STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE MINNESOTA COMMISSIONER OF TRANSPORTATION

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

STATEMENT OF NEED AND REASONABLENESS

The Commissioner of Transportation, pursuant to Minn. Stat. §14.23, presents facts establishing the need for and reasonableness of proposed amendments to rules relating to operating standards for special transportation services, 14 MCAR §1.7001 to 14 MCAR §1.7013.

A. Statutory Authority

Minnesota Statutes section 174.30, subdivision 2, requires the Commissioner of Transportation to adopt by rule standards for the operation of vehicles used to provide special transportation services which are reasonably necessary to protect the health and safety of individuals using that service.

The law was enacted in 1979. Rules were adopted pursuant to that authority on March 25, 1981. Minn. Stat. §14.02, subd. 4 provides that " 'Rule' means every agency statement of general applicability and future effect, including amendments . . ." The authority to adopt rules includes the authority to amend the rules at a later date.

B. Need and Reasonableness

In 1982, the legislature amended the Special Transportation Service law to limit the application of the standards. Laws 1982, Ch. 556, Sec. 2.

The amendments to these rules are proposed to conform the rules to the law, to make several minor changes which will make enforcement easier and to correct the form to comply with the drafting requirements of the Office of the Revisor of Statutes. Changes made in the draft by the Revisor's office include the addition of headnotes, changing "shall" to "must", striking references to "these rules" and "these standards" and inserting the rule numbers, and correcting grammar, punctuation and obsolete citations. These changes will not be individually justified as they are all necessary to bring the rule into conformance with the form required by the Revisor's Office.

The Department published a Notice of Intent to Solicit Outside Opinion in the State Register on June 21, 1982 (6 S.R. 2345). Two written comments were received. Both persons requested that certified emergency medical technicians not be required to take additional first aid training in order to drive special transportation vehicles. The rules will not require additional training of emergency medical technicians because their training exceeds that required by the operating standards.

In May, 1981, when the rules became effective, some persons believed the rules were too strict and requested a hearing before the

Legislative Commission to Review Administative Rules (LCRAR). Hearings were held by the LCRAR and on October 16, 1981 the LCRAR directed the Department to amend the rules by adopting numerous amendments drafted by LCRAR staff after several meetings with interested parties. In March, 1982, the legislature amended the Special Transportation Service Law. In October, 1982, the Department notified the LCRAR that most of the amendments which it had been directed to adopt by rule were in conflict with the amended Special Transportation Service Law. On November 15, 1982, the LCRAR met and voted to withdraw its recommendations of October 18, 1981 regarding the rule amendments. A letter from the Chairman of the LCRAR to the Commissioner of Transportation stated "The Department is thus free to develop rules pursuant to the amended statute."

The primary purpose of these amendments is to bring the rules into conformance with the statute.

14 MCAR §1.7001 A. and B.

All changes made in these two sections amend the rule to conform to the law. The language of the statute is duplicated in the rule because most providers do not refer to the statutes and rely exlusively on the rules for guidance as to what is required of them. Since 1979 when the law was enacted, through the 1982 session and the LCRAR hearings, the scope of application of the rules has been the primary point of confusion and disagreement. Therefore, the Department has not attempted to paraphrase or explain the

applicability limitations. The scope is explicitly restated in the rule because providers do not always understand that the rule applies to the providers that the statute says it applies to. Therefore, the duplication of this language is crucial to the ability of the persons affected by the rules to comprehend its meaning and effect.

14 MCRA §1.7001. C.5

It is necessary to add the phrase "providing life support transportation service" to distinguish those ambulances which are regulated by the Department of Health from ambulances providing special transportation service which are subject to these rules. Some providers have assumed that because almost all ambulance services are regulated by the Health Department, that all ambulances are therefore exempt from compliance with these rules. It is necessary to specifiy that only ambulances providing life support services are exempt. This is reasonable because it aids the provider in understanding the application of the rules.

14 MCAR §1.7003 F.

The definition of "economically disadvantaged" is stricken because it is not necessary. The legislature removed all references to economically disadvantaged persons when it amended the statute in 1982.

14 MCAR §1.7003 P.

The words "economically disadvantaged" are stricken so that the definition of "special transportation service" will conform to the definition in the statute.

14 MCAR §1.7005 A.

"Public Transportation" is stricken and "Program Management" inserted because the name of the division was changed in 1982.

14 MCAR §1.7005 B.1.d.

It is necessary to strike the reference to "economically disadvantaged" in this section, so that the rule will conform to the statute.

14 MCAR §1.7007 C.

It is necessary to strike the requirement that not less than one week notice of inspection be given so that inspections can be conducted unannounced or on shorter notice. The possibility of unannounced or short notice inspections serves as an incentive to the providers to maintain the vehicle in the condition required by law and these rules. When the rules were first proposed in 1980, the Department proposed to conduct occasional, unannounced inspections. Some providers objected, claiming that it would disrupt the scheduling of their vehicles and impede service. The Department adopted the "one week notice" rule as a compromise. However, in a few cases the Department has received

complaints from employees or riders of special transportation services that the provider repairs or corrects violations or problems with the vehicle (for example, bad exhaust system or bad brakes) only after he receives notice of inspection. The possibility of an inspection serves as an incentive to properly maintain the vehicle all the time. Both this department and the Department of Public Safety which inspects wheelchair securement devices as required by the special transportation service law, have a long history of conducting unannounced, random inspections with very little disruption of the drivers' activities. This rule is reasonable because it does unnecessarily burden providers. In consideration of the special kind of service provided in the vehicles subject to these rules, the rules provide that the inspection must be conducted at the providers's office or garage. The department may not stop any vehicle on the road to conduct an inspection. It is necesssary to strike the one week notice requirement and allow unannounced or short notice inspections to assure safer vehicles for the elderly and handicapped riders. Because there are hundreds of vehicles and only eight department employees to enforce these rules, it is unlikely that most providers will ever be inspected without notice. However, it is necessary that the Department have the ability to make unannounced inspections at the provider's office or garage when they are needed.

14 MCAR §1.7007 D.2.

This section is amended to add language which makes it clear that vehicles may be inspected to determine whether they comply with the

requirements of Chapter 169. This addition is necessary to resolve disagreement about whether the Department may inspect anything other than the items listed in 14 MCAR §1.7009 B. Section 1.7009 B. lists safety equipment which must be carried on the vehicle. Providers have argued that this rule (section 1.7007 D.) says that inspections shall comprise examination of records and examination of vehicles to determine compliance with section 1.7009 B.

Section 1.7009 C. states that all vehicles must be maintained and operated in compliance with Chapter 169. However, there is no explicit authority in that section or in 1.7007 D. for the department to inspect vehicles to determine compliance with Chapter 169. Therefore, this amendment is necessary to specifically authorize inspection of vehicles in cases where someone has made a complaint about the condition of the vehicle. This is a reasonable safety regulation to allow the purpose of the statute to be achieved. Minn. Stat. §174.30, subd. 4. provides that "The Commissioner shall provide in the rules procedures for determining compliance and issuing certificates. The procedures may include inspection of vehicles and examination of drivers."

14 MCAR §1.7008 B.

The amendment in this section strikes language which limits the circumstances in which providers may mail evidence of compliance to the department. When a provider is directed to correct a deficiency or violation involving vehicle equipment, the department wishes to

know whether the violation was corrected. In many cases a receipt for work done on the vehicle or a receipt from the purchase of required safety equipment such as a fire extinguisher or warning triangles is adequate evidence of compliance. Because the current rule states that "In the case of violations other than those involving vehicle equipment, the provider may mail evidence of compliance to the department," the department has required its representatives to make a second inspection to determine compliance with vehicle equipment rules. This is time-consuming and expensive and not always necessary. The department and providers agree that this is unnecessary. If the department doubts the truth of the mailed evidence of compliance, it can verify the information or can conduct an inspection under the preceding sentence which says ". . . the commissioner may conduct an inspection to determine whether the violation has been corrected." This is a more reasonable and flexible use of resources to assure the safety of the passengers.

14 MCAR §1.7009 A.9.

The phrase ". . . hired after October 1, 1981" is stricken because it is no longer necessary. All drivers are now hired after October 1, 1981, so the distinction is no longer necessary and is being removed.

14 MCAR §1.7009 B.1.b.(2)

The provision which specifies the size of soft rolled bandages is amended to allow a range of widths. This change is reasonable and

necessary because it accomodates the needs of providers and makes it easier for them to comply with the rule. This is the same bandage size range allowed under Department of Health Life Support Transportation Service Rules. It will allow providers who operate both life support ambulances and special transportation service vehicles to meet requirements with one purchase which may be used in either vehicle. It is reasonable because it allows flexiblity without diminishing safety.

14 MCAR §1.7009 B.4.

This section amends the height requirement for adjustable railings for wheelchair lifts. Transportation providers and manufacturers of wheelchair lifts have told the department that it is very difficult to comply with the 36 inch requirement. Therefore, the department proposes to allow a range of heights which are still high enough to protect passengers. This change is necessary to allow providers to comply with the rule and is reasonable because it permits some flexibility without compromising safety. The Metropolitan Transit Commission which operates Metro Mobility vehicles equipped with wheelchair lifts has asked that we allow railings less than 36 inches high. The manufacturer of its vehicles has told the MTC that a lift with a 36 inch rail can't be folded into the vehicle unless the rail is removed. As we have received many requests to allow a range of heights from 28 to 36 inches and have no evidence which shows that railings as short as 28 inches are not safe, we propose to allow the range.