years.

3. The rehabilitation contract shall provide for an extension of time in the event of any cessation or reduction of service unless such cessation or reduction is the result of no demand for service.

14-MCAR-1.4002-Program-administration

A.---Applications.

1.---Railroad-applications.--Applications-from-railroads-shall-include.

a.---a-description-of-the-rehabilitation-project proposed,-including-the-extent-of-rehabilitation-proposed.

b.---the-estimated-cost-of-rehabilitation

c.---the-amount-of-traffic-on-the-line

d.---present-and-projected-operational-and-maintenance-costs

e.---present-and-projected-revenues-attributed-to the-railroad-from-shipments-on-the-line

f.---a-list-of-the-shippers-and-receivers-on-the line

g.---the-amount-of-funding-the-applicant-is-prepared to-invest-in-the-project.

2.---Rail-user-applications.--Applications-for-rehabilitation-from-rail-users-shall-include.

a.---a-description-of-the-project-proposed

b.---the-amount-of-traffic-on-the-line

c.---the-amount-of-potential-traffic-on-the-line

d.---the-amount-of-shipping-done-by-truck

e.---the-rates-for-both-truck-and-rail-shipping

f.---a-list-of-shippers-and-receivers-on-the-line

g.---the-amount-of-funds-the-rail-users-on-the-line are-prepared-to-contribute-to-the-project

3.---The-Agency-may-provide-application-forms-and-may

~~request-further-information-from-an-applicant-or-other-potential parties-to-the-contract-to-aid-in-the-establishment-of-eligibility and-priority.~~

~~B.---Determination-of-eligibility.--Upon-receipt-of-application and-all-required-information,-the-Agency-shall-determine-whether or-not-a-line-is-eligible.--The-Agency-shall-then-contact-the-other potential-party-to-the-contract-to-determine-whether-that-party is-willing-to-participate-in-a-rehabilitation-project,-and-if-so to-what-extent.--If-there-is-a-rail-user,-a-railroad,-and-the state,-prepared-to-enter-into-a-contract-and-if-the-proposed amount-of-funds-equals-the-total-project-cost-and-all-other requirements-are-met,-the-project-shall-be-declared-eligible and-a-priority-ranking-made.~~

~~C.---Priority-ranking.--Priority-ranking-shall-be-based-on criteria-identified-in-14-MCAR-§1.4001-D.-of-these-rules-and regulations.--Information-requested-and-not-received-or-not arranged-for-within-30-days-of-the-request-may-be-considered adequate-reason-for-the-elimination-of-the-project-from-consid-eration-for-funding.~~

~~D.---Contract.~~

~~1.---Contracts-for-rehabilitation-projects-may-include but-may-not-necessarily-be-limited-to-the-following-provisions:~~

~~a.---the-specific-portions-of-trackage-and-rail line-to-be-rehabilitated~~

~~b.---the-level-of-rehabilitation-to-be-done~~

~~c.---the-plans,-specifications,-and-estimates-of materials,-cost,-and-time~~

~~d.---the-amount-of-funds,-or-other-items-of value-to-be-contributed-by-each-party-to-contract~~

e.---set-a-desirable-level-of-service-to-be-provided-on-the-rehabilitated-line-during-the-contract-effective period

f.---assurance-that-maintenance-shall-be-performed on-the-line-by-the-railroad

g.---method-of-administering-the-contract

h.---schedule-for-the-repayment-of-funds-to-the rail-users-and-the-state

i.---maximum-length-of-the-contracts

j.---maintenance-of-records-and-audits

k.---other-special-features-of-the-contract

2.---Projects-shall-be-processed-and-negotiated-in-order of-priority-ranking.--Projects-that-are-not-finalized-within-a reasonable-period-of-time-as-judged-by-the-Agency-may-be-bypassed and-the-next-lower-project-negotiated-and-funded.

E.---Repayment-requirements.--The-railroad-shall-reimburse a-rail-user-for-funds-it-has-contributed-to-a-project-based-on-a repayment-schedule-of-dollars-per-carload-of-freight-shipped. The-reimbursement-which-shall-be-paid-at-regular-intervals shall-be-based-on-the-total-number-of-railroad-cars-shipped-by rail-user-until-full-payment-is-made.--The-railroad-shall-reimburse-the-state-for-funds-it-has-contributed-to-the-project-in the-following-manner.

1.---State-funds-that-are-contributed-and-which-are-in excess-of-one-third-of-the-total-contract-amount-shall-be-repaid directly-upon-the-completion-of-repayment-of-the-rail-user-and-on generally the same basis as the rail-user-the-amount-of-funds,-or-other-item value-to-be-contributed-by-each-party-to-contract

2.---State-funds-contributed-up-to-one-third-of-the total-contract-amount-shall-be-repaid-from-revenues-received from-traffic-on-the-line-which-exceeds-the-traffic-on-the-line for-the-average-of-the-three-years-prior-to-rehabilitation.--Repayment-of-this-amount-shall-start-upon-completion-of-repayment of-rail-user-funds-and-state-funds-in-excess-of-one-third-of-the total-contract-amount.

F.---Length-of-contract.--The-term-of-the-contract-shall-be long-enough-to-allow-for-the-repayment-of-all-funds-in-the-contract based-on-a-reasonable-projection-of-potential-traffic-levels.--State contributed-funds-not-repaid-by-the-time-the-contract-expires-shall be-forgiven.--The-contract-shall-be-extended-in-the-event-of,-and for-as-long-as,-any-cessation-of-service-for-any-reason-or-any reduction-of-service-below-desirable-service-level-as-provided in-the-contract-unless-such-reduction-in-service-is-the-result-of no-demand-for-service.

G.---Separate-railroad-account.--A-railroad-may-be-permitted to-establish-and-maintain-a-separate-railroad-fund-to-be-used exclusively-for-rehabilitation-of-its-other-rail-lines-in-Minnesota if-the-railroad-can-give-good-cause,-such-as-legal-prohibition against-repayment,-for-not-making-repayment-to-the-State-Rail Service-Improvement-Account.--Funds-in-such-separate-railroad may-only-be-utilized-by-the-railroad-for-eligible-projects-as described-in-paragraph-14-MCAR-§1.4001-A.2.-of-these-rules,-and only-if-such-eligible-project-would-have-been-funded-at-that-time from-the-State-Rail-Service-Improvement-Account-as-determined-by the-State-Planning-Agency.--The-Agency-may-require-a-railroad-to deposit-or-invest-the-funds-according-to-the-instructions-of-the-

~~Agency and to deposit all interest and earnings received on such funds into the separate railroad account. A railroad which has funds in spearate railroad accounts but which does not have eligible lines to upgrade may return those funds to the State Rail Service Improvement Account as a gift.~~

~~H. Program implementation. The Agency may receive applications at any time. On January 1, 1977, the Agency shall make a determination of eligibility of lines and projects and establish a priority for those projects which are eligible for funding. In the event that new appropriations are made to the program or that funds remain after the disposition of already approved projects, the Agency may make public notice, set a new application deadline date, and make a new priority ranking of eligible applications received.~~

~~I. Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular rehabilitation contract if agreed to by all parties. No exception shall be made if such exception would be contrary to the intent of the program or if such exception would preclude the equal treatment of competing projects.~~

14 MCAR § 1.4002 Program Criteria - Post Abandonment Rail Line Subsidy Programs.

A. Eligibility. If a rail line is eligible for subsidy payments under the Federal Rail Service Continuation Program it may also be considered eligible for funding under the Minnesota Rail Service Improvement Act.

B. Project funding.

1. The Commissioner may provide combined State and Federal operations subsidy payments of up to 90% of the

operational subsidy costs. In no event shall the State and Federal operational subsidy payment exceed an amount equal to the amount of the railroad's retained revenue on the line.

2. Rail users shall provide a minimum of 10% of the operational subsidy cost plus any other operational subsidy cost not covered by State and Federal operational subsidy payments.

3. Rehabilitation which may be eligible under Federal regulations and which is performed in conjunction with operational subsidy payments, shall conform with 14 MCAR § 1.4001.

C. Priority criteria. The following criteria shall be used to establish the prority of projects eligible for subsidy payments:

1. The availability of State and Federal funds.

2. The probaility of the rail line becoming profitable upon completion of the project.

3. The costs of the project compared to the benefits resulting from the project.

4. The commitment of rail users to provide their share of the project funding.

14 MCAR § 1.4003 Program Criteria - Capital Improvement Projects.

A. Eligibility.

1. The Commissioner may provide interest-free loans from the Minnesota Rail Service Improvement account for up

to 100% of the cost of a rail transportation related capital improvement project under the following conditions:

a. State funds are available.

b. The capital improvement is directly related to an overall rail line rehabilitation acquisition, or operational subsidy project.

c. The capital improvement project will strengthen the financial condition of the associated rail line.

d. The State's interests are protected by sufficient collateral or personal guarantees acceptable to the Commissioner.

e. The Commissioner shall be repaid for funds loaned at a pre-determined fixed amount payable quarterly over a period not to exceed ten years.

2. The Commissioner may provide a grant from the Minnesota Rail Service Improvement account of up to 50% of the total cost of a capital improvement project if said capital capital improvement is a demonstration project as defined in these rules, and if the following conditions are met:

a. State funds are available.

b. The project demonstrates unique methods of using rail service or alleviating the impact of abandonments that is not in common usage throughout the rail industry or that has not been previously funded under this program.

c. The general likelihood that a similar project can be instituted in other locations without the need for public financing.

d. The project includes two or more participant rail users.

e. The benefits resulting from the project exceed the costs of implementing the project.

14 MCAR § 1.4004 Administration of the Minnesota Rail Service Improvement Program.

A. Provision of information. The railroad and rail users shall provide the Commissioner any pertinent information necessary to achieve proper evaluation and adequate administration of any project under this program. Said information shall include but not be limited to financial data, commodity data, cost data of the project and operations information.

B. Contracts. Executed contracts shall be the documents used to commit funds and implement projects. Contracts shall include but not be limited to the following:

1. The description of and the location of the project.

2. The appropriate plans, standards, specifications, estimated costs, work schedule and completion date.

3. The level of service the railroad will provide during the effective rehabilitation or operations subsidy period, pursuant to applicable Interstate Commerce Commission regulations.

4. Assurances by the railroad that rail line maintenance will be performed during the period of operational subsidy or rehabilitation contract.

5. Provisions for auditing by the Commissioner.

6. The requirement to comply with all applicable Federal regulations when Federal funding is involved in the project.

7. The duration of the contract.

8. Maintenance and availability of records and audits.

9. Payment and repayment schedules when appropriate.

10. The amount of funds and any in-kind participation by each party.

11. Method of administering the contract.

12. A provision for appropriate recapture of State and Federal funds.

C. Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular contract if agreed to by all parties. No exception shall be made if such exception would preclude the equal treatment of competing projects.

14 MCAR § 1.4005 Disclosure of Information Concerning Railroad Data.

A. Confidential information defined. Information is deemed to be confidential for the purpose of these rules when the information collected contains shipping data or commercial or financial information which is required to be kept confidential by the provisions of 49 U.S.C. § 11910.

B. Provision of information.

1. The Commissioner shall direct all requests for information under the authority of the Act to the corporate office of the railroad company. Such requests shall specify the kind of information, the level of detail, the format to be used, and the required date of submittal.

2. Within 20 days from the receipt of the request, the railroad company may if necessary apply for a revision of the time schedule for preparing the information. The Commissioner shall approve or disapprove such revision requests within 20 days of the the receipt of such requests.

3. If the requested information is not received within the time schedule, the Commissioner may make a final demand. The final demand shall be in writing and sent by certified mail to the corporate office of the railroad company. If the information is not received within 60 days of the receipt of the final demand, the Commissioner may issue a subpoena to compel production of the information.

4. If the provision of required information results in substantial and unusual costs for the railroad company, it may petition the Commissioner for reimbursement of such costs in conjunction with providing the information. Cost shall not be a legitimate reason for refusing information.

C. Use of Confidential Railroad Data. Railroad data entrusted to the Department will be used only by Department personnel or the authorized agents of the Department to implement the purpose set forth in the Act.

D. Release of information. Information intended for the restricted use of Department personnel will be furnished to persons outside the Department only in the following circumstances:

1. The railroad gives written approval to the Commissioner to make the information public.

2. The information has already been made public by the action of the railroad or other public authority.

3. The information is aggregated at a sufficient level to obscure the shipping information specific to any individual rail user.

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EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed)
Adoption of Amendments to Rules)
Pertaining to Implementation of)
the Minnesota Rail Service)
Improvement Program)

POST-HEARING
COMMENTS

INTRODUCTION

This memorandum is submitted by the Minnesota Department of Transportation (MnDOT) in support of the adoption of the amendments to the rules implementing the Minnesota Rail Service Improvement Program (MRSI). These comments are intended as substantive evidence regarding the rule amendments and should be considered as such along with the exhibits, testimony and other evidence that has been introduced in this proceeding.

The primary purpose of this memorandum is to respond to the questions of the Hearing Examiner regarding various areas of the rule amendments. MnDOT appreciates the opportunity to respond and the Hearing Examiner's frankness in pointing out his questions about the rule amendments.

Before proceeding to specific areas, it is important to note that the MRSI program is intended to work in conjunction with the Federal Rail Service Continuation Program. This connection is recognized in the enabling legislation and in the rule amendments. The ultimate purpose of both programs is to restore and revitalize the railroad industry by providing funds for restoration of line, capital improvements and, to a more limited extent, operational funding.

The existence of both federal and state programs is essential to Minnesota since much of the funding for the program comes from the federal government. However, this does add a certain degree of complexity to the program since Minnesota must comply with Federal statute and regulations to gain access to these federal funds. In addition, MnDOT in a practical sense administers both the federal and the state programs. Thus, most decisions by MnDOT must consider both federal and state law. See 49 U.S.C.A. § 801-854 (Supp. 1979).

With this brief background, it is easy to see that the rule amendments to the MRSI program are in almost all cases intended to mesh with the federal format. Thus, frequent reference to federal law and regulation will be made in these comments.

COMMENTS

A. All criteria for implementation of the state program are present in the rules.

At the conclusion of the hearing, the Examiner asked Mr. Selness whether all the criteria for decisions under the state program were included in the rules. Mr. Selness, the Chief of the Railroad Development Section of MnDOT, indicated that all criteria were stated within the rules. Obviously, Mr. Selness as the person responsible for the MRSI program since its creation is in the best position to make that determination and has done so correctly. His testimony can be readily confirmed by reference to the Minnesota Rail Plan, exhibit #13, which sets forth the goals and plan by which MnDOT intends to provide railroad funding. The rule amendments have

been prepared with the Plan in mind and the criteria stated in the rule amendments follow the Plan almost exactly. In fact, all areas vital to decisionmaking in the Plan are covered in the rule amendments.

B. The second sentence of the definition of "Subsidy payments" in proposed 14 MCAR § 1400 c. 17 is not intended as an incorporation by reference

The Hearing Examiner inquired as to the intent of the second sentence of 14 MCAR § 1.400 c. 17. That definition provides as follows:

> 17. "Subsidy Payments" means the payment for all costs incurred by a railroad which exceed the revenues obtained from operating the line when the line has been abandoned pursuant to Interstate Commerce Commission regulations, 49 CFR 1121. Said costs shall be computed according to Interstate Commerce Commission accounting procedures as set forth in 49 CFR 1121.

In considering the question of whether this is an incorporation by reference it is important to understand the operation of the operational subsidy program established in 14 MCAR 1.4002, as that section indicates a rail line is only eligible to be considered by MnDOT if it has already qualified for federal funding. This is in accord with the legislative direction stated in Minn. Stat. § 222.50, subd. 6 and 222.53 (Supp. 1979).

The federal portion of the subsidy payment is controlled by 49 CFR 1121. In the federal program subsidy payments are also defined as the excess of costs over revenue on an abandoned line. For calculating eligible costs the federal program sets up a number

of guidelines which are stated in 49 CFR 1121. As a practical matter the state program can only fund 50% of the non-federal share of those costs. Minn. Stat. § 222.50, subd. 6 (Supp. 1979). Thus, the federal determination provides the base from which the Minnesota program begins. The second sentence of the definition of Subsidy Payment, 14 MCAR 1.4000 c. 17 is simply a recognition of that fact. It is not intended as an incorporation of the federal rules on this subject but solely to apprise the program participants of these rules for calculation.

In addition, it should be recognized that MnDOT administers the federal portion of the subsidy program. In accomplishing that administration, MnDOT follows the federal regulations and is therefore intimately aware of the base of subsidy from which it is working.

While MnDOT does not believe that the reference to 49 CFR 1121 in the second sentence of the definition of Subsidy Payment is an incorporation by reference, it has no objection to a change in language which would make that clear.

C. The references to the Federal Railroad Administration Class II Track Safety Standards in 14 MCAR 1.4001A.1 and C.1 are not amendments to the rule

The Hearing Examiner inquired whether the references to the Federal Railroad Administration Class II Track Safety Standards (Class II Standards) in 14 MCAR § 1.4001 A.1 and C.1 are incorporations by reference which constitute changes in the rule. As a comparison of the existing rule and the proposed amendments

indicates the reference to the Class II Standards are not part of the proposed amendments to the rules. While the references have been reorganized somewhat, their use in the program is exactly the same. Therefore, they do not constitute an amendment and need not have been put through the prior approval process of Minn. Stat. § 15.0412, subd. 4 (1978).

The first reference to the Class II Standards occurs in the first sentence of 14 MCAR 1.4001 A.1 which in its proposed amended forms reads as follows:

> 1. Rail line. A rail line, or portions thereof, that does not meet Class II Track Safety Standards as defined by the Federal Railroad Administration, or that does not have the required structural capacity to support rail cars of 263,000 pound gross weight, and that is within the physical boundaries of or predominantly serves rail users in Minnesota, is eligible.

The provision which it is intended to replace is existing 14 MCAR 1.4001A.1 which reads as follows:

> 1. Rail line. A rail line, or portions of the rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more; and if it is within the physical boundaries of Minnesota or predominantly serves rail users in Minnesota.

As can be readily seen the changes in this portion of the rule are minor and syntactical. The Class II Standards are used in exactly the same manner and for the same purpose. While for the sake of convenience MnDOT has underlined the whole provision, only a

few words are actually changed. It is, of course, only the changes which are the subject of the hearing and they do not relate to the Class II Standards.

The second reference to Class II Standards occurs in the first sentence of 14 MCAR 1.4001 C.1 which states as follows in its proposed amended form:

> 1. Rail line rehabiliatation shall be performed to the extent that it allows the use of 263,000 pounds gross weight railroad cars and meets Federal Railroad Administration Class II Track Safety Standards.

This must be compared with the first sentence of existing 14 MCAR 1.4001E which states as follows:

> E. Rehabilitation. Rail rehabilitation shall be carried out to the extent tht it allows the use of 263,000 pound gross weight railroad cars and meets Federal Railroad Administration, Class II Track Safety Standards. The state shall not particpate in contracts that allow for less than the above standards and shall not contribute to the additional cost of rehabilitating the line in excess of these standards.

As is evident the two provisions are identical. The reference in E has simply been moved to C.1 with the same effect and usage. The reorganization occurs within the same program and has no substantive effect on the requirements except to make them better organized and more understandable.

Finally, the Class II standards have not changed since the original adoption of the MRSI rules in 1977. MnDOT intends to continue to use those standards in conjunction with the MRSI program as they existed at the time of the original adoption of the rules in 1977.

In that prior proceeding Hearing Examiner Leonard Nelson found that all "relevant, substantive and procedural requirements provided by law and rule" had been fulfilled. Conclusion 1, Report of Hearing Examiner, August 6, 1976. This, of course, included the requirements with respect to the Class II Standards.

In sum, MnDOT does not believe that it has amended the provisions regarding Class II Standards in a way that brings into operation the incorporation by reference requirments of Minn. Stat. § 15.0412, subd. 4 (1978). Indeed this is best illustrated by consideration of the ultimate effect of a finding that an incorporation by reference had occurred and possibly invalidating those portions of the rule amendments. Under such circumstances MnDOT would be forced to retain the existing language in 14 MCAR 1.4001A.1 and E in order to be able to continue to use the Class II Standards. This would accomplish nothing other than to deny MnDOT the benefit of a portion of the rule reorganization and some syntactical changes. Therefore, the Hearing Examiner should conclude that the incorporation requirments of Minn. Stat. § 15.0412, subd. 4 (1978) do not apply to the references to Class II Standards.

D. The use of "may" within the rule amendments

The Hearing Examiner has asked MnDOT to comment on the use of the word "may" at various points throughout the rule amendments. The Examiner noted eight specific points at which "may" was used.

AS MnDOT understands the Examiner's concern, it is that the use of "may" could possibly leave too much discretion in MnDOT to make decisions without reference to specific criteria. For this purpose MnDOT will comment on each use of the word "may" within the rule amendments explaining the intent of each usage.

However, it is important to note that there is no statute including the Administrative Procedures Act or constitutional provision which prohibits the use of the word "may" in rules. In fact "may" is used throughout the statutes and its use is both necessary and desirable under many circumstances.

In addition, the use of the word "may" in conjunction with a power of MnDOT does not leave MnDOT unfettered power to make arbitrary decisions. Both the Federal and the Minnesota constitutions place restrictions on all administrative decisions substantially preventing an arbitrary or capricious decision. Indeed, each decision that is made in the MRSI program is intended to further the purposes of the program. Minn. Stat. § 222.46 (1978).

1. 14 MCAR § 1.4001 C.1

The use of "may" occurs in 14 MCAR § 1.4001C.1 with respect to a decision by the Commissioner to approve rehabilitation of a line to a level greater than the Class II Standard. This "may" only comes into play if a higher level of service is required on that line. "May" is used in this sentence to allow the Commissioner to consider the priority criteria for funding which are stated in 14

MCAR § 1.400 1B. 1-5. Only by use of these criteria can the Commissioner decide if funding a higher level of service on one line is more important than funding the usual level of service on another line. Thus, the Commissioner's decision is based on stated criteria that are appropriate to the decisions.

Changing this "may" to "shall" would be inappropriate. The change would mislead the program participants into thinking they had an absolute right to funding when in reality the decision had to be based on the priority criteria. In this case "may" serves a useful purpose and adequately informs the program participants of the decisionmaking criteria.

2. 14 MCAR § 1.4001 D.1 and 2

"May" is used in the formulae for project funding for both solvent and bankrupt or abandoned lines. Thus, "may" appears in D.1 as well as D.2 of this provision. The use of "may" is with respect to the Commissioner's authority to give grants or loans up to 90% of the project cost. This reflects the discretion which is placed on the Commissioner to make funding decisions in accordance with the project criteria stated in 14 MCAR 1.4001B. Again, a change from "may" to "shall" would be misleading to program participants. As with the previous usage of "may" this "may" accurately reflects the nature of the program.

3. 14 MCAR 1.4002 B.1

The use of "may" in this instance is the same as discussed in 2 above except here the "may" applies to the operational subsidy

program. The decision must be in accordance with the priority criteria stated in 14 MCAR § 1.400 2C.

4. 14 MCAR § 1.4002 B.3

The use of "may" in this instance is probably less accurate than the word "is" which should be substituted.

5. 14 MCAR § 1.4003 A.1 & 2

The use of "may" in this instance parallels its usage as discussed in 2 above except that here "may" applies to the capital improvement program and demonstration projects. Criteria for the decision of funding are stated in A.1 and A.2.

6. 14 MCAR § 1.400 4C.

While "may" is used in the first sentence of this provision, this provision has not been changed but merely reorganized from 14 MCAR § 1.400 2I. The only change in the provision occurs in the second sentence and does not affect the "may". Therefore, it is existing language that is not being amended and not a proper subject of the hearing though the reorganization is a proper subject.

However, the use of "may" or "shall" in this instance makes little substantive difference. MnDOT would prefer to retain the "may" since it more accurately reflects the sense of the provision.

7. 14 MCAR § 1.4005 B.3

The use of "may" in this instance relates to the Commissioner's demand for information. The provision exactly tracks

the statute, Minn. Stat. § 222.54, which MnDOT hesitates to change. Since it does follow the statute and is presented solely for informational purposes to make the disclosure section of the rule complete, there is no need to change the word or substitute another.

E. Relationship of the rule to the data practices act and federal law

14 MCAR § 1.4005 provides certain procedures for holding confidential information provided to MnDOT by railroads. Only that information which is confidential under 49 U.S.C. § 11910 is required to be kept confidential. This provision is in accord with the data practices act which states in Minn. Stat. § 15.1621, subd. 1 (Supp. 1979).

> Public data. All government-data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute, or temporary classification pursuant to section 15.1642, or federal law, as not public.

(Emphasis added).

Since federal law requires the classification, it is approved under the data practices act.

In addition, the reference to federal law in this section is solely for the purposes of indicating the provisions which require the restrictive classification. It is not intended as an incorporation by reference.

F. "Including but not limited to"

At two points MnDOT has used the words "including but not limited to" in the rule amendments. The Hearing Examiner has asked MnDOT to comment on the intent in this usage.

The first use of the phrase occurs in 14 MCAR § 1.4001 D.3 with respect to participation by a railroad in the MRSI program through "in kind" contribution rather than money. The phrase is intended to give examples of "in kind" participation but not restrict the class of eligible participation. It is an attempt to give definition by example but not to be exclusive.

The second use of the phrase occurs in 14 MCAR 1.4004 B with respect to the elements to be included in a particpation contract. Its use is intended to indicate the minimum requirements which must be included in such a contract but not to exclude other elements which the parties agree are appropriate.

G. Miscellaneous

With respect to 14 MCAR § 1.4004B.3 an explanation of the reference to ICC regulations was requested. This is not an incorporation by reference but simply a reference to the ICC regulations which do set the levels of service required of railroads. The deletion of the reference will not change the meaning of the provision.

Respectfully submitted,

Cecil Selness

DOT-80-022-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on March 4, 1980, at 10:00 a.m. in the State Capitol Building, Saint Paul, Minnesota.

William P. Donohue, Special Assistant Attorney General, appeared for the Department of Transportation (hereinafter "the Department"). Cecil L. Selness, Chief of the Railroad Development Section, Department; Donnarae McKenzie, Coordinator of the Rail Abandonment Program, represented the Department.

Two persons from outside of the Department attended the hearing and signed the hearing register. One person spoke at the hearing. The hearing continued until all interested persons had an opportunity to participate and file written comments following the hearing.

The record includes 14 exhibits, with a post-hearing comment and response from the Department.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Department of Transportation shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 17, 1980, the Department filed the following documents with the Chief Hearing Examiner:

(a) A Notice of Hearing as proposed to be issued.
(b) A copy of the rule amendments as proposed.

2. On January 28, 1980, a Notice of Hearing and a copy of the proposed rule amendments were published at 4 State Register 1193. (Notice of Errata was published on February 11, 1980, at 4 State Register 1255.)

3. On January 29, 1980, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice. (It is unclear to the Hearing Examiner whether the mailing to those on the Secretary of State's List or to those on the additional mailing list included an Errata Sheet attached to the Notice as it was submitted to the Hearing Examiner on February 6, 1980, along with the Affidavit of Mailing.) see HE 3(f)

4. On February 6, 1980, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing.
(c) The Affidavit of Mailing with attached Errata Sheet.
(d) The Affidavit of Receipt of the Secretary of State's List.
(e) The Affidavit of Certificate of Delivery of Secretary of State's List.
(f) The Statement of Need and Reasonableness.
(g) A copy of the proposed rule.
(h) A copy of the Notice of Error published in the State Register.
(i) A copy of the State Register indicating Notice Seeking Outside Opinion, pursuant to Minn. Stat. § 15.0412, subd. 6. Said Notice was published on November 19, 1979, at 4 State Register 832. The Department received two written comments to the request, which are included in the file.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through March 17, 1980, for the receipt of written comments and statements. One post-hearing comment from the Department was received.

Statutory Authority

6. The Department's authority to promulgate the proposed rules is specifically contained in Minn. Stat. § 222.50, subd. 3(d) (1979 Supp.).

7. The purpose of the proposed amendments is to develop methods and procedures for administering the Minnesota Rail Service Improvement Program ("the Program") and to establish criteria for selecting projects for implementation under the program.

Need and Reasonableness

8. At the outset of the hearing, the Department proposed the following amendments to the rules as published in the State Register:

(a) In 14 MCAR § 1.4000 B., line 5, after the word "contracts" the following words were deleted "according to certain guidelines". This language was left in due to a typographical error.

(b) In Section 1.4000 C.1., line 2, should refer to Minn. Stat. § 222.46 instead of § 222.48. This was a typographical error.

(c) In Section 1.4001 D.1., line 2, after the word "lines", the

phrase "not owned by bankrupt railroads" was deleted and the phrase "not included in section D.2. of this rule" was inserted. This change was necessary to clarify the rule.

(d) In Section 1.4001 D.2., line 2, the following language was inserted between the words "railroad" and "the division": "previously owned by a bankrupt railroad, or a rail line has been abandoned under interstate commerce commission regulations, 49 C.F.R. 1121." This amendment was needed to clarify the status of the line ownership and abandonment by the Interstate Commerce Commission. These changes make a distinction between bankrupt and nonbankrupt rail carriers. Furthermore, the ambiguity of what is a bankrupt rail line is further clarified by including these lines that were previously owned by a bankrupt railroad. These changes also include abandoned lines so that they may be rehabilitation project candidates.

(e) In Section 1.4001 D.1.a., the last sentence, "In no event shall the grant exceed 60 percent of the project cost" was deleted. This sentence was inadvertently left in and should have been deleted from the proposed rule provision.

(f) In Section 1.4001 D.2.a., the same sentence as in Finding 8.(e) above was deleted. This deletion should have been made in the proposed rules and was inadvertently left in. This was the correction appearing in the Errata Sheet.

(g) Section 1.4001 D.3., line 4, was amended to correct a typographical error: "If agreed to by all parties ~~of~~ to the contract."

The Hearing Examiner finds these changes are needed and reasonable for the reasons stated above. It also appears that these changes will not constitute a substantial modification of the rule. They do not affect classes of people who received copies of the rule as mailed; they do not go to a new subject matter of significant substantive effect; they do not make a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite a reaction at the hearing; and the results in any of these rules are not fundamentally different from that contained in the Notice of Hearing.

9. At the hearing, the Department submitted as an exhibit its Statement of Need and Reasonableness as part of its affirmative presentation of facts justifying the need for and reasonableness of the proposed rule provisions. Copies of the Statement of Need and Reasonableness were available at the hearing and the public had an opportunity to review them. The proposed amendments and deletion of the rule provisions, Section 1.4001 through Section 1.4005, drew no specific comments from the public. However, the Hearing Examiner raised several questions which were responded to by the Department in its post-hearing comments and made a part of the record herein. Except for the following provisions with recommendations, the proposed deletions and amendments to rules are needed and reasonable based on the Statement of Need and Reasonableness.

10. In existing rule Section 1.4002 E.1., line 4, the language "generally the same basis as the rail" should have been deleted with the complete text of existing section of 1.4002. The language above was not deleted. This was a

typographical error which appeared on the Errata Sheet. The proposed deletion of existing Section 1.4002, as amended to delete the language quoted above, is needed and reasonable. The amendment appears not to constitute a substantial change.

11. In Section 1.4000 C.2. of the definition of "bankrupt railroad", there is specific reference to 11 U.S.C. § 205(a). This appears to be incorporation by reference. If it is intended as such, the effective date of the federal regulation should be included in this proposed rule. If the federal language is not lengthy, then it should be included in the proposed rule. However, if a general reference to the United States Codes provisions would serve the drafter's purpose, then the term "all within the meaning of 11 U.S.C. § 205(a)" should be deleted. If such deletion is made, it would not change or affect the meaning of the proposed amendment. deleted p. 1

12. Sections 1.4000 C.4., 1.4001 D.3., 1.4004 A. and B. include the term "but not limited to". The Department commented that the intent of this language was an attempt to give a definition by examples but not to be exclusive. The Hearing Examiner finds that the use of this language fails to make specific those provisions authorized by statute as required by the Minnesota Administrative Procedure Act. It is recommended that flexible language be inserted; as an example, the phrase "other similar kinds of" would adequately serve this purpose. This kind of change should be made throughout the proposed rules where the phrase "but not limited to" appears. complied

13. The Department, in proposing Rule 1.4000 C.17. (the definition of "subsidy payment"), made specific reference to Interstate Commerce Commission Regulations, 49 C.F.R. 1121. The Program in Minnesota uses as a base the federal determination of subsidy payments. The Department asserts that the reference to the federal regulation is simply a recognition of that fact. The Hearing Examiner recommends that the Department rewrite the last provision because it appears to be an incorporation provision. By post-hearing comment, the Department stated that it had no objection to a change in the language which would make it clear. see CHE_A+P p. 3

14. Sections 1.4001 A.1. and C.1. make reference to Class II Track Safety Standards as defined by the Federal Railroad Administration. The Department commented that this proposed rule provision is not a new rule, but a reorganization of an existing rule. The Hearing Examiner rejects this because all proposed rules published in the State Register were underlined indicating additions to the existing rules. This is the plain meaning of any provision where underlining is indicated. However, it appears that the Class II Safety Track Standards as defined by the Federal Railroad Administration Act will be used as criteria for determining eligibility by the Commissioner under these proposed rules. This language appears to be an incorporation by reference and it would make a difference if that provision was deleted from the proposed rules. To correct the defect perceived by the Examiner, the Department may simply include an effective date of the federal regulations as part of the proposed state rules. Not to do so would be an unlawful delegation of authority and a substantive defect in these rules. reference deleted p. 3, 4

15. Section 1.4001 A.1. includes permissive language such as "at the discretion" of the Commissioner and "may". The plain reading of this proposed provision implies that criteria not stated may be applied to those affected by the proposed rule provision in determining eligibility requirements by the Commissioner. The Department should include all criteria for making such a determination in this proposed rule provision or cross-reference those provisions where all the criteria can be found. Otherwise, the Department must delete those discretionary words and replace them with mandatory language as long as the meaning of the provision is not changed. The use of the permissive language appears to be the case in other proposed provisions, contrary to the Department's contention, where "may" is used. Those proposed provisions are Sections 1.4001 C.1., D.1. and 2., 1.4002 B.1. and 3., 1.4003 A.1. and 2., and 1.4004 C. The Department did comment that it was willing to amend Section 1.4002 B.3. by inserting "is" to accurately reflect the meaning of the provision. In Section 1.4004 C. to insert "shall" for "may" would make little substantive difference.

In the Department's post-hearing comment, it stated that no statute including the Administrative Procedure Act or constitutional provisions prohibit the use of the word "may" in rules. The Department pointed out that "may" is used throughout the statutes as is both necessary and desirable in many circumstances. Contrary to the Department, the Hearing Examiner interprets the Minnesota Administrative Procedure Act as requiring the departments to make specific those provisions authorized by the Minnesota Statute. The use of "may" in rules, although found throughout statutory provisions, is not making specific those authorized statutes.

16. The Hearing Examiner agrees with the Department that a general reference to the Interstate Commerce Commission regulations in Section 1.4004 B.3. is not an incorporation by reference.

17. Section 1.4005 provides certain procedures for holding confidential information provided to the Department by railroads. Only that information which is confidential under 49 U.S.C. § 11910 is required to be kept confidential. This provision is in accord with the Minnesota Data Practices Act which states in Minn. Stat. § 15.1621, subd. 1 (1979 Supp.):

> Public Data. All governmental data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute or temporary classification pursuant to section 15.1642, or federal law, as not public.

Since federal law requires the confidential classification, it is approved under the Data Practices Act. The Hearing Examiner concludes that this proposed rule provision is reasonable and needed. The reference to the federal statute appears not to be an incorporation by reference if the Department means it will abide by the federal regulations.

18. The Hearing Examiner finds that each proposed rule provision which contains language similar to the statutory language is crucial to the ability of the persons affected by the rule to comprehend its meaning and effect. Such language is included in the definition section and Section 1.4005 B.3.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Department of Transportation gave proper notice of the promulgation of the proposed rule provisions.

2. The Department has statutory authority, as cited, to take the action proposed, to wit, the promulgation of, deletions and amendments of the proposed rules.

3. The Department has fulfilled all relevant substantive and procedural requirements of law or rule, except as stated above.

4. The Department has demonstrated the need for and the reasonableness of the proposed deletions and amendments by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed deletions and amendments be adopted by the Department of Transportation with modifications as recommended by the Hearing Examiner.

Dated: April 15, 1980.

HARRY SEYMOUR CRUMP
Hearing Examiner

CHE A

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

JUN 1980
RECEIVED
OFFICE OF
RAILROAD
ADMIN.

June 4, 1980

Ms. Donnarae McKenzie
Rail Development Section
Minnesota Department of Transportation
Transportation Building
St. Paul, Minnesota - 55155

RE: Proposed Rules Governing the Minnesota Rail Service Improvement Program
HE Docket No. DOT-80-022-HC

Dear Ms. McKenzie:

Enclosed herewith is the Order of the Chief Hearing Examiner in the above-entitled matter. As only copies of documents were submitted, we have retained those documents you submitted with your letter of June 2, 1980.

Pursuant to the provisions of Rule 9 MCAR § 2.111, a copy of this Order has been submitted to Joanne Hinderaker, Special Assistant Attorney General responsible for review of rules.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH/eag
Enc.
CC:1 - Ms. Joanne Hinderaker
Special Assistant Attorney General
CC:2 - Harry S. Crump
Hearing Examiner

DOT-80-022-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter was heard before Hearing Examiner Harry Seymour Crump on March 4, 1980, following which the Hearing Examiner issued his Report on April 15, 1980; and

WHEREAS, by letter dated June 2, 1980, and received by the Office of Hearing Examiners on June 3, 1980, the Minnesota Department of Transportation (hereinafter "Department"), indicated its desire to adopt the Rules but enclosed only a draft copy of the Order Adopting Rules undated and unsigned by the Commissioner of Transportation by which it would propose to adopt the Rules as recommended by the Hearing Examiner; and

WHEREAS, the submission to the Chief Hearing Examiner of June 3, 1980 was pursuant to the provisions of Rule 9 MCAR § 2.110, for the purposes of the Chief Hearing Examiner's review pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, which review includes the issues of substantial changes in the Rules and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Chief Hearing Examiner, having completed the aforementioned rule review, finds that the changes in the Rules as submitted, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the Rules as proposed; and

WHEREAS, the Chief Hearing Examiner finds that the Department has complied with the provisions of Minn. Stat. § 15.0412, subd. 4, with the following exceptions:

1. Rule 14 MCAR § 1.4000 C.4. defines the term "collateral" and in said definition, indicates that the term "may" include certain items as well as "other kinds of property and property interests." Such discretionary language grants excessive discretion in the Commissioner and the Department without sufficient standards and criteria under which the discretion will be exercised, thus making the language illegal, and, as illegal, unreasonable. The word "may" should be replaced by the word "shall." By inserting the word "similar" for the word "other" may remove the discretionary problem with the rule, subject to approval by the Attorney General.

complied p. 2

2. Rule 14 MCAR § 1.4000 C.17. defining the term "subsidy payments," includes therein an incorporation by reference of "applicable Interstate Commerce Commission regulations" and "applicable Interstate Commerce Commission accounting procedures." As initially proposed, the rules specifically cited 49 C.F.R. 1121 which gave specificity to the rule while under the proposed language, it is uncertain as to which regulations or accounting procedures are applicable. This would make the rule vague. The specific citation to 49

complied p.3

C.F.R. 1121 should be reinstated. In either instance, it is an incorporation by reference requiring approval of the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4. see CHE B

3. Rule 14 MCAR § 1.4001 D.2. includes an incorporation by reference of Interstate Commerce Commission regulations, 49 C.F.R. 1121, which must be approved by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4. see CHE B.

4. Rule 14 MCAR § 1.4004 B. includes the language "and any other provisions appropriate to the particular project." As in Item No. 1 above, this discretionary language renders the rule illegal and thus unreasonable.

5. Rule 14 MCAR § 1.4005 A. includes an incorporation by reference of 49 U.S.C. § 11910, which must be approved by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4. see p. 10 language inserted

6. Rule 14 MCAR § 1.4005 B.4. allows a railroad company to petition the Commissioner for reimbursement of certain costs but fails to state how such costs will be reimbursed to the company or what standards or criteria the Commissioner will utilize in determining this reimbursement. As such, it gives the Commissioner unbridled discretion which, as detailed in No. 1 above, renders the rule illegal and thus, unreasonable. Standards and criteria under which the Commissioner shall grant reimbursement must be included. section deleted p. 15

7. Rules of the Office of Hearing Examiners, and specifically, Rule 9 MCAR § 2.110, requires that a copy of the Order Adopting Rules be submitted at the time the rules are submitted for the review of the Chief Hearing Examiner. As detailed above, only a proposed order, unsigned and undated, was submitted.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.111, the Department shall either withdraw those sections of the rules discussed above which are in violation of the provisions of Minn. Stat. § 15.0412, subd. 4, and the Rules of the Office of Hearing Examiners, amend them to remove the illegalities, or otherwise cure the defects as detailed therein, or reconvene the rule hearing. In the event the deficiencies are corrected as discussed above, the Department shall resubmit the rules for review by the Chief Hearing Examiner. In the event the Department withdraws the provisions detailed above, it may proceed to adopt the remainder of the rules by filing the complete hearing record and those rules as adopted with the Attorney General, notifying all persons who requested to be informed that the record has been submitted to the Attorney General, and, if approved by the Attorney General, shall have the responsibility of publishing the rules in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 4th day of June, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

CHE B

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : KEN BJORK
Department of Transportation

DATE: June 19, 1980

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: RULES PERTAINING TO IMPLEMENTATION OF THE MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM. DOT-80-022-HC

Having now completed the subsequent review, enclosed is the Chief Hearing Examiner's Order which, as you will see, finds that the rules are not substantially different as proposed and that the agency has complied with Minn. Stat. § 15.0412, subd. 4, and, in addition, allows the incorporation by reference as requested.

DRH:sh
Enc.
cc: Donnarae McKenzie
Joanne Hinderaker

DOT-80-022-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULES PERTAINING TO IMPLEMENTATION OF THE MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter was heard before Hearing Examiner Harry Seymour Crump on March 4, 1980, following which the Hearing Examiner issued his report on April 15, 1980; and

WHEREAS, on June 3, 1980, the Minnesota Department of Transportation (hereinafter "Department") submitted the rules it proposed to adopt to the Chief Hearing Examiner for review on the issues of substantial change and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4, all pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; and

WHEREAS, on June 4, 1980, the Chief Hearing Examiner, pursuant to the provisions of Minn. Stat. §. 15.052, subd. 4, and Rule 9 MCAR § 2.111 issued his Order wherein certain difficulties with the rule were outlined; and

WHEREAS, by memorandum dated June 18, 1980, the Department resubmitted the rules to the Chief Hearing Examiner, which rules have now taken into consideration the items outlined in the Chief Hearing Examiner's report of June 4, 1980, including submission of a request for the allowance of incorporation by reference of regulations of the Interstate Commerce Commission numbered 49 C.F.R. 1121; and

WHEREAS, with respect to the request for incorporation by reference, the Chief Hearing Examiner finds that the above-cited regulations of the Interstate Commerce Commission would exceed 3,000 words or five printed pages in the State Register and that they are readily available for review and copying by the public; and

WHEREAS, the Chief Hearing Examiner, having completed review of the rules as resubmitted, finds that the changes in the rules, as submitted, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed; and

WHEREAS, the Chief Hearing Examiner finds that the Department has complied with the provisions of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, IT IS ORDERED that the Department's request to incorporate by reference Interstate Commerce Commission regulations 49 C.F.R. 1121 is approved and that the Department will now be responsible for submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 19th day
of June, 1980.

DUANE R. HARVES
Chief Hearing Examiner

Published in State Register 2-11-80
#9.

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
DIVISION OF PUBLIC TRANSPORTATION

RECEIVED
FEB 6 1980
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED)
ADOPTION OF AMENDMENTS TO RULES)
PERTAINING TO IMPLEMENTATION OF)
THE MINNESOTA RAIL SERVICE IM-)
PROVEMENT PROGRAM)

NOTICE OF
ERROR

On Monday, January 28, 1980, the text of the proposed amendments to rules along with the Notice of Hearing in the above titled matter were published in the State Register. Due to an oversight, there is an error in the text of §1.4001, Subsection D.,2.a. The text of §1.4001, D.,2. appeared in the State Register as follows:

2. If a rehabilitation project is on a rail line owned by a bankrupt railroad the division of costs shall be by the following formula:

a. The Commissioner may make a grant or interest free loan or combination thereof of State and Federal funds up to 90% of the total cost of a project. In no event shall the grant exceed 60% of the project cost.

b. Rail users shall loan the railroad a minimum of 10% of the total cost of a project.

c. The railroad may be required to furnish a portion of the cost of the project and shall repay all loans from the rail users and the State.

The second sentence under a. should be deleated in this proposed amendment. The text of §1.4001 D.,2. should have appeared as follows:

2. If a rehabilitation project is on a rail line owned by a bankrupt railroad the division of costs shall be by the following formula:

a. The Commissioner may make a grant or interest free loan or combination thereof of State and Federal funds up to 90% of the total cost of a project.

b. Rail users shall loan the railroad a minimum of 10% of the total cost of a project.

c. The railroad may be required to furnish a portion of the cost of the project and shall repay all loans from the rail users and the State.

RICHARD P. BRAUN
COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.	NOTICE OF HEARING

- -

NOTICE is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in Room 125, State Capitol Building, located at Saint Paul, Minnesota on March 4th, 1980, commencing at 10:00 A.M. and continuing until all persons have had an opportunity to be heard.

The Commissioner of Transportation has been granted the statutory authority to promulgate rules governing the Minnesota Rail Service Improvement Program in Minn. Stat., 1979 Supp., § 222.50, subd. 3(d). The proposed amended rules would, if adopted: 1) Merge, the State rail service improvement program with the Federal Rail Service Continuation program. 2) Set out procedures whereby the State may request confidential railroad shipping, commercial and financial information.

A copy of the proposed amended rules is attached. Limited additional copies are now available and may be obtained by writing to the Minnesota Department of Transportation (Attention: Sherri Y. Alston, Assistant Commissioner for Public Transportation), 413 Transportation Building, Saint Paul, Minnesota 55155. The proposed amended rules will be available at the door on the date of the hearing.

The proposed amended rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to particpate in the rule hearing process.

RECEIVED
FEB 6 1980
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed)
Adoption of Amendments to Rules)
Pertaining to Implementation of)
the Minnesota Rail Service)
Improvement Program.)

Following the department's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Harry S. Crump, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612)296-8111 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. For those wishing to submit written statements or exhibits it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411 - 15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

ERRATA

There are two (2) errors in the text of the proposed amendments to the Minnesota Rail Service Improvement Program. First, on page 7, under 2.a., the sentence "In no event shall the grant exceed 60% of the project cost." should be deleted. Second, on page 11, under E.1., the last two (2) lines on the page should read as follows: ~~generally the same basis as the rail user or as agreed upon in the~~ contract.

In the Matter of the Proposed)
Adoption of Amendments to Rules)
Pertaining to Implementation of)
the Minnesota Rail Service)
Improvement Program.)

The department estimates that there will be no cost to local bodies in the State to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7(1978).

NOTICE, any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

PLEASE BE ADVISED that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

In the Matter of the Proposed)
Adoption of Amendments to Rules)
Pertaining to Implementation of)
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Improvement Program.)

"LOBBYIST" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity.

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual wholly engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation is defined in § 500.24 subd. 1 who does not spend over $250 excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of claim form and supporting documents and by appearing at public hearings on the claim.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612)296-5615.

Richard P. Braun
Commissioner of Transportation

Dated this 14th day of January, 1980

Subscribed and Sworn to Before Me:

Colette E. Prokop
Notary Public

COLETTE E. PROKOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sep. 13, 1986

My Commission Expires: 9-13-86

Amendments as Proposed

14 MCAR & 1.4000 General Provisions.

A. Authority. The ~~State-Planning-Agency~~ Commissioner of the Minnesota Department of Transportation is authorized to adopt rules ~~and-regulations~~ necessary to carry out the provisions of "the Minnesota Rail Service Improvement Act" pursuant to ~~Laws of-1976,-ch.-204,-§-5.~~ Minn. Stat., 1979 Supp., § 222.50, subd. 3 (d).

B. Purpose. The purpose of the Minnesota Rail Service Improvement Program and these ~~regulations~~ rules is to improve rail service by providing state funds in a revolving account to be used in conjunction with funds from the Federal Rail Service Continuation Program for the establishment of contracts between the State, rail users, and railroads for ~~rehabilitating-needed rail-lines~~ rail line rehabilitation and other rail service improvement projects.

C. Definitions. The following terms as they appear in these rules ~~and-regulations~~ shall have the following meanings:

1. "Act" means the Minnesota Rail Service Improvement Act, ~~Laws-of-1976,-ch.-204,-§-5.~~ Minn. Stat., § 222.48 - 222.54.

~~2.---"Agency"-means-the-Minnesota-State-Planning-Agency.~~

2. "Bankrupt Railroad" means any railroad corporation which has filed a petition in the United States District Court stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a plan of reorganization, which petition has been approved by said United States District Court, all within the meaning of 11 U.S.C. § 205(a).

3. "Capital Improvements" means the purchase, rehabilitation, construction or reconstruction of physical facilities or equipment to improve rail service. Operating expenses are not considered capital improvements.

4. "Collateral" means the security pledged for the loan which may include but is not limited to land, buildings, machinery, equipment, furniture, fixtures, accounts receivable, marketable securities, cash surrender value of life insurance, and assignment of leases or leasehold interests.

5. "Commissioner" means the Commissioner of the Minnesota Department of Transportation.

6. "Demonstration Project" means an experimental project to improve rail service that has general application within the State but is not traditionally associated with rail transportation.

7. "Department" means the Minnesota Department of Transportation.

8. "Federal Rail Service Continuation Program" means any Federal program created under the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, as amended and as implemented by Federal Regulations.

9. "Loan" means interest-free money requiring repayment.

10. "Personal Guarantee" means an individual or corporate obligation to repay the loan.

~~3.~~ 11. "Rail Line" means railroad roadbeds, right-of-way, track structure and other appurtenances of railroad right-of-way, including, but not limited to public-use sidings.

~~5.~~ 12. "Rail User" means any financially responsible shippers, consignors, consignees, or other ~~entities~~ entity,

~~including~~ political subdivisions ~~of-the-state-or-legal-organizations of-such-entities;~~ and their legal entities, that depend upon the movement of goods by rail service and ~~that~~ offers financial assistance in ~~maintaining-or-improving-that-rail-service~~ improving and maintaining that rail service.

~~4.~~ 13. "Railroad" means a common carrier by railroad as defined in Section 1(3) of the Interstate Commerce Act, 49 U.S.C. § 1(3).

14. "Rail Rehabilitation" means the rebuilding of a rail line or portions thereof and/or the implementation of other allied projects that will improve rail service.

~~6.---"Rehabilitation"-means-reconstructing-a-rail-line or-portions-thereof-in-order-to-improve-rail-service-or-to-construct-a-new-rail-line-to-replace-the-existing-one.~~

~~7.---"Rehabilitation-Program"-means-the-program-for-providing-state-funds-for-establishing-contracts-to-rehabilitate-rail lines-as-provided-for-in-the-Act.~~

~~8.~~ 15. "State Rail Plan" means the plan prepared and adopted by the ~~Agency~~ Department as provided for in the Act.

~~9.~~ 16. "State Rail Service Improvement Account" means the special revenue account created in the State treasury by the Act.

17. "Subsidy Payments" means the payment for all costs incurred by a railroad which exceed the revenues obtained from operating the line when the line has been abandoned pursuant to Interstate Commerce Commission regulations, 49 CFR 1121. Said costs shall be computed according to Interstate Commerce Commission accounting procedures as set forth in 49 CFR 1121.

~~10.~~ 18. For purposes of these ~~regulations~~ rules, certain terms ~~of words~~ shall be interpreted as follows: The word "shall" is mandatory, not permissive; the word "may" is permissive.

14 MCAR §1.4001 Program ~~Criteria.~~, Rail Rehabilitation.

A. Eligibility.

1. Rail line. A rail line, or portions ~~of the rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more, and if it is within the physical boundaries of Minnesota or predominantly serves rail users in Minnesota.~~ thereof, that does not meet Class II Track Safety Standards as defined by the Federal Railroad Administration, or that does not have the required structural capacity to support rail cars of 263,000 pounds gross weight, and that is within the physical boundaries of or predominantly serves rail users in Minnesota, is eligible. At the discretion of the Commissioner, rail lines belonging to a bankrupt railroad requiring rehabilitation to allow continued service of statewide significance may also be eligible for funding.

2. Project. ~~A rail project is eligible for funding if it has both a responsible rail user and a railroad that are willing to enter into a contract for rehabilitation according to guidelines set down in these rules and regulations.~~ A rehabilitation project is eligible for funding if an agreement has been negotiated which meets the requirements of the Act, these rules and, when Federal funds are used, applicable Federal laws and regulations.

6. B. Priority criteria. The following criteria shall be used to establish the priority of projects proposed for funding. ~~until such time as the State Rail Plan, as prepared by the Agency is completed and approved of in formal hearings. At such time, the priority criteria identified in the State Rail Plan shall take effect. Until such time, higher priority shall be given to projects that:~~

~~1. have a higher committed nonstate share of project costs~~

~~2. have greater potential traffic volume per mile of track~~

~~3. have greater potential of repaying the rehabilitation costs~~

~~4. have less available alternative transportation facilities~~

1. The availability of State and Federal program funds.

2. The probability of the rail line continuing in profitable service after the project is completed.

3. The costs of the project compared to the benefits resulting from the project.

4. The level of commitment of a railroad and rail users to participate financially in the project.

5. The need for the line as part of the overall rail system.

~~D.~~ C. Standards ~~.~~ and phasing.

~~1. Operation. Railroad service shall be provided by the railroad to adequately meet the needs of the rail users~~

~~within-the-constraints-of-Interstate-Commerce-Commission-(ICC)~~ ~~regulatory-requirements-and-operational-limitations.--The-Agency~~ ~~or-rail-users-may-bring-a-complaint-before-the-ICC-to-force-the~~ ~~provision-of-adequate-service.--The-contract-shall-stipulate-a~~ ~~desired-level-of-service-on-the-rehabilitated-line-during-the~~ ~~effective-period-of-the-contract.~~

1. Rail line rehabilitation shall be performed to the extent that it allows the use of 263,000 pounds gross weight railroad cars and meets Federal Railroad Administration Class II Track Safety Standards. The Commissioner may approve rehabilitation to a higher Federal Railroad Administration Track Safety Standard if it is necessary for providing a required level of service.

2. Rehabilitation may be accomplished in separate stages if the final result meets the standards of number 1., above.

~~B.~~ D. Project funding.

~~1.--The-Agency-may,-within-program-fund-limitations,~~ ~~provide-eligible-projects-with-up-to-two-thirds-of-the-total~~ ~~amount-of-the-contract.--The-extent-of-state-participation-shall~~ ~~be-determined-by-the-Agency-according-to-the-following-factors:~~

~~a.---the-ability-of-a-railroad-and-rail-users-to~~ ~~participate-financially-in-the-project.~~

~~b.---the-probability-of-the-line-profiting-over~~ ~~a-long-period-of-time.~~

~~c.---the-probable-social-and-economic-impact-on~~ ~~communities,-regions,-and-state-if-the-rehabilitation-is-not~~ ~~carried-out.~~

~~d.---the-availability-of-state-program-funds.~~

1. For rail line rehabilitation and related projects on lines not owned by bankrupt railroads, the division of costs shall be by the following formula.

a. The Commissioner may make a grant or interest-free loan or combination thereof of State and Federal funds of up to 90% of the total cost of a project. In no event shall the grant exceed 60% of the project cost.

b. Rail users shall loan the railroad a minimum of 10% of the cost of a project.

c. The railroad shall furnish a minimum of 20% of the cost of a project, and shall repay all loans from the rail users and the State.

~~2.--Rail-users-shall-provide-a-minimum-of-one-third-and and-may-provide-up-to-two-thirds-of-the-total-contract-amount. Railroad-participation-may-be-up-to-two-thirds-of-the-total-contract-amount.--Railroad-participation-may-be-up-to-two-thirds of-the-toal-contract-amount.~~

2. If a rehabilitation project is on a rail line owned by a bankrupt railroad the division of costs shall be by the following formula:

a. The Commissioner may make a grant or interest free loan or combination thereof of State and Federal funds up to 90% of the total cost of a project. In no event shall the grant exceed 60% of the project cost.

b. Rail users shall loan the railroad a minimum of 10% of the total cost of a project.

c. The railroad may be required to furnish a portion of the cost of the project and shall repay all loans from the rail users and the State.

3. In-kind participation. Participation in a contract by any party may include, but not be limited to, non-monetary contributions such as materials, labor, land or other contributions if agreed ~~of~~ to by all parties to the contract. The amount and fair market value of all in-kind participation shall be clearly ~~set-out~~ defined in the contract.

~~E.--Rehabilitation.--Rail-rehabilitation-shall-be carried-out-to-the-extent-that-it-allows-the-use-of-263,000 pound-gross-weight-railroad-cars-and-meets-Federal-Railroad Administration,-Class-II,-Track-Safety-Standards.--The-state shall-not-participate-in-contracts-that-allow-for-less-than the-above-standards-and-shall-not-contribute-to-the-additional cost-of-rehabilitating-the-line-in-excess-of-these-standards.~~

E. Repayment requirements.

1. The railroad shall reimburse the rail users for funds loaned to them in accordance with a formula based on usage of the line, or a pre-determined fixed amount. Repayments shall be made on a quarterly basis. The terms of repayment shall be sufficient so as to assure repayment in ten years or less.

2. The railroad shall repay the Commissioner for funds loaned to them at a pre-determined fixed amount on a quarterly basis. The repayment shall commence upon completion of the requirement to repay the rail users, and extend over a period not to exceed ten years.

3. The rehabilitation contract shall provide for an extension of time in the event of any cessation or reduction of service unless such cessation or reduction is the result of no demand for service.

14-MCAR-1.4002-Program-administration

A.---Applications.

1.---Railroad-applications.--Applications-from-railroads-shall-include.

a.---a-description-of-the-rehabilitation-project proposed,-including-the-extent-of-rehabilitation-proposed.

b.---the-estimated-cost-of-rehabilitation

c.---the-amount-of-traffic-on-the-line

d.---present-and-projected-operational-and-maintenance-costs

e.---present-and-projected-revenues-attributed-to the-railroad-from-shipments-on-the-line

f.---a-list-of-the-shippers-and-receivers-on-the line

g.---the-amount-of-funding-the-applicant-is-prepared to-invest-in-the-project.

2.---Rail-user-applications.--Applications-for-rehabilitation-from-rail-users-shall-include.

a.---a-description-of-the-project-proposed

b.---the-amount-of-traffic-on-the-line

c.---the-amount-of-potential-traffic-on-the-line

d.---the-amount-of-shipping-done-by-truck

e.---the-rates-for-both-truck-and-rail-shipping

f.---a-list-of-shippers-and-receivers-on-the-line

g.---the-amount-of-funds-the-rail-users-on-the-line are-prepared-to-contribute-to-the-project

3.---The-Agency-may-provide-application-forms-and-may

request-further-information-from-an-applicant-or-other-potential parties-to-the-contract-to-aid-in-the-establishment-of-eligibility and-priority.

B.---Determination-of-eligibility.--Upon-receipt-of-application and-all-required-information,-the-Agency-shall-determine-whether or-not-a-line-is-eligible.--The-Agency-shall-then-contact-the-other potential-party-to-the-contract-to-determine-whether-that-party is-willing-to-participate-in-a-rehabilitation-project,-and-if-so to-what-extent.--If-there-is-a-rail-user,-a-railroad,-and-the state,-prepared-to-enter-into-a-contract-and-if-the-proposed amount-of-funds-equals-the-total-project-cost-and-all-other requirements-are-met,-the-project-shall-be-declared-eligible and-a-priority-ranking-made.

C.---Priority-ranking.--Priority-ranking-shall-be-based-on criteria-identified-in-14-MCAR-§1.4001-D.-of-these-rules-and regulations.--Information-requested-and-not-received-or-not arranged-for-within-30-days-of-the-request-may-be-considered adequate-reason-for-the-elimination-of-the-project-from-consideration-for-funding.

D.---Contract.

1.---Contracts-for-rehabilitation-projects-may-include but-may-not-necessarily-be-limited-to-the-following-provisions.

a.---the-specific-portions-of-trackage-and-rail line-to-be-rehabilitated

b.---the-level-of-rehabilitation-to-be-done

c.---the-plans,-specifications,-and-estimates-of materials,-cost,-and-time

d.---the-amount-of-funds,-or-other-items-of value-to-be-contributed-by-each-party-to-contract

e.---set-a-desirable-level-of-service-to-be-provided-on-the-rehabilitated-line-during-the-contract-effective period

f.---assurance-that-maintenance-shall-be-performed on-the-line-by-the-railroad

g.---method-of-administering-the-contract

h.---schedule-for-the-repayment-of-funds-to-the rail-users-and-the-state

i.---maximum-length-of-the-contracts

j.---maintenance-of-records-and-audits

k.---other-special-features-of-the-contract

2.---Projects-shall-be-processed-and-negotiated-in-order of-priority-ranking.--Projects-that-are-not-finalized-within-a reasonable-period-of-time-as-judged-by-the-Agency-may-be-bypassed and-the-next-lower-project-negotiated-and-funded.

E.---Repayment-requirements.--The-railroad-shall-reimburse a-rail-user-for-funds-it-has-contributed-to-a-project-based-on-a repayment-schedule-of-dollars-per-carload-of-freight-shipped. The-reimbursement-which-shall-be-paid-at-regular-intervals shall-be-based-on-the-total-number-of-railroad-cars-shipped-by rail-user-until-full-payment-is-made.--The-railroad-shall-reimburse-the-state-for-funds-it-has-contributed-to-the-project-in the-following-manner.

1.---State-funds-that-are-contributed-and-which-are-in excess-of-one-third-of-the-total-contract-amount-shall-be-repaid directly-upon-the-completion-of-repayment-of-the-rail-user-and-on generally the same basis as the rail-user-has-repaid-funds,-or-other-items value-to-be-contributed-by-each-party-to-contract

2.---State-funds-contributed-up-to-one-third-of-the total-contract-amount-shall-be-repaid-from-revenues-received from-traffic-on-the-line-which-exceeds-the-traffic-on-the-line for-the-average-of-the-three-years-prior-to-rehabilitation.--Repayment-of-this-amount-shall-start-upon-completion-of-repayment of-rail-user-funds-and-state-funds-in-excess-of-one-third-of-the total-contract-amount.

F.---Length-of-contract.--The-term-of-the-contract-shall-be long-enough-to-allow-for-the-repayment-of-all-funds-in-the-contract based-on-a-reasonable-projection-of-potential-traffic-levels.--State contributed-funds-not-repaid-by-the-time-the-contract-expires-shall be-forgiven.--The-contract-shall-be-extended-in-the-event-of,-and for-as-long-as,-any-cessation-of-service-for-any-reason-or-any reduction-of-service-below-desirable-service-level-as-provided in-the-contract-unless-such-reduction-in-service-is-the-result-of no-demand-for-service.

G.---Separate-railroad-account.--A-railroad-may-be-permitted to-establish-and-maintain-a-separate-railroad-fund-to-be-used exclusively-for-rehabilitation-of-its-other-rail-lines-in-Minnesota if-the-railroad-can-give-good-cause,-such-as-legal-prohibition against-repayment,-for-not-making-repayment-to-the-State-Rail Service-Improvement-Account.--Funds-in-such-separate-railroad may-only-be-utilized-by-the-railroad-for-eligible-projects-as described-in-paragraph-14-MCAR-§1.4001-A.2.-of-these-rules,-and only-if-such-eligible-project-would-have-been-funded-at-that-time from-the-State-Rail-Service-Improvement-Account-as-determined-by the-State-Planning-Agency.--The-Agency-may-require-a-railroad-to deposit-or-invest-the-funds-according-to-the-instructions-of-the-

~~Ageney-and-to-deposit-all-interest-and-earnings-reeeived-on-sueh funds-into-the-separate-railroad-aeeount.--A-railroad-whieh-has funds-in-spearate-railroad-aeeounts-but-whieh-does-not-have eligible-lines-to-upgrade-may-return-these-funds-to-the-State Rail-Serviee-Improvement-Aeeount-as-a-gift.~~

~~H.---Program-implementation.--The-Ageney-may-reeeive-appli-eations-at-any-time.--On-January-1,-1977,-the-Ageney-shall-make a-determination-of-eligibility-of-lines-and-projeets-and-establish a-priority-for-these-projeets-whieh-are-eligible-for-funding.--In the-event-that-new-appropriations-are-made-to-the-program-or that-funds-remain-after-the-disposition-of-already-approved projeets,-the-Ageney-may-make-publie-notiee,-set-a-new-applieation deadline-date,-and-make-a-new-priority-ranking-of-eligible-appli eations-reeeived.~~

~~I.---Exeeptions.--In-the-event-of-unusual-eireumstanees, exeeptions-to-these-rules-may-be-made-for-any-partieular-rehab-ilitation-eontraet-if-agreed-to-by-all-parties.--No-exeeption-shall-be-made-if-sueh-exeeption-would-be-eontrary-to-the-intent of-the-program-or-if-sueh-exeeption-would-preelude-the-equal treatment-of-eompeting-projeets.~~

14 MCAR § 1.4002 Program Criteria - Post Abandonment Rail Line Subsidy Programs.

A. Eligibility. If a rail line is eligible for subsidy payments under the Federal Rail Service Continuation Program it may also be considered eligible for funding under the Minnesota Rail Service Improvement Act.

B. Project funding.

1. The Commissioner may provide combined State and Federal operations subsidy payments of up to 90% of the

operational subsidy costs. In no event shall the State and Federal operational subsidy payment exceed an amount equal to the amount of the railroad's retained revenue on the line.

2. Rail users shall provide a minimum of 10% of the operational subsidy cost plus any other operational subsidy cost not covered by State and Federal operational subsidy payments.

3. Rehabilitation which may be eligible under Federal regulations and which is performed in conjunction with operational subsidy payments, shall conform with 14 MCAR § 1.4001.

C. Priority criteria. The following criteria shall be used to establish the prority of projects eligible for subsidy payments:

1. The availability of State and Federal funds.

2. The probaility of the rail line becoming profitable upon completion of the project.

3. The costs of the project compared to the benefits resulting from the project.

4. The commitment of rail users to provide their share of the project funding.

14 MCAR § 1.4003 Program Criteria - Capital Improvement Projects.

A. Eligibility.

1. The Commissioner may provide interest-free loans from the Minnesota Rail Service Improvement account for up

to 100% of the cost of a rail transportation related capital improvement project under the following conditions:

a. State funds are available.

b. The capital improvement is directly related to an overall rail line rehabilitation acquisition, or operational subsidy project.

c. The capital improvement project will strengthen the financial condition of the associated rail line.

d. The State's interests are protected by sufficient collateral or personal guarantees acceptable to the Commissioner.

e. The Commissioner shall be repaid for funds loaned at a pre-determined fixed amount payable quarterly over a period not to exceed ten years.

2. The Commissioner may provide a grant from the Minnesota Rail Service Improvement account of up to 50% of the total cost of a capital improvement project if said capital capital improvement is a demonstration project as defined in these rules, and if the following conditions are met:

a. State funds are available.

b. The project demonstrates unique methods of using rail service or alleviating the impact of abandonments that is not in common usage throughout the rail industry or that has not been previously funded under this program.

c. The general likelihood that a similar project can be instituted in other locations without the need for public financing.

d. The project includes two or more participant rail users.

e. The benefits resulting from the project exceed the costs of implementing the project.

14 MCAR § 1.4004 Administration of the Minnesota Rail Service Improvement Program.

A. Provision of information. The railroad and rail users shall provide the Commissioner any pertinent information necessary to achieve proper evaluation and adequate administration of any project under this program. Said information shall include but not be limited to financial data, commodity data, cost data of the project and operations information.

B. Contracts. Executed contracts shall be the documents used to commit funds and implement projects. Contracts shall include but not be limited to the following:

1. The description of and the location of the project.

2. The appropriate plans, standards, specifications, estimated costs, work schedule and completion date.

3. The level of service the railroad will provide during the effective rehabilitation or operations subsidy period, pursuant to applicable Interstate Commerce Commission regulations.

4. Assurances by the railroad that rail line maintenance will be performed during the period of operational subsidy or rehabilitation contract.

5. Provisions for auditing by the Commissioner.

6. The requirement to comply with all applicable Federal regulations when Federal funding is involved in the project.

ERRATA

There are two (2) errors in the text of the proposed amendments to the Minnesota Rail Service Improvement Program. First, on page 7, under 2.a., the sentence "In no event shall the grant exceed 60% of the project cost." should be deleted. Second, on page 11, under E.1., the last two (2) lines on the page should read as follows: ~~generally the same basis as the rail user or as agreed upon in the~~ contract.

7. The duration of the contract.

8. Maintenance and availability of records and audits.

9. Payment and repayment schedules when appropriate.

10. The amount of funds and any in-kind participation by each party.

11. Method of administering the contract.

12. A provision for appropriate recapture of State and Federal funds.

C. Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular contract if agreed to by all parties. No exception shall be made if such exception would preclude the equal treatment of competing projects.

14 MCAR § 1.4005 Disclosure of Information Concerning Railroad Data.

A. Confidential information defined. Information is deemed to be confidential for the purpose of these rules when the information collected contains shipping data or commercial or financial informatio which is required to be kept confidential by the provisions of 49 U.S.C. § 11910.

B. Provision of information.

1. The Commissioner shall direct all requests for information under the authority of the Act to the corporate office of the railroad company. Such requests shall specify the kind of information, the level of detail, the format to be used, and the required date of submittal.

2. Within 20 days from the receipt of the request, the railroad company may if necessary apply for a revision of the time schedule for preparing the information. The Commissioner shall approve or disapprove such revision requests within 20 days of the the receipt of such requests.

3. If the requested information is not received within the time schedule, the Commissioner may make a final demand. The final demand shall be in writing and sent by certified mail to the corporate office of the railroad company. If the information is not received within 60 days of the receipt of the final demand, the Commissioner may issue a subpoena to compel production of the information.

4. If the provision of required information results in substantial and unusual costs for the railroad company, it may petition the Commissioner for reimbursement of such costs in conjunction with providing the information. Cost shall not be a legitimate reason for refusing information.

C. Use of Confidential Railroad Data. Railroad data entrusted to the Department will be used only by Department personnel or the authorized agents of the Department to implement the purpose set forth in the Act.

D. Release of information. Information intended for the restricted use of Department personnel will be furnished to persons outside the Department only in the following circumstances:

1. The railroad gives written approval to the Commissioner to make the information public.

2. The information has already been made public by the action of the railroad or other public authority.

3. The information is aggregated at a sufficient level to obscure the shipping information specific to any individual rail user.

#1

RECEIVED
FEB 6 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.

ORDER FOR HEARING

- -

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 125, State Capitol Building, St. Paul, Minnesota on the 4th day of March, 1980, commencing at 10:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

/s/ Richard P. Braun
Richard P. Braun
Commissioner of Transportation

Dated this 14th day of January, 1980.

Subscribed and sworn to before me this 14th day of January, 1980.

Colette E. Prokop
Notary Public,
Ramsey County, Minnesota.

COLETTE E. PROKOP
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sep. 13, 1986

#4

RECEIVED
FEB 6 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

In the Matter of the Proposed Adoption of of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.	CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 335 labels 3 sheets complete list of persons, associations, and other interested groups who as of 1:30 o'clock PM, this 28th day of January, 1980, have requested pursuant to Minn. Stat., §§ 15.0412, subd. _____, (1978 & 1979 Supp) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Donna Lutt

#5

RECEIVED
FEB 6 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULES PERTAINING TO IMPLEMENTATION OF THE MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Kenneth H. Bjork, being duly sworn on oath deposes and says:

1) That he is an employee of the Transportation Department, Administration Division of the State of Minnesota.

2) That on the 28th day of January, 1980, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat., § 15.0412 (1978, & 1979 Supp).

3) That on the 28th day of January, 1980, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not. Kenneth H. Bjork

Subscribed and sworn to before me this 1st day of February, 1980.

Agnes I. Litfin
Notary Public,

Ramsey County, Minnesota

My Commission expires November 21, 1980.

AGNES I. LITFIN
Notary Public, Ramsey Co., Minn.
My Commission Expires
November 21, 1980

RECEIVED
FEB 6 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.

AFFIDAVIT OF MAILING

Kenneth H. Bjork, being first duly sworn, deposes and says:

That on the 29th day of January, 1980, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

/s/ Kenneth H. Bjork

Subscribed and sworn to before me

this 1st day of February, 1980.

Agnes I. Litfin
Notary Public,

Ramsey, County, Minnesota

My Commission expires November 21, 1980

AGNES I. LITFIN
Notary Public, Ramsey Co., Minn.
My Commission Expires
November 21, 1980

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Mn/DOT - Public Transportation
Room 419

DATE: January 22, 1980

TO : Ken Bjork
Systems & Analysis Section

FROM : Donnarae McKenzie DMc
Rail Development Section

PHONE: 296-8627

SUBJECT: Mailing List for Notices and Rules

The mailing list for the rule promulgation process for the Minnesota Rail Service Improvement Program and the Rail User Loan Guarantee Program is attached. The mailing list is comprised of the following lists:

	TITLE OF LIST	NUMBER ON LIST
1.	Regional Development Commissions	25
2.	Railroad Advisory Group and Rail Interest Group	29
3.	Regional Transportation Planning Coordinators	5
4.	Congressional Delegation	11
5.	District Liaison Personnel	9
6.	County Boards of Commissioners	38
7.	County Highway Engineers	38
8.	Mailing List for Rule Notices #1	43
9.	Rail Abandonment Status Report	161
10.	Mailing List for Rule Notices #2	9
	TOTAL NUMBER ON LIST	368

The mailing labels for this list are also attached.

Attachments:

cc:
Steve Buffington
Cecil Selness
Joanne McCrossen
Jim Browne

FEBRUARY 1979

REGIONAL DEVELOPMENT COMMISSION CHAIRMEN AND STAFF DIRECTORS

REGION	CHAIRMAN	EXECUTIVE DIRECTOR
Northwest (1)	Ervin Strandquist Newfolden Minnesota 56738 (218/874-7305)	Sushil Kriplani Acting Director 425 Woodland Avenue Crookston, MN. 56716 (218/281-1396)
Headwaters (2)	M. J. (Buck) Haack 2508 Calihan Avenue Bemidji, MN. 56601 (218/751-3213)	John Ostrem Mental Health Building Box 584 Bemidji, MN. 56601 218/751-3108
Arrowhead (3)	Innis (Sonny) Nesbitt 200 Arrowhead Place 211 W. Second St. Duluth, MN. 55802 (218/722-5545)	Tom Renier, Acting Director 200 Arrowhead Place 211 W. Second St. Duluth, MN. 55802 (218/722-5545)
West Central (4)	Andy Leitch Route 1 Underwood, MN. 56586 (218/826-6969)	James Myhra Administration Building Fergus Falls Community College Fergus Falls, MN. 56537 (218/739-3356)
Region Five (5)	Felix Kujawa Buckman MN. 56317 (612/468-6593)	David Loch 611 Iowa Avenue Staples, MN. 56479 (218/894-3233)
Six East (6E)	~~Earl Larson~~ Homer Bach ~~Route 1~~ Atwater, MN. ~~Willmar, MN. 56201~~ 56209 ~~(612/235-4326)~~	Eugene Hippe City Auditorium 311 W. 6th St. Willmar, MN. 56201 (612/235-8504)
Upper Minnesota Valley (6W)	Thomas Johnson Route 1 Milan, MN. 56262 (612/-734-4769)	Dennis Dahlem 323 West Schlieman Appleton, MN. 56208 (612/289-1981)
East Central (7E)	~~William Jokela~~ Richard Anderson ~~Box 317~~ ~~Sandstone, MN. 55072~~ ~~(612/245-2217)~~ Princeton, Mn. 55371	Philip DelVecchio Kanabec County Courthouse 18 N. Vine St. Mora, MN. 55051 (612/679-4065)
Central Minnesota (7W)	Ralph Thompson RR 3, Box 141 Belgrade, MN. 56312 (612/346-2637)	Otto Schmid 2700 1st St. N. St. Cloud, MN. 56301 (612/253-7870)

(2.)

February 27, 1979

RAILROAD ADVISORY GROUP

R. T. Bennett
Manager of Marketing
DM&IR Railway Company
600 Missabe Building
Duluth, Minnesota 55802

M. S. Reid
Assistant Vice President
C&NW Transportation Company
400 West Madison Street
Chicago, Illinois 60606

Mr. Elmer Bergland
State Legislative Director
United Transportation Union
1000 ~~Upper Midwest Building~~ Lumber Exchange Building
Minneapolis, Minnesota 55401

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Executive Department
Burlington Northern, Inc.
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St. Paul, Minnesota 55101

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Minneapolis, Minnesota 55440

J. F. Corcoran
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DW&P Railway Company
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Duluth, Minnesota 55807

Gordon Forbes
Counsel
Minnesota Railroads Association
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St. Paul, Minnesota 55101

Larry E. Long
~~Assistant to President~~ Director of ~~State Rail Planning~~
The Milwaukee Road
864 Union Station
516 W. Jackson Boulevard
Chicago, Illinois 60606

~~Mike Martino~~ Henry Szachowicz, Jr.
~~Project Manager~~ Attorney
~~Executive Department~~
Rock Island Lines
332 South Michigan Avenue
Chicago, Illinois 60604

February 27, 1979

RAIL INTEREST GROUP

Academic Community

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Professor, Agriculture and
Applied Economics
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Dr. Jerry Kruin
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and Applied Economics
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West Bank
University of Minnesota
Minneapolis, Minnesota 55455
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Dr. Richard W. Lichty
Associate Professor
Department of Economics
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Mr. Duane Johnson
Research Director
Teamsters Union Joint Council #32
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Mr. Leonard LaShomb
Executive Vice-President
Minnesota AFL-CIO
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Phone: 612/227-7647

Public Agencies

Mr. Ray Johnson
Chairman
Countryside Council Transportation
Task Force
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Mr. Jim Shipman
Executive Director
Association of Minnesota Counties
2305 Ford Parkway
St. Paul, Minnesota 55116
Phone: 612/698-4212

Mr. Don Slater
Executive Director
League of Minnesota Municipalities
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Hanover Building
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Phone: 612/222-2861

Shippers

Mr. Gus Adamek
Executive Secretary
Farmers Elevator Association of
Minnesota
852 Grain Exchange
Minneapolis, Minnesota 55415
Phone: 612/339-5043

RAIL INTEREST GROUP

Shippers (cont.)

Mr. Bob Arndt
President
National Farmers Organization
Rural Route #1
Echo, Minnesota 56237
Phone: 507/925-4371

Mr. Vern Ingvalson
Manager Leg. Division
Minnesota Farm Bureau Federation
3110 Wooddale Drive
St. Paul, Minnesota 55165
Phone: 612/739-7200

Mr. J. Patrick Kittler
Chairman
District Export Council
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Minneapolis, Minnesota 55401
Phone: 612/725-2135

Mr. Oliver Perry
Senior Vice President
Minnesota Association of Commerce
and Industry
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St. Paul, Minnesota 55101
Phone: 612/227-9591

Mr. Bob Rumpza
Director of Public Affairs and
Research
Minnesota Farmers Union
1717 University Avenue
St. Paul, Minnesota 55104
Phone: 612/646-4861

Mr. Pete Stallcop
Northwest Elevator Association
P.O. 15004
Commerce Station
Minneapolis, Minnesota 55415
Phone: 612/339-4625

Mr. Kenneth R. Tolonan
Director of Transportation
Minneapolis Grain Exchange
Minneapolis, Minnesota 55410
Phone: 612/336-5363

Special

Mr. Howard Davy
Minnesota Association of Railroad
Passengers
2710 Monterey Avenue South
St. Louis Park, Minnesota 55416

State Agencies

Mr. A. Johnson
Director
Minnesota Energy Agency
Room 740
American Center Building

Mr. David Pointy
Commissioner
Minnesota Department of Economic
Development
Hanover Building

Mr. Mark Seetin
Commissioner
Minnesota Department of Agriculture
Room 420
State Office Building

Mr. Arthur Sidner
Director
State Planning Agency
Room 101
Capitol Square Building

RAIL INTEREST GROUP

Truckers

Mr. James N. Denn
Minnesota Motor Transport
Association
1821 University Avenue
Griggs Midway Building
St. Paul, Minnesota 55104
Phone: 612/646-7351

Mr. Wes Hallman
Executive Secretary
Minnesota Permit Truckers
Association
1745 University Avenue
St. Paul, Minnesota 55104
Phone: 612/647-0166

Mr. Robert F. Sprafka
St. Paul Port Authority
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St. Paul, Minnesota 55101
Phone: 612/224-5686

Waterways

Mr. Alan Johnson
Director of International Sales
and Marketing
Seaway Port Authority of Duluth
P.O. Box 310
Duluth, Minnesota
Phone: 218/727-8525

Mr. Norton Quarve
Regional Transportation Manager
Continental Grain, Member Ex.
Committee
Upper Mississippi Waterways
Association
815 Grain Exchange
Minneapolis, Minnesota 55415
Phone: 612/339-8161 OR
612/339-5151

David R. Sollenberger
Executive Director
Winona Port Authority
City Hall
Winona, Minnesota 55987
Phone: 507/452-8550

#3.

REGIONAL TRANSPORTATION PLANNING COORDINATORS LIST #4

Lee Kessler 175-60
Regional Transportation Planning Coordinator
1000 West Trunk Highway 10
Box 666
Detroit Lakes, MN 56601

Dennis R. Johnson 101-4863
Regional Transportation Planning Coordinator
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P.O. Box 39
Duluth, MN 55811

S. O. Edman 109-4270
Regional Transportation Planning Coordinator
3725 12th Avenue North
P.O. Box 370
St. Cloud, MN 56301

Richard A. Bautch. 104-6411
Regional Transportation Planning Coordinator
501 South Victory Drive
Mankato, MN 56001

Fred P. Tanzer 296-1607
Regional Transportation Planning Coordinator
820 Transportation Building

February 8, 1979

(4.)

LIST #1 - A

CONGRESSIONAL DELEGATION

MINNESOTA SENATORS AND CONGRESSMEN
ADDRESS AND PHONE NUMBERS

The Honorable Rudy Boschowitz
210 Bremer Building
419 North Robert
St. Paul, Minnesota 55101

ATTENTION
Mr. Dan Hogstad — 612/221-0904
Dear Senator Boschowitz

The Honorable Dave Durenberger
174 Federal Courts Building
Minneapolis, Minnesota 55401

ATTENTION
Mr. George Thiss — 612/725-6111
Dear Senator Durenberger

1 The Honorable Arlen Erdahl
1017 Longworth Building
Washington, D.C. 20515

ATTENTION
Mr. Steve Lindroth — 202/225-2271 Wash.
Dear Congressman Erdahl

2 The Honorable Thomas Hagedorn
Room 325 Cannon House Office Bldg.
Washington, D.C. 20515

ATTENTION
Mr. George L. Berg, Jr. — 202/225-2472 Wash.
Dear Congressman Hagedorn — 507/388-4563 Mankato

3 The Honorable William Frenzel
House of Representatives
1026 Longworth House Office Bldg.
Washington, D.C. 20515

ATTENTION
Mr. Richard D. Willow — 202/225-2871 Wash.
Dear Congressman Frenzel — 612/725-2173 Mpls.

4 The Honorable Bruce F. Vento
House of Representatives
422 Cannon House Office Building
Washington, D.C. 20515

ATTENTION
Mr. James G. Pirius — 202/225-6631 Wash.
Dear Congressman Vento — 612/725-7869 St. Paul

5 The Honorable Martin Sabo
Room 426 Cannon House Office Bldg.
Washington, D.C. 20515

ATTENTION
Mr. John Haynes — 202/225-4755
Dear Congressman Sabo

when contacting Sabo, send carres. to Wash. & Mpls. offices

The Honorable Martin Sabo
Room 166 Federal Courts Building
Minneapolis, Minnesota 55401

6 The Honorable Rick Nolan
House of Representatives
214 Cannon House Office Building
Washington, D.C. 20515
HOME - Box 1086
St. Cloud, MN 56801

ATTENTION
Mr. James A. DeChaine
Dear Congressman Nolan — 202/225-2331 Wash.
507/637-3565 Redwood Falls

7 The Honorable Arlan Stangeland
House of Representatives
1518 Longworth House Office Bldg.
Washington, D.C. 20515

ATTENTION
Mr. Jack M. Stewart, Jr. — 202/225-2165 Wash.
Dear Congressman Stangeland — 218/233-8631 Moorhead

8 The Honorable James Oberstar
House of Representatives
323 Cannon House Office Building
Washington, D.C. 20515

ATTENTION
Mr. Tom R. Reagageland — 202/225-6211 Wash.
Dear Congressman Oberstar — 218/727-7474 Duluth

(5.) List 1-C

MN/DOT

DISTRICT LIAISON PERSONNEL LIST

John Allen retired

District #1 - Duluth . . . . . Wilfred T. Highmark 101-4804
Assistant District Director Engineer
1123 Mesaba Avenue
P.O. Box 39
Duluth, MN 55811

District #2 - Bemidji. . . . . Ron Studer 110-3809
District Right of Way Engineer
Washington & 4th Street South
Bemidji, MN 56601

District #3 - Brainerd . . . . David O. Reed 111-2475
Assistant District Director Engineer
301 Laurel
Box H
Brainerd, MN 56401

District #4 - Detroit Lakes. . Viggo Thomsen 175-40
District Traffic Engineer
1000 West T.H. 10
Box 66
Detroit Lakes, MN 56601

District #5 - Golden Valley. . Carl Hoffstedt. 158
Transportation Planning Engineer
2055 North Lilac Drive
Golden Valley, MN 55422

District #6 - Rochester. . . . Allen J. Paulson. 103-7366
Right of Way Engineer
North Highway 52
Box 6177
Rochester, MN 55109

District #7 - Mankato. . . . . Jerry Miller. 104-6411
Traffic Engineer
501 South Victory Drive
Mankato, MN 56001

District #8 - Willmar. . . . . J. J. Hoeke 106-359
Assistant District Director Engineer
Tenth & Pacific
Box 758
Willmar, MN 56201

District #9 - Oakdale. . . . . Jerry Skelton 208
Traffic Analysis & Transportation Supervisor
3485 Hadley Avenue North
Box 2050
North St. Paul, MN 55109

ounty Board of Commissioners
tkin County
tkin, Minnesota 56431

County Board of Commissioners
Faribault County
e Earth, MN 56013

Ott[illegible] Tail County
Fergus Falls, MN 56537

60

ounty Board of Commissioners
ioka County
ioka, Minnesota 55303

County Board of Commissioners
Freeborn County
Albert Lea, MN 56007

County Board of Commissioners
Hope County
Glenwood, MN 56334

ounty Board of Commissioners
eltrami County
emidji, MN 56601

County Board of Commissioners
Goodhue County
Red Wing, MN 55066

County Board of Commissioners
Renville County
Olivia, MN 56277

ounty Board of Commissioners
ig Stone County
rtonville, MN 56278

County Board of Commissioners
Hubbard County
Park Rapids, MN 56470

County Board of Commissioners
Rice County
Faribault, MN 55021

ounty Board of Commissioners
arlton County
arlton, MN 55718

County Board of Commissioners
Jackson County
Jackson, MN 56143

County Board of Commissioners
St. Louis County
Duluth, Minnesota 55802

ounty Board of Commissioners
arver County
haska, MN 55318

County Board of Commissioners
Lake County
Two Harbors, MN 55616

County Board of Commissioners
Swift County
Benson, MN 56215

ounty Board of Commissioners
ass County
alker, MN 56484

County Board of Commissioners
Lyon County
Marshall, MN 56258

County Board of Commissioners
Traverse County
Wheaton, MN 56296

ounty Board of Commissioners
hippewa County
ontevideo, MN 56265

County Board of Commissioners
McLeod County
Glencoe, MN 55336

County Board of Commissioners
Wilkin County
Breckenridge, MN 56520

ounty Board of Commissioners
lay County
oorhead, MN 56560

County Board of Commissioners
Morrison County
Little Falls, MN 56345

County Board of Commissioners
Yellow Medicine County
Granite Falls, MN 56241

ounty Board of Commissioners
row Wing County
rainerd, MN 56401

County Board of Commissioners
Mower County
Austin, MN 55912

County Board of Commissioners
Otter Tail County
Fergus Falls, MN 56537

ounty Board of Commissioners
odge County
antorville, MN 55955

County Board of Commissioners
Nobles County
Worthington, MN 56187

County Board of Commissioners
Blue Earth County
Mankato, MN 56001

akota County
astings, Minnesota 55033

ounty Board of Commissioners
ennepin County
inneapolis, MN 55487

ounty Board of Commissioners
ouston County
aledonia 55921

ounty Board of Commissioners
e Sueur County
eCenter, Minnesota 56057

ounty Board of Commissioners
artin County
airmont, Minnesota 56031

ounty Board of Commissioners
amsey County
t. Paul, Minnesota 55102

ounty Board of Commissioners
cott County
hakopee, Minnesota 55379

ounty Board of Commissioners
teele County
watonna, Minnesota 55060

ounty Board of Commissioners
abasha County
abasha, Minnesota 55981

ounty Board of Commissioners
ashington County
tillwater, MN 55082

ounty Board of Commissioners
inona County
inona, MN 55987

tkin Co. Hwy. Engineer
rpark Lane
tkin, Minnesota 56431

Faribault Co. Hwy. Engineer
& Walnut Street
Blue Earth, MN 56013

Otter Tail Co. Hwy. Engineer
unty Court House
Fergus Falls, MN 56537

7.

. Paul Ruud
oka County Hwy. Engineer
5 East Main Street
oka, MN 55303

Mr. David L. Everds
Freeborn Co. Hwy. Engineer
County Court House
Albert Lea, MN 56007

Mr. Robert Ellestad
Pope Co. Hwy. Engineer
County Court House
Glenwood, MN 56334

. Joe Forbes
ltrami Co. Hwy. Engineer
ute 7, Box 65
midji, MN 56601

Mr. Mike Pinsonneault
Goodhue Co. Hwy. Engineer
County Court House
Albert Lea, Minnesota 56007

Mr. Michael J. Kaczrowski
Renville Co. Hwy. Engineer
County Court House
Olivia, MN 56277

. James D. Burgess
g Stone Co. Hwy. Engineer
unty Court House
tonville, MN 56278

Mr. Adolph Andert
Hubbard Co. Hwy. Engineer
County Department of Highways
Park Rapids, MN 56470

Mr. Arthur N. Storhaug
Rice Co. Hwy. Engineer
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Faribault, MN 55021

. Walter F. Benson
rlton Co. Hwy. Engineer
x "D" - Court House
rlton, MN 55718

Mr. Dwight Herman
Jackson Co. Hwy. Engineer
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Jackson, MN 56143

Mr. Benjamin Beauclair
St. Louis Co. Hwy. Engineer
Room 110 - Court House
Duluth, MN 55802

. Patrick Murphy
rver Co. Hwy. Engineer
unty Court House
aska, MN 55318

Mr. Alfred Sandvik
Lake Co. Hwy. Engineer
Box "J"
Two Harbors, MN 55616

Mr. Tallack Johnson
Swift Co. Hwy. Engineer
Box 241
Benson, MN 56215

. James R. Worcester
ss County Hwy. Engineer
unty Department of Highways
alker, MN 56484

Mr. Robert J. McPartlin
Lyon Co. Hwy. Engineer
County Court House
Marshall, MN 56258

Mr. L. B. Schaub
Traverse Co. Hwy. Engineer
County Court House
Wheaton, MN 56296

r. Elroy Dragsten
ippewa County Hwy. Engineer
lth Street and Washington Ave.
ntevideo, MN 56265

Mr. Roger M. Gustafson
McLeod Co. Hwy. Engineer
P.O. Box 236
Glencoe, MN 55336

Mr. Gailen O. Narum
Wilkin Co. Hwy. Engineer
Box 195
Breckenridge, MN 56520

r. Donald Richards
lay Co. Hwy. Engineer
300 - 15th Avenue North
orhead, MN 56560

Mr. Kenneth Paulson
Morrison Co. Hwy. Engineer
County Court House
Little Falls, MN 56345

Mr. Larry Figgins
Yellow Medicine Co. Hwy. Engr.
Highway 212 West
Granite Falls, MN 56241

r. Duane A. Blanck
row Wing Co. Hwy. Engineer
ox 308
rainerd, MN 56401

Mr. Ray Guttormson
Mower Co. Hwy. Engineer
1105 - 8th Avenue N.E.
Austin, MN 55912

Mr. Dennis Berend
Otter Tail Co. Hwy. Engr.
County Court House
Fergus Falls, MN 56537

r. Robert Onken
odge County Hwy. Engineer
ounty Court House
antorville, MN 55955

Mr. Michael Wagner
Nobles Co. Hwy. Engineer
Box 187
Worthington, MN 56187

Mr. Ralph Sleeper, Jr.
Blue Earth Co. Hwy. Engr.
Box 3083
Mankato, MN 56001

Mr. Robert Sandeen
Dakota Co. Government Center
Highway Department
1560 West T.H. 55
Hastings, MN 55033

Mr. A. J. Lee
Hennepin County Highway Engr.
320 Washington Avenue South
Hopkins, MN 55343

Mr. Charles V. Sheehan
Houston Co. Hwy. Engr.
R.R. #2
Caledonia, MN 55921

Mr. Ronald Sandvik
LeSueur Co. Hwy. Engr.
Box 124
LeCenter, Minnesota 56057

Mr. Robert Witty
Martin County Hwy. Engr.
12th and Marcus Street
Fairmont, Minnesota 56031

Mr. Kenneth Weltzin
Ramsey County Hwy. Engr.
Room 502 - Court House
St. Paul, MN 55102

Mr. Ervie W. Prenevost
Scott Co. Hwy. Engr.
County Court House
Shakopee, Minnesota 55379

Mr. Richard Skalicky
Steele County Hwy. Engr.
590 Dunnel Drive
Owatonna, Minnesota 55060

Mr. Robert W. Egan
Wabasha County Highway Engr.
County Court House
Wabasha, Minnesota 55981

Mr. Charles J. Swanson
Washington County Hwy. Engr.
3rd Street & 9th Avenue N.E.
Waseca, MN 56093

Mr. Earl Welshons
Winona Co. Hwy. Engr.
Route 20
Winona, MN 55987

#8. Mailing list for Rule Notices #

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Assistant Professor
Southwest State University
Marshall, Minnesota 56258

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President
Minnesota Association of Railroad Passengers
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Donald C. Shiel, President
~~Agmark~~ Agmark
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Dana M. Johnston
Sales Manager
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M.F. McClain
Senior Vice President
Kansas City Southern Railway Co.
114 West 11th Street
Kansas City, Missouri 64105

Duluth & Northeastern Railroad Co.
Cloquet, Minnesota 55720

Green Bay & Western Railroad Co.
Green Bay, Wisconsin 54306

Minneapolis Eastern Railway Co.
221 Third Avenue South
Minneapolis, Minnesota 55401

Minnesota, Dakota & Western Railway Co.
P.O. Box 200
Boise, Idaho 83701

Minnesota & Manitoba Railway Company
c/o Canadian National Railways
935 Lagauchetiere Street West
Montreal, Quebec
Canada
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- County Commissioners From August SDM mailing

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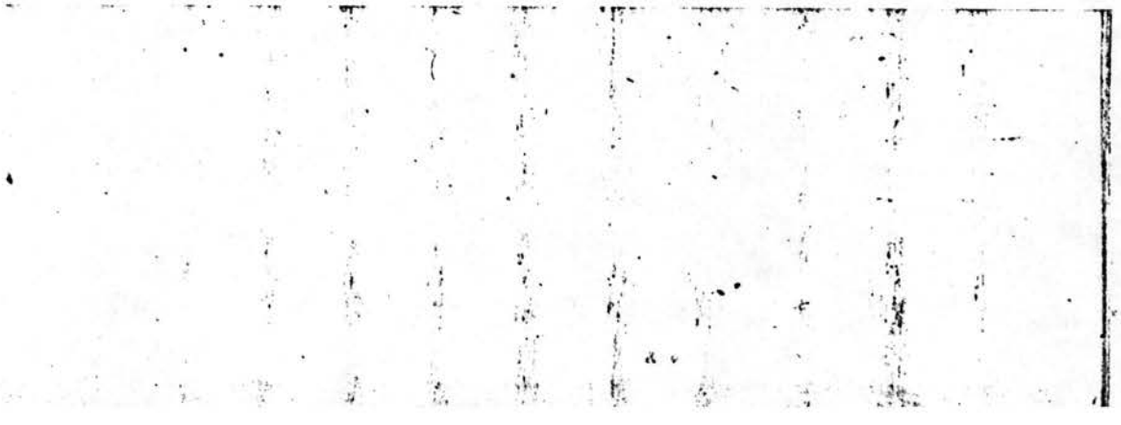

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MPLS MN
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BLADIN PAPER CO w J LICKE
115 1ST ST SW
GRAND RAPIDS MN
55744

BOYUM BURDETTE
250 SO 4TH ST
MPLS MN
55415

BRICK PHILIP J
807 SELLWOOD BLDG
DULUTH MN
55802

BROOKS WILLIAM F JR.
900 MIDLAND BK. BLDG.
MPLS., MN
55401

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IND DIST #561
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56725

CHIEF EDITOR ST INFO UNIT
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WASHINGTON DC
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CHILDS J L
4012 LYNN AVE S
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530 SYNDICATE BLDG
MPLS MN
55402

CITY CLERKS OFFICE
126 NO. MARSHALL
LITCHFIELD, MN
55355

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS
CITY TESTCITY MN
55555

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS
CITY TESTCITY MN
55555

ACKLAND, K. CRIM JUST COUN.
1422 CITY HALL ANNEX
ST. PAUL, MN
55102

ALLERS JOHN
1501 W 80TH ST SUITE210
BLOOMINGTON MN
55431

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ANDERSON STANFORD
14600 MINNETONKA BLVD
MINNETONKA MN
55343

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200 ARROWHEAD PLACE
DULUTH MN
55802

ASSOCIATED GEN CONTR.OF M
111 E. KELLOGG BLVD.
ST. PAUL, MN
55101

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1192 BUSH ST
ST PAUL MN
55106

BEGALKA D REV
212 N ELK ST
BELLE PLAINE MN
56011

BLAHA GERALD
457 GOODHUE ST
ST PAUL MN
55102

BLOHM, JOHN D.
BOX 1065
MARSHALL, MN
56258

BRIGGS & MORGAN LIBRARIAN
W2200 1ST.NATL.BK.BLDG.
ST. PAUL, MN
55101

BROEKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
55420

BRUNING C.R.DEPT.CLINIC.EXP.
BURTON HALL
MPLS. MN
55455

BUSCH NOEL
SUITE 705 510 MARQUETTE
MPLS MN
55402

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MANKATO STATE COLLEGE
MANKATO MN
56001

CARVER CO. AUDITOR
600 E. 4TH. ST.
CHASKA, MN
55318

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1821 UNIV AVE SUITE 271
ST PAUL MN
55104

CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
ST PAUL MN
55155

CITY OF ALBERT LEA
221 E CLARK ST
ALBERT LEA MN
56007

CITY OF ALEXANDRIA
114 7TH AVE W BOX 231
ALEXANDRIA MN
56308

CITY OF ANOKA
CITY HALL 2015 1ST AVE
ANOKA MN
55303

CITY OF APPLE VALLEY
14200 CEDAR AVE SO
APPLE VALLEY MN
55124

CITY OF BRECKENRIDGE
CITY HALL
BRECKENRIDGE MN
56520

CITY OF BROOKLYN CENTER
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

CITY OF CAMBRIDGE
139 E FIRST AVE
CAMBRIDGE MN
55008

CITY OF CHAMPLIN
12001 HWY 52
CHAMPLIN MN
55316

CITY OF COTTAGE GROVE
7516 80TH ST SO
COTTAGE GROVE MN
55016

CITY OF CRYSTAL
4141 DOUGLAS DRIVE NO
CRYSTAL MN
55422

CITY OF EAGAN
3795 PILOT KNOB ROAD
EAGAN MN
55122

CITY OF EAST BETHEL
2751 VIKING BLVD NE
WYOMING MN
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CITY OF EDINA
4801 W 50TH ST
EDINA MN
55424

CITY OF GOLDEN VALLEY
7800 GOLDEN VALLEY RD
GOLDEN VALLEY MN
55427

CITY OF JORDAN FRANK HOUSER2
10 E 1ST
JORDAN MN
55352

CITY OF LAKE INDEPENDENCE
RT 1 BOX 123A
MAPLE PLAIN MN
55359

CITY OF MINNEPOLIS
3801 66TH AVE NO
BROOKLYN CTR MN
55429

CITY OF MINNETONKA
74600 MINNETONKA BLVD
MINNETONKA MN
55343

CITY OF NEW HOPE
4401 XYLON AVE NO
NEW HOPE MN
55428

CITY OF ORONO
PO BOX 66
CRYSTAL BAY MN
55323

CITY OF ROSEVILLE
2701 NO LEXINGTON AVE
ROSEVILLE MN
55113

CITY OF ST CLOUD
CITY HALL
ST CLOUD MN
56301

CITY OF SHAKOPEE
129 E 1ST AVE
SHAKOPEE MN
55379

CITY OF SHOREVIEW
4665 NO VICTORIA ST
SHOREVIEW MN
55112

CLARKSON J.B.
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MINNEAPOLIS MN
55402

CLAUSEN PHILLIP
2307 STANDISH ST
ST PAUL MN
55108

CITY OF BLAINE
9150 CENTRAL AVE NE
BLAINE MN
55434

CITY OF BRAINERD
CITY HALL
BRAINERD MN
56401

CITY OF BROOKLYN PARK
5800 85TH AVE NO
BROOKLYN PARK MN
55443

CITY OF BURNSVILLE
1313 E HWY 13
BURNSVILLE MN
55337

CITY OF CHANHASSEN
7610 LAREDO
CHANHASSEN MN
55317

CITY OF CHASKA
205 E 4TH ST
CHASKA MN
55318

CITY OF DETROIT LAKES
106 E HOLMES ST
DETROIT LAKES MN
56501

CITY OF DULUTH
CITY HALL
DULUTH MN
55802

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E GRAND FORKS MN
46721

CITY OF EDEN PRAIRIE
8950 EDEN PRAIRIE RD
EDEN PRAIRIE MN
55343

CITY OF HASTINGS
100 SIBLEY ST
HASTINGS MN
55033

CITY OF HUTCHINSON
37 WASHINGTON AVE WEST
HUTCHINSON MN
55350

CITY OF MAPLE GROVE
9401 FERNBROOK LANE
MAPLE GROVE MN

CITY OF MAPLEWOOD
1380 FROST AVE
MAPLEWOOD MN
55109

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CITY HALL
MORRIS MN
56244

CITY OF MOUNDSVIEW
2401 HWY 10
ST PAUL MN
55113

CITY OF ROCHESTER
1421 3RD AVE SE
ROCHESTER MN
55901

CITY OF ROSEMOUNT
BOX 455
ROSEMOUNT MN
55068

CITY OF ST LOUIS PARK
5005 MINNETONKA BLVD
ST LOUIS PARK MN
55416

CITY OF ST PAUL
445 CITY HALL
ST PAUL MN
55102

CITY OF WAYZATA
600 RICE STREET
WAYZATA MN
55391

CITY OF WHITE BEAR LAKE
250 MILLER AVE
WHITE BEAR LK MN
55110

COHEN LAWRENCE
1291 1 APPLETREE SOU
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55420

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MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
5TH FLR METRO SQ BLDG
ST PAUL MN
55101

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55104

DAILEY THOMAS ECONOMICS LAB
370 WABASHA ST
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55102

DAKOTA CO MENTAL HEALTH CTR
744 19THAVE NO
SO ST PAUL MN
55075

DAYTON, HERMAN, ET AL
800 MIDLAND BANK BLDG.
MPLS., MN
55401

DEVELOP DISABILITIES PROG
STATE PLAN 200 CAP SQ.
ST. PAUL, MN
55155

DZUGAN KEN ST.PAUL PLANNING
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ST PAUL, MN
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W 1080 1ST NATL BANK
ST PAUL MN
55101

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4801 W 50TH ST
EDINA MN
55424

ENNIS A F BOISE CASCADE
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INTL FALLS MN
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ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
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FARRELL FRANK BUR NOR
RM 1180 176 E 5TH ST
ST PAUL MN
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FARSETH PAUL FOOD STAMPS PRO
WELFARE DEPT 690 N ROBT
ST PAUL MN

FITZGERALD DR 808
3007 LYNDALE AVE SO
MPLS MN
55408

FITZPATRICK LEO
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COTTAGE GROVE MN
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4200 IDSCTR 80 S.8TH ST
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FREDIN CONRAD M
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FURRY CATHERINE
2174 COMMONWEALTH AVE
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55108

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3824 47TH AVE SO
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55406

GOLDBERG PROF MELVIN
WM MITCHELL COL OF LAW
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GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GRUMMERT REV DONALD
1435 ADAMS ST
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411 MAIN ST. SU 210
ST. PAUL, MN
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ROOM B12 CAPITOL
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DUPONT MIKE
5720 EXCELSIOR BLVD
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MORA MN
55051

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161 W. MAIN
PERHAM MN
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ELMER EDWIN W
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ENDERSON WILLIAM
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MPLS MN
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203 HANOVER 480 CEDAR
ST PAUL MN
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518 SUMMIT AVE
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56073

FRIESEN MILLER A
RAHR BD 624 13TH ST S
VIRIGINIA MN
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FRISON FRANK NECA
RM 305 200 SO ROBERT
ST PAUL MN
55107

GEBERT KENNETH L
300 PUBLIC HEALTH CTR
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AUSTIN MN
55912

GRAHAM THOS H.
900 MIDLAND BK. BLDG.
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5152 CEDAR AVE S
MPLS MN
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H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

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ST PAUL MN
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HAIK RAYMOND A
4344 IDS CENTER
MPLS MN
55402

HARTFELDT WILL
2850 METRO DRIVE STE800
BLOOMINGTON MN
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HAUN DR J W GEN MILLS
PO BOX 1113
MPLS MN
55440

HEADWATERS REG DEV. COMM
BOX 584 MENTAL HEALTH
BEMIDJI MN
56601

HEALTH CENTRAL
2810 57TH. AVE. NO.
MINNEAPOLIS, MN
55430

HEARING EX.OFF. M GREENBERG
1745 UNIV AVE
ST PAUL MN
55104

HECKT PAUL
720 AMERICAN CENTER BLD
ST PAUL MN
55101

HINIKER JAMES COMM OF ADMIN
200 ADMIN BLDG
ST PAUL MN

HOGLUND RICHARD C
BOX 755
WILLMAR MN
56201

HORNER WALDORF - KAZIUKEWICZ
PO BOX 3260
ST PAUL MN
55165

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

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ECHO MN

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
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IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JAIN NIRMAL ENIV PROCESS
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MPLS MN
55405

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
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JOHNSON LEROY
1207 98TH LANE NW
COON RAPIDS MN
55433

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

KAVANEY RICHARD
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ST PAUL MN
55102

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

HALLMAN W A
1745 UNIVERSITY AVE
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55104

HARRY, RICK
1000 LAKESHORE DR.
MOUSE LAKE, MN
55767

HAVEN ROBT TWIN TN TREATMENT
1706 UNIV AVE
ST PAUL MN
55104

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

HEIM, PAUL M.
5501 NORMAN CENTER DR.
MPLS., MN
55437

HELTZER JAMES DAYTON HUDS
777 NICOLLET MALL
MPLS MN
55402

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HUNTER LAWRENCE
STE 115 NALPAK BLDG
ST PAUL MN
55101

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
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INGRAM ALAN NASW MN CH
22 NO DALE ST
ST PAUL MN

INGVALSON VERN MN.FARM BU
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ST PAUL MN
55164

IZAAK WALTON LEAGUE OF AM
111 E FRANKLIN SU 201
MPLS MN
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MPLS MN
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11911 HWY. 52
CHAMPLIN, MN
55316

JOHNSON G ROBERT
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MPLS MN
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JOHNSON KEL MACI
HANOVER BLDG
ST PAUL MN
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265 S LAFAYETTE RD
ST PAUL MN
55107

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55437

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5 PLAVEY BLDG
MPLS MN
55402

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COLLEGE FORESTRY U OF M
ST PAUL MN
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10048 NORD RD
BLOOMINGTON MN
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LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LOCH DAVID REG 5 REG DEV COG
11 IOWA AVE
STAPLES MN
56479

LOEFFLER DOROTHY MRS
U OF M 101 EDDY HALL
MPLS MN
55455

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MARLATT RALPH J
1320 SOO LINE BLDG
MPLS MN
55402

MAUL WARREN E.
605 4TH. AVE. SO.
MPLS., MN
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MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

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300 METRO SQUARE
ST PAUL MN
55155

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

MILLER SHERMAN E
RFD 2 BOX 28
WELLS MN
56097

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN GOV ENG COUNCIL
722 91ST AVE NE
BLAINE MN
55434

MINN.MTR.TRANSP. .J.N.DENN
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ST.PAUL MN
55104

MINN MULTI HOUSING ASSN
3100 W LAKE ST
MPLS MN
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KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

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828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANGEVIN, DAVID P.
8748 IDEN AVE. SO.
COTTAGE GROVE MN
55016

LEG REPORT SERV-P STURDEVANT
PO BOX 3259
ANNAPOLIS MD
2140

LEWIS DR.G.M JR.
ABBOTT 110 E 18TH ST
MPLS MN
55403

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2414 PARK AVE
MPLS MN
55404

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATO MN
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MARQUARDT PHILIP
RTE 2 BOX 209
JANESVILLE MN
56048

MASTOR & BALE, LTD.
315 PEAVEY BLDG.
MPLS. MN
55402

MCNEILLY GREG MNDSVIEW ED AS
41 SHERBURNE AVE
ST PAUL MN
55103

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

MIDLAND GLASS-BARTO R.J.
P.O. BOX 69
SHAKOPEE, MN
55379

MILLER DAVID S
2845 QUEBEC AVE SO
ST LOUIS PK MN
55426

MILLER TOM
6921 YORK AVE SO
EDINA MN
55435

MILLER THOMAS F
1628 IDS CENTER
MPLS MN
55402

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN CHAP ASSOC BLDRS-CON
7204 W 27TH ST
MPLS MN
55426

MINN HOSPITAL ASSN
2333 UNIV AVE SE
MPLS MN
55414

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN NEWSPAPER ASSN
84 S 6TH ST STE 400
MPLS MN
55402

MINN PCA WATER QUALITY
1935 W CO. RD B 2
ROSEVILLE MN
55113

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RURAL ELECTRIC ASSN
4901 W 77TH ST
MPLS MN
55435

MINN. SERV. STA. ASSN.
1115 2ND. AVE. SO.
MPLS., MN
55403

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN. TBR. PRODUCERS ASSN.
333 W. SUPERIOR ST.
DULUTH, MN
55802

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MINNESOTA AFL-CIO
175 AURORA AVE
ST PAUL MN
55103

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

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METRO SQ 7TH & ROBERT
ST PAUL MN
55101

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MOSTCA
PO BOX J
PERHAM MN
56573

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NOZISKA HOWARD
7651 METRO PKWY S 103
MPLS MN
55420

NURSING HOME ADMRS BD EXAMRS
RM 340 717 DELAWARE SE
MPLS MN
55414

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P.O.BOX.15004COMM.STAT
MPLS., MN
55415

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
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O'CONNELL RAY
MN GAS CO 733 MARQ AVE
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

MINN RETAIL FEDERATION
180 METRO SQUARE BLDG
ST PAUL MN
55101

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
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55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MIXA FRANK LK MNTKA CONS DIS
402 E LAKE ST
WAYZATA MN
55391

MN AUTOMOBILE DEALERS ASS
277 UNIV AVE
ST PAUL MN
55103

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MN ST PHARMACEUTICAL ASSN
2469 UNIVERSITY AVE
ST PAUL MN
55114

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MPLS ASSN RETARDED CITIZE
2344 NICOLLET AVE. SO.
MPLS., MN
55404

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BOX 986 COURTHOUSE STA
ARLINGTON VA
22216

NELSON HOWARD I

LINDSROM MN
55045

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
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55402

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OLOFSON ARTHUR MBU & MAINC
927 SOO LINE BLDG
MPLS MN
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OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

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11 DELL PLACE
MPLS MN
55403

PETERSON, H. COMM LABOR&I
444 LAFAYETTE RD.5TH FL
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55101

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BLOOMINGTON, MN
55431

PINNETTI NICK M HALEY & A
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

PRICE WALT C REISS COAL CO
1011 SO 8TH ST
SHEBOYGAN WI
53081

RALPH BURKE ASSOCIATES
5200 W 73RD ST
MPLS MN
55435

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE, DAVID
SCORPION IND. INC.
CROSBY, MN
56441

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ROYAL ESQUIRE REALTY INC
1612 PIONEER BLDG
ST PAUL MN
55101

SANFORD S M
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RICHFIELD MN
55423

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310 ENDICOTT BLDG
ST PAUL MN
55101

SCHMIDT WARREN WELLCOME MHS
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MN
56034

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
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SHABATURA EUGENE H
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SMITH BOB III
PIONEER BLDG
ST PAUL MN
55101

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

PAYNE CDL ALVIN
DEGRAFF MN
56233

PHAR MFGRS ASSN GROSSMAN S.
1155 15TH. ST. N.W.
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20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

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EYOTA MN
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BOX 675
FERGUS FALLS MN
56357

PRAUSE J.C.
1313 CCON RAPIDS BLVD.
CCON RAPIDS, MN
55433

RADMAN RICHARD-LABOR TEMPLE
411 MAIN STREET
ST. PAUL, MN
55102

RAUENHORSTCORP-RONALD G KIRK
7900 XERXES S S-2200
MPLS MN
55431

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

REGION NINE DEV. COMM.
120 S. BROAD ST.
MANKATO, MN
56001

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RITTER, JERRY
1011 NICOLLET MALL
MPLS., MN
55403

ROSENTHAL ABE MN TRANS SERV
SUITE 310 N 1821 UNIV
ST PAUL MN
55104

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
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SCHAEN ETHEL
1821 UNIV AVE RM 3895
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55104

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWINN, ROBT. P.
1830 SOO LINE BLDG.
MPLS., MN
55402

SIX EAST REG. DEV. COMM.
311 W 6TH ST
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56201

SODERBERG HAROLD J
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SOUTHWEST REGIONAL DEV COMM
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55110

VALLY CENTER DRUG
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55435

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STILLWATER MN
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110506 WINDMILL COURT
CHASKA MN
55318

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WHITLOCK MARSHALL LORAR
RM.44 ST. CPF. BLDG.
ST. PAUL, MN
55155

WOZNIAK D D
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1068 SO LAKE ST
FOREST LAKE MN
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TENNESSEN SEN ROBERT J
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VIRGINIA, MN
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UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

US DEPT OF AGRICULTURE
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ST PAUL MN
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VIITALA, W.C. HONEYWELL
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MPLS MN
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VOS LEROY
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55119

WALZ SAM CO ADMINISTRATION
ANOKA CTY COURTHOUSE
ANOKA MN
55303

WAMPLER LINUS DIR USW OF
609 PROVIDENCE BLDG
DULUTH MN

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

WM. MITCHELL LAW LIB.
875 SUMMIT AVE.
ST. PAUL, MN
55105

WIS FEEDER PIG MARKET CO-

FRANCIS CREEK WI

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

In the Matter of the Proposed Adoption of Amendments to Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program.	STATEMENT OF NEED AND REASONABLENESS

The proposed adoption of amendments to rules governing the Minnesota Rail Service Improvement Program contains a number of changes to the existing Chapter 14 of the Minnesota Code of Agency Rules. The need for these changes arises because the original statutes governing this program, Minn. Stat. §§ 222.46-222.54, were amended by Minn. Stat. §§ 222.48-222.53 (1979 Supp.).

The Commissioner of Transportation has the authority to propose these amendments to existing rules pursuant to Minn. Stat. § 222.50, Subd. 3., (d) (1979 Supp.).

This Statement of Need and Reasonableness in support of the Department of Transportation's proposed amendments will be presented section by section, and subsections therein. The reasons for deletions, modifications, new sections and subsections, and renumbering as to the Minnesota Rail Service Improvement Program rules are as follows:

§ 1.4000 General Provisions

A. Authority. This subsection cites the authorization for adopting these proposed amendments as shown above. Responsibility for the Rail Service Improvement Program was transferred to the Department of Transportation pursuant to Department of Administration Reorganization Order Number 80 effective November 8, 1976.

B. Purpose. This subsection indicates the purpose of the program. The changes in this rule allow for the merging of Federal and State money in project development, pursuant to Minn. Stat.

§ 222.53 (1979 Supp.). The change also allows the Minnesota Rail Service Improvement Program to be used for rail service improvement projects other than rehabilitation, pursuant to Minn. Stat. § 222.50, subd. 7, (1979 Supp.). This change is necessary to alleviate the impacts of rail abandonments.

C. Definitions. This subsection contains the definitions of various terms used elsewhere in the proposed rules. Under C. the words "and regulations" have been stricken because of redundancy.

The proposed C.1 remains the same as the existing C.1. with the exception that it cites the Statute instead of the Law.

The original C.2. has been deleted because of the transfer of authority from the State Planning Agency to the Minnesota Department of Transportation, pursuant to Department of Administration Reorganization Order Number 80, effective Novemeber 8, 1976, and the subsequent change in Minn. Stat. § 222.48, subd. 2. (1979 Supp.).

The proposed C.2. defines "Bankrupt Railroad". Because there are two bankrupt railroads operating in Minnesota, and due to their financial constraints, these railroads must be treated differently than solvent railroads under these rules. This definition is consistent with 11 USC § 205(a).

The original C.3. has been renumbered C.11.

The proposed C.3. dealing with "Capital Improvements" is needed to define the term as used in the rules, so as to be consistent with the intent of Minn. Stat. §§ 222.46-222.54 as amended.

The original C.4. has been renumbered C.13.

The proposed C.4. defines "Collateral" as the security pledged on a loan to protect the State's interest on loans granted under § 1.4003, and is consistent with common banking practice.

The original C.5. has been renumbered C.12.

The proposed C.5 defines the term "Commissioner" as the Commissioner of the Minnesota Department of Transportation, as that term is defined in Minn. Stat. § 222.48, subd. 3 (1979 Supp.).

The proposed C.6. defines "Demonstration Projects" because this term is used in the rules in an attempt to seek unique ways to improve rail service and alleviate the effects of rail abandonment.

The original C.7. has been deleted and replaced with C.14.

The original C.8. has been renumbered C.15. "Agency" has been stricken and "Department" inserted, pursuant to Minn. Stat. § 222.48, subd. 2 (1979 Supp.).

The proposed C.8. defines "Federal Rail Service Continuation Program" which is referred to in the proposed rules and may be used in conjunction with the Minnesota Rail Service Improvement Program, pursuant to Minn. Stat. § 222.48, subd. 7 (1979 Supp.).

The original C.9. has been renumbered C.16.

The original C.10. has been renumbered C.18.

The proposed C.10. is self explanatory.

The proposed C.11. was originally numbered C.3.

The proposed C.12. was originally numbered C.5. Minor changes in wording have been made for purposes of clarity.

The proposed C.13. was originally numbered C.4.

The proposed C.14. replaces the original C.6. and C.7. Amendments to Minn. Stat. §§ 222.48-222.53 (1979 Supp.) necessitates that a broader definition be given to the meaning of "Rail Rehabilitation" to include capital improvement projects and other projects to improve rail service or alleviate the impact of rail abandonment.

The proposed C.15. replaces the original C.8. deleting the word "Agency" and inserting the word "Department," pursuant to Department of Administration Reorganization Order No. 80 that was effective November 8, 1976.

The proposed C.16. replaces the original C.9.

The proposed C.17. defines subsidy payments in accordance with Interstate Commerce Commission regulation 49 CFR 1121, which controls what these payments will be according to regulated cost accounting procedures for railroads.

The proposed C.18. replaces the original C.10.

§ 1.4001 Program Criteria, Rail Rehabilitation.

The words "Rail Rehabilitation" have been added to the title of this section to differentiate between rehabilitation projects, and subsidy and capital improvement projects that are dealt with under separate sections of these proposed amendments to the rules.

A. Eligibility. This subsection has been amended for clarity and to allow bankrupt railroads the possibility of participating in rehabilitation projects, even though they have limited financial resources. There are two bankrupt railroads operating in southern Minnesota at this time. Changes in this subsection also address the fact that State and Federal funds can be used jointly in rehabilitation projects pursuant to Minn. Stat. § 222.49 (1978).

The Federal Railroad Administration has published track safety standards based on the speed that a train can safely travel on a line. The classification of a rail line is determined by the physical structure and the maintenance performed on the line. Federal Railroad Administration Class II means that a train can operate safely at 25-30 miles per hour. This is the speed desirable on most branch lines in Minnesota. According to the railroads and rail users, any lower speed is not normally financially efficient. A higher speed is not normally necessary for efficient operation.

The standard railroad car used in the transportation of grain and fertilizer has a gross weight of 263,000 pounds. To be fully accessible to rail service a line must be able to carry the combined weight of many of these cars. Therefore, if a rail line has speed restrictions below 25 mph or weight restrictions below 263,000 gross pounds per car, it should be eligible for rail rehabilitation assistance programs.

Because of the bankruptcy of two railroads, the rules must be flexible enough to allow the Commissioner to approve rehabilitation to a higher Federal Railroad Administration Standard on lines

carrying more traffic than that associated with a branch line. Assistance on lines other than branch lines would not normally be required if the railroad involved were solvent.

Eligibility of a project will depend on the condition that an agreement between all parties involved has been negotiated, and that the agreement meets State and Federal regulations.

B. Priority Criteria. Subsection B., Project funding., under the current rules has been redesignated as D. under the proposed amendments. To be more consistent with the normal development of a project, the funding of a project would follow the development of priorities and standards, amended subsections B. and C. respectively.

This proposed subsection replaces the original subsection C., and differs from the original due to amendments made to the original legislation.

B.1. is necessary since there are many rail lines in Minnesota that are in the abandonment process that will become eligible for rehabilitation project funding. It would be financially impossible at present to rehabilitate all these lines. To determine which of these many lines should be considered for rehabilitation projects it was necessary to develop criteria that would indicate the lines that should receive priority. Out of necessity, the availability of funds has to be the first consideration.

B.2. is a part of the priority criteria since it would be financially irresponsible to invest limited funds on a line that had no potential for profitability so that the line could not continue to exist without rehabilitation funding.

B.3. refers to the necessity of completing a cost benefit analysis on a project to determine the advisability of the project.

B.4. establishes the necessity of receiving financial commitments from the rail users to assure the complete success of the project.

B.5. refers to the necessity that a rail line be a part of an overall rail system, i.e., the need to rehabilitate main or sub-main lines as opposed to branch lines that connect to these main or sub-main lines. It would be irresponsible to invest funds in rehabilitating a branch line that is connected to a main line that is in such poor condition that it could possibly be abandoned.

C. Standards and phasing. This proposed subsection replaces subsections D. and E. under the present rules. The current D. deals with standards of service. The service that a railroad is required to give a customer is governed by Interstate Commerce Commission regulations and it is not necessary to include them as a part of the rules. The proposed C. will deal with standards of construction and rehabilitation.

Many of the rail lines in Minnesota in need of rehabilitation are below Federal Railroad Administration (FRA) Class II Track Safety Standards and are incapable of carrying the 263,000 pound gross weight rail cars needed to efficiently transport grains, fertilizer and coal. To provide efficient movement of goods a line should meet a minimum of FRA Class II standards that would allow speeds of 25-30 mph. These lines should also be laid with the 90 pound per yard rail required to use rail cars weighing 263,000 pounds. There are other lines on bankrupt railroads that may require financial assistance if they are to provide the service required by main rail users. Main lines must operate at a higher speed than allowed by FRA Class II standards. The Commissioner should have the option to allow rehabilitation to a higher class when it is necessary. Large rehabilitation projects that cannot be funded in one year would have to be done in stages with the completed project meeting a minimum of FRA Class II standards.

D. Project funding. The proposed section D. "Project Funding" was originally designated as section B. The reason for changing this order was explained in the statement on Section B. Because of amendments to the original Act, the ability to incorporate State and

Federal funds into a single project, and because of the bankrupt condition of two railroads, the original rules for project funding were by and large no longer applicable. All of the original text has been stricken with the exception of subsection 3. Minor changes were made in subsection 3. for reasons of clarity.

The proposed subsection D. addresses the changes in the Act, the merging of State and Federal funds and agreements with bankrupt railroads.

The Act requires that a contract for rehabilitation of a rail line include these participants: 1. The State which is administrator of both State and Federal funds. 2. The railroad involved. 3. The users of the railroad's services. How much each participant contributes to the project is determined in various ways. The Federal Rail Service Continuation Program requires a minimum of 20% financial participation from non-federal sources such as the State, the rail users and the railroad. The Act allows up to 90% combined State and Federal grant to any project. The State and Federal funds available for the program will be a determining factor in the percentage of a project that will be financed with these funds. Because of these factors it is difficult to set a definite figure on the percentage each entity should contribute. The Federal Rail Service Continuation Program limits the amount of Federal financial participation to 80%. On projects where State and Federal funds are used jointly, the State's financial participation is limited to 50% of the non-federal share. When all variables were taken into consideration a maximum amount was set for public funds and a minimum amount for private funds. This allows the financial commitment of public funds to decrease and private funds to increase when conditions warrant.

Under 2.a. of this proposed subsection the sentence "In no event shall the grant exceed 60% of the project cost.", should be deleted, as it was included as an oversight. The intent of this subsection is to allow bankrupt railroads the opportunity to

participate in the Minnesota Rail Service Improvement Program, even if they are unable to participate with a cash contribution. This is because bankrupt railroads are usually unable to invest limited cash resources in the rehabilitation of rail lines. However, it is often possible for bankrupt railroads to provide in-kind participation through the contribution of construction materials, labor and the like. If the second sentence that was included under 2.a. as an oversight remained as a part of the text, bankrupt railroads could be required to provide as much as 30% of the cost of a project in cash. Such a situation could prohibit the participation of a bankrupt railroad in this program. The end result could be that the State and affected rail users would loose vital rail service.

E. Repayment requirements. This subsection was originally a part of § 1.4002 subsection E. The repayment of funds to the rail users and the State is negotiated as part of a rehabilitation contract using these rules as a guideline. This negotiation takes place prior to the necessity of administering a signed contract for a project. Therefore, repayment requirements are more suitably placed under program criteria than program administration. The railroads will continue to repay the shippers the full amount of their contribution based either on the usage of the line or on a pre-determined fixed amount. Since the railroads will be granted up to 60% of the project cost using State and Federal funds, the State should require repayment of any amount loaned to the railroad above the 60% grant to be repaid on a fixed amount basis. This will insure repayment of funds loaned in a more periodic and organized fashion rather than depending on the number of cars shipped as set forth in the original rules.

§ 1.4002 Program Administration

This entire section of the present program rules is deleted. Portions are renumbered and modified under the proposed amendments.

A. Applications. This subsection is replaced by § 1.4004, subsection A. Provision of information. The type of information for the application procedure under the present section is the type of information that will be provided under proposed § 1.4004, A. The process for the provision of this information is included in the proposed § 1.4005.

B. Determination of eligibility. This subsection is deleted because the determination of eligible projects is included in the proposed amendments under the sections that deal with specific types of projects. Under the proposed amendments, eligibility is included as follows: Rail rehabilitation projects, § 1.4001, A.; Subsidy projects, § 1.4002, A.; Capital improvement projects, § 1.4003, A.

C. Priority ranking. This subsection is deleted because subsections for priority ranking are included in the proposed amendments under the sections that deal with specific types of projects. Under the proposed amendments, priority criteria is included as follows: Rail rehabilitation projects, § 1.4001, B.; Subsidy projects § 1.4002, C.

D. Contract. This subsection is deleted because it has been rewritten and is included in § 1.4004, B.

E. Repayment requirements. This subsection is deleted because conditions for repayment are included in the proposed amendments where applicable. The subsection that describes repayment requirements for rehabilitation projects is numbered § 1.4001, E. Repayment requirements for other projects will be handled during contract negotiations, and is included as a provision of the contract, per proposed amendment § 1.4004, B.,9.

F. Length of contract. This subsection is deleted because it is included in the proposed amendment § 1.4004, B.,7.

G. Separate railroad account. This subsection is deleted because it is no longer applicable. Loans made to the railroads for rehabilitation projects will be repaid to the State under the provisions of the proposed amendment § 1.4001, E.

H. Program implementation. This subsection is deleted. Information, as opposed to an application, will be submitted to the Commissioner under proposed amendment § 1.4004, A., and projects will be implemented through executed contracts under § 1.4004, B.

I. Exceptions. This subsection is renumbered and modified under the proposed amendments. It is renumbered as § 1.4004, C., under the proposed section that deals with program administration.

§ 1.4002 Program Criteria - Post Abandonment Rail Line.

Subsidy Program

This new section addresses the ability of the State to match state funds with federal funds on subsidy projects pursuant to Minn. Stat. § 222.50. (1978).

A. Eligibility. Rail lines must meet all federal eligibility requirements for subsidy funding before they will be considered eligible for state funding. The primary federal regulations governing the subsidy program are found in 49 CFR 266. The need for project lines to meet federal criteria is self-explanatory since state funds are only used for matching federal funds.

B. Project Funding. Proposed § 1.4002 B.1. indicates the maximum percentage of state and federal funding that is available for subsidy projects. Federal law limits federal subsidy funds to 80% of the operational deficit. State law limits state match for subsidy projects to 50% of the local share. Consequently, 90% combined state and federal subsidy funding complies with maximum funding available from federal and state sources.

This government funding has been limited further to an amount equal to the railroad's retained revenue on the line, i.e., the amount of money the railroads obtain from shipping goods to and

from the line. The need for such a limitation is to encourage greater shipper financial participation on lines which show less of a potential to become self-sustaining.

B.2. mandates what the amount of the rail users' percentage of the operational subsidy costs of a project will be. Rail users are required to participate in the subsidy to assure that the line will be used.

B. 3. acts to create uniformity for any rail rehabilitation projects to be completed in the state with government funds. Experience on the Redwood Falls to Sleepy Eye line, the only line in the state to receive subsidy funding, proved that rehabilitation of a line to less than FRA Class II Track Safety Standards would not fulfill the shipper's need to receive efficient rail service. Moreover, the car supply problem is exacerbated when a line cannot support rail cars of 263,000 pounds gross weight.

C. Priority Criteria.

Proposed § 1.4002 C.1. is necessary since there are many rail lines in Minnesota that are in the abandonment process that will become eligible for subsidy funding. It would be financially impossible at present to subsidize all these lines. To determine which of these many lines should be considered for subsidy payments it was necessary to develop criteria that would indicate the lines that should receive priority. Out of necessity, the availability of funds has to be the first consideration.

C.2. is a part of the priority criteria since it would be financially irresponsible to invest limited funds on a line that had no potential for profitability so that the line could not continue to exist without subsidy funding.

C.3. refers to the necessity of completing a cost benefit analysis on a project to determine the advisability of the project.

C.4. establishes the necessity of receiving financial commitments from the rail users to assure the complete success of the project.

M.C.A.R. § 1.4003 Program Criteria, Capital improvement Projects. This is a new section of the rules. Under Minn. Stat. § 222.50 Subd. 6 and 7 (b), (1979 Supp.) the Commissioner is allowed to make grants for capital improvement projects.

A. Eligibility. When a rail line is rehabilitated there are often projects related to the rehabilitation that need to be done to allow utilization of the full potential of improved and more efficient rail service. An example of such projects are longer sidings to facilitate the use of 25 or 50 car unit trains, faster loading facilities and larger storage capacity. The individuals and corporations who need these improvements are usually the ones that have already invested funds in the rehabilitation of the associated rail line and do not have immediate assets to do the other improvements. It is therefore, prudent to loan them the funds necessary to make the improvements to their facilities if the improvements are related to the overall rehabilitation project and it is shown that the improvements will increase usage of the line contributing to a more stable financial condition in the future.

A.2. As more branch rail lines are abandoned and present rail service is found to be deficient it becomes necessary to find better ways to provide rail service to the affected shippers, and alternative ways when their lines are abandoned. If two or more shippers can develop a unique approach to maintaining accessability to rail service they should have assistance in doing so. Examples of possible demonstration projects are: jointly owned loading and unloading facilities on a rail line near the one that is abandoned; a cooperatively owned siding on another rail line; and, joint ownership of trucks to move products a short distance to another rail facility. Benefits derived from a capital improvement should compare favorably with costs, and impact favorably upon the area in which it is located. Because of the number of rail lines being abandoned and the potential for a great number of projects, when similar projects are proposed they will have to be processed and

approved in the order of application. New and innovative ways to improve rail transportation or ameliorate the impacts of abandonment are necessary due to the amount of rail line that needs both financial and physical rehabilitation and the amount of trackage that will eventually be abandoned. However, the projects should have potential application for future projects without the need of using limited public funds.

§ 1.4004 Administration of the Minnesota Rail Service Improvement Program

This section deals with the area of program administration and replaces § 1.4002 under the present program rules.

A. Provision of information. This is a new subsection which replaces subsection A. under the current rule numbered § 1.4002. This proposed subsection states that the railroad and rail users shall provide the Commissioner with information to be used for program evaluation and administration purposes. The information is necessary for evaluation purposes to determine the appropriateness and feasibility of implementing a project. The information is also necessary to fulfill the State's evaluation and administration responsibilities for those projects that are implemented. The definition of and provisions for providing this information are dealt with under the proposed § 1.4005.

B. Contracts. This subsection replaces subsections D. and F. under the current rule numbered § 1.4002. This subsection states that the document used to commit funds and implement projects will be a duly executed contract, as it would provide the State with the authority to commit and spend funds on specific projects. This type of document would also provide the State with the necessary safeguards related to the granting and loaning of funds.

This subsection also describes the minimum content requirements of contracts so that all parties to a contract will understand what the contract will include.

C. Exceptions. This subsection is contained in the current rules and has been renumbered and modified under these proposed amendments. This subsection has been renumbered from § 1.4002, I., to § 1.4004, C. The word "rehabilitation" has been deleted from the first sentence because the program does not deal exclusively with rehabilitaiton projects. The words "be contrary to the intent of the program or such exception would" have been deleted from the second sentence because they are unnecessary, as it would be unlawful not to follow the intent of the program.

§ 1.4005 Disclosure of Information Concerning Railroad Data.

This is a new section which deals with the definition, provision, use, and release of confidential railroad information.

A. Confidential information defined. Confidential railroad information is defined by the Interstate Commerce Act under the provisions of 49 USC § 11910 (a) (1), as "A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to a railroad for transportation . . .", and B) information that "may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee . . ." The State uses this definition for confidential railroad information, as it is the definition prescribed by Federal law and it is uniformly accepted throughout the country.

B. Provision of information. The Commissioner is authorized to request and receive confidential railroad data under state and federal laws. Minn. Stat. § 222.54 (1978) gives the Commissioner authority to request the data, and 49 USC § 11910 (b) (2) authorizes the railroad to provide confidential information to a state.

This subsection defines the procedure the Commissioner will use to request confidential railroad data. Requests for information will be directed to the corporate office of the railroad, and

will specify the information needed, and how and when it is to be submitted. If the railroad cannot meet the submittal date, the railroad may request a revision of the time schedule. The Commissioner shall approve or disapprove these requests. If the information is not provided to the Commissioner within the time schedule, the Commissioner may make a final demand. As provided in Minn. Stat. § 222.54 (1978) the Commissioner may issue a subpoena 60 days after the final demand to compel production of the information. The railroad may request reimbursement for substantial and unusual costs for providing requested information.

The submission of railroad information in a timely manner is necessary so that the Department can analyze and evaluate specific rail lines and proposed projects for potential participation in the Minnesota Rail Service Improvement Program.

C. Use of confidential railroad data. Confidential railroad information will be used by the Department to implement the Minnesota Rail Service Improvement Program. Only Department personnel and authorized agents of the Department will use the information because of the confidentiality requirements that are discussed in the following subsection D.

D. Release of information. This subsection describes the circumstances under which the Department will release confidential railroad information. Confidential information will be furnished to persons outside the Department only in the following circumstances: 1) The railroad provides written approval; 2) the information has been made public by the railroad or other public authority; and, 3) the information is aggregated to obscure the data specific to any individual rail user.

The disclosure of confidential railroad information is unlawful under State and Federal laws. Minn. Stat. § 222.54 (1978) requires that the Commissioner use all necessary caution to avoid the disclosure of confidential information supplied for the purposes of the Act. The disclosure of confidential railroad data is also unlawful under 49 USC § 11910 (a) (1).

for Richard P. Braun
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

IN THE MATTER OF THE PROPOSED)
ADOPTION OF AMENDMENTS TO RULES)
PERTAINING TO IMPLEMENTATION OF)
THE MINNESOTA RAIL SERVICE)
IMPROVEMENT PROGRAM)

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Gilbert S. Buffington, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Gilbert S. Buffington
Special Assistant Attorney General

Dated: June 20, 1980

published in SR. 11.19.79

DEPARMTENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION

Notice of Intent to Solicit Outside Opinion
Concerning Proposed Amendments to
Rules of the Minnesota Rail Service
Improvement Program

Notice is hereby given that the Minnesota Department of Transportation (hereinafter "Department") is seeking information or opinions from sources outside the Department in preparing to propose the adoption of amendments to rules relating to the Minnesota Rail Service Improvement Program.

Amendments to the rules are authorized by Minn. Laws 1979, Ex. Sess. ch. 1, §31, subd. 3(d). Due to this new legislation, the proposed amendments to the rules would include changes to the following sections of the present rules governing the Minnesota Rail Service Improvement Program:

1. Program criteria including eligibility requirements, project funding and priority of projects.

2. Application and contracting requirements.

A section would also be added relating to the confidentiality of railroad data submitted to the Department for programming purposes.

The Department requests information and comments concerning the subject matter of the proposed rules. Interested or affected persons or groups may submit statements of information, comment and advice in writing or orally to:

Mr. L. F. McNamara, Director
Office of Railroad Administration
Minnesota Department of Transportation
419 State Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55155

All statements of information and comment must be received by December 14, 1979. Any written material received by the Department shall become part of the hearing record when rules governing this subject are promulgated.

Richard P. Braun
Commissioner

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Mn/DOT - Office of the Commissioner
Room 411

Office Memorandum

TO : Warren Spannus
Attorney General
Room 102 - Capitol Building
Attn: Joanne Hinderaker

DATE: June 23, 1980

FROM for Richard P. Braun
Commissioner

Sheri Y. Alston

PHONE: 296-3000

SUBJECT: Rules Pertaining to Implementation of the Minnesota Rail Service Improvement Program

Pursuant to Minn. Stat. §15.0412, subd. 4., the above entitled rules and hearing record are being transmitted to you for your review and approval.

Attachments:

cc:
S. Buffington
K. Bjork
S. Alston
C. Selness
J. McCrossen