

State of Minnesota
Department of Transportation
Division of Program Management

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ADMINISTRATIVE
HEARINGS

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 The former rules are repealed to allow the inclusion of new material with earlier rules, as now revised, into a reorganized rule structure.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 them 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.

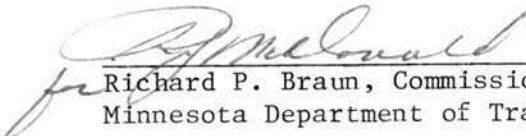
14 MCAR § 1.4065 D.

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:



Richard P. Braun, Commissioner
Minnesota Department of Transportation

8-16-83

Date