



Minnesota Department of Transportation
395 John Ireland Blvd.
St. Paul, MN 55155

March 22, 2024

VIA EMAIL

Legislative Reference Library
sonars@lrl.leg.mn

In the Matter of the Proposed Amendment to Rules Relating to Bridge Rehabilitation, Construction, and Reconstruction, *Minnesota Rules*, 8810.8000 through 8810.8500

Revisor's ID No. R-04830; OAH Docket No. 5-9037-39834

Dear Legislative Reference Library:

The Minnesota Department of Transportation intends to adopt rules relating to Bridge Rehabilitation, Construction, and Reconstruction. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the April 15, 2024, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness before we send our Notice of Intent to Adopt Rules without a Public Hearing.

If there are any questions or concerns, please contact me at andrea.barker@state.mn.us or 651-366-4029.

Sincerely,

Andrea Barker

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Andrea Barker
Policy and Administrative Rules Coordinator

Enclosure:

Statement of Need and Reasonableness



Minnesota Department of Transportation
Office of State Aid

STATEMENT OF NEED AND REASONABLENESS

Bridge Rehabilitation, Construction, and
Reconstruction

Proposed Revisions of *Minnesota Rules 8810*;
Revisor ID No. 04830

March 8, 2024

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's website: <https://www.dot.state.mn.us/rules/bridge-rehabilitation.html>.
2. View older rule records at: [Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Andrea Barker, Policy and Administrative Rules Coordinator, Minnesota Department of Transportation, 395 John Ireland Blvd., Mail Stop 130, St. Paul, MN 55155; telephone: 651-350-2694; email: andrea.barker@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
5. How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

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Acronyms

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
MAT	MN Association of Townships
Minn. R. pt	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

Introduction and Overview

Statement of General Need

The Minnesota Department of Transportation (Department) is proposing amendments to the Minnesota rules governing bridge rehabilitation, construction, and reconstruction. The proposed amendments are necessary to address changes to Minn. Stat. § 174.50, subdivision 7, authorizing political subdivisions to use grants to rehabilitate bridges, including to pay the costs of acquiring and rehabilitating and reconstructing historic bridges. The statute previously only authorized the use of grants for construction or reconstruction of bridges. The proposed amendments define the term “bridge rehabilitation,” add references to rehabilitation throughout the rules to reflect the statute change, and make minor, clerical edits.

Scope of the proposed amendments:

The following parts of Minnesota rules are being affected by the proposed changes:

- 8810.8000, Definitions
- 8810.8200, Construction, Reconstruction Grant Application
- 8810.8300, Regional Commission, Metropolitan Council Review
- 8810.8400, Establishment of Priorities

Background

In 2023, the Minnesota Legislature amended Minn. Stat. § 174.50, subdivision 7(d) to state:

(d) Political subdivisions may use grants made under this section to rehabilitate, construct, or reconstruct bridges, including but not limited to:

(1) matching federal aid grants to construct or reconstruct key bridges;

(2) paying the costs to abandon an existing bridge that is deficient and in need of replacement but where no replacement will be made; ~~and~~

(3) paying the costs to construct a road or street to facilitate the abandonment of an existing bridge if the commissioner determines that the bridge is deficient, and that construction of the road or street is more economical than replacement of the existing bridge-, and

(4) paying the costs of acquiring and rehabilitating and reconstructing historic bridges, including the costs of: (i) acquiring salvageable components from historic bridges and the disassembly, repurposing, restoring, and transportation to a new location of the salvageable components for the construction, rehabilitation, or reconstruction of a bridge; and (ii) related environmental documentation,

preliminary design, and final design associated with the reconstruction of historic bridges.

The changes to the rules reflect these amendments.

Public Participation and Stakeholder Involvement

Consistent with the Administrative Procedures Act (APA), the Department published a Request for Comments in the Minnesota State Register on September 18, 2023. The Department emailed the Request for Comments to all city engineers, county engineers, and all users who had subscribed for notification of active MnDOT rulemaking on the Department's GovDelivery service. Additionally, the Department mailed a copy of the Request for Comments to all individuals on the Department's rulemaking mailing list established under Minn. Stat. § 14.14, subd. 1a.

Statutory Authority

The statutory authority for the Commissioner of Transportation to engage in rulemaking on this topic is establish in Minn. Stat. § 174.50, subd. 7(a):

The commissioner of transportation shall develop rules, procedures for application for grants, conditions of grant administration, standards, and criteria as provided under subdivision 6, including bridge specifications, in cooperation with road authorities of political subdivisions, for use in the administration of funds appropriated to the commissioner and for the administration of grants to subdivisions. The commissioner must publish all rules, procedures, conditions, standards, and criteria on the department's website. Grants under this section are subject to the procedures and criteria established in this subdivision and in subdivisions 5 and 6.

Reasonableness of the Amendments

General Reasonableness

The proposed amendments to these rules reflect the addition of "rehabilitation" of bridges to the statute as an allowable use of grants provided under the statute. The amendments provide clarity and ensure that the statutes and rules do not conflict.

Rule-by-Rule Analysis

1. Minor, grammatical changes, including replacing the word "shall" with "must," were made to the following rule parts:
 - 8810.8000, subp. 2

- 8810.8200, subps. 1, 2, and 3
- 8810.8300
- 8810.8400

These changes are needed and reasonable to provide clarity.

2. The definition of “bridge rehabilitation” was added to part 8810.8000 and is the same definition used in part 8820.0200, subp. 8. This change is needed and reasonable to ensure grant recipients understand what they may use the grants for.
3. The words “rehabilitate” and “rehabilitation” were added to the following rule parts:
 - 8810.0200, subps. 1, 2, and 3
 - 8810.8400

These changes are needed and reasonable to ensure the rules align with the language in the statute and to provide the greatest flexibility in the types of projects eligible for grants.

Regulatory Analysis

Minn. Stat. § 14.131 requires the Department to address eight factors as part of the SONAR. These factors are laid out and addressed in detail below.

Classes Affected

The proposed rules will affect political subdivisions which receive grants for rehabilitation, construction, or reconstruction of bridges. The Department does not believe the proposed rules will result in additional costs to grant recipients. The changes to the rules will benefit political subdivisions by expanding the types of projects that may be funded by grants, in alignment with revisions to Minn. Stat. § 174.50.

Agency Costs

The Department does not anticipate any costs to the agency or any other agency for implementation and enforcement of the proposed rule, nor does it expect any effect on state revenues. The worktime required for the Department to administer the proposed rules is not any more than is currently used to administer the existing rules.

Less Costly or Intrusive Methods

The Department is unaware of any way to achieve the intended effects of the proposed amendments to these rules other than through rulemaking. The proposed amendments were developed to update

existing rule requirements to align with statutory changes.

Alternative Methods

The Department did not seriously consider any alternative methods other than the proposed amendments. As stated above, the proposed amendments were developed to update existing rule requirements to align with statutory changes. Because Minn. Stat. § 174.50 was amended, it is imperative that the rules reflect and support the changes and intent specified in statute.

Department Costs to Comply

As noted above, the Department does not believe there will be a significant increase in costs associated with the proposed rule amendments because it already administers grants. The proposed changes simply change the criteria for determining projects eligible for grants.

Costs of Non-Adoption

The probable consequences of not adopting the proposed rule includes incongruity between Minn. Stat. § 174.50 and these rules.

Differences from Federal Regulations

There are no existing federal regulations relevant to the proposed rules.

Cumulative Effect

There are no other state or federal regulations related to bridge grants. Therefore, the proposed changes do not create a greater regulatory cumulative effect.

Notice Plan

Minn. Stat. § 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Required Notice

The Department is required under Minn. Stat. chapter 14 to identify and send notice to several groups. The steps the Department will take to meet those statutory requirements are laid out in detail below.

- Details on the initial measures taken to ensure stakeholders received both required and additional notice of this rulemaking can be found on page 6 of this SONAR.
- Consistent with Minn. Stat. § 14.14, subd. 1a, on the day the Notice of Intent to Adopt Rules Without a Public Hearing (“Notice”) is published in the *State Register*, the Department will send via email or U.S. Mail a copy of the Notice and the proposed rule to the contacts on the Department’s list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. There are roughly 23 people on the Department’s list of persons who have requested notice via United States Postal Service, and roughly 1,549 persons who have requested notice of all rule proceedings via GovDelivery. The Notice will be sent at least 33 days before the end of the comment period.
- Consistent with Minn. Stat. § 14.116(b), the Department will send a copy of the Notice, a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the Transportation Finance and Policy Committee and the Legislative Coordinating Commission. These documents will be sent at least 33 days before the end of the comment period.
- Consistent with Minn. Stat. § 14.131, the Department will send a copy of the SONAR to the Legislative Reference Library when the Notice is sent.

There are several notices required under Minn. Stat. Chapter 14 in certain situations that do not apply for this rulemaking. These notices are laid out in detail below.

- Minn. Stat. § 14.116 requires the Department “make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority” if it is within two years of the effective date of the law granting rulemaking authority. This requirement does not apply because the Department was granted its original rulemaking authority for these rules in 1976 and no bill within the past two years granted the Department additional authority for this rulemaking.
- Minn. Stat. § 14.111 requires the Department to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. This requirement does not apply because the proposed amendments will not have any effect on farming operations in Minnesota.

Additional Notice Plan

In addition to the required notice referenced above, the Department will make the Notice, SONAR, and proposed rule amendments available on the web page created for this rulemaking. Members of the public may submit comments by U.S. mail, email, or by contacting Department staff directly.

The Department also intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to all city and county engineers. The enabling statute requires the Commissioner to develop rules “in cooperation with road authorities of political subdivisions.” The city and county engineers encompass the applicable road authorities.

On March 7, 2024, the Department received confirmation from OAH that these steps meet the notice requirements for persons or classes of persons who may be affected by the proposed amendments to these rules under Minn. Stat. § 14.14, subd. 1a.

Performance-Based Rules

Minn. Stat. § 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Department’s regulatory objectives while allowing maximum flexibility to regulated parties and to the Department in meeting those objectives.

Strictly performance-based rules would set objectives and leave the manner of achieving those objectives to the regulated parties. However, Minn. Stat. § 174.50 assigns responsibility to the Department to develop rules, procedures for application for grants, conditions of grant administration, standards, and criteria as provided in the statute, for use in the administration of funds appropriated to the commissioner and for the administration of grants to subdivisions.

As explained in the rule-by-rule analysis, there are very few changes to the rules overall. The biggest change is the addition of the terms “rehabilitate” and “rehabilitation” to ensure consistency between the statute and rules and to provide the greatest flexibility in the types of projects eligible for grants.

Consult with MMB on Local Government Impact

As required by Minn. Stat. § 14.131, the Department will consult with Minnesota Management and Budget (MMB) by sending MMB copies of the documents that will be sent to the Governor’s Office for review and approval on the same day we send them to the Governor’s Office. The Department will do this before publishing the Notice of Intent to Adopt Rules Without a Public Hearing. The documents will include the Governor’s Office Proposed Rule and SONAR Form, the proposed rule amendments, and the SONAR. The Department will submit a copy of the cover correspondence and any response received from MMB to OAH with the documents it submits for ALJ review.

Impact on Local Government Ordinances and Rules

Minn. Stat. § 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Department has determined that the proposed amendments will not have any

effect on local ordinances or regulations because there are no related local ordinance or regulations.

Costs of Complying for Small Business or City

Minn. Stat. § 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.”

The Department determined that there are no costs for small business or cities to comply with the rule. The rule expands the number of projects eligible for grant funding in compliance with the statute and does not change the process for applying for grants.

Authors, Witnesses and SONAR Exhibits

The primary authors of this SONAR are Mark Vizecky, State Aid Operations Engineer, and Andrea Barker, Policy and Administrative Rules Coordinator.

Witnesses and Other Staff

The Department expects that the proposed amendments will be noncontroversial. If a hearing is necessary, the Department anticipates having than the listed authors and subject matter experts from the Department’s Office of State Aid testify as witnesses in support of the need for and reasonableness of the rules.

Conclusion

In this SONAR, the Department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapter 8810. The agency has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

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Nancy Daubenberger, Commissioner
Minnesota Department of Transportation