

**STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
STATE PATROL DIVISION**

**In The Matter Of The Proposed Amendments To
Rules Of The Department Of Public Safety
Relating To Wheelchair Securement Devices**

**STATEMENT OF
NEED AND
REASONABLENESS**

General Statement

The initial Minnesota legislation governing wheelchair securement devices was enacted in 1978. This legislation was encoded as Minnesota Statutes, sections 299A.11 to 299A.18. Rules were adopted in response to this legislation. These rules are currently organized under Minnesota Rules, chapter 7450.

The 1978 version of sections 299A.11 to 299A.18 and their corresponding rules required that devices be attached to the frame of a wheelchair and that the devices prevent any forward, backward, or lateral movement of a wheelchair when the vehicle is in motion. This had the practical effect of making it necessary for someone other than the wheelchair user to secure the wheelchair to the device.

In the years since 1978, wheelchair securement devices have been developed that can be operated by the wheelchair user. These devices are sometimes known as "user-friendly" devices. User-friendly devices provide a degree of safety for the wheelchair user by limiting movement of the wheelchair. These devices are not, however, attached to the frame and do not prevent all movement of the wheelchair.

On January 16, 1990, a Wheelchair Tiedown Task Force was brought together and sponsored by the Transit Office of the Minnesota Department of Transportation. The purpose of the task force was to bring together the diverse interests that had the common concern of handicap transport so as to discuss the problems of wheelchair securement. The goal was the establishment of laws and rules that benefitted all concerned. Those attending the meetings included, among others, persons from the Metropolitan Transit Commission, the Minnesota Department of Transportation, the Minnesota Department of Public Safety, Rochester and Duluth Transit Authorities, Multiple Sclerosis Center, HealthEast Transportation, Rochester Center for Independent Living, and individuals using wheelchairs. The task force met several times and was instrumental in the 1991 legislation that amended Minnesota Statutes, sections 299A.11, 299A.12, and 299A.14, to allow the use of user-friendly wheelchair securement devices in transit vehicles.

The 1991 legislative amendments required the Commissioner of Public Safety to "adopt rules as necessary to set standards for the operation, strength, and use of these wheelchair securement devices." Since the statutory amendments did not set standards for the operation, strength, and use of these devices, it is necessary for the Commissioner to do so by rule. The Commissioner is incorporating these standards into present rules by adopting amendments to Minnesota Rules, chapter 7450.

As part of the process of setting the standards for the operation, strength, and use of these user-friendly devices, the Department of Public Safety encouraged and obtained input from interested and knowledgeable members of the public. On June 17, 1991, the Department

published a Notice of Solicitation of Outside Information or Opinions with regard to this rules mandate. Members of the Wheelchair Tiedown Task Force met with representatives of the Department on September 10, 1991, to discuss an early draft of the proposed rules and to advise on concerns that should be addressed in the rules. The early draft was revised based on the discussion and suggestions received. In December 1991, a revised draft of the proposed rules was sent to members of the task force for their comments.

Certain requirements of these rules are based on guidelines for wheelchair securement devices published by the Urban Mass Transportation Administration (UMTA) of the United States Department of Transportation. The guidelines were developed for UMTA by an advisory panel that conducted the National Bus-Wheelchair Accessibility Workshop in May of 1986. The advisory panel members included representatives of transit agencies, organizations for the handicapped, rehabilitation specialists, bus manufacturers, and lift and securement manufacturers. See, Guideline Specifications for Wheelchair Securement Devices, prepared for UMTA, at the National Workshop on Bus-Wheelchair Accessibility, Seattle, Washington, May 1986. (UMTA publication number IT06-0322-87) For brevity, citations to these guidelines will be identified as "National Workshop Guidelines".

Other requirements of these rules are based on recently adopted United States Department of Transportation rules implementing the Americans with Disabilities Act (ADA). See, 49 CFR Parts 37 and 38. The final federal rules were published in the Federal Register September 6, 1991, volume 56, pages 45584 to 45778. The requirements of the federal rules were taken from the National Workshop Guidelines, the Architectural and Transportation Barriers Compliance Board accessible vehicle specifications, and other sources.

Statutory Authority

The Commissioner is setting standards for user-friendly wheelchair securement devices under the authority given in Minnesota Statutes, section 299A.12, subdivision 4, which states: "The commissioner of public safety shall adopt rules as necessary to set standards for the operation, strength, and use of these wheelchair securement devices."

The authority to amend standards for other wheelchair securement devices comes from Minnesota Statutes, section 299A.18, which states: "The commissioner of public safety shall, no later than July 1, 1979, adopt rules containing standards for wheelchair securement devices that meet the requirements of sections 299A.12, subdivision 1, and 299A.13, subdivision 1, and shall approve or disapprove of securement devices that meet those standards." This was the authority used to initially adopt Minnesota Rules, chapter 7450. This authority is sufficient to make amendments to these rules.

The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6, "to promulgate such rules pursuant to chapter 14, as are necessary to carry out the [duties of the Commissioner]."

Small Business Considerations

Minnesota Statutes, section 14.115, requires that we consider the impact of the rules on small businesses and that, where possible, we reduce this impact. Some providers of transportation services to wheelchair users are small businesses.

The majority of the proposed rule amendments give transit operators the option to use user-friendly securement devices on transit vehicles instead of using frame-attached securement devices. Presently, all securement devices used by these operators must be frame-attached devices. The granting of the option to use user-friendly devices does not mandate any burden or adverse effect on a small business. An operator can maintain the status quo and avoid any effect of using user-friendly securement devices by choosing to continue to use only frame-attached devices.

We believe that the installation of user-friendly securement devices by an operator will not create any larger burden on the operator than the installation of frame-attached devices, and may even reduce the burden presently encountered with frame-attached devices. With a user-friendly device, the time involvement of the driver may be reduced because the wheelchair user may be able to secure the wheelchair without the driver's help. Further, the bus may be more able to keep to schedule because the time required to secure a wheelchair with a user-friendly device is less than the time required with a frame-attached device.

Other rule amendments not related to the option for user-friendly securement devices either update the wording to current statutory form or bring the rules into conformance with ADA-mandated requirements with which the operators would in any case have to comply.

Fiscal Impact

There may be local public bodies that operate transit vehicles. The proposed rule amendments will not require additional expenditures by local public bodies. User-friendly securement devices provide an alternative to frame-attached devices that will better enable the transit authorities to maintain their schedules. Since the rule amendments merely provide an alternative to the existing rules, a local public body can choose to not use the alternative, thereby incurring no expenditures as a result of the amendments.

Other Statutory Requirements

Minnesota Statutes, section 16A.128, subdivisions 1a and 2a, do not apply because the rules do not fix fees. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, 116.07, subdivision 6, and 144A.29, subdivision 4, do not apply to these rules.

Witnesses

The Department's intent is to adopt the rules without a hearing. If the Department is required to have a hearing, a list of witnesses will be submitted at the time required.

Rule-By-Rule Analysis

Revisor style and form revisions. In the process of amending these rules, the Revisor of Statutes made many style and form suggestions for improving the rules. The department agrees with these suggestions and will change the rules accordingly. These changes include such things as: improving grammar; splitting long sentences into several shorter, more

direct sentences; changing sentence fragments into whole sentences; changing shall to must, where appropriate; and substituting words that make the rules more understandable. Where a change in the wording of the rules occurs that clearly does not change the substance of the rules, no explanation will be given other than this paragraph.

7450.0100 Definitions. Former part 7450.0100 had eight subparts defining terms used in chapter 7450. Under the proposed amendments, five subparts will be amended and three subparts will be added.

Subpart 1. This subpart sets forth the scope of the definitions. The amendments do not change the substance of the subpart, but make the subpart more readable.

Subpart 3. This subpart defines the term "Commissioner." This definition was amended to remove gender based references. The substance of the subpart remains the same.

Subpart 3a. This subpart defines the term "FMVSS." FMVSS is an abbreviation for a long reference and citation to the federal motor vehicle safety standards. Replacing this long reference with the abbreviation in several places in the rules is reasonable because it makes the rules more readable. This replacement refers to the safety standards as amended through December 31, 1991, instead of referring to the Code of Federal Regulations 1977. The effect of using a more current reference is discussed in each portion of the rules that uses the term "FMVSS" to replace the long reference and citation.

Subpart 3b. This subpart defines the term "gross vehicle weight rating." This is necessary because the term is used to describe transit vehicle and is not defined elsewhere.

Subpart 6. This subpart defines the term "operator." This subpart was amended to make it coincide with the statutory definition. There was no need to define it otherwise.

Subpart 6a. This subpart defines the term "transit vehicle." Even though this term was defined in Minnesota Statutes, section 299A.11, paragraph (d), it is necessary to clarify the statutory definition because the statutory definition is susceptible of two interpretations.

Section 299A.11, paragraph (d), defines a transit vehicle to mean "a bus that is not a school bus as defined in section 169.01, subdivision 6, with a gross vehicle weight rating greater than 15,000 pounds." Does this definition mean all buses except school buses over 15,000 pounds? Or does it mean all buses over 15,000 pounds except school buses?

Subpart 6a defines transit vehicle to mean all buses over 15,000 pounds except school buses. This is in line with the intent of the legislation to allow user-friendly securement devices on large buses that provide transportation service to the general public. Further, since the user-friendly devices do not limit movement of the wheelchair as much as the frame-attached devices, part of the wheelchair user's protection while using the user-friendly device is provided by the size of the bus. It would be inappropriate to allow these devices on small school buses. The definition of transit vehicle adopted by subpart 6a is, therefore, reasonable.

Subpart 7. This subpart defines the term "wheelchair." This subpart was amended to use the same definition for wheelchair as used in Americans with Disabilities Act (ADA) rules, 49 CFR 37.3, on page 45624 of the September 6, 1991, Federal Register.

The ADA definition of wheelchair must be used by transit providers around the country in meeting the very broad and far reaching requirements of the ADA. We have no

good reason to have a different definition of wheelchair than the ADA definition. In the interests of uniformity and consistency, it is reasonable for us to use the ADA definition of wheelchair.

Subpart 8. This subpart defines "wheelchair securement device" or "securement device." This subpart was amended to make it coincide with the statutory definition. There was no need to define it otherwise.

7450.0200 Purpose, Authority, And Scope. The purpose, authority, and scope of these rules is to set standards for wheelchair securement devices. As discussed earlier in this statement, these rules now deal with user-friendly wheelchair securement devices in addition to frame-attached devices.

Subpart 2 was amended to refer to the Commissioner's general rulemaking authority, to show the statutory authority for setting standards for user-friendly devices, and to use the Minnesota Statutes rather than the Minnesota Laws reference to rulemaking authority for frame-attached devices.

Subpart 3. The term "disabled" replaces "sick, injured, incapacitated, or handicapped" to reflect current usage.

Subpart 4. The words "manufactured before January 1, 1988, and" were added to correctly state the exception to these requirements contained in Minnesota Statutes, section 299A.11, paragraph (c).

7450.0250 Type Of Securement Required. The statutory change allowing user-friendly securement devices on transit vehicles makes it necessary to clearly state when a securement device must be used and the types of securement devices that may be used on specific vehicles. Subparts 1 and 2 are reasonable because they clearly restate the requirements of Minnesota Statutes, section 299A.12.

Subpart 1 requires that when wheelchairs are transported in a transit vehicle, they must be secured by either frame-attached or user-friendly wheelchair securement devices. Section 299A.12, subdivision 1, requires vehicles used for wheelchair transportation services to be equipped with frame-attached securement devices, except as provided in subdivision 4. Subdivision 4 permits the use of user-friendly devices in transit vehicles. Section 299A.12, subdivision 3, requires that each occupied wheelchair be secured by a securement device before the vehicle is set in motion.

Subpart 2 requires that when wheelchairs are transported in vehicles other than transit vehicles, they must be secured by a frame-attached wheelchair securement device. The rationale for this requirement is the same as for subpart 1, except that the use of user-friendly devices is permitted only on transit vehicles.

7450.0300 Frame-Attached Wheelchair Securement. Before the statutory changes allowing user-friendly securement devices, all securement devices had to be attached to the frame of the wheelchair. Since all securement devices were of one type, it was unnecessary to describe the devices as "frame-attached". All of the requirements set out in former part 7450.0300 applied to frame-attached devices. Now that two types of devices are permitted, it is necessary to state that the requirements of part 7450.0300 apply to frame-attached devices. This has been done by amending each of the three subparts of part 7450.0300 by

adding the words "frame-attached" to modify the requirements. These amendments do not change the substance of the requirements in part 7450.0300.

Subpart 1 has also been amended by deleting the requirement that an occupied wheelchair must be secured with a securement device while being transported in a vehicle. This requirement is now contained in part 7450.0250.

7450.0400 Minimum Standards For Frame-Attached Devices. Before the statutory changes allowing user-friendly securement devices, all securement devices had to be attached to the frame of the wheelchair. Since all securement devices were of one type, it was unnecessary to describe the devices as "frame-attached". All of the specifications set out in former part 7450.0400 applied to frame-attached devices. Now that two types of devices are permitted, it is necessary to state that the specifications of part 7450.0400 apply to frame-attached devices. This has been done by adding the words "frame-attached" at the beginning of part 7450.0400 to modify the specifications. This amendment does not change the substance of the requirements in part 7450.0400.

Part 7450.0400 also contains several minor housekeeping amendments that do not change the substance of the requirements.

Item B, subitem (1), has been amended to remove "(2)" from the reference to "S4.2 (2)(b)." The deletion of "(2)" is reasonable because it corrects a typographical error. The original reference is to a nonexistent section. The amended reference is to the correct Federal Motor Vehicle Safety Standard seat belt requirement. Item B, subitem (1), has also been amended to use the reference "FMVSS" instead of the long reference and citation to the federal motor vehicle safety standards. This changes the reference to the Code of Federal Regulations from 1977 to 1991, but has no substantive effect because the only changes to this portion of the Regulations are minor changes that do not relate to the uses or vehicles that are subject to these rules. It is reasonable to make this change because it will make for easier research of the cited rules since they are in a more recent publication.

Item E has been amended by changing the specifications for a metal reinforcement plate or washer to which an anchorage bolt might be attached. This amendment was made because 1/16 inch is considered the average optimal thickness, not much more or less. It was not the intent of the original rules to imply that more than 1/16 inch could be better. The 2 1/2 inch diameter was an error in the original rules. Federal Motor Vehicle Safety Standard No. 209 specifies 4 square inches of backing plate, which is more appropriately a 2 1/4 inch diameter washer. The 2 1/2 inch washers are difficult to obtain, whereas 2 1/4 inch washers are common.

7450.0430 User-Friendly Wheelchair Securement.

Subpart 1, Nominal Movement. Minnesota Statutes, section 299A.12, subdivision 4, requires the Commissioner to set standards for the operation and use of the devices. It is necessary to regulate secured wheelchair movement because it relates to the safety and comfort of the occupant and to the integrity of the chair. Safety of the occupant is primary to the purpose of the standards and this depends in part on the occupant's willing use of the device.

Subpart 1 allows some movement of the chair but limits that movement to two inches in normal vehicle operation. Allowing some movement is necessary because it cannot be

avoided, even in normal traffic. Allowing no movement would damage the wheelchair. Allowing movement may result in device designs that can secure more than one type of wheelchair, and keep design and manufacturing costs down so that more operators may be able to provide more vehicles with user-friendly alternative installations. The two inches was chosen as reasonable because it is the amount allowed in 49 CFR 38.23(d)(5) (Federal Register, volume 56, page 45759) for any type of wheelchair. Two inches is also reasonable because allowing more may cause the wheelchair to squeeze an occupant to the point of injury when restrained by a seat belt and in a rapid deceleration mode caused by hard braking or a frontal impact of the vehicle. Devices are available that can meet this standard.

It is necessary to specify the amount of weight of the wheelchair and occupant when testing because testing should duplicate real world conditions when possible. A weight of 250 pounds is a reasonable real world condition and is the test weight specified by the National Workshop Guidelines (1.1 & 4.1.2).

The three tests of acceleration, braking, and turning are a reasonable way to test a securement device because they duplicate real world conditions and because they are taken from National Workshop Guidelines (4.1.2).

The three circles with diameters of 50, 75, and 100 feet are reasonable because these circles allow for different configurations of vehicles which each have their own limitations of safe cornering. It is reasonable to use a different speed for each because the lateral forces generated will then all fall between .356 and .396 times the force of gravity, a tight enough spread to provide for equivalent testing among the choices. The test set is also taken from the National Workshop Guidelines (4.1.2).

Subpart 2. Attachment. Minnesota Statutes, section 299A.12, subdivision 4, requires that the rules set standards for the operation and use of the device. It is necessary that the device not damage the wheelchair during normal operations because one that does damage under normal operations of the vehicle is not useful. It is also therefore necessary to define "damage". It is reasonable to specify that no damage be done only during normal operations because there is no rule for strength of wheelchairs. It is reasonable to define damage as that affecting serviceableness because with the current state of the art, there is no device that will not dent or scratch some style of wheelchair under normal driving conditions. A bent wheel or broken spoke are reasonable examples of "damage" because they address integrity and serviceableness of the wheelchair.

Subpart 3. Release. Minnesota Statutes, section 299A.12, subdivision 4, requires that the rules set standards for the operation of the device. It is necessary to require that the device be designed to prevent unintended release for the safety of the user and other passengers. It is reasonable to require non-failure of the locking mode because devices which can meet this standard are currently available and the user should be afforded the same level of safety as other passengers when possible.

Subpart 4. User Friendly. Minnesota Statutes, section 299A.12, subdivision 4, requires that the rules be for devices that may be engaged and released by the user or user's assistant. It is necessary to define at what point of capacity the user is no longer able to engage and release a device due to a user's disability. It then reasonably falls on the user to have an assistant engage and release the device.

Subpart 4, items A and B. It is necessary to define what can be readily engaged and released by a user in terms of reach, strength, and dexterity so that the manufacturer can know in advance of design and construction what physical limits will be used to determine

if a device is "user friendly." Although reach, strength, and dexterity required were not included in National Workshop Guidelines or 49 CFR 38 requirements for securement devices, 49 CFR 37 and 38 cover more than securement devices and so we were able to satisfy the need to specify in physical terms what a device needs to be user friendly. We borrowed from the reach and space requirements of the Standards for Accessible Transportation Facilities contained in Appendix A to 49 CFR 37 (section 4.2, figures 5 and 6) (Federal Register, volume 56, pages 45657 to 45662) and the strength and dexterity requirements specified for stop requests in 49 CFR 38.37(b) (Federal Register, volume 56, page 45760). There are devices available that meet these requirements.

Subpart 4, item C. It is necessary to ensure that once the user engages the wheelchair, the user will also be able to release the wheelchair. It is reasonable to require no more force or dexterity for release than needed for engagement.

Subpart 4, item D. It is necessary to allow remote lockup and release in order to allow "user friendly" to extend to those users who cannot readily use manual locking devices but where the transit service has provided remote controls operated by the driver. It is reasonable because such control is technically feasible. It is necessary to ensure that such remote control devices have a manual override available to the user or the user's assistant. It is reasonable that the override be "user friendly" at least in the sense specified in items A and B.

Subpart 4, item E. Not all devices are able to secure all types of wheelchairs. It is necessary to clarify whether a device will be approved if the device is not capable of securing all types of wheelchairs. Since user friendly devices attach to a specific component of the wheelchair, usually either the wheels or the frame, and since the devices work within a limited range of size of the component and since there is a huge variety of wheelchairs, it is likely that most, if not all, of the user-friendly securement devices currently available will only be able to secure a portion of the wheelchairs in use. It is reasonable to not require a device to be able to secure all types of wheelchairs. It is, however, reasonable to require that the device secure all types of wheelchairs for which it is approved.

7450.0460 Minimum Standards For User-Friendly Devices.

Subpart 1. Force to be restrained. Minnesota Statutes, section 299A.12, subdivision 4, requires the Commissioner to set standards for the strength of the devices. It is reasonable to require the strengths specified in items A and B of this subpart because they duplicate the requirements of 49 CFR 38.23(d) (Federal Register, volume 56, page 45759) for devices in vehicles within the weight ratings set out in each item.

Subpart 2. Attachment to vehicle. It is necessary to ensure that the device not tear free of the vehicle in an accident. It is, therefore, reasonable to require that a vehicle component chosen for attachment provide the same strength necessary to withstand the minimum force to be restrained under subpart 1.

Subpart 3. Damage to device. Minnesota Statutes, section 299A.12, subdivision 4, requires the Commissioner to set standards for the strength and use of the devices. It is necessary that in case of a crash, the wheelchair occupant be able to exit the vehicle by remaining in the wheelchair if possible. It is reasonable to require that the device allow the wheelchair to be released following a crash having a severity up to the minimum standard test force.

7450.0500 Approval Procedure. Former part 7450.0500 contained the approval procedures for frame-attached securement devices. Most of the amendments to part 7450.0500 are so that it will now also cover the approval procedures for user-friendly securement devices. There are also several minor amendments to clarify or improve existing approval procedures.

Subpart 1. Application. In order to receive the Commissioner's approval of a device, it is necessary that the process be initiated by an application from the person seeking approval. It is reasonable to require that the applicant provide installation and use instructions and an accurate depiction of the construction of the device, its physical characteristics, and its mounting hardware. This will help the Commissioner in determining whether the device will meet the adopted standards. Part of the basis for approval is whether the labeling of the device meets the requirements of subpart 5. It is reasonable to require that the application include the label identifying the manufacturer and the model designation. It is reasonable to have the manufacturer certify to the Commissioner that the device meets the standards, and the documentation and description with markings provide a permanent record of what the Commissioner approved. Providing options for the manufacturer in proving that the device meets the standards is certainly reasonable. Requiring marking helps all concerned keep track of what is approved.

Subpart 2. Demonstration of a frame-attached securement device. This subpart contains the requirements for demonstrating a frame-attached securement device. Now that there are also user-friendly devices, it is necessary and reasonable to clearly specify that the demonstration procedures in this subpart apply to frame-attached devices. The changes to the first sentence of this subpart accomplish this.

The last sentence of this subpart was amended to make clear that the applicant is responsible for any damage or injury caused during a demonstration. This is reasonable because the applicant chooses the driver, the vehicle, the wheelchair, and the securement.

Subpart 2a. Demonstration of a user-friendly securement device. A demonstration of a user-friendly device in a vehicle prior to approval ensures that when the device is sold and installed in a transit operator's buses, it can pass the annual inspections if properly attached and maintained, and that it will actually hold the wheelchair in the manner specified by the adopted standards. The damage provision is reasonable because the applicant chooses the driver, the vehicle, the wheelchair, and the securement.

Subpart 3. Approval. As discussed under part 7450.430, subpart 4, item E, a user-friendly securement device will not necessarily be able to secure all types of wheelchairs. It is necessary that the approval of such a device extend only to the types of wheelchairs that the device can secure. It is reasonable that the written approval issued by the Commissioner indicate the types of wheelchairs that a device will secure so that this information is available to employees of the operator who will be responsible for the correct use of the device and to the Department inspectors who will conduct the annual inspections of the device.

Subpart 4. Denial and revocation. A provision for revoking approval for cause is necessary so that devices not meeting the standards are not used. It is reasonable to require that the Commissioner have cause for revocation of an approval so that the manufacturer can move to correct a specific fault or rebut the cause for revocation. It is reasonable that the Commissioner notify the applicant in writing so that there is a permanent record of the Commissioner's reasons and so that the applicant clearly understands the basis for the denial or revocation.

7450.0600 Occupant Restraint. The requirements of part 7450.0600 remain unchanged. The only wording change is to use a reference to "FMVSS" instead of the long reference and citation to the federal motor vehicle safety standards. This changes the reference to the Code of Federal Regulations from 1977 to 1991. During this time, the requirements of the federal regulations have undergone minor changes that, with one exception, do not substantively affect the users or vehicles subject to these rules. 1991 Federal Motor Vehicle Safety Standard No. 210 has a 30 degree minimum angle for lap belt instead of the 20 degree minimum specified in the 1977 published standard. Almost all current occupant restraint and wheelchair securement systems use close to the same anchor point on tracks, with attachment hardware and web belts. The angles up from horizontal will be different for different types and models of wheelchair, but all are close to 45 degrees. The change from 20 degrees to 30 degrees will therefore have little or no effect on current installation types and will affect future installations only in the choice of seat belt anchorage locations if the manufacturer or installer had preferred to anchor at a point higher up on a post or stanchion. Reference to the 1991 federal standard will allow better access to the cited rules because they are in a more recent publication, and will be in accordance with the design standards currently being used by the manufacturers for compliance with federal standards applicable to the type of equipment in other vehicles.

7450.0700 Use Of A Securement Device.

Minnesota Statutes, section 299A.12, subdivision 4, requires the Commissioner to set standards for the use of securement devices. Use of the devices reasonably includes assignment of responsibility for attachment to wheelchairs and storage when not in use.

The majority of the wording changes to part 7450.0700 are grammatical and do not change the substance of the requirements. These changes involve saying that the driver "has the following duties" instead of "it shall be the responsibility of" the driver to. The words "the driver shall" were added to the items listing the duties so that these items were in full sentences.

The wording of the items was changed so that the driver has the responsibility to "ensure" that the stated duties are carried out instead of the driver having the responsibility to carry out the duties. There are many situations where the only way the driver can ensure that a duty is carried out is for the driver to carry it out personally. However, there are also many other situations where a duty would be carried out by someone other than the driver, such as when the wheelchair user carries out the duties on his or her own, when the operator has an attendant on the vehicle to carry out the duties, or when the wheelchair user has a personal attendant who carries out the duties. This change is reasonable because it allows for more and better ways to carry out the stated duties.

The only substantive change to part 7450.0700 was to item B where the requirement for the driver to ensure that a wheelchair user fastened his or her seat belt was modified by the words "when requested by the wheelchair user or when seat belt usage is required of all passengers in the vehicle." This change was made at the suggestion of committee members who gave two persuasive reasons. One was that requiring wheelchair users to fasten seat belts on vehicles where all passengers were not required to fasten seat belts would discriminate against the disabled. The other was that we could find no statutory authority for the Department to make this requirement and that even if there was such authority, it would likely be superseded by the federal Americans with Disabilities Act. This requirement is reasonable because it acknowledges that the wheelchair user, just like any other passenger, sometimes has the right to decide whether to use a seat belt. The

wheelchair user can then communicate this decision to the driver if the wheelchair user wants to fasten the seat belt before the vehicle is set in motion.

7450.0800 Inspection, Removal, And Correction.

Subpart 1. Inspection. Annual inspections are required by Minnesota Statutes, section 299A.14. It is reasonable to include a reference to the inspection standards in these rules so that readers of these rules are referred to the statutory authority and reasons for the inspections.

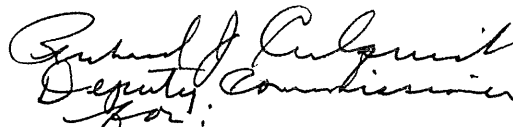
Subpart 2. Removal, correction. Minnesota Statutes, section 299A.12, subdivision 4, charges the Commissioner with the responsibility of regulating the use of wheelchair securement devices. It has in the past proven necessary and effective to order the correction or removal of items not conforming to the standards. In doing so, the transportation operator then usually has the time, opportunity, and willingness to fix the problem before it is necessary for the Commissioner to use the penalties provided by Minnesota Statutes, sections 299A.15, 299A.16, and 299A.17. These penalties include withholding an operator's aid funds and license to operate, and filing misdemeanor charges.

7450.0900 Prohibitions. Part 7450.0900 contained transitional provisions for the dates these rules originally applied to the use of securement devices. These transitional dates have passed and all operators are required to follow these rules. There is no longer any need for part 7450.0900. Therefore it is reasonable to delete it.

Conclusion

Based on the foregoing, the Department's proposed amendments to rules are both necessary and reasonable.

1-14-92
Date


Deputy Commissioner
for:
Thomas H. Frost, Commissioner
Department of Public Safety

