



Department of Transportation

Office of Legal Counsel

700 East Broadway Avenue

Pierre, South Dakota 57501-2586 605/773-3262

FAX: 605/773-4442

MEMORANDUM

TO: Kari Kroll and Kellie Beck

FROM: Karla L. Engle

DATE: April 17, 2019

RE: April 25, 2019 Commission Meeting

The Department of Transportation asks the Transportation Commission to approve amendments to the following administrative rules:

- 70:06:01:01 – Definitions
- 70:06:01:02 – Federal transit grants eligible for state matching funds
- 70:06:01:03 – Eligible grantees
- 70:06:02:01 – Award and administration of federal transit grants
- 70:06:02:02 – Criteria used to award state matching funds
- 70:06:02:03 – State matching fund grant applications and department approvals
- 70:06:02:04 – State matching fund disbursements to grantees
- 70:06:03:01 – Performance and fiscal reports
- 70:06:04:01 – Eligible grant purposes
- 70:06:04:02 – Criteria used to award grants
- 70:06:04:03 – Grant applications
- 70:06:04:04 – Grant disbursements and audits

Copies of the following documents are enclosed with this memo for the commission's consideration:

1. The proposed rule;
2. The Rules Presentation Format Form adopted by the Interim Rules Review Committee, listing the procedural steps that have been taken so far in the rule adoption process.

Any written comments that are timely received will be provided to the commission at the meeting on April 25, 2019. Thank you.

CHAPTER 70:06:01

GENERAL PROVISIONS

Section

70:06:01:01 Definitions.

70:06:01:02 Federal ~~transportation~~ transit grants eligible for state matching funds.

70:06:01:03 Eligible grantees.

70:06:01:01. Definitions. Terms used in this ~~chapter~~ article have the following meaning:

(1) "Capital," transit vehicles and related equipment and structures having a useful life expectancy of one or more years;

(2) "Department," the South Dakota Department of Transportation;

~~(3) "Disabilities," physical or mental impairments which substantially limit one or more major life activities, such as:~~

~~———(a) Self care;~~

~~———(b) Receptive and expressive language;~~

~~———(c) Learning;~~

~~———(d) Mobility;~~

~~———(e) Self direction;~~

~~———(f) Capacity for independent living; and~~

~~———(g) Economic or social self sufficiency;~~

~~(4) "Discretionary," administrative actions not mandated by laws or rules;~~

~~(53) "Dispatcher," a person who assigns transit drivers and transit vehicles to specific travel routes during specific time periods on specific days;~~

~~(6) "Elderly," persons 60 years of age or older;~~

~~(74) "Fixed route," a specific route over which bus service is provided during specific time periods on specific days;~~

~~(85)~~ "FTA," the Federal Transit Administration, United States Department of Transportation;

~~(96)~~ "Grant," a written award to an eligible grantee for a specific amount of funds to carry out specific activities for a specific time period;

~~(7)~~ "Grant administration performance," an evaluation of a grantee's implementation of and compliance with grant requirements, participation in transit training, and service to transit organizations and associations.

~~(408)~~ "Intercity bus service," regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more municipalities, which has the capacity for transporting baggage carried by passengers, and which makes connections with scheduled intercity bus service to more distant points when such service is available;

~~(9)~~ "Local funding," funding eligible to be considered local match in accordance with FTA requirements;

~~(4110)~~ "Operating expenses," costs related to transit vehicle operations, including drivers' and dispatchers' salaries and fringe benefits, gasoline, oil, engine repairs, and vehicle maintenance expenses;

~~(12)~~ "Paratransit," unscheduled public transit services, usually serving persons with disabilities, which operate by passenger request and not on a fixed bus route with a fixed schedule of service;

~~(4311)~~ "Passenger trip," the point from which the passenger enters the transit vehicle to the destination point where the passenger leaves the transit vehicle;

~~(14)~~ "Percentage grant," the percent that the department will pay of the total cost of the purchase price of a transit capital item;

~~(4512)~~ "Public transit transportation," the transporting of persons from one location to another location for a fee in a transit vehicle open to the general public or open to a segment of the general public defined by age, disability, or low income;

~~(16) "Revenues," the fare, fee, or donation made by a transit vehicle passenger to pay for a passenger trip, generally known in the transit industry as farebox revenues;~~

~~(17) (13) "Rural area," cities that have an area encompassing a population of less than 50,000 persons people that has not been designated in the most recent decennial census as an urbanized area by the Secretary of the United States Department of Commerce;~~

~~(18) "Special transit," the transporting of persons from one location to another for a fee or donation in a vehicle primarily serving the elderly and persons with disabilities;~~

~~(19) (14) "Transit," the transporting of persons from one location to another in a vehicle for a fee public transportation;~~

~~(20) "Transit administration," the management of a rural public transit organization funded under 49 U.S.C.S. Appendix § 1614 as in effect on March 1, 1993;~~

~~(21) (15) "Transit administration expenses," salaries and fringe benefits for administrative, secretarial, building maintenance, and fiscal staffs and costs necessary to acquire and maintain administrative office spaces, insurance policies, and related office equipment and supplies;~~

~~(22) (16) "Urban Urbanized area," cities that have an area encompassing a population of not less than 50,000 persons or more people that has been defined and designated in the most recent decennial census as an urbanized area by the Secretary of the United States Department of Commerce;~~

~~(23) (17) "User-side subsidies," the partial funding of the price of a transit fare for an individual rider;~~

~~(24) (18) "Vehicle miles driven," the numerical changes in a transit vehicle's odometer over a specific period of time.~~

Source: 19 SDR 155, effective April 11, 1993; 20 SDR 59, effective November 1, 1993.

General Authority: SDCL 1-44-7.3, 1-44-7.4.

Law Implemented: SDCL ~~1-44-7.2~~, 1-44-7.3, 1-44-7.4.

70:06:01:02. Federal ~~transportation transit~~ grants eligible for state matching funds. The Grantees receiving the following federal transit grants are eligible for state matching funds from the public and special transportation assistance state highway fund:

~~(1) Discretionary grants for capital purchases as authorized under 49 U.S.C.S. Appendix § 1602(a), as in effect on March 1, 1993;~~

~~(2) Urban public transit grants for capital purchases and operating expenses as authorized under 49 U.S.C.S. Appendix § 1607a, as in effect on March 1, 1993 § 5307;~~

~~(3) Transit capital purchases for transit organizations serving elderly persons and persons with disabilities as authorized under 49 U.S.C.S. Appendix § 1612(b) as in effect on March 1, 1993, and under 42 U.S.C.S. § 3030d, as in effect on March 1, 1993; and~~

~~(4) Rural public area transit grants for capital purchases, operating costs, expenses and transit administration expenses as authorized under 49 U.S.C.S. Appendix § 1614, as in effect on March 1, 1993 § 5311;~~

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: ~~SDCL 1-44-7.2~~, 1-44-7.3.

70:06:01:03. Eligible grantees. The following organizations entities are eligible to receive a state matching fund grant from the public and special transportation assistance state highway fund if they have first received FTA or department approval for an eligible a federal transit grant listed in § 70:06:01:02:

(1) County government;

(2) City government;

(3) Indian tribal governments;

~~(4) Nonprofit Private nonprofit corporations providing services primarily for elderly persons or persons with disabilities; and~~

(5) State agencies.

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: SDCL ~~1-44-7.2~~, 1-44-7.3.

CHAPTER 70:06:02

GRANT APPLICATIONS AND DISBURSEMENTS

Section

70:06:02:01 Award and administration of federal transit grants.

~~70:06:02:01~~ 70:06:02:02 Criteria used to award state matching funds.

70:06:02:02 70:06:02:03 State matching fund grant applications and department approvals.

70:06:02:03 70:06:02:04 State matching fund disbursements to grantees.

70:06:02:01. Award and Administration of federal transit grants. The department may award and shall administer federal transit grants in accordance with federal requirements. Before receiving a federal transit grant administered by the department, the grantee shall execute a grant agreement with the department in a form satisfactory to the department.

General Authority: SDCL 1-44-7.3

Law Implemented: SDCL 1-44-7.3

~~70:06:02:01~~ **70:06:02:02. Criteria used to award state matching funds.** The department shall use the following criteria to award state matching funds to the eligible grantees listed in § 70:06:01:03:

(1) ~~Discretionary transit capital grantees, as defined by 49 U.S.C.S. Appendix § 1602(a), as in effect on March 1, 1993, may be awarded a state percentage grant to be used as part of the total capital purchase or purchases;~~

—— (2) ~~Urban transit grantees, as defined by 49 U.S.C.S. Appendix § 1607a, as in effect on March 1, 1993, A grantee receiving a grant authorized by 49 U.S.C. § 5307 may be awarded a state matching~~

~~grants grant~~ based on the grantee's share of the total ~~urban~~ urbanized area population within South Dakota, ~~which is 347,768~~ as determined by the most recent United States census;

~~(32) Transit capital grants for transit organization grantees, as defined by 49 U.S.C.S. Appendix § 1612(b), as in effect on March 1, 1993, and by 42 U.S.C.S. § 3030d, as in effect on March 1, 1993, primarily serving elderly persons and persons with disabilities, may be awarded a state percentage grant to be used as part of their total capital purchase or purchases; Grantees receiving grants authorized by 49 U.S.C. § 5311 may be awarded a state matching fund grant based on factors including number of passenger trips provided, vehicle miles driven, transit administration expenses, operating expenses, grant administration performance, and level of local funding. At least annually, the department shall obtain commission approval of objective scoring procedures for determining grant awards pursuant to this subsection.~~

~~————(4) Rural public transit grantees, as defined by 49 U.S.C.S. Appendix §§ 1614, as in effect on March 1, 1993, may be awarded state matching funds based on the following three criteria:~~

~~————(a) Annual transit vehicle miles driven by each grantee;~~

~~————(b) Annual number of passenger trips provided by each grantee; and~~

~~————(c) Annual amount of local revenues and local funds expended by each grantee;~~

~~————(5) Public transit grantees, as defined by 49 U.S.C.S. Appendix § 1614, as in effect on March 1, 1993, and 49 U.S.C.S. Appendix § 1607a, as in effect on March 1, 1993, may be awarded increases for their original federal grants for the purposes of offsetting the costs of the following:~~

~~————(a) Inflation;~~

~~————(b) Shortages in federal fund allocations to the department; and~~

~~————(c) Paratransit services.~~

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: SDCL ~~1-44-7.2~~, 1-44-7.3.

~~70:06:02:02.~~ 70:06:02:03 State matching fund grant applications and department approvals. Federal A grantee who receives a federal transit grants administered through the department grant identified in § 70:06:02:01 may have receive a state matching grants grant awarded in conjunction with the primary federal grants grant. Eligible grantees which are awarded FTA transit grants directly by FTA shall submit copies of the FTA grant award document to the department with a request for state matching grants. Request forms may be obtained from Grant applications must be made on forms approved by the department. The department may establish deadlines for application submission. The department shall approve in whole or in part or deny a request within 45 days after the department's receipt of a completed request form.

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: ~~SDCL 1-44-7.2, 1-44-7.3.~~

~~70:06:02:03~~ 70:06:02:04. State matching fund disbursements to grantees. State matching grants for federal transit capital expenditure grantees shall be disbursed by the department following the date of capital item purchases. State matching grants for FTA transit operating and administrative expenditure grantees shall be disbursed through a periodic reimbursement of prior grantee expenditures after a grant agreement has been executed and funding requests have been approved by the department.

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: ~~SDCL 1-44-7.2, 1-44-7.3.~~

70:06:03:01. Performance and fiscal reports. ~~When~~ If requested in writing by the department, federal transit grantees with receiving state matching grants shall send copies of federally mandated transit performance and fiscal reports to the department for departmental review, information collection, and reimbursement purposes.

Source: 19 SDR 155, effective April 11, 1993.

General Authority: SDCL 1-44-7.3.

Law Implemented: SDCL ~~1-44-7.2~~, 1-44-7.3.

70:06:04:01. Eligible grant purposes. The following intercity bus service activities are eligible for funding under federal transit grants as authorized by 49 U.S.C.S. ~~Appendix § 1614(i)~~, as ~~in effect on June 1, 1993~~ § 5311(f):

- (1) Planning and marketing for intercity bus transportation;
- (2) Capital grants for intercity bus shelters, joint-use structures, depots, and transit vehicles;
- (3) Operating grants for intercity bus transportation;
- (4) Coordination of rural area connections between small transit operators and intercity bus operators; and
- (5) User-side subsidies.

Source: 20 SDR 59, effective November 1, 1993.

General Authority: SDCL 1-44-7.4.

Law Implemented: SDCL 1-44-7.4.

70:06:04:02. Criteria used to award grants. The department shall use the following criteria to award grants to providers of intercity bus services:

- (1) The total number of vehicle miles driven and passengers served during the last operating year on regularly scheduled fixed routes by bus services which are open to the general public and operated by the grant applicant within South Dakota. No charter or tour mileages may be included;
- (2) Annual operating losses on regularly scheduled, fixed-route intercity bus services within South Dakota, documented by a complete description of the intercity services provided and verification by an independent certified public accountant of the grant applicant's most recent financial statement;

(3) ~~The total number of passengers served on regularly scheduled fixed routes within South Dakota during the last operating year~~ provider's proposed budget for operating expenses and transit administration expenses in the upcoming federal fiscal year; and

(4) Circular FTA C 9040.1 ~~CG~~, Chapter ~~VH VIII~~, dated November 3, ~~1992~~ 24, 2014, issued by FTA to implement 49 U.S.C.S. ~~Appendix § 1614(i), as in effect June 1, 1993~~ § 5311(f).

The department may award additional funds to projects which expand intercity bus service to currently unserved areas of South Dakota or which support intercity bus services routes in immediate danger of abandonment.

Source: 20 SDR 59, effective November 1, 1993.

General Authority: SDCL 1-44-7.4.

Law Implemented: SDCL 1-44-7.4.

70:06:04:03. Grant applications. ~~Before December 1 each year, grant applicants may submit proposals for maintaining, improving, or expanding intercity bus services as contractors to the department. Proposal forms may be obtained from the department. Grant applications must be made on forms approved by the department. The department may establish deadlines for application submission. Proposal forms~~ The department may approve a proposal an application in whole or in part or may deny the proposal application after the department's review of a completed proposal form pursuant to § 70:06:04:02.

Source: 20 SDR 59, effective November 1, 1993.

General Authority: SDCL 1-44-7.4.

Law Implemented: SDCL 1-44-7.4.

70:06:04:04. Grant disbursements and audits. Before receiving federal funds for intercity bus services, the grantee shall execute a grant agreement with the department in a form satisfactory to the department. The department shall disburse intercity bus service grants to grantees through periodic reimbursement of prior expenditures by grantees. Grantees must provide the department

with federal performance and fiscal reports as required by 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Subpart C, Post-Award Requirements, § 18.20 (~~October 1, 1992~~). Grantees must permit auditors of the department to obtain and review all expenditure records related to intercity bus service grants.

Source: 20 SDR 59, effective November 1, 1993.

General Authority: SDCL 1-44-7.4.

Law Implemented: SDCL 1-44-7.4.

Interim Rules Review Committee Recommended Rules Presentation Format

When you submit the final draft to the Legislative Research Council (LRC) and the Rules Review Committee, please answer these questions to show that the SDCL § 1-26 rule-making process is complete. Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes No Date March 27, 2019
- The date of your public hearing. Date April 25, 2019
- The date you submitted the proposed rules and the supporting documents to LRC and the Bureau of Finance and Management: Date April 3, 2019 (Note - This must be completed at least 20 days before your public hearing.)
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.
- The date and the name of the newspapers where you published the notice of the public hearing.
 - Date April 3, 2019 Newspaper Rapid City Journal
 - Date April 3, 2019 Newspaper Aberdeen American News
 - Date April 3, 2019 Newspaper Sioux Falls Argus Leader
 - Date April 3, 2019 Newspaper Pierre Capital Journal
- Summarize how and when interested persons, if any, were contacted and how many were contacted. On April 3, 2019, copies of the hearing notice and proposed rules were sent to the individuals who have requested mail notification of rule-making by the commission. On the same date, electronic copies of the hearing notice and proposed rules were sent to the individuals who have requested electronic notification of rule-making. The hearing notice, proposed rules, small business impact statement, and fiscal notes were also posted on the Open SD website for the State of South Dakota.
- Provide the page numbers in the minutes where it mentions how the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- If the rules are implementing a bill from last session, identify the bill number. _____
- The date you submitted the final rules and supporting documents to the LRC and the Rules Review Committee: Date _____ (Note - This must be received no later than 5 days before the Rules Review Committee meeting.)
 - the "Approval of Rules" - Form 11 (LRC only);
 - the style and form copy (LRC only);
 - the "Affidavit" of mailing - Form 12 (LRC only);
 - the final copy of the rules (Both);
 - the minutes of the hearing (Both);
 - the record of written comments (Both);
 - the impact statement on small business – Form 14 (Committee only);
 - the fiscal note – Form 5 (Committee only);
 - the budgetary information required to increase a fee (Committee only); and
 - the rules process outline (Both).