DEPARTMENT OF TRANSPORTATION

July 18, 2023

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Re: In The Matter of the Proposed Rules of the Department of Transportation Governing Special Transportation Service; Revisor's ID Number R-4593

Dear Librarian:

The Minnesota Department of Transportation intends to adopt rules governing special transportation service. We previously provided a copy of the Statement of Need and Reasonableness (SONAR) when we published the Notice of Intent to Adopt Rules, as required by Minnesota Statues, sections 14.131 and 14.23.

Following publication, the Office of Administrative Hearings (OAH) reviewed the department's rules. The Administrative Law Judge requested that the department amend its SONAR. The amendments have been made and approved by the judge. The final Order Adopting Rules has been filed with OAH and the Notice of Adoption will be published upon final notification to the Secretary of State and Governor's Office.

Enclosed, please find an electronic copy of the revised SONAR for the library's records.

If you have questions, please contact me at andrea.barker@state.mn.us.

Yours very truly,

Andrea Barker
Digitally signed by Andrea Barker
Date: 2023.07.18 10:44:22 -05'00'

Andrea Barker
Policy and Rules Coordinator

Enclosure: Statement of Need and Reasonableness

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rules Chapter 8840; Revisor ID No. R-04593

Office of Freight and Commercial Vehicle Operations

December 8, 2022
Revised: May 30, 2023

General information:

Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: https://www.dot.state.mn.us/cvo/rulemaking.html

View older rule records at: Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/

Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Beth Scheffer, Rulemaking Coordinator, Minnesota Department of Transportation, 395 John Ireland Blvd, St. Paul, MN 55155; telephone 651-366-4792; email elizabeth.scheffer@state.mn.us; or use your preferred telecommunications relay service.

How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.09, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).

How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, Chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

How to read a Code of Federal Regulations citation: 99 CFR § 999.0909(b)(1)(i) is read as Code of Federal Regulations, title 49, section 999.0909, paragraph (b), clause (1), item (i)

Contents

Acronyms

ADA	Americans with Disabilities Act
APA	Administrative Procedures Act
ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
DHS	Department of Human Services
DPS	Department of Public Safety
FMCSA	Federal Motor Carrier Safety Administration
Minn. R. pt.	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness
USDOT	United States Department of Transportation

Introduction and overview

Introduction

In this rulemaking the Department of Transportation (Department) is proposing amendments to the Minnesota rules governing special transportation service. The Department's Office of Freight and Commercial Vehicle Operations administers the special transportation service program as required in Minn. Stat. § 174.30. Special transportation service refers to certain types of transportation for the elderly or disabled as well as certain covered nonemergency medical transportation services, as defined in Minn. Stat. § 174.29. In administering the program, the Office of Freight and Commercial Vehicle Operations issues certificates of compliance (or operating authority), and regulates providers, drivers, attendants, and trainers using the procedures established in in Minn. R. Chapter 8840.

Statement of General Need

The proposed amendments are necessary to address changes to the industry that have occurred since the Department previously revised the rules in 2004. In 2015, the legislature made several changes to the enabling statute, and since July 2016 the program has included providers of nonemergency medical transportation regulated by the Department of Human Services (DHS). The Department is proposing amendments to make the program safer and more efficient, as well as more consistent with other commercial vehicle programs administered by the Department. Amendments are also necessary to clarify aspects of the rules, other legislative changes, and address issues raised by the public.

Scope of the proposed amendments:

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

- 8840.5100 Definitions
- 8840.5300 Scope
- 8840.5400 Certificate of Compliance, General Requirements
- 8840.5450 Restrictions on Name and Description of Service
- 8840.5500 Certificate of Compliance Application
- 8840.5525 Issuance and Expiration of Certificate of Compliance
- 8840.5640 Initial Special Transportation Service Provider Education
- 8840.5650 Annual Evaluation
- 8840.5700 Inspection and Audit
- 8840.5800 Enforcement: Violations, Suspensions, Revocations, and Cancellations
- 8840.5900 Driver Qualifications
- 8840.5910 Driver and Attendant Training Requirements
- 8840.5925 Vehicle Equipment
- 8840.5940 Vehicle Construction Standards
- 8840.5950 Standards for Operation of Vehicles
- 8840.5975 Standards for Maintenance
- 8840.6000 Insurance
- 8840.6100 Records
- 8840.6200 Certification of Training Courses and Instructors
- 8840.6250 Audit of Courses
- 8840.6300 Variance

Background

The legislature created the special transportation service program in 1979. Minn. Stat. § 174.30, subd. 2 requires the commissioner of transportation to adopt rules setting operating standards for vehicles, drivers, and attendants used to provide special transportation service. Minn. Stat. § 174.29 provides a definition and establishes which providers are governed by the rules.

The Department first adopted rules in 1981 setting operating standards for providers required to be certified by the Department to provide special transportation service. Those rules provided qualifications and training standards for drivers and attendants. They also established requirements for vehicle equipment and inspections, maintenance standards, and insurance. Providers are required by law to comply with these standards and to obtain an annual certificate of compliance from the Department.

Since their initial adoption, these rules have been amended three times. Amendments to the rules were finalized in 1983, 1992, and 2004. In 2015, significant changes were made to Minn. Stat. §§ 174.29 and 174.30. Most notable was the inclusion of nonemergency medical transportation services, a program primarily administered by DHS. The rules have not been updated since these and other legislative changes were made.

Public participation and stakeholder involvement

Consistent with the Administrative Procedures Act (APA), the Department published a Request for Comments in the Minnesota State Register on Tuesday, November 12, 2019. Additionally, in accordance with the requirements of Minn. Stat. Chapter 14, and Minn. R. Chapter 1400, the Department sought input and comments from the general public, stakeholders, and individuals affected by these rules. These activities are described in detail on page 41 and 42 of this SONAR.

In short, the Department sent copies of the Request for Comments to the Department's list of persons who have registered to receive notice of all rule proceedings under Minn. Stat. § 14.14, Subd. 1a, the members of the advisory committee for this rulemaking (described below), special transportation service providers, special transportation service trainers, and managed care organizations. To further raise awareness, the Department issued a press release notifying stakeholders of the rulemaking and Request for Comments. To increase accessibility and opportunity for feedback, the Department created a web page which displays relevant information on this rulemaking process and provides the opportunity to make comments. The web page can be found at: https://www.dot.state.mn.us/cvo/rulemaking.html.

Before ever publishing and disseminating a Request for Comments, the Department received significant input in response to earlier Department communications soliciting feedback on the rules. In late 2018, in anticipation of eventually commencing a formal rulemaking, the Department sent a mass email to registered special transportation service providers asking for feedback on these rules. The Department received a significant number of responses to that email. Although this occurred before the Department officially commenced this rulemaking with a Request for Comments, the Department has fully considered that stakeholder input as valuable perspective for proceeding with this rulemaking. After the request for comments was published and disseminated, the Department received seven comments from seven different sources. The commenters included special transportation service providers, medical service providers, riders, and academics. The feedback received during this initial comment period was considered and is reflected in the proposed rules.

Another common way of gathering stakeholder input, of course, is through the formation of an advisory committee comprised of members representing different areas of expertise. Though not required to do so by law, the Department chose to form an advisory committee given the multifaceted nature of special transportation service and the diverse group of stakeholders involved. Additionally, the implementation of an advisory committee allowed the Department to reach a greater number of stakeholders to gather input. In late 2019, the Department formed a rulemaking advisory committee to provide input and advice on potential amendments to the special transportation service rules. The Department commissioned the advisory committee to provide input on potential changes to Minnesota Rules, Chapter 8840. Committee members came from varied backgrounds, which is shown in attached Appendix A.

The advisory committee began meeting in person during January 2020 but moved to online meetings in April 2020 due to protocols implemented in response to the COVID-19 pandemic. The committee met roughly every six weeks, for a total of nine meetings, with the final meeting occurring in April 2021. To ensure all members were comfortable and were able to provide complete input, Department staff met individually with the committee members who use special transportation services; and reported their feedback during the group meetings with the rest of the committee. The Department used consultant services from Minnesota Management and Budget's (MMB) Management Analysis and Development unit to facilitate the committee meeting process. Consultants assisted in scheduling meetings, creating meeting plans, facilitating meetings, and gathering feedback. This process ensured that robust and complete conversations occurred and allowed Department staff to analyze and respond to feedback during meetings.

In addition to the full advisory committee, the Department created a focus group comprised of special transportation service trainers. The purpose of the group was to gather technical and detailed feedback on the training required for special transportation service drivers and attendants. The members of the focus group represented a significant amount of experience designing and providing both special transportation service and other types of training. This is demonstrated in the group composition, shown in Appendix B. The group was created to provide feedback on potential changes to the mandatory training required for all special transportation service drivers and attendants. The group first met in October 2020. The group met three times online and had its last meeting in December 2020.

Statutory authority

The Department was granted authority to adopt special transportation service rules in Minn. Stat. § 174.30, subd. 2, 4(c), and 5, on the topics listed below:

174.30 OPERATING STANDARDS FOR SPECIAL TRANSPORTATION SERVICE.

Subd. 2. Rules. (a) 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.

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

(1) qualifications of drivers and attendants, including driver training requirements that must be met before a driver provides special transportation;

(2) safety of vehicles and necessary safety equipment;

(3) 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

(4) minimum insurance requirements.

(c) The commissioner shall consult with the Council on Disability before making a decision on a variance from the standards.

Subd. 4. Vehicle and equipment inspection; rules; decal; complaint contact information; restrictions on name of service. (a)…

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

Subd. 5. Rules. The rules authorized under this section shall be adopted in accordance with the provisions of the Administrative Procedure Act, sections 14.001 to 14.69.

Reasonableness of the amendments

General Reasonableness

The proposed amendments to these rules were developed over the span of more than a year.

The proposed amendments to the rules reflect an ongoing and robust dialogue with special transportation service stakeholders. The Department has carefully considered all feedback from members of the public and stakeholders. The proposed amendments to the rules reflect these considerations, along with the statutory requirements, to provide minimum standards for performance-based rules that allow both clarity and enforceability.

Rule-by-Rule Analysis

Part 8840.5100 Definitions

Subpart 1b. Certificate of course completion. The addition of the requirement for the instructor's trainer number to be included on a certificate of course completion is necessary for efficient Department audits. The trainer number is a unique identifier issued by MnDOT. Including it on the certificate ensures proper identification of the instructor and allows the Department to quickly determine whether the instructor is certified by the Department. If an instructor name is illegible, the instructor number eases the search of Department records for the corresponding instructor record.

Subpart 4a. Day. The Department proposes the addition of this subpart to clarify the way periods of time are measured when interpreting these rules. This is necessary because there are several requirements within these rules that certain documents be filed, or that certain violations be addressed, within specific periods of time. For instance, providers are given fifteen days to address a violation once they are given written notice under Minn. R. 8840.5700. It is important that there not be confusion by providers as to what that means. The Department must also respond to applications for certificates of compliance, trainer applications, and requests for variance within 30 days. This addition is reasonable to avoid confusion or uncertainty regarding expectations related to compliance.

Subpart 5a. Driver. Striking the language regarding volunteer drivers is necessary for clarity. The Department proposes specifically defining the term "volunteer driver" in a new subpart in order to go into greater detail about the term. Volunteer driver activity has drastically increased since these rules were last amended, and it is reasonable to address the issue separately from the general term "drivers" because of the greater impact volunteer driver programs have on the industry.

Subpart 6. Elderly. The proposed amendment changing the definition of elderly from 55 to 60 was a recommendation by the advisory committee, including a representative from the Minnesota Board on Aging. Special transportation service is partially defined under Minn. Stat. § 174.29, subd. 1 as transportation "exclusively or primarily to serve individuals who are elderly or disabled." Although the Department does not check the age of riders, this program requires clear parameters, so it is necessary to define this term. The proposed definition complies with standard practices by the Minnesota Board on Aging, complies with general industry standards, and is typical of other government program thresholds. This change is reasonable because it is important to have consistency in terms and thresholds across government programs.

Subpart 7. Disability. The addition of the phrase "a record of such an impairment or being regarded as having such an impairment" is necessary to bring the Department definition into compliance with the Americans with Disabilities Act (ADA), other government programs, and industry terms. The additional language was taken directly from the ADA, which is consistently used to define "disability" across government programs and other entities that provide services for people with disabilities. The reason it is necessary to change this term is similar to the reason it is necessary to update the term "elderly." Special transportation service is partially defined as being at least primarily for the elderly or disabled. It is reasonable to have a definition that matches other government programs in a program that involves several agencies.

Subpart 8. Major life activities. The proposed amendment changing "functions" to "activities of daily living" was a recommendation from the advisory committee. It is necessary to maintain an updated and accurate definition of "major life activities" because it is part of the definition of "disability" under these rules. This language is also consistent with ADA terminology. This change is reasonable to make this definition consistent with the standard industry term for organizations and government agencies that provide services to people with disabilities.

Subpart 10. Municipality. The removal of this subpart is necessary because the term "municipality" was only referenced once in Minn. R. Chapter 8840.6000, subp. 1(b)(2). That section is also being repealed, so there is no reason to continue to include an unused term. It is reasonable to remove definitions of words that do not appear in these rules for clarity and succinctness.

Subpart 12a. Protected transport. The Department proposes the addition of this subpart because it is necessary to address an additional mode of transportation which was added to special transportation service by legislative change. Since 2016, Minn. Stat. § 174.30, subd. 3 has required the Department to ensure that a vehicle designated as "protected transport" by the Department of Human Services meets the safety requirements under Minn. Stat. § 256B.0625, subd. 17. It is reasonable to include this definition to provide a clear term for the other references to protected transport that the Department is proposing elsewhere in these rules.

Subpart 17. Special transportation service. The proposed amendment to include nonemergency medical transportation as a part of special transportation service is necessary to make these rules consistent with the definition under Minnesota Statutes. In 2015, the legislature changed the statutory

definition under Minn. Stat. § 174.29, subd. 1 to include the nonemergency medical transportation program administered by DHS under Minn. Stat. § 256B.0625, subd. 17. This amendment is reasonable because it mirrors the statutory definition of special transportation service.

Subpart 18a. Stretcher transport. The addition of this subpart is necessary to clarify the parameters of other proposed safety requirements. Stretcher transport, like protected transport, is a mode of transportation under DHS's nonemergency medical transportation program. Safe transportation of passengers on a stretcher requires consideration of factors such as equipment, training, and vehicle construction that varies from wheelchair transportation and ambulatory passenger transportation. The addition of this subpart is consistent with the other amendments proposed by the Department regarding stretcher transport, particularly those under the required training section. The use of the statutory definition under Minn. Stat. § 256B is reasonable because it is the same definition used by DHS and will allow both agencies to attribute the same meaning to a term used in two programs with a large amount of overlap.

Subpart 21. Volunteer driver. This subpart has been added to clarify which drivers are exempt from these rules even though they provide what would otherwise be considered special transportation service. A volunteer driver using a private automobile is exempt from the requirements of these rules under Minn. Stat. § 174.30, subd. 1(a)(2). The term "private automobile" is self-explanatory, but the term "volunteer driver" is not as clear as it might first appear. The Department is routinely contacted by providers, managed care organizations, healthcare institutions, and riders asking whether an organization that provides rides and holds itself out as a volunteer organization is exempt from the rules. Volunteer drivers were also a subject of extensive discussion during the advisory committee process. A clear standard determining who is and isn't exempt is needed, both to avoid confusion about whether an organization is subject to these rules and to put non-exempt organizations on notice. It is important that all organizations that are required to remain compliant with these rules do so, both for the safety of riders and in fairness to other providers who bear the costs associated with compliance. It is therefore necessary to specifically define this term.

In 2021, the legislature updated the definition of "volunteer driver" under Minn. Stat. § 174.30, subd. 1(a)(2). That section refers to volunteer drivers as "defined in section 65B.472, subdivision 1, paragraph (h)." The rules will be amended to include the definition in Minn. Stat. § 65B.472, subd. 1(h) which provides that a volunteer driver means "an individual who transports persons or goods on behalf of a nonprofit entity or governmental unit in a private passenger vehicle and receives no compensation for services provided other than the reimbursement of actual expenses."

The previous definition included under the definition of "driver", which defined a "volunteer driver" as being subject to the direction and control of a provider does not necessarily conflict with the new statutory definition. However, the Department would still prefer to address the issue by level of reimbursement. The Department does not wish to hinder legitimate volunteer driver organizations in providing transportation access to otherwise homebound Minnesotans. But the Department also does not wish to allow covered organizations to engage in special transportation service without ensuring the proper safety precautions. The new definition is consistent with the enabling statute and allows the Department to directly address whether a person is truly volunteering their time without being reimbursed for anything other than actual expense.

Subpart 22. Wheelchair. The Department proposes the addition of this subpart because it is necessary to address confusion about how electric scooters should be treated by providers. The Department is often contacted by providers, riders, and managed care organizations asking if electric

scooters are considered “wheelchairs” within the context of special transportation service. The addition of this subpart clarifies the issue and mirrors the Department of Public Safety’s (DPS) definition under Minn. R. Chapter 7450. Both the Department and DPS perform inspections of vehicles that provide wheelchair transportation in Minnesota. Minn. Stat. § 174.30, subd. 3 directs the commissioners of both Departments to cooperate in inspecting these vehicles “so that a single inspection is sufficient to ascertain compliance.” Using the same definition as DPS is reasonable because in addition to clarifying the issue of electric scooters, it will also ensure a consistent definition of a shared term between the Department and DPS when administering two programs with significant overlap and a legislative directive to cooperate in inspections.

Part 8840.5300 Scope

Subpart 1. Service criteria. The proposed amendment to this subpart was a recommendation by the advisory committee. The addition of the phrase “an entity or” is necessary to clarify that these rules apply to organizations that receive and use grants to provide special transportation service, not just individual recipients of said grants. The proposed amendment is reasonable because it will help to ensure the relationship between the Department and providers is clear during enforcement of these rules, and to put covered entities on notice.

Subpart 1a. Applicability. The addition of this subpart is necessary to clarify a provider’s responsibility for its drivers, attendants, and other employees. Department employees have often had to clarify that regardless of the wording of employment contracts, employees used by providers to provide special transportation service do so under the authority granted to the provider by the Department. While it was not commonplace when these rules were last amended, many providers now require that drivers use their personal vehicle to provide special transportation service as a condition of their employment. Some providers who engage in this business model view their role as being limited primarily to dispatch; arguing they cannot reasonably be held responsible for drivers and their vehicles because of ride volume and turnover. The addition of this subpart is reasonable to ensure there is no ambiguity regarding a provider’s responsibility as the holder of a certificate of compliance for the drivers and vehicles associated with that certificate of compliance.

Part 8840.5400 Certificate of Compliance, General Requirements

Subpart 1. Certificate of compliance required. The proposed amendment to this subpart requiring the Department to ensure certain safety provisions are in working order during inspections of protected transport vehicles before certification is necessary to address a statutory requirement. This requirement was added to Minn. Stat. § 174.30, subd. 3 in 2015, well after these rules were last amended. It is reasonable to phrase this subpart as a reference to Minn. Stat. § 256B.0625, subd. 17 because it will provide consistency with Minn. Stat. § 174.30, subd 3. It is also reasonable to limit the requirement here to a statutory reference because of potential inconsistencies that may because by future statute changes. Minn. Stat. § 256B.0625 is the enabling statute for DHS covered services which includes many specifics of program administration and is frequently updated. The Department does not wish to include unnecessary language in these rules based on a statute that may change before these rules are next amended.

Part 8840.5450 Restrictions on Name and Description of Service

The proposed amendment to this part, allowing providers to use in their name or advertisements the phrase “nonemergency medical transportation,” is necessary to address a legislative change to the enabling statute for these rules. Historically, Minn. Stat. § 174.30, subd. 4 required only

that providers comply with Minn. R. 8840.5450. However, in 2015 it was amended to include an exception for the term “nonemergency medical transportation” in provider names and advertisements. The proposed amendment is reasonable because it ensures consistency with the enabling statute by mirroring it directly.

Part 8840.5500 Certificate of Compliance Application

Subpart 1. Forms. The proposed amendment to this subpart will allow providers to submit applications by electronic mail. This change is necessary to address a practice that has become commonplace since the last time these rules were amended. This amendment is reasonable because it will make the application process less burdensome, make communication easier, and allow providers to apply more easily on the same day they complete it. Additionally, it will allow for easier and faster communication with applicants who do not wish to mail, or hand deliver an application.

If the Department can review an application and respond by electronic mail, employees will be able to directly address issues with applications as soon as they are received. This will avoid delays between the time an application or renewal is mailed and receipt. Because of the decreased wait time, this will also help ensure correcting errors is not more difficult for Greater Minnesota providers than those located in the metro area.

Providers often prefer to deliver rejected applications and renewals to avoid the mailing delay, an option which is much more burdensome for Greater Minnesota providers. This increased opportunity for providers to respond and resubmit will make it easier to address application issues and receive the same level of service as a provider who delivered an application. The ability to submit applications and renewals by electronic mail is a common request by providers and was discussed at length by the advisory committee.

Subpart 2. Required information.

New Item A(2). The Department proposes this amendment to add a requirement that providers of special transportation service obtain and submit a United States Department of Transportation (USDOT) number at the time of application for a certificate of compliance. This amendment is necessary for consistency with other programs administered by the Department and with the Federal Motor Carrier Safety Administration’s (FMCSA) system. The Department administers six different programs for which it grants operating authority to transport passengers or property within the state of Minnesota. Currently, depending on the type of operating authority and the weight of the vehicle, the Department either requires participants in these programs to possess a valid USDOT number or it issues a MnDOT number.

The FMCSA issues USDOT numbers for all motor carriers that register with them, and has regulatory oversight over all interstate for-hire commercial vehicle operations. This leads to overlap between the Department and the FMCSA, and the two agencies coordinate a significant number of regulatory activities. Many of the entities the Department regulates currently hold both USDOT and MnDOT numbers. This requires Department employees who are presented with an identifying number to determine whether that number is a USDOT or a MnDOT number. This can sometimes be difficult to determine, and the Department frequently receives complaints when the complainant is unable to determine the exact identifying number, or whether the number is a MnDOT or USDOT number. Eliminating the use of MnDOT numbers and requiring all carriers to possess a valid USDOT number will ensure consistency in identification number and eliminate confusion.

This change is reasonable because the FMCSA does not charge a fee for applicants that register with their system but do not apply for operating authority, and special transportation service providers would not need operating authority from the FMCSA to operate solely within the state of Minnesota. Providers that operate across state lines are already required to register with the FMCSA regardless of these rules. This requirement would not impose a new fee on special transportation service providers who operate solely intrastate. The proposed amendment would make both administration of, and compliance with, these rules easier because it would allow for a consistent system of identifiers across all Department administered programs and with the federal government.

Newly numbered Item A(5). The proposed amendment requires providers to include two additional pieces of information when applying for a certificate of compliance. Applicants will be required to state whether each vehicle listed on the certificate of compliance will be used to provide stretcher transport, and whether that vehicle will be used to provide protected transport. This amendment is necessary because, as mentioned above, Minn. Stat. § 174.30, subd. 3 requires the Department to check that certain safety provisions are in working order for special transportation service vehicles used to provide protected transport. The Department needs to know which vehicles will provide stretcher and/or protected transport to ensure compliance.

Currently, the rules only provide significant detail about wheelchair transport because stretcher and protected transport were not common forms of special transportation service the last time these rules were amended. Now stretcher and protected transport are becoming increasingly common.

Stretcher transport is not specifically called out in the way protected transport is under the enabling statute. However, Minn. Stat. 174.30, subd. 2(b)(2) grants the Department rulemaking authority regarding safety of vehicles and necessary safety equipment. It is necessary to address the unique safety factors associated with stretcher transport along with protected transport. Similar to wheelchairs, stretcher transport requires specific lifts and ramps, adequate cab size for transport, functioning restraint systems, and securement for peripheral items. Although these systems are similar to wheelchair securement systems, they differ in their physical specifications and requirements. Both wheelchair and stretcher transport as well as protected transport have unique safety concerns. Because both modes of transportation entail unique safety concerns and legislatively required safety provisions it is reasonable to address protected transport and stretcher transport in the same way.

Newly numbered Item A(6). This amendment requires applicants to provide a contact email address and changes the requirement for contact phone numbers. This amendment is necessary to help make these rules consistent with common business practice. Currently, applicants must provide the "telephone number, including each cellular telephone number" for the person in charge of daily operations. At the time these rules were previously amended, landlines were much more commonplace and cellular telephones were not as prevalent as they are today. The Department encounters an increasing number of providers who prefer to operate by email as much as possible, often exclusively. This preference was relayed to the Department, and discussed at great length, during the advisory committee process. Over the last several years the Department has also begun performing remote audits; reviewing records after a provider has scanned and emailed them to the employee performing the audit. The COVID-19 pandemic caused the Department to perform all audits remotely for over a year. The changes to this item are reasonable because they address the increased likelihood that a provider will not have a landline, does not leave the number of contact numbers open ended, and requires an email address. This will both accommodate providers who want to communicate by email and allow the Department to continue to increase the efficiency of its audits.

Newly numbered Item A(7). The first proposed amendment to this item clarifies that the names of the drivers applicants are required to submit are the drivers' legal names, as it appears on their driver's license. This second proposed amendment will require applicants to include drivers' license numbers in their applications. It is necessary for providers to submit this information in their applications so the Department may verify providers are not using disqualified drivers without having to perform the full audit process described in Minn. R. 8840.5800. The Department audits each provider once per year but will usually only perform another full audit upon receipt of a complaint, or as a follow up to a previous audit to confirm violations have been addressed. When following this standard audit schedule, a provider may not be subject to an audit of its driver files for up to a year after applying. This amendment is reasonable because it will allow the Department to ensure the drivers being used to perform special transportation service have been properly entered into the DHS background study system and do not have any disqualifying offenses on their driving record. Requiring provides to submit this information on the application is reasonable because these rules already require providers to maintain this information in their files

Newly numbered Item A(8). The addition of the requirement for applicants to include the legal names of each person for whom the provider is required to initiate a DHS background study is necessary to address the addition of this same requirement in Minn. Stat. § 174.30, subd. 10, in 2015. The addition of this requirement to the rules is reasonable because it directly references and mirrors the statutory requirement. The requirement to include all the names of directors, officers, partners, and board members has been struck to accommodate the proposed new reporting requirement under item A(9) of this subpart. Both changes address the Department's concerns about "chameleon carriers" (using the application process to avoid enforcement actions by the Department). This concept is addressed in more detail in item A(9) below.

Newly numbered Item A(9). The proposed amendment will require applicants to disclose the certificate number for any certificates of compliance held or previously held by any of the business' owners, partners, directors, or board members. The current rule only requires applicants to disclose the certificate number of a certificate held by one of these parties if it had been suspended, revoked, or canceled within the previous year. This item is necessary to prevent operation by "chameleon carriers," a term used to describe providers who are not currently allowed to operate due to enforcement action by the Department but sidestep the issue by applying for authority as a new applicant under a different name. When a provider acting as a chameleon carrier is successful in applying under a new name, they are able to quickly regain authority with no real change to their operations, which essentially makes the Department's enforcement powers moot. This amendment will allow the Department to determine whether a person is attempting to engage in this behavior prior to a finalized enforcement action by the Department. Under the current rules, it would not technically be a violation for a provider with a pending suspension, revocation, or cancellation to apply under a new name but not disclose the original certificate number. It is reasonable to amend this item to prevent providers from simply changing the certificate of compliance they operate under to attempt to sidestep enforcement action by the Department.

Newly numbered Item A(12). The Department proposes the addition of this item requiring an applicant to disclose any organizations with which it has an agreement to provide special transportation service because it is necessary to facilitate coordination between the Department, providers, and managed care organizations. Managed care organizations are the entities that providers contract with to connect them with people who use special transportation service. Providers also use managed care organizations for reimbursement of rides through DHS. Part of this reimbursement process includes notifying managed care organizations of which drivers and vehicles are used to provide these rides. This

new requirement will allow the Department to cross-reference driver and vehicle lists with these organizations to ensure they are not using drivers or vehicles without notifying the Department.

This item will also allow the Department to specifically notify all the organizations a provider has contracted with when that provider has lost, or regained, operating authority. It is illegal to provide special transportation service without active operating authority, but managed care organizations may not know if a provider that had operating authority when it first entered into a contract with the organization lost that authority later. When this occurs, providers who have been suspended for safety reasons are able to continue to provide, and be reimbursed for, special transportation service. The Department currently notifies all the managed care organizations on its mailing list when any provider's operating authority is suspended. However, this results in notifications that may not be relevant to recipients. The Department often receives feedback that this system makes it difficult for managed care organizations to know when they can and can't use a provider. The Department is also aware of instances in which providers performed rides when they did not have active operating authority. Addressing these rides requires a significant amount of time and effort to recoup payments by the managed care organization, DHS, or both. The addition of the proposed item is reasonable because it will allow the Department to notify these organizations of the loss of operating authority more efficiently and with more specificity.

Subpart 2a. Signature required. This amendment would allow electronic signatures and delivery of any physical document in person, by mail, electronically, or by fax. This amendment is necessary for consistency in common business practices, to allow flexibility for providers without fax machines or scanners, and to address the different options feasible for Greater Minnesota and metro area providers to comply with this part. The Department regularly receives feedback requesting these options. The need for electronic document sharing was also discussed in great detail with the advisory committee. This amendment is reasonable because it is common practice in many areas of both the public and private sectors to sign and deliver documents electronically. The addition of the option to sign electronically will make compliance with this part easier for providers who are unable to fax or scan documents. Clarifying that physical printouts may be delivered in person, by mail, electronically, or by fax will also make compliance easier for providers located in Greater Minnesota. Electronically delivering documents will lower the burden associated with compliance for providers who may have to drive for hours to get to the metro area.

Subpart 5. Information on certificate. The Department proposes this amendment to allow providers to keep certificates of compliance electronically and produce them upon demand. This amendment is necessary to make this part current with common business practices and to increase ease of compliance. Since these rules were last amended, it has become common business practice to maintain files and documents electronically. This is particularly true for businesses that don't have a large amount of physical storage space. This amendment is reasonable because it allows for easier document retention by providers while preserving the ability of the Department to audit those documents. As previously mentioned, the Department has begun performing more audits remotely. Due to the COVID-19 pandemic, all audits were performed remotely for well over a year. Documents that are already electronically stored can be shared with the Department much more easily and would decrease the time and resources needed to complete an audit, remotely or otherwise.

Subpart 6. Record. This proposed amendment would require the Department to reject an application if certain people associated with the organization are also associated with another provider whose certificate of compliance is currently suspended or revoked. This is necessary to address "chameleon carriers" who have lost operating authority and attempt to circumvent the issue by applying

for a certificate of compliance under a new name. It is important that the Department be able to ensure suspended or revoked providers are not able to simply continue operations under a new name. As previously mentioned, the primary method of ensuring compliance is through suspension or revocation of operating authority because managed care organizations are not allowed to reimburse providers for rides if that provider does not have active operating authority. The standard of a single person being associated with the suspended or revoked provider and the new applicant is reasonable to set clear expectations for compliance.

Part 8840.5525 Issuance and expiration of certificate of compliance.

Subpart 2. Issuance or denial of certificate.

Item C. The proposed amendment changing "requested" to "required or requested" is necessary to clarify that a provider must include all information required by statute or rule, whether it is specifically requested or not. The Department does not make a habit of leaving relevant information out of its requests, but this amendment is reasonable to clarify that the burden of compliance is on the provider to make required information available, not on the Department to prove the information was requested. It is important that all the required information be provided because the certificate of compliance is the first and most complete look at a provider's operations short of conducting an audit. This should not add a significant burden to compliance because if an application is rejected for being incomplete the provider is able to simply resubmit a completed application.

Item D. The Department proposes the addition of the requirement that applicants state whether any person listed on the application is disqualified by a required background study because it is necessary to comply with the enabling statute. Minn. Stat. § 174.30, subd. 10(a) states "Providers of special transportation service regulated under this section must initiate background studies in accordance with Chapter 245C on the following individuals." The subdivision includes a list of the classes of individuals subject to the background study requirements: owners, controlling individuals, managerial officials, drivers, attendants, and certain administrative staff. Paragraph (c) of the same subdivision states that providers shall not use any individual to provide any of the services listed in paragraph (a) before receiving notification from DHS that the individual is not disqualified or has received a set-aside. Rejecting an application if any of the people listed on the application are disqualified by the DHS background study is reasonable because it will prevent violations of Minn. Stat. § 174.30, subd. 10 and will address serious potential issues before a provider gets more involved in special transportation service and invests substantial additional time and resources.

Subpart 4. Certificate denied revoked or canceled. The introduction of a 180-day waiting period for a provider who has made a false or fraudulent statement in an application to be allowed to reapply is necessary to prevent intentional subversion of these rules. As previously mentioned, the application for a certificate of compliance is the most comprehensive information the Department will receive on a provider until that provider's first audit. These audits typically occur around a year after the application is approved. Other than applications and audits, the Department may not be aware of the daily activities of providers besides what it learns through complaints or enforcement activities. This amendment is reasonable because the waiting period would only apply if the denial, revocation, or cancellation was for intentional malfeasance; the Department wishes to disincentivize intentionally providing false information. Minor mistakes or omissions would not prevent an applicant from immediately submitting another application. 180 days is consistent with the length of the waiting period to submit a new application for revoked providers. Under Minn. R. 8840.5800, subp. 3a a provider's certificate may be revoked for 180 days for committing a pattern of willful violations of Minn. R. Chapter 8840. Because

patterns of willful violations and false or fraudulent statements on applications are both intentional acts with significant potential to affect rider safety it is reasonable to treat them both equally.

Part 8840.5640 Initial special transportation service provider education.

Subpart 2. Initial education sources and topics. This amendment will change the required education under this subpart from an approved seminar or training by a representative of the Department to approved materials covering statutes, rules, and other regulations. This amendment is consistent with the Department's preferred method of online modules to provide training. These initial trainings were previously provided in person, but now take the form of online modules and assessments. This amendment is reasonable because it is consistent with how initial trainings are currently performed for the other commercial vehicle programs the Department regulates.

Part 8840.5700 Inspection and audit.

Subpart 1. Commissioner shall inspect vehicles. This Department's proposed amendments will modify this subpart in several ways:

1. Change the title of the subpart to add the word "vehicles"
2. Add language stating that the Department may conduct unannounced inspections for compliance with these rules
3. Move language regarding inspection results, provider responsibility, and annual inspection of records to separate subparts for each topic

The title of the subpart has been amended from "commissioner shall inspect" to "commissioner shall inspect vehicles." This change is necessary because a new subpart is being added to this part regarding the Department's process for auditing provider records. This is also the reason that the language stating the Department shall inspect certain records at least annually has been moved to what will now be subpart 1d of this part. Splitting the vehicle inspection and audit portions of this subpart and moving the audit portion into a separate subpart is reasonable because it will allow for increased detail regarding both processes. Inspections and audits are the primary methods of ensuring minimum levels of safety and are also some of the most difficult aspects of compliance for providers. The Department is regularly asked why inspections and audits are performed the way they are, and on what basis. The Department is proposing this amendment, so the processes and standards of inspections and audits are clearer.

The addition of the language stating the Department may conduct an unannounced vehicle inspection is necessary to bring clarity and add process details to the existing Department practices of ensuring providers comply with these rules. Other than the scheduled annual vehicle inspections and records audit, the Department might not have any regulatory contact with a provider for the remainder of the year. Some special transportation service vehicles are used for multiple rides a day and there is a high rate of turnover for drivers and attendants. The Department does inspect vehicles upon complaint, but complainants often do not have specific identifying information for noncompliant vehicles or potentially untrained drivers. The Department has had more success in determining compliance by partnering with locations that have a high number of special transportation service pick-ups and drop-offs, such as autism centers, rehabilitation institutes, and hospitals. As a matter of practice department employees performing these on-site inspections do not prevent drivers from leaving for another ride and the inspections are only performed when there are no passengers in the vehicle or attempting to enter the vehicle. Based on the requirements of Minn. R. Chapter 8840 and the practicalities of the inspection location, the inspection may consist of ensuring the vehicle decal is current, a visual

inspection of the exterior of the vehicle, inspection of any securement systems the vehicle is equipped with, an inspection of any lifts or ramps the vehicle is equipped with, or a conversation with the driver ensuring he or she is listed on the provider's certificate of compliance. It is reasonable to address and memorialize this process in this subpart to clarify the process and parameters of these roadside inspections.

Subpart 1a. Incorporation by reference. This new subpart changes the required document to use to determine whether a vehicle is likely to cause and accident or breakdown from the "North American Uniform Vehicle Out-Of-Service Criteria" to the Department of Transportation's "Minnesota Vehicle Requirements for Special Transportation Services and Limousines" and incorporates the document by reference. The document is freely available to the public on the Department's website and by request from the Department.

This is necessary to ensure a comprehensive, program-specific, and accessible set of standards is used when determining whether a vehicle meets minimum safety requirements. As previously mentioned, the "North American Out-of-Service Criteria" is a useful tool based on federal regulations which prescribes specific quantitative metrics for vehicle safety. However, it is written primarily for commercial vehicles that are greater than 10,000 pounds and contain more specialized equipment. Most vehicles used to provide special transportation service are sedans and vans which weigh substantially less than 10,000 pounds.

The "Minnesota Vehicle Requirements for Special Transportation Services and Limousines" is a document the Department developed specifically for these types of vehicles. The document provides the standards to determine whether a covered vehicle is likely to cause an accident or breakdown and is based on state statutes, state rules, and applicable federal guidelines and regulations. The Department does not anticipate that the document will frequently change as the statutes, rules, and federal guidelines and regulations on which they are based do not frequently change. Vehicles over 10,000 pounds will still be covered by safety provisions within the Federal Code incorporated by reference into Minnesota Statutes under Minn. Stat. § 221.0314.

This amendment is reasonable because the implementation of this standard will allow the Department to have a single standardized tool to use when determining whether a vehicle is likely to cause an accident or breakdown. Additionally, if a member of the public wishes to obtain a copy of the "North American Out-Of-Service Criteria," he or she would need to purchase it from the Commercial Vehicle Safety Alliance. The Department will be able to distribute the "Minnesota Vehicle Requirements for Special Transportation Services and Limousines" for free at the Department's physical locations and online. This will allow providers to access the Department's standards for vehicles and vehicle inspections much more easily.

The proposed amendments also add a reference to the vehicle safety provisions in Minn. Stat. Chapter 169 and clarify that Minn. Stat. § 169.46 through 169.75 is the controlling source of regulation when determining whether a special transportation service vehicle is likely to cause an accident or breakdown. This is necessary to clarify the correct order of analysis when determining whether a vehicle should pass or fail an inspection. Historically, there has been some confusion regarding what standard to apply when determining if a vehicle is in a condition in which it was likely to cause an accident or breakdown. This subpart currently requires that the "North American Uniform Vehicle Out-of-Service Criteria" be used. Those criteria are updated and published once per year by the Commercial Vehicle Safety Alliance and lay out detailed standards for vehicle safety. On issues where Minn. Stat. Chapter 169 is silent on quantifiable metrics, the criteria are quite useful in applying a standard that does not

require a trained mechanic to implement. But when the two are in conflict, the criteria cannot, and do not, supersede Minnesota Statutes. It is reasonable to make that distinction here to clarify the correct order of analysis. This is particularly true for providers when attempting to determine the requirements of a Department inspection.

Subpart 1b. Inspection results; removal from service. This new subpart provides the language from the original subpart 1 regarding vehicle inspection results and the requirement for the commissioner to direct a provider to immediately remove a vehicle from service upon determining the vehicle is in a condition that is in violation of a provision of Minn. Stat. §§ 169.46 to 169.75, and is in a condition that is likely to cause an accident or break down.

The proposed amendments to this subpart also add the requirement that the Department's vehicle inspection form include a field to indicate whether a vehicle designated for protected transport meets the standards of Minn. Stat. § 256B.0625, subd. 17. This amendment is necessary to reflect the requirement that the Department check these standards under Minn. Stat. § 174.30, subd. 3. This language was added to the enabling statute in 2015. The amendment is reasonable because it directly mirrors the above referenced passage which states "For vehicles designated as protected transport under section 256B.0625, subdivision 17, paragraph (h), the commissioner of transportation, during the commissioner's inspection, shall check to ensure the safety provisions contained in that paragraph are in working order."

Note: The correct citation to the pertinent DHS statute is Minn. Stat. § 256B.0625, subd. 17(i). At the time of writing of this SONAR, the Revisor's Office had not yet updated the citation contained in Minn. Stat. § 174.30, subd. 3, which erroneously refers to the previous codification of this provision at 256B.0625, subd. 17(h).

Subpart 1c. Provider responsibility; defective equipment. This new subpart provides the language from the original subpart 1 regarding the provider's responsibility to provide written evidence of compliance after being directed to repair or replace defective equipment. No other changes to this language is proposed.

Subpart 1d. Commissioner shall audit records. The Department proposes the addition of this subpart governing audits of provider records for increased readability, and to include additional details on the Department's audit process. This is necessary to establish clear standards and expectations for an audit of provider records. Minn. R. 8840.5650 states the Department shall annually audit providers to determine whether they are keeping the records required by Minn. R. 8840.6100. Additionally, subpart 1 of this part previously required the Department to inspect vehicle inspection, repair, and maintenance records at least annually. The proposed amendment builds on that language, specifying the Department must also examine driver and attendant records and give the provider the documented results of the audit.

The addition of this subpart is reasonable because the proposed amendment will make navigating these rules easier and make expectations for a Department audit more clear. Combining and calling out the parts of these rules that specify which records must be audited will allow readers to get a clear picture of the requirements of an audit without having to go to several other parts.

The use of the term "at least annually" is reasonable because it mirrors the standard for vehicle inspections in the previous part. Because records audits were previously addressed alongside vehicle inspections under that part, the same standard has applied to both until now. The Department generally does not perform a full audit of a provider's records more than once a year but will often inspect certain

records upon complaint, as a follow up to determine that a previously noted violation has been addressed, or if other violations noted in the field indicate potential additional violations related to records.

Subpart 5. Failure to permit an inspection. The proposed addition of the term "or audit" has been included to address the proposed addition of subpart 1a to this part. This addition is necessary to clarify providers may still be suspended for failure to allow an audit. Audits are now called out specifically under their own subpart, rather than generally under the inspection subpart. Because of this, it might not be clear that providers may still be suspended if they do not allow an audit. This addition is reasonable because it will ensure a loophole is not created and that the Department retains its enforcement authority when providers decline to participate in an audit. The Department occasionally encounters providers who are reluctant, or outright refuse, to make their records available. It is quite rare to actually have to suspend such providers but bringing it to these providers' attention that they can lose operating authority for refusing to allow an audit has been extremely effective in ensuring compliance with this part.

Part 8840.5800 Enforcement: violations, suspensions, revocations, and cancellations.

Subpart 1. Notice and opportunity for correction. The proposed amendment specifying that a provider found to be in violation of Minn. Stat. § 174.30 is subject to enforcement action is necessary for clarity regarding the requirements of these rules. Clarifying that the Department has the ability to enforce the provisions of the enabling statute will help ensure providers are aware of the requirement to comply with both the statute and these rules. This amendment is reasonable to account for potential future changes to the enabling statute that might occur before the next time these rules are amended. The enabling statute has historically been changed by legislative action more frequently than these rules have been amended. Specifying that providers are required to comply with both the terms of the enabling statute and the terms of these rules is reasonable to ensure clarity of expectations and that due process is followed during Department enforcement actions.

Item A. The Department proposes amending this item to clarify that Minn. Stat. Chapter 169 is the controlling source of law when determining whether a special transportation service vehicle is in a condition that is likely to cause an accident or breakdown. This amendment is necessary to keep this part consistent with the proposed amendment to Minn. R. 8840.5700, subp. 1. It is reasonable to change both this item and Minn. R. 8840.5700, subp. 1 to prevent any confusion regarding the correct order of analysis in determining whether a vehicle has met minimum safety standards.

Item C. The amendments will alter this item in several ways to clarify that providers and certain employees of providers are subject to the requirements of these rules and Minn. Stat. § 174.30. The term "or attendant" was added to clarify that both drivers and attendants used to provide special transportation service are subject to these standards. This is necessary to keep the phrasing of this item consistent.

The phrase "and Minnesota Statutes, section 174.30" has been added to clarify that covered parties must remain compliant with these rules and the enabling statute. This is necessary to prevent confusion about provisions that might later be added to the enabling statute but won't be included in these rules until the next time they are amended. Both of these changes are reasonable because they will help make the requirements of this item as clear as possible.

Finally, the amendments include the prohibition of providers to use anyone associated with the organization in a way that violates these rules or the enabling statute. If found to be using a person in

such a way, the provider is required to stop doing so until written evidence is presented to the Department proving the violation has been addressed. This amendment is necessary to specifically address the requirement that providers comply with the DHS background study process for owners and employees who may come into contact with riders or their data. This requirement was not addressed the last time these rules were written because it was not added to the enabling statute until 2015. The addition of this item is reasonable to clarify the requirements of these rules and put providers on notice of a critical requirement that overlaps heavily with the requirements of a program administered by another government agency. This amendment will not affect a provider's ability to do business unless the provider refuses to stop using an employee until he or she is compliant with the background study requirement. This is the same standard that providers are already held to for vehicle-related violations.

Item D. The Department proposes the addition of this item to clarify that if a vehicle used to provide special transportation service has a non-functioning wheelchair lift or ramp, that vehicle cannot be used to provide special transportation service rides where the rider is secured in a wheelchair. The vehicle may still be used to provide rides where a rider can safely access the vehicle and be properly secured by alternative means. This is necessary to clarify an area of uncertainty the Department is often requested to address. Department employees are regularly asked if it is a violation of these rules to provide otherwise safe special service transportation in a vehicle that does not currently meet securement standards. The addition of this item is reasonable because it provides a clear answer for both providers and Department employees.

Subpart 2. Violation determination. Allowing providers to mail, deliver, or e-mail evidence of compliance to the Department is necessary to follow common communication practices more closely. The ability to submit evidence of compliance by e-mail was part of the larger advisory committee discussion regarding the ease of communication with the Department and compliance with these rules. This change is reasonable because it will make compliance easier for all providers and equalize the options between providers in the metro and providers in Greater Minnesota. The proposed amendment also requires providers to include a copy of the vehicle inspection report with their evidence of compliance. This is necessary to ensure all violations that were noted in an inspection report have been addressed. This is reasonable because providers are issued a copy of an inspection report after every vehicle inspection and sending a copy with the proof that violations have been addressed will allow Department employees to immediately determine whether all of the listed violations were addressed.

Subpart 3. Suspension. The proposed amendment will change this subpart in several places to clarify that violations of Minn. Stat. § 174.30 are grounds for suspension and adds factors defining the circumstances under which the Department may suspend a provider. The references to the enabling statute are necessary to clarify and put providers on notice that they are subject to the statutory provisions as well as these rules. Clarifying that violations of the enabling statute are grounds for suspension under these rules is reasonable to account for the possibility that the statute may be changed before these rules are next amended. It will also help consolidate the requirements under this program which is co-regulated by the statutes and rules of the Department, DHS, and DPS. This can occasionally make it difficult for providers to find a definitive answer on regulations in one place.

The change of the phrase "the commissioner *shall* suspend a provider's certificate" to "the commissioner *may* suspend" is necessary to prevent the Department from being forced to suspend providers over relatively minor violations. The way this subpart is currently written, the Department would technically be required to suspend a provider that had not provided written proof that a violation for not having an operable flashlight had been corrected within fifteen days. The Department prefers an approach of education and follow up, except in cases of serious safety concerns.

The proposed amendments also add language including the factors the commissioner must consider when determining whether to suspend a provider's certificate of compliance. The Department must consider the number of violations found, the provider's history of the same types of violations, and the provider's general history of violations. Additionally, the rules require the Department to develop violation history review criteria and guidelines and post them on the Department's website.

Giving the Department the ability to choose whether to suspend a provider's certificate of compliance based on these factors will allow the Department to prioritize safety and to set clear standards without being forced to issue a suspension for minor infractions. This change is reasonable because the additional deference granted to the Department would be standardized by a system of making determinations based on the factors listed in the rule. Posting the criteria for reviewing these factors on the Department's website will help ensure the requirements are clear and accessible. The factors for suspension that must be considered are reasonable because they address current safety violations, and a provider's history of violations, including whether the provider has properly addressed them in the past.

Item F. This addition of the ability to suspend a provider for failure to pay a decal fee is necessary to address a 2020 legislative change to Minn. Stat. § 174.30. The requirement that providers pay a $45 fee for each decal was enacted in 2015. Since that change, the Department has spent a significant amount of time and resources determining which providers were in arrears and by how much, as well as coordinating with the Department of Revenue to properly communicate with providers that the Department had referred for nonpayment. The ability for the Department to suspend a provider for failure to pay that fee was not addressed until the change to the enabling statute in 2020. The addition of this item is reasonable because it mirrors the requirements of Minn. Stat. § 174.30, subd. 8(d) which states "If the commissioner determines that a provider has failed to pay the decal fees as required by subdivision 4, the commissioner must send written notice by certified mail ordering the provider to pay the applicable fees within 60 days after the notice was mailed."

Subpart 3a. Revocation. The addition of the phrase "contained in parts 8840.5100 to 8840.6300 and Minnesota Statutes, section 174.30" is necessary to clarify which standards must be considered when the Department is considering a revocation. This phrase is reasonable not just to make the requirements of this part clear, but also to account for potential future changes to the enabling statute before these rules are next amended.

The removal of the requirement for the Department to determine that a pattern of violations shows a "willful or reckless" disregard for health and safety is necessary for consistent enforcement. The phrase "willful or reckless" is a subjective standard that is difficult to determine, causing difficulties when attempting to impose a revocation.

The removal of the phrase "willful or reckless" is reasonable because the standards in the rules and enabling statute that providers must comply with are clear. Any pattern of violations which shows a disregard for the health and safety of the vulnerable population that uses special transportation services is cause for serious concern willful, reckless, or otherwise. The Department will still be required to consider willfulness in the factors used to determining revocation under subpart 3b but keeping it as a separate element is unnecessary.

Subpart 3c. Cancellation. The Department proposes this amendment to clarify that knowingly making a material statement that is false or fraudulent under standards provided in Minn. Stat. § 174.30 is grounds for cancellation, not just under the standards specifically provided in Minn. R. Chapter 8840.

This amendment is necessary and reasonable to account for potential future changes to the enabling statute that may occur before these rules are next amended.

Subpart 3e. Application for another certificate after a false or fraudulent statement. The addition of the proposed waiting period to reapply after certain cancellations is necessary to discourage false or fraudulent statements made on applications for certificates of compliance. It is reasonable to impose a waiting period after false or fraudulent statements made on an application because, as previously mentioned, the Department might not have an opportunity to inspect a provider's records for an entire year after an application has been processed. If a provider is intentionally hiding noncompliance or other pertinent information, it could create a significant safety risk for the vulnerable population that uses special transportation services. The proposed period of a 180-day waiting period before reapplying is consistent with the reapplication waiting period that a revocation of a certificate of compliance carries. The length of the waiting period was discussed at length with the advisory committee. Although there was some debate regarding the length of the waiting period, the consensus was that 180 days was appropriate. The Department is confident the proposed amendment will deter noncompliance.

Subpart 6. Notice of suspension, revocation, or cancellation. The proposed amendment adds the requirement that the Department send notice to the address listed on a provider's certificate of compliance rather than the "last known address." This is necessary to further clarify that it is the responsibility of providers to keep their contact information up to date. This amendment is reasonable because the new standard is easily determinable, sets a clear expectation for providers, and will not cause confusion about proper notice if a provider changes addresses but does not update its certificate of compliance. Providers are already required to notify the Department of any change to the information listed on their certificate of compliance within ten days under Minn. R. 8840.5500, subp. 7. The Department has encountered issues when attempting to communicate with providers who have changed addresses without notifying the Department, which wastes both the provider's and Department's time and resources. This can also delay Department enforcement actions when the provider claims they did not receive notice due to a change of address.

Part 8840.5900 Driver qualifications.

Subpart 6. Waiver of physical qualification. The Department proposes this amendment to change the title of this subpart from "Waiver for physical defects" to "Waiver of physical qualification." This amendment is necessary to accurately summarize the waiver process, and modernizes the language being used with more respectful terminology. The addition of the clauses under 49 CFR, § 391.41(b) have been included because they were added to the relevant portion of the Code of Federal Regulations after the previous rulemaking was completed.

Subpart 7. Other evidence of physical qualification. Changing the title of this subpart from "qualifications" to "qualification" is necessary and reasonable to remain consistent with the other subpart titles of this part.

The addition of a "valid commercial driver's license" as an alternative form of proving physical qualification under this subpart is necessary because it will minimize the redundancy of a person having to present the same information to multiple agencies. A person who applies for a commercial driver's license must go through the same process with DPS as it does with the Department. This amendment is reasonable to prevent compliant drivers from having to submit the same information twice.

Subpart 10. Age. The amendment of this title from "Age and experience" to simply "Age" is necessary and reasonable to be consistent with the change to the body of this subpart.

The removal of the requirement that a driver has at least one year of driving experience is necessary for the Department to maintain a consistent standard. It is difficult to determine if a person is compliant with this requirement using any metric other than the length of time a person has possessed a state issued driver's license. Many drivers that provide special transportation service are from another country, which often makes it difficult to document previous driving experience. It is important that the Department has a consistent standard for a situation that frequently occurs. This change is reasonable because the Department has proposed the addition of a skills assessment requirement to the driver and attendant training requirements under Minn. R. 8840.5910, which will serve to further ensure drivers are qualified to operate a special transportation service vehicle. The addition of the skills assessment will more than offset the removal of this requirement in ensuring safety by special transportation service drivers on the road. This will also provide consistency and make the age requirement under these rules the same as the age requirement under the rules for the Limousine Service program administered by the Department.

Subpart 11. Driving record. The proposed change of the term "convictions" to "a conviction" is necessary and reasonable to ensure the language is consistent with the rules of the limousine service program the Department also administers, and to clarify that even one conviction is prohibited.

Subpart 13. Provider responsibility; employee's driver's license. The proposed amendment changes the wording of this subpart to clarify that when a provider obtains a prospective employee's driver's license, the provider must ensure the license is valid at the time the review is performed. This issue was raised by the advisory committee and is necessary to clarify provider responsibility when hiring new drivers. This clarification is reasonable to ensure there is a clear standard during a critical part of the hiring process.

Subpart 13a. Provider responsibility; status of the employee's driver's license. The addition of this subpart is necessary to require providers to annually check driver records. Subpart 14 of this part previously required providers to annually check the criminal and driving records of the drivers it uses to provide special transportation service. Additionally, subpart 12 listed disqualifying criminal convictions. In 2015, the legislature repealed both subparts 12 and 14, and added the requirement that providers comply with the DHS background study system to determine eligibility. This system tracks criminal charges and convictions, but not traffic-related violations that may impact a driver's license status. The addition of this requirement is reasonable to ensure the status of the licenses for the drivers a provider employs are regularly checked. Providers are still required to not use disqualified drivers and maintain a record of license checks under Minn. R. 8840.6100. A member of the advisory committee pointed out that because of the repeal of the license status check requirement, providers are now required to perform checks but are not prescribed a schedule to do so. This amendment is reasonable because it is important that there be a clear standard providers are held to in order to ensure disqualified drivers are not used to provide special transportation service.

Subpart 13b. Provider responsibility; background study eligibility. The Department proposes the addition of the requirement that providers receive a determination of eligibility from DHS before using a driver to provide special transportation service because it is necessary to clarify that providers must comply with the requirements of the DHS background study system. This requirement is laid out in Minn. Stat. § 174.30, subd. 10(a) "Providers of special transportation service regulated under this section must initiate background studies in accordance with Chapter 245C on the following individuals."

This requirement was added to the enabling statute by the legislature in 2015. The addition of this subpart is reasonable to ensure that providers do not use employees to provide special transportation service without a determination of eligibility, and also that they stop using an employee if he or she becomes ineligible at a later time. The inclusion of the provider receiving documentation stating the driver is disqualified as the triggering event to stop using that driver was added at the suggestion of the advisory committee. This is reasonable to clarify provider responsibilities under this subpart. This provision is consistent with the DHS background study process and will provide a clear standard under these rules.

Subpart 15. Provider responsibility; statement of physical qualification. Changing the title of this subpart from "qualifications" to "qualification" is necessary to remain consistent with the other subpart titles of this part. The amendments to this subpart include the requirement that providers ensure the medical examiner's certificates or other evidence of physical qualification for the drivers they employ are current. Specifically, the provider must perform the checks in such a way that no driver it uses to provide special transportation service does so without a current medical examiner's certificate or other evidence of physical qualification. The addition of the requirement for providers to check medical examiner's certificates or other evidence of physical qualification is necessary to ensure that drivers do not perform special transportation service trips after a medical examiner's certificate has expired or a waiver has lapsed.

Subpart 16. Provider responsibility; failure to maintain physical qualification. The change to the title of this subpart amending "physical qualifications" to "physical qualification" is necessary and reasonable to remain consistent with the other subpart titles of this part.

Subpart 17. Complaint records. This proposed amendment requires providers to keep a copy of the complaints received for all attendants it employs, in addition to the drivers. This amendment is necessary and reasonable to ensure providers accurately track issues related to both the drivers and attendants they employ. This will allow the Department to check these records and any subsequent follow-up actions taken by a provider to address these issues. The population that uses special transportation service is particularly vulnerable and it is critical that issues with drivers or attendants that prevents their safe transportation are documented and addressed.

8840.5910 Driver and Attendant Training Requirements.

Subpart 1. Training required before providing special transportation service. The Department proposes changing the title of this subpart from "Training required before driving" to "Training required before providing special transportation service." This is necessary to address attendants who are also covered by this subpart and need to meet certain minimum standards before being used to provide special transportation service. This subpart governs the training providers either perform or hire Department certified trainers to perform for both drivers and attendants, addressing both here is reasonable.

The amendments also change the term "receive" to "complete" to describe the training requirements. This is necessary and reasonable to describe more accurately several of the items added to this subpart and the phrasing of subpart 2.

Item A. The proposed amendment removes the requirement that each driver and attendant complete the passenger assistance training described in subpart 5, items E to I, and adds the requirement that they complete "an orientation to common issues and instruction related to transporting passengers." This training can be performed by a provider or a Department certified

trainer. This change is necessary to allow pre-driving training to be performed by special transportation service providers without having to potentially schedule an outside trainer each time a new driver is hired. This item, as currently written, is the only one in this subpart that requires training that must be administered by a Department-certified trainer before providing STS services. All other trainings requiring a Department-certified trainer must be completed within 45 days of a driver or attendant initially being used to provide special transportation service. Providers have reported difficulty meeting this requirement due to employee turnover and a decreasing level of available Department-certified trainers.

It is often standard practice by trainers to charge by training session, rather than by attendee. This can significantly increase the cost of training employees as well as make scheduling difficult for all parties involved. Requiring drivers and attendants to complete orientation to common issues and instructions related to transporting passengers under the proposed language is reasonable because the item will continue to properly address rider safety while allowing providers to work with trainers to ensure that all employees are properly trained on passenger assistance under Subpart 5 within the appropriate timeline. The requirement that drivers receive orientation in common issues and instructions related to transporting passengers is reasonable because it is more encompassing than the currently required passenger assistance and covers all the minimum basic information a driver or attendant needs to know when performing special transportation service.

Item F. The requirement for instruction on maintaining cleanliness of the vehicle was added at the suggestion of the advisory committee. The requirement that drivers and attendants be trained in how to properly sanitize and maintain the cleanliness of the vehicle is necessary not just for general best practices, but because a particularly vulnerable population uses special transportation service. One of the most common complaints the Department receives is that vehicles used for special transportation service were not properly cleaned before a ride. The addition of the requirement that drivers and attendants be trained in the use of the body fluids cleanup kit is necessary because the cleanup kit is also being added as required equipment under these rules. Many providers already carry a body fluids cleanup kit and report regularly having to use them. It is reasonable to require this training before a driver or attendant is used to provide special transportation service because it is anticipated these kits will be used on a regular basis and it is likely that one will be needed before 45 days when the other required trainings must be completed.

Item G. The requirement for evaluation of behind-the-wheel skills was added based on the recommendations of the trainer group. This requirement is necessary to ensure passengers are not transported by drivers who do not at least meet the minimum standards necessary for safe transportation. Drivers are required to complete an additional defensive driving course within 45 days of being hired, but it is necessary to assess the skills of special transportation service drivers and ensure they are able to perform the maneuvers necessary to provide safe transportation before they begin providing STS services.

The areas of evaluation are reasonable because they were selected based on the DPS type III school bus requirements. The type III school bus program regulates vehicles weighing 10,000 pounds or less with a seating capacity of less than ten. Because of the similarity of the vehicles used to provide these services and the vulnerability of both populations that use the services, similar requirements for the programs is appropriate. Additionally, many special transportation service providers also perform type III school bus transportation. The more similarity between the two programs, the easier it will be for providers to comply with the requirements of both programs.

Subpart 2. Additional training required. The inclusion of the references to the required trainings under subparts 5a and 6a is necessary and reasonable to make the timing requirements of this part clear.

Subpart 4. First aid training.

Item G. The addition of the requirement for training in recognition of medical complications related to diabetes, hyperglycemia, and hypoglycemia was recommended by both the trainer group and the advisory committee. This item is necessary to account for passengers who have these illnesses and use special transportation services. A major purpose of the first aid training is to teach drivers and attendants how to determine when it is necessary to request emergency medical assistance. Training in recognition of medical complications related to diabetes, hyperglycemia, and hypoglycemia is reasonable, particularly when considering that some rural special transportation service rides are lengthy, and complications may require immediate medical attention. It is important for drivers to recognize complications and call for emergency medical assistance quickly.

Item H. The addition of the requirement for drivers and attendants to be trained in recognizing the signs of a mental health episode was a recommendation of both the trainer group and the advisory committee. Mental health first aid, in general, was a subject of much discussion during the advisory committee process. The addition of this item is necessary to address the increase in passengers using special transportation service in a way that directly relates to a mental health diagnosis. In 2015 the legislature added nonemergency medical transportation to the list of regulated activities under Minn. Stat. § 174.30, subd. 1. Consequently, special transportation service now includes a much higher number of rides where a passenger is being transported to or from medical appointments related to mental health, particularly minor passengers with a diagnosis of autism. Given this increase, it is reasonable to require drivers and attendants to learn how to recognize signs of a mental health emergency or panic attack in the required first aid training under this subpart.

Subpart 5. Passenger assistance training.

Item B. The Department proposes that this item be amended to include the requirement that drivers and attendants be trained in securing common peripheral items and assistive devices. The addition of this requirement is necessary because riders often bring medical equipment or other items with them. The Department is frequently contacted with questions about this issue, and it was brought up several times during the advisory committee process. Special transportation service passengers often ride with accompanying oxygen tanks and other medical equipment, and it is important for these items to be secured. This amendment is reasonable because if these items are not properly secured, they may be thrown with great force if the vehicle comes to a sudden stop, rapidly accelerates, or is involved in an accident. If this were to occur, it would be very dangerous for both the passengers and driver.

Item C. This proposed amendment includes several changes. The terms “children” and “people with mental and physical [disabilities]” would be added to the groups of people that must be discussed during this training. The addition of the requirement that attitudes toward children be discussed is necessary and reasonable to address the increase in passengers who are minors since these rules were last amended. The addition of the modifier “mental and physical” to the types of disabilities covered under this item is reasonable, and necessary to clarify how different types of disabilities can present the need for unique requirements or accommodations that may affect how a passenger is transported. Both these changes were suggested by the advisory committee to address a broader group of riders. The change in the requirement that the training include the participation of the elderly and persons with

disabilities “when possible” is necessary and reasonable because it is simply not feasible to guarantee this requirement is met at every passenger assistance training performed in the state.

Item D. The addition of the requirement for discussion of strategy and resources for situations where communications may be limited due to language barriers was a recommendation by the trainer group. The addition of this item is necessary to address the fact that a significant number of special transportation service passengers, drivers, and attendants do not share the same first language. The addition of this item is reasonable because even when these parties may be generally able to communicate, it is important to ensure that more complicated or delicate issues involved in special transportation service are properly communicated and understood amongst all parties.

Item E. The Department proposes amending this item to add the term “mental health” to the list of factors discussed. This addition is necessary and reasonable because, as previously mentioned, in recent years there has been a significant increase in people using special transportation services to get to and from medical appointments related to a mental health diagnosis. This amendment was part of the broader advisory committee recommendations to ensure mental health is properly and fully addressed under this part.

Item G. This proposed amendment of the addition of the phrase “communicating with” is necessary to ensure passengers are not transferred in a way that makes them uncomfortable. Transferring passengers is a delicate procedure requiring effective communication between the transferor and the transferee. The Department has received numerous complaints about the way passengers have been transferred that could have been resolved had the driver or attendant properly communicated with the passenger. The addition of this item is reasonable to ensure drivers and attendants are properly trained in working with passengers to ensure they are comfortable during a process which often requires close proximity and physical contact.

Item K. The Department proposes adding the requirement that the passenger assistance training under this part include a discussion of other service animals in addition to guide dogs. This amendment was recommended by the advisory committee to address the recognition of different types of service animals under the ADA. The amendment of this item is necessary and reasonable to address the increase in other types of service animals that drivers and attendants may encounter when providing special transportation services.

Item L. The addition of the requirement for training in properly communicating safety concerns related to assistive or mobility devices is necessary to ensure drivers and attendants properly communicate safety issues that may arise from a passenger’s preferred or requested manner of transportation. The addition of this item is critical to ensure special transportation services are provided in a safe and respectful manner. This item differs from item G in that it addresses concerns by the driver or attendant about the safety of the way the passenger prefers to be transferred, not the other way around. Special transportation services are used by a particularly vulnerable population and rides often involve physically touching a person to transfer him or her into the vehicle. It is important that drivers and attendants properly communicate with riders when doing this to ensure safety and comfort for all parties. The Department has received many complaints that could have been resolved more easily if there had been effective communication between a driver and a passenger regarding why the driver felt transporting the passenger in particular way, or in a particular mobility assistance device, was not safe. The addition of this item is reasonable because, similar to item G, it is also about communicating with passengers regarding the manner in which they will be transported. However, it is necessary that this distinction be made because communicating safety concerns related to transporting riders in certain

mobility devices is an important issue for providers. This concern was expressed several times during advisory committee meetings.

Subpart 5a. Stretcher transportation assistance training. The addition of the requirement for stretcher transportation assistance training was a recommendation of the trainer group. This subpart is necessary to address a method of special transportation service that has become more common in recent years. These rules have addressed vehicle requirements for stretcher transport since they were last amended. However, prior to the addition of the DHS nonemergency medical transportation program in 2015, special transportation service providers that provided stretcher transport were generally also ambulance providers and met the safety requirements through that training. Since nonemergency medical transportation was added to special transportation service, there has been an increase in providers that do not fall under the ambulance service requirements, and do not receive that training. The proposed subpart is intended to supplement the passenger assistance training in subpart 5, adding a requirement specifically for stretcher transportation. This is reasonable because many providers that perform stretcher transport already perform in-house trainings that are consistent with other requirements, particularly providers of ambulance service. Drivers and attendants who have been trained under the ambulance service requirements may apply for exemption from stretcher transport assistance training under the newly proposed language in subpart 10.

Subpart 6a. Child seat training. The Department proposes the addition of child seat training to ensure that drivers and attendants who provide special transportation service to children are sufficiently trained to safely secure those children during transport. The addition of the subpart is necessary because it is of utmost importance that children using special transportation service are transported safely. The three-hour time requirement is reasonable because it based on industry standards for length of these types of trainings and is consistent with the DPS requirement for childcare/foster care child passenger safety classes.

Subp. 9. Refresher course and continuing education.

Item B. The addition of requirement for abuse prevention training every three years is necessary to ensure drivers and attendants properly retain and consistently implement the knowledge and skills learned in the initial abuse prevention training required under Minn. R. 8840.5910, subp. 8. It is reasonable and critically important that all the initial trainings are addressed every three years to ensure that drivers and attendants remain aware of, and follow, best practices, especially for abuse prevention considering the particularly vulnerable nature of the population that uses special transportation service.

Item C. The Department proposes the requirement for training in proper securement every three years for the same reasons as it proposes the addition of item B. It is important that this training is completed to ensure best practices are followed when securing passengers. Although this is an activity a driver or attendant may engage in daily, the addition of this item is reasonable because not only is it important to ensure that drivers and attendants properly retain and implement best practices, but those best practices may have evolved since a driver or attendant's initial training was performed.

Item F. The proposed reduction in continuing education hours required was included at the recommendation of the trainer group. The change lowers the number of hours required for continuing education related to providing special transportation service from seven to three. This amendment is necessary to address regular feedback the Department receives, stating the difficulty of consistently being able to design a training that includes seven hours of suitable material. The proposed amendment is reasonable because the four fewer hours of training a driver or attendant will receive under this item

is balanced out by the additional four hours included under items B and C. When this subpart was written, the seven-hour requirement was intended to give trainers flexibility in designing these courses to account for potential changes to the field. It was also intended to lower the amount of repetition that would occur for drivers and attendants who repeatedly took these courses. Given the consistent feedback that finding enough new material is difficult and the addition of four hours of training under items B and C, the Department proposes this amendment to provide clear course expectations without increasing the overall length of the trainings required under this subpart.

Subpart 10. Commissioner to consider training equivalents. The purpose of this new subpart is to expand on the existing practice of exempting drivers and attendants who possess a valid first aid certificate from the first aid training requirements under Minn. R. 8840.5910, subp. 4. The first aid exemption is already allowed under Minn. R. 8840.5910, subp. 2(a). The proposed subpart will allow a similar exemption to apply to other types of training that the Department determines meets or exceeds the training requirements of this part. This subpart is necessary because many providers offer other types of transportation that fall outside of special transportation service regulations but require similar types of training. In many cases, the training requirements for these other types of transportation are more stringent than the requirements under these rules. The addition of this subpart is reasonable because it will prevent drivers and attendants from being required to take trainings that cover the same material twice. The requirement that the Department follow the same procedures in Minn. R. 8840.6200 will ensure consistency in application, and the requirement that the Department provide a written response to requesting providers within 30 days is consistent with other time requirements in these rules. The requirement that providers keep copies of the approval is reasonable to ensure both parties are clear about who has been exempted from a training requirement and is consistent with the other records requirements for drivers and attendants.

Subpart 11. Course content. The Department proposes the requirement that all trainings under this part include a proficiency assessment element, which is necessary to help ensure trainees retain the information being taught. The addition of this subpart is reasonable because it will not mandate a requirement for trainees to pass a test by a specific percentage, but rather allow flexibility in how the trainer verifies that trainees are learning what they need to learn. The assessment process is already commonplace for many trainers and was recommended as best practices by the trainer group.

The new language also addresses distance and online learning, which is necessary to address a now common method of performing trainings. Although these concepts existed when these rules were last amended, they are far more frequently encountered now. The Department has discovered that many trainers have been utilizing online and distance options to provide special transportation service trainings and has approved several online training modules. This style of training has the benefits of flexibility in timing, accessibility to trainees around the state, and being easier to perform trainings for smaller groups. However, it is important that certain portions of trainings include the trainer observing the trainee physically performing various procedures covered by the training. It is also important that trainings be consistent in their material and methods. It is reasonable that the Department specifically evaluate the online aspects of a training to ensure these issues are addressed.

8840.5925 Vehicle equipment.

Subpart 1 Safety equipment.

Item C. The requirement for vehicles to carry a body fluids cleanup kit is necessary to ensure special transportation service vehicles are sanitary during rides. This topic was brought up during the advisory committee process because many providers are already carrying these kits as part of their

standard equipment. The population that uses special transportation service is particularly vulnerable. Many of them have medical conditions that make them more susceptible to illness or result in incidents that require the vehicle they were in to be sanitized after their ride. This item is reasonable because the language used to define the body fluids cleanup kit was taken directly from Minn. Stat. § 169.475, which sets the standards for type III school busses. The similarity between the two programs makes the shared language appropriate.

Item D. The Department proposes amending this item to require that cellular phones used to satisfy the two-way communication requirement meet the hands-free standards under Minn. Stat. §169.475. The statute states that cellular telephones may only be used when the vehicle is not in motion or a part of traffic unless it meets the exceptions of Minn. Stat. § 169.475, subd. 3. Special transportation service vehicles are required to be operated in compliance with Minn. Stat. chapter 169 generally, but this amendment is necessary to clarify that operating a cell phone while performing special transportation service must be done in compliance with section 169.475. Many, if not most, providers use cellular phones to satisfy the two-way communication requirement. This may be the reason that one of the most common complaints the Department receives is that a driver was talking on the phone while driving. Clarifying that a violation of Minn. Stat. § 169.475 is also a violation under this part is reasonable because it will allow the Department to resolve these complaints more easily and ensure vehicles are operated safely.

Item F. The proposed amendment would change this item to mirror the current child restraint requirements under Minn. Stat. § 169.685, subd. 5(b). This is necessary to ensure the rules are consistent with the requirements of Minnesota Statutes and do not hold providers to two different standards. These rules currently require drivers and attendants to comply with incorporated federal standards which are less stringent than the current state standards. It is reasonable to modify this item to include the state requirements that must be met by all vehicles on Minnesota roads, who do not fall under an exception or exemption, because all special transportation service vehicles are already held to this higher standard.

Item G. The addition of the requirement for seat belt extenders was a recommendation by the advisory committee. The addition of this item is necessary to ensure the safe securement of riders who, due to their size, cannot be properly secured by seatbelts as installed by manufacturers. Seatbelt extenders are relatively common items that can be acquired from dealerships and manufacturers, at little to no cost to providers. It is already a requirement under both these rules and Minnesota Statutes that passengers be properly secured during special transportation service rides. The addition of this item is reasonable to ensure the necessary equipment is available for all riders to be properly secured. Multiple riders have reported difficulty in finding special transportation service vehicles in which they can be properly secured while riding in a passenger's seat without the use of a seatbelt extender.

Item I. Striking the exemption for taxis under this item is necessary to ensure emergency equipment is available for all special transportation service rides, regardless of any other uses for the vehicle. The 1992 amendment to these rules exempted taxis from the requirement to keep a blanket in the vehicle. At the time, the industry was concerned about theft of blankets if they were required in vehicles. The proposed amendment is reasonable because it does not require that a blanket be kept in the cab of the vehicle. A blanket could be stored in the trunk, or possibly the glovebox. Taxis are already required to carry all the same equipment as other providers other than a blanket. If a vehicle is stuck on the side of the road during a Minnesota winter, the rider needs to be kept warm, whether or not the vehicle they are transported in is also used as a taxi. This is particularly true in rural areas where a

replacement vehicle or ambulance can take a long time to arrive in the event of an accident or breakdown.

Item K. This item has been amended to require that all special transportation service vehicles carry a device capable of cutting securement straps, not just those that are equipped with wheelchair securement devices. This is necessary to ensure passengers who are unable to free themselves can be removed from the vehicle in the event of an accident, breakdown, or medical emergency. Securement straps are similar in many ways to seatbelts, and both can malfunction in a way that prevents a passenger from leaving their seat or position. Additionally, a particularly vulnerable population uses special transportation service, and many may be unable to free themselves in the event of an emergency, regardless of whether they were being transported in a wheelchair. This amendment is reasonable to ensure a passenger can be safely removed from their position if a securement strap or seatbelt otherwise prevents it.

Subpart 6 Vehicle identification. The Department proposes amending this item to remove the option of marking a vehicle with a number assigned by the Department. This is necessary and reasonable to remain consistent with the proposed requirement that providers obtain a USDOT number under Minn. R. 8840.5500, subp. 2(A)(2).

8840.5940 Vehicle Construction Standards.

Subpart 3 Holes. The proposed amendment is necessary to institute a more easily measured standard regarding holes and openings in vehicles and to make special transportation service vehicle requirements more consistent with the requirements of the other programs administered by the Department. The current language requires the Department to assess whether a hole admits exhaust gases, which is difficult to determine. It is far easier to determine if a hole or opening is necessary to the operation of the vehicle. The issue of difficulty determining the standard was raised during the advisory committee process. This requirement is reasonable because it closely models the language of the requirements for commercial vehicles under the Code of Federal Regulations. 49 CFR § 393.84 states that floors shall be “free of unnecessary holes and openings.” This is the same standard being proposed here but applied to the entire vehicle rather than just the floor. Because this is the federal standard for commercial vehicles it is also the requirement imposed on all other commercial vehicles programs regulated by the Department. This amendment will make the standards under these rule clearer and will make the standards between Department administered programs more consistent.

8840.5950 Standards for Operations of Vehicles

Subpart 1 Operation. The proposed amendment changes this subpart in three ways. First, it will require providers to maintain records of daily safety inspections, second, it removes the provision requiring weekly or 1,000-mile inspections, and finally, it moves some of the items that were required to be inspected weekly to the list of those required to be inspected daily.

The addition of the requirement that daily safety inspections be documented is necessary to ensure the Department is able to verify that daily safety inspections have been performed. These rules currently require providers ensure daily safety inspections are performed, but there is no documentation requirement. Thus, there is no way for the Department to easily verify these inspections were performed. This topic was discussed at length during the advisory committee process. It is reasonable for the Department to be able to confirm that providers are maintaining their vehicles to safely transport people who use special transportation service.

The list of items that must be inspected daily will be amended to use the same items as the federal daily vehicle inspection requirements, as well as wheelchair and stretcher loading devices and securement systems. This is necessary to ensure the requirements under this program are consistent with other commercial vehicle programs the Department administers. These requirements already apply to any providers that operate in an interstate capacity. This change is reasonable because consistency in the daily inspection requirements will make compliance easier for companies that fall under multiple programs administered by the Department. Consistency with federal language will also make compliance easier for providers that are directly regulated by both the Department and the federal government.

The removal of the requirement for weekly visual inspections is necessary for several reasons. Some of the items on the current weekly vehicle inspection list should actually be checked every day the vehicle is used, some parts of the vehicle cannot be properly inspected without using a vehicle lift making compliance difficult, and the current language is inconsistent with other commercial vehicle programs the Department administers. The proposed amendment will require that wheelchair and stretcher lifts and securement systems be inspected daily. This is reasonable because it is critically important to identify issues that would prevent a passenger from being safely transferred or secured before a driver or attendant attempts to transfer or secure that passenger. Similarly, functioning brakes, steering mechanisms, and indicators are all paramount to the safe operation of a vehicle and have been added to the daily inspection list. Finally, certain items under the weekly inspection cannot be properly inspected without the use of a vehicle lift, and possibly additional tools. Exhaust systems, frames, suspensions, and belts often cannot be inspected while the vehicle is on the ground, or without the aid of mechanical tools. It is rare for a provider to have regular access to these items, which makes full compliance difficult and expensive.

Subpart 2 Smoking. The proposed amendment bans vaping as well as smoking in special transportation service vehicles, removes the exemption for taxis, and requires a vehicle be thoroughly cleaned and odor free if this subpart is violated. The inclusion of the ban on vaping was a recommendation by the advisory committee. Vaping has only recently become widespread and was not a concern the last time these rules were amended. Vaping releases many of the same chemicals as cigarettes or cigars and can cause significant odor. It is reasonable and necessary to ban vaping in special transportation service vehicles. Smoking and vaping should not be done in vehicles that contain or will contain the vulnerable population that use special transportation services, regardless of whether the vehicle is also used as a taxi. The addition of the requirement for “cleaning so as to be odor free” when this subpart is violated is reasonable and necessary to ensure there is a measurable standard to determine compliance. This portion of the amendment was suggested by the advisory committee and follows the best practices many providers have already implemented.

Subpart 3 Seat belts. The proposed amendment requiring child restraint systems to be used for all child passengers younger than eight and shorter than four feet nine inches is necessary to make these rules consistent with Minn. Stat. § 169.685. This statute is part of the minimum standards for all vehicles on the road in Minnesota. The proposed removal of the exception for taxis is necessary for the same reason. This amendment is reasonable because it will prevent confusion from being held to two standards and because passenger safety should not depend on whether the vehicle is used for something else besides special transportation service.

Subpart 3a Heating and air conditioning. The addition of the requirement that heating and air conditioning systems be functional is necessary to ensure that passengers travel safely and comfortably even in extreme temperatures. Besides being a particularly vulnerable population, people who use

special transportation services often spend a significant amount of time in vehicles during rides. This is especially true for riders in rural areas who may have to travel more than an hour to reach their destination. The requirement that the vehicle have functioning heating and cooling systems, if so equipped, is reasonable to avoid requiring significantly expensive upgrades for special transportation service vehicles that are not equipped with these systems. This phrasing was included at the recommendation of the advisory committee. It is exceedingly rare to encounter a vehicle that is not equipped with a heating and air conditioning system, so the Department does not anticipate significant issues with compliance.

Subpart 5 Emergency policy. This Department proposes amending this part to require drivers or attendants who fail to follow the provider's emergency policy to be retrained on the emergency policy before being used to provide special transportation service again. This amendment is necessary to ensure emergency procedures are followed. It is critical that proper procedures are followed in the event of an emergency. This amendment is reasonable because it only requires that a relevant training be performed to address an important issue. There is no punitive element.

8840.5975 Standards for maintenance.

Subpart 1 Maintenance. The Department proposes an amendment to item D of this subpart to require the interior of the vehicle be free from debris and tripping hazards. This is necessary to ensure passengers can safely use special transportation services. People that use special transportation services often have difficulty moving without assistance. Debris and tripping hazards are therefore particularly problematic.

8840.6000 Insurance.

Subpart 1 Minimum coverage. The proposed amendment to this subpart will require providers to maintain a combined single limit insurance policy rather than allowing an option of varying limits for individual bodily harm, group bodily harm, and damage to property. It will also increase the minimum liability coverage from $300,000 to $500,000. Finally, this amendment will require that all providers maintain the same minimum level of insurance rather than differentiating by private, municipality, and state providers.

The two main considerations in determining the necessity of requiring providers to carry combined single limit policies were availability of policies and the minimum insurance requirements of managed care organizations. Although it was common practice when these rules were last amended, it is now rare for insurance companies to offer policies at this level of coverage other than combined single limit. The managed care organizations, with whom providers contract to connect with riders, also require minimum levels of insurance. Typically, these organizations require providers to maintain combined single limit policies. Requiring providers to maintain combined single limit insurance policies is reasonable because it is consistent with industry standards for both insurance providers and managed care organizations.

Increasing the level of required insurance coverage is necessary to bring the Department's requirement in line with industry standards and to ensure providers that do not contract with managed care organizations maintain a similar minimum level of insurance coverage as those that do. These rules have not been amended since 2004, it is important that the minimum level of insurance be adjusted to account for current costs and industry standards for coverage. Most providers contract with a managed care organization and therefore must meet the minimum level of insurance coverage required by those contracts. However, some providers do not engage in this practice, so they are not required to meet the

minimum level of insurance coverage required by those organizations. It is necessary to increase the minimum level of insurance coverage for all providers to ensure the certainty of a claim being covered does not vary depending on whether a provider has a contract with a managed care organization.

The increase in the minimum coverage from $300,000 to $500,000 is reasonable because managed care organizations require at least $500,000 minimum limits. It is common practice by managed care organizations to require far more than the $500,000 minimum limits, some as high as $1.5 million or more. However, this rule covers all levels of nonemergency medical transportation, which are all reimbursed at different rates. The Department does not control the amount providers are reimbursed for rides and must account for providers who only offer the lower reimbursed levels when determining the appropriate amount of insurance each provider must be required to purchase. An increase in minimum coverage from $300,000 to $500,000 is reasonable considering any provider contracting with a managed care organization would be required to carry at least that amount.

The removal of the differentiation between private providers, municipalities, and the state is necessary and reasonable to account for the inclusion of nonemergency medical transportation in these rules and to prevent redundancies. The original differentiation between private providers and the state within these rules was put into place to account for the Minnesota Tort Claims act under Minn. Stat. § 3.763. This section limits the liability of the state by setting maximum tort claim amounts for instances when state employees are acting within the scope of their employment. The application of Minn. Stat. § 3.763 is not dependent on its inclusion in these rules. Additionally, the inclusion of the DHS nonemergency medical transportation program caused significant overlap between DHS and the Department. There are several institutions that receive state funding or are owned by the state that provide nonemergency medical transportation in a secondary capacity. The Department does not wish to leave open the interpretation that it possesses the ability to set minimum insurance levels for other agencies. The previous minimum level for municipalities was almost identical to that of private providers. Imposing one standard will ensure efficiency and clarity without sacrificing level of certainty that an insurance claim will be covered.

8840.6100 Records.

Subpart 1 Availability to the commissioner. The proposed amendment will change this subpart in three ways. First, language will be added to clarify that providers must keep all records required under Minn. Stat. § 174.30. This is necessary to address the possibility that the enabling statute may change before these rules are next amended. This change is reasonable to ensure providers are able to easily determine standards under these rules.

The second change will require providers to maintain records on forms prescribed by the commissioner, or on substantially similar documents. This is necessary to address improper or incomplete documentation by providers. The change is reasonable because it gives providers a framework for maintaining necessary information while allowing flexibility for providers who prefer their own forms. This is also consistent with the records requirements of other commercial vehicle programs the Department administers.

Finally, this amendments to this subpart will explicitly allow providers to keep records electronically, but in a manner that they may be presented at the provider's principal place of business upon request by the Department. This is necessary to allow standard business practices while maintaining provider responsibility for records. It is reasonable because it ensures the Department can still properly audit records while allowing providers flexibility in business practices.

Subpart 3 Drivers.

Item A. Requiring that each driver's name be recorded as it appears on his or her driver's license is necessary to ensure that the driver's legal name and proper spelling are used when checking the driver's license status and background. The amendment is reasonable because the Department must check multiple databases maintained by several different agencies to verify compliance with these rules. It is reasonable to require the name be recorded as it is shown on the driver's license because it is the driver's legal name and a driver cannot be used to provide special transportation service without a driver's license.

Old Item C. The Department proposes removing this item because of the difficulty in defining what constitutes one year of driving experience. This is necessary to ensure the standards under these rules are clear and consistent. The phrase "one year of driving experience" is a term of art that is only used by the Department. There is no clear guidance from any other agency that would specifically define who would and would not qualify as having a year of driving experience. There are several situations in which a person's driving experience may be difficult to document and quantify. For example, many drivers used to provide special transportation service are from another country and often have driven in that country for years before they began driving in the United States. On several occasions, the Department has encountered drivers during audits who have driven in the United States for less than one year but who have driven in another country for many years. The removal of this requirement is reasonable because it will ensure the Department uses clear and consistent standards. These rules will still ensure drivers have the necessary level of driving experience and skill because drivers used to provide special transportation service are required to have the proper license for the class of vehicle driven and will have to complete the evaluation of behind-the-wheel skills added to Minn. R. 8840.5910, subp. 1, item G.

Item E. Changing the term "before driving" to "before providing special transportation service" is necessary to address the possibility of a driver being used as an attendant before being used as a driver. This amendment is reasonable because, in either case, the employee must complete the appropriate training before being used to provide special transportation service. This amendment is consistent with the use of the phrase "before providing special transportation service" elsewhere in these rules, and with proposed amendments to the phrase "before driving" elsewhere in this SONAR.

Item F. The Department proposes amending this item to require that providers maintain the documents relied upon to determine that a driver met the minimum qualifications of Minn. R. 8840.5900. This amendment is necessary to replace a previous obligation that was repealed by the legislature in 2015. Both the driver's criminal background and driver's traffic record check were previously addressed under Minn. R. 8840.5900, subp. 14. When the legislature added nonemergency medical transportation to the special transportation service program, it added the requirement that providers comply with the DHS background study system. Because the original criminal background check system was superfluous, the legislature struck that subpart. However, this also removed the requirement to maintain records of a driver's traffic background and license status. The DHS background study system does not track this information. The addition of this requirement is reasonable to allow the Department to properly audit provider background checks of drivers' traffic background and license status.

Item G. Striking the language regarding school bus endorsements and adding language referencing alternative information is necessary to address the other ways a driver can currently, and might in the future, show proof of possessing a valid medical examiner's certificate other than by

physically possessing the actual certificate. This amendment is reasonable because it explicitly limits the alternative manners of showing compliance to methods allowed by Minnesota statute or rule.

Item H. The addition of this item will ensure providers have properly entered a driver into the DHS background study system and received confirmation that the driver is eligible before using them to provide special transportation service. This is necessary to comply with the requirements of Minn. Stat. § 174.30, subd. 10(c) "The transportation service provider shall not permit any individual to provide any service or function listed in paragraph (a) until the transportation service provider has received notification from the commissioner of human services." Specifically, the provider may not use that person to provide special transportation service until the provider has received confirmation that the person is eligible. The addition of this item is reasonable because it mirrors the requirements of the enabling statute.

Subpart 4 Attendants.

Item A. Specifying an attendant's name must be the same as it is on their government issued identification is necessary to ensure consistency between the records of different government agencies. This amendment is reasonable because it will prevent confusion and incorrect identification of attendants during the credentialing and audit processes when Department employees have to cross reference between multiple databases controlled by multiple agencies.

Item D. The addition of this item is necessary to ensure providers have properly entered attendants into the DHS background study system and have received confirmation that attendant is eligible before using him or her to provide special transportation service. As with Minn. R. 8840.5525, subp. 2, item D, this is necessary to comply with the requirements of Minn. Stat. § 174.30, subd. 10 (c). The addition of this item is reasonable because it also mirrors the requirements of the enabling statute.

Subpart 8a Trip records. The Department proposes the addition of this subpart because it is necessary for clarity to address the addition of the statutory requirement that providers maintain records of special transportation service trips performed. In 2020, the legislature added this requirement to Minn. Stat. § 174.30, subd. 2a (b)(6). It states that providers must maintain "a record of trips, limited to date, time, and driver's name." The addition of this subpart is reasonable because it mirrors the requirements of the enabling statute.

Subpart 9 Safety inspection and maintenance records. The proposed amendment will change this subpart to address the other ways a provider could show compliance with the requisite federal motor vehicle safety standards, other than a federal certificate of compliance with those standards. This amendment is necessary and reasonable to clarify the acceptability of these alternative ways of showing compliance under Minn. R. 8840.5940.

Part 8840.6200 Certification of training courses and instructors.

Subpart 4 Instructors.

Item B. The proposed amendment will change the wording of this requirement to specify that an instructor must have work experience interacting with people with disabilities, alter the requirement so that the experience be with disabilities in general rather than just physical disabilities, and replace the phrase "their effect on" with "how those disabilities, aging, and communication disorders may affect."

The change of the requirement that the work experience be in interacting with people with disabilities is necessary to ensure actual face-to-face experience with people with disabilities, not just

experience at a facility that serves those with disabilities. The change to the requirement that the experience be with disabilities generally, not just physical, is necessary to account for the non-physical disabilities some people who use special transportation service have. The replacement of the phrase "their effect on" with "how those disabilities, aging, and communication disorders may affect" is necessary for clarity and consistency within this item. These changes are reasonable because they ensure this item addresses actual work experience with people with all types of disabilities and make this item clearer.

Item C. The Department proposes altering this item to refer to training required before providing special transportation service, rather than training required before driving. This amendment is necessary and reasonable to remain consistent with the other proposed changes to the term "training required before driving" within these rules.

Subpart 7 Certificate of course completion. The proposed amendment will change this subpart to require the Department to withdraw a trainer's certificate if the trainer issues a materially false or fraudulent certificate of course completion. The proposed amendment is necessary to ensure trainers provide the full and complete courses required by these rules. In their current state, these rules require the commissioner to immediately withdraw the certification of a trainer after the Department has audited that trainer's course and determined it does not meet the standards of these rules. The proposed amendment is reasonable to provide an enforcement mechanism for the instances when a trainer has issued a certificate for a course that did not meet the requirements of these rules but that the Department did not audit. For example, courses that are allegedly taught during a session that is shorter than the time requirements, or that are reported to the Department as one course but titled as a different one on the corresponding certificate. Historically, most trainers do not engage in these practices, but the Department has discovered several instances of both examples. The Department requires drivers and attendants who attend these courses to be retrained, but a specific enforcement mechanism to address trainers who engage in these practices is reasonable to prevent reoccurrence.

8840.6250 Audit of courses.

Subpart 1 Auditing authority. This amendment is based on recommendations from the advisory committee and the trainer group. It will require trainers to provide the date, time, and location of upcoming trainings upon the Department's request. This amendment will replace the 72-hour reporting requirement the Department proposes repealing under Minn. R. 8840.6200, subp. 6. This change is necessary because many providers train their own drivers, so many trainings occur on quite short notice. Additionally, these trainings are generally provided one-on-one over the course of up to several weeks. The amendment is reasonable because it will allow the Department to gather information on trainings it intends to audit, but it will also allow providers to maintain best training practices while still communicating with the Department.

Subpart 2 Withdrawing certification. The proposed amendment to this subpart will require that the Department withdraw the certificate of a trainer who refuses to allow an audit. This amendment is necessary to ensure the Department has adequate oversight over training courses. It is important that the Department be able to withdraw a trainer's certificate if they refuse to allow an audit. If a trainer does not provide an opportunity for the Department to audit their course, the Department cannot determine whether that course meets the standards of these rules. The Department has encountered a number of trainers who attempt to avoid giving anything but cursory information about their courses and will cancel a course if they discover it will be audited. In these instances, the Department is unable to determine whether a training is actually being performed in a way that meets the requirements of

these rules. This amendment is reasonable because it is consistent with the standards for a provider who refuses to allow an audit under part Minn. R. 8840.5700, subp. 5. It is also consistent with the standards for an operator who refuses to allow an audit under the Department's limousine service permit program.

8840.6300 Variance.

Subpart 1 Elements. The proposed amendments specify the information required to request a variance. The first requirement for the petition is to submit all information required by Minnesota Statutes, section 14.056, subdivision 1. This is reasonable because the statute contains the standard information required for an applicant to submit a petition for variance from any Minnesota Rule. The change is necessary to ensure petitions for variance include sufficient details for the department to consider.

The second requirement for the petition is to demonstrate that the applicant meets the criteria in items A-C. The criteria is unchanged from the current rule.

Subpart 6 Conditions and duration. The addition of this subpart was a recommendation of the Revisor's office. This subpart is necessary to clarify the Department's ability to impose conditions when granting and renewing variances within the confines of Minn. Stat. § 14.056. The addition of this subpart is reasonable because it is a direct reference to statute which will make it easier for providers to determine what parameters dictate the Department's ability to add conditions when granting or renewing variances.

Regulatory analysis

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

Classes Affected

The classes of persons most likely to be affected by the proposed amendments to these rules are providers of special transportation service, special transportation service trainers, managed care organizations, insurance providers, and the individuals who use special transportation services. Providers are most likely to bear any additional costs that may arise from the implementation of the amendments to these rules. However, hopefully any additional costs of compliance will be balanced out by the increased efficiencies created through some of the proposed amendments. Both trainers and managed care organizations may incur incidental costs when adjusting their practices to stay in compliance with the amended rules.

The most tangible new costs will be for insurance and additional vehicle and safety equipment. While the increase in minimum coverage is not insubstantial, the amount the Department proposes is consistent with the lower end of insurance coverage currently required by managed care organizations, some of which require minimum coverage of up to $1.5 million per claim. Many providers are already required to carry substantially higher insurance plans than what the Department proposes, due to their existing contracts. It is possible the increased minimum being proposed will result in increased costs for some providers, the Department does not foresee it being a substantial increase in cost.

The Department is proposing the addition of several mandatory pieces of equipment. Specifically, the Department proposes requiring all vehicles be equipped with a body fluids cleanup kit, a seatbelt extender, blanket, and a tool to cut seatbelt or other straps. The associated costs should be minimal as these items can be purchased individually for less than twenty dollars each. Strap cutters and emergency blankets can both be purchased for less than three dollars. Seat belt extenders can be purchased for around ten dollars, and often for less if the vehicle was purchased at a dealership. Many vehicles already carry the proposed additional equipment. It is common practice for many providers to carry a body fluids cleanup kit in their vehicles. Similarly, some providers already have seatbelt extenders available. And it should also be noted, seatbelt extenders will not be required in all vehicles, only that they be available when necessary. Finally, the Department is not proposing a completely new blanket requirement, but the removal of an exemption for some vehicles.

The additional training proposed by the Department for drivers and attendants that provide stretcher transportation, or transport children, may cause providers to incur additional costs related to those trainings, but this should be mitigated by several factors. It is common practice within the industry to keep a trainer on staff, particularly for providers with larger fleets. For those providers, the cost incurred will primarily be for certifying that trainer to provide that training. Additionally, many providers who perform these types of transportation, particularly stretcher transportation, already require their drivers to complete training that would satisfy the requirements of the proposed amendments.

Trainers and managed care organizations may incur some incidental costs when adjusting their processes to account for changes within these rules, but the Department does not foresee a specific and direct cost for these groups related to any proposed amendments. Trainers may incur costs related to becoming certified to teach new trainings the Department proposes, but they are not required to offer those modules.

Ultimately, the effect on individual providers, trainers, and managed care organizations is likely to be minimal. One purpose of this rulemaking is to minimize the cost of compliance for providers, and the Department has a statutory obligation under Minn. Stat. § 174.30 to avoid adopting rules that unduly restrict providers. Throughout the rulemaking process, the Department worked to avoid making changes that would be unduly burdensome, from both a cost and compliance perspective. The proposed amendments are designed to make the rules clearer and increase the ease of compliance. This will benefit providers and the entities that work with and reimburse providers. The proposed amendments should ultimately benefit users of special transportation services, as the Department is proposing numerous amendments to ensure vehicles are clean, vehicles are properly maintained, proper equipment is available, providers use qualified employees, and those employees are properly trained.

Agency Costs

The Department does not believe the proposed amendments will increase its costs or the costs of any other agency. The programs that these rules affect have existed for years and the agencies that administer these programs have dedicated funds accordingly. The proposed amendments do not create new responsibilities for any agency, but may lead to increased efficiency in enforcement, which could potentially result in lowered costs of program administration.

Less Costly or Intrusive Methods

The Department is unaware of any way to achieve the intended effects of the proposed amendments to these rules other than this rulemaking. The proposed amendments were developed to update existing rule requirements, and to comply with statutory changes.

Alternative Methods

The Department did not seriously consider any alternative methods other than the proposed amendments. As state above, the proposed amendments were developed to update existing rule requirements, and to comply with statutory changes.

Department Costs to Comply

As noted above, the Department does not believe there will be a significant increase in costs associated with the proposed rule amendments, which primarily update and clarify existing obligations. The Department is proposing additional equipment requirements and increased minimum insurance, which may lead to increased costs for providers. But as addressed above, the Department does not believe this will lead to a significant increase. The other entities and government agencies involved with some aspect of oversight already have systems in place to account for the requirements of these rules. No additional obligations are being placed on those groups, and it is extremely unlikely the proposed amendments will cause them to incur any significant costs. Likewise, these rule amendments will not add any new sources of state revenue or increase any existing ones.

Costs of Non-Adoption

Failure to adopt the proposed amendments would result in a failure to achieve the intended purpose of accounting for current industry practices, addressing relevant changes to statutes, clarifying ambiguous rule language, and generally keeping the rules current. A primary reason for many of the proposed amendments was to make the administration of the special transportation service program more efficient. One of the ways this was accomplished was to make the requirements of these rules better reflect current industry practices. Not adopting the proposed amendments to these rules would potentially prevent the intended cost-savings associated with implementing those measures.

Differences from Federal Regulations

There are no directly relevant federal regulations to compare to the proposed amendments. The special transportation service program is a Minnesota state program created by Minnesota Statutes and implemented through these administrative rules. The FMCSA regulates other forms of transporting passengers, but there is not an equivalent area of federal regulation covering special transportation services.

Cumulative effect

There are several other state agencies that administer programs and have regulations that overlap with the special transportation service rules. DPS inspects vehicles that are equipped with wheelchair securement devices as well as type-III school buses. DHS administers the nonemergency medical

transportation program that many special transportation service providers are also enrolled in. However, the cumulative effects of the rules on these areas are unlikely to be significant.

PS is the agency primarily responsible for the wheelchair safety device program under Minn. Stat. chapter 299A. DPS and the Department are required to coordinate their inspections of vehicles under Minn. Stat. § 174.30, subd. 3 but the Department has historically drawn on the DPS standards, rather than the other way around. For instance, the Department implemented new inspection and training procedures in response to a 2019 change to Minn. Stat. § 299A.12 incorporating certain portions of the ADA to wheelchair securement device requirements. It is unlikely there will be a significant cumulative effect of these rule amendments in the context of DPS regulations.

As previously mentioned, the DHS nonemergency medical transportation program overlaps or intersects in certain aspects with the Department's special transportation service program. The main ways the two programs affect each other are that in order to receive reimbursement, DHS requires providers of nonemergency medical transportation to maintain special transportation service authority and the Department requires certain special transportation service provider employees to comply with the DHS background study requirements. The Department has accounted for this overlap through this rulemaking and has attempted to make the areas of crossover less burdensome for providers. It is likely that any cumulative effects of the proposed amendments on the areas of DHS regulation will make both programs more efficient.

Consideration of equity lens

The Department has considered the impacts of these proposed amendments in accordance with the Department's equity lens, which is a tool used to examine policies to identify how different groups may be affected by the actions being proposed. Other than the previously mentioned measures taken to address the health and safety of the elderly and people with disabilities who use special transportation service, no notable impacts on marginalized or protected groups were identified during this process.

Notice Plan

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

Notice

Details on the previous measures taken to ensure stakeholders received both required and additional notice of this rulemaking can be found on page 6 of this SONAR.

Required Notice

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

Consistent with Minn. Stat. § 14.14, subd. 1a, on the day the Dual Notice is published in the *State Register,* the Department will send via email or U.S. mail a copy of the Dual Notice and the proposed rule to the contacts on the Department's list of all persons who have registered with the agency for the

purpose of receiving notice of rule proceedings There are roughly 30 people on the Department's list of persons who have requested notice via United States Postal Service, and roughly 350 persons who have requested noticed of all rule proceedings via GovDelivery. The Dual Notice will be sent at least 33 days before the end of the comment period.

Consistent with Minn. Stat. § 14.116(b), the Department will send a copy of the Dual Notice, a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the Transportation Finance and Policy Committee, Health and Human Services Committee, and the Legislative Coordinating Commission. These documents will be sent at least 33 days before the end of the comment period.

Consistent with Minn. Stat. § 14.131, the Department will send a copy of the SONAR to the Legislative Reference Library when the Dual Notice is sent.

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

Minn. Stat. § 14.116(c) requires the Department "make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority" if it is within two years of the effective date of the law granting rulemaking authority. This requirement does not apply because the Department was granted special transportation service rulemaking authority in 1979 and no bill within the past two years granted the Department additional authority for this rulemaking.

Minn. Stat. § 14.111 requires the Department to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. This requirement does not apply because the proposed amendments will not have any effect on farming operations in Minnesota.

Additional notice plan

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

The Department plans to issue a press release regarding this rulemaking when it publishes the Dual Notice. The press release will include the Internet address for the web page dedicated to this rulemaking, as well as contact information for Department staff.

The Department also intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule to:

- Special transportation service providers. This category includes all service providers that MnDOT has licensed. There are roughly 225 licensed service providers.
- Special transportation service trainers. Special transportation service trainers are individuals certified by the Department to provide driver and attendant training under Minn. R. 8840.5910. There are roughly 100 certified trainers.

- Managed care organizations. MnDOT identified managed care organizations based on the list of contacts it has developed over time during the administration of the special transportation service program. There are approximately 8 managed care organizations.
- The Department's GovDelivery list used for special transportation service communications. The Department maintains a free email notification service for sending updates on issues and developments related to special transportation service. Anyone may subscribe through links on the Office of Freight and Commercial Vehicle website. The Department routinely sends updates on special transportation service regulations to the email subscribers. The list contains roughly 1,600 email addresses.
- The advisory committee for this rulemaking. The advisory committee was comprised of 17 members. Details regarding the advisory committee members, meeting schedule, and meeting process can be found in Appendix A.
- The trainer focus group created for this rulemaking. The trainer focus group was comprised of 9 members. Details regarding the trainer focus group members, meeting schedule, and meeting process can be found in Appendix B.

On December 7, 2022, the Department received confirmation from OAH that these steps meet the notice requirements for persons or classes of persons who may be affected by the proposed amendments to these rules under Minn. Stat. § 14.14, subd. 1a.

Performance-based rules

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

The Department is also required by Minn. Stat. § 174.30, subd. 2 to adopt rules "which are reasonably necessary to protect the health and safety of individuals using that service." But 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." During this rulemaking, the Department has attempted to balance both statutory requirements.

Truly performance-based rules would set objectives and leave the manner of achieving those objectives to the regulated parties. Given the unique requirements of special transportation service, the particularly vulnerable population that uses the service, and the statutory requirement that the Department adopt rules to protect their safety, truly performance-based rules are not possible. However, the Department has made a significant effort to make these rules as flexible as possible while still ensuring that necessary safety requirements are in place.

The Department is proposing amendments to these rules to allow multiple ways to show evidence of compliance, apply for and renew authority, amend application information, and store records. The Department is also allowing flexibility pertaining to provider records by requiring they meet certain standards but not a specific format. Lastly, the Department is attempting to allow additional flexibility in training by proposing providers create their own pre-driving training within specific parameters and allowing equivalent non-special transportation service trainings to be considered satisfactory under these rules.

Consideration of health, safety, and undue restrictions

In exercising its powers, the Department is required by Minn. Stat. § 174.30, subd. 2 to consider both the health and safety of riders, and the costs of compliance borne by providers. Specifically, the subdivision states the Department must implement rules 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."

The Department considered both the safety of riders and the cost of compliance during every stage of this rulemaking. Proposed amendments regarding driver and attendant training, required equipment, and vehicle maintenance are intended to increase the health and safety of riders. Proposed amendments to the provider certification process, records requirements, driver and attendant training, and vehicle maintenance are intended to reduce the burden of compliance for providers. As addressed above, the Department also tried to minimize any identifiable monetary costs associated with these proposed amendments.

Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the Department will consult with Minnesota Management and Budget (MMB) by sending MMB copies of the documents that will be sent to the Governor's Office for review and approval on the same day we send them to the Governor's Office. The Department will do this before publishing the Dual Notice. The documents will include the Governor's Office Proposed Rule and SONAR Form, the proposed rule amendments, and the SONAR. The Department will submit a copy of the cover correspondence and any response received from MMB to OAH at the hearing or with the documents it submits for ALJ review.

Impact on local government ordinances and rules

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

Costs of complying for small business or city

Minn. Stat. § 14.127, subd. 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees." The proposed rule amendments do not impose any requirements on local government, so there will be no costs of complying for any city.

Authors and witnesses

The primary authors of this SONAR are William Jensen-Kowski, Staff Attorney in the Office of Freight and Commercial Vehicle Operations, Laura Roads, Associate Legal Counsel in the Office of Chief Counsel, Elizabeth Scheffer, Senior Legal Counsel in the Office of Chief Counsel and the Department Rules Coordinator, and Andrea Barker, Administrative Policy Coordinator.

Witnesses and other staff

The Department expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the Department does not anticipate having anyone other than the listed authors testify as witnesses in support of the need for and reasonableness of the rules.

Conclusion

The Department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, Chapter 8840. The Department has provided the necessary notice and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statutes and rules.

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

Nancy Daubenberger

Digitally signed by Nancy Daubenberger
Date: 2023.06.06 09:22:25 -05'00'

Nancy Daubenberger
Commissioner
Minnesota Department of Transportation

Appendix A

Name	Organization	Group Represented
Tom Gottfried	Department of Transportation/Department of Human Services	Transit administration, Nonemergency medical transportation administration
Dan Hirsch	Discover Ride	Metro providers
Scott Isaacson	Lifts Transportation	Metro providers
Dave Jordal	Allina Medical Transportation	Metro providers, Ambulance service providers
Lucas Kunach	Fraser Mental Health Services	Child mental health service providers
Denise Lasker	HealthPartners	Managed care organizations
Jay McCloskey	Transportation Insurance Professionals	Insurances providers
Emily Murray	Association of Minnesota Counties	Minnesota counties
Mike Weidner	Minnesota Paratransit Providers Association	Paratransit providers
Mike Pinske	Americare Mobility Van	Outstate providers
Jan Roer	People's Express	Outstate providers
Kim Pettman	Self	Special transportation service users
Derek Rausch	Brown & Brown of Minnesota	Insurance providers
Diogo Reis	Department of Human Services	Nonemergency medical transportation administration
Bob Ries	Department of Human Services	Nonemergency medical transportation administration
Lauren Thompson	Self	Special transportation service users
Courtney Whited	Minnesota Board on Aging	Elderly Minnesotans

Appendix B

Name	Organization
Bill Butts	Med City Training Center
Hans Erdman	Emergicare Training Services
Debra Huhn	Heartland Express
Matthew Liveringhouse	Transit Services Group
Steve Mandieka	Non-affiliated trainer
Andre Masson	Allina Medical Transportation
Suzette Smith	Contemporary Transportation
Dustin Turvald	Healtheast Transportation
J.P. White	Non-affiliated trainer

DEPARTMENT OF TRANSPORTATION

December 29, 2022

Legislative Reference Library
645 State Office Building 100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: Minnesota Department of Transportation's Proposed Amendments to Rules Governing Special Transportation Services – Minnesota Rules Chapters 8840; Revisor's ID No. R-04593

Dear Librarian:

The Minnesota Department of Transportation intends to adopt amendments to the rules governing special transportation service. We plan to publish a Dual Notice of Hearing in the January 3, 2023 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy, and two physical copies, of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 366-3649.

Sincerely,

William Jensen-Kowski
Staff Attorney
Office of Commercial Vehicle Operations

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rules Chapter 8840; Revisor ID No. R-04593

Office of Freight and Commercial Vehicle Operations

December 8, 2022

General information:

Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: https://www.dot.state.mn.us/cvo/rulemaking.html

View older rule records at: Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/

Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Beth Scheffer, Rulemaking Coordinator, Minnesota Department of Transportation, 395 John Ireland Blvd, St. Paul, MN 55155; telephone 651-366-4792; email elizabeth.scheffer@state.mn.us; or use your preferred telecommunications relay service.

How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.09, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).

How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, Chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

How to read a Code of Federal Regulations citation: 99 CFR § 999.0909(b)(1)(i) is read as Code of Federal Regulations, title 49, section 999.0909, paragraph (b), clause (1), item (i)

Contents

Acronyms

ADA	Americans with Disabilities Act
APA	Administrative Procedures Act
ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
DHS	Department of Human Services
DPS	Department of Public Safety
FMCSA	Federal Motor Carrier Safety Administration
Minn. R. pt.	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness
USDOT	United States Department of Transportation

Introduction and overview

Introduction

In this rulemaking the Department of Transportation (Department) is proposing amendments to the Minnesota rules governing special transportation service. The Department's Office of Freight and Commercial Vehicle Operations administers the special transportation service program as required in Minn. Stat. § 174.30. Special transportation service refers to certain types of transportation for the elderly or disabled as well as certain covered nonemergency medical transportation services, as defined in Minn. Stat. § 174.29. In administering the program, the Office of Freight and Commercial Vehicle Operations issues certificates of compliance (or operating authority), and regulates providers, drivers, attendants, and trainers using the procedures established in in Minn. R. Chapter 8840.

Statement of General Need

The proposed amendments are necessary to address changes to the industry that have occurred since the Department previously revised the rules in 2004. In 2015, the legislature made several changes to the enabling statute, and since July 2016 the program has included providers of nonemergency medical transportation regulated by the Department of Human Services (DHS). The Department is proposing amendments to make the program safer and more efficient, as well as more consistent with other commercial vehicle programs administered by the Department. Amendments are also necessary to clarify aspects of the rules, other legislative changes, and address issues raised by the public.

Scope of the proposed amendments:

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

- 8840.5100 Definitions
- 8840.5300 Scope
- 8840.5400 Certificate of Compliance, General Requirements
- 8840.5450 Restrictions on Name and Description of Service
- 8840.5500 Certificate of Compliance Application
- 8840.5525 Issuance and Expiration of Certificate of Compliance
- 8840.5640 Initial Special Transportation Service Provider Education
- 8840.5650 Annual Evaluation
- 8840.5700 Inspection and Audit
- 8840.5800 Enforcement: Violations, Suspensions, Revocations, and Cancellations
- 8840.5900 Driver Qualifications
- 8840.5910 Driver and Attendant Training Requirements
- 8840.5925 Vehicle Equipment
- 8840.5940 Vehicle Construction Standards
- 8840.5950 Standards for Operation of Vehicles
- 8840.5975 Standards for Maintenance
- 8840.6000 Insurance
- 8840.6100 Records
- 8840.6200 Certification of Training Courses and Instructors
- 8840.6250 Audit of Courses
- 8840.6300 Variance

Background

The legislature created the special transportation service program in 1979. Minn. Stat. § 174.30, subd. 2 requires the commissioner of transportation to adopt rules setting operating standards for vehicles, drivers, and attendants used to provide special transportation service. Minn. Stat. § 174.29 provides a definition and establishes which providers are governed by the rules.

The Department first adopted rules in 1981 setting operating standards for providers required to be certified by the Department to provide special transportation service. Those rules provided qualifications and training standards for drivers and attendants. They also established requirements for vehicle equipment and inspections, maintenance standards, and insurance. Providers are required by law to comply with these standards and to obtain an annual certificate of compliance from the Department.

Since their initial adoption, these rules have been amended three times. Amendments to the rules were finalized in 1983, 1992, and 2004. In 2015, significant changes were made to Minn. Stat. §§ 174.29 and 174.30. Most notable was the inclusion of nonemergency medical transportation services, a program primarily administered by DHS. The rules have not been updated since these and other legislative changes were made.

Public participation and stakeholder involvement

Consistent with the Administrative Procedures Act (APA), the Department published a Request for Comments in the Minnesota State Register on Tuesday, November 12, 2019. Additionally, in accordance with the requirements of Minn. Stat. Chapter 14, and Minn. R. Chapter 1400, the Department sought input and comments from the general public, stakeholders, and individuals affected by these rules. These activities are described in detail on page 41 and 42 of this SONAR.

In short, the Department sent copies of the Request for Comments to the Department's list of persons who have registered to receive notice of all rule proceedings under Minn. Stat. § 14.14, Subd. 1a, the members of the advisory committee for this rulemaking (described below), special transportation service providers, special transportation service trainers, and managed care organizations. To further raise awareness, the Department issued a press release notifying stakeholders of the rulemaking and Request for Comments. To increase accessibility and opportunity for feedback, the Department created a web page which displays relevant information on this rulemaking process and provides the opportunity to make comments. The web page can be found at: https://www.dot.state.mn.us/cvo/rulemaking.html.

Before ever publishing and disseminating a Request for Comments, the Department received significant input in response to earlier Department communications soliciting feedback on the rules. In late 2018, in anticipation of eventually commencing a formal rulemaking, the Department sent a mass email to registered special transportation service providers asking for feedback on these rules. The Department received a significant number of responses to that email. Although this occurred before the Department officially commenced this rulemaking with a Request for Comments, the Department has fully considered that stakeholder input as valuable perspective for proceeding with this rulemaking. After the request for comments was published and disseminated, the Department received seven comments from seven different sources. The commenters included special transportation service providers, medical service providers, riders, and academics. The feedback received during this initial comment period was considered and is reflected in the proposed rules.

Another common way of gathering stakeholder input, of course, is through the formation of an advisory committee comprised of members representing different areas of expertise. Though not required to do so by law, the Department chose to form an advisory committee given the multifaceted nature of special transportation service and the diverse group of stakeholders involved. Additionally, the implementation of an advisory committee allowed the Department to reach a greater number of stakeholders to gather input. In late 2019, the Department formed a rulemaking advisory committee to provide input and advice on potential amendments to the special transportation service rules. The Department commissioned the advisory committee to provide input on potential changes to Minnesota Rules, Chapter 8840. Committee members came from varied backgrounds, which is shown in attached Appendix A.

The advisory committee began meeting in person during January 2020 but moved to online meetings in April 2020 due to protocols implemented in response to the COVID-19 pandemic. The committee met roughly every six weeks, for a total of nine meetings, with the final meeting occurring in April 2021. To ensure all members were comfortable and were able to provide complete input, Department staff met individually with the committee members who use special transportation services; and reported their feedback during the group meetings with the rest of the committee. The Department used consultant services from Minnesota Management and Budget's (MMB) Management Analysis and Development unit to facilitate the committee meeting process. Consultants assisted in scheduling meetings, creating meeting plans, facilitating meetings, and gathering feedback. This process ensured that robust and complete conversations occurred and allowed Department staff to analyze and respond to feedback during meetings.

In addition to the full advisory committee, the Department created a focus group comprised of special transportation service trainers. The purpose of the group was to gather technical and detailed feedback on the training required for special transportation service drivers and attendants. The members of the focus group represented a significant amount of experience designing and providing both special transportation service and other types of training. This is demonstrated in the group composition, shown in Appendix B. The group was created to provide feedback on potential changes to the mandatory training required for all special transportation service drivers and attendants. The group first met in October 2020. The group met three times online and had its last meeting in December 2020.

Statutory authority

The Department was granted authority to adopt special transportation service rules in Minn. Stat. § 174.30, subd. 2, 4(c), and 5, on the topics listed below:

174.30 OPERATING STANDARDS FOR SPECIAL TRANSPORTATION SERVICE.

Subd. 2. Rules. (a) 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.

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

(1) qualifications of drivers and attendants, including driver training requirements that must be met before a driver provides special transportation;

(2) safety of vehicles and necessary safety equipment;

(3) 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

(4) minimum insurance requirements.

(c) The commissioner shall consult with the Council on Disability before making a decision on a variance from the standards.

Subd. 4. Vehicle and equipment inspection; rules; decal; complaint contact information; restrictions on name of service. (a)…

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

Subd. 5. Rules. The rules authorized under this section shall be adopted in accordance with the provisions of the Administrative Procedure Act, sections 14.001 to 14.69.

Reasonableness of the amendments

General Reasonableness

The proposed amendments to these rules were developed over the span of more than a year.

The proposed amendments to the rules reflect an ongoing and robust dialogue with special transportation service stakeholders. The Department has carefully considered all feedback from members of the public and stakeholders. The proposed amendments to the rules reflect these considerations, along with the statutory requirements, to provide minimum standards for performance-based rules that allow both clarity and enforceability.

Rule-by-Rule Analysis

Part 8840.5100 Definitions

Subpart 1b. Certificate of course completion. The addition of the requirement for the instructor's trainer number to be included on a certificate of course completion is necessary for efficient Department audits. The trainer number is a unique identifier issued by MnDOT. Including it on the certificate ensures proper identification of the instructor and allows the Department to quickly determine whether the instructor is certified by the Department. If an instructor name is illegible, the instructor number eases the search of Department records for the corresponding instructor record.

Subpart 4a. Day. The Department proposes the addition of this subpart to clarify the way periods of time are measured when interpreting these rules. This is necessary because there are several requirements within these rules that certain documents be filed, or that certain violations be addressed, within specific periods of time. For instance, providers are given fifteen days to address a violation once they are given written notice under Minn. R. 8840.5700. It is important that there not be confusion by providers as to what that means. The Department must also respond to applications for certificates of compliance, trainer applications, and requests for variance within 30 days. This addition is reasonable to avoid confusion or uncertainty regarding expectations related to compliance.

Subpart 5a. Driver. Striking the language regarding volunteer drivers is necessary for clarity. The Department proposes specifically defining the term "volunteer driver" in a new subpart in order to go into greater detail about the term. Volunteer driver activity has drastically increased since these rules were last amended, and it is reasonable to address the issue separately from the general term "drivers" because of the greater impact volunteer driver programs have on the industry.

Subpart 6. Elderly. The proposed amendment changing the definition of elderly from 55 to 60 was a recommendation by the advisory committee, including a representative from the Minnesota Board on Aging. Special transportation service is partially defined under Minn. Stat. § 174.29, subd. 1 as transportation "exclusively or primarily to serve individuals who are elderly or disabled." Although the Department does not check the age of riders, this program requires clear parameters, so it is necessary to define this term. The proposed definition complies with standard practices by the Minnesota Board on Aging, complies with general industry standards, and is typical of other government program thresholds. This change is reasonable because it is important to have consistency in terms and thresholds across government programs.

Subpart 7. Disability. The addition of the phrase "a record of such an impairment or being regarded as having such an impairment" is necessary to bring the Department definition into compliance with the Americans with Disabilities Act (ADA), other government programs, and industry terms. The additional language was taken directly from the ADA, which is consistently used to define "disability" across government programs and other entities that provide services for people with disabilities. The reason it is necessary to change this term is similar to the reason it is necessary to update the term "elderly." Special transportation service is partially defined as being at least primarily for the elderly or disabled. It is reasonable to have a definition that matches other government programs in a program that involves several agencies.

Subpart 8. Major life activities. The proposed amendment changing "functions" to "activities of daily living" was a recommendation from the advisory committee. It is necessary to maintain an updated and accurate definition of "major life activities" because it is part of the definition of "disability" under these rules. This language is also consistent with ADA terminology. This change is reasonable to make this definition consistent with the standard industry term for organizations and government agencies that provide services to people with disabilities.

Subpart 10. Municipality. The removal of this subpart is necessary because the term "municipality" was only referenced once in Minn. R. Chapter 8840.6000, subp. 1(b)(2). That section is also being repealed, so there is no reason to continue to include an unused term. It is reasonable to remove definitions of words that do not appear in these rules for clarity and succinctness.

Subpart 12a. Protected transport. The Department proposes the addition of this subpart because it is necessary to address an additional mode of transportation which was added to special transportation service by legislative change. Since 2016, Minn. Stat. § 174.30, subd. 3 has required the Department to ensure that a vehicle designated as "protected transport" by the Department of Human Services meets the safety requirements under Minn. Stat. § 256B.0625, subd. 17. It is reasonable to include this definition to provide a clear term for the other references to protected transport that the Department is proposing elsewhere in these rules.

Subpart 17. Special transportation service. The proposed amendment to include nonemergency medical transportation as a part of special transportation service is necessary to make these rules consistent with the definition under Minnesota Statutes. In 2015, the legislature changed the statutory

definition under Minn. Stat. § 174.29, subd. 1 to include the nonemergency medical transportation program administered by DHS under Minn. Stat. § 256B.0625, subd. 17. This amendment is reasonable because it mirrors the statutory definition of special transportation service.

Subpart 18a. Stretcher transport. The addition of this subpart is necessary to clarify the parameters of other proposed safety requirements. Stretcher transport, like protected transport, is a mode of transportation under DHS's nonemergency medical transportation program. Safe transportation of passengers on a stretcher requires consideration of factors such as equipment, training, and vehicle construction that varies from wheelchair transportation and ambulatory passenger transportation. The addition of this subpart is consistent with the other amendments proposed by the Department regarding stretcher transport, particularly those under the required training section. The use of the statutory definition under Minn. Stat. § 256B is reasonable because it is the same definition used by DHS and will allow both agencies to attribute the same meaning to a term used in two programs with a large amount of overlap.

Subpart 21. Volunteer driver. This subpart has been added to clarify which drivers are exempt from these rules even though they provide what would otherwise be considered special transportation service. A volunteer driver using a private automobile is exempt from the requirements of these rules under Minn. Stat. § 174.30, subd. 1(a)(2). The term "private automobile" is self-explanatory, but the term "volunteer driver" is not as clear as it might first appear. The Department is routinely contacted by providers, managed care organizations, healthcare institutions, and riders asking whether an organization that provides rides and holds itself out as a volunteer organization is exempt from the rules. Volunteer drivers were also a subject of extensive discussion during the advisory committee process. A clear standard determining who is and isn't exempt is needed, both to avoid confusion about whether an organization is subject to these rules and to put non-exempt organizations on notice. It is important that all organizations that are required to remain compliant with these rules do so, both for the safety of riders and in fairness to other providers who bear the costs associated with compliance. It is therefore necessary to specifically define this term.

In 2021, the legislature updated the definition of "volunteer driver" under Minn. Stat. § 174.30, subd. 1(a)(2). That section refers to volunteer drivers as "defined in section 65B.472, subdivision 1, paragraph (h)." The rules will be amended to include the definition in Minn. Stat. § 65B.472, subd. 1(h) which provides that a volunteer driver means "an individual who transports persons or goods on behalf of a nonprofit entity or governmental unit in a private passenger vehicle and receives no compensation for services provided other than the reimbursement of actual expenses."

The previous definition included under the definition of "driver", which defined a "volunteer driver" as being subject to the direction and control of a provider does not necessarily conflict with the new statutory definition. However, the Department would still prefer to address the issue by level of reimbursement. The Department does not wish to hinder legitimate volunteer driver organizations in providing transportation access to otherwise homebound Minnesotans. But the Department also does not wish to allow covered organizations to engage in special transportation service without ensuring the proper safety precautions. The new definition is consistent with the enabling statute and allows the Department to directly address whether a person is truly volunteering their time without being reimbursed for anything other than actual expense.

Subpart 22. Wheelchair. The Department proposes the addition of this subpart because it is necessary to address confusion about how electric scooters should be treated by providers. The Department is often contacted by providers, riders, and managed care organizations asking if electric

scooters are considered “wheelchairs” within the context of special transportation service. The addition of this subpart clarifies the issue and mirrors the Department of Public Safety’s (DPS) definition under Minn. R. Chapter 7450. Both the Department and DPS perform inspections of vehicles that provide wheelchair transportation in Minnesota. Minn. Stat. § 174.30, subd. 3 directs the commissioners of both Departments to cooperate in inspecting these vehicles “so that a single inspection is sufficient to ascertain compliance.” Using the same definition as DPS is reasonable because in addition to clarifying the issue of electric scooters, it will also ensure a consistent definition of a shared term between the Department and DPS when administering two programs with significant overlap and a legislative directive to cooperate in inspections.

Part 8840.5300 Scope

Subpart 1. Service criteria. The proposed amendment to this subpart was a recommendation by the advisory committee. The addition of the phrase “an entity or” is necessary to clarify that these rules apply to organizations that receive and use grants to provide special transportation service, not just individual recipients of said grants. The proposed amendment is reasonable because it will help to ensure the relationship between the Department and providers is clear during enforcement of these rules, and to put covered entities on notice.

Subpart 1a. Applicability. The addition of this subpart is necessary to clarify a provider’s responsibility for its drivers, attendants, and other employees. Department employees have often had to clarify that regardless of the wording of employment contracts, employees used by providers to provide special transportation service do so under the authority granted to the provider by the Department. While it was not commonplace when these rules were last amended, many providers now require that drivers use their personal vehicle to provide special transportation service as a condition of their employment. Some providers who engage in this business model view their role as being limited primarily to dispatch; arguing they cannot reasonably be held responsible for drivers and their vehicles because of ride volume and turnover. The addition of this subpart is reasonable to ensure there is no ambiguity regarding a provider’s responsibility as the holder of a certificate of compliance for the drivers and vehicles associated with that certificate of compliance.

Part 8840.5400 Certificate of Compliance, General Requirements

Subpart 1. Certificate of compliance required. The proposed amendment to this subpart requiring the Department to ensure certain safety provisions are in working order during inspections of protected transport vehicles before certification is necessary to address a statutory requirement. This requirement was added to Minn. Stat. § 174.30, subd. 3 in 2015, well after these rules were last amended. It is reasonable to phrase this subpart as a reference to Minn. Stat. § 256B.0625, subd. 17 because it will provide consistency with Minn. Stat. § 174.30, subd 3. It is also reasonable to limit the requirement here to a statutory reference because of potential inconsistencies that may because by future statute changes. Minn. Stat. § 256B.0625 is the enabling statute for DHS covered services which includes many specifics of program administration and is frequently updated. The Department does not wish to include unnecessary language in these rules based on a statute that may change before these rules are next amended.

Part 8840.5450 Restrictions on Name and Description of Service

The proposed amendment to this part, allowing providers to use in their name or advertisements the phrase “nonemergency medical transportation,” is necessary to address a legislative change to the enabling statute for these rules. Historically, Minn. Stat. § 174.30, subd. 4 required only

that providers comply with Minn. R. 8840.5450. However, in 2015 it was amended to include an exception for the term “nonemergency medical transportation” in provider names and advertisements. The proposed amendment is reasonable because it ensures consistency with the enabling statute by mirroring it directly.

Part 8840.5500 Certificate of Compliance Application

Subpart 1. Forms. The proposed amendment to this subpart will allow providers to submit applications by electronic mail. This change is necessary to address a practice that has become commonplace since the last time these rules were amended. This amendment is reasonable because it will make the application process less burdensome, make communication easier, and allow providers to apply more easily on the same day they complete it. Additionally, it will allow for easier and faster communication with applicants who do not wish to mail, or hand deliver an application.

If the Department can review an application and respond by electronic mail, employees will be able to directly address issues with applications as soon as they are received. This will avoid delays between the time an application or renewal is mailed and receipt. Because of the decreased wait time, this will also help ensure correcting errors is not more difficult for Greater Minnesota providers than those located in the metro area.

Providers often prefer to deliver rejected applications and renewals to avoid the mailing delay, an option which is much more burdensome for Greater Minnesota providers. This increased opportunity for providers to respond and resubmit will make it easier to address application issues and receive the same level of service as a provider who delivered an application. The ability to submit applications and renewals by electronic mail is a common request by providers and was discussed at length by the advisory committee.

Subpart 2. Required information.

New Item A(2). The Department proposes this amendment to add a requirement that providers of special transportation service obtain and submit a United States Department of Transportation (USDOT) number at the time of application for a certificate of compliance. This amendment is necessary for consistency with other programs administered by the Department and with the Federal Motor Carrier Safety Administration’s (FMCSA) system. The Department administers six different programs for which it grants operating authority to transport passengers or property within the state of Minnesota. Currently, depending on the type of operating authority and the weight of the vehicle, the Department either requires participants in these programs to possess a valid USDOT number or it issues a MnDOT number.

The FMCSA issues USDOT numbers for all motor carriers that register with them, and has regulatory oversight over all interstate for-hire commercial vehicle operations. This leads to overlap between the Department and the FMCSA, and the two agencies coordinate a significant number of regulatory activities. Many of the entities the Department regulates currently hold both USDOT and MnDOT numbers. This requires Department employees who are presented with an identifying number to determine whether that number is a USDOT or a MnDOT number. This can sometimes be difficult to determine, and the Department frequently receives complaints when the complainant is unable to determine the exact identifying number, or whether the number is a MnDOT or USDOT number. Eliminating the use of MnDOT numbers and requiring all carriers to possess a valid USDOT number will ensure consistency in identification number and eliminate confusion.

This change is reasonable because the FMCSA does not charge a fee for applicants that register with their system but do not apply for operating authority, and special transportation service providers would not need operating authority from the FMCSA to operate solely within the state of Minnesota. Providers that operate across state lines are already required to register with the FMCSA regardless of these rules. This requirement would not impose a new fee on special transportation service providers who operate solely intrastate. The proposed amendment would make both administration of, and compliance with, these rules easier because it would allow for a consistent system of identifiers across all Department administered programs and with the federal government.

Newly numbered Item A(5). The proposed amendment requires providers to include two additional pieces of information when applying for a certificate of compliance. Applicants will be required to state whether each vehicle listed on the certificate of compliance will be used to provide stretcher transport, and whether that vehicle will be used to provide protected transport. This amendment is necessary because, as mentioned above, Minn. Stat. § 174.30, subd. 3 requires the Department to check that certain safety provisions are in working order for special transportation service vehicles used to provide protected transport. The Department needs to know which vehicles will provide stretcher and/or protected transport to ensure compliance.

Currently, the rules only provide significant detail about wheelchair transport because stretcher and protected transport were not common forms of special transportation service the last time these rules were amended. Now stretcher and protected transport are becoming increasingly common.

Stretcher transport is not specifically called out in the way protected transport is under the enabling statute. However, Minn. Stat. 174.30, subd. 2(b)(2) grants the Department rulemaking authority regarding safety of vehicles and necessary safety equipment. It is necessary to address the unique safety factors associated with stretcher transport along with protected transport. Similar to wheelchairs, stretcher transport requires specific lifts and ramps, adequate cab size for transport, functioning restraint systems, and securement for peripheral items. Although these systems are similar to wheelchair securement systems, they differ in their physical specifications and requirements. Both wheelchair and stretcher transport as well as protected transport have unique safety concerns. Because both modes of transportation entail unique safety concerns and legislatively required safety provisions it is reasonable to address protected transport and stretcher transport in the same way.

Newly numbered Item A(6). This amendment requires applicants to provide a contact email address and changes the requirement for contact phone numbers. This amendment is necessary to help make these rules consistent with common business practice. Currently, applicants must provide the "telephone number, including each cellular telephone number" for the person in charge of daily operations. At the time these rules were previously amended, landlines were much more commonplace and cellular telephones were not as prevalent as they are today. The Department encounters an increasing number of providers who prefer to operate by email as much as possible, often exclusively. This preference was relayed to the Department, and discussed at great length, during the advisory committee process. Over the last several years the Department has also begun performing remote audits; reviewing records after a provider has scanned and emailed them to the employee performing the audit. The COVID-19 pandemic caused the Department to perform all audits remotely for over a year. The changes to this item are reasonable because they address the increased likelihood that a provider will not have a landline, does not leave the number of contact numbers open ended, and requires an email address. This will both accommodate providers who want to communicate by email and allow the Department to continue to increase the efficiency of its audits.

Newly numbered Item A(7). The first proposed amendment to this item clarifies that the names of the drivers applicants are required to submit are the drivers' legal names, as it appears on their driver's license. This second proposed amendment will require applicants to include drivers' license numbers in their applications. It is necessary for providers to submit this information in their applications so the Department may verify providers are not using disqualified drivers without having to perform the full audit process described in Minn. R. 8840.5800. The Department audits each provider once per year but will usually only perform another full audit upon receipt of a complaint, or as a follow up to a previous audit to confirm violations have been addressed. When following this standard audit schedule, a provider may not be subject to an audit of its driver files for up to a year after applying. This amendment is reasonable because it will allow the Department to ensure the drivers being used to perform special transportation service have been properly entered into the DHS background study system and do not have any disqualifying offenses on their driving record. Requiring provides to submit this information on the application is reasonable because these rules already require providers to maintain this information in their files

Newly numbered Item A(8). The addition of the requirement for applicants to include the legal names of each person for whom the provider is required to initiate a DHS background study is necessary to address the addition of this same requirement in Minn. Stat. § 174.30, subd. 10, in 2015. The addition of this requirement to the rules is reasonable because it directly references and mirrors the statutory requirement. The requirement to include all the names of directors, officers, partners, and board members has been struck to accommodate the proposed new reporting requirement under item A(9) of this subpart. Both changes address the Department's concerns about "chameleon carriers" (using the application process to avoid enforcement actions by the Department). This concept is addressed in more detail in item A(9) below.

Newly numbered Item A(9). The proposed amendment will require applicants to disclose the certificate number for any certificates of compliance held or previously held by any of the business' owners, partners, directors, or board members. The current rule only requires applicants to disclose the certificate number of a certificate held by one of these parties if it had been suspended, revoked, or canceled within the previous year. This item is necessary to prevent operation by "chameleon carriers," a term used to describe providers who are not currently allowed to operate due to enforcement action by the Department but sidestep the issue by applying for authority as a new applicant under a different name. When a provider acting as a chameleon carrier is successful in applying under a new name, they are able to quickly regain authority with no real change to their operations, which essentially makes the Department's enforcement powers moot. This amendment will allow the Department to determine whether a person is attempting to engage in this behavior prior to a finalized enforcement action by the Department. Under the current rules, it would not technically be a violation for a provider with a pending suspension, revocation, or cancellation to apply under a new name but not disclose the original certificate number. It is reasonable to amend this item to prevent providers from simply changing the certificate of compliance they operate under to attempt to sidestep enforcement action by the Department.

Newly numbered Item A(12). The Department proposes the addition of this item requiring an applicant to disclose any organizations with which it has an agreement to provide special transportation service because it is necessary to facilitate coordination between the Department, providers, and managed care organizations. Managed care organizations are the entities that providers contract with to connect them with people who use special transportation service. Providers also use managed care organizations for reimbursement of rides through DHS. Part of this reimbursement process includes notifying managed care organizations of which drivers and vehicles are used to provide these rides. This

new requirement will allow the Department to cross-reference driver and vehicle lists with these organizations to ensure they are not using drivers or vehicles without notifying the Department.

This item will also allow the Department to specifically notify all the organizations a provider has contracted with when that provider has lost, or regained, operating authority. It is illegal to provide special transportation service without active operating authority, but managed care organizations may not know if a provider that had operating authority when it first entered into a contract with the organization lost that authority later. When this occurs, providers who have been suspended for safety reasons are able to continue to provide, and be reimbursed for, special transportation service. The Department currently notifies all the managed care organizations on its mailing list when any provider's operating authority is suspended. However, this results in notifications that may not be relevant to recipients. The Department often receives feedback that this system makes it difficult for managed care organizations to know when they can and can't use a provider. The Department is also aware of instances in which providers performed rides when they did not have active operating authority. Addressing these rides requires a significant amount of time and effort to recoup payments by the managed care organization, DHS, or both. The addition of the proposed item is reasonable because it will allow the Department to notify these organizations of the loss of operating authority more efficiently and with more specificity.

Subpart 2a. Signature required. This amendment would allow electronic signatures and delivery of any physical document in person, by mail, electronically, or by fax. This amendment is necessary for consistency in common business practices, to allow flexibility for providers without fax machines or scanners, and to address the different options feasible for Greater Minnesota and metro area providers to comply with this part. The Department regularly receives feedback requesting these options. The need for electronic document sharing was also discussed in great detail with the advisory committee. This amendment is reasonable because it is common practice in many areas of both the public and private sectors to sign and deliver documents electronically. The addition of the option to sign electronically will make compliance with this part easier for providers who are unable to fax or scan documents. Clarifying that physical printouts may be delivered in person, by mail, electronically, or by fax will also make compliance easier for providers located in Greater Minnesota. Electronically delivering documents will lower the burden associated with compliance for providers who may have to drive for hours to get to the metro area.

Subpart 5. Information on certificate. The Department proposes this amendment to allow providers to keep certificates of compliance electronically and produce them upon demand. This amendment is necessary to make this part current with common business practices and to increase ease of compliance. Since these rules were last amended, it has become common business practice to maintain files and documents electronically. This is particularly true for businesses that don't have a large amount of physical storage space. This amendment is reasonable because it allows for easier document retention by providers while preserving the ability of the Department to audit those documents. As previously mentioned, the Department has begun performing more audits remotely. Due to the COVID-19 pandemic, all audits were performed remotely for well over a year. Documents that are already electronically stored can be shared with the Department much more easily and would decrease the time and resources needed to complete an audit, remotely or otherwise.

Subpart 6. Record. This proposed amendment would require the Department to reject an application if certain people associated with the organization are also associated with another provider whose certificate of compliance is currently suspended or revoked. This is necessary to address "chameleon carriers" who have lost operating authority and attempt to circumvent the issue by applying

for a certificate of compliance under a new name. It is important that the Department be able to ensure suspended or revoked providers are not able to simply continue operations under a new name. As previously mentioned, the primary method of ensuring compliance is through suspension or revocation of operating authority because managed care organizations are not allowed to reimburse providers for rides if that provider does not have active operating authority. The standard of a single person being associated with the suspended or revoked provider and the new applicant is reasonable to set clear expectations for compliance.

Part 8840.5525 Issuance and expiration of certificate of compliance.

Subpart 2. Issuance or denial of certificate.

Item C. The proposed amendment changing "requested" to "required or requested" is necessary to clarify that a provider must include all information required by statute or rule, whether it is specifically requested or not. The Department does not make a habit of leaving relevant information out of its requests, but this amendment is reasonable to clarify that the burden of compliance is on the provider to make required information available, not on the Department to prove the information was requested. It is important that all the required information be provided because the certificate of compliance is the first and most complete look at a provider's operations short of conducting an audit. This should not add a significant burden to compliance because if an application is rejected for being incomplete the provider is able to simply resubmit a completed application.

Item D. The Department proposes the addition of the requirement that applicants state whether any person listed on the application is disqualified by a required background study because it is necessary to comply with the enabling statute. Minn. Stat. § 174.30, subd. 10(a) states "Providers of special transportation service regulated under this section must initiate background studies in accordance with Chapter 245C on the following individuals." The subdivision includes a list of the classes of individuals subject to the background study requirements: owners, controlling individuals, managerial officials, drivers, attendants, and certain administrative staff. Paragraph (c) of the same subdivision states that providers shall not use any individual to provide any of the services listed in paragraph (a) before receiving notification from DHS that the individual is not disqualified or has received a set-aside. Rejecting an application if any of the people listed on the application are disqualified by the DHS background study is reasonable because it will prevent violations of Minn. Stat. § 174.30, subd. 10 and will address serious potential issues before a provider gets more involved in special transportation service and invests substantial additional time and resources.

Subpart 4. Certificate denied revoked or canceled. The introduction of a 180-day waiting period for a provider who has made a false or fraudulent statement in an application to be allowed to reapply is necessary to prevent intentional subversion of these rules. As previously mentioned, the application for a certificate of compliance is the most comprehensive information the Department will receive on a provider until that provider's first audit. These audits typically occur around a year after the application is approved. Other than applications and audits, the Department may not be aware of the daily activities of providers besides what it learns through complaints or enforcement activities. This amendment is reasonable because the waiting period would only apply if the denial, revocation, or cancellation was for intentional malfeasance; the Department wishes to disincentivize intentionally providing false information. Minor mistakes or omissions would not prevent an applicant from immediately submitting another application. 180 days is consistent with the length of the waiting period to submit a new application for revoked providers. Under Minn. R. 8840.5800, subp. 3a a provider's certificate may be revoked for 180 days for committing a pattern of willful violations of Minn. R. Chapter 8840. Because

patterns of willful violations and false or fraudulent statements on applications are both intentional acts with significant potential to affect rider safety it is reasonable to treat them both equally.

Part 8840.5640 Initial special transportation service provider education.

Subpart 2. Initial education sources and topics. This amendment will change the required education under this subpart from an approved seminar or training by a representative of the Department to approved materials covering statutes, rules, and other regulations. This amendment is consistent with the Department's preferred method of online modules to provide training. These initial trainings were previously provided in person, but now take the form of online modules and assessments. This amendment is reasonable because it is consistent with how initial trainings are currently performed for the other commercial vehicle programs the Department regulates.

Part 8840.5700 Inspection and audit.

Subpart 1. Commissioner shall inspect vehicles. This Department's proposed amendments will modify this subpart in several ways:

1. Change the title of the subpart to add the word "vehicles"
2. Add language stating that the Department may conduct unannounced inspections for compliance with these rules
3. Remove language regarding annual inspection of records
4. Add a reference to the vehicle safety provisions in Minn. Stat. Chapter 169
5. Change the required document to use to determine whether a vehicle is likely to cause and accident or breakdown from the "North American Uniform Vehicle Out-Of-Service Criteria" to the Department of Transportation's "Minnesota Vehicle Requirements for Special Transportation Services and Limousines"
6. Add a requirement to include a statement of whether the safety provisions for protected transport are met on vehicle forms

The title of the subpart has been amended from "commissioner shall inspect" to "commissioner shall inspect vehicles." This change is necessary because a new subpart is being added to this part regarding the Department's process for auditing provider records. This is also the reason that the language stating the Department shall inspect certain records at least annually has been moved to what will now be subpart 1a of this part. Splitting the vehicle inspection and audit portions of this subpart and moving the audit portion into a separate subpart is reasonable because it will allow for increased detail regarding both processes. Inspections and audits are the primary methods of ensuring minimum levels of safety and are also some of the most difficult aspects of compliance for providers. The Department is regularly asked why inspections and audits are performed the way they are, and on what basis. The Department is proposing this amendment, so the processes and standards of inspections and audits are clearer.

The addition of the language stating the Department may conduct an unannounced vehicle inspection is necessary to bring clarity and add process details to the existing Department practices of ensuring providers comply with these rules. Other than the scheduled annual vehicle inspections and records audit, the Department might not have any regulatory contact with a provider for the remainder of the year. Some special transportation service vehicles are used for multiple rides a day and there is a high rate of turnover for drivers and attendants. The Department does inspect vehicles upon complaint, but complainants often do not have specific identifying information for noncompliant vehicles or

potentially untrained drivers. The Department has had more success in determining compliance by partnering with locations that have a high number of special transportation service pick-ups and drop-offs, such as autism centers, rehabilitation institutes, and hospitals. As a matter of practice department employees performing these on-site inspections do not prevent drivers from leaving for another ride and the inspections are only performed when there are no passengers in the vehicle or attempting to enter the vehicle. Based on the requirements of Minn. R. Chapter 8840 and the practicalities of the inspection location, the inspection may consist of ensuring the vehicle decal is current, a visual inspection of the exterior of the vehicle, inspection of any securement systems the vehicle is equipped with, an inspection of any lifts or ramps the vehicle is equipped with, or a conversation with the driver ensuring he or she is listed on the provider's certificate of compliance. It is reasonable to address and memorialize this process in this subpart to clarify the process and parameters of these roadside inspections.

The proposed amendments to this subpart also clarifies that Minn. Stat. § 169.46 through 169.75 is the controlling source of regulation when determining whether a special transportation service vehicle is likely to cause an accident or breakdown. This is necessary to clarify the correct order of analysis when determining whether a vehicle should pass or fail an inspection. Historically, there has been some confusion regarding what standard to apply when determining if a vehicle is in a condition in which it was likely to cause an accident or breakdown. This subpart currently requires that the "North American Uniform Vehicle Out-of-Service Criteria" be used. Those criteria are updated and published once per year by the Commercial Vehicle Safety Alliance and lay out detailed standards for vehicle safety. On issues where Minn. Stat. Chapter 169 is silent on quantifiable metrics, the criteria are quite useful in applying a standard that does not require a trained mechanic to implement. But when the two are in conflict, the criteria cannot, and do not, supersede Minnesota Statutes. It is reasonable to make that distinction here to clarify the correct order of analysis. This is particularly true for providers when attempting to determine the requirements of a Department inspection.

The Department also proposes amending this subpart to change the required document to be used to determine whether a vehicle is in a condition that is likely to cause an accident or breakdown from the "North American Out-Of-Service Criteria" to the Department's "Minnesota Vehicle Requirements for Special Transportation Services and Limousines". This is necessary to ensure a comprehensive, program-specific, and accessible set of standards is used when determining whether a vehicle meets minimum safety requirements. As previously mentioned, the "North American Out-of-Service Criteria" is a useful tool based on federal regulations which prescribes specific quantitative metrics for vehicle safety. However, it is written primarily for commercial vehicles that are greater than 10,000 pounds and contain more specialized equipment. Most vehicles used to provide special transportation service are sedans and vans which weigh substantially less than 10,000 pounds.

The "Minnesota Vehicle Requirements for Special Transportation Services and Limousines" is a tool the Department has developed for these types of vehicles, specifying the standards to determine whether a covered vehicle is likely to cause an accident or breakdown based on state statutes, state rules, and applicable federal guidelines and regulations. Vehicles over 10,000 pounds will still be covered by safety provisions within the Federal Code incorporated by reference into Minnesota Statutes under Minn. Stat. § 221.0314. This amendment is reasonable because the implementation of this standard will allow the Department to have a single standardized tool to use when determining whether a vehicle is likely to cause an accident or breakdown. Additionally, if a member of the public wishes to obtain a copy of the "North American Out-Of-Service Criteria," he or she would need to purchase it from the Commercial Vehicle Safety Alliance. The Department will be able to distribute the "Minnesota Vehicle Requirements for Special Transportation Services and Limousines" for free at the Department's physical

locations and online. This will allow providers to access the Department's standards for vehicles and vehicle inspections much more easily.

Finally, the proposed amendments to this subpart require that the Department's vehicle inspection form include a field to indicate whether a vehicle designated for protected transport meets the standards of Minn. Stat. § 256B.0625, subd. 17. This amendment is necessary to reflect the requirement that the Department check these standards under Minn. Stat. § 174.30, subd. 3. This language was added to the enabling statute in 2015. The amendment is reasonable because it directly mirrors the above referenced passage which states "For vehicles designated as protected transport under section 256B.0625, subdivision 17, paragraph (h), the commissioner of transportation, during the commissioner's inspection, shall check to ensure the safety provisions contained in that paragraph are in working order."

Note: The correct citation to the pertinent DHS statute is Minn. Stat. § 256B.0625, subd. 17(i). At the time of writing of this SONAR, the Revisor's Office had not yet updated the citation contained in Minn. Stat. § 174.30, subd. 3, which erroneously refers to the previous codification of this provision at 256B.0625, subd. 17(h).

Subpart 1a. Commissioner shall audit records. The Department proposes the addition of this subpart governing audits of provider records for increased readability, and to include additional details on the Department's audit process. This is necessary to establish clear standards and expectations for an audit of provider records. Minn. R. 8840.5650 states the Department shall annually audit providers to determine whether they are keeping the records required by Minn. R. 8840.6100. Additionally, subpart 1 of this part previously required the Department to inspect vehicle inspection, repair, and maintenance records at least annually. The proposed amendment builds on that language, specifying the Department must also examine driver and attendant records and give the provider the documented results of the audit.

The addition of this subpart is reasonable because the proposed amendment will make navigating these rules easier and make expectations for a Department audit more clear. Combining and calling out the parts of these rules that specify which records must be audited will allow readers to get a clear picture of the requirements of an audit without having to go to several other parts.

The use of the term "at least annually" is reasonable because it mirrors the standard for vehicle inspections in the previous part. Because records audits were previously addressed alongside vehicle inspections under that part, the same standard has applied to both until now. The Department generally does not perform a full audit of a provider's records more than once a year but will often inspect certain records upon complaint, as a follow up to determine that a previously noted violation has been addressed, or if other violations noted in the field indicate potential additional violations related to records.

Subpart 5. Failure to permit an inspection. The proposed addition of the term "or audit" has been included to address the proposed addition of subpart 1a to this part. This addition is necessary to clarify providers may still be suspended for failure to allow an audit. Audits are now called out specifically under their own subpart, rather than generally under the inspection subpart. Because of this, it might not be clear that providers may still be suspended if they do not allow an audit. This addition is reasonable because it will ensure a loophole is not created and that the Department retains its enforcement authority when providers decline to participate in an audit. The Department occasionally encounters providers who are reluctant, or outright refuse, to make their records available. It is quite

rare to actually have to suspend such providers but bringing it to these providers' attention that they can lose operating authority for refusing to allow an audit has been extremely effective in ensuring compliance with this part.

Part 8840.5800 Enforcement: violations, suspensions, revocations, and cancellations.

Subpart 1. Notice and opportunity for correction. The proposed amendment specifying that a provider found to be in violation of Minn. Stat. § 174.30 is subject to enforcement action is necessary for clarity regarding the requirements of these rules. Clarifying that the Department has the ability to enforce the provisions of the enabling statute will help ensure providers are aware of the requirement to comply with both the statute and these rules. This amendment is reasonable to account for potential future changes to the enabling statute that might occur before the next time these rules are amended. The enabling statute has historically been changed by legislative action more frequently than these rules have been amended. Specifying that providers are required to comply with both the terms of the enabling statute and the terms of these rules is reasonable to ensure clarity of expectations and that due process is followed during Department enforcement actions.

Item A. The Department proposes amending this item to clarify that Minn. Stat. Chapter 169 is the controlling source of law when determining whether a special transportation service vehicle is in a condition that is likely to cause an accident or breakdown. This amendment is necessary to keep this part consistent with the proposed amendment to Minn. R. 8840.5700, subp. 1. It is reasonable to change both this item and Minn. R. 8840.5700, subp. 1 to prevent any confusion regarding the correct order of analysis in determining whether a vehicle has met minimum safety standards.

Item C. The amendments will alter this item in several ways to clarify that providers and certain employees of providers are subject to the requirements of these rules and Minn. Stat. § 174.30. The term "or attendant" was added to clarify that both drivers and attendants used to provide special transportation service are subject to these standards. This is necessary to keep the phrasing of this item consistent.

The phrase "and Minnesota Statutes, section 174.30" has been added to clarify that covered parties must remain compliant with these rules and the enabling statute. This is necessary to prevent confusion about provisions that might later be added to the enabling statute but won't be included in these rules until the next time they are amended. Both of these changes are reasonable because they will help make the requirements of this item as clear as possible.

Finally, the amendments include the prohibition of providers to use anyone associated with the organization in a way that violates these rules or the enabling statute. If found to be using a person in such a way, the provider is required to stop doing so until written evidence is presented to the Department proving the violation has been addressed. This amendment is necessary to specifically address the requirement that providers comply with the DHS background study process for owners and employees who may come into contact with riders or their data. This requirement was not addressed the last time these rules were written because it was not added to the enabling statute until 2015. The addition of this item is reasonable to clarify the requirements of these rules and put providers on notice of a critical requirement that overlaps heavily with the requirements of a program administered by another government agency. This amendment will not affect a provider's ability to do business unless the provider refuses to stop using an employee until he or she is compliant with the background study requirement. This is the same standard that providers are already held to for vehicle-related violations.

Item D. The Department proposes the addition of this item to clarify that if a vehicle used to provide special transportation service has a non-functioning wheelchair lift or ramp, that vehicle cannot be used to provide special transportation service rides where the rider is secured in a wheelchair. The vehicle may still be used to provide rides where a rider can safely access the vehicle and be properly secured by alternative means. This is necessary to clarify an area of uncertainty the Department is often requested to address. Department employees are regularly asked if it is a violation of these rules to provide otherwise safe special service transportation in a vehicle that does not currently meet securement standards. The addition of this item is reasonable because it provides a clear answer for both providers and Department employees.

Subpart 2. Violation determination. Allowing providers to mail, deliver, or e-mail evidence of compliance to the Department is necessary to follow common communication practices more closely. The ability to submit evidence of compliance by e-mail was part of the larger advisory committee discussion regarding the ease of communication with the Department and compliance with these rules. This change is reasonable because it will make compliance easier for all providers and equalize the options between providers in the metro and providers in Greater Minnesota. The proposed amendment also requires providers to include a copy of the vehicle inspection report with their evidence of compliance. This is necessary to ensure all violations that were noted in an inspection report have been addressed. This is reasonable because providers are issued a copy of an inspection report after every vehicle inspection and sending a copy with the proof that violations have been addressed will allow Department employees to immediately determine whether all of the listed violations were addressed.

Subpart 3. Suspension. The proposed amendment will change this subpart in several places to clarify that violations of Minn. Stat. § 174.30 are grounds for suspension and adds factors defining the circumstances under which the Department may suspend a provider. The references to the enabling statute are necessary to clarify and put providers on notice that they are subject to the statutory provisions as well as these rules. Clarifying that violations of the enabling statute are grounds for suspension under these rules is reasonable to account for the possibility that the statute may be changed before these rules are next amended. It will also help consolidate the requirements under this program which is co-regulated by the statutes and rules of the Department, DHS, and DPS. This can occasionally make it difficult for providers to find a definitive answer on regulations in one place.

The change of the phrase “the commissioner *shall* suspend a provider’s certificate” to “the commissioner *may* suspend” is necessary to prevent the Department from being forced to suspend providers over relatively minor violations. The way this subpart is currently written, the Department would technically be required to suspend a provider that had not provided written proof that a violation for not having an operable flashlight had been corrected within fifteen days. The Department prefers an approach of education and follow up, except in cases of serious safety concerns.

The proposed amendments also add language including the factors the commissioner must consider when determining whether to suspend a provider’s certificate of compliance. The Department must consider the number of violations found, the provider’s history of the same types of violations, and the provider’s general history of violations. Additionally, the rules require the Department to develop violation history review criteria and guidelines and post them on the Department’s website.

Giving the Department the ability to choose whether to suspend a provider’s certificate of compliance based on these factors will allow the Department to prioritize safety and to set clear standards without being forced to issue a suspension for minor infractions. This change is reasonable because the additional deference granted to the Department would be standardized by a system of

making determinations based on the factors listed in the rule. Posting the criteria for reviewing these factors on the Department's website will help ensure the requirements are clear and accessible. The factors for suspension that must be considered are reasonable because they address current safety violations, and a provider's history of violations, including whether the provider has properly addressed them in the past.

Item F. This addition of the ability to suspend a provider for failure to pay a decal fee is necessary to address a 2020 legislative change to Minn. Stat. § 174.30. The requirement that providers pay a $45 fee for each decal was enacted in 2015. Since that change, the Department has spent a significant amount of time and resources determining which providers were in arrears and by how much, as well as coordinating with the Department of Revenue to properly communicate with providers that the Department had referred for nonpayment. The ability for the Department to suspend a provider for failure to pay that fee was not addressed until the change to the enabling statute in 2020. The addition of this item is reasonable because it mirrors the requirements of Minn. Stat. § 174.30, subd. 8(d) which states "If the commissioner determines that a provider has failed to pay the decal fees as required by subdivision 4, the commissioner must send written notice by certified mail ordering the provider to pay the applicable fees within 60 days after the notice was mailed."

Subpart 3a. Revocation. The addition of the phrase "contained in parts 8840.5100 to 8840.6300 and Minnesota Statutes, section 174.30" is necessary to clarify which standards must be considered when the Department is considering a revocation. This phrase is reasonable not just to make the requirements of this part clear, but also to account for potential future changes to the enabling statute before these rules are next amended.

The removal of the requirement for the Department to determine that a pattern of violations shows a "willful or reckless" disregard for health and safety is necessary for consistent enforcement. The phrase "willful or reckless" is a subjective standard that is difficult to determine, causing difficulties when attempting to impose a revocation.

The removal of the phrase "willful or reckless" is reasonable because the standards in the rules and enabling statute that providers must comply with are clear. Any pattern of violations which shows a disregard for the health and safety of the vulnerable population that uses special transportation services is cause for serious concern willful, reckless, or otherwise. The Department will still be required to consider willfulness in the factors used to determining revocation under subpart 3b but keeping it as a separate element is unnecessary.

Subpart 3c. Cancellation. The Department proposes this amendment to clarify that knowingly making a material statement that is false or fraudulent under standards provided in Minn. Stat. § 174.30 is grounds for cancellation, not just under the standards specifically provided in Minn. R. Chapter 8840. This amendment is necessary and reasonable to account for potential future changes to the enabling statute that may occur before these rules are next amended.

Subpart 3e. Application for another certificate after a false or fraudulent statement. The addition of the proposed waiting period to reapply after certain cancellations is necessary to discourage false or fraudulent statements made on applications for certificates of compliance. It is reasonable to impose a waiting period after false or fraudulent statements made on an application because, as previously mentioned, the Department might not have an opportunity to inspect a provider's records for an entire year after an application has been processed. If a provider is intentionally hiding noncompliance or other pertinent information, it could create a significant safety risk for the vulnerable

population that uses special transportation services. The proposed period of a 180-day waiting period before reapplying is consistent with the reapplication waiting period that a revocation of a certificate of compliance carries. The length of the waiting period was discussed at length with the advisory committee. Although there was some debate regarding the length of the waiting period, the consensus was that 180 days was appropriate. The Department is confident the proposed amendment will deter noncompliance.

Subpart 6. Notice of suspension, revocation, or cancellation. The proposed amendment adds the requirement that the Department send notice to the address listed on a provider's certificate of compliance rather than the "last known address." This is necessary to further clarify that it is the responsibility of providers to keep their contact information up to date. This amendment is reasonable because the new standard is easily determinable, sets a clear expectation for providers, and will not cause confusion about proper notice if a provider changes addresses but does not update its certificate of compliance. Providers are already required to notify the Department of any change to the information listed on their certificate of compliance within ten days under Minn. R. 8840.5500, subp. 7. The Department has encountered issues when attempting to communicate with providers who have changed addresses without notifying the Department, which wastes both the provider's and Department's time and resources. This can also delay Department enforcement actions when the provider claims they did not receive notice due to a change of address.

Part 8840.5900 Driver qualifications.

Subpart 6. Waiver of physical qualification. The Department proposes this amendment to change the title of this subpart from "Waiver for physical defects" to "Waiver of physical qualification." This amendment is necessary to accurately summarize the waiver process, and modernizes the language being used with more respectful terminology. The addition of the clauses under 49 CFR, § 391.41(b) have been included because they were added to the relevant portion of the Code of Federal Regulations after the previous rulemaking was completed.

Subpart 7. Other evidence of physical qualification. Changing the title of this subpart from "qualifications" to "qualification" is necessary and reasonable to remain consistent with the other subpart titles of this part.

The addition of a "valid commercial driver's license" as an alternative form of proving physical qualification under this subpart is necessary because it will minimize the redundancy of a person having to present the same information to multiple agencies. A person who applies for a commercial driver's license must go through the same process with DPS as it does with the Department. This amendment is reasonable to prevent compliant drivers from having to submit the same information twice.

Subpart 10. Age. The amendment of this title from "Age and experience" to simply "Age" is necessary and reasonable to be consistent with the change to the body of this subpart.

The removal of the requirement that a driver has at least one year of driving experience is necessary for the Department to maintain a consistent standard. It is difficult to determine if a person is compliant with this requirement using any metric other than the length of time a person has possessed a state issued driver's license. Many drivers that provide special transportation service are from another country, which often makes it difficult to document previous driving experience. It is important that the Department has a consistent standard for a situation that frequently occurs. This change is reasonable because the Department has proposed the addition of a skills assessment requirement to the driver and attendant training requirements under Minn. R. 8840.5910, which will serve to further ensure drivers

are qualified to operate a special transportation service vehicle. The addition of the skills assessment will more than offset the removal of this requirement in ensuring safety by special transportation service drivers on the road. This will also provide consistency and make the age requirement under these rules the same as the age requirement under the rules for the Limousine Service program administered by the Department.

Subpart 11. Driving record. The proposed change of the term "convictions" to "a conviction" is necessary and reasonable to ensure the language is consistent with the rules of the limousine service program the Department also administers, and to clarify that even one conviction is prohibited.

Subpart 13. Provider responsibility; employee's driver's license. The proposed amendment changes the wording of this subpart to clarify that when a provider obtains a prospective employee's driver's license, the provider must ensure the license is valid at the time the review is performed. This issue was raised by the advisory committee and is necessary to clarify provider responsibility when hiring new drivers. This clarification is reasonable to ensure there is a clear standard during a critical part of the hiring process.

Subpart 13a. Provider responsibility; status of the employee's driver's license. The addition of this subpart is necessary to require providers to annually check driver records. Subpart 14 of this part previously required providers to annually check the criminal and driving records of the drivers it uses to provide special transportation service. Additionally, subpart 12 listed disqualifying criminal convictions. In 2015, the legislature repealed both subparts 12 and 14, and added the requirement that providers comply with the DHS background study system to determine eligibility. This system tracks criminal charges and convictions, but not traffic-related violations that may impact a driver's license status. The addition of this requirement is reasonable to ensure the status of the licenses for the drivers a provider employs are regularly checked. Providers are still required to not use disqualified drivers and maintain a record of license checks under Minn. R. 8840.6100. A member of the advisory committee pointed out that because of the repeal of the license status check requirement, providers are now required to perform checks but are not prescribed a schedule to do so. This amendment is reasonable because it is important that there be a clear standard providers are held to in order to ensure disqualified drivers are not used to provide special transportation service.

Subpart 13b. Provider responsibility; background study eligibility. The Department proposes the addition of the requirement that providers receive a determination of eligibility from DHS before using a driver to provide special transportation service because it is necessary to clarify that providers must comply with the requirements of the DHS background study system. This requirement is laid out in Minn. Stat. § 174.30, subd. 10(a) "Providers of special transportation service regulated under this section must initiate background studies in accordance with Chapter 245C on the following individuals." This requirement was added to the enabling statute by the legislature in 2015. The addition of this subpart is reasonable to ensure that providers do not use employees to provide special transportation service without a determination of eligibility, and also that they stop using an employee if he or she becomes ineligible at a later time. The inclusion of the provider receiving documentation stating the driver is disqualified as the triggering event to stop using that driver was added at the suggestion of the advisory committee. This is reasonable to clarify provider responsibilities under this subpart. This provision is consistent with the DHS background study process and will provide a clear standard under these rules.

Subpart 15. Provider responsibility; statement of physical qualification. Changing the title of this subpart from "qualifications" to "qualification" is necessary to remain consistent with the other

subpart titles of this part. The amendments to this subpart include the requirement that providers ensure the medical examiner's certificates or other evidence of physical qualification for the drivers they employ are current. Specifically, the provider must perform the checks in such a way that no driver it uses to provide special transportation service does so without a current medical examiner's certificate or other evidence of physical qualification. The addition of the requirement for providers to periodically check medical examiner's certificates or other evidence of physical qualification is necessary to ensure that drivers do not perform special transportation service trips after a medical examiner's certificate has expired or a waiver has lapsed.

The Department proposes "periodic" checks because not all types of evidence of physical qualification are valid for the same length of time. Waivers of physical qualification in particular, can vary by the type and severity of the condition in question. It is the provider's responsibility to ensure that drivers have current and valid medical examiner's certificates or other evidence of physical qualification. This is reasonable because the providers are the ones with the information, not the Department.

Subpart 16. Provider responsibility; failure to maintain physical qualification. The change to the title of this subpart amending "physical qualifications" to "physical qualification" is necessary and reasonable to remain consistent with the other subpart titles of this part.

Subpart 17. Complaint records. This proposed amendment requires providers to keep a copy of the complaints received for all attendants it employs, in addition to the drivers. This amendment is necessary and reasonable to ensure providers accurately track issues related to both the drivers and attendants they employ. This will allow the Department to check these records and any subsequent follow-up actions taken by a provider to address these issues. The population that uses special transportation service is particularly vulnerable and it is critical that issues with drivers or attendants that prevents their safe transportation are documented and addressed.

8840.5910 Driver and Attendant Training Requirements.

Subpart 1. Training required before providing special transportation service. The Department proposes changing the title of this subpart from "Training required before driving" to "Training required before providing special transportation service." This is necessary to address attendants who are also covered by this subpart and need to meet certain minimum standards before being used to provide special transportation service. This subpart governs the training providers either perform or hire Department certified trainers to perform for both drivers and attendants, addressing both here is reasonable.

The amendments also change the term "receive" to "complete" to describe the training requirements. This is necessary and reasonable to describe more accurately several of the items added to this subpart and the phrasing of subpart 2.

Item A. The proposed amendment removes the requirement that each driver and attendant complete the passenger assistance training described in subpart 5, items E to I, and adds the requirement that they complete "an orientation to common issues and instruction related to transporting passengers." This training can be performed by a provider or a Department certified trainer. This change is necessary to allow pre-driving training to be performed by special transportation service providers without having to potentially schedule an outside trainer each time a new driver is hired. This item, as currently written, is the only one in this subpart that requires training that must be administered by a Department-certified trainer before providing STS services. All other trainings

requiring a Department-certified trainer must be completed within 45 days of a driver or attendant initially being used to provide special transportation service. Providers have reported difficulty meeting this requirement due to employee turnover and a decreasing level of available Department-certified trainers.

It is often standard practice by trainers to charge by training session, rather than by attendee. This can significantly increase the cost of training employees as well as make scheduling difficult for all parties involved. Requiring drivers and attendants to complete orientation to common issues and instructions related to transporting passengers under the proposed language is reasonable because the item will continue to properly address rider safety while allowing providers to work with trainers to ensure that all employees are properly trained on passenger assistance under Subpart 5 within the appropriate timeline. The requirement that drivers receive orientation in common issues and instructions related to transporting passengers is reasonable because it is more encompassing than the currently required passenger assistance and covers all the minimum basic information a driver or attendant needs to know when performing special transportation service.

Item F. The requirement for instruction on maintaining cleanliness of the vehicle was added at the suggestion of the advisory committee. The requirement that drivers and attendants be trained in how to properly sanitize and maintain the cleanliness of the vehicle is necessary not just for general best practices, but because a particularly vulnerable population uses special transportation service. One of the most common complaints the Department receives is that vehicles used for special transportation service were not properly cleaned before a ride. The addition of the requirement that drivers and attendants be trained in the use of the body fluids cleanup kit is necessary because the cleanup kit is also being added as required equipment under these rules. Many providers already carry a body fluids cleanup kit and report regularly having to use them. It is reasonable to require this training before a driver or attendant is used to provide special transportation service because it is anticipated these kits will be used on a regular basis and it is likely that one will be needed before 45 days when the other required trainings must be completed.

Item G. The requirement for evaluation of behind-the-wheel skills was added based on the recommendations of the trainer group. This requirement is necessary to ensure passengers are not transported by drivers who do not at least meet the minimum standards necessary for safe transportation. Drivers are required to complete an additional defensive driving course within 45 days of being hired, but it is necessary to assess the skills of special transportation service drivers and ensure they are able to perform the maneuvers necessary to provide safe transportation before they begin providing STS services.

The areas of evaluation are reasonable because they were selected based on the DPS type III school bus requirements. The type III school bus program regulates vehicles weighing 10,000 pounds or less with a seating capacity of less than ten. Because of the similarity of the vehicles used to provide these services and the vulnerability of both populations that use the services, similar requirements for the programs is appropriate. Additionally, many special transportation service providers also perform type III school bus transportation. The more similarity between the two programs, the easier it will be for providers to comply with the requirements of both programs.

Subpart 2. Additional training required. The inclusion of the references to the required trainings under subparts 5a and 6a is necessary and reasonable to make the timing requirements of this part clear.

Subpart 4. First aid training.

Item G. The addition of the requirement for training in recognition of medical complications related to diabetes, hyperglycemia, and hypoglycemia was recommended by both the trainer group and the advisory committee. This item is necessary to account for passengers who have these illnesses and use special transportation services. A major purpose of the first aid training is to teach drivers and attendants how to determine when it is necessary to request emergency medical assistance. Training in recognition of medical complications related to diabetes, hyperglycemia, and hypoglycemia is reasonable, particularly when considering that some rural special transportation service rides are lengthy, and complications may require immediate medical attention. It is important for drivers to recognize complications and call for emergency medical assistance quickly.

Item H. The addition of the requirement for drivers and attendants to be trained in recognizing the signs of a mental health episode was a recommendation of both the trainer group and the advisory committee. Mental health first aid, in general, was a subject of much discussion during the advisory committee process. The addition of this item is necessary to address the increase in passengers using special transportation service in a way that directly relates to a mental health diagnosis. In 2015 the legislature added nonemergency medical transportation to the list of regulated activities under Minn. Stat. § 174.30, subd. 1. Consequently, special transportation service now includes a much higher number of rides where a passenger is being transported to or from medical appointments related to mental health, particularly minor passengers with a diagnosis of autism. Given this increase, it is reasonable to require drivers and attendants to learn how to recognize signs of a mental health emergency or panic attack in the required first aid training under this subpart.

Subpart 5. Passenger assistance training.

Item B. The Department proposes that this item be amended to include the requirement that drivers and attendants be trained in securing common peripheral items and assistive devices. The addition of this requirement is necessary because riders often bring medical equipment or other items with them. The Department is frequently contacted with questions about this issue, and it was brought up several times during the advisory committee process. Special transportation service passengers often ride with accompanying oxygen tanks and other medical equipment, and it is important for these items to be secured. This amendment is reasonable because if these items are not properly secured, they may be thrown with great force if the vehicle comes to a sudden stop, rapidly accelerates, or is involved in an accident. If this were to occur, it would be very dangerous for both the passengers and driver.

Item C. This proposed amendment includes several changes. The terms “children” and “people with mental and physical [disabilities]” would be added to the groups of people that must be discussed during this training. The addition of the requirement that attitudes toward children be discussed is necessary and reasonable to address the increase in passengers who are minors since these rules were last amended. The addition of the modifier “mental and physical” to the types of disabilities covered under this item is reasonable, and necessary to clarify how different types of disabilities can present the need for unique requirements or accommodations that may affect how a passenger is transported. Both these changes were suggested by the advisory committee to address a broader group of riders. The change in the requirement that the training include the participation of the elderly and persons with disabilities “when possible” is necessary and reasonable because it is simply not feasible to guarantee this requirement is met at every passenger assistance training performed in the state.

Item D. The addition of the requirement for discussion of strategy and resources for situations where communications may be limited due to language barriers was a recommendation by the trainer group. The addition of this item is necessary to address the fact that a significant number of special transportation service passengers, drivers, and attendants do not share the same first language. The addition of this item is reasonable because even when these parties may be generally able to communicate, it is important to ensure that more complicated or delicate issues involved in special transportation service are properly communicated and understood amongst all parties.

Item E. The Department proposes amending this item to add the term "mental health" to the list of factors discussed. This addition is necessary and reasonable because, as previously mentioned, in recent years there has been a significant increase in people using special transportation services to get to and from medical appointments related to a mental health diagnosis. This amendment was part of the broader advisory committee recommendations to ensure mental health is properly and fully addressed under this part.

Item G. This proposed amendment of the addition of the phrase "communicating with" is necessary to ensure passengers are not transferred in a way that makes them uncomfortable. Transferring passengers is a delicate procedure requiring effective communication between the transferor and the transferee. The Department has received numerous complaints about the way passengers have been transferred that could have been resolved had the driver or attendant properly communicated with the passenger. The addition of this item is reasonable to ensure drivers and attendants are properly trained in working with passengers to ensure they are comfortable during a process which often requires close proximity and physical contact.

Item K. The Department proposes adding the requirement that the passenger assistance training under this part include a discussion of other service animals in addition to guide dogs. This amendment was recommended by the advisory committee to address the recognition of different types of service animals under the ADA. The amendment of this item is necessary and reasonable to address the increase in other types of service animals that drivers and attendants may encounter when providing special transportation services.

Item L. The addition of the requirement for training in properly communicating safety concerns related to assistive or mobility devices is necessary to ensure drivers and attendants properly communicate safety issues that may arise from a passenger's preferred or requested manner of transportation. The addition of this item is critical to ensure special transportation services are provided in a safe and respectful manner. This item differs from item G in that it addresses concerns by the driver or attendant about the safety of the way the passenger prefers to be transferred, not the other way around. Special transportation services are used by a particularly vulnerable population and rides often involve physically touching a person to transfer him or her into the vehicle. It is important that drivers and attendants properly communicate with riders when doing this to ensure safety and comfort for all parties. The Department has received many complaints that could have been resolved more easily if there had been effective communication between a driver and a passenger regarding why the driver felt transporting the passenger in particular way, or in a particular mobility assistance device, was not safe. The addition of this item is reasonable because, similar to item G, it is also about communicating with passengers regarding the manner in which they will be transported. However, it is necessary that this distinction be made because communicating safety concerns related to transporting riders in certain mobility devices is an important issue for providers. This concern was expressed several times during advisory committee meetings.

Subpart 5a. Stretcher transportation assistance training. The addition of the requirement for stretcher transportation assistance training was a recommendation of the trainer group. This subpart is necessary to address a method of special transportation service that has become more common in recent years. These rules have addressed vehicle requirements for stretcher transport since they were last amended. However, prior to the addition of the DHS nonemergency medical transportation program in 2015, special transportation service providers that provided stretcher transport were generally also ambulance providers and met the safety requirements through that training. Since nonemergency medical transportation was added to special transportation service, there has been an increase in providers that do not fall under the ambulance service requirements, and do not receive that training. The proposed subpart is intended to supplement the passenger assistance training in subpart 5, adding a requirement specifically for stretcher transportation. This is reasonable because many providers that perform stretcher transport already perform in-house trainings that are consistent with other requirements, particularly providers of ambulance service. Drivers and attendants who have been trained under the ambulance service requirements may apply for exemption from stretcher transport assistance training under the newly proposed language in subpart 10.

Subpart 6a. Child seat training. The Department proposes the addition of child seat training to ensure that drivers and attendants who provide special transportation service to children are sufficiently trained to safely secure those children during transport. The addition of the subpart is necessary because it is of utmost importance that children using special transportation service are transported safely. The three-hour time requirement is reasonable because it based on industry standards for length of these types of trainings and is consistent with the DPS requirement for childcare/foster care child passenger safety classes.

Subp. 9. Refresher course and continuing education.

Item B. The addition of requirement for abuse prevention training every three years is necessary to ensure drivers and attendants properly retain and consistently implement the knowledge and skills learned in the initial abuse prevention training required under Minn. R. 8840.5910, subp. 8. It is reasonable and critically important that all the initial trainings are addressed every three years to ensure that drivers and attendants remain aware of, and follow, best practices, especially for abuse prevention considering the particularly vulnerable nature of the population that uses special transportation service.

Item C. The Department proposes the requirement for training in proper securement every three years for the same reasons as it proposes the addition of item B. It is important that this training is completed to ensure best practices are followed when securing passengers. Although this is an activity a driver or attendant may engage in daily, the addition of this item is reasonable because not only is it important to ensure that drivers and attendants properly retain and implement best practices, but those best practices may have evolved since a driver or attendant's initial training was performed.

Item F. The proposed reduction in continuing education hours required was included at the recommendation of the trainer group. The change lowers the number of hours required for continuing education related to providing special transportation service from seven to three. This amendment is necessary to address regular feedback the Department receives, stating the difficulty of consistently being able to design a training that includes seven hours of suitable material. The proposed amendment is reasonable because the four fewer hours of training a driver or attendant will receive under this item is balanced out by the additional four hours included under items B and C. When this subpart was written, the seven-hour requirement was intended to give trainers flexibility in designing these courses to account for potential changes to the field. It was also intended to lower the amount of repetition that

would occur for drivers and attendants who repeatedly took these courses. Given the consistent feedback that finding enough new material is difficult and the addition of four hours of training under items B and C, the Department proposes this amendment to provide clear course expectations without increasing the overall length of the trainings required under this subpart.

Subpart 10. Commissioner to consider training equivalents. The purpose of this new subpart is to expand on the existing practice of exempting drivers and attendants who possess a valid first aid certificate from the first aid training requirements under Minn. R. 8840.5910, subp. 4. The first aid exemption is already allowed under Minn. R. 8840.5910, subp. 2(a). The proposed subpart will allow a similar exemption to apply to other types of training that the Department determines meets or exceeds the training requirements of this part. This subpart is necessary because many providers offer other types of transportation that fall outside of special transportation service regulations but require similar types of training. In many cases, the training requirements for these other types of transportation are more stringent than the requirements under these rules. The addition of this subpart is reasonable because it will prevent drivers and attendants from being required to take trainings that cover the same material twice. The requirement that the Department follow the same procedures in Minn. R. 8840.6200 will ensure consistency in application, and the requirement that the Department provide a written response to requesting providers within 30 days is consistent with other time requirements in these rules. The requirement that providers keep copies of the approval is reasonable to ensure both parties are clear about who has been exempted from a training requirement and is consistent with the other records requirements for drivers and attendants.

Subpart 11. Course content. The Department proposes the requirement that all trainings under this part include a proficiency assessment element, which is necessary to help ensure trainees retain the information being taught. The addition of this subpart is reasonable because it will not mandate a requirement for trainees to pass a test by a specific percentage, but rather allow flexibility in how the trainer verifies that trainees are learning what they need to learn. The assessment process is already commonplace for many trainers and was recommended as best practices by the trainer group.

The new language also addresses distance and online learning, which is necessary to address a now common method of performing trainings. Although these concepts existed when these rules were last amended, they are far more frequently encountered now. The Department has discovered that many trainers have been utilizing online and distance options to provide special transportation service trainings and has approved several online training modules. This style of training has the benefits of flexibility in timing, accessibility to trainees around the state, and being easier to perform trainings for smaller groups. However, it is important that certain portions of trainings include the trainer observing the trainee physically performing various procedures covered by the training. It is also important that trainings be consistent in their material and methods. It is reasonable that the Department specifically evaluate the online aspects of a training to ensure these issues are addressed.

8840.5925 Vehicle equipment.

Subpart 1 Safety equipment.

Item C. The requirement for vehicles to carry a body fluids cleanup kit is necessary to ensure special transportation service vehicles are sanitary during rides. This topic was brought up during the advisory committee process because many providers are already carrying these kits as part of their standard equipment. The population that uses special transportation service is particularly vulnerable. Many of them have medical conditions that make them more susceptible to illness or result in incidents that require the vehicle they were in to be sanitized after their ride. This item is reasonable because the

language used to define the body fluids cleanup kit was taken directly from Minn. Stat. § 169.475, which sets the standards for type III school busses. The similarity between the two programs makes the shared language appropriate.

Item D. The Department proposes amending this item to require that cellular phones used to satisfy the two-way communication requirement meet the hands-free standards under Minn. Stat. §169.475. The statute states that cellular telephones may only be used when the vehicle is not in motion or a part of traffic unless it meets the exceptions of Minn. Stat. § 169.475, subd. 3. Special transportation service vehicles are required to be operated in compliance with Minn. Stat. chapter 169 generally, but this amendment is necessary to clarify that operating a cell phone while performing special transportation service must be done in compliance with section 169.475. Many, if not most, providers use cellular phones to satisfy the two-way communication requirement. This may be the reason that one of the most common complaints the Department receives is that a driver was talking on the phone while driving. Clarifying that a violation of Minn. Stat. § 169.475 is also a violation under this part is reasonable because it will allow the Department to resolve these complaints more easily and ensure vehicles are operated safely.

Item F. The proposed amendment would change this item to mirror the current child restraint requirements under Minn. Stat. § 169.685, subd. 5(b). This is necessary to ensure the rules are consistent with the requirements of Minnesota Statutes and do not hold providers to two different standards. These rules currently require drivers and attendants to comply with incorporated federal standards which are less stringent than the current state standards. It is reasonable to modify this item to include the state requirements that must be met by all vehicles on Minnesota roads, who do not fall under an exception or exemption, because all special transportation service vehicles are already held to this higher standard.

Item G. The addition of the requirement for seat belt extenders was a recommendation by the advisory committee. The addition of this item is necessary to ensure the safe securement of riders who, due to their size, cannot be properly secured by seatbelts as installed by manufacturers. Seatbelt extenders are relatively common items that can be acquired from dealerships and manufacturers, at little to no cost to providers. It is already a requirement under both these rules and Minnesota Statutes that passengers be properly secured during special transportation service rides. The addition of this item is reasonable to ensure the necessary equipment is available for all riders to be properly secured. Multiple riders have reported difficulty in finding special transportation service vehicles in which they can be properly secured while riding in a passenger's seat without the use of a seatbelt extender.

Item I. Striking the exemption for taxis under this item is necessary to ensure emergency equipment is available for all special transportation service rides, regardless of any other uses for the vehicle. The 1992 amendment to these rules exempted taxis from the requirement to keep a blanket in the vehicle. At the time, the industry was concerned about theft of blankets if they were required in vehicles. The proposed amendment is reasonable because it does not require that a blanket be kept in the cab of the vehicle. A blanket could be stored in the trunk, or possibly the glovebox. Taxis are already required to carry all the same equipment as other providers other than a blanket. If a vehicle is stuck on the side of the road during a Minnesota winter, the rider needs to be kept warm, whether or not the vehicle they are transported in is also used as a taxi. This is particularly true in rural areas where a replacement vehicle or ambulance can take a long time to arrive in the event of an accident or breakdown.

Item K. This item has been amended to require that all special transportation service vehicles carry a device capable of cutting securement straps, not just those that are equipped with wheelchair securement devices. This is necessary to ensure passengers who are unable to free themselves can be removed from the vehicle in the event of an accident, breakdown, or medical emergency. Securement straps are similar in many ways to seatbelts, and both can malfunction in a way that prevents a passenger from leaving their seat or position. Additionally, a particularly vulnerable population uses special transportation service, and many may be unable to free themselves in the event of an emergency, regardless of whether they were being transported in a wheelchair. This amendment is reasonable to ensure a passenger can be safely removed from their position if a securement strap or seatbelt otherwise prevents it.

Subpart 6 Vehicle identification. The Department proposes amending this item to remove the option of marking a vehicle with a number assigned by the Department. This is necessary and reasonable to remain consistent with the proposed requirement that providers obtain a USDOT number under Minn. R. 8840.5500, subp. 2(A)(2).

8840.5940 Vehicle Construction Standards.

Subpart 3 Holes. The proposed amendment is necessary to institute a more easily measured standard regarding holes and openings in vehicles and to make special transportation service vehicle requirements more consistent with the requirements of the other programs administered by the Department. The current language requires the Department to assess whether a hole admits exhaust gases, which is difficult to determine. It is far easier to determine if a hole or opening is necessary to the operation of the vehicle. The issue of difficulty determining the standard was raised during the advisory committee process. This requirement is reasonable because it closely models the language of the requirements for commercial vehicles under the Code of Federal Regulations. 49 CFR § 393.84 states that floors shall be “free of unnecessary holes and openings.” This is the same standard being proposed here but applied to the entire vehicle rather than just the floor. Because this is the federal standard for commercial vehicles it is also the requirement imposed on all other commercial vehicles programs regulated by the Department. This amendment will make the standards under these rule clearer and will make the standards between Department administered programs more consistent.

8840.5950 Standards for Operations of Vehicles

Subpart 1 Operation. The proposed amendment changes this subpart in three ways. First, it will require providers to maintain records of daily safety inspections, second, it removes the provision requiring weekly or 1,000-mile inspections, and finally, it moves some of the items that were required to be inspected weekly to the list of those required to be inspected daily.

The addition of the requirement that daily safety inspections be documented is necessary to ensure the Department is able to verify that daily safety inspections have been performed. These rules currently require providers ensure daily safety inspections are performed, but there is no documentation requirement. Thus, there is no way for the Department to easily verify these inspections were performed. This topic was discussed at length during the advisory committee process. It is reasonable for the Department to be able to confirm that providers are maintaining their vehicles to safely transport people who use special transportation service.

The list of items that must be inspected daily will be amended to use the same items as the federal daily vehicle inspection requirements, as well as wheelchair and stretcher loading devices and securement systems. This is necessary to ensure the requirements under this program are consistent

with other commercial vehicle programs the Department administers. These requirements already apply to any providers that operate in an interstate capacity. This change is reasonable because consistency in the daily inspection requirements will make compliance easier for companies that fall under multiple programs administered by the Department. Consistency with federal language will also make compliance easier for providers that are directly regulated by both the Department and the federal government.

The removal of the requirement for weekly visual inspections is necessary for several reasons. Some of the items on the current weekly vehicle inspection list should actually be checked every day the vehicle is used, some parts of the vehicle cannot be properly inspected without using a vehicle lift making compliance difficult, and the current language is inconsistent with other commercial vehicle programs the Department administers. The proposed amendment will require that wheelchair and stretcher lifts and securement systems be inspected daily. This is reasonable because it is critically important to identify issues that would prevent a passenger from being safely transferred or secured before a driver or attendant attempts to transfer or secure that passenger. Similarly, functioning brakes, steering mechanisms, and indicators are all paramount to the safe operation of a vehicle and have been added to the daily inspection list. Finally, certain items under the weekly inspection cannot be properly inspected without the use of a vehicle lift, and possibly additional tools. Exhaust systems, frames, suspensions, and belts often cannot be inspected while the vehicle is on the ground, or without the aid of mechanical tools. It is rare for a provider to have regular access to these items, which makes full compliance difficult and expensive.

Subpart 2 Smoking. The proposed amendment bans vaping as well as smoking in special transportation service vehicles, removes the exemption for taxis, and requires a vehicle be thoroughly cleaned and odor free if this subpart is violated. The inclusion of the ban on vaping was a recommendation by the advisory committee. Vaping has only recently become widespread and was not a concern the last time these rules were amended. Vaping releases many of the same chemicals as cigarettes or cigars and can cause significant odor. It is reasonable and necessary to ban vaping in special transportation service vehicles. Smoking and vaping should not be done in vehicles that contain or will contain the vulnerable population that use special transportation services, regardless of whether the vehicle is also used as a taxi. The addition of the requirement for “cleaning so as to be odor free” when this subpart is violated is reasonable and necessary to ensure there is a measurable standard to determine compliance. This portion of the amendment was suggested by the advisory committee and follows the best practices many providers have already implemented.

Subpart 3 Seat belts. The proposed amendment requiring child restraint systems to be used for all child passengers younger than eight and shorter than four feet nine inches is necessary to make these rules consistent with Minn. Stat. § 169.685. This statute is part of the minimum standards for all vehicles on the road in Minnesota. The proposed removal of the exception for taxis is necessary for the same reason. This amendment is reasonable because it will prevent confusion from being held to two standards and because passenger safety should not depend on whether the vehicle is used for something else besides special transportation service.

Subpart 3a Heating and air conditioning. The addition of the requirement that heating and air conditioning systems be functional is necessary to ensure that passengers travel safely and comfortably even in extreme temperatures. Besides being a particularly vulnerable population, people who use special transportation services often spend a significant amount of time in vehicles during rides. This is especially true for riders in rural areas who may have to travel more than an hour to reach their destination. The requirement that the vehicle have functioning heating and cooling systems, if so

equipped, is reasonable to avoid requiring significantly expensive upgrades for special transportation service vehicles that are not equipped with these systems. This phrasing was included at the recommendation of the advisory committee. It is exceedingly rare to encounter a vehicle that is not equipped with a heating and air conditioning system, so the Department does not anticipate significant issues with compliance.

Subpart 5 Emergency policy. This Department proposes amending this part to require drivers or attendants who fail to follow the provider's emergency policy to be retrained on the emergency policy before being used to provide special transportation service again. This amendment is necessary to ensure emergency procedures are followed. It is critical that proper procedures are followed in the event of an emergency. This amendment is reasonable because it only requires that a relevant training be performed to address an important issue. There is no punitive element.

8840.5975 Standards for maintenance.

Subpart 1 Maintenance. The Department proposes an amendment to item D of this subpart to require the interior of the vehicle be free from debris and tripping hazards. This is necessary to ensure passengers can safely use special transportation services. People that use special transportation services often have difficulty moving without assistance. Debris and tripping hazards are therefore particularly problematic.

8840.6000 Insurance.

Subpart 1 Minimum coverage. The proposed amendment to this subpart will require providers to maintain a combined single limit insurance policy rather than allowing an option of varying limits for individual bodily harm, group bodily harm, and damage to property. It will also increase the minimum liability coverage from $300,000 to $500,000. Finally, this amendment will require that all providers maintain the same minimum level of insurance rather than differentiating by private, municipality, and state providers.

The two main considerations in determining the necessity of requiring providers to carry combined single limit policies were availability of policies and the minimum insurance requirements of managed care organizations. Although it was common practice when these rules were last amended, it is now rare for insurance companies to offer policies at this level of coverage other than combined single limit. The managed care organizations, with whom providers contract to connect with riders, also require minimum levels of insurance. Typically, these organizations require providers to maintain combined single limit policies. Requiring providers to maintain combined single limit insurance policies is reasonable because it is consistent with industry standards for both insurance providers and managed care organizations.

Increasing the level of required insurance coverage is necessary to bring the Department's requirement in line with industry standards and to ensure providers that do not contract with managed care organizations maintain a similar minimum level of insurance coverage as those that do. These rules have not been amended since 2004, it is important that the minimum level of insurance be adjusted to account for current costs and industry standards for coverage. Most providers contract with a managed care organization and therefore must meet the minimum level of insurance coverage required by those contracts. However, some providers do not engage in this practice, so they are not required to meet the minimum level of insurance coverage required by those organizations. It is necessary to increase the minimum level of insurance coverage for all providers to ensure the certainty of a claim being covered does not vary depending on whether a provider has a contract with a managed care organization.

The increase in the minimum coverage from $300,000 to $500,000 is reasonable because managed care organizations require at least $500,000 minimum limits. It is common practice by managed care organizations to require far more than the $500,000 minimum limits, some as high as $1.5 million or more. However, this rule covers all levels of nonemergency medical transportation, which are all reimbursed at different rates. The Department does not control the amount providers are reimbursed for rides and must account for providers who only offer the lower reimbursed levels when determining the appropriate amount of insurance each provider must be required to purchase. An increase in minimum coverage from $300,000 to $500,000 is reasonable considering any provider contracting with a managed care organization would be required to carry at least that amount.

The removal of the differentiation between private providers, municipalities, and the state is necessary and reasonable to account for the inclusion of nonemergency medical transportation in these rules and to prevent redundancies. The original differentiation between private providers and the state within these rules was put into place to account for the Minnesota Tort Claims act under Minn. Stat. § 3.763. This section limits the liability of the state by setting maximum tort claim amounts for instances when state employees are acting within the scope of their employment. The application of Minn. Stat. § 3.763 is not dependent on its inclusion in these rules. Additionally, the inclusion of the DHS nonemergency medical transportation program caused significant overlap between DHS and the Department. There are several institutions that receive state funding or are owned by the state that provide nonemergency medical transportation in a secondary capacity. The Department does not wish to leave open the interpretation that it possesses the ability to set minimum insurance levels for other agencies. The previous minimum level for municipalities was almost identical to that of private providers. Imposing one standard will ensure efficiency and clarity without sacrificing level of certainty that an insurance claim will be covered.

8840.6100 Records.

Subpart 1 Availability to the commissioner. The proposed amendment will change this subpart in three ways. First, language will be added to clarify that providers must keep all records required under Minn. Stat. § 174.30. This is necessary to address the possibility that the enabling statute may change before these rules are next amended. This change is reasonable to ensure providers are able to easily determine standards under these rules.

The second change will require providers to maintain records on forms prescribed by the commissioner, or on substantially similar documents. This is necessary to address improper or incomplete documentation by providers. The change is reasonable because it gives providers a framework for maintaining necessary information while allowing flexibility for providers who prefer their own forms. This is also consistent with the records requirements of other commercial vehicle programs the Department administers.

Finally, this amendments to this subpart will explicitly allow providers to keep records electronically, but in a manner that they may be presented at the provider's principal place of business upon request by the Department. This is necessary to allow standard business practices while maintaining provider responsibility for records. It is reasonable because it ensures the Department can still properly audit records while allowing providers flexibility in business practices.

Subpart 3 Drivers.

Item A. Requiring that each driver's name be recorded as it appears on his or her driver's license is necessary to ensure that the driver's legal name and proper spelling are used when checking the

driver's license status and background. The amendment is reasonable because the Department must check multiple databases maintained by several different agencies to verify compliance with these rules. It is reasonable to require the name be recorded as it is shown on the driver's license because it is the driver's legal name and a driver cannot be used to provide special transportation service without a driver's license.

Old Item C. The Department proposes removing this item because of the difficulty in defining what constitutes one year of driving experience. This is necessary to ensure the standards under these rules are clear and consistent. The phrase "one year of driving experience" is a term of art that is only used by the Department. There is no clear guidance from any other agency that would specifically define who would and would not qualify as having a year of driving experience. There are several situations in which a person's driving experience may be difficult to document and quantify. For example, many drivers used to provide special transportation service are from another country and often have driven in that country for years before they began driving in the United States. On several occasions, the Department has encountered drivers during audits who have driven in the United States for less than one year but who have driven in another country for many years. The removal of this requirement is reasonable because it will ensure the Department uses clear and consistent standards. These rules will still ensure drivers have the necessary level of driving experience and skill because drivers used to provide special transportation service are required to have the proper license for the class of vehicle driven and will have to complete the evaluation of behind-the-wheel skills added to Minn. R. 8840.5910, subp. 1, item G.

Item E. Changing the term "before driving" to "before providing special transportation service" is necessary to address the possibility of a driver being used as an attendant before being used as a driver. This amendment is reasonable because, in either case, the employee must complete the appropriate training before being used to provide special transportation service. This amendment is consistent with the use of the phrase "before providing special transportation service" elsewhere in these rules, and with proposed amendments to the phrase "before driving" elsewhere in this SONAR.

Item F. The Department proposes amending this item to require that providers maintain the documents relied upon to determine that a driver met the minimum qualifications of Minn. R. 8840.5900. This amendment is necessary to replace a previous obligation that was repealed by the legislature in 2015. Both the driver's criminal background and driver's traffic record check were previously addressed under Minn. R. 8840.5900, subp. 14. When the legislature added nonemergency medical transportation to the special transportation service program, it added the requirement that providers comply with the DHS background study system. Because the original criminal background check system was superfluous, the legislature struck that subpart. However, this also removed the requirement to maintain records of a driver's traffic background and license status. The DHS background study system does not track this information. The addition of this requirement is reasonable to allow the Department to properly audit provider background checks of drivers' traffic background and license status.

Item G. Striking the language regarding school bus endorsements and adding language referencing alternative information is necessary to address the other ways a driver can currently, and might in the future, show proof of possessing a valid medical examiner's certificate other than by physically possessing the actual certificate. This amendment is reasonable because it explicitly limits the alternative manners of showing compliance to methods allowed by Minnesota statute or rule.

Item H. The addition of this item will ensure providers have properly entered a driver into the DHS background study system and received confirmation that the driver is eligible before using them to provide special transportation service. This is necessary to comply with the requirements of Minn. Stat. § 174.30, subd. 10(c) "The transportation service provider shall not permit any individual to provide any service or function listed in paragraph (a) until the transportation service provider has received notification from the commissioner of human services." Specifically, the provider may not use that person to provide special transportation service until the provider has received confirmation that the person is eligible. The addition of this item is reasonable because it mirrors the requirements of the enabling statute.

Subpart 4 Attendants.

Item A. Specifying an attendant's name must be the same as it is on their government issued identification is necessary to ensure consistency between the records of different government agencies. This amendment is reasonable because it will prevent confusion and incorrect identification of attendants during the credentialing and audit processes when Department employees have to cross reference between multiple databases controlled by multiple agencies.

Item D. The addition of this item is necessary to ensure providers have properly entered attendants into the DHS background study system and have received confirmation that attendant is eligible before using him or her to provide special transportation service. As with Minn. R. 8840.5525, subp. 2, item D, this is necessary to comply with the requirements of Minn. Stat. § 174.30, subd. 10 (c). The addition of this item is reasonable because it also mirrors the requirements of the enabling statute.

Subpart 8a Trip records. The Department proposes the addition of this subpart because it is necessary for clarity to address the addition of the statutory requirement that providers maintain records of special transportation service trips performed. In 2020, the legislature added this requirement to Minn. Stat. § 174.30, subd. 2a (b)(6). It states that providers must maintain "a record of trips, limited to date, time, and driver's name." The addition of this subpart is reasonable because it mirrors the requirements of the enabling statute.

Subpart 9 Safety inspection and maintenance records. The proposed amendment will change this subpart to address the other ways a provider could show compliance with the requisite federal motor vehicle safety standards, other than a federal certificate of compliance with those standards. This amendment is necessary and reasonable to clarify the acceptability of these alternative ways of showing compliance under Minn. R. 8840.5940.

Part 8840.6200 Certification of training courses and instructors.

Subpart 4 Instructors.

Item B. The proposed amendment will change the wording of this requirement to specify that an instructor must have work experience interacting with people with disabilities, alter the requirement so that the experience be with disabilities in general rather than just physical disabilities, and replace the phrase "their effect on" with "how those disabilities, aging, and communication disorders may affect."

The change of the requirement that the work experience be in interacting with people with disabilities is necessary to ensure actual face-to-face experience with people with disabilities, not just experience at a facility that serves those with disabilities. The change to the requirement that the experience be with disabilities generally, not just physical, is necessary to account for the non-physical

disabilities some people who use special transportation service have. The replacement of the phrase "their effect on" with "how those disabilities, aging, and communication disorders may affect" is necessary for clarity and consistency within this item. These changes are reasonable because they ensure this item addresses actual work experience with people with all types of disabilities and make this item clearer.

Item C. The Department proposes altering this item to refer to training required before providing special transportation service, rather than training required before driving. This amendment is necessary and reasonable to remain consistent with the other proposed changes to the term "training required before driving" within these rules.

Subpart 7 Certificate of course completion. The proposed amendment will change this subpart to require the Department to withdraw a trainer's certificate if the trainer issues a materially false or fraudulent certificate of course completion. The proposed amendment is necessary to ensure trainers provide the full and complete courses required by these rules. In their current state, these rules require the commissioner to immediately withdraw the certification of a trainer after the Department has audited that trainer's course and determined it does not meet the standards of these rules. The proposed amendment is reasonable to provide an enforcement mechanism for the instances when a trainer has issued a certificate for a course that did not meet the requirements of these rules but that the Department did not audit. For example, courses that are allegedly taught during a session that is shorter than the time requirements, or that are reported to the Department as one course but titled as a different one on the corresponding certificate. Historically, most trainers do not engage in these practices, but the Department has discovered several instances of both examples. The Department requires drivers and attendants who attend these courses to be retrained, but a specific enforcement mechanism to address trainers who engage in these practices is reasonable to prevent reoccurrence.

8840.6250 Audit of courses.

Subpart 1 Auditing authority. This amendment is based on recommendations from the advisory committee and the trainer group. It will require trainers to provide the date, time, and location of upcoming trainings upon the Department's request. This amendment will replace the 72-hour reporting requirement the Department proposes repealing under Minn. R. 8840.6200, subp. 6. This change is necessary because many providers train their own drivers, so many trainings occur on quite short notice. Additionally, these trainings are generally provided one-on-one over the course of up to several weeks. The amendment is reasonable because it will allow the Department to gather information on trainings it intends to audit, but it will also allow providers to maintain best training practices while still communicating with the Department.

Subpart 2 Withdrawing certification. The proposed amendment to this subpart will require that the Department withdraw the certificate of a trainer who refuses to allow an audit. This amendment is necessary to ensure the Department has adequate oversight over training courses. It is important that the Department be able to withdraw a trainer's certificate if they refuse to allow an audit. If a trainer does not provide an opportunity for the Department to audit their course, the Department cannot determine whether that course meets the standards of these rules. The Department has encountered a number of trainers who attempt to avoid giving anything but cursory information about their courses and will cancel a course if they discover it will be audited. In these instances, the Department is unable to determine whether a training is actually being performed in a way that meets the requirements of these rules. This amendment is reasonable because it is consistent with the standards for a provider who refuses to allow an audit under part Minn. R. 8840.5700, subp. 5. It is also consistent with the

standards for an operator who refuses to allow an audit under the Department's limousine service permit program.

8840.6300 Variance.

Subpart 1 Elements. The proposed amendment about variances was included at the recommendation of the Revisor's office. This amendment is necessary to clarify that variances must comply with the requirements of Minn. Stat. § 14.056, and to remain consistent with the proposed changes to this subpart's items. The change is reasonable to clarify the basis for the Department's variance program under these rules. The second part of this amendment consolidates this subpart's items from three to two and adds language specifying the findings the Department must make when granting or denying a variance. This change is reasonable because the substance of the requirements has not been altered, but rather reworded to clarify the standards that must be addressed in decisions by the Department. This will add more detail to this subpart and will allow providers to see the standards for the Department to grant a variance.

Subpart 6 Conditions and duration. The addition of this subpart was a recommendation of the Revisor's office. This subpart is necessary to clarify the Department's ability to impose conditions when granting and renewing variances within the confines of Minn. Stat. § 14.056. The addition of this subpart is reasonable because it is a direct reference to statute which will make it easier for providers to determine what parameters dictate the Department's ability to add conditions when granting or renewing variances.

Regulatory analysis

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

Classes Affected

The classes of persons most likely to be affected by the proposed amendments to these rules are providers of special transportation service, special transportation service trainers, managed care organizations, insurance providers, and the individuals who use special transportation services. Providers are most likely to bear any additional costs that may arise from the implementation of the amendments to these rules. However, hopefully any additional costs of compliance will be balanced out by the increased efficiencies created through some of the proposed amendments. Both trainers and managed care organizations may incur incidental costs when adjusting their practices to stay in compliance with the amended rules.

The most tangible new costs will be for insurance and additional vehicle and safety equipment. While the increase in minimum coverage is not insubstantial, the amount the Department proposes is consistent with the lower end of insurance coverage currently required by managed care organizations, some of which require minimum coverage of up to $1.5 million per claim. Many providers are already required to carry substantially higher insurance plans than what the Department proposes, due to their existing contracts. It is possible the increased minimum being proposed will result in increased costs for some providers, the Department does not foresee it being a substantial increase in cost.

The Department is proposing the addition of several mandatory pieces of equipment. Specifically, the Department proposes requiring all vehicles be equipped with a body fluids cleanup kit, a seatbelt

extender, blanket, and a tool to cut seatbelt or other straps. The associated costs should be minimal as these items can be purchased individually for less than twenty dollars each. Strap cutters and emergency blankets can both be purchased for less than three dollars. Seat belt extenders can be purchased for around ten dollars, and often for less if the vehicle was purchased at a dealership. Many vehicles already carry the proposed additional equipment. It is common practice for many providers to carry a body fluids cleanup kit in their vehicles. Similarly, some providers already have seatbelt extenders available. And it should also be noted, seatbelt extenders will not be required in all vehicles, only that they be available when necessary. Finally, the Department is not proposing a completely new blanket requirement, but the removal of an exemption for some vehicles.

The additional training proposed by the Department for drivers and attendants that provide stretcher transportation, or transport children, may cause providers to incur additional costs related to those trainings, but this should be mitigated by several factors. It is common practice within the industry to keep a trainer on staff, particularly for providers with larger fleets. For those providers, the cost incurred will primarily be for certifying that trainer to provide that training. Additionally, many providers who perform these types of transportation, particularly stretcher transportation, already require their drivers to complete training that would satisfy the requirements of the proposed amendments.

Trainers and managed care organizations may incur some incidental costs when adjusting their processes to account for changes within these rules, but the Department does not foresee a specific and direct cost for these groups related to any proposed amendments. Trainers may incur costs related to becoming certified to teach new trainings the Department proposes, but they are not required to offer those modules.

Ultimately, the effect on individual providers, trainers, and managed care organizations is likely to be minimal. One purpose of this rulemaking is to minimize the cost of compliance for providers, and the Department has a statutory obligation under Minn. Stat. § 174.30 to avoid adopting rules that unduly restrict providers. Throughout the rulemaking process, the Department worked to avoid making changes that would be unduly burdensome, from both a cost and compliance perspective. The proposed amendments are designed to make the rules clearer and increase the ease of compliance. This will benefit providers and the entities that work with and reimburse providers. The proposed amendments should ultimately benefit users of special transportation services, as the Department is proposing numerous amendments to ensure vehicles are clean, vehicles are properly maintained, proper equipment is available, providers use qualified employees, and those employees are properly trained.

Agency Costs

The Department does not believe the proposed amendments will increase its costs or the costs of any other agency. The programs that these rules affect have existed for years and the agencies that administer these programs have dedicated funds accordingly. The proposed amendments do not create new responsibilities for any agency, but may lead to increased efficiency in enforcement, which could potentially result in lowered costs of program administration.

Less Costly or Intrusive Methods

The Department is unaware of any way to achieve the intended effects of the proposed amendments to these rules other than this rulemaking. The proposed amendments were developed to update existing rule requirements, and to comply with statutory changes.

Alternative Methods

The Department did not seriously consider any alternative methods other than the proposed amendments. As state above, the proposed amendments were developed to update existing rule requirements, and to comply with statutory changes.

Department Costs to Comply

As noted above, the Department does not believe there will be a significant increase in costs associated with the proposed rule amendments, which primarily update and clarify existing obligations. The Department is proposing additional equipment requirements and increased minimum insurance, which may lead to increased costs for providers. But as addressed above, the Department does not believe this will lead to a significant increase. The other entities and government agencies involved with some aspect of oversight already have systems in place to account for the requirements of these rules. No additional obligations are being placed on those groups, and it is extremely unlikely the proposed amendments will cause them to incur any significant costs. Likewise, these rule amendments will not add any new sources of state revenue or increase any existing ones.

Costs of Non-Adoption

Failure to adopt the proposed amendments would result in a failure to achieve the intended purpose of accounting for current industry practices, addressing relevant changes to statutes, clarifying ambiguous rule language, and generally keeping the rules current. A primary reason for many of the proposed amendments was to make the administration of the special transportation service program more efficient. One of the ways this was accomplished was to make the requirements of these rules better reflect current industry practices. Not adopting the proposed amendments to these rules would potentially prevent the intended cost-savings associated with implementing those measures.

Differences from Federal Regulations

There are no directly relevant federal regulations to compare to the proposed amendments. The special transportation service program is a Minnesota state program created by Minnesota Statutes and implemented through these administrative rules. The FMCSA regulates other forms of transporting passengers, but there is not an equivalent area of federal regulation covering special transportation services.

Cumulative effect

There are several other state agencies that administer programs and have regulations that overlap with the special transportation service rules. DPS inspects vehicles that are equipped with wheelchair securement devices as well as type-III school buses. DHS administers the nonemergency medical transportation program that many special transportation service providers are also enrolled in. However, the cumulative effects of the rules on these areas are unlikely to be significant.

PS is the agency primarily responsible for the wheelchair safety device program under Minn. Stat. chapter 299A. DPS and the Department are required to coordinate their inspections of vehicles under Minn. Stat. § 174.30, subd. 3 but the Department has historically drawn on the DPS standards, rather

than the other way around. For instance, the Department implemented new inspection and training procedures in response to a 2019 change to Minn. Stat. § 299A.12 incorporating certain portions of the ADA to wheelchair securement device requirements. It is unlikely there will be a significant cumulative effect of these rule amendments in the context of DPS regulations.

As previously mentioned, the DHS nonemergency medical transportation program overlaps or intersects in certain aspects with the Department's special transportation service program. The main ways the two programs affect each other are that in order to receive reimbursement, DHS requires providers of nonemergency medical transportation to maintain special transportation service authority and the Department requires certain special transportation service provider employees to comply with the DHS background study requirements. The Department has accounted for this overlap through this rulemaking and has attempted to make the areas of crossover less burdensome for providers. It is likely that any cumulative effects of the proposed amendments on the areas of DHS regulation will make both programs more efficient.

Consideration of equity lens

The Department has considered the impacts of these proposed amendments in accordance with the Department's equity lens, which is a tool used to examine policies to identify how different groups may be affected by the actions being proposed. Other than the previously mentioned measures taken to address the health and safety of the elderly and people with disabilities who use special transportation service, no notable impacts on marginalized or protected groups were identified during this process.

Notice Plan

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

Notice

Details on the previous measures taken to ensure stakeholders received both required and additional notice of this rulemaking can be found on page 6 of this SONAR.

Required Notice

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

Consistent with Minn. Stat. § 14.14, subd. 1a, on the day the Dual Notice is published in the *State Register,* the Department will send via email or U.S. mail a copy of the Dual Notice and the proposed rule to the contacts on the Department's list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings There are roughly 30 people on the Department's list of persons who have requested notice via United States Postal Service, and roughly 350 persons who have requested noticed of all rule proceedings via GovDelivery. The Dual Notice will be sent at least 33 days before the end of the comment period.

Consistent with Minn. Stat. § 14.116(b), the Department will send a copy of the Dual Notice, a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the Transportation Finance and Policy Committee, Health and Human Services Committee, and the Legislative Coordinating Commission. These documents will be sent at least 33 days before the end of the comment period.

Consistent with Minn. Stat. § 14.131, the Department will send a copy of the SONAR to the Legislative Reference Library when the Dual Notice is sent.

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

Minn. Stat. § 14.116(c) requires the Department "make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority" if it is within two years of the effective date of the law granting rulemaking authority. This requirement does not apply because the Department was granted special transportation service rulemaking authority in 1979 and no bill within the past two years granted the Department additional authority for this rulemaking.

Minn. Stat. § 14.111 requires the Department to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. This requirement does not apply because the proposed amendments will not have any effect on farming operations in Minnesota.

Additional notice plan

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

The Department plans to issue a press release regarding this rulemaking when it publishes the Dual Notice. The press release will include the Internet address for the web page dedicated to this rulemaking, as well as contact information for Department staff.

The Department also intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule to:

- Special transportation service providers. This category includes all service providers that MnDOT has licensed. There are roughly 225 licensed service providers.
- Special transportation service trainers. Special transportation service trainers are individuals certified by the Department to provide driver and attendant training under Minn. R. 8840.5910. There are roughly 100 certified trainers.
- Managed care organizations. MnDOT identified managed care organizations based on the list of contacts it has developed over time during the administration of the special transportation service program. There are approximately 8 managed care organizations.
- The Department's GovDelivery list used for special transportation service communications. The Department maintains a free email notification service for sending updates on issues and developments related to special transportation service. Anyone may subscribe through links on the Office of Freight and Commercial Vehicle website. The Department routinely sends updates

on special transportation service regulations to the email subscribers. The list contains roughly 1,600 email addresses.

- The advisory committee for this rulemaking. The advisory committee was comprised of 17 members. Details regarding the advisory committee members, meeting schedule, and meeting process can be found in Appendix A.
- The trainer focus group created for this rulemaking. The trainer focus group was comprised of 9 members. Details regarding the trainer focus group members, meeting schedule, and meeting process can be found in Appendix B.

On December 7, 2022, the Department received confirmation from OAH that these steps meet the notice requirements for persons or classes of persons who may be affected by the proposed amendments to these rules under Minn. Stat. § 14.14, subd. 1a.

Performance-based rules

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

The Department is also required by Minn. Stat. § 174.30, subd. 2 to adopt rules "which are reasonably necessary to protect the health and safety of individuals using that service." But 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." During this rulemaking, the Department has attempted to balance both statutory requirements.

Truly performance-based rules would set objectives and leave the manner of achieving those objectives to the regulated parties. Given the unique requirements of special transportation service, the particularly vulnerable population that uses the service, and the statutory requirement that the Department adopt rules to protect their safety, truly performance-based rules are not possible. However, the Department has made a significant effort to make these rules as flexible as possible while still ensuring that necessary safety requirements are in place.

The Department is proposing amendments to these rules to allow multiple ways to show evidence of compliance, apply for and renew authority, amend application information, and store records. The Department is also allowing flexibility pertaining to provider records by requiring they meet certain standards but not a specific format. Lastly, the Department is attempting to allow additional flexibility in training by proposing providers create their own pre-driving training within specific parameters and allowing equivalent non-special transportation service trainings to be considered satisfactory under these rules.

Consideration of health, safety, and undue restrictions

In exercising its powers, the Department is required by Minn. Stat. § 174.30, subd. 2 to consider both the health and safety of riders, and the costs of compliance borne by providers. Specifically, the subdivision states the Department must implement rules 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."

The Department considered both the safety of riders and the cost of compliance during every stage of this rulemaking. Proposed amendments regarding driver and attendant training, required equipment, and vehicle maintenance are intended to increase the health and safety of riders. Proposed amendments to the provider certification process, records requirements, driver and attendant training, and vehicle maintenance are intended to reduce the burden of compliance for providers. As addressed above, the Department also tried to minimize any identifiable monetary costs associated with these proposed amendments.

Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the Department will consult with Minnesota Management and Budget (MMB) by sending MMB copies of the documents that will be sent to the Governor's Office for review and approval on the same day we send them to the Governor's Office. The Department will do this before publishing the Dual Notice. The documents will include the Governor's Office Proposed Rule and SONAR Form, the proposed rule amendments, and the SONAR. The Department will submit a copy of the cover correspondence and any response received from MMB to OAH at the hearing or with the documents it submits for ALJ review.

Impact on local government ordinances and rules

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

Costs of complying for small business or city

Minn. Stat. § 14.127, subd. 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees." The proposed rule amendments do not impose any requirements on local government, so there will be no costs of complying for any city.

Authors and witnesses

The primary authors of this SONAR are William Jensen-Kowski, Staff Attorney in the Office of Freight and Commercial Vehicle Operations, Laura Roads, Associate Legal Counsel in the Office of Chief Counsel, Elizabeth Scheffer, Senior Legal Counsel in the Office of Chief Counsel and the Department Rules Coordinator, and Andrea Barker, Administrative Policy Coordinator.

Witnesses and other staff

The Department expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the Department does not anticipate having anyone other than the listed authors testify as witnesses in support of the need for and reasonableness of the rules.

Conclusion

The Department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, Chapter 8840. The Department has provided the necessary notice and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statutes and rules.

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

Nancy Daubenberger
Commissioner
Minnesota Department of Transportation

Appendix A

Name	Organization	Group Represented
Tom Gottfried	Department of Transportation/Department of Human Services	Transit administration, Nonemergency medical transportation administration
Dan Hirsch	Discover Ride	Metro providers
Scott Isaacson	Lifts Transportation	Metro providers
Dave Jordal	Allina Medical Transportation	Metro providers, Ambulance service providers
Lucas Kunach	Fraser Mental Health Services	Child mental health service providers
Denise Lasker	HealthPartners	Managed care organizations
Jay McCloskey	Transportation Insurance Professionals	Insurances providers
Emily Murray	Association of Minnesota Counties	Minnesota counties
Mike Weidner	Minnesota Paratransit Providers Association	Paratransit providers
Mike Pinske	Americare Mobility Van	Outstate providers
Jan Roer	People's Express	Outstate providers
Kim Pettman	Self	Special transportation service users
Derek Rausch	Brown & Brown of Minnesota	Insurance providers
Diogo Reis	Department of Human Services	Nonemergency medical transportation administration
Bob Ries	Department of Human Services	Nonemergency medical transportation administration
Lauren Thompson	Self	Special transportation service users
Courtney Whited	Minnesota Board on Aging	Elderly Minnesotans

Appendix B

Name	Organization
Bill Butts	Med City Training Center
Hans Erdman	Emergicare Training Services
Debra Huhn	Heartland Express
Matthew Liveringhouse	Transit Services Group
Steve Mandieka	Non-affiliated trainer
Andre Masson	Allina Medical Transportation
Suzette Smith	Contemporary Transportation
Dustin Turvald	Healtheast Transportation
J.P. White	Non-affiliated trainer