



STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

Concerning Proposed Rules of	)	STATEMENT OF NEED
the Department of	)	AND REASONABLENESS
Transportation Relating to	)	
Operating Standards For	)	
Special Transportation Service	)	

The Commissioner of Transportation, under Minnesota Statutes, section 174.30, subdivision 2, presents facts showing the need for and reasonableness of proposed rules relating to operating standards for special transportation services.

**I. STATUTORY AUTHORITY.**

Minnesota Statutes, section 174.29, subdivision 1, defines special transportation service as:

. . .motor vehicle transportation provided on a regular basis by a public or private entity or person that is designed exclusively or primarily to serve individuals who are elderly, handicapped, or disabled and who are unable to use regular means of transportation but do not require ambulance service, as defined in section 144.801, subdivision 4. Special transportation service includes but is not limited to service provided by specially equipped buses, vans, taxis, and volunteers driving private automobiles.

Minnesota Statutes, section 174.30 requires the commissioner of transportation to adopt rules setting standards for vehicles and drivers that provide special transportation service. The legislature enacted Section 174.30 in 1979 and has amended it four times.

The Minnesota Department of Transportation (Mn/DOT) first adopted rules setting operating standards for special transportation services in 1981. The rules provided standards for driver qualifications and training, the equipping and maintaining of vehicles, vehicle inspections, and insurance. The law requires that certain providers of special transportation services comply with the standards and obtain an annual certificate of compliance from the commissioner of transportation. The operating standard rules were amended in 1983.

In 1987, the legislature received complaints that the operating standards did not give adequate direction to providers of special transportation services. In addition, there were charges that drivers occasionally operated vehicles in an unsafe manner. The legislature amended section 174.30 in 1987 and increased the commissioner's responsibilities with respect to the inspection

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of vehicles and certification of special transportation services.

Minnesota Statutes, section 174.30, subdivision 2, states:

**AUTHORITY TO ADOPT; PURPOSE AND CONTENT; RULEMAKING.** The commissioner of transportation shall adopt by rule standards for the operation of vehicles used to provide special transportation service which are reasonably necessary to protect the health and safety of individuals using that service. The commissioner, as far as practicable, consistent with the purpose of the standards, shall avoid adoption of standards that unduly restrict any public or private entity or person from providing special transportation service because of the administrative or other cost of compliance.

Standards adopted under this section must include but are not limited to:

- (a) Qualifications of drivers and attendants, including driver training requirements that must be met before a driver provides special transportation;
- (b) Safety of vehicles and necessary safety equipment;
- (c) General requirements concerning inspection and maintenance of vehicles, replacement vehicles, standard vehicle equipment, and specialized equipment necessary to ensure vehicle usability and safety for disabled persons; and
- (d) Minimum insurance requirements.

The commissioner shall consult with the state council on disability before making a decision on a variance from the standards.

Subdivision 2a requires providers to inspect, repair and maintain special transportation service vehicles. It also states they must keep inspection and maintenance records and must conduct tests to ensure that emergency doors and windows and wheelchair lifts function properly.

Subdivision 4 requires the commissioner to inspect or provide for the inspection of special transportation service vehicles at least annually. In addition, the commissioner must provide for the unannounced quarterly inspection of at least five per cent of the vehicles.

Subdivision 4, paragraph (c) states that the commissioner shall provide procedures in the rules for inspecting vehicles, removing unsafe vehicles from service, determining and requiring compliance, and reviewing driver qualifications.

Subdivision 4a requires the commissioner to annually evaluate a provider of special transportation service subject to section 174.30 and to certify a provider that complies with the standards.

Some special transportation services are not subject to the operating standards. First, the standards only apply to providers who receive grants or other financial assistance from either the state or federal government to provide the service. Second, licensed nursing homes, board and care facilities, day care and group homes are exempt from the operating standards unless they regularly transport nonresidents to their programs. Third, the legislature has declared that the operating standards do not apply to: (1) a common carrier operating on fixed routes and schedules, (2) a volunteer driver using a private automobile, (3) a school bus defined in section 169.01, subdivision 6, and (4) an emergency ambulance regulated under Minnesota Statutes, Chapter 144.

The 1987 legislation made taxis subject to operating standards. Before 1987 they had been exempt.

## **II. LEGISLATIVE AND RULEMAKING HISTORY.**

The amendments to Minnesota Statutes, section 174.30 passed the Minnesota House of Representatives and Senate. The Governor signed the legislation on May 12, 1987. Its provisions became effective on August 1, 1987. Mn/DOT published a Notice of Solicitation of Outside Information or Opinions in the State Register on July 13, 1987 and the department accepted information and opinions until August 31, 1987. Few comments were received within the time prescribed by the notice. However, several providers and other interested persons have submitted comments and opinions to the department during the rulemaking process.

The department also held several meetings to gain information about the proposed operating standards. It formed an Operating Standards Committee that met for the first time on July 9, 1987. Members of the committee represented a wide range of small business providers including taxis, bus companies, rural Minnesota providers, paratransit organizations and the St. Paul Red Cross. In addition, representatives of the Regional Transit Board, the Minnesota State Patrol, the State Council for the Handicapped and Mn/DOT's Transit Office were included. Additional meetings of the committee were held in September of 1987 and January of 1988.

Mn/DOT staff also met with representatives of other state agencies. Those attending discussed proposals for implementation and enforcement of the rules after final adoption. Other meetings with people knowledgeable in special transportation matters have been held when requested or when the department has needed outside advice.

The department originally intended to publish a Notice of Intent to Adopt these rules during the late spring of 1988. However, Mn/DOT and the Regional Transit Board began receiving complaints about special transportation service drivers. The complaints involved allegations of sexual misconduct and other forms of abuse of minors and vulnerable adults. The department began a substantial redraft of the proposed rules to include more stringent requirements for drivers including checking their driving and criminal records. Additional committee meetings

were held in 1990 and 1991 to discuss these changes.

The legislature has also considered further amendments to laws relating to special transportation services. During the spring of 1991, the legislature adopted amendments to Minnesota Statutes, sections 171.01 and 171.02 and enacted section 171.323. The amendments require special transportation service drivers to have a commercial driver's license with a permit or endorsement before driving a special transportation service vehicle within the seven-county metropolitan area. Subdivision 2 of section 171.323 directs the commissioner of public safety to adopt rules governing the issuance of special transportation service vehicle permits and endorsements. Subdivision 3 provides that the commissioner of public safety must conduct a criminal records check of an applicant before issuing a permit or endorsement. Finally, subdivision 4 states that no endorsement may be issued to a driver that is not qualified to receive a school bus endorsement due to criminal history or to a driver that is not qualified under rules promulgated by the commissioner of transportation or if a driver has a criminal record of convictions relating to vulnerable adult abuse. These provisions took effect on August 1, 1991.

The department has revised its proposed rules to harmonize with the most recent legislative action. Since no substantive amendments to the proposed rules were considered by the department, other than those required by the recent legislation, it has held no additional meetings of the operating standards committee. However, Mn/DOT has discussed the endorsement requirement with representatives of the Department of Public Safety, Driver and Vehicle Services Division, and with several providers. Their comments were considered in revising the proposed rules.

Further revision of the proposed rules became necessary during September of 1991. On September 6, 1991, the United States Department of Transportation (USDOT) issued a final rule implementing the transportation provisions of the Americans with Disabilities Act (ADA). Code of Federal Regulations, title 49, Part 38 contains provisions setting minimum guidelines and requirements for accessibility standards for transportation vehicles. Special transportation service providers must comply with the ADA and rules adopted by the USDOT. The department's original draft contained requirements for vehicle lifts, platforms, ramps and door heights that varied from the new federal requirements. As discussed in the part-by-part analysis, those provisions have been redrafted to conform to the new federal requirements.

### **III. SMALL BUSINESS CONSIDERATIONS**

In proposing these amendments, the commissioner of transportation has considered the provisions of Minnesota Statutes, section 14.115, relating to the impact of the rules on small businesses. In doing so, the commissioner was also guided by the language of Minnesota Statutes, section 174.30, subdivision 2. Accordingly, the department sought to propose standards that are "reasonably necessary to protect the health and safety of individuals using [special transportation service]," while avoiding the "adoption of standards that unduly restrict

any public or private entity or person from providing special transportation service because of the administrative or other cost of compliance," Minnesota Statutes, section 174.30, subdivision 2.

The vast majority of special transportation providers are "small businesses" as defined in Minnesota Statutes, section 14.115, subdivision 1. The department, where feasible, has simplified or established less stringent compliance or reporting requirements. The proposed rules include provisions:

1. allowing use of the same application form for new and renewal applications, part 8840.5500;
2. allowing providers to remove a defective vehicle from service instead of repairing it, part 8840.5800, subpart 2;
3. permitting alternatives for proving that a driver does not have a medical condition that interferes with a driver's ability to drive safely, part 8840.5900, subpart 1;
4. permitting a limited review of a driver's criminal record under certain circumstances, part 8840.5900, subpart 3;
5. creating an exemption from first aid training requirements for persons having other evidence of comparable training, part 8840.5910;
6. permitting a smaller fire extinguisher than previously required, part 8840.5925, subpart 1;
7. allowing providers an alternate means of establishing compliance with vehicle performance standards, part 8840.5940, subpart 1; and
8. allowing an alternate means of record keeping for insurance claims, part 8840.6100, subpart 1, item F.

The proposed rules also establish less stringent schedules or deadlines for compliance. Included are provisions:

1. changing the inspection requirements for newly manufactured vehicles, part 8840.5400;
2. providing that some elements of the driver training program may be completed within 45 days after the driver begins providing service, part 8840.5910, subpart 2; and
3. allowing additional time for existing drivers to comply with the defensive driver training requirements, part 8840.5910, subpart 3.

Instead of adopting design or operational standards, the department has proposed the establishment of performance standards by adopting federal motor vehicle safety standard numbers 217 and 220 in part 8840.5940, pursuant to Minnesota Statutes, section 14.115, subdivision 2, paragraph (d).

The department considered small business exemptions but since most providers qualify as "small

businesses" under the statute, the department decided that exemptions would not be feasible in light of the requirements of Minnesota Statutes, section 174.30.

Most of the increased cost to providers under the proposed rules will occur due to new equipment and training requirements. The legislature specifically directed the commissioner to adopt standards for driver training and vehicle safety in Minnesota Statutes, section 174.30, subdivision 2.

Vehicle safety will be enhanced by the department's proposal that all vehicles be equipped with additional items: a CB radio (which is the least expensive two-way communication available), and a strap-cutter. These items are relatively inexpensive.

The proposed rules also contain requirements for some, but not all, vehicles. If a vehicle is equipped with a wheelchair lift, it also must have a front entrance door besides the lift door. The front passenger door on vans complies with this requirement. Vehicles designed to carry more than ten persons will be required to comply with federal motor vehicle safety standard 217 on bus window retention and release. Providers may choose whether to operate this type of equipment. For those that do, the safety of special transportation service passengers, in the department's opinion, outweighs the potential increased cost to providers. As a practical matter, most of the special transportation service vehicles of this type now in service already comply with these requirements.

Other equipment requirements for rollover protection and emergency exits apply only to equipment or vehicles put into service after January 1, 1993. Retrofitting of existing equipment is not required. This allows a provider to control its costs during a gradual phase-in of new and safer equipment.

Still other equipment requirements, including specifications for ramps, wheelchair lifts, wheelchair platforms and door height requirements, are mandated by new federal regulations. The department may not establish less stringent requirements.

The additional training proposed relates to instruction in equipment operation, defensive driver training and abuse prevention training. As will be described more fully in the part-by-part analysis, this training is being proposed in direct response to reports of driver misconduct.

The department has sought to allow for small business participation in every stage of the rulemaking process. A copy of the Notice of Solicitation of Outside Information and Opinions was sent to every current special transportation service provider known to the department and several "small business" providers were represented on the department's operating standards committee.

#### **IV. PART BY PART STATEMENT OF NEED AND REASONABLENESS.**

Part 8840.5100 **DEFINITIONS.**

Subpart 12. **Physical or mental impairment.** This subpart is amended to specify that only certain "nonacute" medical conditions constitute physical or mental impairment. In subpart 7, the term "handicapped" means "having a physical or mental impairment that limits one or more major life activities." The amendment is needed to clarify that special transportation services are designed for handicapped people having only nonacute medical conditions. People with acute medical conditions or those experiencing a medical crisis need ambulance service. The amendment is reasonable because it conforms to Minnesota Statutes, section 174.29 which states that special transportation service is designed "to serve individuals who are elderly, handicapped, or disabled and who are unable to use regular transportation but do not require ambulance service, as defined in section 144.801, subdivision 4." Ambulance services must be licensed by the Minnesota Department of Health under Minnesota Statutes, section 144.802.

Part 8840.5300 **SCOPE.**

Subpart 3. **Exemptions.** This subpart is amended to delete taxis from the list of vehicles exempt from the operating standards. The amendment is needed and reasonable because it is consistent with Minnesota Statutes, section 174.29, which specifically includes taxis as special transportation service vehicles. It is also consistent with action the legislature took in 1987 by deleting taxis from the list of exemptions in Minnesota Statutes, section 174.30, subdivision 1.

References throughout the proposed rules to "life support transportation" have been changed to "ambulance services." The change is needed because of a legislative change in the definitions set out in Minnesota Statutes, section 144.801.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Part 8840.5400 **COMPLIANCE.**

Subpart 1. **Certificate of compliance required.** This subpart states that no person may provide special transportation service without a current annual certificate of compliance issued by the commissioner. It is being amended in several ways.

The department originally proposed to adopt a rule stating that no vehicle could be used for service until it was inspected as required by part 8840.5700. The department has received many complaints from providers who must put new or substitute vehicles into service on short notice. These providers maintain that the state's inability to immediately inspect a vehicle on request hinders the provision of special transportation service. It usually takes one to two weeks for a Mn/DOT or Minnesota State Patrol employee to inspect a vehicle. This is particularly true when the vehicle is outside the metropolitan area. Because of these complaints, the department has reconsidered its position and proposes this amendment.

The amendment is needed to conform the proposed rules to Minnesota Statutes, section 299A.14. That section requires the state patrol to inspect a vehicle equipped with a wheelchair-securement device before it is used. Therefore, it is reasonable for the department to adopt the same requirement and to state that a certificate of compliance must be issued before the vehicle is used.

However, the commissioner, in proposing these rules, also must meet the mandate of Minnesota Statutes, section 174.30, subdivision 2, which requires the avoidance of the "adoption of standards that unduly restrict any public or private entity or person from providing special transportation service because of the administrative or other cost of compliance." Therefore, the amendment is needed to avoid placing undue or unnecessary restrictions on providers. If the vehicle is a newly manufactured vehicle not equipped with a wheelchair-securement device, the department proposes to give the provider 30 days from the day the vehicle is first used to have it inspected by Mn/DOT representatives. This provision is reasonable because newly manufactured vehicles are generally in excellent operating condition. They have not been used and have not been subjected to abuse. Since they are likely to be in safe operating condition it is reasonable to allow the provider to use a newly manufactured vehicle for several weeks before having it inspected.

If a provider obtains a used vehicle, it is necessary that it be inspected before it is used for special transportation service. A provider might not know if the previous owner properly maintained the vehicle. Improper maintenance could result in conditions likely to cause an accident or breakdown. Some used vehicles are sold with mechanical defects or other problems that need correcting. Therefore, when a provider first puts a used vehicle into service, it must be inspected by the State Patrol or the Department of Transportation. This is a reasonable measure designed to ensure the safety of the passengers.

Subpart 2. **Ambulance service license required.** This subpart has not been substantively amended. The amendments are technical and for clarification only.

#### Part 8840.5450 **RESTRICTIONS ON NAME AND DESCRIPTION OF SERVICE.**

This is a proposed new rule restricting words that may be used in the name or description of a special transportation service. It prohibits using the words "medical," "emergency," "life support," "ambulance," or any form of those words suggesting that the special transportation service provides medical assistance or treatment.

This part is needed because the department has received complaints from special transportation service passengers and others that some providers transport people who need ambulance service as described in Minnesota Statutes, section 144.802. Ambulance service is designed for ill or injured persons. These people might need medical treatment or transportation by someone who is trained to observe a passenger's condition and take steps to provide medical care if necessary. Special transportation service, on the other hand, while it may be provided to disabled, elderly



or frail individuals, is designed for people who have stable but chronic conditions who are not in need of medical observation or treatment while they are transported.

There is confusion among people who run nursing homes and clinics about which transportation service may be used in certain situations. They question, for example, which type of service should be used to transport a person to a clinic for a x-ray or a person receiving intravenous therapy. A passenger needing medical attention or observation might not receive proper care if transported by a special transportation service. There is also the possibility that one searching through a directory for an ambulance service might call a special transportation service provider by mistake. Upon discovering the error, a second call to an ambulance service would be necessary. This presents a serious problem to someone needing immediate ambulance service.

This part is a reasonable attempt to address this difficulty. It is reasonable to prohibit a provider from using a word or words in its name or description of service that might be misconstrued as suggesting it provides medical care or observation unless the provider has a license as an ambulance service issued by the Minnesota Department of Health as required by Minnesota Statutes, section 144.802.

#### Part 8840.5500 **CERTIFICATION.**

Subpart 1. **Forms.** This subpart is amended to provide that the same application form will be used for new and renewal applications. The amendment is needed to clarify that the same application form and information must be provided whether the application is for a new certificate or the renewal of an existing one. It is also needed to simplify reporting and record keeping requirements of providers. The amendment is reasonable because it is consistent with Minnesota Statutes, section 174.30, subdivision 4a, requiring the commissioner to evaluate a provider of special transportation service annually. The department must have the required information in applications for renewal so that it can decide if the characteristics of the service have changed. The amendment is also a reasonable measure to lessen the impact of the proposed rules on small businesses.

This subpart is also amended to change the address of the Office of Motor Carrier Safety and Compliance.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Required information.** This amendment requires that the application include the phone number of the person responsible for the provider's service. It is needed because the department might need to contact the provider if it has questions about the application or the provider's service. It is reasonable to encourage and expedite communication between the department and those it regulates.

This subpart is also amended to change the part number of the reference to safety equipment required. The amendment is needed because of substantive amendments to those parts of the rules.

Subpart 6. **Record.** Under the current rules, 8840.5800, subpart 3, the commissioner has the authority to suspend certificates of compliance. Amendments to that subpart are also being proposed. The amendment of this subpart is needed to require the recording of suspensions of certificates of compliance. Suspension of a certificate is a serious sanction. It is reasonable to require the commissioner to maintain a complete record on each certificate of compliance issued, including references to suspensions.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

#### Part 8840.5600 **RENEWAL.**

Subpart 2. **Written answer.** This amendment deletes the requirement that the commissioner grant or deny requests for renewal in writing before the expiration of the current certificate. The amendment is needed because the current requirement is not practical. Sometimes applicants do not submit applications for renewal in time for the commissioner to consider and act on them before the expiration date of the current certificate.

The department considered an amendment that would have required providers to submit requests for renewal a certain time before expiration of a certificate. Some providers raised objections to that procedure and the department withdrew the proposal. However, it is unreasonable to require the commissioner to make a written grant or denial in what might be a few hours. A reasonable alternative to the department's original proposal is to place the burden of timely filing on providers. The amendment allows providers to use their foresight and judgment in deciding when to submit requests for renewal. If the provider anticipates a problem in the renewal process, it can plan accordingly. Renewal problems are rare and, as a practical matter, the department processes most renewal applications quickly.

#### Part 8840.5650 **ANNUAL EVALUATION.**

Some form of provider evaluation has been carried out by the department for several years. In 1987 the legislature amended Minnesota Statutes, section 174.30, subdivision 4, to provide more specific requirements about how the commissioner was to conduct an inspection, the standards that were to be used, and the steps taken when a vehicle had a defect. The legislature also enacted subdivision 4a. That subdivision states:

The commissioner shall annually evaluate or provide for the evaluation of each provider of special transportation service regulated under this section and certify that the provider is in compliance with the standards under this section.

Subdivision 4, paragraph (c) also requires the commissioner to provide procedures for determining and requiring compliance.

The adoption of this part is needed to give notice to providers of what will be included in the annual evaluation that now must be conducted by the commissioner. It specifies that the evaluation will include an audit of the provider's records, an inspection of vehicles, and a determination that the commissioner of public safety inspected the wheelchair-securement device.

Since the commissioner must certify compliance based on the annual evaluation, the commissioner must conduct a review of several facets of a provider's business. Record keeping requirements are set out in part 8840.6100. Providers must keep records of a driver's qualifications and training. Reviewing those records enables the commissioner to decide if the provider is using or employing drivers that meet the standards prescribed by the rules. Providers also must keep vehicle maintenance and inspection records. An inspection of the vehicle and its records shows if it is safe and in compliance. Once the Commissioner of Public Safety has inspected and certified a provider's wheelchair-securement devices, the provider must keep evidence of compliance. By examining a provider's vehicles and these records, the department can evaluate the provider's compliance with the various requirements regarding driver qualifications, training, proper equipment and vehicle maintenance. This part sets forth reasonable inspection standards for determining whether a provider has complied with the rules and it is consistent with Minnesota Statutes, section 174.30, subdivision 4.

#### Part 8840.5700 **INSPECTION.**

Subpart 1. **Commissioner shall inspect.** A substantial amendment to this rule is needed to comply with the special transportation legislation passed by the legislature in the spring of 1987. The legislature amended Minnesota Statutes, section 174.30, subdivision 4, paragraph (a). It requires the commissioner to conduct several different kinds of inspections. First, the commissioner must inspect all vehicles at least annually. Second, the commissioner must conduct reinspections when necessary to verify that providers have corrected vehicle defects and violations. Third, the commissioner may also conduct unannounced inspections of vehicles. Finally, the commissioner must provide for quarterly unannounced inspections of at least five percent of the certified special transportation service vehicles.

This rule restates the requirements of Minnesota Statutes, section 174.30, subdivision 4, paragraph (a). It also provides reasonable procedures for inspections by stating that the commissioner shall examine the vehicle inspection, repair and maintenance records at least annually. To advise the provider of the results of the inspection, the inspection must be documented. A written record must be made of the items and equipment checked, the results of the inspection, and repairs or corrections that are necessary to bring the vehicle into compliance. A copy of the record must be given to the provider.

The rule also requires a provider to remove a vehicle from service if it is likely to cause an

accident or break down. This requirement is derived from Minnesota Statutes, section 174.30, subdivision 4, paragraph (b). It is necessary to specify the criteria inspectors use in making the determination of when a vehicle is likely to cause an accident or breakdown. This ensures uniformity and impartiality in the inspection process and provides notice to providers of violations leading to out-of-service orders.

In the spring of 1991, the legislature adopted the North American Uniform Driver, Vehicle, and Hazardous Materials Out-Of-Service Criteria by amending Minnesota Statutes, section 221.031. This is the criteria now used by the Federal Highway Administration, Mn/DOT and the Minnesota State Patrol in making out-of-service determinations in truck and bus cases. Under the vehicle out-of-service criteria, a vehicle must be placed out-of-service when its mechanical condition is determined to be so imminently hazardous that it is likely to break down or cause an accident or be likely to contribute to loss of control of the vehicle by the driver. The criteria are specific about the operating conditions of the major mechanical components of a vehicle. Definite standards are provided for inspections and out-of-service orders. The department has decided to adopt the part of the criteria applying to vehicles as the standard for making out-of-service determinations for special transportation service vehicles.

Application of these criteria to vehicles used for transporting the elderly or disabled is reasonable. The interest in protecting special transportation passengers is the same as protecting those who ride passenger or school buses. A copy of the current out-of-service criteria may be obtained from the Commercial Vehicle Safety Alliance, 1620 Eye Street, N.W., Suite 1000, Washington, D.C. 20006. A current copy will also be available for inspection at the Office of Motor Carrier Safety and Compliance, 151 Livestock Exchange Building, 100 Stockyard Road, South St. Paul, MN 55075 and at the State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155.

**Subpart 2. Complaint record.** This amendment is needed to clarify that complaints about vehicles must be documented by the commissioner. The commissioner must maintain records of complaints and inspection results. It is also needed to specify that an inspection include the provider's vehicles or records. Finally, it requires a statement of the corrective action the provider must take. The amendment is reasonable because it is consistent with the requirements of Minnesota Statutes, section 174.30, subdivision 4, paragraph (c). That paragraph provides that the commissioner must establish procedures for inspecting vehicles and for determining and requiring compliance with the rules. It is reasonable to inspect both the vehicle and records in response to a complaint. It is also reasonable to document violations found. This gives a provider notice of necessary corrective action and allows the commissioner to monitor compliance. The record also would reveal repeated violations, if they occur.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 4. Items examined.** This amendment is needed to correspond to the requirement of Minnesota Statutes, section 174.30, subdivision 4, that the commissioner conduct annual

inspections. The remaining amendments simply include the new part numbers governing construction and maintenance of vehicles. The restriction that the commissioner could inspect a vehicle only when a complaint had been made has been removed as inconsistent with current statutes. The amendment is reasonable because it is consistent with the statutory requirement of annual inspections and reinspections when necessary to verify the correction of deficiencies.

#### Part 8840.5800 ENFORCEMENT.

Subpart 1. **Notice.** This amendment is needed to clarify that there are two categories of violations. Some violations are likely to cause an accident or breakdown and some are not. When a provider has violated a rule but the violation is not likely to cause an accident or breakdown, the provider must be given a 15 day notice to correct the violation. The provision for a 30 day notice has been deleted. Passengers have complained that providers continue to use defective vehicles for an unreasonable amount of time. Fifteen days is a reasonable period to allow for the repair or correction of somewhat minor defects. In addition, the shorter period is consistent with the provisions of Minnesota Rules, part 8850.8350, subpart 4, which applies to trucks and buses.

This amendment is also needed to comply with Minnesota Statutes, section 174.30, subdivision 4, paragraph (b), directing the commissioner to immediately take a vehicle likely to cause an accident or breakdown out of service. The provider must comply with an out-of-service order and must correct the defect before returning the vehicle to service. The Federal Motor Carrier Safety Regulations, adopted by the State of Minnesota, provide that a motor carrier may not use a similarly defective vehicle until it has corrected a defect. This amendment establishes the same standard for providers of special transportation services. It would be unreasonable to have a less stringent standard for a service that transports elderly and handicapped passengers than the standard provided for trucks transporting freight. It would be equally unreasonable to allow a vehicle to continue operating when its mechanical condition is so imminently hazardous that it is likely to break down or cause an accident.

This amendment is also needed to emphasize further the distinction between special transportation service and ambulance service and to make provisions for addressing violations of pertinent statutes and rules. It was stated in a prior section of the Statement of Need and Reasonableness that ambulance service is transportation for people who are ill, injured or in need of medical observation. That transportation may be provided only by companies licensed by the Minnesota Department of Health. Special transportation service is provided to persons who have chronic conditions preventing them from using regular means of transportation. Special transportation service is not intended for the transportation of people who have medical conditions requiring medical observation or treatment during transportation. Special transportation drivers and attendants are not required to receive the training required of ambulance drivers and attendants. The vehicles do not carry medical equipment and do not have red lights and sirens for use during emergencies, as do ambulances.

Some special transportation service providers have been observed providing ambulance services or transportation bordering on it. Because the Department of Health and not the Department of Transportation has statutory authority to seek criminal misdemeanor enforcement of the ambulance service statutes, it is difficult for Mn/DOT to address those violations. The department's only immediate recourse is to order a stop to the violation. The department may also take action to suspend or revoke the certificate of compliance of a special transportation service provider.

This amendment requires the department, if it observes a special transportation provider providing ambulance service, to notify the Commissioner of Health and the Commissioner of Human Services. Notice to the Commissioner of Health is reasonable. It is the Department of Health that has authority to prosecute violations of the ambulance service statutes. Notice to the Commissioner of Human Services is also reasonable. It is the Department of Human Services that provides funds to medical assistance recipients receiving both special transportation service and ambulance service. If payments are being made to a provider who is operating without a license, action may be taken against that provider by the Commissioner of Human Services. Giving notice to the appropriate regulatory authority enables that agency to investigate the violation and take corrective action.

Finally, an amendment of this subpart is needed to address the problem of unqualified drivers. These rules establish training requirements and standards drivers must meet before they are allowed to provide special transportation service. The current rules establish minimal qualifications for drivers. The department is proposing that these standards be made more stringent for reasons described later in the part-by-part analysis. Minnesota Statutes, section 174.30, subdivision 2, requires the commissioner to adopt standards for "qualifications of drivers and attendants, including driver training requirements that must be met before a driver provides special transportation." Implied in the mandate to adopt standards is the power to enforce them, once adopted.

Parts 8840.5900 and 8840.5910 give a provider fixed and identifiable standards with which to judge the qualifications of a driver it proposes to use or employ. In addition, a provider must keep records showing that its drivers meet those standards, part 8840.6100. It is necessary to make sure that unqualified drivers do not operate special transportation service vehicles. Placing the initial and continuing responsibility on a provider to ensure that its personnel meet the standards while it is using or employing them is a reasonable approach to achieving and ensuring compliance. The department does not certify or license drivers. A provider is in the best position to evaluate the qualifications of its drivers and attendants and to make sure they meet the standards. When an unqualified driver or attendant is discovered, it is necessary to remove them from service. Still, the primary responsibility for making sure that drivers or attendants are qualified before they are returned to service remains on the provider as long as written evidence of compliance is submitted to the commissioner. If, in the view of the commissioner, the evidence submitted does not adequately reflect compliance, the department can investigate further, discuss the matter with the provider and take other enforcement action under subpart

3 of this part, when warranted.

**Subpart 2. Violation determination.** This rule has been amended to allow the commissioner, after 15 days, to conduct an inspection to see if a violation was corrected. The amendment is needed to remain consistent with the requirements of subpart 1. The rule is also amended to allow the provider to notify the commissioner that the vehicle has been removed from service instead of being repaired. It is reasonable to allow a provider to use its own judgment concerning the repair or replacement of a vehicle. Sometimes the provider would prefer obtaining a new vehicle instead of correcting a defect. This amendment allows the provider flexibility in making those decisions and establishes a less stringent requirement than the current rule.

**Subpart 3. Suspension.** An amendment of this subpart is needed to specify the conditions under which a certificate of compliance will be suspended by the commissioner. The current rule is vague and does not provide adequate notice to providers of violations that may result in the suspension of their certificate.

The proposed rule gives four circumstances under which the commissioner is required to suspend a certificate. The first involves the failure to correct a vehicle defect. This is needed because it is consistent with Minnesota Statutes, section 174.30, subdivision 4, paragraphs (b) and (c), which require the commissioner to provide procedures for requiring compliance with the rules. Defects found in a vehicle must be corrected to make it safe; even those that are somewhat minor in nature. A provider has two options: either the vehicle must be repaired or it may be voluntarily removed from service. A failure to do either creates an unnecessary risk for special transportation service passengers. Suspension of a provider's certificate is a reasonable means of obtaining compliance with the rules when a provider has not voluntarily corrected a defect after notification from the commissioner. The same holds true for all violations of parts 8840.5100 through 8840.6300.

The second circumstance that will result in suspension of a provider's certificate is a failure to obey an out-of-service order. The legislature was specific when it determined that a vehicle should be removed from service if it is in a condition that is likely to cause an accident or breakdown, Minnesota Statutes, section 174.30, subdivision 4, paragraph (b). The "North American Uniform Vehicle Out-Of-Service Criteria" lists out-of-service defects in great detail. The likelihood of an accident or breakdown presents a risk of serious harm for any passenger, especially those who are elderly or disabled. Suspension of a certificate of compliance is a reasonable means of requiring compliance and deterring further violation of the rules.

Likewise, suspension is reasonable if a provider ignores a directive to stop using an unqualified driver. An unqualified driver would not have received the minimum training required or he would have a driving or criminal record that does not meet the standards prescribed in the proposed rules. The need for and reasonableness of the driver qualification standards is set out in other sections of the part-by-part analysis. A driver who does not meet those standards may

pose a serious risk to the health and safety of special transportation service passengers. It is reasonable to enforce the rules through use of this sanction.

Finally, amendment of this subpart is needed to conform it to part 8840.5700, subpart 5, of the current rules which states that failure to permit an inspection is grounds for immediate suspension.

Subpart 3a. **Revocation.** This subpart is needed to specify the two circumstances that will result in the revocation of a certificate of compliance by the commissioner. First, there must be a sanction for a provider that provides special transportation service after its certificate of compliance has been suspended. Revocation is a necessary sanction and is a reasonable measure designed to protect the health and safety of individuals using special transportation service. Removing a provider from the system is both necessary and reasonable when it has repeatedly shown a disregard for the law and rules governing operating standards for special transportation services.

Second, this subpart incorporates a legislatively mandated sanction for those who provide ambulance service without a license. Revocation for this violation is reasonable because it is consistent with Minnesota Statutes, section 174.315, that makes revocation of the provider's certificate of compliance mandatory.

Once a permit has been revoked, a provider may not reapply for 180 days. Revocation would have little usefulness as a sanction if a provider could reapply for a certificate immediately. On the other hand, it would be unreasonable to forever bar a revoked provider from providing special transportation service. The determination of how long a provider should be removed from the system after revocation is one that is difficult to make. The department considered several alternatives ranging from 30 days to one year and came to the conclusion that 180 days is a reasonable period. It provides a sufficient deterrent and offers a provider a reasonable time to reassess its operations and arrange to achieve and maintain compliance.

#### Part 8840.5900 **DRIVER QUALIFICATIONS.**

Subpart 1. **Standards.** There are two amendments to item B of subpart 1. Both amendments relate to alternatives to the physician's statement that a driver does not have a current medical condition that interferes with the driver's ability to drive safely. Both are proposed to establish less stringent compliance and reporting requirements for small business providers and are needed to "reduce the cost of compliance" without jeopardizing the health and safety of special transportation service passengers.

The first amendment allows a driver to get a statement from a certified nurse practitioner. This amendment is reasonable because nurse practitioners have a Bachelor of Science nursing degree from a four-year nursing program. They also earn certification beyond that normally received by a registered nurse. They have additional training, have taken additional examinations and



have been certified as qualified to, among other things, conduct physical examinations. It is reasonable to allow a qualified professional, other than a physician, to state whether a driver has a medical condition that impairs the ability to drive. Nurse practitioners are now eligible to submit claims for health insurance reimbursement for this service in Minnesota. There is no reason to restrict them from providing this service to special transportation service drivers.

The second amendment of this item allows drivers two additional means of showing they do not have a medical condition that might interfere with their ability to drive safely. The amendment is reasonable because many special transportation service providers have drivers who are qualified under Minnesota Statutes, Chapter 171, to drive school buses or who are qualified under Minnesota Statutes, Chapter 221, to drive charter carrier vehicles. The amendment allows these drivers to submit a valid school bus endorsement or a current United States Department of Transportation (USDOT) health card to the commissioner as evidence that the driver does not have a current medical condition that might interfere with the driver's ability to drive safely. A driver who has a school bus endorsement or a USDOT health card has been through a physical examination more rigorous than required by these rules. Therefore, there is no reason for requiring an additional medical statement to drive a special transportation service vehicle.

The department is proposing to amend item D and add item E to this subpart to provide additional protection to special transportation passengers. The amendment of item D, subitem (1), is needed to conform the rules to the recent legislative amendments to Minnesota Statutes, sections 171.01 and 171.02 and the enactment of Minnesota Statutes, section 171.323. Those amendments and the new statute provide that a special transportation service driver must have a commercial driver's license with a special transportation service vehicle permit or endorsement issued by the Commissioner of Public Safety if the driver will be providing special transportation service within the seven-county metropolitan area. It is reasonable to include these requirements in the proposed rules. This amendment provides notice of the new requirements to all who seek to become special transportation service drivers without reference to other sources.

Item D, subitem (3), currently requires a driver to have a driving record clear of revocations, suspensions and cancellations for the past three years except suspensions that result from unpaid parking tickets. This rule has, in the past, been too stringently enforced against drivers. Therefore, the amendment is needed to make the standards more specific and to address those particular kinds of driving violations that show the person is not presently qualified to drive a special transportation service vehicle. The proposed amendment would prohibit a person from driving if, during the past three years, the driver has had his license canceled or revoked or suspended under Minnesota Statutes, sections 171.14, 171.17 and 171.18, clauses (2) through (5), (7) or (11).

It is reasonable to prohibit someone from driving a special transportation service vehicle if the driver's license has been suspended, canceled or revoked. Cancellation of a driver's license occurs when it is discovered that the person was not entitled to receive it under the law. A

person who wrongfully obtains a license, whether through providing inaccurate information, deceit or fraud, has shown a disregard for the licensing laws of the State of Minnesota.

Revocation of a driver's license occurs when a driver has been convicted of specific serious offenses related to the operation of a motor vehicle. Offenses listed in the statute include vehicular manslaughter, using a motor vehicle in the commission of a felony and three violations within 12 months for which the person could have been incarcerated. Conviction of the offenses listed in the proposed rule is evidence of extreme carelessness or recklessness in operating a motor vehicle.

Not all suspensions of a driver's license would result in barring a driver from providing special transportation service for three years. The proposed rule specifies that a driver will be deemed unqualified for three years for suspensions resulting from a showing that the driver: (1) has been convicted of a traffic violation that caused an accident resulting in a fatality, personal injury or serious property damage, (2) is a habitually reckless or negligent driver, (3) is a habitual violator of traffic laws, (4) has been found in a judicial proceeding as incompetent to drive a motor vehicle, (5) has committed an offense in another state that is grounds for suspension in Minnesota, or (6) has failed to report a medical condition that would have resulted in cancellation of driving privileges had the medical condition been reported.

Two other temporarily disqualifying offenses are listed in item D, subitem (3), of this subpart. Minnesota law requires drivers of motor vehicles and motorcycles to have insurance coverage on the vehicle they own or operate. A person who fails to have insurance on his vehicle has not accepted the responsibility that accompanies a grant of driving privileges. Failure to obtain insurance coverage also shows a lack of concern for the welfare and property of others.

Likewise, a person who drives a motor vehicle without a valid license in force has not shown the ability or will to comply with the most basic of licensing requirements. This is true despite the type of vehicle driven. In addition, during the past legislative session, it was determined that special transportation service drivers in the seven-county metropolitan area must have a commercial driver's license. This is the most recent expression of legislative intent on driver qualifications for providers of special transportation service. This provision is needed to give effect to the legislature's decision to restrict service within the metropolitan area to those who have a commercial driver's license and to bar temporarily those who fail to get the proper license and endorsement.

Each of these provisions would only prevent a person from driving if there had been convictions within the last three years sufficient to require the suspension, revocation or cancellation of a driver's license. Such recent and serious violations suggest that the person does not have a proper concern for the safety of others and for compliance with motor vehicle laws. The protection offered to passengers of special transportation services depends upon adherence to licensing, traffic and regulatory requirements. Temporarily barring someone from providing special transportation service is a reasonable protective measure when a driver shows a disregard

for basic licensing requirements, traffic regulations and criminal laws relating to the operation of motor vehicles. The commissioner has been directed to adopt standards that are reasonably necessary to protect the health and safety of individuals using special transportation service. Barring a driver for three years is a reasonable means of safeguarding passengers from careless or unqualified drivers.

The department proposes to limit the disqualification to three years. It is reasonable to permit a driver to "requalify" by demonstrating his or her willingness and ability to obey traffic laws. A driver that has operated a motor vehicle for three consecutive years without a suspension, cancellation or revocation of driving privileges should be deemed to meet the minimum standards required for providing special transportation service. An employer's standards might be more demanding. The department believes it is necessary and reasonable to ensure that they are not less stringent than those proposed in item D, subitem (3).

The addition of item D, subitem (4), is needed to provide a three-year disqualification for those drivers convicted of operating a vehicle under the influence of alcohol or a controlled substance. Driving under the influence shows an extreme carelessness and indifference to the public in general and passengers in particular. It is common knowledge that educational and enforcement efforts have been increased substantially throughout the United States to reduce the problems associated with drinking and driving. The department believes it is reasonable to exclude or remove drivers with these convictions from the special transportation system temporarily. This provision provides protection to special transportation passengers while allowing for the rehabilitation of convicted drivers.

Item E is being added to include additional violations of state criminal statutes that make a driver ineligible, for 15 years, to provide special transportation service. The item is needed to protect the health and safety of special transportation service passengers. The specific statutes listed involve conduct that is reasonably related to the care and protection of those passengers including murder, manslaughter, criminal vehicular homicide, aiding suicide, assault, mistreatment of persons, robbery, kidnapping, false imprisonment, abduction, various sexual crimes involving minors, other criminal sexual conduct, incest, malicious punishment or endangerment of a child, burglary (when a person is threatened or assaulted), obscenity involving minors and felony drug crimes.

During the past four years, several incidents of alleged sexual and other abuse have been reported. Special transportation passengers are often physically or mentally incapable of defending themselves. They are extremely vulnerable to physical attack, intimidation and other forms of abuse. In addition, they are often incapable of or unwilling to report incidents of abuse to providers and the proper authorities. The department believes it is necessary to devise a method of screening out those drivers who present an unreasonable risk of abuse. The addition of item E is needed to provide a screening method and to give adequate notice to providers and drivers of offenses that are grounds for disqualification.

Since the population to be protected by the proposed rules consists largely of minors and vulnerable adults and since they are not as capable of self preservation as others, it is necessary and reasonable to disqualify drivers whose past conduct has harmed, or threatened harm to, other people. Most of the listed offenses involve the inappropriate use of force against another person. Some involve uninvited sexual contact or obscenity involving children. Felony drug crimes are also listed. Other drug crimes were considered as disqualify offenses but the department concluded that the proposed rule, as drafted, provides adequate protection to special transportation service passengers while avoiding the problem of "over-inclusiveness."

The department maintains that it is not required to present specific facts to demonstrate that each offense is needed and reasonable to disqualify a driver, In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Licensing Background Studies, Minnesota Rules, Parts 9543.3000 to 9543.3090: OAH Docket No. 5-1800-4923-1, Report of Administrative Law Judge Howard L. Kaibel, Jr., December 6, 1990, pages 27-29.

The department also considered adding certain public misconduct crimes to the list of disqualify offenses. These include:

- (1) Minnesota Statutes, section 609.66 (Dangerous weapons);
- (2) Minnesota Statutes, section 609.713 (Terroristic threats);
- (3) Minnesota Statutes, section 609.746 (Interference with privacy);
- (4) Minnesota Statutes, section 609.79 (Obscene or harassing phone calls); and
- (5) Minnesota Statutes, section 609.795 (Letter, telegram or package; opening; harassment).

These offenses involve a lack of sensitivity to the emotional impact of one person's actions on another. However, due to the nature of these crimes the facts leading to conviction might or might not involve conduct that presents a threat to special transportation service passengers. These offenses are not, therefore, automatically deemed to be crimes against persons or reasonably related to the provision of special transportation services. Providers should use caution when using or employing a driver that has been convicted of one of these offenses. The facts underlying the conviction should be explored to determine whether an unreasonable risk to passengers is posed. It is reasonable expect providers to use sound judgment in employment decisions where grounds for disqualification are not clearly established.

Other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Provider responsibility.** This subpart is new. It is needed to provide additional protection to special transportation passengers by requiring a background check of a driver's criminal and driving record. The commissioner has been directed to provide rules for reviewing driver qualifications, Minnesota Statutes, section 174.30, subdivision 4, paragraph (c). Subpart 2 is being proposed to meet this statutory mandate.

Background checks are intended to protect people who receive services through regulated programs. They help to identify individuals whose past actions suggest they are not qualified for certain positions. Background checks are not new. They have been required under other Minnesota statutes. For example, an investigation into the criminal history of certain workers in human services programs has been mandated by Minnesota Statutes, section 245A.04. The procedure has also been adopted in other Minnesota Rules. The criminal background of an applicant for a school bus endorsement on a driver's license must be checked under Minnesota Rules, part 7414.0400.

In the spring of 1991, the legislature adopted Minnesota Statutes, section 171.323 relating to some special transportation service drivers. As stated earlier, that section requires the driver of a special transportation service vehicle to obtain a special transportation service vehicle endorsement on his or her driver's license before driving a special transportation service vehicle within the seven-county metropolitan area. In addition, subdivision 3 directs the Commissioner of Public Safety to conduct a criminal records check of an applicant before issuing or renewing a special transportation service vehicle endorsement. Subdivision 4 provides that an endorsement not be issued to a person (1) who is disqualified to receive a school bus endorsement due to criminal history, (2) who is disqualified under rules promulgated by the Commissioner of Transportation under section 174.30, or (3) who has a criminal record of convictions relating to vulnerable adult abuse. Item E is needed to establish the commissioner's standards for disqualifying drivers based on criminal history.

This subpart is needed to require an initial review for non-metropolitan area drivers and to require an annual review of the criminal background of all drivers to determine that drivers continue to meet the standards. Although the Commissioner of Public Safety will conduct a criminal records check before issuing a permit or endorsement, the endorsement, once issued, is valid for four years. No endorsement is required for drivers providing special transportation service outside the metropolitan area. The department has concluded that complete reliance on the background check required by Minnesota Statutes, section 171.323, would not be prudent for two reasons: first, that section does not require an initial background check of all drivers; second, it is unreasonable to allow four years to elapse between criminal background checks.

The department considered several approaches to conducting driver background checks prior to the 1990-1991 legislative session. Some providers advocated leaving the rule in its present form. However, since the legislature mandated amendments to these rules in 1987, there have been several reported incidents of driver abuse of special transportation passengers. Leaving the rule in its present form would not provide the protection reasonably necessary for the health and safety of special transportation service passengers. On the other hand, some advocated adopting a procedure requiring the commissioner to certify drivers. After consideration, the department concluded that it would need additional statutory authority and resources to conduct exhaustive background checks of each applicant driver. The department's mandate is to adopt standards on the qualifications of drivers and attendants. The department concluded that it is not authorized to investigate and certify them. Finally, some providers advocated an exemption

from this requirement for volunteer drivers. The department concluded that it would be unreasonable to exempt drivers solely because of their employment status. The fact that one volunteers to provide special transportation service does not alter the risk of abuse to persons receiving the service. Furthermore, the legislature did not choose to create this exemption when it adopted Minnesota Statutes, section 171.323.

The Department of Human Services has recently adopted rules requiring criminal background studies of certain employees of providers licensed under Minnesota Statutes, chapter 245A. Those rules are found at Minnesota Rules, parts 9543.3000 to 9543.3090. The Department of Human Services was urged to consider exceptions to the provisions of its proposed rules for volunteers. Administrative Law Judge Howard L. Kaibel, Jr. was assigned to preside over the hearing on those rules. His report (see, In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Licensing Background Studies, Minnesota Rules, Parts 9543.3000 to 9543.3090: OAH Docket No. 5-1800-4923-1, Report of Administrative Law Judge Howard L. Kaibel, Jr., December 6, 1990) addresses two claims for exemption for volunteers. One claim for exemption applied to members of the clergy. The second applied to volunteers who provide services for a minimal amount of time. In considering these claims, Judge Kaibel stated, in part:

The Department did not accept the second exemption on the ground that the time spent volunteering does not alter the risk of abuse to persons receiving services. Both of these grounds are valid reasons for not altering the proposed rule. More important, however, the Department cannot create exemptions to the background study requirement and remain consistent with Chapter 245A. Additional exemptions must be created by the Legislature, not the Department. Declining to exempt certain volunteers in certain occupations from the background study requirements is not a defect in the proposed rules. (page 18)

Under Minnesota Statutes, section 174.30, subdivision 2, the commissioner is directed to adopt standards relating to "qualifications for drivers." The department believes this should be construed to mean all drivers of regulated special transportation service. Exemptions from the provisions of Minnesota Statutes, sections 171.323 and 174.30 must be created by the legislature.

The proposed rule is compatible with the recent amendments to Minnesota Statutes, sections 171.01, 171.02 and 171.323. A provider is required to determine that a driver has a proper license and permit or endorsement before hiring or using that driver. However, the proposed rule goes beyond those requirements by stating that a provider must conduct an initial review of the driving and criminal record of non-metropolitan area drivers and an annual review of the records of a driver with a special transportation service vehicle endorsement or permit. A provider must request a review of the driving record from the Department of Public Safety, Driver and Vehicle Services Division, to determine if the driver meets the standards of part 8840.5900, item D. The review may be conducted over the telephone at no cost. If the

provider wants a written printout, it may be obtained for \$4.00. The review also must include the conviction records of the Bureau of Criminal Apprehension (BCA). To complete this part of the review, a provider will have to get a waiver from the driver whose records are to be checked. Waiver forms are available from the BCA or a provider may develop and use its own forms. The review costs \$8.00 and takes one to two working days to do. Since the form can state that the background check should be limited to the specific offenses listed in the proposed rule, it is relatively nonintrusive.

Although it is foreseeable that some drivers may refuse to allow a background check, the department believes the driver's right to privacy is outweighed by the need to protect the health and safety of special transportation service passengers. On rare occasions, a driver with a clear criminal record may decide, for personal reasons, not to permit the background check. That driver, though qualified, would be precluded from operating a special transportation service vehicle. However, the department believes it is reasonable to assume that most drivers with clear criminal records will voluntarily authorize the background check if the reasons for conducting the check are carefully and accurately explained by the provider.

The department has decided not to require a provider to check criminal records other than those maintained by the BCA. The Commissioner of Public Safety is required by section 171.323 to check records from other states for drivers residing in Minnesota less than five years who apply for a special transportation service vehicle endorsement. These records are readily available to law enforcement personnel but not to others. Placing this requirement on providers would greatly complicate the hiring process, increase administrative costs to providers and delay the use or hiring of otherwise qualified drivers. Providers have other means, such as checking employment references, for assessing the qualifications of a prospective driver before employment. It is reasonable to leave the ultimate decision on employment to the provider. Since it is in the provider's best interests to avoid using or hiring drivers that pose a threat to its passengers, the department believes that providers will resolve questions concerning a driver's qualifications in favor of passenger safety.

Finally, this subpart states that if a provider becomes aware of a driver's conviction of disqualifying offenses or if a driver's special transportation service vehicle endorsement or permit is withdrawn by the Commissioner of Public Safety, the provider must stop using or employing the driver immediately and a report must be made to the commissioner. The department believes this language is needed since it would be unreasonable to allow a convicted (and disqualified) driver to continue operating a special transportation service vehicle until an annual review of the records is conducted.

**Subpart 3. Limited criminal record review.** This is a new subpart. It is needed to create a limited exception to the criminal record review required under subpart 2. The exception applies only to those persons that have undergone a recent criminal background check under rules adopted by the Department of Human Services (DHS). Some special transportation service drivers might work in programs subject to licensure under Minnesota Statutes, chapter 245A and

have had a recent criminal background check by the Commissioner of Human Services under the DHS rules. The list of disqualifying offenses in subpart 1, item E is very similar to that found in Minnesota Rules, part 9543.3070 and, therefore, criminal background checks conducted under either set of rules would be similar in scope. However, the department deems violations of Minnesota Statutes, section 609.498, tampering with a witness, and section 609.582, subdivision 1, burglary in the first degree, as reasonably related to the provision of special transportation service. These offenses are not listed in part 9543.3070. On the other hand, the DHS rules list some offenses that are not found in subpart 1, item E.

The department believes it is unnecessary and unreasonable to require a driver to undergo a complete criminal background check under both sets of rules. If a driver has successfully completed a criminal background check under the DHS rules, a provider must only check the driver's criminal record for convictions of criminal statutes not listed in the DHS rules. This is a reasonable accommodation to special transportation service providers and drivers that does not threaten the health or safety of special transportation service passengers.

The department considered a complete exemption for those drivers whose criminal records had already been checked under the DHS rules. However, because there are discrepancies in the two sets of rules, this would establish different standards for criminal background checks. The department concluded this would be legally unacceptable.

The department also considered deleting offenses not found in the DHS rules from subpart 1, item E, to conform both sets of rules. This would be unwise and may place some special transportation service passengers at risk. Tampering with a witness is a serious offense. It is pointed out later in the part-by-part analysis that the policy of the State of Minnesota is to require reporting of suspected abuse or neglect of minors and vulnerable adults. The department is extremely interested in protecting special transportation service passengers and minimizing incidents of abuse. It is reasonable to disqualify a driver who has, in the past, been convicted of attempting to prevent or persuade someone from testifying or providing information to law enforcement authorities.

Burglary in the first degree involves unlawfully entering a building when another person is present, when possessing a dangerous weapon, or assaulting a person in a building after unlawful entry. This offense, like others listed, involves the inappropriate use of force by one person against another. Special transportation service drivers often pick-up and drop-off passengers at their homes. This places people who are already deemed vulnerable in an even more vulnerable position. It is reasonable to give special transportation service passengers the assurance that their driver is not a convicted burglar.

Subpart 4. **Complaint records.** This subpart is also new. It is being added to require providers to keep records of allegations of misconduct against drivers and to investigate them. This rule simply reflects the current practice followed by most special transportation providers. Allegations of misconduct are easily made. Many are without merit. Documenting and



resolving complaints protects both special transportation service passengers and drivers. In cases where misconduct is substantiated, a provider may take disciplinary or corrective action. If the misconduct consists of actions that constitute a violation of the criminal statutes listed in subpart 1, item E, the provider could refer the case to the proper authorities for further investigation and prosecution. On the other hand, if the misconduct cannot be substantiated, the driver's file should show the matter was resolved in favor of the driver. This would protect the driver's reputation and employment record. In cases that cannot be completely resolved either way, at least the provider would be put on notice of a potential problem and could monitor the driver's activities more closely.

The department believes the addition of this subpart is needed because it is leaving the responsibility for hiring and terminating drivers with the provider. The department does not have the resources to investigate complaints against drivers. Nevertheless, it is prudent to require a provider to investigate and document them. This will enable the department to review a provider's records to ensure that complaints are being investigated and resolved and that unqualified drivers are removed from service. Proper resolution of these matters is in the best interests of the provider, its drivers and its passengers. The department believes this subpart is a reasonable means of making sure complaints are resolved.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

#### Part 8840.5910 **DRIVER AND ATTENDANT TRAINING REQUIREMENTS.**

Subpart 1. **Training required before driving.** This subpart is needed to specify the nature and extent of training a driver or attendant must receive before providing special transportation services. Drivers and attendants must complete instruction in the operation of a radio, the vehicle ramp, the wheelchair lift and wheelchair-securement devices. In addition, they must receive preliminary passenger assistance training, instruction in emergency procedures, instruction in abuse reporting procedures and instruction in conducting the daily vehicle inspection.

The legislature held hearings in the spring of 1987 regarding amendments to the special transportation service law. It heard testimony from passengers and passenger advocates. They maintained that drivers were not adequately trained to deal with the various disabilities of special transportation passengers. Among other things, they stated that accidents had been caused because drivers did not secure wheelchairs properly. In 1978 there was an accident in which an improperly secured passenger lost a leg because of the alleged negligence of the driver. In another case, it was alleged that a driver did not maintain a proper lookout and had run over a passenger who was attempting to cross the street after leaving the vehicle. Other allegations were made about the carelessness of the drivers in handling and helping passengers as they entered and exited the vehicle.

Because of the hearings, the legislature amended Minnesota Statutes, section 174.30, subdivision 2, paragraph (a). It states that the standards the commissioner was required to adopt must include " . . .driver training requirements that must be met before a driver provides special transportation."

The department held meetings with special transportation providers and representatives of passenger groups. There has been significant controversy over the amount of training drivers should receive before providing transportation. Special transportation service providers maintain that training drivers is expensive and time consuming. Often drivers quit shortly after providers hire them. The providers assert that extensive advance training is a waste of money when the driver doesn't stay on the job.

Representatives of elderly and disabled passengers believe the welfare and safety of passengers is put at risk by the current rule allowing a 45-day training period. It is their position that many passengers have chronic conditions limiting their mobility and ability to communicate with drivers. Therefore, they maintain, drivers must receive training in recognizing and dealing with various disabilities passengers might have.

After many meetings between the department, providers and passenger representatives, a compromise was reached. It is represented by this proposed rule.

First, preliminary passenger assistance training is necessary before drivers and attendants provide services. The rule on passenger assistance training has been substantially rewritten. The requirements have been divided into two parts: training required before driving and training that must be completed within 45 days after beginning to provide special transportation service. The provisions of this subpart are needed to specify that a driver or attendant receive some informal preliminary passenger assistance training covering the topics in part 8840.5910, subpart 5, items E through I before providing services. The training must include discussion, demonstration and practice by students. Topics include methods of handling, folding and unfolding wheelchairs, transfer of wheelchair passengers, proper handling of the vehicle in light of mobility limitations of passengers, placement and proper use of assistive devices and various aspects of ambulatory passenger assistance. Because many passengers are disabled and use wheelchairs or assistive devices (e.g., walkers, canes, crutches or braces) a driver or attendant must know how to handle them without injuring passengers or damaging equipment. In addition, the driver must know how much assistance to provide to a passenger depending on the degree of disability. Many people are unfamiliar with techniques in helping elderly or disabled people and with the devices they use. The training may be conducted by providers at little or no cost. The department estimates that this training will take about two or three hours to complete. This requirement is a reasonable means of addressing the concerns of special transportation service passengers without requiring a provider to offer complete training before driving.

Second, it is necessary that drivers and attendants learn to operate certain equipment required on special transportation service vehicles before providing services. They must know how to

use the radio. This requirement is needed because a driver or attendant might face a situation requiring contact with a dispatcher or others when they begin providing special transportation services. Emergency assistance, made available by two-way or CB radio, is essential to protect the health and safety of special transportation service passengers. The training may be conducted by providers and would take about one-half hour to complete. This is a reasonable means of ensuring responsive emergency assistance when required without significantly increasing the cost of compliance to providers.

Third, it is necessary that drivers and attendants be instructed in emergency procedures. Besides knowing how to use the radio, drivers and attendants must know who to contact and what to do until assistance arrives. Radio training would provide little benefit without emergency procedure instruction. In cases of accidents or medical emergencies, saving seconds is often crucial to saving lives. It is necessary for providers to train their employees to follow a clearly defined procedure for handling emergencies before providing services. It is estimated that this training would take about one half hour to complete. This requirement is reasonable because it promotes passenger protection without unduly burdening providers.

Fourth, drivers must know how to operate a vehicle ramp, wheelchair lift and securement devices before providing service. This requirement is needed because improper operation of a ramp or lift can result in serious injury to wheelchair passengers. Failure to secure a wheelchair properly could result in the serious personal injury or fatality of a passenger if the vehicle is involved in an accident. Drivers and attendants should be thoroughly familiar with this equipment and its operation before they provide services to wheelchair passengers. This training could be conducted by providers. It is estimated that it would take about one to two hours to complete. This provision is a reasonable driver training requirement that can be fulfilled without placing an unreasonable burden on providers. A lesser requirement would place some special transportation service passengers at unreasonable risk.

Fifth, it is necessary that the driver and attendant know how to conduct the required daily vehicle inspection. Before driving a special transportation service vehicle, it is essential that the driver satisfy himself that the vehicle is in safe operating condition. The inspection includes items described in part 8840.5950, subpart 1. The requirement is similar to inspections presently required of truck and bus drivers under Minnesota Rules, part 8850.9000. The training could be conducted by providers in about one-half hour. Requiring that a driver be trained in how to conduct this inspection is a reasonable measure designed to protect the safety of passengers.

Subpart 2. **Additional training required.** This subpart is needed to specify the additional training required of drivers and attendants. It may be given after they have gained some experience in providing services. This approach is reasonable because it allows the provider and employees to decide if they want to continue the employment relationship before additional training. However, it still requires that drivers and attendants complete training shortly after they begin providing services.

This subpart requires four hours of first aid training. The current rule provides that drivers must receive specific elements of first aid training and this amendment does not change the requirements. However, the amendment creates an exception for those who have completed first aid or emergency care training if they have a basic or advanced American Red Cross First Aid certificate or an emergency care provider certificate issued to persons qualified to provide ambulance service. The amendment is needed to establish less stringent compliance and reporting requirements for people who have already received training that is comparable or more extensive than required under the current rules. Requiring them to repeat the training would be unreasonable if they can provide evidence of having completed a more advanced course. First aid training is provided by an instructor in a course certified by the department at an estimated cost of \$20 per student.

This subpart also requires four hours of classroom instruction in defensive driving. This provision is needed because drivers of special transportation service vehicles must be especially sensitive to disabilities of passengers that make them susceptible to injury in the event of sudden maneuvers, stops or accidents. It is a reasonable requirement necessary to protect the health and safety of special transportation service passengers. The training teaches alertness, how to avoid dangerous situations, and how to drive sensitively and safely. This requirement can be met by taking classes provided throughout the state by the Minnesota Safety Council, the Minnesota State Patrol or other organizations. The cost is approximately \$25.

This subpart also requires that drivers receive passenger assistance training. This training is intended to be formal and must cover topics already addressed in the preliminary training in greater detail. The current rules contain these basic requirements. However, subparts 5 and 6 are needed to give specificity and detail not provided by the current rules. Special transportation service passengers have repeatedly stressed the need for training focused on limitations to their mobility and communications abilities. Passenger assistance training may be obtained from an instructor in a course certified by the department at an approximate cost of \$35 per student. It may be completed in eight hours. This is a reasonable means of ensuring that drivers will be responsive to the needs of their passengers without an undue increase in the cost of compliance to providers.

Finally, this subpart states that drivers and attendants must receive instruction in requirements and procedures regarding sexual and vulnerable adult abuse and maltreatment of minors. This training is needed because drivers and attendants are placed in the position of caring for passengers who are minors or vulnerable adults. They must be sensitive to abuse issues and must know what to do if they gain information of possible abuse or neglect. They should be aware of legal responsibilities as well as practical matters in reporting these incidents. The requirement is reasonable because adequate and timely reporting of abuse is necessary to deter incidents of abuse or neglect. It also aids in the prompt investigation of reports and encourages the provision of protective and counseling services when appropriate. Abuse training may be conducted by providers or agencies under contract. The cost will vary depending on the instructor. It can be completed in four hours. The department is aware that abuse training may

be more difficult to arrange in rural areas of the state. Prosecutors, social service agencies, private attorneys and law enforcement officials should be sources of information on this subject.

Mankato Technical College announced in the September/October edition of In Transit, a newsletter of Minnesota public transit providers, that it was offering classes designed to meet Mn/DOT's proposed training requirements covering passenger assistance, vulnerable adults, emergency care and defensive driving. All four classes are available at a cost of \$75. The vulnerable adult training is offered separately for \$20 per student. Information may be obtained from Mankato Technical College Specialized Service Training, at 1-800-722-9359 or (507) 625-3441, extensions 276 or 262. The department anticipates that technical colleges and other organizations will similarly offer abuse-prevention training after adoption of the proposed rules.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 3. Training required for certain drivers after effective date of amendments.** This subpart is needed to provide a grace period for existing drivers who have not received defensive driver training during the two years preceding the effective date of the amendments to the rules. Rather than 45 days, they will have 120 days to complete the training. This subpart is a reasonable accommodation to drivers and providers. It allows the provider additional flexibility in planning for the training of existing drivers but it does not exempt drivers from essential training requirements. It merely allows them additional time to comply.

**Subpart 4. First aid training.** The amendment of this subpart is needed to remove a compliance date from the current rules and to clarify that drivers must receive instruction only in the preliminary treatment of shock. It does not require that drivers receive instruction in the treatment of sudden serious illnesses but only in recognizing them and how and when to call for medical assistance. These amendments are reasonable because drivers are not expected to know the entire range of treatment for shock or sudden illnesses. They are not trained in the practice of medicine. However, preliminary treatment of shock and early recognition of illness is imperative in minimizing the effects of the illness. It is reasonable to require drivers to know what to do until professional medical help arrives.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 5. Passenger assistance training.** The amendment of this subpart is needed to remove a compliance date from the current rules and to specify the requirements for passenger assistance training. It is necessary for drivers and attendants to know about the disabling conditions and limitations of the passengers. The only entirely new requirement for passenger assistance training is that the course contain a discussion of the effect of mobility impairments, medication, and past experiences on passengers. This requirement is needed because of testimony presented at the legislative hearings. Many passengers think that drivers are not sensitive to the limitations

of disabled passengers. They believe they have been treated unprofessionally at times. It is reasonable to require instruction in these matters so that passengers are not hurried or forced beyond their abilities.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 6. Ambulatory passenger assistance training.** This amendment is needed to remove a compliance date from the current rules and to substitute the new item numbers that specify what training must be received by a driver and attendant who transport elderly and physically handicapped passengers who are ambulatory. The amendment of this subpart is reasonable because it makes the subpart consistent with other provisions of the proposed rules.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 7. Fire extinguisher training.** This subpart continues the current requirement that providers instruct drivers and attendants in the use of the fire extinguisher. However, the amendment is needed to include a new requirement. The provider must record when and where the instruction was given in the driver's or attendant's file. The amendment is reasonable because it imposes a minimal record keeping requirement on the provider while enabling the department to make sure the instruction was given.

This subpart is also amended by removing the provision that allowed drivers and attendants to complete training within 90 days after beginning to provide service. The amendment is needed and reasonable because it is consistent with Minnesota Statutes, section 174.30, subdivision 2, paragraph (a) and with other provisions of the proposed rules that require some training before a driver is allowed to operate a special transportation service vehicle.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 8. Abuse-prevention training.** This subpart is needed because of the department's concern about the protection of minors and vulnerable adults that use special transportation services. There have been several reports of alleged sexual misconduct and abuse of vulnerable adults. Accusations have been made against special transportation drivers.

The proposed rules deal with the problem in two ways. First, the driver qualifications provisions have been substantially rewritten. This should ensure that providers do not hire or use drivers who have a demonstrated propensity toward sexual abuse, maltreatment of minors or abuse of vulnerable adults. Second, this subpart has been included requiring that drivers and attendants be instructed in the laws relating to sexual abuse and misconduct, the protection of vulnerable adults and maltreatment of minors. The subpart also requires training in legal

reporting requirements and appropriate responses to victims.

This subpart is needed because instruction in criminal laws and applicable penalties will deter illegal conduct. Some drivers might not be aware of these laws. Others might not realize the nature or the extent of prohibited conduct. They also might not realize how severe the sanctions for illegal sexual conduct are. The required instruction will sensitize drivers and attendants to these issues. It also will help them to spot and prevent incidents of misconduct that might occur on special transportation service vehicles between others.

Knowledge of reporting requirements also might act as a deterrent. In addition, it will help to promote the objectives of the vulnerable adult law. Minnesota Statutes, section 626.557, declares:

. . . it is the policy of this state to require the reporting of suspected abuse or neglect of vulnerable adults, to provide for the voluntary reporting of abuse or neglect of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

Many special transportation passengers come within the "vulnerable adult" definition found in Minnesota Statutes, section 626.557, subdivision 2, paragraph (b), subparagraph (4). A vulnerable adult is one who "is unable or unlikely to report abuse or neglect without assistance because of impairment or mental or physical function or emotional status." Drivers and attendants might receive knowledge of incidents of abuse or neglect. It is reasonable to require instruction in issues involving the protection of vulnerable adults, including voluntary reporting of suspected abuse or neglect.

**Subpart 9. Refresher course.** The current rule requires drivers and attendants to complete a refresher first aid course every three years. The amendment of this subpart is needed to add two new requirements. First, drivers and attendants must complete a refresher course in passenger assistance training every three years. The amendment is needed because skills and knowledge deteriorate over time. The refresher course is a means of reminding drivers and attendants of important points they must remember when transporting elderly and handicapped passengers. It also allows them to be informed of developments in medical knowledge or techniques for helping disabled passengers. Finally, it gives instructors an opportunity to watch them at work and correct bad habits that might have developed since their last training course.

Second, the amendment requires abuse-prevention training every three years. It is necessary to provide further protection for special transportation passengers. Statutes and administrative rules change over time. The amendment is reasonable because it provides a means for continuing education in legal developments, both in the criminal law and in legal reporting requirements. The refresher course also will enhance the deterrent effect on drivers and attendants and help them to maintain sensitivity to these issues.

The amendments to this subpart are requirements reasonably related to protecting the health and safety of special transportation service passengers.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

#### Part 8840.5925 **VEHICLE EQUIPMENT.**

This part has been extensively reorganized for clarity and to be more specific about the kind of equipment the vehicle must carry.

**Subpart 1. Safety equipment.** This subpart lists the safety equipment that a vehicle must carry. The requirement in the current rule that a vehicle must carry a dry chemical fire extinguisher remains. However, the amendment is needed to establish less stringent compliance requirements for small business providers by allowing a smaller extinguisher than previously required. The approximate cost of the smaller extinguisher is \$20. This is about \$5 less than the 5A:B:C fire extinguisher. This amendment is reasonable because it conforms to Code of Federal Regulations, Title 49, section 393.95. This is the federal regulation for fire extinguishers in trucks and buses. This section has been adopted by the State of Minnesota in Minnesota Rules, part 8850.8200.

Amendment of this subpart is also needed to allow passenger automobiles to carry a fire extinguisher in the trunk if a notice is placed on the dashboard of the vehicle. This amendment is reasonable because passenger automobiles do not have a convenient place to fasten a fire extinguisher bracket. The required notice will ensure that the fire extinguisher will be easy to find in an emergency. The fire extinguisher must be secured in a bracket in vans.

This subpart continues the current requirement that the vehicle must carry a first aid kit. The amendment is needed to delete the requirement that it be stored in a location visible to the driver. This is reasonable because there is a limit to the number of things that can be stored in a location visible to the driver. The driver will be trained in first aid and will be familiar with the location of the first aid kit.

This subpart is also amended to delete the requirement that a vehicle carry a spare tire and a jack unless the vehicle is radio equipped. This is reasonable because special transportation service vehicles are usually so large that it is not feasible to change a tire on the road whether radio equipped or not. It would usually be necessary to remove the passengers from the vehicle. This is not advisable. It is more prudent to call for a substitute vehicle and board the passengers when it arrives. Then the provider may decide whether to change the tire on the road or have the vehicle towed.

This subpart also contains a new requirement that a vehicle have a working radio capable of two-way communication. It specifically states that a CB radio is acceptable. This requirement is



needed because a driver may have to call for emergency assistance. Emergency assistance, made available by radio, is essential to protect the health and safety of special transportation passengers. This requirement is reasonable because a CB radio is the least expensive two-way communication available. One may be obtained for \$40 to \$50. Many special transportation service vehicles now carry CB radios so that a driver can send for help in an emergency. Several services assisted by the St. Paul Red Cross are equipped with CB radios obtained specifically for use in emergency situations.

This subpart also includes an amendment of the child restraint requirement. The amendment is needed to delete the application of the rule to children who weigh less than forty pounds. Instead, a child restraint system must be available when a vehicle, other than a taxi, is used to transport children under the age of 4. This amendment is needed and reasonable since it conforms to Minnesota Statutes, section 169.685, subdivision 5, paragraph (a).

This subpart retains the requirement that a vehicle carry an ice scraper and blanket. However, this subpart has been amended to exempt taxis from carrying a blanket. The amendment is needed because taxi operators believe theft of these items would occur frequently. It is reasonable to exempt taxis from a requirement that would not guarantee the availability of the items without continual replacement.

Finally, this subpart adds a new requirement that a vehicle equipped with a wheelchair securement device carry a strap-cutter. Passengers and passenger advocates had differing opinions on this requirement. A strap-cutter would allow a driver or attendant to cut securement straps quickly to speed the evacuation process in case of fire. Those that opposed this requirement feared that some providers would simply include a large knife or other weapon among the items in the vehicle. All agreed that any type of weapon in a special transportation service vehicle would be dangerous. The proposed rule requires a strap-cutter but specifies that it must not have an exposed sharp edge and cannot be of the type that could be used as a weapon. Devices that fit this requirement are available on the market for about \$10. Additional information about devices of this type may be obtained from Tie Tech, Inc., Post Office Box 5226, Lynnwood, WA 98046-5226. The addition of this requirement is needed to help ensure that passengers could be removed quickly from a vehicle if a fire were to occur. It could make the difference between saving or losing lives. Although this provision increases the cost of compliance to providers, the department believes the requirement is reasonably necessary for the health and safety of passengers and that it will not restrict a provider from providing special transportation service.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 2. Seats.** Amendment of this subpart is needed to exempt Type 1 school buses from the seat belt requirement. This is reasonable because it conforms to the current school bus requirements. Type 1 school buses have additional interior padding to protect students. They

are not required by federal or state law to be fitted with passenger seat belts.

Subpart 3. **Ramps.** Amendment of this subpart is needed to conform the proposed rules to federal regulations adopted under the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. 1201 et seq. The United States Department of Transportation published its final rule implementing the transportation provisions of the ADA on September 6, 1991. See, Federal Register, volume 56, number 173, pages 45584 through 45778. Part 38 contains specifications for transportation vehicles acquired by public or private entities, including requirements for vehicle lifts, platforms, ramps, securement devices and door height. Mn/DOT originally proposed to adopt rules covering these items but has withdrawn its proposed language in favor of conforming the state and federal requirements. The amendment is reasonable because special transportation service providers are already required to comply with the ADA regulations. The proposed rule simply incorporates the existing federal requirements.

Subpart 4. **Wheelchair lifts.** The amendment of this subpart is also needed and reasonable to conform the proposed rules to current federal regulations governing equipment used by special transportation service providers.

Subpart 5. **Securement devices.** The amendment of this subpart is needed to clarify that wheelchair-securement devices must comply with the rules of the Minnesota Department of Public Safety. The amendment is reasonable because it is consistent with Minnesota Statutes, section 174.30 and sections 299A.11 through 299A.18.

The department considered incorporating the provisions of Code of Federal Regulations, title 49, section 38.23, paragraph (d), relating to securement devices, by reference. However, the Commissioner of Public Safety, in addition to conforming Minnesota Rules, parts 7450.0100 to 7450.0900 to the new federal requirements, might choose to adopt additional standards. It is reasonable to simply incorporate the standards adopted by the Commissioner of Public Safety to make sure the proposed rules remain consistent with other state and federal regulations.

#### Part 8840.5940 **VEHICLE CONSTRUCTION STANDARDS.**

Subpart 1. **Rollover protection.** This subpart requires that a special transportation service vehicle obtained and first used by a provider after January 1, 1993 meet the federal rollover protection standard for buses. The federal standard provides that the roof and structural members supporting the roof must meet certain crush resistance requirements. This subpart is needed because the roof and side walls of a vehicle not meeting the standard could collapse in a rollover accident. This can cause serious direct injury to passengers. Furthermore, many special transportation service vehicles have "raised roofs." This is a common modification to a van that allows extended headroom for passengers. However, some are simply unreinforced fiberglass caps that can become immediately detached from the vehicle in a collision or rollover. They also can reduce the vehicle's structural integrity. If it is in an accident, it may be partially crushed. Rollover accidents of vehicles with unreinforced raised roofs can allow passengers to

be easily ejected, causing serious or fatal injuries. Finally, besides causing direct injury to passengers, a collapsed roof often results in door jamming. This significantly hinders rescue efforts.

There is currently no federal rollover standard for vans or minivans. Vans have been used to transport passengers for a relatively short time. The federal standard adopted in this subpart is the rollover requirement for school buses. Extension of this standard to special transportation service vehicles is reasonable to protect passengers in accidents. However, to avoid unduly burdening providers, this requirement applies only to vehicles that are obtained by a provider after January 1, 1993. The requirement will not apply to vehicles now owned and used by a provider. Though many special transportation service vehicles have been modified to meet this standard, it would be unreasonable to dictate the immediate retrofitting of other vehicles. This is consistent with Minnesota Statutes, section 174.30, subdivision 2, which requires the commissioner to "avoid adoption of standards that unduly restrict any public or private entity or person from providing special transportation service because of the administrative or other cost of compliance." After the implementation date, it will be necessary for a provider who acquires a standard van to spend about \$2,000 to add a raised roof with adequate rollover protection to the vehicle. This is an estimated average cost. The cost of compliance may vary depending on the type of vehicle, the materials used and the labor charged.

This subpart also requires certification that a vehicle meets the federal rollover standard. It states that the certification must be on a form prescribed by the commissioner and specifies the information it must contain. This is needed and reasonable because it is consistent with Minnesota Statutes, section 174.30, subdivisions 2 and 4, paragraph (c). These subdivisions require the commissioner to adopt standards for the safety of vehicles and to provide procedures for determining compliance. Requiring a certificate does not place an excessive burden on providers. The necessary information is readily available from those who manufacture or reconstruct vehicles. An alternative means of determining compliance is also acceptable. A provider need only submit other documentation verifying that the vehicle meets the standard. These requirements establish a reasonable means of determining compliance with the rules.

**Subpart 2. Emergency exits.** This subpart requires that a vehicle have a front entrance door besides the wheelchair lift door. The subpart is needed to provide an additional means of escape or rescue for the driver and passengers. Most special transportation service vehicles already comply with this requirement. However, it is necessary and reasonable to include the requirement for the protection of the health and safety of passengers.

This subpart is also needed to specify that a vehicle designed to carry more than ten people must comply with federal motor vehicle safety standard 217 on bus window retention and release. The federal standard sets requirements for the retention of windows, other than windshields, in buses. It also establishes operating forces, opening dimensions and markings for push-out bus windows and other emergency exits. Code of Federal Regulations, title 49, section 571.3, defines "bus" as "a motor vehicle with motive power, except a trailer, designed for carrying

more than 10 persons." Specific adoption of this standard by reference is a necessary and reasonable means of reducing the likelihood of passengers being thrown from the vehicle. It also ensures passengers of a means of easy escape and rescue.

This subpart also includes similar provisions for vehicles designed to carry fewer than ten people. This provision is needed to provide passengers in smaller vehicles with an easy means of escape or rescue. It extends the same type of protection given by federal motor vehicle safety standard 217 to passengers in smaller vehicles. It is a reasonable safety requirement that a vehicle have some emergency exit. This is especially true of special transportation service vehicles. Special transportation service passengers are considerably less mobile than passengers using other means of transportation. It is important to have a way to remove passengers safely other than through the vehicle doors. However, to avoid unduly burdening providers, this requirement applies only to vehicles obtained by a provider after January 1, 1993. The requirement will not apply to vehicles now owned and used by a provider. This is consistent with Minnesota Statutes, section 174.30, subdivision 2, which requires the commissioner to "avoid adoption of standards that unduly restrict any public or private entity or person from providing special transportation service because of the administrative or other cost of compliance."

This subpart also requires the marking of exits on the interior and exterior of vehicles except for passenger cars, taxis or station wagons. It is necessary to help passengers and rescue workers find emergency exits after accidents. It is vital that passengers escape or be removed quickly and safely. The requirement is a reasonable protective measure and the cost of adding additional required markings will be negligible.

Subpart 3. **Holes.** This subpart is needed to prohibit holes that might admit exhaust gases. This is a reasonable safety requirement designed to prevent the intrusion of carbon monoxide into the passenger compartment. Special transportation passengers might have respiratory problems. It is particularly important that they are not exposed to exhaust gases from the vehicle.

Subpart 4. **Doors and windows.** This subpart requires that doors and windows open and close as intended by the manufacturer. This subpart is needed because the department has received complaints from some passengers that doors and windows do not open or close as intended. They claim that vehicles are drafty and passengers are not adequately protected from the cold. It is reasonable to require that windows operate as originally intended.

Subpart 5. **Door height.** This subpart is needed and reasonable in that it is consistent with federal regulations adopted under the Americans with Disabilities Act.

#### Part 8840.5950 STANDARDS FOR OPERATION OF VEHICLES.

Subpart 1. **Operation.** Item C of this subpart is amended to transfer the burden of maintaining

safety inspection records from the driver to the provider. It also requires that a provider conduct and document tests of emergency doors and windows. This amendment is needed and reasonable in that it conforms the provisions of this subpart to Minnesota Statutes, section 174.30, subdivision 2a, paragraph (b). That paragraph specifically requires providers to maintain these records.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 2. Smoking.** The only substantive amendment to this subpart is needed to clarify that taxis, no longer exempted from the rules, must comply only when transporting special transportation service passengers. It is reasonable to prohibit smoking in taxis when they are transporting special transportation service passengers. Many of them have respiratory problems that could be complicated or aggravated by tobacco smoke. The prohibition is limited however. It would be unreasonable to extend it to taxis when they are not being used to provide special transportation service.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 3. Seat belts.** This amendment is needed to place an affirmative duty on drivers to determine that passengers are properly seated and secured before pulling away from a stop. This is a requirement that is reasonably necessary for the protection of passengers. A general instruction to use seat belts is not adequate. Some special transportation passengers might be physically or mentally impaired to the extent that they are unable to comply with a driver's instruction. Either the driver or an attendant should determine that seat belts are properly in place. Studies have shown the importance of using seat belts. Properly secured passengers are far less likely to suffer injury or death in accidents.

This subpart has also been amended to conform to legislatively created exemptions from the requirements of the laws relating to seat belts and passenger restraint systems for children. It is necessary and reasonable to conform this subpart to exemptions found in Minnesota Statutes, section 169.685, subdivision 6, paragraph (5) and Minnesota Statutes, section 169.686, subdivision 2, paragraph (3). These pertain to passengers having a medical statement or certificate stating that the person should be exempt from the seat belt or restraint requirements for medical reasons.

**Subpart 4. Emergency stopping.** The only amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 5. Emergency policy.** This subpart is new. It is needed to add the requirement that a provider to develop a written policy for drivers and attendants to use in accidents or emergencies. Emergency situations are inherently stressful. Despite training, a written policy

would be useful to drivers and attendants. They are the ones who must make rational and informed decisions under adverse circumstances. Reminders of crucial aspects of passenger care, radio contact and reporting assist the driver and attendant in protecting passengers from further harm or injury. The subpart is a reasonable measure to protect the health and safety of special transportation passengers.

#### Part 8840.5975 **STANDARDS FOR MAINTENANCE.**

Subpart 1. **Maintenance.** The only amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Wheelchair lifts.** The inclusion of this subpart is needed to require that wheelchair lifts be properly maintained according to the manufacturer's instructions. Serious accident or injury could result from a lift that is in disrepair. It is reasonable to require that providers follow the manufacturer's instructions since the manufacturer is responsible for lift design and operation.

#### Part 8840.6000 **INSURANCE.**

Subpart 1. **Minimum coverage.** The substantive amendment to this subpart is needed and reasonable in that it incorporates the current standard for minimum insurance coverage required by Minnesota Statutes, chapter 65B.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Certificate of insurance.** The amendment of this subpart is needed to change the address of the Office of Motor Carrier Safety and Compliance. The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

#### Part 8840.6100 **RECORDS.**

Subpart 1. **Information required.** This amendment is added to expand a provider's record keeping requirements. It requires a provider to maintain a separate file on a driver instead of a simple application form. Besides the requirements of the present rule, the file must reflect compliance with several new provisions of the proposed rules.

First, the amendment to item A, subitem (2), is needed to harmonize the rule with recent changes to Minnesota Statutes, sections 171.01, 171.02 and 171.323. Those sections require that a driver have a special transportation service vehicle endorsement or permit and a commercial driver's license when providing special transportation service in the seven-county metropolitan area. This amendment is reasonable in that it simply requires that evidence of the proper license and endorsement be included in the driver's file.

Second, the amendment to item A, subitem (4), is needed to harmonize with proposed provisions relating to an annual review of the driving record of one who operates a special transportation service vehicle. Both the driving and criminal record of a driver must be reviewed. This requirement allows the commissioner to determine if a driver meets the standards of part 8840.5900, subpart 1, item D, subitem (3).

Third, the amendment is needed to change the part number specifying first aid training due to changes in the substantive provisions of the proposed rules and to give a provider the option of including a certificate of completion of other acceptable first aid courses. This amendment reflects the substantive amendment to the proposed rules allowing successful completion of other courses instead of the training required by part 8840.5910.

Fourth, the part number specifying training in the techniques of transporting and assisting elderly and handicapped passengers has been amended to reflect the appropriate provisions of the rules as proposed.

Fifth, the addition of item A, subitems (8), (9) and (10) is needed to require a provider to keep a record of the date the driver received the training required before driving a special transportation service vehicle, the date the driver received required additional training and the date the driver completed a refresher course.

Sixth, the addition of item A, subitem (11) is needed because of the proposed new provisions relating to driver qualifications. The department is substantially amending the rules to require a more detailed background check of a driver's driving and criminal record before allowing drivers to operate a special transportation service vehicle. The responsibility for conducting the check remains with the provider. However, it is reasonable for the department to be interested in making certain that the appropriate check of driving and criminal records was conducted. This provision allows the commissioner to determine compliance with the rules. It is necessary to make certain that drivers having previous convictions for the crimes specified in part 8840.5900, subpart 1, item E, do not become or remain drivers of special transportation service vehicles. It is further necessary to ensure that providers comply with the background check provision.

The amendments to item A of this subpart are needed and reasonable because they are consistent with Minnesota Statutes, section 174.30, subdivision 4, paragraph (c). That paragraph requires the commissioner to provide procedures in the rules for determining compliance and reviewing driver qualifications.

The amendment to item B is needed to reflect the substantive change allowing an alternative means of evidence that a driver does not have a current medical condition that interferes with the driver's ability to drive safely.

The amendment to item C is needed to clarify that a provider must maintain a separate file on

an attendant instead of a simple application form. The information required under the current rule is not contained on an application form. This amendment is reasonable because it conforms to current practice and does not impose an additional burden on providers. The item has been further amended to correctly reference other parts of these rules.

The amendment to item F is needed to specify a less stringent and alternative means of record keeping regarding insurance claims. It is reasonable because it establishes less stringent record keeping requirements for small business providers and reduces duplicate recording of insurance matters without impairing the commissioner's ability to determine compliance with the rules.

The amendments to items G and H are needed and reasonable because they are consistent with the requirements of Minnesota Statutes, section 174.30, subdivision 2a, paragraph (b). That paragraph specifically requires providers to maintain the records listed in those items.

The amendment to item I is needed because of the proposed requirement relating to rollover protection. The department is proposing that vehicles obtained and first used after January 1, 1993, comply with federal motor vehicle safety standard number 220. This standard is one that is necessary to ensure the safety of vehicles. The requirement in item I allows the commissioner to determine compliance with the safety standard.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Documents required in vehicle.** This subpart is amended to clarify which insurance documents must be kept in a special transportation service vehicle. This amendment is needed and reasonable because it conforms the provisions of this subpart to Minnesota Statutes, section 169.791.

#### Part 8840.6200 **CERTIFICATION OF TRAINING COURSES.**

Subpart 1. **Commissioner approval.** The amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 2. **Application form.** The amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 3. **Minimum standards.** The amendment of this subpart is needed and reasonable because it conforms the provisions of this subpart to other substantive amendments of the proposed rules. Those amendments specify that driver training must include not only instruction but also demonstration, discussion and practical application when possible.

Subpart 4. **Instructors.** This amendment is needed to specify that passenger assistance instructors must not only understand the various disabilities special transportation passengers



might have, but also the special care required in transporting these people. Passenger assistance training was added because passengers stated that drivers were not sensitive to their limitations. Therefore, it is reasonable to require that instructors be sensitive to special transportation passenger's needs and limitations.

The other amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 5. **Written answer.** The amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

Subpart 6. **Notice to commissioner.** This subpart has been added to place the burden of giving notice of training courses on instructors. Notice to the commissioner is necessary for three reasons. First, it allows the commissioner to keep records of the frequency and location of training sessions. The department wants to ensure that adequate training is readily available to drivers and attendants. Second, the commissioner should have this information available to providers and others who ask about the time and location of training. Third, the commissioner must have sufficient advance notice to enable a department representative to audit a course as provided in part 8840.6250. This subpart is reasonable because it places a minimal burden on instructors while allowing the commissioner to determine and require compliance with the driver qualifications provisions of the proposed rules.

#### Part 8840.6250 **AUDIT OF COURSES.**

This part has been included as a necessary means of determining and requiring compliance with driver qualifications, including driver training requirements. Minnesota Statutes, section 174.30, subdivision 2, requires the commissioner to adopt standards for qualifications of drivers and attendants. Subdivision 4, paragraph (c) of that section, states that the commissioner must provide procedures in the rules for determining and requiring compliance and for reviewing driver qualifications.

Other parts of these rules establish standards for driver qualifications and training. Inspecting course materials, observing classroom instruction and reviewing instructor qualifications will allow the commissioner to determine compliance with parts 8840.5910 and 8840.6200. Interviewing students will allow the commissioner to assess whether the training is adequate and effective. Student comprehension is crucial in the learning process. The goal of the required training is to impart knowledge and skill to drivers and attendants. This part establishes a reasonable method for determining whether the goal is being met.

#### Part 8840.6300 **VARIANCE.**

Subpart 1. **Elements.** The amendments to this subpart are technical or clarifying in nature or are needed to correct errors of form or grammar.

**Subpart 1a. Consultation with council on disability.** The addition of this subpart is needed to conform these rules to Minnesota Statutes, section 174.30, subdivision 2. That subdivision provides, in part, that the "commissioner shall consult with the state council on disability before making a decision on a variance from the standards." The legislature included this provision to ensure that potential special transportation service passenger interests will be heard before the commissioner grants a variance. This subdivision establishes a reasonable method for consultation. It makes the information submitted to the commissioner for consideration equally available to the council. The only exception is information the commissioner might have that is protected under the Minnesota Government Data Practices Act. The council has 23 days to review and discuss the information. The current rules require the commissioner to act on the application within 30 days. If the commissioner is to have adequate time to consider the council's recommendation, it must be submitted at least seven days before the 30 day period expires. This allows the council and the commissioner a reasonable time to deliberate on the issues presented by the application.

**Subpart 2. Written answer in 30 days.** This amendment is needed to promote ongoing consultation with the council. The council is necessarily interested in applications on which it has made a recommendation. This is particularly so when an application is denied, with the concurrence of the council, and the applicant requests a contested case hearing. The council or interested persons should know of the denial and request for hearing to decide if they will participate further. This amendment is reasonable because it is consistent with Minnesota Statutes, section 174.30, subdivision 2 and it provides a basis for public involvement in variance requests.

**Subpart 3. Revocation of variance.** This amendment is necessary as a further means of providing information to the council. The granting of a variance might mean a significant departure from certain provisions of the rules. The revocation of a variance calls for immediate compliance with the rules in all respects. Special transportation service passengers and other interested people should know when complete compliance is required. This is a reasonable means of keeping the council informed and preventing a provider from continuing to operate as if the variance were still effective.

#### **IV. REPEALER**

**Part 8840.5200 AUTHORITY.** This part is repealed as unnecessary. Authority for adoption of these rules is found in Minnesota Statutes, section 174.30, subdivision 2.

**Part 8840.5700 INSPECTION.**

**Subpart 3. On-site inspection.** This subpart is repealed because it is inconsistent with Minnesota Statutes, section 174.30, subdivision 4. That subdivision requires the commissioner to provide for the unannounced quarterly inspection of at least five per cent of the vehicles

operated by certified providers.

Under the current rule, the commissioner had the duty to inspect vehicles only upon receipt of a complaint. Arrangements for conducting the inspection could be made with the provider before the inspection date. Now, however, the commissioner must conduct "unannounced" inspections. It is possible that some, but not all, will take place at the provider's office or garage.

The repeal of this subpart is reasonable because it gives the commissioner and department personnel some flexibility in carrying out their expanded inspection duties. In addition, it also allows providers to arrange for inspections at a time and place convenient to both the department and the provider.

## V. WITNESSES AND SUMMARY OF TESTIMONY

**A. Expert witnesses.** The department does not intend to use expert witnesses to provide evidence establishing the need for and reasonableness of the proposed rules. The department may, if necessary to adequately address evidence and argument presented by the public, arrange for the testimony of expert witnesses.

**B. Mn/DOT witnesses.** The department will introduce its Statement of Need and Reasonableness as an exhibit into the record in accordance with Minnesota Rules, part 1400.0500, subpart 3. The following department personnel will be available at the hearing, if one is required, for questioning by the Administrative Law Judge and other interested persons or to briefly summarize all or a portion of the Statement of Need and Reasonableness if requested by the Administrative Law Judge.

**1. Elizabeth M. Parker.** Elizabeth M. Parker is the Director of the Office of Motor Carrier Safety and Compliance. She was involved in the development and drafting of the proposed rules and may be called to testify about the need for and reasonableness of any of the proposed provisions.

**2. Ward Briggs.** Ward Briggs is an attorney with the Office of Motor Carrier Safety and Compliance. For the past year, he has been involved in the development and drafting of the proposed rules and may be called to testify about the need for and reasonableness of any of the proposed provisions.

**3. Richard Norberg.** Richard Norberg is the Information Services Manager of the Office of Motor Carrier Safety and Compliance. His duties include administering the special transportation service program for the department. He has been involved in the development of the proposed rules and may be called to testify about the need for an reasonableness of any of the proposed provisions. Specifically, he is the witness most likely to address: adminisitrative

requirements for certifying special transportation service providers; driver and attendant qualifications and training requirements; insurance requirements; and, recordkeeping requirements.

**C. Advisory Committee members.** The department may, if necessary to adequately address evidence and argument presented by the public, call members of the department's advisory committee to testify about the need for and reasonableness of any the proposed provisions. The current members of the advisory committee, not mentioned above, that may be called to testify are:

Donna Allan	Mn/DOT, Office of Transit
Mary O'Hara Anderson	Disability Consultant; member, Governor's Planning Council on Developmental Disabilities
O.J. Doyle	Health Care Consultant
Lyle Frerechs	Metro Mobility Administrative Center
David Jordal	Health One Transportation
Ed Kouneski	Regional Transit Board
James Letourneau	Yellow Taxi
Dennis McMann	Mn/DOT, Office of Transit
Mary Jo Nichols	Metropolitan Center for Independent Living
Bernard Skrebes	Metropolitan Senior Federation of the Metro Region
Kurt Strom	State Council on Disability, Community Program Advocate

In particular, Mary O'Hara Anderson, Ed Kouneski, and Mary Jo Nichols would testify about past incidents of abuse of minors and vulnerable adults and the need for requiring criminal background checks for drivers.

**D. Other witnesses.** The department may also call the following persons to testify:

**1. Mary Kay Hohenstein.** Mary Kay Hohenstein is the coordinator for training at Mankato Technical College. She may be called to testify about training sessions the college offers for special transportation service drivers and the cost of the training. The college

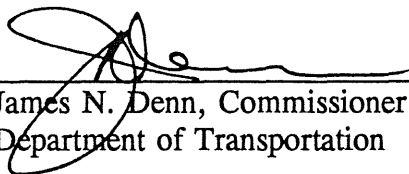
curricula addresses passenger assistance, defensive driving, emergency care, and vulnerable adult training.

**2. Neil Johnson.** Neil Johnson is an employee with the Minnesota Bureau of Criminal Apprehension. He may be called to testify about the proposed requirement for a criminal background check. He would testify about the procedure and cost of the check.

**3. Katherine Burke Moore.** Katherine Burke Moore is the Director of the Division of Driver and Vehicle Services, Minnesota Department of Public Safety. She may be called to testify about the requirement for a special transportation service vehicle endorsement on a driver's license and the procedure for checking a driver's driving record.

**4. R.C. "Bob" Rost.** Bob Rost is the president of Minnesota Body & Equipment Company. His company modifies buses and vans for use as special transportation service vehicles. He may be called to testify about vehicle equipment and vehicle construction standards and the costs of compliance.

DATE: 3/4/92

  
James N. Denn, Commissioner  
Department of Transportation