

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2-8-84
DATE FOR REVIEW 2-20-84
DATE DUE 2-28-84

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved 2-28-84 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 2/13/84
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.20.84 Date but contains typo. in stat citation

✓ Notice of Intent to Solicit Outside Opinion SR. 4.4.83

✓ Order for rulemaking
10.26.83. date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
9.12.83 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
9.12.83 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 12.12.83 Approving H.E.'s Report
✓ 1.30.84 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

_____ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

✓ Agency comments to HE re amendments.
letter dated 11/7/83 to Bruce Campbell

AG Copy

Department of Transportation

Adopted Rules Governing Distribution of Financial Assistance under the Public Transit Assistance Program (14 MCAR SS 1.4031-1.4065) and Repeal of Existing Rules (14 MCAR SS 1.4025-1.4030)

Rules as Adopted

14 MCAR S 1.4031 Definitions.

A. Scope. The terms used in 14 MCAR SS 1.4031-~~1.4065~~ 1.4044 have the meanings given them in this rule.

B. Cost. "Cost" means the amount of money asked or paid or the liability incurred for a commodity or service.

C. Cost contract. "Cost contract" means a cost reimbursement contract under which the contractor receives no fee, operating as a nonprofit organization.

D. Cost-plus-a-fixed-fee contract. "Cost-plus-a-fixed-fee contract" means a cost reimbursement contract providing for the payment of a fixed fee to the contractor based upon negotiation.

E. Cost-plus-incentive-fee contract. "Cost-plus-incentive-fee contract" means a cost reimbursement contract providing for a fee adjusted by a negotiated formula relating total allowable costs to target costs.

F. Cost reimbursement contract. "Cost reimbursement contract" means a contract providing for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract.

G. Department. "Department" means the Department of Transportation.

H. Direct cost. "Direct cost" means cost incurred for the benefit of and traceable to a specific activity or incurred for providing a specific service.

I. Fee. "Fee" means profit and represents a sum of money which is over and above actual costs.

J. Financial assistance. "Financial assistance" means state funds paid to an eligible recipient in accordance with the

public transit subsidy program established under Minnesota Statutes, section 174.24.

K. Generally accepted accounting principles. "Generally accepted accounting principles" means broad rules adopted by the accounting profession as guides for use in accumulating and reporting financial data and found in the American Institute of Certified Public Accountants Professional Standards, volume 3 "Accounting," published by Commerce Clearing House (Chicago 1979).

L. Indirect cost. "Indirect cost" means a cost incurred for the benefit of the operating entity as a whole and not traceable to a specific activity.

M. Negotiation. "Negotiation" means the process of conferring or bargaining to reach agreement.

N. Operating deficit. "Operating deficit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 5.

O. Public transit or transit. "Public transit" or "transit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 7.

P. Reasonable cost. "Reasonable cost" means a price for a commodity or service which, in its nature or amount, does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business.

Q. Regional Development Commission. "Regional Development Commission" has the meaning given it in Minnesota Statutes, section 462.384, subdivision 4.

R. Revenue. "Revenue" means sources of income.

S. Total operating cost. "Total operating cost" means the cost allowability provisions of 14 MCAR SS ~~1.4040~~ 1.4036 and ~~1.4042~~ 1.4037, as well as the fee allowability provisions of 14 MCAR S ~~1.4043~~ 1.4038.

14 MCAR S 1.4032 Authority, purpose, and scope.

A. Authority. Rules 14 MCAR SS 1.4031-~~1.4065~~ 1.4044 are adopted pursuant to Minnesota Statutes, sections 174.23, subdivisions 2 and 7; 174.24, subdivision 3; and 174.245, subdivision 2.

B. Purpose. The purpose of 14 MCAR SS 1.4031-~~1.4065~~ 1.4044 is to establish the procedures and standards for review and approval of applications for transit financial assistance, to define "total operating cost" as the term is used in carrying out the public transit assistance program, to establish uniform performance standards for private operators of regular route transit systems in the Twin Cities metropolitan area transit taxing district, and to establish the procedures and standards for review and approval of applications for capital grant assistance.

C. Scope. Rules 14 MCAR SS 1.4031-~~1.4065~~ 1.4044 apply to applicants for financial assistance under the public transit subsidy program established by Minnesota Statutes, section 174.24, and the public transit capital grant assistance program established by Minnesota Statutes, section 174.245.

14 MCAR S 1.4033 ~~Eligible recipient~~ Eligibility for public transit participation program.

"Eligible recipient," for the purposes of 14 MCAR SS 1.4033-1.4043, means a legislatively established public transit commission or authority, a county or a statutory or a home rule charter city operating or providing financial assistance to public transit, a private operator of public transit, or a combination of them.

14 MCAR S ~~1.4035~~ 1.4034 Application for financial assistance through public transit participation program.

An applicant shall request financial assistance using a format prescribed by the department. The required information for the application is limited to the items specified in 14 MCAR S 1.4035. In addition to submitting an application to the department, an applicant shall submit an application to the appropriate regional development commission for review and approval for consistency with regional transportation plans and development guides. If there is no regional development commission in the area, the applicant shall submit the application to the the State Planning Agency for review. When

applicable, the application must also be submitted to the local transit authority, commission, or system for review and comment as to consistency with its approved transportation development program.

14 MCAR S ~~1.4037~~ 1.4035 Application format.

A. Management plan. Applicants shall include the following information in the management plan:

1. a description of the levels of service to be provided during the contract period, including a discussion of service area, type of service, vehicle descriptions, days and hours of service, contract services, and route maps;

2. a description of the participating transit system's proposed marketing program, including costs and benefits of major elements;

3. a description of proposed capital improvements in the participating transit system;

4. a description of revenue-producing contracts relating to the transit services provided by or for the applicant;

5. a description of expense contracts for services and goods procured by the transit system;

6. a description of the participating public transit system's vehicle maintenance program for the period of financial assistance;

7. a description of the organizational structure established to direct, control, review, and implement the management plan;

8. a description of measurable goals and objectives for the transit system, illustrating the benefits expected to be realized by the investment of state financial assistance;

9. a description of how revenue will be generated through the fare box;

10. a listing of transit and paratransit systems and their union affiliations currently operating in the applicant's area, and a description of existing or potential coordination with these systems;

11. a description of the driver selection process; and

12. a description of the proposed insurance carrier and the limits of coverage.

B. Operations report. Applicants shall include the following information in the operations report on forms provided by the department:

1. actual statistics on operating expenses and operating revenues for the most recent 12-month period;

2. anticipated statistics on operating expenses and operating revenues for the new contract period;

3. actual statistics on miles and hours of service and passengers carried for the most recent 12-month period; and

4. anticipated statistics on miles and hours of service and passengers carried for the new contract period.

C. Resolution regarding application submission. Applicants shall include with the application a resolution by the governing body authorizing the submission of an application, designating a person to represent the applicant in negotiations with the department, and attesting to the availability of local funds to provide the percentage of total cost specified in Minnesota Statutes, section 174.24, subdivision 3.

14 MCAR S ~~1.4040~~ 1.4036 Determination of financial assistance; expense categories.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR S ~~1.4042~~ 1.4037 and the following definitions of expense categories apply and have the meanings given them in this rule.

B. Personnel services. The "personnel services" expense category includes:

1. administrative, management, and supervisory services which are the amount paid to employees of the transit system who are classified as managers, supervisors, coordinators, or administrators and for which the amounts claimed by employees not working solely for the transit system must be supported by detailed time sheets;

2. operators' wages which are the total amount paid to employees of the transit system who are classified as vehicle

operators;

3. maintenance and repair wages which are the labor charges incurred in the performance of maintenance and repair of vehicles and other property required for the operation of the transit system, including only wages of maintenance personnel employed by the transit system;

4. other direct wages which are the amount paid to employees of the transit system who are not classified as operators, maintenance, or administrative personnel, such as dispatchers, bookkeepers, clerical personnel, janitors, and security personnel;

5. indirect labor charges which are the amount to be allocated to the transit contract for labor which is not traceable to a specific transit activity but which benefits the transit operation and must be based on a cost allocation plan approved by the Minnesota Department of Transportation; and

6. fringe benefits which are the cost of providing fringe benefits for active and retired employees of the transit system, including pension benefits, vacation and sick leave benefits, social security taxes, workers' compensation insurance, unemployment insurance, life insurance, and first party medical coverage and which may be allocated indirectly based on a cost allocation plan approved by the Minnesota Department of Transportation.

C. Administrative charges. The "administrative charges" expense category includes:

1. management fees which are the amount paid for professional services provided by a management service company engaged contractually to provide operating management to the transit system;

2. tariffs and traffic expenses which are any necessary tariff filing fees and costs for the procurement of tickets, tokens, and transfers~~, etc.~~;

3. advertising, marketing, and promotional charges including the necessary cost of advertising and promoting the transit system;

4. legal, auditing, and other professional fees including attorney fees and expenses, court costs, witness fees, and fees for accounting and auditing services rendered by individuals or firms other than employees of the transit system for the purpose of maintaining continuing operations of the transit system, such as accident claims, defending workers' compensation claims, or other items directly related to the management plan and approved by the Minnesota Department of Transportation project manager and other professional fees including fees paid for planning, engineering, or other consultant services necessary to the continuing operation of the transit system;

5. security costs which are the costs necessary to provide armored car services and patrol services for vehicles, stations, yards, and buildings to detect and prevent criminal activity, fires, and unsafe conditions, ~~etc.,~~ when the patrolling is performed by an outside security agency and not by transit system employees;

6. office supplies expense which is the cost of office supplies and materials and printing and photocopying charges, which are solely attributable to and necessary for the operation of the transit system;

7. lease and rental costs of administrative facilities including leases and rentals of such items as land, buildings, office equipment, and furnishings, that are used for performing the general administrative functions of the transit system;

8. utilities expense which is the cost of utilities such as gas, electricity, water, telephone services, and trash collection;

9. other direct administrative charges including other administrative charges necessary for the continuing operation of the transit system, such as mileage reimbursement for transit support vehicles, approved conference fees, employee travel expenses, driver's training, approved membership fees for transit associations if the cost of membership is reasonably related to the value of the services or benefits received, and subscriptions to transit publications; and

10. indirect administrative charges which are the amount allocated to the transit contract for administrative services not traceable to a specific transit activity but which benefit the transit operation and which must be based on a cost allocation plan approved by the Minnesota Department of Transportation.

D. Vehicle charges. The "vehicle charges" expense category includes:

1. fuel and lubricants expense including costs of gasoline, diesel fuel, antifreeze, propane, lubricating oil, transmission fluid, and grease used by revenue and service vehicles;

2. maintenance and repair material expense including costs of parts, materials, and supplies used in the maintenance and repair of revenue and service equipment;

3. contract service maintenance labor expense which is the cost of labor for maintenance and repair service provided by persons other than transit system employees;

4. tire expense which is the cost of tires and tubes used on revenue and service equipment including the cost of recapping or regrooving and the rental costs for tires and tubes; and

5. other vehicle charges including the cost of first aid equipment, fire extinguishers, and other emergency equipment required for vehicles, and the cost of noncapitalized vehicle improvements which do not remake a vehicle or appreciably extend its useful life and which have received approval from the Minnesota Department of Transportation.

E. Operations charges. The "operations charges" expense category includes:

1. purchase of service which is the cost of having a subcontractor operate the project service, with cost established:

a. through competitive bidding procedures, except for those recipients covered under Minnesota Statutes, chapter 221;

b. through a negotiated contract with the prime contractor in bid situations when only one bid is received; or

c. through a negotiated subcontract in a nonbid

situation;

2. depreciation which is the amount of depreciation or use allowance on depreciable items such as structures, revenue equipment, service vehicles and equipment, and office furniture and equipment and is the amount allowed based on a company's existing depreciation schedule or, if a schedule does not already exist, a depreciation schedule submitted to and approved by the Minnesota Department of Transportation, but which may not be charged for items purchased, totally or in part, with state or federal funds;

3. mileage reimbursement for passenger service including the cost of volunteer driver reimbursement for projects incorporating this type of service, as well as mileage reimbursement for transit personnel using private vehicles for emergency replacement passenger transport in the event of mechanical breakdown of transit vehicles;

4. repair and maintenance of other property including material costs associated with the upkeep and repair of buildings and stations, grounds, nonrevenue equipment owned or leased by the transit company, and miscellaneous expenses such as small tool replacement, and supplies used for cleaning and for general shop and garage purposes;

5. leases and rentals including leases and rentals of garages, depots, passenger vehicles, service vehicles, and passenger stations, ~~etc.,~~ used in the operation of the transit system, with allowability based on the reasonableness of rates and the presence of evidence that the lease will not give rise to material equity in the property; and

6. other operations charges including the cost of such things as the purchase or rental and cleaning of uniforms, street tolls, sanding and snowplow operations, passenger amenities, and station agents and which may be allocated indirectly based on a cost allocation plan approved by the department.

F. Insurance charges. The "insurance charges" expense category includes:

1. public liability and property damage insurance expense on vehicles including premiums paid to insure the transit system against loss through damage to its own property and to indemnify the transit system and all financial and operational participants against loss from liability for its acts which cause damage to the person or property of others; and

2. public liability and property damage insurance charges other than on vehicles, including excess liability insurance, baggage and express insurance, and fire and theft insurance.

G. Taxes and fees. The "taxes and fees" expense category includes:

1. vehicle registration and permit fees on vehicles;

2. federal fuel and lubricant taxes and excise taxes on tires;

3. state fuel and lubricant taxes; and

4. other taxes and fees including applicable real estate and property taxes.

14 MCAR S ~~1.4042~~ 1.4037 Determination of financial assistance; disallowed expenses.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR S ~~1.4040~~ 1.4036 and the following definitions of disallowed expenses apply and have the meanings given them in this rule.

B. General purpose equipment. Expenditures for general purpose equipment are unallowable as operating costs ~~except with the prior approval of the department~~. "General purpose equipment" means equipment that is usable for other than transit contract purposes, such as office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, and automatic data processing equipment.

C. Interest and other financial costs. Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection with these costs are unallowable.

D. Fines and penalites. Costs resulting from violations of,

or failure to comply with federal, state, or local laws and regulations are unallowable.

E. Contingencies. Contributions to a contingency reserve or any similar provision for unseen events are unallowable.

F. Bad debts. Any losses arising from uncollectible accounts, other claims, and related costs are unallowable.

G. Donations and entertainment expense. Contributions and donations are unallowable as are any entertainment expenses.

14 MCAR S ~~1.4043~~ 1.4038 Determination of financial assistance; fee for service.

Operators for profit of public transit service are eligible for a fee for service. The profit or fee must be established as a dollar amount over and above costs of operation. The fee will be arrived at through noncompetitive negotiations and must represent a fair and reasonable price. Factors to be considered in determining the fee are degree of risk assumed by the contractor, the extent of the contractor's investment, and the contractor's past and present performance.

14 MCAR S ~~1.4044~~ 1.4039 Distribution of financial assistance; revenue categories.

A. Scope. In determining the local sources of funds which may comprise the fixed percentage of total operating costs to be paid by a recipient in accordance with the distribution classifications specified in Minnesota Statutes, sections 174.24, subdivision 3, the following definitions of revenue categories apply and have the meanings given them in this rule.

B. Passenger fare. "Passenger fare" means revenue earned from transporting passengers on the public transit system, including a cash fare, a donation received instead of a set fare, and an advance fare received from the sale of a coupon, token, or pass.

C. Contract revenue. "Contract revenue" means revenue received from a contract with a beneficiary of a specific transit service, including an amount paid by an organization for a special route guarantee and revenue earned for a ride given in

regular transit service but paid for by some organization for the benefit of the rider.

D. School bus revenue. "School bus revenue" means revenue earned from service provided under a contract with a school district, including an amount paid for transporting school children on regularly scheduled route service, for operating a bus exclusively to carry school children, and an amount paid by a college or university for operating a bus on or between campuses.

E. Charter revenue. "Charter revenue" includes reimbursement for charter service received in association with publicly funded transit service, providing that charter service rates are developed so that cost recovery equals or exceeds the full cost of providing the charter service.

F. Auxiliary revenue. "Auxiliary revenue" means revenue earned from an activity closely associated with the transit operation, including revenue received from an advertising service, delivery, a lease, and station and vehicle concessions.

G. Other financial assistance. "Other financial assistance" includes revenue earned from an activity not associated with the provision of the recipient's transit service but which is applied to help cover the system's costs, including a federal cash grant, senior citizen fare assistance, fuel and lubricant tax refund, insurance settlement, investment income, and any general donation.

14 MCAR S ~~1.4045~~ 1.4040 Distribution classifications.

Distribution of funds must be made in accordance with the recipient's classification as specified in Minnesota Statutes, section 174.24, subdivision 3. Exceptions to the distribution classifications are the Twin Cities Metropolitan Transit Commission based on the definition of urbanized area found in Minnesota Statutes, section 174.22, subdivision 10, private operators of regular route transit service in the metropolitan transit taxing district based on the statutory commitment to pay private operators up to 100 percent of the operating deficit, and the project for coordination of special transportation

service in the metropolitan area based on the definition of elderly and handicapped service found in Minnesota Statutes, section 174.22, subdivision 13.

14 MCAR S ~~1.4050~~ 1.4041 Financial assistance contract.

A. Content. The financial assistance contract must be a cost reimbursement contract and may be a cost contract, a cost-plus-a-fixed-fee contract, or a cost-plus-incentive-fee contract. The contract must specify the maximum amount of financial assistance to be awarded to the eligible recipient by the department and state the terms and conditions of assistance. For recipients receiving payment under the method described in Minnesota Statutes, section 174.24, subdivision 5, the contract is effective for no more than one year. The final application must be incorporated into the contract as a legal part of the contract document. A resolution by the governing body which designates a person or persons to execute the contract on behalf of the recipient and to represent the recipient during the contract term must be included with the contract.

B. Disbursement schedule. Payments to recipients under contract must be made in accordance with Minnesota Statutes, section 174.24, subdivision 5.

C. Penalties. If a recipient fails to comply with the terms and conditions of the contract, the department shall terminate the financial assistance contract.

14 MCAR S ~~1.4055~~ 1.4042 Use of financial assistance.

A. Record keeping. An eligible recipient and any subcontractor shall maintain their financial records in accordance with generally accepted accounting principles. The records must permit audit verification of transit cost allocations claimed during the contract period. The eligible recipient and any subcontractor also shall keep records on miles and hours of service and passengers carried. Records must be kept available for a period of three years from the date of final payment.

B. Reporting. At the end of each month of operation, a recipient shall provide the department with a report summarizing cost allocations and operating statistics for the period. Reports must be completed on forms provided or approved by the department and must be submitted no later than 20 working days after the end of the preceding month.

C. Audits. The financial records of the eligible recipient must be audited. They may be audited by the department or the department may accept all or part of the audit of an independent auditor instead of a departmental audit if the audit meets department standards. The financial records of a subcontractor may be audited at the department's discretion. Audits at the end of a contract period must establish approved total operating costs. New recipients are subject to a pre-award audit before contract execution and fund encumbrance. As provided by Minnesota Statutes, section 16.095, the records, books, documents, and accounting practices of the recipient and of any subcontractor relating to the contract are subject to audit and examination by the department and the legislative auditor during working hours.

D. Project monitoring. The department shall use the management plan required under 14 MCAR S ~~1.4037~~ 1.4035 A. as a basis for monitoring and evaluating the performance of the public transit system during the contract period. Public transit policy decisions made by the recipient and actions taken during the contract period must conform with the management plan. A proposed deviation from the management plan must be reported to the department and approval secured in writing before implementation. Approval will be granted if it is clearly documented that the proposed deviation will not increase overall project costs. Failure to secure approval jeopardizes continued financial assistance.

14 MCAR S ~~1.4060~~ 1.4043 Uniform performance standards for private operators in metropolitan transit taxing district.

A. Uniform standards. Performance standards developed by the private operators of regular route transit service must be

specified in the management plan required under 14 MCAR S ~~1.4037~~ 1.4035 A. and approved by the department in the process of negotiation. Standards must emphasize maintaining the quality of the system, maintaining the efficiency of the system, and maintaining service levels to the extent necessary to maximize ridership.

B. Funding procedures for private operators. Private operators are subject to the application procedures described in 14 MCAR SS ~~1.4035~~ 1.4034 and ~~1.4037~~ 1.4035. They also are subject to the contract described in 14 MCAR S ~~1.4050~~ 1.4041 and the provisions in 14 MCAR S ~~1.4055~~ 1.4042. By the provisions of Minnesota Statutes, section 174.24, subdivision 3, payments to private operators may equal up to 100 percent of the operating deficit. The operating deficit is recognized as the total operating cost defined in 14 MCAR S 1.4031 S., minus revenue received. Payments to private operators must be made monthly upon receipt of a request for funds submitted on forms provided by the department. An advance of funds not to exceed ten percent of the maximum contract award may be made in the first month of the contract upon justification from the recipient. This advance must then be deducted from the last two monthly requests for funds.

14 MCAR S ~~1.4065~~ 1.4044 Public transit capital grant assistance program.

A. Eligibility. To be eligible for capital grant assistance, an applicant must be a political subdivision, public transit authority, or other public or private nonprofit agency that operates or provides financial assistance to a public transit system, except that a public transit authority or commission that operates a public transit system in a city of the first class is not eligible.

B. Criteria. Requests for capital assistance from eligible recipients must be evaluated for the impact of the capital need addressed on the provision of transit service, for the impact on accessibility to the handicapped, and on the availability of local share money.

C. Standards. ~~Capital~~ Only assistance requests ~~must be considered~~ for the purchase of new transit vehicles or for the refurbishing of existing vehicles may be considered. Refurbishing expenses are recognized as those costs that remake a vehicle to a renewed level of mechanical and structural soundness and which appreciably extend its useful life.

D. Procedures. The department shall conduct an annual survey of the capital needs of financial assistance grant recipients. The survey must ask respondents to relate capital needs to the criteria established. The resulting capital grant requests must be reviewed by an internal committee of departmental representatives. The committee shall evaluate requests ~~based on the criteria~~ and establish priority rankings based on an equal weighting of each of the three criteria. The department shall award grants to the highest ranked eligible recipients from funds designated for capital grants.

E. Capital grant assistance contract. The capital assistance contract between the department and the eligible recipient must specify the maximum amount of financial assistance to be awarded to the recipient and must state the terms and conditions of assistance. In accordance with Minnesota Statutes, section 174.245, capital grants may not exceed two-thirds of the total cost of the purchase price or refurbishing expense. A resolution by the recipient's governing body pertaining to the capital grant request is required.

Repealer. Rules 14 MCAR SS 1.4025; 1.4026; 1.4027; 1.4028; 1.4029; and 1.4030, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 29 1984
Joan Anderson Growe
Secretary of State
9:36 AM

APPROVED AS TO LEGALITY
February 28, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Jerry D. Parms
SPECIAL ASSISTANT ATTORNEY GENERAL

com/s-84-002-BC

Rules as Proposed (all new material)

14 MCAR S 1.4031 Definitions.

A. Scope. The terms used in 14 MCAR SS 1.4031-1.4065 have the meanings given them in this rule.

B. Cost. "Cost" means the amount of money asked or paid or the liability incurred for a commodity or service.

C. Cost contract. "Cost contract" means a cost reimbursement contract under which the contractor receives no fee, operating as a nonprofit organization.

D. Cost-plus-a-fixed-fee contract. "Cost-plus-a-fixed-fee contract" means a cost reimbursement contract providing for the payment of a fixed fee to the contractor based upon negotiation.

E. Cost-plus-incentive-fee contract. "Cost-plus-incentive-fee contract" means a cost reimbursement contract providing for a fee adjusted by a negotiated formula relating total allowable costs to target costs.

F. Cost reimbursement contract. "Cost reimbursement contract" means a contract providing for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract.

G. Department. "Department" means the Department of Transportation.

H. Direct cost. "Direct cost" means cost incurred for the benefit of and traceable to a specific activity or incurred for providing a specific service.

I. Fee. "Fee" means profit and represents a sum of money which is over and above actual costs.

J. Financial assistance. "Financial assistance" means state funds paid to an eligible recipient in accordance with the public transit subsidy program established under Minnesota Statutes, section 174.24.

K. Generally accepted accounting principles. "Generally accepted accounting principles" means broad rules adopted by the accounting profession as guides for use in accumulating and reporting financial data and found in the American Institute of Certified Public Accountants Professional Standards, volume 3

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"Accounting," published by Commerce Clearing House (Chicago 1979).

L. Indirect cost. "Indirect cost" means a cost incurred for the benefit of the operating entity as a whole and not traceable to a specific activity.

M. Negotiation. "Negotiation" means the process of conferring or bargaining to reach agreement.

N. Operating deficit. "Operating deficit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 5.

O. Public transit or transit. "Public transit" or "transit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 7.

P. Reasonable cost. "Reasonable cost" means a price for a commodity or service which, in its nature or amount, does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business.

Q. Regional Development Commission. "Regional Development Commission" has the meaning given it in Minnesota Statutes, section 462.384, subdivision 4.

R. Revenue. "Revenue" means sources of income.

S. Total operating cost. "Total operating cost" means the cost allowability provisions of 14 MCAR SS 1.4040 and 1.4042, as well as the fee allowability provisions of 14 MCAR S 1.4043.

14 MCAR S 1.4032 Authority, purpose, and scope.

A. Authority. Rules 14 MCAR SS 1.4031-1.4065 are adopted pursuant to Minnesota Statutes, sections 174.23, subdivisions 2 and 7; 174.24, subdivision 3; and 174.245, subdivision 2.

B. Purpose. The purpose of 14 MCAR SS 1.4031-1.4065 is to establish the procedures and standards for review and approval of applications for transit financial assistance, to define "total operating cost" as the term is used in carrying out the public transit assistance program, to establish uniform performance standards for private operators of regular route transit systems in the Twin Cities metropolitan area transit taxing district, and to establish the procedures and standards for review and approval of applications for capital grant

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assistance.

C. Scope. Rules 14 MCAR SS 1.4031-1.4065 apply to applicants for financial assistance under the public transit subsidy program established by Minnesota Statutes, section 174.24, and the public transit capital grant assistance program established by Minnesota Statutes, section 174.245.

14 MCAR S 1.4033 Eligible recipient.

"Eligible recipient" means a legislatively established public transit commission or authority, a county or a statutory or a home rule charter city operating or providing financial assistance to public transit, a private operator of public transit, or a combination of them.

14 MCAR S 1.4035 Application for financial assistance through public transit participation program.

An applicant shall request financial assistance using a format prescribed by the department. In addition to submitting an application to the department, an applicant shall submit an application to the appropriate regional development commission for review and approval for consistency with regional transportation plans and development guides. If there is no regional development commission in the area, the applicant shall submit the application to the the State Planning Agency for review. When applicable, the application must also be submitted to the local transit authority, commission, or system for review and comment as to consistency with its approved transportation development program.

14 MCAR S 1.4037 Application format.

A. Management plan. Applicants shall include the following information in the management plan:

1. a description of the levels of service to be provided during the contract period, including a discussion of service area, type of service, vehicle descriptions, days and hours of service, contract services, and route maps;

2. a description of the participating transit system's proposed marketing program, including costs and benefits of

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major elements;

3. a description of proposed capital improvements in the participating transit system;

4. a description of revenue-producing contracts relating to the transit services provided by or for the applicant;

5. a description of expense contracts for services and goods procured by the transit system;

6. a description of the participating public transit system's vehicle maintenance program for the period of financial assistance;

7. a description of the organizational structure established to direct, control, review, and implement the management plan;

8. a description of measurable goals and objectives for the transit system, illustrating the benefits expected to be realized by the investment of state financial assistance;

9. a description of how revenue will be generated through the fare box;

10. a listing of transit and paratransit systems and their union affiliations currently operating in the applicant's area, and a description of existing or potential coordination with these systems;

11. a description of the driver selection process; and

12. a description of the proposed insurance carrier and the limits of coverage.

B. Operations report. Applicants shall include the following information in the operations report on forms provided by the department:

1. actual statistics on operating expenses and operating revenues for the most recent 12-month period;

2. anticipated statistics on operating expenses and operating revenues for the new contract period;

3. actual statistics on miles and hours of service and passengers carried for the most recent 12-month period; and

4. anticipated statistics on miles and hours of service and passengers carried for the new contract period.

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C. Resolution regarding application submission. Applicants shall include with the application a resolution by the governing body authorizing the submission of an application, designating a person to represent the applicant in negotiations with the department, and attesting to the availability of local funds to provide the percentage of total cost specified in Minnesota Statutes, section 174.24, subdivision 3.

14 MCAR S 1.4040 Determination of financial assistance; expense categories.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR S 1.4042 and the following definitions of expense categories apply and have the meanings given them in this rule.

B. Personnel services. The "personnel services" expense category includes:

1. administrative, management, and supervisory services which are the amount paid to employees of the transit system who are classified as managers, supervisors, coordinators, or administrators and for which the amounts claimed by employees not working solely for the transit system must be supported by detailed time sheets;

2. operators' wages which are the total amount paid to employees of the transit system who are classified as vehicle operators;

3. maintenance and repair wages which are the labor charges incurred in the performance of maintenance and repair of vehicles and other property required for the operation of the transit system, including only wages of maintenance personnel employed by the transit system;

4. other direct wages which are the amount paid to employees of the transit system who are not classified as operators, maintenance, or administrative personnel, such as dispatchers, bookkeepers, clerical personnel, janitors, and security personnel;

5. indirect labor charges which are the amount to be allocated to the transit contract for labor which is not

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traceable to a specific transit activity but which benefits the transit operation and must be based on a cost allocation plan approved by the Minnesota Department of Transportation; and

6. fringe benefits which are the cost of providing fringe benefits for active and retired employees of the transit system, including pension benefits, vacation and sick leave benefits, social security taxes, workers' compensation insurance, unemployment insurance, life insurance, and first party medical coverage and which may be allocated indirectly based on a cost allocation plan approved by the Minnesota Department of Transportation.

C. Administrative charges. The "administrative charges" expense category includes:

1. management fees which are the amount paid for professional services provided by a management service company engaged contractually to provide operating management to the transit system;

2. tariffs and traffic expenses which are any necessary tariff filing fees and costs for the procurement of tickets, tokens, transfers, etc.;

3. advertising, marketing, and promotional charges including the necessary cost of advertising and promoting the transit system;

4. legal, auditing, and other professional fees including attorney fees and expenses, court costs, witness fees, and fees for accounting and auditing services rendered by individuals or firms other than employees of the transit system for the purpose of maintaining continuing operations of the transit system, such as accident claims, defending workers' compensation claims, or other items directly related to the management plan and approved by the Minnesota Department of Transportation project manager and other professional fees including fees paid for planning, engineering, or other consultant services necessary to the continuing operation of the transit system;

5. security costs which are the costs necessary to provide armored car services and patrol services for vehicles,

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stations, yards, and buildings to detect and prevent criminal activity, fires, unsafe conditions, etc., when the patrolling is performed by an outside security agency and not by transit system employees;

6. office supplies expense which is the cost of office supplies and materials and printing and photocopying charges, which are solely attributable to and necessary for the operation of the transit system;

7. lease and rental costs of administrative facilities including leases and rentals of such items as land, buildings, office equipment, and furnishings, that are used for performing the general administrative functions of the transit system;

8. utilities expense which is the cost of utilities such as gas, electricity, water, telephone services, and trash collection;

9. other direct administrative charges including other administrative charges necessary for the continuing operation of the transit system, such as mileage reimbursement for transit support vehicles, approved conference fees, employee travel expenses, driver's training, approved membership fees for transit associations if the cost of membership is reasonably related to the value of the services or benefits received, and subscriptions to transit publications; and

10. indirect administrative charges which are the amount allocated to the transit contract for administrative services not traceable to a specific transit activity but which benefit the transit operation and which must be based on a cost allocation plan approved by the Minnesota Department of Transportation.

D. Vehicle charges. The "vehicle charges" expense category includes:

1. fuel and lubricants expense including costs of gasoline, diesel fuel, antifreeze, propane, lubricating oil, transmission fluid, and grease used by revenue and service vehicles;

2. maintenance and repair material expense including

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costs of parts, materials, and supplies used in the maintenance and repair of revenue and service equipment;

3. contract service maintenance labor expense which is the cost of labor for maintenance and repair service provided by persons other than transit system employees;

4. tire expense which is the cost of tires and tubes used on revenue and service equipment including the cost of recapping or regrooving and the rental costs for tires and tubes; and

5. other vehicle charges including the cost of first aid equipment, fire extinguishers, and other emergency equipment required for vehicles, and the cost of noncapitalized vehicle improvements which do not remake a vehicle or appreciably extend its useful life and which have received approval from the Minnesota Department of Transportation.

E. Operations charges. The "operations charges" expense category includes:

1. purchase of service which is the cost of having a subcontractor operate the project service, with cost established:

a. through competitive bidding procedures, except for those recipients covered under Minnesota Statutes, chapter 221;

b. through a negotiated contract with the prime contractor in bid situations when only one bid is received; or

c. through a negotiated subcontract in a nonbid situation;

2. depreciation which is the amount of depreciation or use allowance on depreciable items such as structures, revenue equipment, service vehicles and equipment, and office furniture and equipment and is the amount allowed based on a company's existing depreciation schedule or, if a schedule does not already exist, a depreciation schedule submitted to and approved by the Minnesota Department of Transportation, but which may not be charged for items purchased, totally or in part, with state or federal funds;

3. mileage reimbursement for passenger service including the cost of volunteer driver reimbursement for projects incorporating this type of service, as well as mileage

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reimbursement for transit personnel using private vehicles for emergency replacement passenger transport in the event of mechanical breakdown of transit vehicles;

4. repair and maintenance of other property including material costs associated with the upkeep and repair of buildings and stations, grounds, nonrevenue equipment owned or leased by the transit company, and miscellaneous expenses such as small tool replacement, and supplies used for cleaning and for general shop and garage purposes;

5. leases and rentals including leases and rentals of garages, depots, passenger vehicles, service vehicles, passenger stations, etc., used in the operation of the transit system, with allowability based on the reasonableness of rates and the presence of evidence that the lease will not give rise to material equity in the property; and

6. other operations charges including the cost of such things as the purchase or rental and cleaning of uniforms, street tolls, sanding and snowplow operations, passenger amenities, and station agents and which may be allocated indirectly based on a cost allocation plan approved by the department.

F. Insurance charges. The "insurance charges" expense category includes:

1. public liability and property damage insurance expense on vehicles including premiums paid to insure the transit system against loss through damage to its own property and to indemnify the transit system and all financial and operational participants against loss from liability for its acts which cause damage to the person or property of others; and

2. public liability and property damage insurance charges other than on vehicles, including excess liability insurance, baggage and express insurance, and fire and theft insurance.

G. Taxes and fees. The "taxes and fees" expense category includes:

1. vehicle registration and permit fees on vehicles;

2. federal fuel and lubricant taxes and excise taxes on

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tires;

3. state fuel and lubricant taxes; and

4. other taxes and fees including applicable real estate and property taxes.

14 MCAR S 1.4042 Determination of financial assistance; disallowed expenses.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR S 1.4040 and the following definitions of disallowed expenses apply and have the meanings given them in this rule.

B. General purpose equipment. Expenditures for general purpose equipment are unallowable as operating costs except with the prior approval of the department. "General purpose equipment" means equipment that is usable for other than transit contract purposes, such as office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, and automatic data processing equipment.

C. Interest and other financial costs. Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection with these costs are unallowable.

D. Fines and penalites. Costs resulting from violations of, or failure to comply with federal, state, or local laws and regulations are unallowable.

E. Contingencies. Contributions to a contingency reserve or any similar provision for unseen events are unallowable.

F. Bad debts. Any losses arising from uncollectible accounts, other claims, and related costs are unallowable.

G. Donations and entertainment expense. Contributions and donations are unallowable as are any entertainment expenses.

14 MCAR S 1.4043 Determination of financial assistance; fee for service.

Operators for profit of public transit service are eligible for a fee for service. The profit or fee must be established as a dollar amount over and above costs of operation. The fee will

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be arrived at through noncompetitive negotiations and must represent a fair and reasonable price. Factors to be considered in determining the fee are degree of risk assumed by the contractor, the extent of the contractor's investment, and the contractor's past and present performance.

14 MCAR S 1.4044 Distribution of financial assistance; revenue categories.

A. Scope. In determining the local sources of funds which may comprise the fixed percentage of total operating costs to be paid by a recipient in accordance with the distribution classifications specified in Minnesota Statutes, sections 174.24, subdivision 3, the following definitions of revenue categories apply and have the meanings given them in this rule.

B. Passenger fare. "Passenger fare" means revenue earned from transporting passengers on the public transit system, including a cash fare, a donation received instead of a set fare, and an advance fare received from the sale of a coupon, token, or pass.

C. Contract revenue. "Contract revenue" means revenue received from a contract with a beneficiary of a specific transit service, including an amount paid by an organization for a special route guarantee and revenue earned for a ride given in regular transit service but paid for by some organization for the benefit of the rider.

D. School bus revenue. "School bus revenue" means revenue earned from service provided under a contract with a school district, including an amount paid for transporting school children on regularly scheduled route service, for operating a bus exclusively to carry school children, and an amount paid by a college or university for operating a bus on or between campuses.

E. Charter revenue. "Charter revenue" includes reimbursement for charter service received in association with publicly funded transit service, providing that charter service rates are developed so that cost recovery equals or exceeds the full cost of providing the charter service.

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F. Auxiliary revenue. "Auxiliary revenue" means revenue earned from an activity closely associated with the transit operation, including revenue received from an advertising service, delivery, a lease, and station and vehicle concessions.

G. Other financial assistance. "Other financial assistance" includes revenue earned from an activity not associated with the provision of the recipient's transit service but which is applied to help cover the system's costs, including a federal cash grant, senior citizen fare assistance, fuel and lubricant tax refund, insurance settlement, investment income, and any general donation.

14 MCAR S 1.4045 Distribution classifications.

Distribution of funds must be made in accordance with the recipient's classification as specified in Minnesota Statutes, section 174.24, subdivision 3. Exceptions to the distribution classifications are the Twin Cities Metropolitan Transit Commission based on the definition of urbanized area found in Minnesota Statutes, section 174.22, subdivision 10, private operators of regular route transit service in the metropolitan transit taxing district based on the statutory commitment to pay private operators up to 100 percent of the operating deficit, and the project for coordination of special transportation service in the metropolitan area based on the definition of elderly and handicapped service found in Minnesota Statutes, section 174.22, subdivision 13.

14 MCAR S 1.4050 Financial assistance contract.

A. Content. The financial assistance contract must be a cost reimbursement contract and may be a cost contract, a cost-plus-a-fixed-fee contract, or a cost-plus-incentive-fee contract. The contract must specify the maximum amount of financial assistance to be awarded to the eligible recipient by the department and state the terms and conditions of assistance. For recipients receiving payment under the method described in Minnesota Statutes, section 174.24, subdivision 5, the contract is effective for no more than one year. The final

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application must be incorporated into the contract as a legal part of the contract document. A resolution by the governing body which designates a person or persons to execute the contract on behalf of the recipient and to represent the recipient during the contract term must be included with the contract.

B. Disbursement schedule. Payments to recipients under contract must be made in accordance with Minnesota Statutes, section 174.24, subdivision 5.

C. Penalties. If a recipient fails to comply with the terms and conditions of the contract, the department shall terminate the financial assistance contract.

14 MCAR S 1.4055 Use of financial assistance.

A. Record keeping. An eligible recipient and any subcontractor shall maintain their financial records in accordance with generally accepted accounting principles. The records must permit audit verification of transit cost allocations claimed during the contract period. The eligible recipient and any subcontractor also shall keep records on miles and hours of service and passengers carried. Records must be kept available for a period of three years from the date of final payment.

B. Reporting. At the end of each month of operation, a recipient shall provide the department with a report summarizing cost allocations and operating statistics for the period. Reports must be completed on forms provided by the department and must be submitted no later than 20 working days after the end of the preceding month.

C. Audits. The financial records of the eligible recipient must be audited. They may be audited by the department or the department may accept all or part of the audit of an independent auditor instead of a departmental audit if the audit meets department standards. The financial records of a subcontractor may be audited at the department's discretion. Audits at the end of a contract period must establish approved total operating costs. New recipients are subject to a pre-award audit before

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contract execution and fund encumbrance. As provided by Minnesota Statutes, section 16.095, the records, books, documents, and accounting practices of the recipient and of any subcontractor relating to the contract are subject to audit and examination by the department and the legislative auditor during working hours.

D. Project monitoring. The department shall use the management plan required under 14 MCAR S 1.4037 A. as a basis for monitoring and evaluating the performance of the public transit system during the contract period. Public transit policy decisions made by the recipient and actions taken during the contract period must conform with the management plan. A proposed deviation from the management plan must be reported to the department and approval secured in writing before implementation. Failure to secure approval jeopardizes continued financial assistance.

14 MCAR S 1.4060 Uniform performance standards for private operators in metropolitan transit taxing district.

A. Uniform standards. Performance standards developed by the private operators of regular route transit service must be specified in the management plan required under 14 MCAR S 1.4037 A. and approved by the department in the process of negotiation. Standards must emphasize maintaining the quality of the system, maintaining the efficiency of the system, and maintaining service levels to the extent necessary to maximize ridership.

B. Funding procedures for private operators. Private operators are subject to the application procedures described in 14 MCAR SS 1.4035 and 1.4037. They also are subject to the contract described in 14 MCAR S 1.4050 and the provisions in 14 MCAR S 1.4055. By the provisions of Minnesota Statutes, section 174.24, subdivision 3, payments to private operators may equal up to 100 percent of the operating deficit. The operating deficit is recognized as the total operating cost defined in 14 MCAR S 1.4031 S., minus revenue received. Payments to private operators must be made monthly upon receipt of a request for

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funds submitted on forms provided by the department. An advance of funds not to exceed ten percent of the maximum contract award may be made in the first month of the contract upon justification from the recipient. This advance must then be deducted from the last two monthly requests for funds.

14 MCAR S 1.4065 Public transit capital grant assistance program.

A. Eligibility. To be eligible for capital grant assistance, an applicant must be a political subdivision, public transit authority, or other public or private nonprofit agency that operates or provides financial assistance to a public transit system, except that a public transit authority or commission that operates a public transit system in a city of the first class is not eligible.

B. Criteria. Requests for capital assistance from eligible recipients must be evaluated for the impact of the capital need addressed on the provision of transit service, for the impact on accessibility to the handicapped, and on the availability of local share money.

C. Standards. Capital assistance requests must be considered for the purchase of new transit vehicles or for the refurbishing of existing vehicles. Refurbishing expenses are recognized as those costs that remake a vehicle to a renewed level of mechanical and structural soundness and which appreciably extend its useful life.

D. Procedures. The department shall conduct an annual survey of the capital needs of financial assistance grant recipients. The survey must ask respondents to relate capital needs to the criteria established. The resulting capital grant requests must be reviewed by an internal committee of departmental representatives. The committee shall evaluate requests based on the criteria and establish priority rankings.

E. Capital grant assistance contract. The capital assistance contract between the department and the eligible recipient must specify the maximum amount of financial assistance to be awarded to the recipient and must state the terms and conditions of assistance. In accordance with

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Minnesota Statutes, section 174.245, capital grants may not exceed two-thirds of the total cost of the purchase price or refurbishing expense. A resolution by the recipient's governing body pertaining to the capital grant request is required.

Repealer. Rules 14 MCAR SS 1.4025; 1.4026; 1.4027; 1.4028; 1.4029; and 1.4030, are repealed.

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OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD326

Agency: Department of Transportation

Division: Program Management Division

Agency Contact: Nancy Moore, Special Projects Coordinator

Rule Numbers: 14 MCAR SS 1.4025-1.4030, 1.4031-1.4033, 1.4035, 1.4037, 1.4040, 1.4042-1.4045, 1.4055, 1.4060, 1.4065

Title: Rules Governing Public Transit Financial Assistance

RECEIVED
AUG 18 1983
ADMINISTRATIVE HEARINGS

Type of Rules: Permanent

Incorporations by Reference:

Rule Number:	Material Incorporated:
14 MCAR S 1.4031 L.	Accounting Principles Board Accounting Principles Manual, section 1026 (1970)

Duplication of Statutory Language:

Rule Number:	Statutory Section Duplicated:
14 MCAR S 1.4033	Minnesota Statutes, section 174.24, subdivision 2
14 MCAR S 1.4065 A.	Minnesota Statutes, section 174.245, subdivision 2

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: July 20, 1983

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

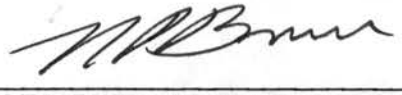
ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Bruce D. Campbell on the 26th day of October, 1983 at 9:30 A.M., in Room 81 of the Minnesota State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State of Minnesota Department of Transportation for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Distribution of Financial Assistance Under the Public Transit Assistance Program are adopted this 20th day of January, 1984, pursuant to authority vested in me by Minnesota Statutes section 174.23, subds. 2 and 7 (1982), 174.24, subd. 3 (1982), and 174.25, subd. 2 (1982).

STATE OF MINNESOTA



COMMISSIONER OF TRANSPORTATION

DOT Exhibit No. D
File No. DOT-84-002BC
Date 10-26-83

BEHIND SCHEDULE PROJECTS
1982 FINAL LIST
March 22, 1983

Firm	Municipality	Nature of Deficiency Days Behind Schedule	Project Description
1) Jones Haugh & Smith Inc.	Blooming Prairie	185	Facilities Plan
	Claremont	426	Plans & Specifications
	Lyle	365	Infiltration/Inflow
2) McGhie and Betts, Inc.	Adams	310	Facilities Plan
	Elgin	191	Facilities Plan
3) Jack D. Salo, Inc.	Floodwood	509	Facilities Plan
4) Widseth Smith Nolting & Associates, Inc.	Erskine	791	Facilities Plan
	Gonvick	610	Facilities Plan
	Williams	579	Facilities Plan

SUBSTANDARD PROJECTS
1982 FINAL LIST
March 22, 1983

Firm	Municipality	Nature of Deficiency Days Behind Schedule	Project Description

Entries withheld pending outcome of hearings.

Department of Transportation

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Distribution of Financial Assistance under the Public Transit Assistance Program

Notice is hereby given that the State of Minnesota, Department of Transportation, is seeking information or opinions from sources outside the Department of Transportation in preparing to promulgate new and revised rules governing distribution of financial assistance under the public transit assistance program. The promulgation of these rules is authorized by Minnesota Statutes § 174.23, subds. 2 and 7, Minnesota Statutes § 174.24, subd. 3, and Minnesota Statutes § 174.245, subd. 2, which require the Department of Transportation to establish the procedures and standards for review and approval of applications for transit financial assistance, to define "total operating costs" as the term is used in carrying out the public transit assistance program, to establish uniform performance standards for private operators of regular route transit service in the Twin Cities metropolitan area transit taxing district, and to establish the procedures and standards for review and approval of applications for capital grant assistance.

The Department of Transportation requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Allan J. Schenkelberg, Acting Director
Office of Transit
Minnesota Department of Transportation
820 Transportation Building
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-7590 or (612) 296-1610 and in person at the above address.

All statements of information and comment shall be accepted until May 9, 1983. Any written material received by the Department of Transportation shall become part of the record in the event that the rules are promulgated.

Richard P. Braun, Commissioner

DOT Exhibit No. K
e No. DoT-84-002BC
Date 10-26-83

I am qualified to vote the enclosed ballot(s) as (check category that applies) ....a member of the Armed Forces; ....a spouse or dependent of a member of the Armed Forces .... a citizen of the United States temporarily residing outside the territorial limits of the United States; ....a citizen of the United States permanently residing outside the territorial limits of the United States. I have not cast and will not cast any other ballot in this election. I personally marked the enclosed ballot(s) without exhibiting it to any other person, or which, in case of my physical disability, was marked for me under my personal direction.

.....
(Legal signature of Voter)

Subscribed and sworn to me this ... day of ....., 19...

.....
(Signature of Witness)

.....
(Give title or office of witness authorized to administer oaths. If an officer of the Armed Forces, a commissioned or noncommissioned officer not below the rank of sergeant or its equivalent.)

1 MCAR § 2.4202 Duties of county auditor or municipal clerk upon receipt of absentee ballot return envelope.

A. Absentee ballot return envelopes which are delivered in person by an absent voter or an agent must be received by the county auditor or municipal clerk by ~~4:30~~ 7:00 p.m. on the day before election day.

B.-C. [Unchanged.]

Repealer. Rules 1 MCAR §§ 2.0901; 2.0902; 2.0903; 2.2113; 2.4102 D. and E. are repealed.

Department of Transportation

Proposed Rules Governing Distribution of Financial Assistance under the Public Transit Assistance Program (14 MCAR §§ 1.4031-1.4065) and Repeal of Existing Rules (14 MCAR §§ 1.4025-1.4030)

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held, pursuant to Minnesota Statutes §§ 14.01-14.20, 14.37-14.38, 14.46-14.47, and 14.48-14.54 (1982) as well as by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules), in the State Office Building, Room 81, 435 Park Street, St. Paul, Minnesota, on October 26, 1983, commencing at 9:30 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commissioner of Transportation has been provided the statutory authority to promulgate rules governing distribution of financial assistance under the public transit assistance program in Minnesota Statutes § 174.23, subdivisions 2 and 7, § 174.24, subdivision 3, and § 174.245, subdivision 2 (1982). The proposed rules, if adopted generally would repeal existing rules and:

1. establish the procedures and standards for review and approval of applications for transit financial assistance,

2. define "total operating cost" as the term is used in carrying out the public transit assistance program,

3. establish uniform performance standards for private operators of regular route transit systems in the Twin Cities metropolitan area transit taxing district, and

4. establish the procedures and standards for review and approval of applications for capital grant assistance.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

For more information pertaining to the rules, see the copy attached. All interested or affected persons will have an opportunity to participate concerning the repeal of existing rules and the adoption of proposed new rules governing distribution of financial assistance under the public transit assistance program. Statements may be made orally and written material may be submitted at the hearing. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Bruce Campbell, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7602, either before the hearing or within five (5) working days after the close of the hearing. If so ordered by the hearing examiner, the hearing record may remain open and such materials may be submitted for a period longer than five (5) working days but not exceeding twenty (20) calendar days after the close of the hearing. All such statements and materials will be entered into and become a part of the record for this proceeding. As stated above, the rule hearing procedure is governed by relevant sections of Minnesota Statutes §§ 14.01-14.52 (1982), as well as by 9 MCAR §§ 2.101 to 2.112 (Minnesota Code of Agency Rules). If you have any questions about this procedure, call or write the hearing examiner. The Department of Transportation hereby requests those submitting written statements to provide a copy of said materials to the Mn/DOT address given below, if possible.

A copy of the rules is attached. Additional copies of the proposed rules are now available and one free copy may be obtained by writing to:

Ms. Nancy Moore
Office of Transit
Program Management Division
Minnesota Department of Transportation
815 Transportation Building
St. Paul, Minnesota 55155

The rules will be available at the door on the date of the hearing.

Notice is also hereby given that twenty-five (25) days prior to the hearing a statement of need and reasonableness will be available for review at the office of Department of Transportation given above and at the Office of Administrative Hearings. The statement of need and reasonableness will include a summary of all of the evidence and argument which the department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule(s). Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The proposed rules are subject to change as a result of the rule hearing process. No new rules may be adopted without re-hearing if substantial change is proposed. The Department of Transportation therefore strongly urges those who are potentially affected by these proposed rules to participate in the rule hearing process.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department of Transportation may not take any final action on the rules for a period of five (5) 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 Department of Transportation. 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 the department (in the case of the department's submission or resubmission to the Attorney General). You may also call the department for this information at 612/296-7590. The department expects that 50 persons may attend the hearing and it is estimated that 1 to 2 hours will be necessary for the department to present its evidence at the hearing. It is not anticipated that adoption of the proposed rules will result in the expenditure of public monies by local bodies of government to implement the rules for the two years immediately following its adoption within the meaning of Minnesota Statute § 14.11 (1982).

Please be advised that Minnesota Statutes chapter 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 Minnesota Statutes section 10A.01, subdivision 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 $250.00, 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 $250.00, not including his own traveling expense 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5148.

Dated this 16th day of August, 1983.

Richard P. Braun
Commissioner

Rules as Proposed (all new material)

14 MCAR § 1.4031 Definitions.

A. Scope. The terms used in 14 MCAR §§ 1.4031-1.4065 have the meanings given them in this rule.

B. Cost. "Cost" means the amount of money asked or paid or the liability incurred for a commodity or service.

C. Cost contract. "Cost contract" means a cost reimbursement contract under which the contractor receives no fee, operating as a nonprofit organization.

D. Cost-plus-a-fixed-fee contract. "Cost-plus-a-fixed-fee contract" means a cost reimbursement contract providing for the payment of a fixed fee to the contractor based upon negotiation.

E. Cost-plus-incentive-fee contract. "Cost-plus-incentive-fee contract" means a cost reimbursement contract providing for a fee adjusted by a negotiated formula relating total allowable costs to target costs.

F. Cost reimbursement contract. "Cost reimbursement contract" means a contract providing for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract.

G. Department. "Department" means the Department of Transportation.

H. Direct cost. "Direct cost" means cost incurred for the benefit of and traceable to a specific activity or incurred for providing a specific service.

I. Fee. "Fee" means profit and represents a sum of money which is over and above actual costs.

J. Financial assistance. "Financial assistance" means state funds paid to an eligible recipient in accordance with the public transit subsidy program established under Minnesota Statutes, section 174.24.

K. Generally accepted accounting principles. "Generally accepted accounting principles" means broad rules adopted by the accounting profession as guides for use in accumulating and reporting financial data and found in the American Institute of Certified Public Accountants Professional Standards, volume 3 "Accounting," published by Commerce Clearing House (Chicago 1979).

L. Indirect cost. "Indirect cost" means a cost incurred for the benefit of the operating entity as a whole and not traceable to a specific activity.

M. Negotiation. "Negotiation" means the process of conferring or bargaining to reach agreement.

N. Operating deficit. "Operating deficit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 5.

O. Public transit or transit. "Public transit" or "transit" has the meaning given it in Minnesota Statutes, section 174.22, subdivision 7.

P. Reasonable cost. "Reasonable cost" means a price for a commodity or service which, in its nature or amount, does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business.

Q. Regional Development Commission. "Regional Development Commission" has the meaning given it in Minnesota Statutes, section 462.384, subdivision 4.

R. Revenue. "Revenue" means sources of income.

S. Total operating cost. "Total operating cost" means the cost allowability provisions of 14 MCAR §§ 1.4040 and 1.4042, as well as the fee allowability provisions of 14 MCAR § 1.4043.

14 MCAR § 1.4032 Authority, purpose, and scope.

A. Authority. Rules 14 MCAR §§ 1.4031-1.4065 are adopted pursuant to Minnesota Statutes, sections 174.23, subdivisions 2 and 7; 174.24, subdivision 3; and 174.245, subdivision 2.

B. Purpose. The purpose of 14 MCAR §§ 1.4031-1.4065 is to establish the procedures and standards for review and approval of applications for transit financial assistance, to define "total operating cost" as the term is used in carrying out the public transit assistance program, to establish uniform performance standards for private operators of regular route transit systems in the Twin Cities metropolitan area transit taxing district, and to establish the procedures and standards for review and approval of applications for capital grant assistance.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

C. Scope. Rules 14 MCAR §§ 1.4031-1.4065 apply to applicants for financial assistance under the public transit subsidy program established by Minnesota Statutes, section 174.24, and the public transit capital grant assistance program established by Minnesota Statutes, section 174.245.

14 MCAR § 1.4033 Eligible recipient.

"Eligible recipient" means a legislatively established public transit commission or authority, a county or a statutory or a home rule charter city operating or providing financial assistance to public transit, a private operator of public transit, or a combination of them.

14 MCAR § 1.4035 Application for financial assistance through public transit participation program.

An applicant shall request financial assistance using a format prescribed by the department. In addition to submitting an application to the department, an applicant shall submit an application to the appropriate regional development commission for review and approval for consistency with regional transportation plans and development guides. If there is no regional development commission in the area, the applicant shall submit the application to the State Planning Agency for review. When applicable, the application must also be submitted to the local transit authority, commission, or system for review and comment as to consistency with its approved transportation development program.

14 MCAR § 1.4037 Application format.

A. Management plan. Applicants shall include the following information in the management plan:

1. a description of the levels of service to be provided during the contract period, including a discussion of service area, type of service, vehicle descriptions, days and hours of service, contract services, and route maps;

2. a description of the participating transit system's proposed marketing program, including costs and benefits of major elements;

3. a description of proposed capital improvements in the participating transit system;

4. a description of revenue-producing contracts relating to the transit services provided by or for the applicant;

5. a description of expense contracts for services and goods procured by the transit system;

6. a description of the participating public transit system's vehicle maintenance program for the period of financial assistance;

7. a description of the organizational structure established to direct, control, review, and implement the management plan;

8. a description of measurable goals and objectives for the transit system, illustrating the benefits expected to be realized by the investment of state financial assistance;

9. a description of how revenue will be generated through the fare box;

10. a listing of transit and paratransit systems and their union affiliations currently operating in the applicant's area, and a description of existing or potential coordination with these systems;

11. a description of the driver selection process; and

12. a description of the proposed insurance carrier and the limits of coverage.

B. Operations report. Applicants shall include the following information in the operations report on forms provided by the department:

1. actual statistics on operating expenses and operating revenues for the most recent 12-month period;

2. anticipated statistics on operating expenses and operating revenues for the new contract period;

3. actual statistics on miles and hours of service and passengers carried for the most recent 12-month period; and

4. anticipated statistics on miles and hours of service and passengers carried for the new contract period.

C. Resolution regarding application submission. Applicants shall include with the application a resolution by the governing body authorizing the submission of an application, designating a person to represent the applicant in negotiations with the department, and attesting to the availability of local funds to provide the percentage of total cost specified in Minnesota Statutes, section 174.24, subdivision 3.

14 MCAR § 1.4040 Determination of financial assistance; expense categories.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR § 1.4042 and the following definitions of expense categories apply and have the meanings given them in this rule.

B. Personnel services. The "personnel services" expense category includes:

1. administrative, management, and supervisory services which are the amount paid to employees of the transit system who are classified as managers, supervisors, coordinators, or administrators and for which the amounts claimed by employees not working solely for the transit system must be supported by detailed time sheets;

2. operators' wages which are the total amount paid to employees of the transit system who are classified as vehicle operators;

3. maintenance and repair wages which are the labor charges incurred in the performance of maintenance and repair of vehicles and other property required for the operation of the transit system, including only wages of maintenance personnel employed by the transit system;

4. other direct wages which are the amount paid to employees of the transit system who are not classified as operators, maintenance, or administrative personnel, such as dispatchers, bookkeepers, clerical personnel, janitors, and security personnel;

5. indirect labor charges which are the amount to be allocated to the transit contract for labor which is not traceable to a specific transit activity but which benefits the transit operation and must be based on a cost allocation plan approved by the Minnesota Department of Transportation; and

6. fringe benefits which are the cost of providing fringe benefits for active and retired employees of the transit system, including pension benefits, vacation and sick leave benefits, social security taxes, workers' compensation insurance, unemployment insurance, life insurance, and first party medical coverage and which may be allocated indirectly based on a cost allocation plan approved by the Minnesota Department of Transportation.

C. Administrative charges. The "administrative charges" expense category includes:

1. management fees which are the amount paid for professional services provided by a management service company engaged contractually to provide operating management to the transit system;

2. tariffs and traffic expenses which are any necessary tariff filing fees and costs for the procurement of tickets, tokens, transfers, etc.;

3. advertising, marketing, and promotional charges including the necessary cost of advertising and promoting the transit system;

4. legal, auditing, and other professional fees including attorney fees and expenses, court costs, witness fees, and fees for accounting and auditing services rendered by individuals or firms other than employees of the transit system for the purpose of maintaining continuing operations of the transit system, such as accident claims, defending workers' compensation claims, or other items directly related to the management plan and approved by the Minnesota Department of Transportation project manager and other professional fees including fees paid for planning, engineering, or other consulting services necessary to the continuing operation of the transit system;

5. security costs which are the costs necessary to provide armored car services and patrol services for vehicles, stations, yards, and buildings to detect and prevent criminal activity, fires, unsafe conditions, etc., when the patrolling is performed by an outside security agency and not by transit system employees;

6. office supplies expense which is the cost of office supplies and materials and printing and photocopying charges, which are solely attributable to and necessary for the operation of the transit system;

7. lease and rental costs of administrative facilities including leases and rentals of such items as land, buildings, office equipment, and furnishings, that are used for performing the general administrative functions of the transit system;

8. utilities expense which is the cost of utilities such as gas, electricity, water, telephone services, and trash collection;

9. other direct administrative charges including other administrative charges necessary for the continuing operation of the transit system, such as mileage reimbursement for transit support vehicles, approved conference fees, employee travel expenses, driver's training, approved membership fees for transit associations if the cost of membership is reasonably related to the value of the services or benefits received, and subscriptions to transit publications; and

10. indirect administrative charges which are the amount allocated to the transit contract for administrative services not

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traceable to a specific transit activity but which benefit the transit operation and which must be based on a cost allocation plan approved by the Minnesota Department of Transportation.

D. Vehicle charges. The "vehicle charges" expense category includes:

1. fuel and lubricants expense including costs of gasoline, diesel fuel, antifreeze, propane, lubricating oil, transmission fluid, and grease used by revenue and service vehicles;

2. maintenance and repair material expense including costs of parts, materials, and supplies used in the maintenance and repair of revenue and service equipment;

3. contract service maintenance labor expense which is the cost of labor for maintenance and repair service provided by persons other than transit system employees;

4. tire expense which is the cost of tires and tubes used on revenue and service equipment including the cost of recapping or regrooving and the rental costs for tires and tubes; and

5. other vehicle charges including the cost of first aid equipment, fire extinguishers, and other emergency equipment required for vehicles, and the cost of noncapitalized vehicle improvements which do not remake a vehicle or appreciably extend its useful life and which have received approval from the Minnesota Department of Transportation.

E. Operations charges. The "operations charges" expense category includes:

1. purchase of service which is the cost of having a subcontractor operate the project service, which cost established:

a. through competitive bidding procedures, except for those recipients covered under Minnesota Statutes, chapter 221;

b. through a negotiated contract with the prime contractor in bid situations when only one bid is received; or

c. through a negotiated subcontract in a nonbid situation;

2. depreciation which is the amount of depreciation or use allowance on depreciable items such as structures, revenue equipment, service vehicles and equipment, and office furniture and equipment and is the amount allowed based on a company's existing depreciation schedule or, if a schedule does not already exist, a depreciation schedule submitted to and approved by the Minnesota Department of Transportation, but which may not be charged for items purchased, totally or in part, with state or federal funds;

3. mileage reimbursement for passenger service including the cost of volunteer driver reimbursement for projects incorporating this type of service, as well as mileage reimbursement for transit personnel using private vehicles for emergency replacement passenger transport in the event of mechanical breakdown of transit vehicles;

4. repair and maintenance of other property including material costs associated with the upkeep and repair of buildings and stations, grounds, nonrevenue equipment owned or leased by the transit company, and miscellaneous expenses such as small tool replacement, and supplies used for cleaning and for general shop and garage purposes;

5. leases and rentals including leases and rentals of garages, depots, passenger vehicles, service vehicles, passenger stations, etc., used in the operation of the transit system, with allowability based on the reasonableness of rates and the presence of evidence that the lease will not give rise to material equity in the property; and

6. other operations charges including the cost of such things as the purchase or rental and cleaning of uniforms, street tolls, sanding and snowplow operations, passenger amenities, and station agents and which may be allocated indirectly based on a cost allocation plan approved by the department.

F. Insurance charges. The "insurance charges" expense category includes:

1. public liability and property damage insurance expense on vehicles including premiums paid to insure the transit system against loss through damage to its own property and to indemnify the transit system and all financial and operational participants against loss from liability for its acts which cause damage to the person or property of others; and

2. public liability and property damage insurance charges other than on vehicles, including excess liability insurance, baggage and express insurance, and fire and theft insurance.

G. Taxes and fees. The "taxes and fees" expense category includes:

1. vehicle registration and permit fees on vehicles;

2. federal fuel and lubricant taxes and excise taxes on tires;

3. state fuel and lubricant taxes; and

4. other taxes and fees including applicable real estate and property taxes.

14 MCAR § 1.4042 Determination of financial assistance; disallowed expenses.

A. Scope. In determining the total operating costs of a public transit system, upon which financial assistance is based, 14 MCAR § 1.4040 and the following definitions of disallowed expenses apply and have the meanings given them in this rule.

B. General purpose equipment. Expenditures for general purpose equipment are unallowable as operating costs except with the prior approval of the department. "General purpose equipment" means equipment that is usable for other than transit contract purposes, such as office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, and automatic data processing equipment.

C. Interest and other financial costs. Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection with these costs are unallowable.

D. Fines and penalties. Costs resulting from violations of, or failure to comply with federal, state, or local laws and regulations are unallowable.

E. Contingencies. Contributions to a contingency reserve or any similar provision for unseen events are unallowable.

F. Bad debts. Any losses arising from uncollectible accounts, other claims, and related costs are unallowable.

G. Donations and entertainment expense. Contributions and donations are unallowable as are any entertainment expenses.

14 MCAR § 1.4043 Determination of financial assistance; fee for service.

Operators for profit of public transit service are eligible for a fee for service. The profit or fee must be established as a dollar amount over and above costs of operation. The fee will be arrived at through noncompetitive negotiations and must represent a fair and reasonable price. Factors to be considered in determining the fee are degree of risk assumed by the contractor, the extent of the contractor's investment, and the contractor's past and present performance.

14 MCAR § 1.4044 Distribution of financial assistance; revenue categories.

A. Scope. In determining the local sources of funds which may comprise the fixed percentage of total operating costs to be paid by a recipient in accordance with the distribution classifications specified in Minnesota Statutes, sections 174.24, subdivision 3, the following definitions of revenue categories apply and have the meanings given them in this rule.

B. Passenger fare. "Passenger fare" means revenue earned from transporting passengers on the public transit system, including a cash fare, a donation received instead of a set fare, and an advance fare received from the sale of a coupon, token, or pass.

C. Contract revenue. "Contract revenue" means revenue received from a contract with a beneficiary of a specific transit service, including an amount paid by an organization for a special route guarantee and revenue earned for a ride given in regular transit service but paid for by some organization for the benefit of the rider.

D. School bus revenue. "School bus revenue" means revenue earned from service provided under a contract with a school district, including an amount paid for transporting school children on regularly scheduled route service, for operating a bus exclusively to carry school children, and an amount paid by a college or university for operating a bus on or between campuses.

E. Charter revenue. "Charter revenue" includes reimbursement for charter service received in association with publicly funded transit service, providing that charter service rates are developed so that cost recovery equals or exceeds the full cost of providing the charter service.

F. Auxiliary revenue. "Auxiliary revenue" means revenue earned from an activity closely associated with the transit operation, including revenue received from an advertising service, delivery, a lease, and station and vehicle concessions.

G. Other financial assistance. "Other financial assistance" includes revenue earned from an activity not associated with the provision of the recipient's transit service but which is applied to help cover the system's costs, including a federal cash grant, senior citizen fare assistance, fuel and lubricant tax refund, insurance settlement, investment income, and any general donation.

14 MCAR § 1.4045 Distribution classifications.

Distribution of funds must be made in accordance with the recipient's classification as specified in Minnesota Statutes, section 174.24, subdivision 3. Exceptions to the distribution classifications are the Twin Cities Metropolitan Transit Commission based on the definition of urbanized area found in Minnesota Statutes, section 174.22, subdivision 10, private

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operators of regular route transit service in the metropolitan transit taxing district based on the statutory commitment to pay private operators up to 100 percent of the operating deficit, and the project for coordination of special transportation service in the metropolitan area based on the definition of elderly and handicapped service found in Minnesota Statutes, section 174.22, subdivision 13.

14 MCAR § 1.4050 Financial assistance contract.

A. Content. The financial assistance contract must be a cost reimbursement contract and may be a cost contract, a cost-plus-a-fixed-fee contract, or a cost-plus-incentive-fee contract. The contract must specify the maximum amount of financial assistance to be awarded to the eligible recipient by the department and state the terms and conditions of assistance. For recipients receiving payment under the method described in Minnesota Statutes, section 174.24, subdivision 5, the contract is effective for no more than one year. The final application must be incorporated into the contract as a legal part of the contract document. A resolution by the governing body which designates a person or persons to execute the contract on behalf of the recipient and to represent the recipient during the contract term must be included with the contract.

B. Disbursement schedule. Payments to recipients under contract must be made in accordance with Minnesota Statutes, section 174.24, subdivision 5.

C. Penalties. If a recipient fails to comply with the terms and conditions of the contract, the department shall terminate the financial assistance contract.

14 MCAR § 1.4055 Use of financial assistance.

A. Record keeping. An eligible recipient and any subcontractor shall maintain their financial records in accordance with generally accepted accounting principles. The records must permit audit verification of transit cost allocations claimed during the contract period. The eligible recipient and any subcontractor also shall keep records on miles and hours of service and passengers carried. Records must be kept available for a period of three years from the date of final payment.

B. Reporting. At the end of each month of operation, a recipient shall provide the department with a report summarizing cost allocations and operating statistics for the period. Reports must be completed on forms provided by the department and must be submitted no later than 20 working days after the end of the preceding month.

C. Audits. The financial records of the eligible recipient must be audited. They may be audited by the department or the department may accept all or part of the audit of an independent auditor instead of a departmental audit if the audit meets department standards. The financial records of a subcontractor may be audited at the department's discretion. Audits at the end of a contract period must establish approved total operating costs. New recipients are subject to a pre-award audit before contract execution and fund encumbrance. As provided by Minnesota Statutes, section 16.095, the records, books, documents, and accounting practices of the recipient and of any subcontractor relating to the contract are subject to audit and examination by the department and the legislative auditor during working hours.

D. Project monitoring. The department shall use the management plan required under 14 MCAR § 1.4037 A. as a basis for monitoring and evaluating the performance of the public transit system during the contract period. Public transit policy decisions made by the recipient and actions taken during the contract period must conform with the management plan. A proposed deviation from the management plan must be reported to the department and approval secured in writing before implementation. Failure to secure approval jeopardizes continued financial assistance.

14 MCAR § 1.4060 Uniform performance standards for private operators in metropolitan transit taxing district.

A. Uniform standards. Performance standards developed by the private operators of regular route transit service must be specified in the management plan required under 14 MCAR § 1.4037 A. and approved by the department in the process of negotiation. Standards must emphasize maintaining the quality of the system, maintaining the efficiency of the system, and maintaining service levels to the extent necessary to maximize ridership.

B. Funding procedures for private operators. Private operators are subject to the application procedures described in 14 MCAR §§ 1.4035 and 1.4037. They also are subject to the contract described in 14 MCAR § 1.4050 and the provisions in 14 MCAR § 1.4055. By the provisions of Minnesota Statutes, section 174.24, subdivision 3, payments to private operators may equal up to 100 percent of the operating deficit. The operating deficit is recognized as the total operating cost defined in 14 MCAR § 1.4031 S., minus revenue received. Payments to private operators must be made monthly upon receipt of a request for funds submitted on forms provided by the department. An advance of funds not to exceed ten percent of the maximum contract award may be made in the first month of the contract upon justification from the recipient. This advance must then be deducted from the last two monthly requests for funds.

14 MCAR § 1.4065 Public transit capital grant assistance program.

A. Eligibility. To be eligible for capital grant assistance, an applicant must be a political subdivision, public transit authority,

or other public or private nonprofit agency that operates or provides financial assistance to a public transit system, except that a public transit authority or commission that operates a public transit system in a city of the first class is not eligible.

B. Criteria. Requests for capital assistance from eligible recipients must be evaluated for the impact of the capital need addressed on the provision of transit service, for the impact on accessibility to the handicapped, and on the availability of local share money.

C. Standards. Capital assistance requests must be considered for the purchase of new transit vehicles or for the refurbishing of existing vehicles. Refurbishing expenses are recognized as those costs that remake a vehicle to a renewed level of mechanical and structural soundness and which appreciably extend its useful life.

D. Procedures. The department shall conduct an annual survey of the capital needs of financial assistance grant recipients. The survey must ask respondents to relate capital needs to the criteria established. The resulting capital grant requests must be reviewed by an internal committee of departmental representatives. The committee shall evaluate requests based on the criteria and establish priority rankings.

E. Capital grant assistance contract. The capital assistance contract between the department and the eligible recipient must specify the maximum amount of financial assistance to be awarded to the recipient and must state the terms and conditions of assistance. In accordance with Minnesota Statutes, section 174.245, capital grants may not exceed two-thirds of the total cost of the purchase price or refurbishing expense. A resolution by the recipient's governing body pertianing to the capital grant request is required.

Repealer. Rules 14 MCAR §§ 1.4025; 1.4026; 1.4027; 1.4028; 1.4029; and 1.4030, are repealed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Cooperative/Rental Multi-Family Housing Innovative Loans

Notice is hereby given that the Minnesota Housing Finance Agency has adopted the following temporary rules for the purpose of establishing procedures for application for participation in and setting income limits for Cooperative/Rental Multi-Family Housing Innovative Loans, pursuant to subdivision 18a of chapter 462A.05 and chapter 462A.27 of Minnesota Statutes.

In accordance with chapter 462A.27 of Minnesota Statutes, these temporary rules were effective commencing August 25,

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1983, the date of their adoption by the Minnesota Housing Finance Agency, and will continue in effect for 360 days or until permanent rules are adopted, whichever occurs first.

September 12, 1983

James J. Solem
Executive Director

Rules as Adopted (all new material)

12 MCAR § 3.122 Definitions.

A. Scope. For the purposes of 12 MCAR §§ 3.123, 3.124, 3.125 and 3.126, the following terms have the meanings given them.

B. Applicant. "Applicant" means one or more persons or entities which apply for a cooperative/rental multi-family housing innovative loan.

C. Borrower. "Borrower" means an applicant which is granted a cooperative/rental multi-family housing innovative loan, and which is the maker of a note in evidence of such loan.

D. Cooperative/rental multi-family housing innovative loan. "Cooperative/rental multi-family housing innovative loan" means a loan to be made to a borrower pursuant to the authority granted in Minnesota Statutes section 462A.05, subdivision 18a, and the proceeds of which are to be from the monies in the fund established by Minnesota Statutes section 462A.21, subdivision 9a.

E. Democratic Resident Association. "Democratic Resident Association" means an association, incorporated or unincorporated, whose membership is limited to and open to residents of a project, and where each member of such association has an equal vote in the affairs of the association.

F. Project. "Project" means a multi-family housing development for which the cooperative/rental multi-family housing innovative loan is requested.

12 MCAR § 3.123 Eligibility requirements.

A. For Applicants. To be eligible for selection for a cooperative/rental multi-family housing innovative loan, each applicant must satisfy the following requirements:

1. the applicant must be either a cooperative housing corporation, or a limited dividend entity;

2. the applicant must demonstrate the ability to organize and complete the project;

3. the applicant must demonstrate that it has, or will have, the ability to repay the cooperative/rental multi-family housing innovative loan, and to obtain other financing, if needed, at the expiration of such loan;

4. the applicant must have developed a training and education program for the residents of the Project, and must include a copy of such program with its application for a loan. Such training and education program must include, at a minimum, (1) details of how the resident association will be organized and operated, (2) what the legal rights of the residents and the association are, and how the residents will be advised of such rights, (3) what the financial interests and obligations of the individual residents and the association are, and how the residents will be advised of such obligations, and (4) how the project will be managed and maintained.

B. For Projects. To be eligible for selection for a cooperative/rental multi-family housing innovative loan, each project must satisfy the following requirements:

1. the project must be located in the State of Minnesota;

2. the project must be in the form of a cooperative or rental multi-family housing development, which is either owned and operated on a nonprofit cooperative basis by the residents, or owned by a limited dividend entity and operated by a residents association;

3. the operation and management of the project must be substantially under the control of a democratic residents association, which shall include the filling of housing units vacancies.

12 MCAR § 3.124 Other requirements.

A. Unavailability of financing. At the time of application for a cooperative/rental multi-family housing innovative loan, conventional financing for the purpose for which such loan is requested must not be available from private lenders upon equivalent terms and conditions.

B. Income Limits. Occupancy in a project as a resident shall be restricted to persons and families of low and moderate income which, for purposes of 12 MCAR §§ 3.122, 3.123, 3.124, 3.125 and 3.126, is defined as those persons and families whose

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File No. DOT-84-00258
Date 10-26-83
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ADMINISTRATIVE HEARINGS

Exhibit D-1

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program (14 §§MCAR 1.4031 - 1.4065) and Repeal of Existing Rules 14 MCAR §§ 1.4025 - 1.4030.

NOTICE OF HEARING

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NOTICE is hereby given that a public hearing in the above-entitled matter will be held, pursuant to Minnesota Statutes §§ 14.01 - 14.20, §§ 14.37-14.38 §§ 14.46 - 14.47 and §§ 14.48 - 14.54 (1982) as well by 9 MCAR §§ 2.101 - 2.112 (Minnesota Code Agency Rules), in the State Office Building, Room 81, 435 Park Street, St. Paul, Minnesota, on October 26, 1983, commencing at 9:30 A.M. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commissioner of Transportation has been provided the statutory authority to promulgate rules governing distribution of financial assistance under the public transit assistance program in Minnesota Statutes § 174.23, subdivisions 2 and 7, § 174.24, subdivision 3, and § 174.245, subdivision 2 (1982). The proposed rules, if adopted generally would repeal existing rules and:

1. establish the procedures and standards for review and approval of applications for transit financial assistance,

2. define "total operating cost" as the term is used in carrying out the public transit assistance program,

In the Matter of the Proposed)
Adoption of Rules of the)
Department of Transportation)
Governing Distribution of)
Financial Assistance Under the)
Public Transit Assistance Pro-)
gram (14 §§ MCAR 1.4031 -)
1.4065) and Repeal of Existing)
Rules 14 MCAR §§ 1.4025 -)
1.4030.)

3. establish uniform performance standards for private operators of regular route transit systems in the Twin Cities metropolitan area transit taxing district, and

4. establish the procedures and standards for review and approval of applications for capital grant assistance.

For more information pertaining to the rules, see the copy attached. All interested or affected persons will have an opportunity to participate concerning the repeal of existing rules and the adoption of proposed new rules governing distribution of financial assistance under the public transit assistance program. Statements may be made orally and written material may be submitted at the hearing. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Bruce Campbell, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7602, either before the hearing or within five (5) working days after the close of the hearing. If so ordered by the hearing examiner, the hearing record may remain open and such materials may be submitted for a period longer than five (5) working days but not exceeding twenty (20) calendar days after the close of the hearing. All such statements and materials will be entered into and become a part of the record for this proceeding. As stated above, the rule hearing procedure is governed by relevant sections of Minnesota Statutes §§ 14.01 - 14.52 (1982), as well as by 9 MCAR sections 2.101 to 2.112 (Minnesota Code of Agency Rules). If you have any questions about this procedure, call or write the hearing examiner. The Department of Transportation

In the Matter of the Proposed)
Adoption of Rules of the)
Department of Transportation)
Governing Distribution of)
Financial Assistance Under the)
Public Transit Assistance Pro-)
gram (14 §§ MCAR 1.4031 -)
1.4065) and Repeal of Existing)
Rules 14 MCAR §§ 1.4025 -)
1.4030.)

hereby requests those submitting written statements to provide a copy of said materials to the Mn/DOT address given below, if possible.

A copy of the rules is attached. Additional copies of the proposed rules are now available and one free copy may be obtained by writing to:

Ms. Nancy Moore
Office of Transit
Program Management Division
Minnesota Department of Transportation
815 Transportation Building
St. Paul, Minnesota 55155

The rules will be available at the door on the date of the hearing.

NOTICE IS ALSO HEREBY GIVEN that twenty-five (25) days prior to the hearing a Statement of Need and Reasonableness will be available for review at the Office of Department of Transportation given above and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules(s). Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The proposed rules are subject to change as a result of the rule hearing process. No new rules may be adopted without re-hearing if substantial change is proposed. The Department of Transportation therefore strongly urges those who are potentially affected by these proposed rules to participate in the rule hearing process.

In the Matter of the Proposed)
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Department of Transportation)
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1.4065) and Repeal of Existing)
Rules 14 MCAR §§ 1.4025 -)
1.4030.)

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department of Transportation may not take any final action on the rules for a period of five (5) 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 Department of Transportation. 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 the department (in the case of the department's submission or resubmission to the Attorney General). You may also call the department for this information at 612/296-7590. The department expects that 50 persons may attend the hearing and it is estimated that 1 to 2 hours will be necessary for the department to present its evidence at the hearing. It is not anticipated that adoption of the proposed rules will result in the expenditure of public monies by local bodies of government to implement the rules for the two years immediately following its adoption within the meaning of Minnesota Statute § 14.11 (1982).

Please be advised that Minnesota Statutes chapter 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 Minnesota Statutes section 10A.01, subdivision 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 $250.00,

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1.4030.)

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 $250.00, not including his own traveling expense 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5148.

Dated this 16th day of August, 1983.

for Richard P. Braun
Commissioner

Subscribed and sworn to before me
this 16th day of August, 1983.

Colette E. Prokop
Notary Public

Ramsey, County, Minnesota.

My Commission expires 9-13-86.

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

DOT Exhibit No. I
File No. DOT-84-002-BC
Date 10-26-83

RECEIVED
SEP 14 1983
ADMINISTRATIVE HEARINGS

Exhibit B-1

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program (14 MCAR §§1.4031 - 1.4065) and Repeal of Existing Rules 14 MCAR §§ 1.4025 - 1.4030.

ORDER FOR HEARING

- -

IT IS ORDERED this 16th day of August, 1983, that a public hearing on the proposed rules captioned above be held in Room 81, State Office Building, St. Paul, Minnesota on October 26, 1983, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the Department of Transportation for that purpose and be published in the State Register.

for Richard P. Braun
Commissioner

Subscribed and sworn to before me
this 16th day of August, 1983.

Colette E. Prokop
Notary Public

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

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

Exhibit F

RECEIVED
SEP 14 1983
ADMINISTRATIVE HEARINGS

AFFIDAVIT OF MAILING

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program (14 §§CAR 1.4031 - 1.4065) and Repeal of Existing Rules 14 MCAR §§ 2.4025 - 1.4030.

DOT Exhibit No. J
File No. DOT-84-002 SC
Date 10-26-83

- -

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

That on the 12th day of September, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Commissioner of Transporation for the purpose of receiving notices concerning proposals for or proposed rules of the Department of Transportation.

AFFIANT

Kenneth H. Bjork
Manager
Administrative Procedures & Documentation Section
Office of Systems & Support Services

Subscribed and sworn to before me

this 12th day of Sept, 1983.

Colette E. Prokop
Notary Public

Ramsey County, Minnesota.

My Commission expires 9-13-86.

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

DOT Exhibit No. 1
File No. DoT-84-002BC
Exhibit # Date 10-26-83

RECEIVED
SEP 14 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program (14 §§CAR 1.4031 - 1.4065) and Repeal of Existing Rules 14 MCAR §§ 2.4025 - 1,4030.	CERTIFICATE AS TO COMPLETENESS OF MAILING LIST FOR RULE - MAKING

- -

I, Kenneth H. Bjork, Manager - Administrative Procedures and Documentation Section, do certify that attached and included in the Affidavit of Mailing of the Notice to all persons on the Department of Transportation mailing list, there is a complete list of persons, associations, and other interested groups who as of 4:30 p.m. on September 12, 1983 requested pursuant to Minn. Stat. § 14.14 that their names be placed on file with the Commissioner of Transportation for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Dated this 12th day of September, 1983.

AFFIANT

Kenneth H. Bjork, Manager
Administrative Procedures &
Documentation Section
Office of Systems &
Support Services

Subscribed and sworn to before me
this 12th day of Sept, 1983.

Colette E. Prokop
Notary Public

Ramsey County, Minnesota.

My Commission expires 9-13-86.

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

DOT-84-002-BC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 26, 1983, before Bruce D. Campbell, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Department of Transportation and;

WHEREAS, the Department of Transportation has now determined to adopt rules; and

WHEREAS, the Department of Transportation has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Transportation has cured the defects in the rules as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Transportation has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: January 30th, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

400 SUMMIT BANK BUILDING
310 SOUTH FOURTH AVENUE
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

January 30, 1984

Commissioner Richard P. Braun
Minnesota Department of Transportation
411 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program; OAH Docket No. DOT-84-002-BC.

Dear Commissioner Braun:

Enclosed herewith is the Order of the Chief Hearing Examiner in the above-referenced matter. Also enclosed are the originals of your Order Adopting Rules and Findings and Conclusions of the Commissioner of Transportation which were submitted to me for review.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/341-7640

DRH:sh
Encs.



AN EQUAL OPPORTUNITY EMPLOYER

DOT-84-002-BC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Rules Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982), as amended by Minn. Laws 1983, Ch. 210, §§ 6 and 7, which provide:

> Subd. 3. Finding of substantial change. If the [hearing examiner's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, the chief hearing examiner shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected.
>
> Subd. 4. Need or reasonableness not established. If the chief hearing examiner determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission. Advice of the commission shall not be binding on the agency.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: December 12th, 1983.

DUANE R. HARVES
Chief Hearing Examiner

MEMORANDUM

Besides the reasons stated in the Examiner's Findings of Fact 32 and 49, Minn. Stat. § 14.05, subd. 4, specifically requires an agency to adopt standards and criteria for the granting of variances from rules before or at the same time the variance rule is adopted. Therefore, the violation of this specific statutory mandate is a further reason for the illegality of the rules in questions.

D.R.H.

DOT-84-002-BC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Rules Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner Bruce D. Campbell on Wednesday, October 26, 1983, at 9:30 a.m., in Room 81 of the Minnesota State Office Building, St. Paul, Minnesota.

This Report is a part of the rule hearing procedure required by Minn. Stat. §§ 14.05 through 14.28 (1982), to determine whether the proposed rules should be adopted by the Commissioner of Transportation.

Members of the Department panel appearing at the hearing included Nancy Moore, Special Projects Coordinator of the Minnesota Department of Transportation, Robert Works, Director, Transit Program Section, Minnesota Department of Transportation, and Jean Stepan, Special Assistant Attorney General assigned to the Minnesota Department of Transportation.

Four people signed the hearing register and one public witness appeared and spoke at the hearing. The Department submitted 18 written exhibits and two timely written comments were received from members of the public.
The Commissioner of Transportation must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of Transportation of actions which will correct the defects and the Commissioner of Transportation may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner of Transportation may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner of Transportation does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982), as amended by Minn. Laws 1983, Ch. 210, § 7.

If the Commissioner of Transportation elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Commissioner of Transportation shall submit the rule to the Attorney General for review of form and legality. If the Commissioner of Transportation makes changes in the rule other than those recommended by the Hearing Examiner, then he shall

submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Commissioner of Transportation submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On August 18, 1983, the Department of Transportation filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.

(b) The Order for Hearing.

(c) The Notice of Hearing proposed to be issued.

(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On September 12, 1983, a Notice of Hearing and a copy of the proposed rules were published in VIII State Register, page 451.

3. On September 12, 1983, the Department of Transportation mailed the Notice of Hearing to all persons and associations who had registered their names with the Department of Transportation for the purpose of receiving such notice.

4. On September 14, 1983, the Department of Transportation filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.

(b) The Department's certification that its mailing list was accurate and complete.

(c) The Affidavit of Mailing the Notice to all persons on the Department's list.

(d) The Statement of Need and Reasonableness.

(e) The names of Department of Transportation personnel who will represent the Department at the hearing together with the names of any other witnesses solicited by the Department to appear on its behalf.

(f) A copy of the State Register containing the proposed rules.

(g) An Affidavit of Additional Notice.

(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at VII State Register, page 1441, April 4, 1983 .

(i) The Petition requesting a rule hearing.

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

5. The record remained open through November 2, 1983, for the receipt of written comments and statements. On November 7, 1983, the Department of Transportation filed with the Hearing Examiner a Statement of Acceptance or

Rejection of Public Comments as authorized by law, whereupon the record finally closed.

Nature of the Proposed Rules

6. This rule proceeding presents totally new rules and substitutional revisions of existing rules concerning the distribution of financial assistance under the Public Transit Financial Assistance Program, established pursuant to Minn. Stat. §§ 174.21-174.27 (1982). The governing legislation mandates that rules be developed in the following four areas which are addressed in the rules: procedures for the review and approval of applications for operating financial assistance; a definition of a term "total operating cost"; the establishment of uniform performance standards for private operators of regular route transit in the Twin Cities transit taxing district; and the establishment of procedures for the review and approval of applications for financial assistance. The Department of Transportation, to aid in proposing rules acceptable to the diverse interest groups concerned, formed an external advisory committee made up of current recipients of transit financial assistance. Consultation with interested groups in the development of the rules was statutorily mandated. Minn. Stat. § 174.23, subd. 7 (1982). The seven members of the Committee represented all service area classifications defined in Minn. Stat. § 174.24, subd. 3 (1982). The Committee met on a number of occasions and assisted in the development of and approved the content of the proposed rules. The minutes of the Advisory Committee are contained in the official record as DOT Exhibit E.

Statutory Authority

7. The Department of Transportation advances the following authority for promulgating rules governing the distribution of financial assistance under the Public Transit Financial Assistance Program: Minn. Stat. § 174.23, subds. 2 and 7 (1982); Minn. Stat. § 174.24, subd. 3 (1982); and Minn. Stat. § 174.245, subd. 2 (1982). The statutory authority relied upon by the Department of Transportation generally authorizes the adoption of rules relative to the subject matter of the proposed rules. To the extent that a specific provision of any proposed rule exceeds the scope of statutory authority granted, a discussion of such specific lack of authority will be included herein in the consideration of that individual rule provision. Except as specifically noted, it is found that the Department does have authority to adopt the proposed rules.

14 MCAR § 1.4031. Definitions

8. This section of the proposed rules contains 19 separate definitions which are proposed to clarify the meaning of words used throughout the rules. None of the definitions proposed were challenged in public comments, and the definitions comport either with dictionary or statutory definitions, or generally accepted accounting practices and principles. It is concluded that the need and reasonableness of such definitions have been established by an affirmative presentation of facts in the record and that the definitions are necessary to make the law enforced and administered specific for purposes of

Minn. Stat. § 14.02, subd. 4 (1982). Certain of the definitions incorporate by reference statutory definitions. Incorporations by reference are authorized. Minn. Stat. § 14.07, subd. 4 (1982). The form of the rule, including the incorporations by reference, were approved by the Revisor of Statutes.

14 MCAR § 1.4032. Authority, Purpose and Scope

9. § 1.4032, in three subsections, states the statutory authority for the adoption of the rules, the purpose of the rules and the scope of their application. Minn. Stat. § 14.02, subd. 4 (1982), defines a rule as a "agency statement of general applicability and future effect...". Both the complexity of the proposed rules and the recent vintage of the subject matter make the inclusion of an authority, scope and purpose section appropriate. It is reasonable to state the statutory authority to adopt rules and to state the scope and purpose of the rules to inform, in a clear and concise manner, the public of the legislative directive to the Commissioner of Transportation and the general intent of both the enabling legislation and the proposed rules.

10. Although not affecting the need and reasonableness of the proposed rule, it would be more appropriate to begin the rules with the authority, purpose and scope section, 14 MCAR § 1.4032, rather than follow the definitional section. If the reason for the authority, purpose and scope section is to orient the reader, the placement of this section prior to the definitional section would more properly implement that purpose.

no change see F & F

14 MCAR § 1.4033. Eligible Recipient

11. Section 1. 4033 is a definition of the term "eligible recipient", and, as such, is a verbatim restatement of the definition contained in Minn. Stat. § 174.24, subd. 2 (1982). It is necessary and reasonable to duplicate the statutory definition because eligibility is a primary issue that needs to be readily understood by the public. Such duplication of statutory language is also necessary in order to avoid confusion with the Assistance Program, described in 14 MCAR § 1.4065, which has different eligibility requirements. Since the definition is taken from statutory language, the definition is reasonable.

12. Although not affecting the need and reasonableness of the proposed rule, the definition of "eligible recipient" should be contained in the definitional section if it has general application. If its placement in the rules is designed to avoid confusion with use of the same term in later provisions of the rules, making a placement in the general definitional section inappropriate, however, the definition should be qualified by a citation to those provisions of the rules to which this definition of the term applies.

clarified p. 3

14 MCAR § 1.4035. Application for Financial Assistance Through Public Transit Participation Program

13. Section 1.4035 describes the process for submitting an Application for Financial Assistance under the statutory program. An application is necessary to initiate consideration of the request for assistance by the Department of Transportation. The provision, requiring a submission to the Depart-

ment, allows the Department to prescribe the format of the application. It appears, from the language of the proposed rule, that the Department may be free to request any information it chooses from the applicant. At least, the rule does not specifically limit or define the information that might be sought through the later adoption of a format. If such is the appropriate construction of the proposed rule, the Department has failed to establish its legality since it allows the Department absolute discretion to require any information desired from the applicant. A purpose of adopting rules is to limit such unfettered agency discretion. The Hearing Examiner assumes that it was the intention of the Department that the provisions of the following proposed rule, 14 MCAR § 1.4037, by implication, prescribe the information to be provided in an application. If such was the intention of the Department, however, the rule, as drafted, does not reflect that intent. The Department, on the face of the rule, has an impermissibly unlimited discretion. See Finding 32, infra.

14. If the application of the first sentence of 14 MCAR § 1.4035 was not intended to be limited to the matters specified in 14 MCAR § 1.4037, the Department has also failed to demonstrate the legality of the proposed rule. If the Department of Transportation may request and obtain from any applicant whatever information it chooses to seek, the rule contains no reasonable standard or limitation on Department action. As such, the rule, in giving unfettered discretion to the Department without criteria or standards, is illegal. See Finding 32, infra.

15. It is not entirely clear from the context of the rule which construction was intended by the Department. To correct the defect, it should include, after the first sentence of 14 MCAR § 1.4035, a provision limiting the contents of the application to those matters specified in § 1.4037, if such is the intent of the rule. If the contents of the application are not limited by § 1.4037, reasonable categories of information which the Department may request from an applicant must be specified. If it is the intention of the Department to request from applicants information other than that specified in 14 MCAR § 1.4037, any criteria limiting the discretion of the Agency with respect to the contents of an application must be based on evidence within the record and must not constitute a substantial change. Minn. Stat. § 14.24 (1982); 9 MCAR § 2.111.

16. Although not affecting need and reasonableness, the Hearing Examiner notes that 14 MCAR § 1.4035 follows immediately after 14 MCAR § 1.4033, the definition of "eligible recipient". Since the rules are replacement rules, rather than amendments, there appears to be no reason not to renumber the rules consecutively without leaving a gap for § 1.4034. Much the same observation could be made about the numbering of the remaining rules. There is no statement in the record regarding the failure of the Department to use a consecutive numbering system.

17. The remaining portion of 14 MCAR § 1.4035, requiring the submission of an application to other appropriate governmental bodies, is necessary and reasonable since it reflects a statutory requirement. Minn. Stat. § 174.23, subd. 2 (1982).

14 MCAR § 1.4037. Application Format

18. § 1.4037 A of the Rules describes the information that must be contained in the Management Plan. The information requested under Items 1-6 pertains to specific cost and revenue items in the budget and is information the Department needs to evaluate properly the applicant's request for financial assistance prior to entering into budget negotiations. The information requested under Items 7-12 pertains to specific operational plans of the applicant and is information the Department needs to evaluate properly the applicant's qualifications for providing the most efficient and effective transit service. Since the information requested in the Management Plan is necessary for the Department to make an informed judgment with respect to the application for funds, it is needed for the Department to make an intelligent decision with respect to funding applications prior to committing state funds. The required content of the Management Plan is reasonable since it contains the categories of information that the Department needs to properly evaluate the application.

19. § 1.4037 B requires applicants to submit an Operations Report specifying actual and anticipated statistics on operating expenses and operating revenues and actual and anticipated statistics on miles and hours of service and passengers carried. It is necessary to request both actual and anticipated statistics in each category because it makes possible comparisons that facilitate and improve the Department's evaluation of applications for assistance. Statistics on operating expenses and revenues are necessary because these budget figures provide the basis for negotiations towards a final financial assistance contract. Statistics on miles and hours of service and passengers carried are important to budget evaluation because they largely determine the scope of other budgetary cost items. The Hearing Examiners finds that, for the reasons stated, the provision defining the contents of the Operations Plan is both necessary and reasonable.

20. § 1.4037 C requires applicants to provide, with the application, a resolution by the governing body, authorizing the submission of an application, designating a person to represent the applicant in negotiations with the Department and attesting to the availability of local funds. It is both necessary and reasonable to require the submission of such a resolution so that the Department may be assured that its efforts to establish a financial assistance arrangement with the applicant will be fruitful.

14 MCAR § 1.4040. Determination of Financial Assistance; Expense Categories

21. § 1.4040 A describes the scope of the definition of "total operating costs" and is needed to make clear that all of the expense items defined in this section, as well as all the unallowable expenses defined in § 1.4042 apply in the determination of total operating costs.

22. § 1.4040 B defines the categories of costs contained in the term "personnel services" expense. A definition of this component of cost is needed because personnel services are a major component of the total operating costs of the transit system. The definition is reasonable because it includes all the charges applicable to transit personnel, including indirect labor charges and fringe benefits.

23. § 1.4040 C defines the "administrative charges" cost category as a separate expense category. This section is necessary because administrative charges are a natural component of the total operating costs of a transit system. With the exception hereinafter discussed, the section is reasonable because it provides for all of the charges applicable to the administration of a transit system. The Hearing Examiner, however, for the reasons stated in Finding 32, infra, finds that the inclusion of the term "etc.", as an open-ended component of an attempted definition in two provisions of subsection C, renders the provision illegal.

24. To correct the defect, the Department must either eliminate the term "etc." without addition, or add additional components to the definitions which find support in the record and do not constitute a substantial change within the meaning of Minn. Stat. § 14.24 (1982) and 9 MCAR § 2.111.

25. § 1.4040 D defines the expense category of "vehicle charges". The section is necessary because vehicle charges are an integral part of the total operating cost of a transit system. It is reasonable because it provides for all charges applicable to the operation of vehicles.

26. § 1.4040 E defines the expense category of "operations charges". A definition is necessary because operations charges are an essential element in the total operating cost of a transit system. With the exception hereinafter discussed, the definition is reasonable because it provides for all the types of operations charges that might be present in a transit operation, both direct and indirect. For the reasons stated in Finding 23, supra, the inclusion of the term "etc." in subsection E 5 of the proposed rule renders it illegal.

27. To correct the defect, the Department must either remove the term "etc." from the proposed rule without addition or add additional components to the definition which find support in the record and do not constitute a substantial change. Minn. Stat. § 14.24 (1982) and 9 MCAR § 2.111.

28. § 1.4040 F describes specific items of expense within the "insurance charges" general expense category. The definition is needed because insurance expenses are a necessary and unavoidable element in the total operating cost of a transit system. The definition is reasonable because it allows for the two essential types of insurance present in a transit operation: public liability insurance and property damage insurance.

29. § 1.4040 G defines the expense category of "taxes and fees". The definition is necessary and reasonable because such taxes are applicable to a transit operation and those taxes and fees enumerated are exhaustive of the category.

14 MCAR § 1.4042. Determination of Financial Assistance; Disallowed Expenses

30. § 1.4042 A defines the scope of total operating costs and is needed to make clear that all of the disallowed expenses defined in § 1.4042, as well as expense items defined in 14 MCAR § 1.4040, apply in the determination of total operating costs.

31. § 1.4042 B provides that expenditures for general purpose equipment are unallowable as operating costs, except with the prior approval of the Department. The section then defines general purpose equipment. It is

necessary to disallow such costs because general purpose equipment can too easily be transferred to activities other than transit. Moreover, such items have useful lives that are not only difficult to determine but also longer than the life of a transit project. It is reasonable to exclude general purpose equipment from compensable expenditures because general purpose equipment, by its nature, has applications and uses for activities other than transit. Moreover, given the fact that transit substantially benefits the local community, local organizations should use local funds to purchase general purpose equipment which both maintains the local transit operation and gives the locality flexibility in adapting their equipment to changing local needs. It is necessary and reasonable to define general purpose equipment without reference to a capital purchase price or expected useful life because there is no universal standard by which to define general purpose equipment in terms of price and useful life maximums.

32. Although the exclusion of general purpose equipment from compensable expenditures, is necessary and reasonable, the unfettered discretion of the Department to vary the rule by allowing expenditures for general purpose equipment renders this provision of the rule illegal. The rule is not sufficiently specific so as to avoid, or at least discourage, arbitrary behavior on the part of the Department. Generally, a lack of standards governing the exercise of discretion by an administrative body which permits or encourages arbitrary enforcement may be illegally vague. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). Constitutional due process may also require that decisions be made in accordance with ascertainable standards. Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2nd Cir. 1968). Moreover, both the Office of Administrative Hearings and the Office of the Attorney General have uniformally rejected rules which lodge unlimited discretion in an agency without defined or ascertainable standards. Such a result is inherent in the definition of a rule, contained in Minn. Stat. § 14.02, subd. 4 (1982), as an agency statement of general applicability to implement or make specific the law enforced of administered by that agency. The absence of standards and unfettered discretion on the part of the agency, however well-intentioned, avoids the purpose of adopting a rule, which is to both inform the public of the standards to be applied in administrative operation and protect them from arbitrary agency action. See Minn. Stat. § 14.05, subd. 4 (1982).

33. To correct the defect the Department must either delete from § 1.4042 B the ability of the Department to include general purpose equipment in cost calculations or establish reasonable standards governing the exercise of that discretion. If the Agency chooses to adopt criteria restricting the exercise of agency discretion, the criteria must find support in the record and not constitute a substantial change. Minn. Stat. § 14.24 (1982); 9 MCAR § 2.111.

deleted p.10

34. § 1.4042 C-G describe the following unallowable cost items: interest and other financial costs; fines and penalties; contingencies; bad debts; contributions; donations; and entertainment expenses. It is necessary and reasonable to disallow such costs because they do not contribute to the day-to-day operation of the transit system and because allowing them would encourage undesirable business practices. It is also reasonable to disallow

such costs because they are considered unallowable costs by the Federal Government. Federal Management Circular 74-4.

14 MCAR § 1.4043. Determination of Financial Assistance; Fee for Service

35. § 1.4043 provides that operators for profit of public transit service are eligble for a fee for service. The fee for service, over and above the cost of operation, must be arrived at through non-competitive negotiations and represent a fair and reasonable profit. The rules enumerate factors to be considered in determining the fee. The provision is needed in order to provide incentives for private operators to provide public transportation service. Moreover, the consideration of a profit incentive is mandated by statute. The guidelines established for paying a fee for service are reasonable in that they are in conformance with Federal procurement regulations.

36. One public commentator suggested that the limitation on fee reimbursement available to for-profit public transit services be altered to provide that a private non-profit operator could also qualify for such an incentive reimbursement. See, Pub. Ex. I, Comments of Suburban Paratransit, Inc., p. 2. The purpose of allowing an incentive payment is to encourage those operators who normally engage in an operation for profit to provide services. A similar incentive is not necessary for non-profit organizations. Moreover, the State has a limited amount of funding and, as such, it is reasonable to restrict incentive reimburesements to accomplish the evident statutory purpose, necessary encouragement of the provision of transit services. Hence, the Hearing Examiner concludes that the Department has demonstrated that limiting for profit incentive reimbursement to "for-profit" transit providors is both necessary and reasonable.

14 MCAR § 1.4044. Distribution of Financial Assistance; Revenue Categories

37. § 1.4044 A describes the scope of the definitions of revenue categories and is necessary and reasonable in order to demonstrate that all of the revenues defined in 14 MCAR § 1.4044 apply in determining the fixed local share of total operating costs to be paid by a recipient in accordance with statutory requirements.

38. § 1.4044 B-G describe the various sources of revenue that may comprise the fixed local percentage of total operating costs to be paid by a recipient. It is necessary to define these revenues in order to fairly and consistently implement Minn. Stat. § 174.24, subd. 3 (1982), which requires the Commissioner of Transportation to distribute State funds in such a way that a fixed percentage of costs is paid from local sources of revenue. The definitions established are reasonable in that they describe sources of revenue connected with the provision of transit service, are local sources as required by statute and comport with current operational practice. Two public commentators suggested that investment income and general donations be excluded from the definition of other financial assistance contained in § 1.4044, subd. G. Pub. Ex. I, Comments of Suburban Paratransit, Inc., pp. 2-4; Pub. Ex. II, Comments of Darts. Both commentators suggested that investment income be eliminated and a limitation on donations be keyed directly to a specific transit use or a receipt in lieu of transit fares. The Hearing

Examiner does not accept the changes suggested by the public witnesses on much the same reasoning that a similar conclusion was reached with respect to a fee incentive for non-profit private operators. Since the State makes a significant financial contribution to transit projects throughout the State, it must reduce its burden in all proper circumstances. The definition advanced by the Department of Transportation minimizes the expense to the State without having a deliterious impact on transit programs. The Hearing Examiner notes that the concern raised by Darts and Suburban Paratransit, Inc., have little practical application. For the majority of transit projects that the Minnesota Department of Transportation funds, the operation of the "fixed local share" funding procedure obviates the unfairness suggested by the public commentators. Under this funding mechanism, the local share is "fixed" based upon a statutory percentage of project costs for various population categories. The local transit project must meet its fixed share and can use essentially the revenues available to it to do so. Once the fixed share requirement is met, the recipient is free to use any additional revenues as it chooses.

14 MCAR § 1.4045. Distribution Classifications

39. § 1.4045 references the statutes concerning the distribution of funds under the classifications established by the Legislature and states exceptions allowed by the statutes. It is necessary to include this section to provide continuity in the text of the rules. Incorporation of statutory definitions by reference is authorized. Minn. Stat. § 14.07, subd. 4 (1982).

14 MCAR § 1.4050. Financial Assistance Contract

40. § 1.4050 A describes the content of a financial assistance contract. Because this contract is a legal result of the application and negotiations process, it is necessary and reasonable to provide the public with pertinent information about the contract. Because the governing statute allows payment to most recipients to be made at 50% of the total contract amount in the first month of operation, it is necessary to restrict such contracts to no more than one year in order to avoid the excessive individual drain on the general fund that would result from multi-year contracts. It is necessary and reasonable to include a resolution by the governing body because it is legally required and assigns responsibility for the proper execution of the contract.

41. § 1.4050 B references the statutes concerning the allowable disbursements schedule for state transit funds. Its inclusion is necessary and reasonable to provide continuity in the text of the rules. Incorporation of statutory definitions and terms by reference is statutorily authorized. Minn. Stat. § 14.07, subd. 4 (1982).

42. § 1.4050 C provides that the Minnesota Department of Transportation will terminate the financial assistance contract if a recipient fails to comply with the terms and conditions of the contract. The provision is both necessary and reasonable in order to promote contract compliance and, when violations occur, to prevent further misappropriation of state funds.

14 MCAR § 1.4055. Use of Financial Assistance

43. § 1.4055 A provides for record keeping by recipients and their sub-

contractors. The requirement of adherence to generally accepted accounting principles and the verification of transit cost allocation are necessary to insure a proper accounting for the use of a state financial assistance. It is necessary to require statitics on miles and hours of service and passengers carried so the Department of Transportation can monitor the efficiency and effectiveness of the transit service funded. The retention of records three years from the date of final payment is necessary and reasonable to comply with the procedures of the Minnesota Department of Administration Contract Management Division and the subsequent Minnesota Department of Transportation Uniform Procedures Manual.

44. § 1.4055 B requires recipients to submit to the Department, at the end of each month, a report summarizing cost allocations and operating statistics for the period. The provision of this information is both necessary and reasonable to facilitate the regular monitoring and evaluation of projects funded by the Department of Transportation. It is appropriate to require information on a monthly basis to insure that recipients keep records current and maintain an accurate accounting.

45. Suburban Paratransit, Inc., Pub. Ex. I, p. 5, has suggested that the requirement that the information be provided on forms emanating from the Department be altered to include forms approved by the Department. The Department of Transportation, in its submission to the Hearing Examiner after the close of the public comment, as authorized by statute, has accepted this comment. Hence, it would be reasonable for the Department to amend § 1.4055 B as follows:

> Reports must be completed on forms provided or approved by the Department . . . .

so amended p. 14

Such an amendment does not constitute a substantial change within the meaning of Minn. Stat. § 14.24 (1982) or 9 MCAR § 2.111. See, United Steel Workers of America v. Marshall, 647 F.2d 1189 (D.C.Cir. 1980); American Iron & Steel Institute v. EPA, 568 F.2d 284, 293 (3rd Cir. 1977); South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974).

46. § 1.4055 C provides for audits of the financial records of recipients and their subcontractors. Audits are necessary to establish that State financial assistance has been properly expended and has been used only for grant purposes. It is reasonable to require audits because the Department of Transportation must safeguard the integrity of public funds and insure their program application. The flexibility provided for this section as respects departmental audits and independent audits is necessary and reasonable because it may reduce the cost of audits and comport with the legislative directive contained in Minn. Stat. § 174.23, subd. 7 (1982), to develop "necessary and reasonable changes . . . in financial examination procedures where possible". The requirement for pre-award audits of new recipients is both necessary and reasonable since it provides the Department of Transportation with an opportunity to resolve, prior to the expenditure of public funds, any deficiencies in the financial accounting procedures of a new recipient.

47. It could be suggested that the discretion of the Department to either accept an independent audit or institute a departmental audit, uncontrolled by

criteria contained in the rule, has the same vice of vagueness previously discussed with respect to the inclusion of reimbursement for general purpose vehicles, discussed at Findings 31-33, supra. The Hearing Examiner, however, does not conclude that the discretion with respect to audits is impermissibly vague. The vice previously noted when an agency decision is made without standards is really a denial of administrative due process; the person governed by the rule may be subject to a loss, or forfeiture at the whim of the agency. Under the instant rule, however, the recipient is placed at no disadvantage by the discretionary decision of the Department to conduct their own audit rather than accept an independent audit. Any expense would be borne by the Department and, in the final analysis, it is the Department's duty to insure the proper application of State public funds. A decision whether to subject a recipient to a departmental audit is a decision to be made on an individual basis as a result of agency experience and the information presented to it in the individual case. Under such circumstances, the Department is performing a function which would be difficult to circumscribe by a more particular rule. Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979). See also, City of New Brighton v. Metropolitan Council, 237 N.W.2d 620, 625 (Minn. 1975). Hence, the Hearing Examiner concludes that § 1.4055 C, as proposed, is both necessary and reasonable.

48. § 1.4055 D provides for project monitoring by the Department. This provision is necessary if the Department is to fulfill its public responsibility to protect State funds from misuse and to insure that public funds are used as efficiently and effectively as possible. It is necessary to require that recipients receive prior approval from the Department before changing the Project Management Plan because such changes affect the Project budget and can impact the amount of State financial resources expended. It is necessary to provide for a penalty in the event changes are made without prior approval in order to foster compliance with this provision.

49. For the reasons stated in Finding 32, supra, § 1.4055 D, which authorizes the Department of Transportation to approve deviations from the Management Plan required under § 1.4037 A, is illegal in that no criteria are enunciated for the exercise of that discretion. See Minn. Stat. § 14.05, subd. 4 (1982). Moreover, severe financial implication might result from the failure to obtain approval.

50. To correct the defect, the Department must enunciate in Subsection D criteria that it will employ in determining whether to sanction a departure from the Management Plan. Such criteria must find support in the record and must not constitute a substantial change within the meaning of Minn. Stat. § 14.24 (1982), or 9 MCAR § 2.111.

New Language added p. 14

14 MCAR § 1.4060. Uniform Performance Standards for Private Operators in Metropolitan Transit Taxing District

51. § 1.4060 A requires that performance standards be developed by the private operators of regular route transit service and that these standards be specified in the Management Plan. Such standards are necessary because they are mandated by statute. The criteria for establishing standards are reasonable since they conform with current effective practice and realistically place appropriate burdens and requirements on the private operators.

52. § 1.4060 B establishes funding procedures for private operators. It is necessary to establish funding procedures for private operators so that they may obtain appropriate funding. The provisions are reasonable in that they place upon the private operators the same application, contract and monitoring requirements that apply to other applicants. The rule provision allowing up to 100% of the operating deficit as reimbursement is needed and reasonable to comport with the statutory requirement. It is reasonable to make private operators eligible for a fee for service under the total operating cost definition to provide an incentive for continuing public transit service, an incentive that would be absent in the absence of a fee for service concept. Moreover, the governing statute specifically authorizes a fee for service. The cash flow requirements of private business make both necessary and reasonable the provision for payment to private operators on a monthly basis and the optional ability to receive an advance of funds in the first month of the contract. The provision for the deduction of the advance from the last two monthly payments is necessary and reasonable to avoid overpayments of State funds should an advance be obtained by the private operator.

53. Suburban Paratransit, Inc., Pub. Ex. I, p. 5, suggests that § 1.4060 B add the word "program" after the word "minus" and before the words "revenue received" in § 1.4060 B. Such an amendment, however, is unnecessary since the term "revenue received" is clearly defined in the rule.

14 MCAR § 1.4065. Public Transit Grant Assistance Program

54. § 1.4065 A states eligibility requirements for the receipt of grant assistance and restates the statutory definition contained in Minn. Stat. § 174.245, subd.2 (1982). It is necessary and reasonable to duplicate statutory language because eligibility is a primary issue requiring ready comprehension by the public. It is also necessary to duplicate statutory language to make a clear distinction between this program and the Transit Assistance Program, described in § 1.4033, each of which has different eligibility requirements. The Hearing Examiner finds that the duplication of statutory language is both necessary and reasonable to allow affected persons to understand the proposed rules. Minn. Stat. § 14.07, subd. 5 (1982).

55. § 1.4065 B states the criteria to be used in the evaluation of requests for assistance. The formulation of criteria is legislatively mandated. Minn. Stat. § 174.245, subd. 2 (1982). The criteria are reasonable because they emphasize three central concepts in transit purchasing: need as impacting on service provision; accessibiility for the handicapped; and local financial capability to provide matching funds.

56. § 1.4065 C states the standards for capital assistance requests for the purchase of new transit vehicles or the refurbishing of existing vehicles. The rule also contains the definition of refurbishing expenses. The provision of the rule is necessary as a consequence of Minn. Stat. § 174.245, subd. 1 (1982). A public commentator suggests that the rule, as drafted, is unreasonable in that it does not accurately state the applicable scope of the transit Grant Assistance Program established pursuant to Minn. Stat. § 174.245 (1982). The rule as drafted states that the requests must be considered for the purchase of new transit vehicles or for the refurbishing of

existing vehicles. The unspoken assumption is that such requests may also be considered for other purposes. Minn. Stat. § 174.245 (1982), limits Public Transit Grant Assistance to the purchase or refurbishing of transit vehicles; it may not be considered for another purpose. While such may not be the intent of the Department in formulating the rule, it is the natural interpretation of the provision as drafted. The Department seeks to defend the rule by arguing its correspondence to the statute. Minn. Stat. § 174.245, subd. 1 (1982), clearly limits the Public Transit Grant Assistance Program to only the purchasing or refurbishing of transit vehicles. Hence, the Hearing Examiner finds that § 1.4065 C is in excess of statutory authority in that, as a consequence of vagueness, it may be possible for the Department to exceed the scope of Minn. Stat. § 174.245, subd. 1 (1982).

57. To correct the defect the Department should adopt the suggestion of Suburban Paratransit, Inc., contained in Pub. Ex. I, pp. 5-6, as follows:

> Only Assistance requests for the purchase of new transit vehicles or for the refurbishing of existing vehicles may be considered.

so adopted p. 16

58. The remaining provision of § 1.4065 C, defining refurbishing expenses, is necessary and reasonable as a result of Minn. Stat. § 174.245, subd. 1 (1982). It is also reasonable in that it comports with the normal dictionary definition of the term and accepted accounting practice.

59. § 1.4065 D establishes procedures for the review of Grant Assistance requests. Establishing such procedures is mandated by Minn. Stat. § 174.245, subd. 2 (1982). Establishing review procedures is also necessary as a consequence of the limited availability of State funds and the competition for such funds. A survey of the capital needs of financial assistance grant recipients is a reasonable component of the procedure because it gives all such recipients an equal opportunity to submit a request and to make a factual presentation to support assistance. The use of an internal committee of departmental representatives to evaluate requests is reasonable because such individuals have the necessary background and information to evaluate the requests properly.

60. § 1.4065 D, however, does not comport with the requirement contained in Minn. Stat. § 174.245, subd. 2 (1982). The statute requires the Commissioner to "establish by rule the procedures and standards for review and approval of applications for financial assistance and the criteria to be used in determining priorities in making the grants". Although the rule does establish an internal mechanism for establishing priority rankings, there is no provision regarding the relative priority to be assigned each criterion. Moreover, there is no consideration of how awards are to be made once rankings are assigned. There is no requirement, for example, that the Department must fund, up to its available resources, those projects with the highest priorities. To complete § 1.4065 D there must be some logical transition between the ranking by the internal committee and the execution of an Assistance Contract as discussed in § 1.4065 E. In the absence of such a logical relationship between ranking and funding, the same vice of unfettered discretion discussed in Finding 32, supra, applies to § 1.4065 D. Hence, the Hearing Examiner finds that the rule, as drafted, does not comport with the

statutory duty contained in § 174.245 (1982), to establish by rule the standards for approval of applications for financial assistance.

61. To correct the defect, the Department must include in § 1.4065 D a provisions relative to the relationship between priority rankings, as provided for in § 1.4065 D, and the execution of the Assistance Contract discussed in § 1.4065 E. Any such logical transition or relationship between the separate events must find support in the record and must not constitute a substantial change within the meaning of Minn. Stat. § 14.24 (1982) and 9 MCAR § 2.111.

62. § 1.4065 E describes the Assistance Contract. It is necessary and reasonable to include this provision in the rule to inform the public of the requirements to which recipients are subject. The limits of assistance stated in the rule are reasonable since they are statutorily mandated. Minn. Stat. § 174.245, subd. 2 (1982). The requirement of a resolution by the recipient's governing body is a necessary legal requirement imposed by municipal law and practice.

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

CONCLUSIONS

1. That the Department of Transportation gave proper notice of the hearing in this matter.

2. That the Department of Transportation has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1, 1a and 2 (1982), as amended by Minn. Laws Ch. 210, § 4 and Ch. 301, § 64, and all other procedural requirements of law or rule.

3. That the Commissioner of Transportation has demonstrated his statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, as amended by Minn. Laws 1983, Ch. 210, § 6, and 14.50 (i) and (ii)(1982), except as noted at Findings 13, 14, 23, 26, 32, 49, 56 and 60, supra.

4. That the Department of Transportation has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii)(1982).

5. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3, supra, as noted at Findings 15, 24, 27, 33, 50, 57 and 61, supra.

6. That due to Conclusions 3 and 5, supra, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6.

7. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

8. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department of Transportation from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 7th day of December, 1983.

Bruce D Campbell

BRUCE D. CAMPBELL
Hearing Examiner

Reported: Janet R. Shaddix & Associates
8755 Irving Avenue South
Bloomington, MN 55431

STATE OF MINNESOTA

MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Rules Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

Findings and Conclusion of the Commissioner of Transportation

Based upon all the testimony and written comments, and in response to the reports of both the Chief Hearing Examiner and the Hearing Examiner in charge of the rule proceedings, the Minnesota Department of Transportation makes the following:

AGENCY FINDINGS OF FACT

Findings No. 1-9. These findings of the Hearing Examiner require no action and are accepted without comment.

Finding No. 10. Although not affecting the need and reasonableness of the proposed rule, the Hearing Examiner has suggested that the "authority, purpose, and scope" section would be placed more appropriately in the rules if it were first, followed by the "definitions" section, rather than the other way around as they are now in the proposed rules. In checking with the Office of the Revisor of Statutes, we have learned that this is their established procedure for rule drafting and that it cannot be changed.

Finding No. 11. This finding of the Hearing Examiner is accepted and requires no action.

Finding No. 12. This finding concerns the fact that in 14 MCAR § 1.4033 the term "eligible recipient" has not been distinguished from the same term used in later provisions of the rules. We readily agree with this finding and have made two changes to clarify this section of the rules. The title of 14 MCAR § 1.4033 has been changed from "eligible recipient" to "eligibility for public transit participation program" and, in the body of the rule, the phrase "for the purposes of 14 MCAR § 1.4033-1.4043" has been inserted after the words "eligible recipient."

Findings No. 13-15. The essence of these findings of the Hearing Examiner is that we have not properly and clearly limited our discretion regarding required application information in 14 MCAR § 1.4035 (now 1.4034) because we have not specifically referred to 14 MCAR § 1.4037 (now 1.4035) in this section. To correct the defect, we have followed the Hearing Examiner's suggestion and have included after the first sentence of 14 MCAR § 1.4035 (now 1.4034),the following sentence: "The required information for the application shall be limited to the items specified in 14 MCAR § 1.4035" (formerly 1.4037). This was the original intent of the Department in this section.

Finding No. 16. Although not affecting the need and reasonableness of the proposed rules, the Hearing Examiner has noted that the rules do not use a consecutive numbering system and has suggested that the rules be renumbered consecutively. In checking with the Office of the Revisor of Statutes, they could give no explanation as to why this may have been done and had no problem with the numbering being changed. Consequently, the rules have been renumbered consecutively as suggested.

Findings No. 17-22. These findings of the Hearing Examiner are accepted and require no action.

Findings No. 23-24. These findings concern the use of the term "etc." in two of the definitions found in 14 MCAR § 1.4040 C (now 1.4036). The Hearing Examiner has determined that such an open-ended component is illegal as found in definitions 2 and 5 of 1.4040 C. To correct the defect, we have adopted the Hearing Examiner's suggestion to eliminate the term "etc." without addition.

Finding No. 25. This finding of the Hearing Examiner is accepted and requires no action.

Findings No. 26-27. These findings concern the use of the term "etc." in the definition found in 14 MCAR § 1.4040 E.5 (now 1.4036). The Hearing Examiner has determined that such an open-ended component is illegal. To correct the defect, we have adopted the Hearing Examiner's suggestion to eliminate the term "etc." without addition.

Findings No. 28-31. These findings of the Hearing Examiner are accepted and require no action.

Findings No. 32-33. These findings concern the section on disallowed expenses found in 14 MCAR § 1.4042 (now 1.4037), and specifically the definition of "general purpose equipment" found in B. In the definition we have indicated that such expenditures are unallowable "except with the prior approval of the department." The Hearing Examiner has determined that such a phrase, in the absence of standards, gives the department "unfettered discretion" and is therefore illegal. To correct the defect, we have adopted the Hearing Examiner's suggestion to delete from the rule that phrase allowing discretion.

Findings No. 34-44. These findings of the Hearing Examiner are accepted and require no action.

Finding No. 45. Under this finding, the Hearing Examiner approved a suggestion made in the public comments of Suburban Paratransit, Inc. regarding reporting forms. The department had accepted this comment earlier in its response to the Hearing Examiner after the close of the record. Accordingly, part of 14 MCAR § 1.4055 B (now 1.4042) has been amended so as to read: "Reports must be completed on forms provided or approved by the department . . . ."

Findings No. 46-48. These findings of the Hearing Examiner are accepted and require no action.

Findings No. 49-50. These findings concern the section on "project monitoring" in 14 MCAR § 1.4055 D (now 1.4042). The Hearing Examiner has determined that the provision allowing deviations from the management plan with departmental approval is illegal because no criteria are enunciated for the exercise of that discretion. The defect has been corrected by enunciating in this section the criteria to be employed in determining whether to sanction a departure from the management plan, to wit: "Approval will be granted if it is clearly documented that the proposed deviation will not increase overall project costs." This addition is supported by the department's Statement of Need and Reasonableness which states that prior approval for changes is necessary because such changes affect the project budget and can impact the amount of state financial resources expended. By tying approval for deviations directly to the impact on the budget, the rule simply is clarified and no substantial change results.

Findings No. 51-55. These findings of the Hearing Examiner are accepted and require no action.

Findings No. 56-57. In these findings the Hearing Examiner has determined that, in the section on "standards" for the capital grant assistance program, the department has not properly limited the scope of the program in accordance with the statutes. Following the suggestion of the hearing examiner, we have adopted the change suggested by a public commentator so that the first sentence of 14 MCAR § 1.4065 C (now 1.4044) now reads: "Only assistance requests for the purchase of new transit vehicles or for the refurbishing of existing vehicles may be considered."

Findings No. 58-59. These findings of the Hearing Examiner are accepted and require no action.

Findings No. 60-61. In these findings the Hearing Examiner has determined that the rule appearing in 14 MCAR § 1.4065 D (now 1.4044) is improper in that it gives the department "unfettered discretion" in granting awards for capital grants. The rule was criticized for lacking "some logical transition between the ranking by the internal committee and the execution of an Assistance Contract." In light of the Hearing Examiner's suggestions, we have corrected the defect by making changes to the last sentence of the section in question and by adding one sentence. It now reads: "The committee shall evaluate requests and establish priority rankings based on an equal weighting of each of the three criteria. The department shall award grants to the highest ranked eligible recipients from funds designated for capital grants." This change serves as a clarification of what logically would be inferred from the process of evaluating and ranking proposals as described in the rules. As a specific statement of what was logically implied it does not constitute a substantial change.

Finding No. 62. This finding of the Hearing Examiner is accepted and requires no action.

Based upon the foregoing Findings of Fact, the Department of Transportation makes the following:

CONCLUSIONS

1. The Department has responded to all of the findings of the Hearing Examiner and has heeded the counsel of the Chief Hearing Examiner.

2. In responding to the report of the Hearing Examiner, the Department has made all required changes and heeded non-mandatory suggestions as it deemed appropriate.

3. All modifications of the proposed rules are based upon examination of the public comments, make no substantial change from the proposed rule as originally published, and are based upon facts appearing in the rules hearing record.

Based upon the foregoing Conclusions, the Department of Transportation states the following:

It is hereby ordered that the proposed rules be adopted consistent with the foregoing Findings and Conclusions.

Dated: January 20, 1984

Richard P. Braun
Commissioner of Transportation

DOT Exhibit No. L
File No. DoT-84-002-BC
Date 10-26-83

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ADMINISTRATIVE HEARINGS

State of Minnesota

Department of Transportation

Division of Program Management

In the Matter of the Proposed Rules Governing Distribution of Financial Assistance Under the Public Transit Assistance Program

Statement of Need and Reasonableness

The Minnesota Commissioner of Transportation (hereinafter "Commissioner") pursuant to Minn. Stat. § 14.14, subd. 2, hereby presents facts establishing the need for and reasonableness of the proposed rules governing distribution of financial assistance under the public transit assistance program and justification for their adoption.

The facts which establish the need for, and reasonableness of the rules, are presented in four categories:

A. Statutory Authority

B. General Statement of Need

C. General Statement of Reasonableness

D. Rule by Rule Statement of Need and Reasonableness

A. Statutory Authority

The above captioned rules are proposed as new and revised rules of the Commissioner. The former rules are repealed to allow the inclusion of new material with earlier rules, as now revised, into a reorganized rule structure. The Statutory Authority of the Commissioner for promulgation of these rules is Minnesota Statutes, sections 174.23, subdivisions 2 and 7; 174.24, subdivision 3; and 174.245, subdivision 2.

Minn. Stat. § 174.23, subd. 2, requires the Commissioner to establish by rule the procedures and standards for review and approval of applications for financial assistance submitted to the Commissioner pursuant to sections 174.21 to 174.27. Subdivision 2 provides that applicants shall submit to the Commissioner any financial or other information required by the Commissioner to carry out his duties.

Minn. Stat. § 174.23, subd. 7, requires the Commissioner to define by rule the term "total operating cost" as the term is used in carrying out the purposes of section 174.24. Subdivision 7 provides that the definition of total operating cost may include provisions for a fee for service. It also requires the Commissioner to consult with eligible recipients to the maximum extent feasible in formulating these rules and develop necessary and reasonable changes in cost and fee allowability provisions and financial examination procedures where possible.

Minn. Stat. § 174.24, subd. 3, requires the Commissioner to adopt rules establishing uniform performance standards for private operators of regular route transit systems in the transit taxing district, as defined in section 473.446, subdivision 2. Section 174.24, subdivision 3, provides that payments to these private operators shall be based on the performance standards and operating deficit.

Minn. Stat. § 174.245, subd. 2, requires the Commissioner to establish by rule the procedures and standards for review and approval of applications for capital financial assistance and the criteria to be used in determining priorities in making the grants. Section 174.245, subdivision 2, provides that state grants shall not exceed two-thirds of the total cost of the purchase price or refurbishing expense.

B. General Statement of Need

These rules governing the distribution of financial assistance under the public transit assistance program are necessary because the Legislature has directed the Minnesota Department of Transportation (hereinafter "Mn/DOT") to establish rules governing the public transit assistance program. As cited above, the Legislature has specifically mandated that rules be developed in these four areas: (1) to establish procedures for the review and approval of applications for operating financial assistance, (2) to define the term "total operating cost," (3) to establish uniform performance standards for private operators of regular route transit in the Twin Cities transit taxing district, and (4) to establish procedures for the review and approval of applications for capital financial assistance.

Rules establishing procedures and standards for the review and approval of applications for operating assistance and capital purchases are needed in order to ensure that all applicants and recipients are treated equally and fairly in the selection process and so that all can compete on a common basis. The definition of "total operating cost" is also needed to ensure fairness and equity among recipients, and would do so by delineating which costs are allowable and which are not, thereby eliminating, to the greatest extent feasible, the differences in interpretation that can arise among individual contract managers and recipients. In addition, a definition of total operating cost is needed in order to avoid, as much as is practicable, the occurrence of "after-the-fact" cost allowability questions which can often arise at the time of audit examination. Rules establishing performance standards for private operators are needed to ensure the delivery of adequate transit service to the public served by these operators.

C. General Statement of Reasonableness

These rules are reasonable because they are based to a great extent on procedures and definitions that are used now in actual practice and which have been proven to be largely effective. The proposed rules clarify past practice, make corrections and additions where this has been shown to be necessary, and close gaps in understanding. The rules are also reasonable in that they are based, in many instances, on existing policies and definitions of the federal government, and the latter, in general, govern state practice and procedure.

The procedure used in drafting the rules helps to establish their reasonableness. An External Advisory Committee made up of current recipients of transit financial assistance was formed and Mn/DOT staff met several times with then to review drafts of the rules. The seven members of this committee represented all service area classifications defined in Minn. Stat. § 174.24, subd. 3: large urbanized, urbanized, small urban, rural, and elderly and handicapped service. In forming this committee, Mn/DOT was responsive to the directive of the Legislature to consult with eligible recipients to the maximum extent feasible in formulating these rules. In addition to the committee, Mn/DOT presented information on and a draft of the rules to all current transit providers attending a conference it held on March 24, 1983.

D. Rule by Rule Statement of Need and Reasonableness

14 MCAR § 1.4031 Definitions.

A. A statement regarding "scope" is necessary to clarify the fact that the terms defined here are applicable to all rules promulgated in this section of Minnesota Statutes.

B. "Cost" is necessary to define because it is a basic element in the whole concept of distributing financial assistance. The definition offered is reasonable in that it corresponds with the definition found in accounting textbooks.

C. "Cost contract" is defined because it is an allowable type of contract for recipients of financial assistance and because it is a term that is not likely to be immediately understood by the general public. The definition given is reasonable in that it is consistent with Federal Procurement Regulations.

D. "Cost-plus-a-fixed-fee contract" is defined because it is an allowable type of contract for recipients of financial assistance and because it is a term that is not likely to be immediately understood by the general public. The definition given is reasonable in that it is consistent with Federal Procurement Regulations.

E. "Cost-plus-incentive-fee contract" is defined because it is an allowable type of contract for recipients of financial assistance and because it is a term that is not likely to be immediately understood by the general public. The definition given is reasonable in that it is consistent with Federal Procurement Regulations.

F. "Cost reimbursement contract" is a general classification term and is defined to clarify the meanings of cost contract, cost-plus-a-fixed-fee contract, and cost-plus-incentive-fee contract as the term is used in those definitions. The definition given is reasonable in that it is consistent with Federal Procurement Regulations.

G. "Department" is defined for the convenience of people using the rules to simplify the reference to the Department of Transportation.

H. "Direct cost" is necessary to define because it is a broad conceptual foundation for a majority of the specific definitions of costs that appear in the rules. It is a reasonable definition in that it corresponds with the definition found in accounting textbooks.

I. "Fee" is defined to clarify the reference made to it in the statutes as an allowable service charge.

J. "Financial assistance" is necessary to define so that it is clear what specific state funds are being regulated by the provisions of these rules.

K. "Generally accepted accounting principles" is defined so as to make clear transit program adherence to the commonly accepted definition of the term, as found in accounting textbooks.

L. "Indirect cost" is necessary to define because it is a broad conceptual foundation for a number of specific definitions of cost that appear in the rules. It is a reasonable definition in that it corresponds with the definition found in accounting textbooks.

M. "Negotiation" is defined to highlight its importance as the essential process used in establishing contracts for service and cost reimbursement and, consequently, to ensure that the public clearly understands the meaning of it. It is a reasonable definition because it is consistent with the dictionary definition of the word.

N. "Operating deficit" is defined by referencing the statutes.

O. "Public transit or transit" is defined by referencing the statutes.

P. "Reasonable cost" is necessary to define in order to register a general standard for the evaluation of total operating costs. The definition is reasonable in that it is consistent with the definition found in Federal Procurement Regulations.

Q. "Regional Development Commission" is defined by referencing the statutes.

R. "Revenue" is necessary to define because it is a basic element in the whole concept of distributing financial assistance by service area classifications. It is a reasonable definition because it is consistent with the dictionary definition of the word.

S. "Total operating cost" is defined because the statute requires this to be defined. It is a reasonable definition in that it is consistent with the statute.

14 MCAR § 1.4032 Authority, purpose, and scope.

14 MCAR § 1.4032 A.

This section states the specific authority under which the Department proposes these rules. It is reasonable to state this because it informs the public that the Legislature directed Mn/DOT to write these rules.

14 MCAR § 1.4032 B.

It is reasonable to state the purpose of the rules because doing this clearly and concisely informs the public of the general intent of each section of the statutes cited earlier, thereby contributing to ease of understanding.

14 MCAR § 1.4032 C.

The scope definition is necessary in order to avoid any misunderstanding by the public as to the application of these rules.

14 MCAR § 1.4033 Eligibility for public transit participation program.

This section quotes the statute in defining eligibility. It is necessary and reasonable to duplicate the statutory language because eligibility is a primary issue and needs to be readily understood by the public. It is also necessary to duplicate statutory language in order to avoid confusion with the capital assistance program (1.4065) which has different eligibility requirements.

14 MCAR § 1.4035 Application for financial assistance.

This section describes the process for submitting an application. The submission of an application to other agencies for review, in addition to submission to Mn/DOT, is needed and reasonable because it is required by Minn. Stat. § 174.23, subd. 2.

14 MCAR § 1.4037 Application format.

14 MCAR § 1.4037 A.

Subsection A specifies the information which applicants must include in the management plan. The information requested under numbers 1 through 6 pertains to specific cost and revenue items in the budget and is information the Department needs to properly evaluate the applicant's request for financial assistance prior to entering into budget negotiations. The information requested under numbers 7 through 12 pertains to specific operational plans of the applicant and is information the Department needs to properly evaluate the applicant's qualifications for providing the most efficient and effective transit service possible. In general all of the information requested under Subsection A assists in giving the Department a full understanding of the project to which it is being asked to commit state funds and is needed to facilitate the ongoing development and improvement of transit services funded.

14 MCAR § 1.4037 B.

Subsection B requires applicants to submit an operations report specifying actual and anticipated statistics on operating expenses and operating revenues, and actual and anticipated statistics on miles and hours of service and passengers carried. It is necessary to request both actual and anticipated statistics in each category because this makes possible comparisons that facilitate and improve the Department's evaluation of applications for assistance. Statistics on operating expenses and operating revenues are absolutely essential because it is these budget figures that provide the basis for negotiations toward a final financial assistance contract. Statistics on miles and hours of service and passengers carried are also important to budget evaluation because they impact upon such budgetary items as fuel costs, maintenance costs, personnel costs, and expected revenues. In addition, the information on miles and hours of service and passengers carried assists the Department in evaluating what kind of service is being purchased with the assistance granted and aids in determining what measures, if any, need to be taken to improve upon the service provided.

14 MCAR § 1.4037 C.

Subsection C requires applicants to provide, with the application, a resolution by the governing body authorizing the submission of an application, designating a person to represent the applicant in negotiations with the department, and attesting to the availability of local funds. With such a resolution provided, the Department is reasonably assured that its efforts to establish a financial assistance arrangement with the applicant will be fruitful and not wasted and is for this reason a necessary provision.

14 MCAR § 1.4040 Determination of financial assistance; expense categories.

14 MCAR § 1.4040 A.

Subsection A describes the scope of the definition of total operating costs and is needed in order to make clear that all of the expense terms defined in 14 MCAR § 1.4040 as well as all the unallowable expenses defined in 14 MCAR § 1.4042 apply in the determination of total operating costs.

14 MCAR § 1.4040 B.

Subsection B describes specific items of expense for the "personnel services" general expense category. It is needed because personnel services are a major component of the total operating costs of a transit system. It is reasonable because it includes all the charges applicable to transit personnel, including indirect labor charges and fringe benefits.

14 MCAR § 1.4040 C.

Subsection C describes specific items of expense for the "administrative charges" general expense category. It is needed because administrative charges are a natural component of the total operating costs of a transit system. It is reasonable because it provides for all the charges applicable to the administration of a transit system, including management fees, tariffs, advertising and marketing charges, legal and auditing fees, security costs, office supplies expense, leases and rentals of administrative facilities, utilities expense, miscellaneous direct administrative charges, and indirect administrative charges.

14 MCAR § 1.4040 D.

Subsection D describes specific items of expense for the "vehicle charges"

general expense category. It is needed because vehicle charges are an integral part of the total operating costs of a transit system. It is reasonable because it provides for all charges applicable to the operation of vehicles, including fuel and lubricants, maintenance and repair material, contract service maintenance labor, tires, and miscellaneous vehicle expenses.

14 MCAR § 1.4040 E.

Subsection E describes specific items of expense for the "operations charges" general expense category. It is needed because operations charges are an essential element in the total operating costs of a transit system. It is reasonable because it provides for all the types of operations charges that might be present in a transit operation, including purchase of service contracts, depreciation, mileage reimbursement for passenger service, repair and maintenance of transit equipment and facilities, and miscellaneous operations charges.

14 MCAR § 1.4040 F.

Subsection F describes specific items of expense for the "insurance charges" general expense category. It is needed because insurance expenses are a necessary and unavoidable element in the total operating costs of a transit system. It is reasonable because it allows for the two essential types of insurance present in a transit operation: public liability and property damage insurance expense on vehicles and public liability and property damage insurance charges other than vehicles.

14 MCAR § 1.4040 G.

Subsection G lists specific taxes that comprise the "taxes and fees" general expense category. It is needed and reasonable because such taxes are

applicable to a transit operation.

14 MCAR § 1.4002 Determination of financial assistance; disallowed expenses.

14 MCAR § 1.4002 A.

Subsection A describes the scope of the definition of total operating costs and is needed in order to make clear that all of the disallowed expenses defined in 14 MCAR § 1.4042 as well as the expense terms defined in 14 MCAR § 1.4040 apply in the determination of total operating costs.

14 MCAR § 1.4042 B.

Subsection B provides that expenditures for general purpose equipment are unallowable as operating costs except with the prior approval of Mn/DOT. It is necessary to disallow such costs, except in special, well-documented circumstances, because general purpose equipment can too easily be transferred to activities other than transit and because such items have useful lives that are difficult to determine and which could extend beyond the life of a transit project. It is necessary and reasonable to define general purpose equipment without reference to a capital purchase price or expected useful life because there is no universal standard by which to define capital in terms of price and useful life maximums. Given that transit substantially benefits the local community, it is reasonable for Mn/DOT to expect local organizations to support their own base of local operations by using local funds to purchase the general purpose equipment which maintains that operation and which will, in addition, give them flexibility in using their equipment as changes in local needs might dictate, such as in projects other than transit.

14 MCAR § 1.4042 C-G.

Subsections C through G describe the following unallowable costs: interest

and other financial costs, fines and penalties, contingencies, bad debts, and contributions, donations, and entertainment expenses. It is necessary and reasonable to disallow such costs because they do not contribute to the day-to-day operation of the transit system and because allowing them would encourage undesirable business practices. It is also reasonable to disallow such costs because they are considered unallowable costs by the federal government (Federal Management Circular 74-4).

14 MCAR § 4044 Distribution of financial assistance; revenue categories.

14 MCAR § 1.4044 A.

Subsection A describes the scope of the definitions of revenue categories and is needed in order to make clear that all of the revenue terms defined in 14 MCAR § 1.4044 apply in determining the fixed local share of total operating costs to be paid by a recipient in accordance with statutory requirements.

14 MCAR § 1.4044 B-G.

Subsections B through G describe the various sources of revenue that may comprise the fixed local percentage of total operating costs to be paid by a recipient. It is necessary to define these revenues in order to fairly and consistently implement Minn. Stat § 174.24, subd. 3, which requires the Commissioner to distribute state funds in such a way that a fixed percentage of costs is paid from local sources of revenue. The definitions established are reasonable in that they describe sources of revenue connected with the provision of transit service, are local sources as required by statute, and are definitions currently used in practice.

14 MCAR § 1.4045 Distribution classifications.

This section references the statutes concerning the distribution of funds

under the classifications established by the Legislature and states exceptions allowed by the statutes. It is necessary to include this section in order to provide continuity in the rules.

14 MCAR § 1.4050 Financial assistance contract.

14 MCAR § 1.4050 A.

Subsection A describes the content of the financial assistance contract. Because this contract is the legal result of the application and negotiations process, it is necessary and reasonable to provide the public with pertinent information about it. Because the statute allows payment to most recipients to be made at 50 percent of the total contract amount in the first month of operation, it is necessary to restrict such contracts to no more than one year, in order to avoid the excessive one-time drain on the general fund that would result from multi-year contracts. It is necessary to incorporate the final application into the contract as a legal part of the contract document because only the application is designed to state specifically the service and budget details the Department has agreed to allow and by which the recipient has agreed to abide. A resolution by the governing body is necessary and and reasonable to include because it is legally required and assigns responsibility for the proper execution of the contract.

14 MCAR § 1.4040 B.

Subsection B references the statutes concerning the allowable disbursement schedule for state transit funds and is necessary to include in order to provide continuity in the rules.

14 MCAR § 1.4050 C.

Subsection C provides that Mn/DOT will terminate the financial assistance contract if a recipient fails to comply with the terms and conditions of the contract. It is necessary to make such a stipulation in order to foster contract compliance and, in cases where violations occur, to prevent further misappropriation of state funds.

14 MCAR § 1.4055 Use of financial assistance.

14 MCAR § 1.4055 A.

Subsection A provides for record keeping by recipients and their subcontractors. The requirement that generally accepted accounting principles be adhered to and that transit cost allocations be verifiable is necessary to ensure a proper accounting for the use of the state financial assistance. It is necessary to require statistics on miles and hours of service and passengers carried in order that Mn/DOT can monitor the efficiency and effectiveness of the transit services funded. It is necessary and reasonable to require records to be kept for a period of three years from the date of final payment because this complies with the procedures of the Minnesota Department of Administration Contract Management Division and the subsequent Mn/DOT Uniform Procedures Manual.

14 MCAR § 1.4055 B.

Subsection B requires recipients to submit to Mn/DOT, at the end of each month, a report summarizing cost allocations and operating statistics for the period. This information is needed by the Department to facilitate regular monitoring and evaluation of projects funded. Because disbursements to most recipients are made in advance by lump sums, the information is needed on a monthly basis

to ensure that recipients keep records up to date and that they maintain an accurate accounting.

14 MCAR § 1.4055 C.

Subsection C provides for audits of the financial records of recipients and their subcontractors. Audits are needed in order to establish that state financial assistance has been properly expended and has been used only for the purposes for which it was granted. It is reasonable to require audits because the Department is expected by the public to protect public funds from being put to illegal or improper uses. The flexibility provided for in the rules regarding the use of Departmental audits versus independent audits is needed and reasonable because it may reduce the cost of audits and because it responds to the Legislature's directive in Minn. Stat. § 174.23, subd. 7, to develop "necessary and reasonable changes in ... financial examination procedures where possible." The requirement for pre-award audits of new recipients is needed and reasonable because it provides the Department an opportunity to resolve, prior to public funds being expended, any problems that might exist with the financial accounting procedures of a new recipient, thereby serving as an advance protection procedure.

14 MCAR § 1.4055 D.

Subsection D provides for project monitoring by the Department. This provision is needed in order for Mn/DOT to fulfill its responsibility to the public to protect public funds from misuse and to ensure that public funds are used as efficiently and effectively as possible. It is necessary to require that recipients receive prior approval from the Department before changing the project management plan because such changes affect the project budget and can impact the amount of state financial resources expended.

It is necessary to provide for a penalty in the event changes are made without prior approval in order to foster compliance with this provision.

14 MCAR § 1.4060 Uniform performance standards for private operators in metropolitan transit taxing district.

14 MCAR § 1.4060 A.

Subsection A requires that performance standards be developed by the private operators of regular route transit service and that these standards be specified in the management plan. These standards are necessary because they are required by the statutes. The criteria for establishing the standards are reasonable because they conform with current, effective practice and are realistic in terms of the burden and requirements they place on the private operators.

14 MCAR § 1.4060 B.

Subsection B establishes funding procedures for the private operators. They are reasonable procedures in that they place upon the private operators the same application, contract, and monitoring requirements which apply to other applicants. The private operator payment provision of up to 100 percent of the operating deficit is needed and reasonable because it is so stated in the statutes. It is reasonable to make private operators eligible for a fee for service under the total operating cost definition because they are private concerns that would otherwise have no tangible incentive for continuing public transit service. Allowing a fee for service is also reasonable because the statutes permit it. It is necessary and reasonable to make payments to private operators on a monthly basis and to provide an option to receive an advance of funds in the first month of the contract because of the cash flow requirements of a private concern. It is then necessary to deduct the

advance from the last two monthly payments in order to avoid overpayment of state funds.

14 MCAR § 1.4065 Public transit capital grant assistance program.

14 MCAR § 1.4065 A.

Subsection A states eligibility requirements for the receipt of capital grant assistance and quotes the statutes. It is necessary and reasonable to duplicate statutory language because eligibility is a primary issue and needs to be readily understood by the public. It is also necessary to duplicate statutory language in order to make a clear distinction between the capital program and the transit assistance program (1.4033), each of which has different eligibility requirements.

14 MCAR § 1.4065 B.

Subsection B states the criteria to be used in the evaluation of requests for capital assistance. Criteria are needed because the Legislature directed Mn/DOT in Minn. Stat. § 174.245, subd. 2, to establish "criteria to be used in determining priorities in making the grants." They are reasonable criteria because they emphasize three central concepts in transit capital purchasing: (1) need as it impacts on service provision; (2) accessibility for the handicapped; and (3) local financial capability to provide matching funds.

14 MCAR § 1.4065 C.

Subsection C states the standards for capital purchases. The standards are needed and reasonable because they are in conformance with the statutes. The definition of refurbishing is reasonable in that it is structured from a combination of dictionary definitions and accounting principles.

14 MCAR § 1.4065 D.

Subsection D establishes procedures for the review of capital assistance grant requests. Establishing such procedures is required by the statutes and is needed because of the limited availability of state funds and the competition that is to be expected for these funds. A survey of the capital needs of financial assistance grant recipients is a reasonable part of the procedure because it gives all such recipients an equal opportunity to submit a request and to make a case for receiving assistance. The use of an internal committee of departmental representatives to evaluate requests is reasonable because these individuals would have the necessary background and information for properly evaluating the requests.

14 MCAR § 1.4065 E.

Subsection E describes the capital assistance contract. It is necessary to state this in the rules in order to properly inform the public of the requirements to which recipients are subject. The limits of assistance stated are as established by the statutes. The resolution by the recipient's governing body is a necessary legal requirement.

Signed:

for Richard P. Braun, Commissioner
Minnesota Department of Transportation

8-16-83
Date

Minnesota Department of Transportation
Transportation Building, St. Paul, MN 55155

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ADMINISTRATIVE HEARINGS

November 7, 1983

Phone 612/296-7590

Bruce Campbell, Hearing Examiner
Administrative Hearings Office
4th Floor Summit Bank Building
310 4th Avenue South
Minneapolis, MN 55415

RE: The Proposed Rules of the Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.

Dear Mr. Campbell:

In accordance with Minnesota Statutes, Mn/DOT takes this opportunity to respond to the comments received on its proposed transit rules prior to the close of the hearing record on November 2nd. Two letters were received and we will respond to each one separately.

The letter from Suburban Paratransit, Inc. recommended five changes to the rules. Mn/DOT responds as follows:

(1) We reject the recommended change regarding "operators for profit." Legislative intent was solely to allow for paying a fee for service to transit operators whose reason for being in existence is to make a profit. The intent was not to provide a fee for service to any other type of organization.

(2) We reject the recommended change regarding investment income and general donations. As to interest income, this is tracked by Mn/DOT auditors only where it is at all possible. As to the donations issue, all the examples given by SPI are examples of specific donations, not general donations. Non-specific general donations and interest income that are generated because of the project must be considered part of program revenue and applied to cover project costs wherever possible, since Mn/DOT's funding of SPI at 100% of the deficit represents a substantial commitment and burden on the part of the State.

(3) We accept the recommended change regarding reporting forms. The proposed change requires Mn/DOT approval and allows the Department to exercise its judgment.

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ADMINISTRATIVE HEARINGS

(4) We reject the recommended change regarding "program revenue" versus simply "revenue." No distinction is necessary since we have clearly defined revenue.

(5) We reject the recommended change in the capital assistance section. The existing wording corresponds with the statute and the wording change suggested would not change the sense of the rule.

The second letter, from D.A.R.T.S., Inc. of Dakota County, raises only one issue and that is in regards to the inclusion of investment income and general donations under "other financial assistance." We reject the suggestion that this be deleted from the rules. Since the State makes a significant financial contribution to transit projects throughout the state, it must reduce its burden in all proper circumstances. We note that for the D.A.R.T.S. organization, as well as for the majority of other transit projects that Mn/DOT funds, this is actually a non-issue because of the operation of the "fixed local share" funding procedure. Under this funding mechanism, the local share is "fixed" based on a statutory percentage of project costs for various population categories. The local transit project must meet its fixed share and can use essentially any revenues available to it to do so. Once the fixed share requirement is met, the recipient is free to use any additional revenues any way it pleases.

We trust our position is clear on the issues raised.

Respectfully submitted,

Nancy Moore

Nancy A. Moore
Special Projects Coordinator
Mn/DOT

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

- -

I, Jean Stepan, Special Assistant Attorney General, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jean Stepan
Special Assistant Attorney General

Dated: Feb. 7, 1984

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.	AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 8th day of February, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Kenneth H. Bjork
Authorized Signature

Subscribed and sworn to before me
this 8th day of February, 1984.

Margaret M. Hansen
Notary Public

Ramsey County, Minnesota.

My Commission expires 4/15/85.

MARGARET M. HANSEN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires April 15, 1985

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Adoption of Rules of the State Department of Transportation Governing Distribution of Financial Assistance Under the Public Transit Assistance Program.	NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

- -

Pursuant to your request and in accordance with Minnesota Statutes, § 14.16:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, 8 February, 1984, for review as to form and legality. Pursuant to Minn. Stat. § 14.17 and 1 MCAR § 1.206C., the Attorney General will not approve the rules for at least ten calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-1288. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact Allan J. Schenkelberg, Director, Office of Transit, 815 Transportation Building, Saint Paul, Minnesota 55155, telephone (612) 296-1615 during normal business hours.

Richard P. Braun
Commissioner of Transportation

Dated this 8th day of February, 1984.

Minnesota Department of Transportation

Transportation Building, St. Paul, MN 55155

Phone _____

PERSONS TO BE NOTIFIED OF RULE SUBMISSION TO THE OFFICE OF THE ATTORNEY GENERAL

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