

October 28, 1980

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State of Minnesota

County of Ramsey

In the Matter of Proposed Rules  
Relating to Operating Standards  
for Special Transportation Service

Before the Minnesota

Commissioner of Transportation

Statement of Need and  
Reasonableness

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The Minnesota Commissioner of Transportation (hereinafter "Commissioner") pursuant to Minn. Stat. § 15.0412, hereby presents facts establishing the need for and reasonableness of the proposed rules relating to Operating Standards for special transportation services and justification for their adoption.

The facts which establish the need for, and reasonableness of the rules are presented in four categories:

- A. Statutory Authority
- B. General Statement of Need
- C. General Statement of Reasonableness
- D. Rule by Rule Statement of Need and Reasonableness

A. Statutory Authority

The above captioned rules are newly proposed rules of the Commissioner. The statutory authority of the Commissioner for adoption of these rules is Minn. Stat., 1979 Supp., § 174.30 subd. 2 and subd. 5.

Minn. Stat., 1979 Supp., § 174.30, subd. 2, requires the Commissioner to adopt standards for the operation of vehicles used to provide special transportation service, which are reasonably necessary to protect the health and safety of the individuals using that service. Subdivision 2 provides that the standards adopted may include but are not limited to:

- A. qualifications of drivers and attendants including driver training requirements;
- B. safety equipment in vehicles;
- C. general requirements concerning the maintenance of the standard equipment in the vehicles; and
- D. minimum insurance requirements.

Minn. Stat. § 174.30, subd. 4 requires the Commissioner of Transportation to issue an annual certificate of compliance for each vehicle which complies with the standards. The Commissioner must provide procedures for determining compliance and issuing the certificates. Subdivision 4 provides that the procedures may include an inspection of the vehicles and an examination of the drivers.

Subdivision 5 requires that the standards and the procedures be adopted by rule in accordance with Minn. Stat. Ch. 15. It also requires that the Commissioner, prior to proposing the rules, make available to the standing committees on transportation in both houses of the Legislature, a draft of the rules and a proposed budget for the necessary enforcement activities of the Department. The law requires that the Commissioner review the draft

rules, the enforcement plan and the proposed budget with the Interagency Task Force on Coordination of Special Transportation Service (hereinafter, Interagency Task Force).

B. General Statement of Need

These Operating Standards are necessary because the Legislature has directed the Minnesota Department of Transportation (hereinafter "Mn/DOT") to write Operating Standards for special transportation service vehicles. At present in Minnesota, there is no regulation of vehicles which transport the elderly and handicapped other than the general traffic and motor vehicle law in Minn. Stat. Ch. 169, the wheelchair securement device law and the regulation of life support transportation services. Life support transportation services provide transportation and treatment and are regulated by the Minnesota Department of Health. The Operating Standards will fill this gap by regulating transportation provided to elderly, handicapped, disabled, and economically disadvantaged persons except for transportation which is provided in certain vehicles. The transportation which is exempt is that which is provided by regular route common carriers, taxis, private automobiles driven by volunteers, school buses, and licensed emergency vehicles (now known as life support transportation).

These rules are needed because, as the amount of transportation available to elderly, handicapped, disabled and economically disadvantaged persons has increased over the last few years, the exposure to risks related to motor vehicle use has risen for this population. According to a study conducted by the Minnesota Department of Economic Security,<sup>1</sup> approximately

14.5% of the population or one in seven Minnesotans is functionally disabled but not institutionalized. The authors of the study estimated that there are 575,000 persons in Minnesota who have a limitation of capacity or inability to perform the activities of living necessary for people to carry out their roles in society. Only half of these people can travel in their own automobiles. There are about 470,000 Minnesotans over the age of 65.<sup>2</sup> Some of the persons no longer provide their own transportation. Other users of special transportation service include school children in special education programs, economically disadvantaged children and adults involved with Head Start, Community Action Programs and Senior Nutrition Programs, residents of group homes, nursing homes, skilled nursing facilities, and recipients of services provided by over 200 nonprofit social service agencies. None of this transportation is regulated beyond the universal requirements that the driver possess a driver's license and that the vehicle comply with the law relating to private passenger vehicles.

A survey conducted in September, 1980, by the Minnesota Department of Transportation indicates that there are roughly 1,000 agencies, organizations and services providing special transportation services to the elderly, handicapped and economically disadvantaged.

At present it is very difficult to obtain data which indicates the degree of regulation needed for this kind of transportation. The Minnesota Department of Public Safety annual publication entitled "Motor Vehicle Crash Facts" contains no separate category for vehicles which could be loosely classified as social service or special transportation service

vehicles. Because special transportation is provided in many different kinds of vehicles, passenger automobiles, station wagons, nine, ten, twelve or sixteen passenger vans, small buses, school buses and taxis, it is impossible to establish an accident rate for these vehicles according to type of service provided. No accident data is collected on motor vehicles according to the kind of service offered. Motor vehicle statistics are compiled for particular kinds of motor vehicles not for the kinds of services which the vehicles are used to provide. In addition, vehicles which are publicly owned and licensed are not included in the statistics. Many of the vehicles used to provide special transportation service are publicly owned vehicles.

The insurance industry, which is usually a good source of information on accidents and claims, has not kept statistics on special transportation vehicles because it was not until 1979 that the category of Social Service Automobile was recognized as the basis for a special rate classification.<sup>3</sup> Formerly all special transportation service was rated for insurance purposes as a commercial risk and on the basis of the vehicle type that was used rather than on the basis of the kind of service provided. Therefore, it has been extremely difficult to obtain data which indicates the kinds of accidents that these vehicles are involved in and whether there have been fatalities.

These vehicles do have accidents which result in passenger injuries. Accident information was obtained from Mn/DOT and the Metropolitan Transit Commission's Project Mobility which provides service to handicapped persons.



In January, 1980, Mn/DOT surveyed each of the fifty-four transit systems receiving state assistance. Of thirty-one systems which responded, sixteen reported accidents or claims during the preceding three years. Almost all the accidents involved property damage claims under \$600.00. Four reported claims for personal injuries. The personal injuries reported were due to passengers falling in the vehicle or being thrown forward as a result of a sudden stop.

The information which Mn/DOT has obtained indicates that there is room for improvement, particularly in the area of passenger assistance but it does not indicate a need for a rigorous inspection program. It suggests a need for minimal training of drivers and assuring that minimum safety equipment is being carried in the vehicles. In addition, some operational requirements are necessary.

Because this is a new area of regulation there is a need for uniform rules to insure the safety of the passengers. These Operating Standards provide such minimum uniform standards.

In addition, these rules are necessary to fill a gap which was created when the Legislature amended the law which authorized the Department of Health to license vehicles used for medically related transportation.

In 1978, the Department of Health licensed all providers of transportation for medical purposes, both emergency and non-emergency (trips to doctor's appointments by persons who couldn't use regular transportation). Only transportation services which used vehicles defined as ambulances were



licensed and enrolled as transportation providers by the Department of Public Welfare (DPW) for reimbursement for medically related trips.

In 1978, the Legislature amended Minn. Stat. § 144.801 to restrict the Department of Health to licensing transportation defined as life support transportation. Vehicles originally licensed as emergency ambulances were redesignated as life support transportation services and the Health Department stopped licensing vehicles which provided non-life support, (non-emergency) medically related transportation. Providers of life support transportation service continued to be licensed by the Department of Health and enrolled as providers by DPW.

However, new providers of non-life support transportation (previously called non-emergency ambulance service and now called special transportation service) must now be regulated and issued a certificate of compliance under Minn. Stat. § 174.30 by Mn/DOT. Then, if they are certified by Mn/DOT, they may be enrolled by DPW as "recognized providers of transportation services" under Minn. Stat. § 256B.04, Subd. 12. A "recognized provider of transportation services" is an operator of special transportation service that has been issued a current certificate of compliance with the Operating Standards or, if those standards do not apply to the operator, that DPW finds is able to provide the required transportation in a safe and reliable manner.

Therefore, the Department of Transportation must adopt Operating Standards and issue certificates of compliance so that new providers of medically related transportation may be enrolled and reimbursed by DPW.

### C. General Statement of Reasonableness

These rules are reasonable because they require all providers to meet uniform standards, yet provide flexibility to deal with unique situations through a procedure allowing the granting of variances.

The rules allow providers additional time to train new drivers and allow providers to establish courses to meet the training requirements. The cost of compliance with these rules will not be great. None of the required safety equipment is costly and driver training costs will also be minimal once training materials have been developed.

Mn/DOT intends to supply the forms for applications, a list of sources for training courses and a provider's manual to assist special transportation providers in complying with the rules.

The procedure which was used to draft these rules helps to establish their reasonableness. There has been extensive public involvement in the development of these rules. Eight of the eleven drafts were reviewed by the Interagency Task Force and discussed at its meetings. Many of the members' comments resulted in revisions in the drafts. Approximately seventy persons provided written comments in response to Mn/DOT's publication and mailing of a Notice of Intent to Solicit Public Opinion in April, 1980. Approximately 135 persons were added to a mailing list to review drafts of the proposed Standards. Many of these persons telephoned their comments and suggestions.

D. Rule by Rule Statement of Need and Reasonableness

14 MCAR § 1.7001 Scope.

14 MCAR § 1.7001 A.

The scope section gives notice to the public of the inclusive nature of the term, special transportation service. The Interagency Task Force discussed eight drafts of the proposed rules, and in the course of those discussions and in a review of the comments received by the Department in response to the notice of proposed rulemaking, it became clear that there is widespread confusion about the kinds of services which will be subject to these rules. Therefore, in order to make it easier for regulated persons to understand and to comply with the rules and to describe to the public, to social service organizations and to governmental agencies the kind of transportation which comprises special transportation service, the definition in the statute has been restated. The use of this definition is crucial to the ability of transportation providers to understand the scope of the rules so that they will know whether or not they must comply with the Operating Standards.

14 MCAR § 1.7001 B.

Subsection B lists five kinds of vehicles to which the Operating Standards will not apply. These five categories of vehicles are described in the statute. They are listed in the Operating Standards using the statutory language because the repetition is crucial to the ability of transportation

providers to understand exactly which vehicles will not be required to meet the requirements of the Operating Standards. Minn. Stat. § 174.29, which established the Interagency Task Force, provided that any kind of transportation furnished to the elderly, handicapped, disabled or economically disadvantaged was special transportation. The Legislature, in drafting Minn. Stat. § 174.30, determined that for purposes of regulation under the Operating Standards, five kinds of vehicles, four of which are subject to regulation by other laws, would be excluded from regulation. Because numerous questions were raised about the scope of the regulation, it is set forth in the Standards.

#### 14 MCAR § 1.7002 Authority

This section states the specific authority under which the Department proposes these rules. It is reasonable to state this because it informs the public that the Legislature directed Mn/DOT to write these rules.

#### 14 MCAR § 1.7003 Definitions

A. "Ambulance" (14 MCAR § 1.7003 A.) is defined so that it has the meaning given to it in Minn. Stat. § 144.801, subd. 2. It is reasonable to define it this way because some persons who provide special transportation service also provide life support transportation service using the same vehicle, an ambulance. This definition promotes consistent usage.

B. "Commissioner" (14 MCAR § 1.7003 B.) means the Minnesota Commissioner of Transportation. It is defined for the convenience of people using the rules to simplify the reference to the Commissioner of Transportation.

C. "Common Carrier" (14 MCAR § 1.7003 C.) is defined so that it has the meaning given to it in the statutes. This definition is used in the authorizing legislation and is used here for consistency.

D. "Disabled" (14 MCAR § 1.7003 D.) is defined to mean handicapped. The members of the Interagency Task Force felt that there was no functional difference between the words disabled and handicapped and that it was appropriate to define the words synonymously.

E. "Economically disadvantaged" (14 MCAR § 1.7003 E.) is defined broadly so that providers who receive funds from DPW will know that they must comply with the rules if they transport economically disadvantaged passengers who are unable to use regular means of transportation. In some cases, the Operating Standards will provide the criteria by which the Department of Public Welfare determines whether to enroll and reimburse operators of special transportation for providing medically related transportation. This definition makes it clear to transportation providers that all vehicles which transport public assistance recipients who are unable to use regular transportation are subject to the Operating Standards.

F. "Elderly" (14 MCAR § 1.7003 F.) is defined to mean persons aged fifty-five and older because many groups which provide transportation to the elderly select different ages as cutoff points for determining which people are eligible for their services. Fifty-five was found to be the lowest age for defining elderly among the various groups who provide transportation and other services. Choosing the lowest and most inclusive age limit imposes no additional burden on transportation providers.

G. "Handicapped" (14 MCAR § 1.7003G.) is a modification of the definition used in the 1973 Rehabilitation Act (29 U.S.C. 794) and the regulations in 49 C.F.R. 27. The Interagency Task Force recommended using the broadest definition possible. This definition is a functional one.

H. "Major life activities" (14 MCAR § 1.7003 H.) is defined to further clarify the meaning of "handicapped".

I. "Motor vehicle" (14 MCAR § 1.7003 I.) is defined so that it has the meaning given to it in the statutes.

J. "Municipality" (14 MCAR § 1.7003 J.) is defined so that it has the meaning given to it in the statutes.

K. "Person" (14 MCAR § 1.7003 K.) has been defined to include every natural person or kind of entity that might operate a special transportation service vehicle.

L. "Physical or mental impairment" (14 MCAR § 1.7003 L.) is defined to further clarify the meaning of "handicapped".

M. "Provider" (14 MCAR § 1.7003 M.) means any public or private person who operates special transportation service vehicles. The definition of "provider" as one who operates special transportation service vehicles is a reasonable one because it is a functional definition. Under the Operating Standards the provider is responsible for assuring that each vehicle is certified and that each driver meets the requirements set forth in the Operating Standards. The person who operates, that is, maintains the vehicles, hires the drivers and secures the insurance is in the best position to see that the vehicles are certified in compliance with the Operating Standards. Therefore, provider has been defined as the person who operates the vehicles as opposed to the person or agency who supplies or arranges transportation for clients. In many cases, a social service agency or organization contracts for special transportation service with a transportation provider. It is reasonable to define provider as the person who operates the vehicle, and to require that person to be responsible for certifying the vehicle.



N. "Regular basis" (14 MCAR § 1.7003 N.) is used in the legislation authorizing the Operating Standards but it is not defined. "Regular basis" must be specifically defined so that providers of transportation will know whether they are subject to the Operating Standards. Mn/DOT staff have had many conversations with representatives of social service agencies who as part of their service to clients, transport them in agency or employee owned passenger automobiles on a sporadic or infrequent basis. Most agencies with social workers and outreach workers who provide a minimal amount of transportation, seem to provide from two or three to a dozen trips a month. After discussions with employees of county welfare departments, Veteran's Service Officers and participants in the American Red Cross coordinated transportation program, it was determined that twelve round trips a month would be a reasonable cut-off point. Mn/DOT determined that it was reasonable to assume that the Legislature used the phrase "regular basis" because it felt that as the number of trips and passengers increased, the risk increased and therefore the need for regulation increased. The Interagency Task Force agreed that it was reasonable to choose a number which represented a regular basis, and exclude from regulation those who provided fewer than that number of trips in a given period of time. The number twelve was selected as the upper limit, keeping in mind that the statute requires that the Department adopt only the minimum standards necessary to protect the health and safety of the passengers. Because questions arose about the number of passengers who could be carried on any given round trip the number of passengers was quantified to eliminate any confusion or uncertainty about the limits of the term "regular basis". Because many agencies have vans which carry six to twelve passengers at a time and most social service employees carry only one or two clients in their cars, transporting thirty passengers was selected as a rough equivalent of making twelve round trips per month.



O. "School bus" (14 MCAR § 1.7003 O.) is defined so that it has the meaning given to it in the statutes.

P. "Semi-ambulatory" (14 MCAR § 1.7003 P.) is necessary to define a group of persons who require special provisions under the Operating Standards. The definition is reasonable because it is a commonly accepted lay definition of the word "semi-ambulatory." It includes persons who can walk only with the aid of an assistive device.

Q. "Special transportation service" (14 MCAR § 1.7003 Q.) is a new term in the statutes. Because the concept of special transportation service is new, repeating the definition from the statute is crucial to the ability of regulated persons to understand the rules.

R. "State" (14 MCAR § 1.7003 R.) is defined so that it has the meaning given to it in the statutes.

S. "Variance" (14 MCAR § 1.7003 S.) is necessary to explain the concept of a variance. It is reasonable because it is consistent with the commonly accepted meaning of the word.

T. "Vehicle" (14 MCAR § 1.7003 T.) is necessary because it allows the use of that shorter term in place of "special transportation service vehicle" and simplifies the reference.

#### 14 MCAR § 1.7004 Compliance.

#### 14 MCAR § 1.7004 A.

Minn. Stat. § 174.30, subd. 2 states that the Commissioner shall adopt standards for the operation of vehicles used to provide special transportation

which are reasonably necessary to protect the health and safety of individuals using that service.

The law also provides that a certificate of compliance shall be issued for each vehicle which meets the standards adopted under Minn. Stat. § 174.30. Therefore it is reasonable and necessary to prohibit the provision of special transportation service without a current certificate because the Commissioner has been authorized to write Operating Standards regulating the items set out in the Standards. It is necessary to require that the vehicle comply with the standards before the certificate is issued because the law requires it. The requirement that the certificate of compliance be issued to a provider who transports an occupied wheelchair only if the vehicle has been issued a certificate of compliance by the Commissioner of Public Safety is necessary because it gives notice to persons who transport occupied wheelchairs that there is an additional law with which they must comply. The law which authorizes the Operating Standards requires that the certificate of compliance for an approved wheelchair securement device be obtained before the Operating Standards certificate is issued by the Commissioner. This section is reasonable because it gives notice to providers of that requirement.

14 MCAR §1.7004 B.

Subsection B provides that no special transportation service provider shall offer to provide life support transportation service unless the service is licensed as required by the law regulating such service. This section gives notice to special transportation service providers, some of whom were

licensed as ambulance operators under the prior Health Department law, and some of whom now provide both kinds of service, that they may not provide both life support and special transportation service unless they are licensed under both laws. Comments received by the Health Department and Mn/DOT and discussions which occurred during the review of the Operating Standards by the Interagency Task Force, indicate that there is a good deal of confusion about the regulation of life support transportation and special transportation service where both kinds of service are provided using one vehicle. Therefore, although this Department has no authority to regulate life support transportation service, this section is included in the Department's Operating Standards to give special transportation service providers notice that if they wish to expand their service beyond special transportation service to include life support transportation service, they must comply with additional requirements.

14 MCAR § 1.7005 Certification

14 MCAR § 1.7005 A.

Subsection A tells providers how to apply for a certificate of compliance. It tells them that the Department supplies the necessary forms, how they can obtain the forms and where the forms should be mailed.

14 MCAR § 1.7005 B.

Subsection B specifies the information which each applicant must submit to the Commissioner. Each applicant will be required to submit two forms to

the Commissioner; a provider application form and a certificate of insurance which will actually be mailed by the provider's insurer. The provider must indicate whether the application is new or a renewal. This is necessary because it is for the administrative convenience of the Department and will only require checking a box on the application form. If the application is a renewal there will be information on file including the certificate of insurance. A new certificate of insurance will not be required for renewals.

Subsection B.1.

The name, address, telephone number and service area of the provider are necessary so that the Department can identify the provider. Requesting information about the type of service provided is reasonable because it enables the Department to identify the kind of service which is being offered so that service which is exempt from regulation can be identified. It is reasonable to require the provider to specify the category of passengers served because special transportation service is defined in the law and the Operating Standards as that which serves four categories of passengers. Obtaining this information will enable the Department to confirm that the provider should be applying for a certificate. The provider must list each vehicle which is operated so that the vehicle can be identified on the certificate which will be issued. Information about seating capacity is necessary because it enables the Department to determine whether the driver must have a Class B license.

It is necessary to require each provider to complete a checklist showing whether each vehicle carries the required safety equipment as no pre-

certification inspection will be required. This will enable the Department, on the basis of the provider's representation, to determine whether the vehicle complies with the requirements of the Operating Standards. Because Minn. Stat. § 174.30, subd. 4 provides that the Commissioner may not issue a certificate of compliance to vehicles carrying occupied wheelchairs until the wheelchair securement device has been certified by the Commissioner of Public Safety, it is necessary to require the provider to furnish the number of the wheelchair securement device certificate of approval.

Subsection B.2.

Subsection B.2. requires that each applicant furnish a certificate of insurance. A certificate of insurance is a standard device used by lending institutions, school districts, businesses and governmental agencies to ascertain that a person who is subject to certain regulations or who is about to enter into a contract has insurance which is sufficient to meet the needs or requirements of the person to whom the certificate is furnished. It is the insurance company's statement that it provides the stated coverage to the insured. When the Operating standards were being written, eleven insurance companies who routinely insure special transportation providers were contacted to determine whether they are willing to furnish a certificate of insurance for their clients. Each of the eleven representatives contacted confirmed that a certificate of insurance could be obtained by an insured by calling the agent and requesting that it be mailed. Each representative said that his or her company would mail the certificate wherever the insured requested at no charge.

This requirement is necessary so that the Department can be sure that each provider has in effect, a policy which satisfies the requirements of the Operating Standards. It is a reasonable requirement because it is easily complied with and is a customary business practice.

14 MCAR § 1.7005 C.

Subsection C requires that the Commissioner issue a certificate of compliance when the applicant has met all the requirements of the Standards.

14 MCAR § 1.7005 D.

The requirement that all applications be processed and a certificate issued or denied in writing within 30 days of receipt of the complete application is necessary and reasonable because 30 days is a reasonable length of time for the Commissioner's staff to take action on the application. It also provides a reliable time frame for the provider. The requirement that the certificate be issued or denied in writing gives the provider a written record of the action that was taken on its application. If the certificate is denied, the applicant has a written explanation of the reason for the denial, and it may then take action to correct the problem which led to the denial. In addition, it gives the Commissioner a written record to retain.

14 MCAR § 1.7005 E.

The requirement in Subsection E that a certificate be granted which lists each vehicle and shows the expiration date is reasonable because it makes it easier to keep track of each providers' vehicles by listing them on the



same certificate. Issuing the provider a certificate with the expiration date will enable it to comply with the renewal requirement more easily.

14 MCAR § 1.7006 F.

If the Commissioner maintains a record of all certificates, renewal notices can be mailed regularly and staff will be able to determine from a central file whether a particular provider has complied with the Operating Standards, thus making enforcement easier.



14 MCAR § 1.7006 Renewal.

14 MCAR § 1.7006 A.

It is necessary to adopt a rule setting forth a procedure for renewal because Minn. Stat. §174.30, subd. 4 requires the Commissioner to issue a certificate annually for each vehicle which complies with the Operating Standards.

14 MCAR §1.7006 B.

In order to give the Commissioner's staff sufficient time to issue the renewal certificate, providers will be required to request renewal at least thirty days prior to expiration of the current certificate. The burden of requesting renewal is on the provider, but the Commissioner must issue the renewal certificate before the provider's current certificate expires. This assures that a provider will not be operating without a certificate. As each certificate is issued for a period of one year, and each provider must have a certificate of compliance in effect in order to be eligible to receive any public funds for transportation, it is important that the renewal overlap or meet the effective date of the current certificate so that there is no time period in which the provider does not have a certificate of compliance in effect.

14 MCAR § 1.7006 C.

It is reasonable to require the Department to issue a new certificate when the renewal application is approved so that vehicle and driver changes will be recorded.

14 MCAR § 1.7007 Inspection.

14 MCAR § 1.7007 A.

This section sets out minimum requirements for inspection. Minn. Stat. § 174.30, subd. 4 requires the Commissioner to provide procedures for determining compliance with the Operating Standards. That section also allows the Commissioner to establish a vehicle inspection. The Commissioner must have a means of investigating complaints which are made against a provider and for determining whether the provider is violating the requirements of the Operating Standards. The Commissioner must be able to inspect vehicles, books and documents when a complaint is made. The Operating Standards impose reasonable inspection requirements.

14 MCAR § 1.7007 B.

This section requires that all complaints and inspections be documented so that a record is established to protect the providers and to insure that each complaint will be formally addressed.

14 MCAR § 1.7007 C.

Subsection C requires the Commissioner to give notice of inspections not less than one week in advance so that the provider can make other arrangements for the transportation of passengers during the time the inspection will be conducted. The Department has received several complaints from consumers who use special transportation services who feel that inspections should be made without warning. The primary objective of conducting an

inspection is to make sure that providers comply with the Operating Standards as much of the time as possible. If the Department gives notice of an inspection and a provider corrects the violation before the inspector reaches the vehicle, the objective has been achieved. The benefit to the passengers of having regularly scheduled special transportation available to them outweighs the benefits of being able to catch the provider in a violation, assuming that the notice of an inspection prompts its correction.

14 MCAR § 1.7007 D.

The providers' records which indicate compliance with the Standards are the driver application records, the vehicle log and the maintenance records. As the Department must certify those vehicles which comply with the Operating Standards, inspection of these records upon receipt of a complaint is a necessary part of determining whether a special transportation service complies with the Operating Standards.

14 MCAR § 1.7007 E.

Subsection E provides a section for failure to permit an inspection. It is necessary to ensure that providers will cooperate when an inspection is scheduled so that the commissioner may determine whether the provider complies with the Operating Standards. It is reasonable because it only deprives the provider of the certificate for as long as the inspection is refused.

14 MCAR § 1.7008 Enforcement.

14 MCAR § 1.7008 A.

If a provider is found in violation of the Operating Standards, the provider will be given thirty days to correct the violation. The written notice will specify what steps the provider must take to correct the violation. This period of time should be sufficient to allow providers to correct any violation, except, perhaps, a failure to employ drivers who have had passenger assistance training. However, the passenger assistance training requirement should not be difficult for providers to comply with as that requirement will not take effect until January 1, 1982. Newly hired drivers will be allowed ninety days to obtain passenger assistance training after they begin to provide special transportation service. These two provisions should enable providers to comply with the Standards and avoid the need to correct this kind of violation in thirty days.

14 MCAR § 1.7008 B.

It is necessary to conduct a second inspection so that the Commissioner may determine that the violation has been corrected and that the provider complies with the Operating Standards.

14 MCAR § 1.7008 C. and D.

It is necessary to hold a hearing prior to revocation so that any dispute or misunderstanding may be examined. The provider must be given notice in advance of the hearing so that he can present his case. The requirement that

the Commissioner revoke the certificate of compliance only after holding a hearing is necessary to ensure compliance with basic tenets of due process.

14 MCAR § 1.7009 Standards for operation of vehicles.

14 MCAR § 1.7009 A. Personnel.

Minn. Stat. § 174.30 requires that the Commissioner establish Operating Standards and provides that he may adopt standards governing driver qualifications, including driver training requirements. Therefore it is reasonable for the Department to adopt standards establishing qualifications for drivers and establishing training requirements.

Subsection A. 1.

The Operating Standards require that each driver have visual acuity of 20/40 in each eye corrected, and a field of vision of 70 degrees in each eye. This standard has previously been used by two other state agencies as a reasonable standard for determining that a person can see well enough to drive safely. The Department of Public Safety rules establishing requirements for commercial driver training vehicles, instructors, and school licensing require that applicants for an instructor's license have normal peripheral vision and visual acuity of not less than 20/40 in each eye corrected. The Department of Education and Minnesota Department of Public Safety rules establishing qualifications for school bus drivers also require that the drivers have visual acuity of not less than 20/40 in each eye corrected. The eye screening

test which is used by the Department of Public Safety identifies individuals who do not have at least 20/40 visual acuity in each eye. Persons who do not pass the vision screening test are sent to an eye doctor for examination. If the doctor determines that the applicant has 20/40 visual acuity, the applicant may take the other portions of the driver license examination and be licensed without restrictions related to eyesight.

Applicants with visual acuity from 20/50 to 20/90 are also permitted to proceed with the driver license examination. However, when those persons are licensed, conditions are imposed which restrict freeway driving, driving speed or prohibit night driving depending on degree of visual impairment. It is necessary that drivers of special transportation service vehicles be free of these restrictions so that they may provide complete and safe service to their passengers. Therefore it is reasonable to require drivers who transport others to have visual acuity of at least 20/40 corrected.

The Department also consulted Dr. Donald Brandt who is an emergency room physician at Unity Hospital in Fridley. Dr. Brandt is a member of the Emergency Physicians Professional Association and is under contract to the Minnesota Department of Health as Medical Director for Emergency Services. Dr. Brandt advised the Department on the proposed physical requirements necessary for drivers of special transportation vehicles and advised the Department that the standards for visual acuity and peripheral vision are necessary to insure the safety of the passengers.

The Operating Standards also require that drivers not have a hearing loss greater than 30 decibels in the better ear with or without a hearing aid. Dr. Brandt stated that this was a reasonable rule for determining whether a driver could hear well enough to allow him or her to transport passengers



safely. Both the Public Service Commission and the Department of Public Safety require a slightly higher standard for drivers who operate common carriers and school buses.

Subsection A. 2.

The requirement that drivers have no current medical condition which interferes with the ability to drive safely is a broadly stated minimum requirement. This rule allows the driver and his or her doctor to determine whether the driver has any medical condition which, in the doctor's opinion, would effect the driver's ability to transport passengers safely. This is a necessary requirement as it is important to protect the health and safety of the passengers who are being transported. Writing the rule this broadly also allows a person who is taking medicine to determine with his or her doctor whether the medicine effects his or her ability to drive safely. The requirement that each driver file a form signed by a physician stating that he or she has no medical condition which interferes with his or her ability to drive safely, is reasonable because it imposes a minimum burden on the driver, and allows a physician who is familiar with the driver's medical condition to sign the statement without conducting an extensive physical examination.

It is necessary to require that a form containing this information be maintained by a driver's employer so that the Department will have access to the information, if it desires to determine through an inspection whether the driver is qualified. The requirement that this statement be obtained prior to the driver's employment is necessary so that persons who have medical conditions which might make it unsafe for them to drive, will be screened prior to the time they begin transporting passengers.



Subsection A. 3.

It is necessary and reasonable to require that each driver or attendant be capable of performing a safety inspection, assisting passengers, and operating lifts and ramps if applicable, because it is necessary to ascertain that each driver or attendant has a certain minimum level of physical ability. Many of the passengers who will be transported have limited physical strength and need assistance entering and leaving the vehicle. That assistance will be provided by the driver or an attendant. Therefore, it is reasonable to require that drivers and attendants have the minimal amount of physical strength necessary to assist persons who cannot assist themselves and to perform a minimum safety inspection to ensure that the vehicle is in good operating condition.

Subsection A. 4.

The requirement that each driver possess a license which is valid for the type of vehicle which he or she drives, gives notice to drivers that there is more than one type of license and that drivers must have the type required by law for the vehicle which will be driven.

The requirement that each driver be at least 18 years of age and have not less than one year of experience as a licensed driver is reasonable and necessary because drivers who transport passengers who cannot provide their own transportation must have experience in operating a motor vehicle beyond the minimum ability to obtain a license.

The requirement that drivers have a driving record clear of revocations, suspensions and cancellations for the past three years, except for suspensions resulting from unpaid parking tickets, is reasonable because it is very important that drivers who transport passengers have good driving records. A driver whose license has been revoked, suspended or cancelled within the past three years casts doubt on his or her ability to operate a vehicle in a safe and responsible matter. Because many of their passengers are disabled or mentally or physically handicapped, drivers of special transportation service vehicles have an additional responsibility to their passengers. It is necessary to have some basis upon which to determine that the driver will drive in a safe and responsible manner and has done so in the recent past.

The Commissioner of Public Safety is required to revoke a driver's license in the following circumstances: conviction of manslaughter resulting from the operation of a motor vehicle, operation of a motor vehicle under the influence of intoxicating liquor or drugs, commission of a felony with a motor vehicle, fleeing the scene of an accident resulting in death or personal injury, perjury relating to motor vehicles, conviction, guilty plea or forfeiture of bail upon three moving violations of Minn. Stat. Ch. 169 within 12 months, or conviction of an offense in another state which if committed in Minnesota would be grounds for revocation. The Commissioner of Public Safety may suspend a driver's license upon evidence that the licensee has committed an offense for which revocation is required, for conviction of a traffic violation where it appears that the violation contributed to death or injury, for habitual recklessness, habitual violation of traffic laws, incompetence, fraudulent use of the license, commission of an act in another state which would be grounds for suspension in Minnesota, failure to surrender a license which has been suspended, revoked or cancelled or failure to appear in court in another state for arrest on a motor vehicle violation. The Commissioner

of Public Safety is also required to suspend the license of any person who has been convicted of violating a law of Minnesota or an ordinance of a political subdivision which regulates parking of motor vehicles and who has been sentenced to pay a fine, has been determined to be able to pay the fine and has refused or failed to pay the fine. In this case, the Commissioner may suspend the person's license for thirty days or until he is notified by the court that the fine has been paid. The Commissioner also has authority to cancel any driver's license upon determining that the licensee was not entitled to receive the license or that the licensee committed fraud in applying for the license.

The Department has received a number of inquiries about this section, almost all of which have dealt with the problem of a person who has been convicted of parking violations and has neglected to pay the fine. Providers have expressed concern that they not be prohibited from hiring a person whose license may have been temporarily suspended due to failure to pay a parking fine. Therefore, because the failure to pay a parking fine does not indicate irresponsibility or recklessness in the operation of a vehicle, an exception for that situation has been added.

It is reasonable to make this standard a criterion of employment because the grounds for revocation, suspension or cancellation indicate irresponsibility and carelessness in the operation of a motor vehicle or fraud or perjury in obtaining a license. It is reasonable to require that drivers who transport passengers have good recent driving records and that providers check the driver's record. A Department of Public Safety study of St. Paul school bus drivers showed that one-third of the drivers who had been involved in accidents in 1980 were not legally qualified to drive.<sup>4</sup>

Subsection A. 5.

Each driver and attendant will be required to complete a four hour first aid course because the groups of passengers which are carried in special transportation service vehicles are often at greater risk medically than the average population carried in regular transit vehicles. The four hour requirement is a minimum standard, and employers and drivers, if they wish, may engage in more extensive training. The areas in which instruction is required are areas in which emergency situations might arise. This training assumes the absence of professional emergency medical assistance when aid is needed. Included in the list of items to be covered in the course is the appropriate use of emergency medical assistance. The current accepted thinking about first aid training is, that it is as important to teach people what not to do, as it is to teach them what to do. Dr. Brandt, who advised the Department about this requirement, stressed that only a minimum number of items must be covered: treatment of shock, control of bleeding, opening of an airway in the event a person stops breathing, prevention of injury due to excessive exposure to heat and cold, identification of certain sudden illnesses and the appropriate use of emergency medical assistance.

It is reasonable and necessary to require drivers to complete a minimum amount of first aid training so that they will be able to render emergency assistance in the event it is needed, and so that they will know when to summon professional emergency medical assistance.

Subsection A. 6. and 7.

The Operating Standards require that drivers receive either four or eight hours of passenger assistance technique training depending on whether the driver handles wheelchairs. The Department sought the advice of two consultants in writing this section. The consultants were Dianne Talbot, a nurse instructor at Sister Kenny Institute in Minneapolis, and John Schatzlein, the Director of Control Data Corporation's Homework Program. Homework employs many handicapped persons in the computer industry. Both of these persons have had extensive work experience with, and professional training in the problems caused by aging and physical disability.

The purpose of training drivers is to reduce anxiety about dealing with special passengers, to dispel myths about the aging process and chronic disease, to enable drivers to provide safe and efficient assistance to elderly and handicapped persons who may need assistance and to instill a sense of profession in the drivers. Driver training also may result in reduced insurance rates for some programs.<sup>5</sup>

The various conditions of the handicapped and of the elderly who are not in good health often result in their having special needs which are not immediately evident to those who are unfamiliar with chronic disease and aging. Passenger assistance technique training is not designed to make medical experts of special transportation service drivers. It is designed to give drivers useful information which they might not otherwise have, even though only a small number of the total number of passengers may have special medical or physical needs. It is worthwhile to provide this information to the drivers to enable them to provide additional assistance to those who may need it.



Many examples can be given to illustrate specific problems which drivers may need to handle if they are carrying passengers suffering from chronic disease. Many drivers are familiar with arthritis and know that they should not assist arthritic passengers by taking hold of their shoulder joints, wrists, or elbows, but they may not know that if they are driving long distances they should not ask an arthritic passenger to sit still for more than an hour at a time. People with arthritis are often in pain and their joints stiffen unless they are able to move around fairly often.

Drivers who are transporting passengers who have cerebral palsy need to understand that, although people with cerebral palsy may have difficulty communicating, the problem is one of motor impairment, not language impairment. Drivers also need to be informed about problems which may arise in passengers who have diabetes. Many diabetics have impaired sensation and as a result are more likely to suffer frostbite. Because of their circulatory problems and their impaired sensation, diabetics must be seated in the warmest part of the vehicle in the winter. Drivers also need to know that diabetic coma may resemble drunkenness. This is a serious problem and drivers should be taught not to assume that a passenger who passes out or appears disoriented has been drinking.

While many people are familiar with epilepsy, they do not know what to do if a person has a seizure. The consultant from Sister Kenny Institute advised that the primary danger to epileptics during seizures is damage to the head from blows due to convulsing. However, it is considered very dangerous to attempt to place something in the mouth of a person who is having a seizure. The accepted practice for a driver who is transporting someone who feels a seizure coming on, (60% of epileptics know when they will have a seizure) is

to pull over, lay the person down and cradle the head or put padding under the head to protect it from blows. Fewer than 1% of convulsing epileptics swallow their tongues. Mrs. Talbot also advised that it is not necessary to call an ambulance unless more than 10 minutes have elapsed after the end of the seizure and the person has not regained consciousness. Most epileptics are disoriented following a seizure and have a strong desire to sleep. She said that epileptics seldom need medical treatment immediately following the seizure. Most drivers do not know these facts and it is reasonable to require them to become familiar with them.

A number of other disabling conditions need to be discussed with special transportation service drivers. Among those are spinal cord injury, multiple sclerosis, Parkinson's disease, stroke and heart disease. Multiple sclerosis is a disease which afflicts approximately one out of every one hundred seventy people in Minnesota, the the highest percentage in the United States. Drivers need to be informed about this disease because the medical condition of a person with multiple sclerosis changes frequently during the course of the disease. Drivers should not believe that because a person exhibits certain symptoms that his condition will be the same the next time they transport him. Because of the frequent changes in medical condition, a person with multiple sclerosis may experience severe emotional stress and may need more patience and understanding than other passengers who may have adjusted to their various disabling conditions.

During the course of passenger assistance training, drivers who transport passengers in wheelchairs should be taught transfer techniques for safely moving passengers from a wheelchair to a car seat, and the use of a transfer belt which maximizes the strength of the driver providing assistance, but



does not interfere with the passenger's ability to use a cane or a walker because both of the passenger's arms are free.

Drivers of special transportation service vehicles sometimes suffer back injuries from the strain of assisting passengers who need physical assistance to move. Proper training in the techniques of leverage and in use of the back for effective lifting helps prevent injury to drivers.

Drivers must be taught to fold and load wheelchairs without damaging the wheelchair. Wheelchairs cost several hundred to a thousand dollars and are easily damaged and bent by improper loading. For these reasons it is necessary for drivers to learn how to transfer passengers and how to handle wheelchairs.

Drivers should be given guidelines for driving vehicles carrying handicapped persons. Passengers with impaired mobility and balance are much more easily injured by sudden braking, skids and fast turns. A wheelchair passenger may slide out of his wheelchair if the vehicle stops suddenly.

The passenger assistance training requirement has been divided into two sections. The four hour course comprises an orientation and introduction, an overview of aging and chronic disease, discussion of physical disabilities, discussion of body mechanics and how to assist someone to walk, and an elderly and handicapped consumer panel. This section of the course is sufficient training for drivers who will not handle wheelchairs or transfer people from wheelchairs to seats in the vehicle.

The eight hour course consists of instruction in transfer techniques, the use of canes, crutches and walkers, use of lifts and ramps, safety considerations, a practice session using occupied wheelchairs and a question and answer session.

Subsection A.8.

It is reasonable to require each driver to receive instruction in the use of a fire extinguisher because most people, including most special service transportation drivers, do not know how to use fire extinguishers. The chemical in a fire extinguisher discharges quickly, often in ten seconds to two minutes. In the event of a fire requiring the use of the extinguisher it is important that the driver know how to aim it properly, and how to control the flow to effect the most efficient use of a limited amount of chemicals. The State Fire Marshal's Office recommended that each driver be taught to use a fire extinguisher.

Subsection A. 9.

It is reasonable to require each driver or attendant to complete the required training within 90 days of beginning to provide transportation so that only a limited amount of time will elapse during which the driver is not trained to provide transportation to the groups he or she is transporting. It is reasonable to allow 90 days to elapse so that drivers who are on probation can be observed by their employers and also because there may be difficulty scheduling passenger assistance technique courses prior to the time the driver begins providing such service. This training is important enough to require that each driver be trained very near to the time he or she begins to provide special transportation service.

Subsection A. 10.

It is reasonable and necessary to require that each driver complete a refresher first aid course every three years so that his or her knowledge of first aid training will remain current.

14 MCAR § 1.7009 B. Equipment.

Subsection B. 1.a.

The requirement that each vehicle, when in use, carry a five pound dry chemical fire extinguisher is reasonable and necessary because that is the size and type of fire extinguisher recommended by the State Fire Marshal's Office for special transportation service vehicles. This is a small, inexpensive, dry chemical fire extinguisher for use on electrical, gas, wood or paper fires. It is an all purpose fire extinguisher. Two special transportation service vehicles have experienced fires in the past year. In one case, it was the presence of a fire extinguisher that prevented a serious fire from harming a passenger. It is particularly important that vehicles which transport mobility impaired persons who are not able to escape immediately, have some means of extinguishing a fire.

Subsection B. 1.b.

The requirement that an emergency first aid kit be carried is reasonable because the kit contains items which would be useful if a passenger suffered a medical emergency which required that bleeding be stopped or that a wound be covered until emergency help arrived. The contents of the emergency first aid kit listed in the proposed standards are those which were recommended by the Department's medical advisor, Dr. Brandt. This is a very minimal requirement and assumes that emergency assistance could be readily summoned. Transportation services are free to carry larger first aid kits if they wish. The contents of such a first aid kit would provide sterile material to place over a wound or to use for a pressure dressing to stop bleeding. Dr. Brandt advised Mn/DOT that it is no longer considered advisable for first aid kits

for nonprofessionals to contain splinting materials, tourniquets, bulb syringes, or harsh antiseptics such as iodine.

Subsection B. 1.c.

Many special transportation vehicles carry passengers who cannot walk away from the vehicle if it has a flat tire or who are sensitive to heat and cold and might find it difficult to wait a long period of time for aid to arrive. As it is not uncommon for motor vehicles to have flat tires it is necessary for each vehicle to have equipment for changing a flat tire or to have a means of summoning a reliable source of assistance immediately. Therefore it is reasonable to require that each vehicle carry a spare tire and jack or have a service contract and a radio which enables aid to be summoned immediately. Vans and most minibuses are equipped with a spare tire and jack. Buses or vans with double wheels in the rear or vehicles which are too large or heavy to enable a tire to be changed on the road will be required to have a radio to send for a backup vehicle or for a service vehicle to change the tire.

Subsection B. 1.d.

It is reasonable to require drivers to carry a flashlight in the vehicle so that if the vehicle malfunctions after dark the driver will be able to light his way along the road to place reflective triangles to warn oncoming traffic of the stalled vehicle. The flashlight would also be useful to light the interior of the vehicle after dark in an emergency.

Subsection B. 1.e.

The requirement that approved child restraint systems be used is necessary because the proper use of child auto restraining devices can prevent nearly

ninety percent of deaths and eighty percent of injuries to children in auto accidents.<sup>6</sup>

The Minnesota Medical Association's Department of Legislative Affairs reported in its newsletter<sup>7</sup> that small children need special protection because a child's head is much heavier and larger in proportion to his body than an adult's head. A child can slip under a standard safety belt in a crash or a sudden stop and a diagonal shoulder harness can position itself across a child's neck or face. For these reasons, children need a restraint system designed to fit their smaller bodies and softer bone structure.

The Medical Association reports that ninety percent of children ride unprotected and that reliable protective child restraints are available and relatively inexpensive at a cost of \$15.00 to \$45.00 each. Presently only two states require that children under a certain size be carried in a protective child restraint, but the National Highway Traffic Safety Administration has adopted standards for child restraint systems which all child restraint systems sold for use in a motor vehicle in the United States must meet. These standards are found in 49 CFR 571.213. Because many special transportation service vehicles carry children, and children are more vulnerable to accidents than adults, it is reasonable to require that all children carried in these vehicles be properly restrained in an approved child seating device. Surveys conducted by the Department of Public Safety, the Minnesota Safety Council, and the Minnesota Medical Association demonstrate that the majority of children are not properly restrained in vehicles. Therefore, it is necessary to require that children carried in special transportation service vehicles be carried in approved child restraint systems.

The Federal regulation describing approved child restraint systems requires that all approved child restraints bear a tag stating what size child can



safely be carried and that the device has been approved for use. Therefore, it is relatively easy for anyone to obtain a device which indicates what size child it fits and to determine that the device has federal approval.

Subsection B. 1.f.

It is reasonable to require special transportation service vehicles to carry three emergency warning triangles so that if the vehicle is stopped on the side of the road after dark, the driver will be able to set out the devices to warn oncoming traffic and prevent a collision with the vehicle. This is especially important for special transportation service vehicles. Some passengers in these vehicles are not able to get out of the vehicle and walk away from a stalled vehicle or move off the side of the road or up a slope off the highway. Therefore, it is important that oncoming traffic be warned of a potential hazard ahead. These reasons establish the necessity and reasonableness of requiring the triangles. A telephone survey conducted by Mn/DOT in September established that they can be obtained at chain auto part stores across the state.

The requirement that the triangle consist of reflective and fluorescent material is necessary to insure that it can be seen easily in the dark by oncoming traffic. Triangles are required rather than flares or other devices because they are safer to use and to store.

Subsections B. 1.g. and h.

It is reasonable to require each vehicle to carry an ice scraper from October 1 to April 30 because this is the time of the year in which a great deal of snow falls. It is particularly important for special transportation service vehicles to be well equipped in the winter because the passengers are more dependent on the safe functioning of the vehicle.



The requirement that a blanket be carried is necessary because many special transportation vehicles carry passengers who have impaired circulation or impaired sensation. It is particularly important to have a blanket in the vehicle to keep such a passenger warm if the heater fails, the passenger needs extra warmth or is sitting in a drafty location. Mn/DOT's consultants on passenger assistance training recommended that a blanket be required.

Subsection B. 2.

The requirement that all seats be securely fastened to the floor or frame of the vehicle is necessary to prevent the use of temporary seating in spaces that are designed to be used for wheelchair securement devices. In other states, serious crashes have been reported involving vehicles carrying folding chairs for temporary seating in unoccupied spaces for wheelchairs.

Subsection B. 3.

The requirement that all ramps have a skid proof surface is necessary so that drivers, while loading and unloading wheelchairs, and passengers who use the ramp in lieu of using steps, will have sure footing getting in and out of the vehicle. The requirement that the ramp be secured to the vehicle when in use is necessary to prevent the ramp from falling from the vehicle when in use. It is therefore reasonable to require that the ramp be slip proof and secured to the vehicle.

Subsection B. 4.

The Standards require vehicles which are equipped with a wheelchair lift and which carry semi-ambulatory persons to be equipped with a lift that has

adjustable or removable railing or with a folding wheelchair that can be stored on the vehicle when the vehicle is in use. This is required because many passengers who are able to walk, but are not able to use steps, use special transportation vehicles and enter and leave the vehicle using the wheelchair lift. Many wheelchair lifts do not operate up and down smoothly and a passenger with impaired mobility and balance can have a very difficult time standing on a lift as it is raised and lowered unless the passenger has something to grasp. Therefore, it is reasonable to require that all lifts be equipped with railings so that a person who must enter and leave the vehicle standing on a lift may have something firm to hold, or, with a boarding chair so that a person who uses a lift without railings will have a wheelchair available in which he or she can sit while the lift operates.

The requirement that railings be removable is reasonable because some wheelchairs, particularly electric wheelchairs, are larger than others because of the location of the power box and the power switch. The electrically powered wheelchair requires more space on the lift than an ordinary wheelchair and comes in contact with the railing. Therefore, requiring removable railings on a vehicle equipped with railings will allow it to accommodate any size wheelchair safely. If providers feel that they do not wish to have a wheelchair lift equipped with railings because of the difficulty of accommodating larger wheelchairs, they may choose to have a folding wheelchair on the vehicle for loading and unloading passengers not in wheelchairs who might use the lift to enter and exit the vehicle.

#### Subsection B. 5.

The requirement that vehicles which carry occupied stretchers comply with Department of Health rules is reasonable because it gives notice of an additional rule with which providers must comply.

14 MCAR § 1.7009 C. Operation.

Subsection C. 1.

The requirement that all vehicles be maintained and operated in compliance with Minn. Stat. Ch. 169 is reasonable because it gives notice to providers that they must comply with all traffic and motor vehicle laws contained in the statutes.

Subsection C. 2.

Requiring all providers to conduct a daily safety inspection ensures that drivers will become familiar with the vehicle and that six items which are essential to the safe operation of the vehicle will be inspected each time the vehicle is used. Each of the items listed can be easily and quickly inspected visually. No mechanical knowledge is required. The entire inspection will take no more than five minutes and can be performed by any driver. A number of other states, including Missouri, Michigan, North Dakota and Arkansas require pre-trip inspections of special transportation vehicles.<sup>8</sup>

Subsection C. 3.

Providers are also required to conduct a safety inspection every week or one thousand miles. This is a reasonable interval for inspection of the items listed for the more extensive inspection as each of the items listed is essential for the safe operation of the vehicle. The items which are listed under the one thousand mile inspection and which are not listed under the daily inspection are items which are less likely to cause problems on a day to day basis and less likely to need immediate attention.

Such an inspection keeps the provider or driver in touch with the condition of the vehicle and allows problems or defects in these items to be noted and corrected immediately, thus assuring the safe arrival of the passengers.

Subsection C. 4.

It is reasonable to prohibit smoking in the vehicle at all times for two reasons. The first reason is safety. It is much safer for the driver to devote his attention to the road and to the passengers, if necessary, than to look away from the road while lighting a cigarette and smoking during the time he is driving. The second reason for prohibiting smoking is for the health of the passengers. Many passengers are reluctant to ask others not to smoke in their presence and many special transportation passengers have disabilities involving their lungs and respiratory systems which are not visible to the driver and other passengers. Therefore, the burden of providing a safe and healthy environment is placed on the provider. It is reasonable to require that a no smoking sign be posted so that the driver and all passengers will have notice that smoking is prohibited in the vehicle.

Subsection C. 5.

The requirement that drivers and passengers use seat belts at all times and that drivers instruct all passengers to wear seat belts is necessary because fewer than one in five passengers in the United States voluntarily wears a seat belt when traveling in a motor vehicle. Mn/DOT has information which indicates that accidents might have been prevented had the passenger been wearing a seat belt.

In 1977, the United States Department of Transportation, National Highway Traffic Safety Administration compiled information which indicates the importance of wearing seat belts. One million people are injured each year in motor vehicle accidents. The purpose of a safety belt is to prevent a person from becoming a free floating object in a car in a collision. D.O.T. statistics indicate that lap and shoulder belts users have sixty percent fewer major injuries, and that without safety belts chances of being injured increase by forty percent.

Mn/DOT has received many objections to requiring passengers and drivers to wear seat belts based on the perceived objections of the passengers. Statistics indicate that the odds of surviving a crash are twenty five times greater if the passenger is restrained inside the car. Eighty percent of all accidents occur within twenty five miles of the home and fatalities involving nonbelted occupants have been recorded at speeds as low as twelve miles per hour. Therefore, it is reasonable and necessary for all transportation services which have seat belts in the vehicle to require the occupants to wear them and to require the drivers to direct each passenger to fasten the seat belt. This is particularly important for passengers who may have chronic illness, disabilities or impairments because they are more likely to be injured in the event of a crash. Requiring drivers to wear seat belts makes it more likely that in the event of an accident the driver will remain in his seat and retain control of the vehicle.

#### Subsection C. 6.

Presently Minnesota law requires passenger buses weighing in excess of ten thousand pounds to be equipped with flares or flags which can be displayed on the highway in the event the vehicle is disabled while traveling on the

highway. It is reasonable to require that special transportation service vehicles for the elderly and handicapped also carry warning triangles in the vehicle and place them at specified distances from a disabled vehicle to warn oncoming traffic. This is particularly important for vehicles carrying people who must stay with the vehicle until help arrives.

14 MCAR § 1.7009 D. Maintenance.

Subsection D. 1. and 2.

The rules require that all vehicles be maintained in accordance with the manufacturer's maintenance schedule or an improved schedule based on actual operating conditions. This is reasonable because the manufacturer is best able to determine how the vehicle should be maintained. It is reasonable to allow operators to use a stricter maintenance schedule on the assumption that they know whether or not the vehicle is subjected to average use or greater than average use. It is necessary to require that operators correct any deficiency that might interfere with the safe operation of the vehicle before the vehicle is placed in service so that passengers will not be subjected to any unnecessary risk based on the assumption of the operator that the vehicle can be driven with the deficiency. This is particularly important for vehicles which carry disabled passengers because they are more likely to be injured in an accident and are not able to walk away from a stalled vehicle.

Subsection D. 3. and 4.

The requirement that windows, lights, and interiors of vehicles be clean and in good repair is reasonable because visibility is improved and the safety of the passengers is enhanced by this requirement.



14 MCAR § 1.7010 Insurance.

Minn. Stat. § 174.30 provides that the Commissioner may require minimum insurance as one of the elements of Operating Standards.

14 MCAR § 1.7010 A.

The Operating Standards require that providers meet the requirements of the Minnesota No Fault Insurance Law. They also require that each provider carry basic economic loss benefits in the amount required by law and personal injury protection which provides coverage for payments relating to lost wages, loss of future wages, death benefits, and medical expenses. The Operating Standards also require a minimum amount of uninsured motorist coverage as required by Minnesota law.

The Standards also require residual liability coverage or bodily liability coverage in three different amounts. Private providers are required to carry one hundred thousand dollars, subject to a maximum of three hundred thousand dollars, for injury or death of two or more persons in a single accident. This is a reasonable minimum amount of insurance for private providers. Most providers carry a policy with higher limits.

Municipalities and entities of the state are required to carry an amount equal to the maximum tort liability which could be imposed upon each, respectively, in the event of a claim. It was determined that it would not be appropriate to require a governmental unit to carry more insurance than the amount of liability that the governmental unit could face under the Tort Claims Act.

14 MCAR § 1.7010 B.

Each provider will be required to have its insurer file with the Department, a certificate of insurance, for the special transportation service vehicles which he operates. This is necessary so that the Department can determine that each provider is insured as required by these Operating Standards. It is a reasonable requirement because it is a very easy requirement to meet and does not impose a costly burden on the provider.

It is reasonable to require that the insurer notify the Department in writing prior to the termination of coverage by either party so that the Department can take action to revoke the certificate in the event that the insurance is terminated. Operating special transportation vehicles without insurance would be a violation of state law as well as a violation of the Operating Standards. It is necessary for the Department to be able to determine that the operator is insured and to know when the insurance has been terminated.

14 MCAR § 1.7010 C.

It is reasonable to allow providers who are self insured to qualify as self-insurers for purposes of these rules because the law provides a procedure by which they may do so, in lieu of carrying an insurance policy.

14 MCAR § 1.7011 Records

14 MCAR § 1.7011 A. 1.-8.

Each provider will be required to maintain files containing driver application forms, the physician's statement, correspondence with the Commissioner,

accident reports and records of insurance claims arising from the operation of the operator's vehicle, the service records for each vehicle and the driver's log book if the log book is not maintained in the vehicle. It is necessary to require the operators to maintain these records so that if a complaint is made, Mn/DOT will have the opportunity to inspect the records to be sure that the drivers comply with the requirements of the rules and to determine that the vehicle is being operated and maintained in the manner required by the Operating Standards. These are reasonable methods of determining compliances with these rules. Operators who maintain these records should also find it easier to comply with the Operating Standards if the records are regularly maintained.

Each provider must maintain a driver and attendant application form for each driver and attendant and a physician's statement for each driver. The application form requires the inclusion of a statement signed by a physician, stating that he or she is familiar with the medical condition of the driver named on the form and finds that the driver has no current medical condition which interferes with the ability to drive safely. It is reasonable to request that this statement be obtained so that the Department can determine that each driver is physically fit to transport passengers. The other required information enables the Department to identify each driver and determine that he or she is qualified to drive. It is necessary to ask for each driver's birthdate so that driver records in the Department of Public Safety can be checked. That information can be obtained only with the name and birthdate of the driver.

The information which must be provided about training courses is necessary to allow the Department to determine that the driver complies with the requirements

of the Operating Standards. Failure to meet any of the requirements would be grounds for issuing a notice of violation to the provider. The Department received many statements objecting to this requirement on the basis that the amount of paper to be exchanged in the mail imposed a considerable burden on the providers. As the Department is not conducting a precertification inspection, it is reasonable to allow the providers to maintain the information in their files and to certify on the application form that they send in that each driver hired by the provider complies with the requirements of the Operating Standards. The Interagency Task Force agreed that this was a reasonable procedure and recommended its adoption.

14 MCAR § 1.7011 B.

Each provider is required to maintain in the vehicle a card showing the name of its insurance company, telephone number and agents name, accident report forms, and a card showing local emergency telephone numbers. These are reasonable because they assure that in the event of an accident the driver will have the telephone number and the name of the agent, accident report forms which can be completed while the events surrounding the accident are still fresh in his or her memory, and local emergency telephone numbers in case it is necessary to call for emergency assistance. Many special transportation service vehicles now carry cards with emergency telephone numbers.

14 MCAR § 1.7012 Certification of Training Courses.

14 MCAR § 1.7012 A.

The Operating Standards require that all training courses be certified prior to the time they are attended by the drivers. This is a reasonable requirement

because the rules specify certain items which must be discussed and taught in each course and also specify the qualifications of the persons who will be approved to teach the courses. Because the rules prescribe these two things, it is reasonable and necessary for Mn/DOT to require that all proposed courses be submitted to it for prior approval. This provides a service to the providers because it reduces the possibility that a provider will offer specific course or pay for attendance at a course by its driver, and then find that the course has been disapproved by Mn/DOT because it does not meet the requirements of the rules. Therefore, the information which must be submitted about each course and about the instructor is necessary so that courses can be certified.

14 MCAR § 1.7012 B.

The name, address, employment, and relevant training of the instructor must be shown so that Mn/DOT can determine that the instructor is qualified to teach the course. Also, the name and address of any institution which is sponsoring the course must be shown.

14 MCAR § 1.7012 C.

The rules require that any first aid course be taught by a person who is a licensed physician, registered nurse, licensed practical nurse, a paramedic, an emergency medical technician, or a certified first aid instructor. Each of these persons, with the exception of the certified first aid instructor, is licensed by the state to provide varying degrees of emergency medical assistance to injured persons.

The American Red Cross offers certified first aid instructor training and uses the instructors it trains to teach its own first aid courses. The Department's medical advisor, Dr. Brandt, believes that each of the listed persons would be qualified to teach a basic first aid course to drivers of special transportation vehicles.

The rules require that passenger assistance technique training be taught by a person who is a licensed physician, registered nurse, registered physical therapist, registered occupational therapist, public health nurse, or other health professional who has had work experience with physical disabilities, aging, and communication disorders.

The teaching of passenger assistance technique training requires the ability to explain certain medical conditions related to aging, chronic disease and physical disability. Persons with some medical training or with training in physical therapy or occupational therapy would be qualified to teach this portion of the course. The requirement that these persons have work experience with physical disabilities and communication disorders is reasonable because many people who have medical training do not have any experience with persons who have physical disabilities, aging, or communication disorders and are not familiar with the limitations created by these conditions or with the abilities of people who have these conditions. Therefore, it is reasonable to require that persons who will teach passenger assistance training have work experience with the kinds of passengers who are transported by special transportation service vehicles. This assures that the people who will teach drivers how to deal with these passengers will have had a range of experiences which will enable them to answer questions and to comment on experiences which drivers may have with elderly and handicapped passengers. These requirements were written with the assistance of a consultant from Sister Kenny Institute in Minneapolis.



14 MCAR § 1.7012 D.

It is reasonable to require the Department to approve or disapprove applications for approval of training courses in writing so that an applicant will know why the course application was denied. The 30-day requirement insures that applicants will receive timely consideration of their requests for approval of training courses, so that they will be able to arrange training courses as soon as possible.

14 MCAR § 1.7013 Variance.

14 MCAR § 1.7013 A.


This section allows the Commissioner to grant variances from any of the rules except those which give notice of certain statutory requirements. A provision allowing the granting of variances is necessary because all special transportation services are not alike, and yet the rules must be uniform in their application. The provision for granting a variance allows the Commissioner to treat a unique circumstance differently from other circumstances when the applicant makes an affirmative showing that the rule in question can be met or exceeded by application of an alternative practice, and that the health and safety of the public will not be jeopardized by the granting of the variance, and that the rule in question imposes an excessive burden on the applicant.

The reasonableness of this rule is also supported by the requirement in the authorizing legislation that the Department not adopt any rule which would unduly restrict the provision of special transportation services by any

person or entity due to the administrative or other cost of compliance. The provision allowing the granting of a variance allows the Department to take that requirement into consideration while applying the rules on a uniform and equal basis.

The rules require that if the special circumstance which justified granting the variance change, the applicant must immediately notify the Department in writing and the Department will impose the requirement as stated in the rules. This is necessary so that alternative practices which do not comply with the language of the rules will be permitted only when the circumstances justify them.

Dated this 7<sup>th</sup> day of November, 1980.

  
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Richard P. Braun  
Commissioner of Transportation

## Footnotes

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4. Minneapolis Tribune, October 23, 1980.
5. F. Davis, W. Dotterweich and D. Burkhalter, Risk Management Manual for Human Service Agencies, Transportation Center, University of Tennessee (Final Draft, April, 1980).
6. C. Fischer, Big Protection for Little People,<sup>FAMILY SAFETY</sup> Spring, 1979, Vol. 38, No. 1, p. 22.
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Michigan Small Bus Program Operator's Manual, Michigan Department of State Highways and Transportation, Revised, July, 1978;  
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A Public Transportation Safety Program, Recommendations for Selection and Training of Bus Drivers, North Dakota State Highway Department, January, 1977.

APPENDIX A

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