STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

In the Matter of the Proposed Adoption of the Rule of the State Department of Transportation Governing Limousine Service and Permit Requirements	))))	**STATEMENT OF NEED AND REASONABLENESS**

Introduction

The commissioner of transportation presents evidence and argument supporting the need for and reasonableness of a proposed permanent rule relating to limousine service and permit requirements. This statement of need and reasonableness gives the commissioner's statutory authority for adopting the rule, explains the circumstances that have created the need for the rule, and shows why the proposed rule is an appropriate response to the need.

Legislative and Rulemaking History

The "for-hire" transportation of persons and property is regulated under *Minnesota Statutes*, chapter 221. The State of Minnesota did not require a person providing limousine service to have a certificate or permit authorizing the service until 1991. The relevant part of *Minnesota Statutes*, section 221.025, stated:

> Except as provided in sections 221.031 and 221.033, the provisions of this chapter do not apply to the intrastate transportation described below:
>
> (n) a person providing limousine service that is not regular route service in a passenger automobile that is not a van, and that has a seating capacity, excluding the driver, of not more than 12 persons;

The Minnesota Limousine Operators Association (MLOA), citing a need to establish insurance coverage requirements and to cure perceived abuses by some persons characterizing themselves as limousine operators, sought legislation to establish a program of limousine regulation during the 1991 legislative session. As a result, the Minnesota Legislature passed Laws 1991, chapter 284, and presented it to the Governor on May 29, 1991. Section 9 of the bill made it effective on the day following final enactment.

The Governor vetoed the legislation on June 1, 1991. Contesting the validity of the Governor's veto, the Secretary of the Senate delivered the bill to the Secretary of State for filing on June 7, 1991, and Laws 1991, chapter 284, was filed on June 10, 1991. The Governor's veto was ruled invalid and the bill was declared law by the Ramsey County District Court in The Seventy-seventh Minnesota State Senate, et al v. Carlson, et al, docket number C3-91-7547.

Laws 1991, chapter 284, amended *Minnesota Statutes*, sections 168.017, subdivision 3; 168.011, subdivision 35; 168.128, subdivisions 2 and 3; 221.025; 221.091; and enacted

Minnesota Statutes, section 221.84. The pertinent amendments to the provisions in chapter 168 relate to limousine license plates and insurance requirements. The amendment to *Minnesota Statutes*, section 221.025, deleted the above-quoted exemption. *Minnesota Statutes*, section 221.091, sets out the relative powers of the state and cities of the first class regarding transportation regulated under chapter 221. It was amended to reflect the enactment of *Minnesota Statutes*, section 221.84.

As originally enacted, *Minnesota Statutes*, section 221.84, stated:

221.84 OPERATION OF LIMOUSINES.

Subdivision 1. **Definition.** "Limousine service" means a service that:

(1) is not provided on a regular route;

(2) is provided in an unmarked luxury passenger automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver;

(3) provides only prearranged pickup; and

(4) charges more than a taxicab fare for a comparable trip.

Subd. 2. **Permit required; rules.** No person may operate a for-hire limousine service without a permit from the commissioner. The commissioner shall adopt rules governing the issuance of permits for for-hire operation of limousines that include;

(1) annual inspections of limousines;

(2) driver qualifications, including requiring a criminal history check of drivers;

(3) insurance requirements *in accordance with section 168.128*;

(4) advertising regulation, including requiring a copy of the permit to be carried in the limousine and use of the words "licensed and insured";

(5) provisions for agreements with political subdivisions for sharing enforcement costs;

(6) issuance of temporary permits and temporary permit fees; and

(7) other requirements deemed necessary by the commissioner.

This section does not apply to limousines operated by persons meeting the definition of private carrier in section 221.011, subdivision 26.

Subd. 3. **Penalties.** The commissioner may issue an order requiring violations of statutes, rules, and local ordinances governing operation of limousines to be corrected and assessing monetary penalties up to $1,000. The commissioner may suspend or revoke a permit for violation of applicable statutes and rules and, upon the request of a political subdivision, may immediately suspend a permit for multiple violations of local ordinances. The commissioner shall immediately suspend a permit for failure to maintain required insurance and shall not restore the permit until proof of insurance is provided. A person whose permit is revoked or suspended or who is assessed an administrative penalty may appeal the commissioner's action in a contested case proceeding under chapter 14.

Subd. 4. **Permits; decals.** (a) The commissioner shall design a distinctive decal to be issued to permit holders under this section. Each decal is valid for one year from the date of issuance. No person may operate a limousine that provides limousine service unless the limousine has such a decal conspicuously displayed.

(b) During the period July 1, 1991, to June 30, 1992, the fee for each decal issued under this section is $150. After June 30, 1992, the fee for each decal is $80. The fee for each permit issued under this section is $150. The commissioner shall deposit all fees under this section in the trunk highway fund.

The Minnesota Department of Transportation (Mn/DOT or "the department") published a Notice of Solicitation of Outside Information or Opinions in the *State Register* on September 23, 1991. The notice stated that opinions or information would be accepted until November 1, 1991. The department did not receive any written comments before that date.

The department formed a Limousine Advisory Committee in November to help in the development of the proposed rule. In forming the committee, the department sought persons knowledgeable in various aspects of the limousine industry as well as representatives from other state agencies, municipalities, and regulatory bodies.

The committee met for the first time on December 6, 1991. In addition to Mn/DOT personnel, eleven persons were present. They included representatives of the MLOA, several limousine operators, and representatives of the City of Minneapolis and the Metropolitan Airports Commission. The names of the persons who attended committee meetings are listed at the end of the statement of need and reasonableness. The committee held subsequent meetings on December 11th and 18th of 1991, and on January 2nd, 9th, and 16th of 1992. The committee had nearly completed its work by the end of January of 1992.

The department temporarily halted work on the rule during the 1992 legislative session because of various legislative proposals that would necessarily shape the content of the rule. During the session, *Minnesota Statutes*, section 221.84, subdivision 2, was amended. Section 52 of Laws 1992, chapter 578, deleted the words, "in accordance with section 168.128" from clause (3). (The deleted language is shown in italics on the previous page.) The amendment was sought to give the commissioner the authority to adopt insurance requirements different from those found in *Minnesota Statutes*, section 168.128. No other amendments were considered.

Laws 1992, chapter 578, also amended *Minnesota Statutes*, sections 168.011, by adding subdivision 36, [*definition of Personal Transportation Service Vehicle*]; enacted *Minnesota Statutes*, section 168.1281, [*Personal Transportation Service Plates*]; amended *Minnesota Statutes*, section 221.011, by adding subdivision 34, [*definition of Personal Transportation Service*]; and enacted *Minnesota Statutes*, section 221.85, [*Personal Transportation Service*].

This legislation resulted in the establishment of two similar but distinct types of transportation, i.e., "limousine service" and "personal transportation service." The main distinguishing feature between the two is the type of vehicle used to provide the transportation. Limousine service must be provided in a "luxury passenger automobile that is not a van or station wagon." Personal transportation service must be provided in a personal transportation service vehicle as defined in *Minnesota Statutes*, section 168.011, subdivision 36. Passenger vehicles seating up to six persons, vans, and station wagons are specifically included as personal transportation service vehicles.

The pertinent sections of Laws 1992, chapter 578, were effective on August 1, 1992. Because of the amendments, Mn/DOT's proposed rule required substantial redrafting. Earlier drafts of the proposed rule treated passenger vehicles seating up to six persons as limousines and

incorporated the insurance requirements of *Minnesota Statutes*, section 168.128. Once the required revisions were complete, Mn/DOT held a final meeting of its Limousine Advisory Committee on October 14, 1992.

Mn/DOT was prepared to publish notice of its intent to adopt the proposed rule in early 1993. However, early in the 1993 Legislative Session, a bill (H.F. 87) was introduced that would have amended the personal transportation service legislation. There was considerable discussion of other amendments as the session progressed. Some of the amendments would have had a direct effect on the proposed limousine rule and Mn/DOT delayed proposing the rule until the status of the personal transportation service legislation was clarified.

As a result of controversy surrounding personal transportation services, Laws 1993, chapter 323, was enacted on May 20, 1993. It added a subdivision to *Minnesota Statutes*, section 168.1281, prohibiting the registrar from issuing new "LS" license plates. That subdivision was effective immediately upon enactment. It also repealed *Minnesota Statutes*, sections 168.011, subdivision 36; 168.1281; 221.011, subdivision 34; and 221.85, effective as of August 1, 1994.

The distinction between "limousine service" and "personal transportation service" is in doubt. Without further legislative action, personal transportation service will cease to exist on August 1, 1994. Prior to the enactment of Laws 1993, chapter 323, the proposed limousine rule sought to affect the legislative distinction between the two types of service by limiting the limousine regulatory program to vehicles with a stretched chassis and wheelbase. Mn/DOT decided, therefore, to redraft the proposed limousine rule in a way that would allow limousine operators to operate certain non-stretched passenger automobiles as limousines even though they also would be considered personal transportation service vehicles. Some operators receive requests for service in "executive sedans" and this change was necessary to allow operators to continue to provide service when the repeal takes effect. These issues are discussed further in relevant portions of the part-by-part statement of need and reasonableness.

Small Business Considerations

Minnesota Statutes, section 14.115, requires agencies, when proposing new rules or amending existing rules that might affect small businesses, to consider certain methods for reducing the impact of the rule and to provide certain notices to small businesses. In proposing the rule, the commissioner considered the methods for reducing the impact on small businesses listed in *Minnesota Statutes*, section 14.115, subdivision 2.

All limousine operators identified by the department are "small businesses" as defined in *Minnesota Statutes*, section 14.115, subdivision 1. The MLOA and members of the department's Limousine Advisory Committee estimated that the average limousine operator employs four persons and operates three limousines. Since all limousine operators are "small businesses," the commissioner determined that there was no rational basis for establishing different requirements for some operators including less stringent compliance and reporting

requirements, less stringent schedules or deadlines for compliance, consolidated or simplified requirements, and exemptions. All limousine operators are similarly situated and should be subject to the same requirements.

However, the commissioner's main objective in this rulemaking proceeding is to establish only those requirements directly mandated or permitted by *Minnesota Statutes*, section 221.84, or those absolutely necessary to implement, administer or enforce that section. The commissioner solicited comments from the public, the MLOA, and members of the department's Limousine Advisory Committee to ensure that the rule does not impose an undue or unnecessary burden on limousine operators.

The department has provided opportunities for small business participation during this rulemaking proceeding. First, the department invited several representatives of small businesses to serve as members of the department's Limousine Advisory Committee. They have participated directly in the development of the proposed rule. Mn/DOT sometimes withdrew proposals because of the small business concerns of committee members.

For example, the department originally proposed requiring limousine operators to inspect their vehicles periodically (once each week or every 1,000 miles) and to document the results. Committee members pointed out that most operators conduct routine inspections but objected to the additional recordkeeping requirement. The department withdrew the proposal and, with the agreement of the committee, provided additional detail to the annual vehicle inspection requirement. The department believes that current industry practice, with the detailed annual inspection, will adequately protect the safety of passengers.

The department also proposed that limousine operators attach copies of the most recent Mn/DOT inspection report to a vehicle decal application. The department withdrew the proposal and will arrange to maintain a data base showing compliance with the annual inspection requirement. When an operator applies for a vehicle identification decal, the department will check the data base to confirm that the vehicle has passed an inspection during the preceding year.

Second, the department has cooperated with the MLOA to keep its members informed of proposals under consideration. MLOA members are small businesses. The MLOA has circulated preliminary drafts of the proposed rules to its members. Some individual members have contacted the department with comments or suggestions about the proposed rules. The department has given serious consideration those comments and suggestions.

Third, the department has furnished various drafts of the proposed rule, or portions of the proposed rule, to a person requesting them. Most of the requests came from small businesses or persons who were considering forming small businesses to provide limousine service. Many requests came from individual owner-operators who operate only one vehicle. Some are not MLOA members. Any person who considered commenting on the proposed rule was encouraged to do so and all comments and suggestions were considered.

Finally, the department has kept a list of the names and addresses of persons wanting information about this rulemaking proceeding. Notice of the department's intent to adopt the proposed rule and a copy of the rule will be mailed directly to those persons.

The specific ways small business concerns were addressed are discussed in the part-by-part statement of need and reasonableness.

Other Statutory Requirements

Minnesota Statutes, section 14.11, subdivision 1, is not applicable as the proposed rule will not require expenditures of more than $100,000 by local public bodies. *Minnesota Statutes*, section 14.11, subdivision 2, is not applicable as the proposed rule will not have any impact on agricultural land. *Minnesota Statutes*, section 16A.128, subdivision 1, is not applicable because the fees mentioned in the proposed rule were set by the legislature when it enacted *Minnesota Statutes*, section 221.84.

Part-By-Part Need and Reasonableness Justification

Part 8880.0100 DEFINITIONS.

Subpart 1. Scope. The definitions contained in this part are needed to clarify words and phrases used in the proposed rule. An English word used in its ordinary sense does not need a definition different from that usually found in a dictionary. (Throughout the statement of need and reasonableness, the American Heritage Dictionary, Second College Edition, Houghton Mifflin Company, 1982, was used to provide commonly-accepted definitions.) Each word or phrase defined in this part, however, is used in a technical, rather than an ordinary sense, and therefore must be defined.

Minnesota Statutes, section 645.08, paragraph (1), gives a pertinent rule of statutory construction. It states:

> Words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning . . . . are construed according to such special meaning or their definition;

This principle also should be applied to administrative rules since adopted rules have the force and effect of law under *Minnesota Statutes*, section 14.38.

The need for and reasonableness of each defined word or phrase is discussed in the applicable subpart.

Subpart 2. Bus. In enacting *Minnesota Statutes*, section 221.84, the legislature limited the types of vehicles used to provide limousine service to "luxury passenger automobiles."

According to the statute, a "luxury passenger automobile" has a seating capacity of not more than 12 persons, excluding the driver. The word "bus" is used in the proposed definition of "luxury passenger automobile" [*subpart 12*]. That subpart specifically excludes a "bus" from consideration as a "luxury passenger automobile" and the justification for doing so is discussed in that part of the statement of need and reasonableness.

There is a need to be precise about the meaning of the word "bus" since it is used in the definition of "luxury passenger automobile." A common dictionary definition of the word "bus" is "a long motor vehicle used for carrying passengers." A technical definition is needed to specify the number of passengers a bus carries. If, by definition, a bus carries more than 12 passengers, it cannot be considered a "luxury passenger automobile" and may not be used to provide limousine service.

Incorporating the definition of "bus" in *Minnesota Statutes*, section 169.01, subdivision 50, is a reasonable means of meeting the need. It avoids duplication of statutory language and clarifies the number of passengers a bus carries. The definition states:

> "Bus" means every motor vehicle designed for carrying more than 15 passengers including the driver and used for the transportation of passengers.

Subpart 3. Commissioner. *Minnesota Statutes*, section 221.84, subdivision 2, gives the commissioner of transportation the authority to adopt administrative rules. The commissioner also is charged with administering and enforcing the provisions of the statute. The definition is needed to avoid using the entire phrase "the Commissioner of the Minnesota Department of Transportation" in the many times it appears throughout the rule. The proposed definition is reasonable since it is concise and accurately identifies the commissioner.

Readers should note that the use of the term "commissioner" does not mean that the commissioner of transportation will personally issue permits, inspect vehicles, or complete the many tasks required of the department in the rule. The commissioner delegates this authority, under a provision in Minnesota law, to persons in the department with expertise in these areas. Delegations of this type are used throughout state government in the administration and enforcement of regulatory programs.

Subpart 4. Conviction. A dictionary definition of the word "conviction" is "the state of being found or proved guilty." The legislature has directed the commissioner to adopt rules for "driver qualifications, including requiring a criminal history check of drivers." Conducting a criminal history check necessarily involves checking conviction records. A technical definition is needed since conviction records show guilty pleas as well as being found or proven guilty after a trial.

The proposed rule governing criminal history checks is part 8880.0800, subpart 7. It requires checking the driving and criminal record of a driver for various convictions. The driver's record must be checked through the Department of Public Safety, Driver and Vehicle

Services Division. The criminal record must be checked through the Bureau of Criminal Apprehension. The need for and reasonableness of the criminal history check requirement is discussed on pages 56 to 58 of the statement of need and reasonableness.

Minnesota Statutes, chapter 171, governs driver's licenses. It contains a definition of "conviction" and includes provisions relating to motor vehicle offenses. *Minnesota Statutes*, chapter 299C, governs the operations of the Bureau of Criminal Apprehension. It does not include a definition of "conviction."

The proposal is a reasonable means of meeting the need for a technical definition since it is from the chapter governing motor vehicle offenses. *Minnesota Statutes*, section 171.01, subdivision 13, states:

> The term "conviction" means a final conviction either after trial or upon a plea of guilty. Also, a forfeiture of cash or collateral deposited to guarantee a defendant's appearance in court, which forfeiture has not been vacated; the failure to comply with a written notice to appear in court; or a breach of a condition of release without bail, is equivalent to a conviction.

Subpart 5. Criminal record. Just as *Minnesota Statutes*, chapter 299C, does not define "conviction," neither does it define "criminal record." A technical definition is needed to establish the scope of the criminal history check required by statute. Left undefined, a "criminal history check" could conceivably include checking the conviction records of other states, police complaint records, or arrest records. The criminal history check required by the proposed rule requires a check of a driver's criminal record.

The proposed rule is a reasonable means of meeting the need for a technical definition. First, it specifies the records that must be checked. The department carefully considered the appropriate scope of the criminal history check. It concluded that limiting the scope of the check is necessary to avoid placing an undue burden on limousine operators. It would be unreasonable to require a criminal history check without giving specific guidance about its scope.

Second, the proposal upholds the presumption of innocence. It would be unreasonable to disqualify a driver based on an unsubstantiated allegation of criminal conduct or an arrest. Since a person is presumed innocent until proven guilty, a driver should not be disqualified unless convicted.

Third, it would be unreasonable to disqualify a driver permanently because of a criminal conviction. Part 8880.0800, subpart 7, requires a limousine operator to conduct a check of the criminal record of a driver. The proposal effectively limits the check to conviction records in which the last date of discharge from the criminal justice system is less than five years.

Subpart 6. Department. The Minnesota Department of Transportation is the department within the state government that is responsible for administering and enforcing the limousine regulation program. Instead of using the entire phrase "Minnesota Department of Transportation" in the many times it appears throughout the proposed rule, a definition is

needed. The proposed rule is a reasonable means of meeting the need since it is concise and accurately identifies the department.

Subpart 7. Driver. Several provisions in the proposed rule relate to limousine drivers. According to the dictionary, a "driver" is "one who drives." A more technical definition of the word is needed. Under *Minnesota Statutes*, section 221.84, the commissioner has the authority to adopt rules for limousine drivers; not drivers of other motor vehicles.

The proposal is a reasonable means of meeting the need. It limits the application of the word to persons who drive, or are in actual physical control, of a limousine. There is a statutory definition of "driver" in *Minnesota Statutes*, section 171.01, subdivision 6. But, it is too broad since it uses the words "motor vehicle." Nevertheless, the commissioner proposes to include the phrase "in actual physical control" since it is included in the statutory definition.

Subpart 8. For hire. *Minnesota Statutes*, section 221.84, subdivision 2, refers to the provision of "for-hire" limousine service. "For-hire" is a technical phrase used in transportation law and, therefore, a technical definition is needed in the rule.

Incorporation of an existing statutory definition is a reasonable means of meeting the need. The definition is from *Minnesota Statutes*, section 221.011, subdivision 16. This definition applies to the phrase when it is used in *Minnesota Statutes*, section 221.84. It states:

> "For hire" means for remuneration or compensation of any kind promised, paid, or given to or received by a person for the transportation of persons or property on the highways, and includes compensation obtained by a motor carrier indirectly, by subtraction from the purchase price or addition to the selling price of property transported, when the purchase or sale of the property is not a bona fide purchase or sale. The transportation of property by a person who purchases it immediately before transporting it, and sells it immediately after transporting it, is transportation for hire. The lease or rental of a motor vehicle to a person for transportation of the person's property is transportation for hire and not private carriage when the lessor, directly or indirectly, serves as driver or obtains or arranges for a driver under the terms of the motor vehicle lease. For hire does not include motor vehicle operations conducted by a private carrier.

Subpart 9. Limousine. According to the dictionary, a "limousine" is "a large passenger vehicle, especially a luxurious automobile usually driven by a chauffeur and sometimes having a glass partition separating the passenger compartment from the driver's seat." There is no definition of the word "limousine" in *Minnesota Statutes*, section 221.84. But, subdivision 1, clause (2), of that section describes the type of vehicle used to provide "limousine service." A technical definition is needed to avoid the repetitious use of the cumbersome descriptive language found in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), when referring to the described vehicles throughout the rule.

Minnesota Statutes, section 168.011, subdivision 35, defines the word "limousine." It states:

> For purposes of motor vehicle registration only, "limousine" means an unmarked luxury passenger

automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver.

Minnesota Statutes, chapter 168, relates to motor vehicle registration. The department considered incorporating this definition since it is usually preferable to incorporate existing statutory definitions instead of repeating statutory language. However, the qualifying phrase "*for purposes of motor vehicle registration only*" could have caused confusion.

The proposed definition is a reasonable means of meeting the need for a technical definition. It reflects the statutory description in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), and is in harmony with the statutory definition in *Minnesota Statutes*, section 168.011, subdivision 35.

Subpart 10. Limousine operator. There is a need to use a single phrase throughout the rule to describe those persons who have received a limousine service permit from the commissioner and who are subject to the rule. *Minnesota Statutes*, section 221.84, subdivision 2, states in part:

No person may *operate* a for-hire limousine service without a permit from the commissioner.

Although the department could have chosen another descriptive phrase, like "permit holder" or "limousine service provider," use of the phrase "limousine operator" is a reasonable choice since it is in harmony with the statute, is concise, and accurately identifies those who have received limousine service permits.

The proposed definition states that a "broker or other person who arranges for, but does not provide, limousine service" is not considered a "limousine operator." There is a need to exclude those who do not actually provide limousine service from regulation under the rule.

According to members of the department's Limousine Advisory Committee, there are persons who advertise themselves as limousine operators but who do not provide limousine service. Typically, they receive calls from passengers, refer the requests for service to those who operate limousines, and charge a referral fee.

Under *Minnesota Statutes*, section 221.84, "no person may operate a for-hire limousine service without a permit." The characteristics of "limousine service" are listed in subdivision 1. Under the statute, the actual transportation of passengers is essential to the provision of "limousine service." Further, most of the rules mandated by *Minnesota Statutes*, section 221.84, subdivision 2, would not apply to those who do not operate vehicles or employ drivers. Therefore, since the legislature did not intend to regulate brokers of limousine service, it is reasonable to specifically exclude them from the definition of "limousine operator."

Subpart 11. Limousine service. A definition of this phrase is needed since it is used in a technical sense in *Minnesota Statutes*, section 221.84. Subdivision 1, states:

"Limousine service" means a service that:
(1) is not provided on a regular route;
(2) is provided in an unmarked luxury passenger automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver;
(3) provides only prearranged pickup; and
(4) charges more than a taxicab fare for a comparable trip.

The department considered simply incorporating the statutory language. Upon reviewing *Minnesota Statutes*, section 221.84, however, it appears that two additional defining characteristics of limousine service appear in the statute. First, the type of "limousine service" regulated under the statute is limited to "for-hire" service. Second, regulated "limousine service" does not include service provided by a private carrier. The commissioner believes it is technically necessary to include these defining characteristics in its use of the phrase "limousine service" throughout the rule and proposes to define the phrase accordingly. This is reasonable since the service regulated under the rule is necessarily limited to "for-hire" service not provided by a private carrier.

The proposed definition differs from that found in the statute in one other respect. Instead of the descriptive language found in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), the commissioner proposes to use the phrase "is provided in a limousine." (The word "limousine" is defined in subpart 9 of this part. The need for and reasonableness of that definition is discussed on pages 9 and 10 of the statement of need and reasonableness.)

Since the definition of "limousine" uses the language in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), it is reasonable to replace that descriptive language with the word "limousine" in this definition. This avoids duplication of language and makes the rule easier to understand.

Subpart 12. Luxury passenger automobile. *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), describes the type of vehicle used to provide limousine service as "an unmarked luxury passenger automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver." A technical definition is needed for two reasons. First, the statute does not define the phrase "luxury passenger automobile," and the phrase can have many different meanings. Second, the determination of what constitutes a "luxury passenger automobile" is central to the limousine regulation program established by the legislature.

Passenger transportation having the characteristics of limousine service has traditionally been provided in a variety of vehicles. Though "stretch limousines" are the primary type used, some persons have called transportation provided in station wagons, vans, "stretch" pickup trucks, and smaller buses, limousine service.

There is a need to be as specific as possible about the types of vehicles that may be used to provide limousine service. Clearly, the legislature intended that this service not be provided

in vans and station wagons. The MLOA, in seeking the legislation, expressed a concern that limousine service be provided in vehicles that the public generally considers to be limousines. And, during this rulemaking, the MLOA and other limousine operators maintained that the viability and image of the limousine industry is damaged when a passenger calls for limousine service and a vehicle, other than a luxury passenger automobile, arrives to provide the service. Therefore, a specific and clear technical definition is needed.

The proposed definition is a reasonable means of meeting this need. It follows two approaches in clarifying the phrase: it describes the characteristics of a "luxury passenger automobile" and specifically lists types of vehicles that are deemed not to fall within that class.

Using the positive approach first, the department's definition proposes three alternate standards for determining if a vehicle is a "luxury passenger automobile." First, the definition acknowledges that a vehicle with a chassis and wheelbase that has been stretched beyond the manufacturer's original specifications is a "luxury passenger automobile." This part of the definition was included because of the general public's perception of a "limousine."

In the 1992/1993 St. Paul issue of the U.S. West Direct Yellow Pages, there are 16 display advertisements that include pictorial representations of limousines. The advertisements are targeted to business groups, wedding parties, birthday parties, tours, concert-goers, proms, and other "special occasions." Fifteen of the drawings show "stretch" limousines. Of those, eight use the word "stretch" in accompanying text, as do other limousine ads. Therefore, because of the way limousine service has traditionally been presented to the public, most people who ask for limousine service expect to be picked up and transported in a "stretch limo."

The proposed definition also includes "executive sedans" that are equipped with interior furnishings and amenities not normally found in passenger automobiles or that have a fair market value of more than $25,000. Some passengers require service in a non-stretched sedan, usually because they do not want to draw attention to themselves. Limousine operators have traditionally provided this type of service as well and the department originally intended to include executive sedans in this definition. There was considerable discussion and disagreement among the Limousine Advisory Committee members about what constituted a "luxury" vehicle. The committee members agreed that some sedan models were "luxury" vehicles, but disagreed about others.

This problem was temporarily resolved when the legislature amended *Minnesota Statutes*, sections 168.011, by adding subdivision 36, in Laws 1992, chapter 578. Subdivision 36 defines "personal transportation service vehicle" as:

> . . .a passenger vehicle that has a seating capacity of up to six persons excluding the driver, or a van or station wagon with a seating capacity of up to 12 persons excluding the driver, that provides personal transportation service as defined in section 221.011, subdivision 34.

Under *Minnesota Statutes*, section 221.011, subdivision 34, "personal transportation

service" is service that:

(1) is not provided on a regular route;
(2) is provided in a personal transportation service vehicle as defined in section 168.011, subdivision 36;
(3) is not metered for the purpose of determining fares;
(4) provides prearranged pickup of passengers;
(5) charges more than a taxicab fare for a comparable trip.

A person may provide limousine or personal transportation service or both, if the person obtains both permits. However, the status of personal transportation service is in doubt because of the legislative action described in the legislative and rulemaking history portion of this statement of need and reasonableness. If the repeal takes effect as planned, limousine operators would not be able to provide sedan service if the definition of "luxury passenger automobile" did not include some non-stretch sedans. It would not be reasonable to consider all sedans as "luxury passenger automobiles." To give effect to the legislature's use of the word "luxury," the department believes it is necessary and reasonable to include only those that have amenities similar to traditional limousines or that have a fair market value of more than $25,000.

This three-part definition of the phrase "luxury passenger automobile" conforms to the expectations of the public and the needs of operators. The MLOA and members of the department's Limousine Advisory Committee have received complaints about the type of vehicles that have sometimes been used to provide limousine service. A person who calls for a "limousine" might understandably be upset when picked up by a station wagon, van, or other passenger vehicle that bears no resemblance to a traditional limousine. The proposed definition addresses this problem while allowing operators to use executive sedans when requested.

The proposed definition also lists certain vehicles that are not "luxury passenger automobiles." These include a bus, pickup truck, station wagon, taxicab, truck, or van.

Buses. Buses are used by regular route common carriers and charter carriers to provide regulated passenger transportation under *Minnesota Statutes*, chapter 221. The commissioner believes it is reasonable to exclude the use of buses from providing limousine service for three reasons.

First, since the legislature used the phrase "luxury passenger automobile" in *Minnesota Statutes*, section 221.84, and limited this type of vehicle's seating capacity to 12, excluding the driver, it could be argued that a reasonable interpretation of the phrase "luxury passenger automobile" would necessarily exclude a bus. If this were so, no definition would be needed. However, under *Minnesota Statutes*, sections 14.02 and 14.05, the department does not have the authority to interpret the phrase "luxury passenger automobile" without initiating a rulemaking proceeding. It is necessary therefore to address the issue in this rulemaking.

Second, a person might permanently reconfigure the seating arrangement of a school bus or motor coach by adding luxury seats, tables, and other amenities, so that it didn't have a

seating capacity of more than 12 persons, excluding the driver. It could the be argued that the vehicle meets the description found in *Minnesota Statutes*, section 221.84, at least if the vehicle could be considered an "automobile." The specific exclusion of buses will resolve anticipated uncertainty about this issue.

Third, the commissioner believes it is necessary to clarify the distinction between charter carriers and limousine operators. Under *Minnesota Statutes*, section 221.011, subdivision 20, a "charter" is:

> . . .the agreement whereby the owner of a motor vehicle lets the same to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time.

Subdivision 21 defines "charter carrier" as:

> . . .a person who engages in the business of transporting the public by motor vehicle under charter. The term "charter carrier" does not include regular route common carriers of passengers, school buses described in section 221.025, clause (a), or persons providing limousine service described in section 221.84.

Traditionally, limousine service closely resembles transportation provided under charter. The main practical distinction between the two is that charter carriers primarily operate motor coaches.

The last phrase in *Minnesota Statutes*, section 221.011, subdivision 21, (relating to limousine service), was added during the 1992 legislative session. The legislature clearly intended to draw a distinction between the two types of passenger transportation. A person who provides only limousine service is not a "charter carrier" and may not get a charter carrier permit from the Minnesota Transportation Regulation Board (TRB). This means that a limousine operator may not engage in special passenger service. See, *Minnesota Statutes*, sections 221.011, subdivision 32, and 221.121, subdivision 6b.

On the other hand, though a limousine operator lets his vehicle "to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time," the operator is not required to get a charter carrier permit to do so if the service is provided by a limousine operator with a limousine service permit in a luxury passenger automobile.

In summary, if a bus is used to provide this service, it is a charter. If a luxury passenger automobile is used, it is not a charter. The proposed definition serves to reinforce this distinction.

Station wagons and vans. Station wagons and vans also are specifically excluded from the phrase "luxury passenger automobile." This is both necessary and reasonable because of the descriptive language in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2). The words "station wagon" and "van" are defined in proposed subparts 22 and 26 respectively. The need for and reasonableness of those definitions is discussed on pages 19 and 20 of the statement of

need and reasonableness.

Taxicabs. Taxicabs also are excluded from the definition of "luxury passenger automobile." The exclusion is needed to distinguish limousine service from taxicab service for three reasons. First, vehicles operated as taxicabs generally do not meet public expectations of a "limousine"; that is, they are not stretched vehicles and do not have the amenities found in limousines. Therefore, it is reasonable to exclude them from the definition of the phrase "luxury passenger automobile."

Second, taxicabs have never been considered as limousines for purposes of motor vehicle registration. Before it was amended in 1991, *Minnesota Statutes*, section 168.011, subdivision 35, stated:

> "Limousine" means a passenger automobile, *other than a taxicab* or a passenger-carrying van-type vehicle, that does not provide regular route service and that has a seating capacity, excluding the driver, of not more than 12 passengers. [emphasis added]

Third, the legislature has granted the power to license and regulate taxicabs to cities in *Minnesota Statutes*, section 412.221, subdivision 20. The Minneapolis Code of Ordinances, title 13, chapter 341 and the Saint Paul Legislative Code, chapter 376, provide examples of municipal regulation of taxicab service. These ordinances include provisions relating to drivers, vehicle condition and equipment, and charges for service. It is reasonable to maintain, to the fullest extent possible, the separation of state and local authority over the regulation of taxicabs.

Under *Minnesota Statutes*, section 221.84, subdivision 1, clause (4), a limousine service must charge more than a taxicab fare for a comparable trip. This shows the legislature's intent to keep the distinction between the two services. It should be noted that nothing in the proposed rule prohibits a taxicab operator from also becoming a limousine operator. It is not the department's intention to keep a taxicab operator from obtaining a limousine service permit and also providing limousine service if vehicles meeting the definition of "luxury passenger automobiles" are used to provide the service.

Trucks and pickup trucks. Trucks and pickup trucks also are excluded from the definition of "luxury passenger automobile." This exclusion is needed because, like other vehicles discussed, trucks and pickup trucks do not meet the public's expectations of a limousine. In addition, it would be unreasonable to consider a truck as an automobile. The dictionary defines "automobile" as "a self-propelled *passenger* vehicle that usually has four wheels and an internal-combustion engine, used for land transport."

Minnesota Statutes, section 168.011, subdivision 7, includes pickup trucks in a definition of "passenger automobile" but it specifically states that it is included "for purposes of taxation only." This is not a sufficient reason to consider a pickup truck as a passenger automobile for other purposes.

Trucks and pickup trucks are not primarily designed to carry passengers. The proposed definitions in subparts 17 and 24 reflect this. The need for and reasonableness of those definitions is discussed on pages 16 and 19 of the statement of need and reasonableness.

Subpart 13. Meter. A definition of this word is needed since it is used in a technical sense in the definition of "taxicab." The proposal is reasonable since it concisely and accurately describes the device used by taxicabs. The definition helps to distinguish further between taxicabs and luxury passenger automobiles.

Subpart 14. Motor vehicle. This definition is needed because the phrase "motor vehicle" is used in the definitions of "bus," "meter," "station wagon," "taxicab," "truck," and "van." It also is used in parts 8880.0600, subpart 2; and 8880.0800, subparts 4 and 5.

The incorporation of the definition in *Minnesota Statutes*, section 169.01, subdivision 3, is a reasonable means of meeting the need. It states:

> "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power.

Minnesota Statutes, chapter 169, relates to traffic regulation. It uses the term often. Limousines, like all passenger automobiles, must comply with the provisions of chapter 169.

Subpart 15. Permit. A definition of this word is needed because it is used in *Minnesota Statutes*, section 221.84. It is reasonable to specify that the word, when used in the rule, means the permit issued by the commissioner to operate a limousine service.

Subpart 16. Person. A definition of this word is needed because it is used in *Minnesota Statutes*, section 221.84. Since the applicable definition of the word, when used in the statute, is found in *Minnesota Statutes*, section 221.011, subdivision 6, incorporation of the definition is a reasonable means of meeting the need. The incorporated definition states:

> "Person" means any individual, firm, copartnership, cooperative, company, association and corporation, or their lessees, trustees, or receivers.

Subpart 17. Pickup truck. A technical definition of this phrase is needed because pickup trucks are excluded from the definition of "luxury passenger automobile." *Minnesota Statutes*, section 168.011, subdivision 29, states:

> "Pickup truck" means any truck with a manufacturer's nominal rated carrying capacity of three-fourths ton or less and commonly known as a pickup truck.

Incorporation of this definition is a reasonable means of meeting the need for a technical definition. It is sufficiently descriptive and avoids unnecessary redefinition of a term already defined in statute. Pickup trucks are excluded from the definition of "luxury passenger

automobile" and may not be used to provide limousine service.

Subpart 18. Political subdivision. A technical definition is necessary because the phrase is used in *Minnesota Statutes*, section 221.84, subdivision 2, clause (5). This clause requires the commissioner to provide for agreements with political subdivisions in the rule. The proposal is a reasonable means of meeting the need since the political subdivisions listed in the definition might be called upon to enforce various laws applicable to limousines.

Subpart 19. Prearranged pickup. This definition is needed because the phrase is used in *Minnesota Statutes*, section 221.84, subdivision 1, clause (3). The phrase is not defined in statute and can have different meanings.

Under *Minnesota Statutes*, section 645.16, when the words of a statute are not explicit, the intention of the legislature may be ascertained by considering:

(1) the occasion and necessity for the law:
(2) the circumstances under which it was enacted;
(3) the mischief to be remedied;
(4) the object to be attained;
(5) the former law, if any, including other laws upon the same or similar subjects;
(6) the consequences of a particular interpretation;
(7) the contemporaneous legislative history; and
(8) legislative and administrative interpretations of the statute.

The legislature provided that an essential characteristic of limousine service is prearranged pickup. It is necessary to review the above factors to make certain that the legislature's intention is given effect in the rule.

The enactment of *Minnesota Statutes*, section 221.84, was designed to address several problems in the limousine industry. Those who sought the legislation, including the MLOA, stated that limousine service should be provided only on an "on-call" basis. Some operators had been actively soliciting passengers at hotels, motels, and airports. Managers of these facilities complained about this practice. Their complaints involved unauthorized parking and waiting at facilities, bothersome solicitation of patrons in hotel lobbies, and poor or unwanted service. Holders of regular route common carrier certificates, authorizing this type of transportation, also complained that they were losing business to unauthorized operators. As a result, the legislature specified that limousine service must be provided only when it is prearranged.

The proposal is a reasonable means of meeting the need for a definition. It gives effect to the legislature's intent by stating that service may be provided only when requested by a passenger.

The department considered other options in approaching the definition of this phrase. They included a time-lapse requirement that would further restrict the type of pickup. For

example, "prearranged pickup" could have been defined as requiring the passage of an hour (or another period) between the request for service and the time the transportation began.

Additional restrictions are unneeded and unreasonable. The practice the legislature sought to address only involved the solicitation of passengers "in-person" by limousine operators. A time-lapse requirement would have interfered with passenger plans. A person arriving at an airport, or one leaving a hotel for an airport, might reasonably expect to arrange for prompt limousine service without a delay imposed by government regulation. There is no rational justification for forcing a passenger to change plans or take another type of transportation. The proposal gives effect to the legislature's intent without unduly burdening limousine operators or passengers.

Subpart 20. Public highway. A definition of this phrase is needed since it is used in the definition of "regular route." Also, the word "highway" is used in the statutory definition of "for-hire," which is incorporated by reference.

Minnesota Statutes, section 221.011, subdivision 5, states:

> "Public highway" means every public street, alley, road, highway or thoroughfare of any kind, except waterways, open to public travel and use.

Incorporation of this definition is a reasonable means of meeting the need since it is found in the same chapter as *Minnesota Statutes*, section 221.84, and it adequately describes the phrase.

Subpart 21. Regular route. A technical definition of this phrase is needed because one essential characteristic of limousine service listed in *Minnesota Statutes*, section 221.84, subdivision 1, is that it "is not provided on a regular route." The legislature clearly intended to distinguish regular route common carriers from limousine operators. Also, the phrase "regular route" is used in a technical sense in transportation law.

As stated earlier, one problem the enactment of *Minnesota Statutes*, section 221.84, was designed to address involved limousine operators who regularly checked the airports and certain hotels and motels to see if passengers required service. Drivers solicited those present. Under Minnesota law, the only passenger carriers that may operate over regular routes are those with a regular route common carrier certificate issued by the Transportation Regulation Board.

Minnesota Statutes, section 221.011, subdivision 9, defines "regular route common carrier" as:

> . . .a person who holds out to the public as willing, for hire, to transport passengers by motor vehicle between fixed termini over a regular route upon the public highways.

The proposal is a reasonable way to meet the need for a technical definition. It uses traditional ideas of fixed points, fixed routes, and regular time schedules. Yet, the definition

also allows limousine operators to provide service that meets the more traditional definition of "regular route" if it is a "prearranged pickup."

Regular route carriers go from point to point over a regular route to provide service to whoever might be waiting. They do not provide the type of individualized service that some passengers want. For example, a person might want to be transported from home to the person's place of business at the same time each day. This would normally be considered a regular route service. However, if the service was prearranged between the passenger and a limousine operator, it could still be provided under a limousine service permit. It is reasonable to allow limousine operators to provide this type of service if it is requested first.

Subpart 22. Station wagon. A definition of this phrase is needed because it is used in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), and in the proposed definition of "luxury passenger automobile." The phrase is not defined in state statutes. The proposal is a reasonable means of defining the phrase since it accurately describes the type of vehicle commonly known as a station wagon. Station wagons are excluded from the definition of "luxury passenger automobile" and may not be used to provide limousine service.

Subpart 23. Taxicab. A definition of this word is needed because it is used in *Minnesota Statutes*, section 221.84, subdivision 1, clause (4), and in the proposed definition of "luxury passenger automobile." The proposal is a reasonable means of defining the word since it accurately describes the type of vehicle commonly known as a taxicab and the type of service it provides. Taxicabs are excluded from the definition of "luxury passenger automobile" and may not be used to provide limousine service.

Subpart 24. Truck. A definition of this word is needed because it is used in the proposed definition of "luxury passenger automobile." The department considered incorporating the definition in *Minnesota Statutes*, section 169.01, subdivision 49. It states:

> "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

The words "originally manufactured," are needed in the definition. A "stretch" truck, though not normally considered a limousine, might be used or maintained primarily for the transportation of persons. If it has been stretched and equipped with extra seating and other amenities, it could be argued that it also was "designed" to transport persons. Trucks are not, however, originally manufactured for the transportation of persons.

The proposal is a reasonable means of defining the word since it accurately describes the type of vehicle commonly known as a truck. Trucks are not normally designed for passenger transportation, they do not meet the public's perception of a limousine and are therefore excluded from the definition of "luxury passenger automobile." Trucks may not be used to provide limousine service.

Subpart 25. Unmarked. A definition of this word is needed because it is used in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2). The legislation was designed to prevent the use of advertising on vehicles used to provide limousine service. The proposal is a reasonable means of defining the word since it prohibits such advertising while allowing markings that might be required by state and federal law.

Subpart 26. Van. A definition of this word is needed because it is used in *Minnesota Statutes*, section 221.84, subdivision 1, clause (2), and the proposed definition of "luxury passenger automobile."

The department considered incorporating the definition in *Minnesota Statutes*, section 168.011, subdivision 28. It states:

> "Van" means any vehicle of box-like design with no barrier or separation between the operator's area and the remainder of the cargo-carrying area, and with a manufacturer's nominal rated carrying capacity of three-fourths ton or less.

This definition is inappropriate for use in the rule because it focuses on whether there is a barrier between the operator and the "cargo-carrying" area. A person might choose to construct a barrier, like those in many stretch limousines, and propose to use a van to provide limousine service though the statute clearly shows that vans are not to be considered "luxury passenger automobiles."

The proposal is a reasonable means of defining the word since it accurately describes the type of vehicle commonly known as a van as used to transport passengers. Vans are excluded from the definition of "luxury passenger automobile" and may not be used to provide limousine service.

Part 8880.0200 AUTHORITY.

There is a need to identify the commissioner's statutory authority for adopting the rule. The proposed rule meets the need by citing the reader to *Minnesota Statutes*, section 221.84, subdivision 2. People who have questions about the scope of the rule might wish to review the statute. Giving the statutory basis for adopting the rule serves two purposes: it is a convenience for the reader and it supports rule provisions mandated by statute.

For example, a person might question why part 8880.0300, subpart 6, requires a limousine operator to charge more than a taxicab fare for a comparable trip. A review of the statute shows that this requirement comes directly from *Minnesota Statutes*, section 221.84, subdivision 1, clause (4). Or, though someone might object to the criminal history check requirement in part 8880.0800, subpart 7, *Minnesota Statutes*, section 221.84, subdivision 2, directs the commissioner to adopt rules that include the requirement of a criminal history check of drivers. It is reasonable to help readers locate the statutory basis for the rule.

Part 8880.0300 GENERAL REQUIREMENTS.

Subpart 1. Permit required. This subpart is needed to establish, in the rule, a main provision of *Minnesota Statutes*, section 221.84. The first sentence of subdivision 2 states:

> No person may operate a for-hire limousine service without a permit from the commissioner.

It is reasonable to notify a person of the permit requirement before any of the other provisions since the remaining parts of the rule are directed to those who have limousine service permits.

The wording of this subpart differs in three respects from the above-quoted language in *Minnesota Statutes*, section 221.84. First, the words "for-hire" are not used since they are included in the proposed definition of "limousine service."

Second, advertising and holding out as a limousine operator without a permit is prohibited. *Minnesota Statutes*, section 221.84, subdivision 2, clause (4), directs the commissioner to adopt rules for advertising regulation. This subpart is one of those rules. It would be unreasonable to allow a person without a limousine service permit to advertise as a limousine operator. This would be misleading to the public since the person could not lawfully provide the service. Only those who have the means of providing lawful limousine service should be allowed to advertise that service.

The phrase "hold out" is used in transportation law, sometimes interchangeably with "advertise." It appears in the first sentence of *Minnesota Statutes*, section 221.021, which states, "[n]o person may operate as a motor carrier or advertise or otherwise hold out as a motor carrier without a certificate or permit in effect." The following distinction is sometimes made between advertising and holding out: advertising is directed to the public in general; holding out is directed to particular individuals. It is reasonable to include both terms in the subpart to make it clear that a person may not make any representation of being able to provide limousine service without a permit. It makes no difference if it is made to the public or to a particular person.

Third, the subpart states that the permit must be "valid." This word is not defined in the rule. According to the dictionary, an appropriate meaning of "valid" is "legally sound and effective." This is the meaning intended by the commissioner when using the word "valid" in the rule. A person with a suspended or revoked permit does not have a valid permit and therefore loses the right to advertise or hold out as a limousine operator. As stated above, only those who may lawfully provide limousine service should be allowed to advertise that service.

Subpart 2. Decal required. This subpart is needed because of *Minnesota Statutes*, section 221.84, subdivision 4, clause (a). It states:

> The commissioner shall design a distinctive decal to be issued to permit holders under this section. Each decal is valid for one year from the date of issuance. *No person may operate a limousine that provides limousine service unless the limousine has such a decal conspicuously displayed.*

Though this is a statutory requirement, it is reasonable to notify limousine operators of this requirement in the rule. The subpart is further needed and reasonable because it addresses how the decal is to be "conspicuously displayed" by referring to part 8880.0700, subpart 3. The need for and reasonableness of that subpart is discussed on pages 41 and 42 of the statement of need and reasonableness.

Subpart 3. Insurance required. *Minnesota Statutes*, section 221.84, subdivision 2, clause (3), directs the commissioner to adopt rules for insurance requirements. This subpart is needed to establish those requirements.

The statute, as originally enacted, stated that the commissioner was to adopt rules for "insurance requirements in accordance with section 168.128." *Minnesota Statutes*, section 168.128, requires an applicant for limousine license plates to furnish a certificate of insurance with the application and specifies the coverage required. After the department began this rulemaking proceeding, representatives of the MLOA and members of the department's Limousine Advisory Committee indicated their preference for adopting insurance requirements like those that apply to motor carriers. *Minnesota Statutes*, section 221.84, was amended during the 1992 legislative session to allow the commissioner to adopt rules with those requirements.

The proposed rule is a reasonable means of meeting the need for insurance requirements. First, it notifies a person that the requirements in *Minnesota Statutes*, section 168.128, must still be met, including the amount of coverage requirements. It is reasonable to maintain uniformity with the established amount of coverage required.

Second, it refers to the statute with which motor carriers must comply. *Minnesota Statutes*, section 221.141 states:

> **221.141 INSURANCE OR BONDS.**
>
> Subdivision 1. **Financial responsibility of carriers.** No motor carrier and no interstate carrier shall operate a vehicle until it has obtained and has in effect the minimum amount of financial responsibility required by this section. Policies of insurance, surety bonds, other types of security, and endorsements must be continuously in effect and must remain in effect until canceled. Before providing transportation, the motor carrier or interstate carrier shall secure and cause to be filed with the commissioner and maintain in full effect, a certificate of insurance in a form required by the commissioner, evidencing public liability insurance in the amount prescribed. The insurance must cover injuries and damage to persons or property resulting from the operation or use of motor vehicles, regardless of whether each vehicle is specifically described in the policy. This insurance does not apply to injuries or death to the employees of the motor carrier or to property being transported by the carrier. The commissioner shall require cargo insurance for certificated carriers, except those carrying passengers exclusively. The commissioner may require a permit carrier to file cargo insurance when the commissioner deems necessary to protect the users of the service.
>
> Subd. 1a. **Cancellation.** Insurance, bonds, endorsements, certificates, and other evidence of financial responsibility issued to satisfy the requirements of this section may be canceled on not less than 30 days' written notice to the insured and to the commissioner.
>
> Subd. 1b. **Amount.** Except as provided in subdivision 1d, the amount of insurance, bond, or other security required for motor carriers is the amount prescribed by order of the commissioner. The amount prescribed may from time to time be reduced or increased by order of the commissioner.

The commissioner may, if desired by the petitioner, prescribe in lieu of the bond or insurance some other form of security as may be satisfactory. Each policy of insurance, surety bond, or other evidence of financial responsibility issued to a motor carrier or to an interstate carrier must be amended by attachment to the policy of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement (Form F) prescribed in Code of Federal Regulations, title 49, part 1023, or must by its terms provide coverage that conforms to the terms and conditions of that endorsement.

Subd. 1c. **Interstate carriers.** An interstate carrier must obtain insurance or bond in the minimum amounts prescribed in Code of Federal Regulations, title 49, section 1043.2, paragraphs (a) and (b).

Subd. 1d. **Motor carriers of hazardous cargo.** A motor carrier that transports property described under (2) and (3) of the schedule of limits in Code of Federal Regulations, title 49, section 387.9, must obtain insurance or bond in the amounts prescribed in those regulations.

Subd. 1e. **Insurer must be authorized.** A policy of insurance, bond, or other evidence of financial responsibility does not satisfy the requirements of this section unless the insurer or surety furnishing the evidence of financial responsibility is authorized or registered by the department of commerce to issue the policies, bonds, or certificates in this state.

Subd. 1f. **Financial responsibility defined.** "Financial responsibility" means a policy of insurance, surety bond, or other financial undertaking sufficient to pay liability amounts required by this section.

Subd. 2. [Repealed, 1983 c 371 s 44]

Subd. 3. **Replacement certificate of insurance; effective date.** Certificates of insurance which have been accepted by the commissioner under subdivision 1 may be replaced by other certificates of insurance and the liability of the retiring insurer under the certificate of insurance is considered terminated as of the effective date of the replacement certificate, provided the replacement certificate is acceptable to the commissioner.

Subd. 4. **Household goods movers.** A household goods mover shall maintain in effect cargo insurance or cargo bond in the amount of $50,000 and shall file with the commissioner a cargo certificate of insurance or cargo bond. A cargo certificate of insurance must conform to Form H, Uniform Motor Cargo Certificate of Insurance, described in Code of Federal Regulations, title 49, part 1023. A cargo bond must conform to Form J, described in Code of Federal Regulations, title 49, part 1023. Both Form H and Form J are incorporated by reference. The cargo certificate of insurance or cargo bond must be issued in the full and correct name of the person, corporation, or partnership to whom the household goods mover permit was issued and whose operations are being insured.

Subd. 5. **Passenger transportation.** For purposes of this section, "motor carrier" includes any person who transports passengers for hire in intrastate commerce. This section does not apply to an entity or person included in section 221.031, subdivision 3b, paragraph (b).

Subdivisions 1c, 1d, 4, and 5, do not apply to limousine operators. The remainder of the section establishes the following basic insurance requirements. Subdivision 1, requires carriers (in this case, limousine operators) to obtain and maintain insurance coverage and to file proof of coverage with the commissioner. Subdivision 1a, states that an insurer must give the commissioner and the insured 30-days written notice before cancellation of coverage. Subdivision 1b, gives the commissioner the authority to set the amount of coverage. Subdivision 1e, states that insurers must be authorized by the Minnesota Department of Commerce. Subdivision 1f, defines the phrase "financial responsibility." Subdivision 3, provides for replacement certificates of insurance.

Subdivision 5 does not apply to limousine operators since they are listed in section 221.031, subdivision 3b, paragraph (b). This subdivision was enacted during the 1992

legislative session. Limousine operators were exempted from the statute because the commissioner already had the authority to establish insurance requirements for limousine operators in rules adopted under section 221.84. The legislative history of this subdivision and the amendments to *Minnesota Statutes*, section 221.84, reveal that this subdivision was not intended to preclude the commissioner from applying these requirements to limousine operators.

In addition to *Minnesota Statutes*, section 221.141, the proposed rule incorporates several provisions of *Minnesota Rules*. They provide:

8855.0300 DUPLICATES FURNISHED TO COMMISSIONER.

A motor carrier or interstate carrier shall furnish to the commissioner a duplicate of its public liability and cargo policies and endorsements when requested by the commissioner.

8855.0400 CERTIFICATE OF INSURANCE; BOND; FEDERAL FORMS.

An insurance company that provides insurance against public liability and property damage for a motor carrier operating under a permit or certificate or for an interstate carrier shall cover all motor vehicles used in the motor carrier's operations whether specifically described in the policy or not. The insurance company shall file with the commissioner either a certificate of insurance naming each motor carrier insured on form E, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance," as described in Code of Federal Regulations, title 49, part 1023, as amended through October 1, 1987, which is incorporated by reference, or the forms prescribed in part 8855.0800.

In lieu of an insurance certificate, a bond may be filed on form G, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond," as described in Code of Federal Regulations, title 49, part 1023, as amended through October 1, 1987, which is incorporated by reference.

8855.0600 NAMES ON INSURANCE CERTIFICATES AND BONDS.

Certificates of insurance and bonds must be issued in the full and correct name of the person, corporation, or partnership whose operations are being insured.

8855.0700 CANCELLATION OF INSURANCE; FEDERAL FORMS.

A certificate of insurance or bond for public liability and a certificate of insurance or bond for cargo security may be canceled.

The insurer shall cancel certificates of insurance for public liability or cargo insurance by filing with the commissioner a form K, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies," described in Code of Federal Regulations, title 49, part 1023, as amended through October 1, 1987, which is incorporated by reference.

The insurer shall cancel surety bonds for public liability or cargo insurance by filing with the commissioner a form L, "Uniform Notice of Cancellation of Motor Carrier Surety Bonds," described in Code of Federal Regulations, title 49, part 1023, as amended through October 1, 1987, which is incorporated by reference.

A cancellation notice takes effect 30 days from the day the notice is received by the commissioner.

8855.0800 AGGREGATION OF INSURANCE.

When insurance is provided by more than one insurer to aggregate coverage required under Minnesota Statutes, chapter 221, each insurer shall file form BMC 91X described in Code of Federal Regulations, title 49, section 1043.7, paragraph (a)(3), as amended through October 1, 1987, which is incorporated by reference.

8855.0850 INSURANCE AND BONDING COMPANIES MUST BE AUTHORIZED BY DEPARTMENT OF COMMERCE.

Insurance companies or bonding companies who file certificates of insurance or bonds with the commissioner must be authorized and registered with the Department of Commerce, to do business in the state of Minnesota.

The need for and reasonableness of *Minnesota Rules*, parts 8855.0300, 8855.0400, and 8855.0600 to 8855.0850 is not at issue in this rulemaking since they are adopted rules. However, the need to apply these rules to limousine operators and the reasonableness of doing so must be shown.

The proposed rule (including the incorporated statute and existing rule provisions) is reasonable because it addresses a concern shared by the legislature, the MLOA, and other limousine operators about protecting the public. During the 1991 legislative session, the MLOA voiced concerns about limousine operators who choose to let their insurance lapse to reduce overhead costs. Uninsured motorists present a threat to the public, particularly when transporting passengers for-hire. *Minnesota Statutes*, section 168.128, subdivision 3, requires an insurance company to notify the commissioner of public safety if a policy is canceled or no longer provides the required coverage. The MLOA sought additional legislation to further address the organization's concern and the following language was added to the subdivision:

> The commissioner [of public safety] shall immediately notify the commissioner of transportation if the policy of a person required to have a permit under section 221.84 is canceled or no longer provides the coverage required by this subdivision.

It was thought that this requirement would guarantee suspension of a limousine service permit if an operator failed to maintain the required coverage. Nevertheless, as a practical matter, some insurance companies do not notify the Department of Public Safety when insurance coverage is canceled even though the law requires them to do so. This problem was discussed during the rulemaking. The departments of transportation and public safety discussed various solutions. It was determined that Mn/DOT could most effectively monitor compliance with the insurance requirements since it already had the necessary rules and administrative means to do so.

Therefore, during the 1992 legislative session, *Minnesota Statutes*, section 221.84, was amended to allow the adoption of these insurance requirements. They give additional assurance of coverage through the filing of a "Form E" and "Form K." The "Form E" is a certificate of insurance that provides for coverage of all vehicles operated by a permit holder whether listed in the insurance policy or not. Insurance coverage may not be canceled without filing a "Form K." This requires a 30-day notice to the insured and the commissioner before the effective date of cancellation.

The proposed rule is further reasonable in that it sets the same requirements for limousine operators as for other persons who transport passengers for-hire. *Minnesota Statutes*, section 221.141, and rules adopted under that section, apply to regular route common carriers of passengers and charter carriers. It is reasonable that all for-hire passenger carriers be subject to the same insurance requirements.

Members of the department's Limousine Advisory Committee contacted various insurers and determined that compliance with the proposed rule will not impose an additional cost on limousine operators over the cost of standard commercial insurance coverage.

Subpart 4. Advertising restrictions. This subpart is needed because of *Minnesota Statutes*, section 221.84, subdivision 2, clause (4), which requires the commissioner to adopt rules that include:

> . . .advertising regulation, including requiring a copy of the permit to be carried in the limousine and use of the words "licensed and insured";

The requirement that a limousine operator carry a copy of the limousine service permit in the limousine is found in part 8880.0500, subpart 2, of the proposed rule. The need for and reasonableness of that requirement is discussed on page 37 of the statement of need and reasonableness.

The department considered various provisions relating to advertising regulation and has proposed two main requirements: the first deals with display of the limousine operator's permit number; the second governs use of the words "limousine," "limousine service," and "licensed and insured" when they might lead a person to believe that the advertiser has a valid limousine service permit.

It is reasonable to require a limousine operator to display its permit number in advertising material. First, it will help the public differentiate between operators who have limousine service permits and those who do not. After the adoption of the rules, the public will gradually become accustomed to looking for this information in advertising material, including brochures, flyers, and cards. They will have some reasonable assurance that permitted limousine operators have complied with the law and rules. A person who advertises without displaying a permit number will be investigated to make sure that compliance with the rules is accomplished.

Second, it will help identify permitted operators who violate the law or rules. For example, an operator might distribute flyers that include its permit number to hotels. This is appropriate advertising. If, in addition, an operator solicits passengers in the hotel's lobby, a violation of part 8880.0300, subpart 9, has taken place. In such cases, the hotel management can easily identify the violator to the department or other enforcement personnel by referring to the limousine service permit number. The MLOA and members of the department's Limousine Advisory Committee support the proposal as a reasonable means of identifying operators.

It is also reasonable to impose minimal restrictions on advertising that seek further to differentiate between permitted and non-permitted operators. This was the legislature's main purpose in including the advertising rulemaking mandate. The public should be able easily to identify an operator that has complied with *Minnesota Statutes*, section 221.84, and the commissioner's adopted rules. It would be unreasonable to allow a non-permitted operator to use the words "limousine" or "limousine service" since for-hire limousine service may only be provided by a person with a permit.

Nevertheless, it would be equally unreasonable to prohibit completely the use of the words "licensed and insured" except by limousine operators. Persons engaged in other occupations might have a legitimate need or desire to use those words in advertising. It is reasonable to prohibit the use of those words when used in a way that suggests the service is offered by a permitted operator.

Compliance with this subpart should not impose a significant cost on limousine operators. The department expects limousine operators to adjust their "yellow pages" advertising at the time they renew their advertising contracts. Other advertising should conform to the rule at the earliest possible date. Limousine operators with a large inventory of printed advertising materials might have to replace non-conforming materials. Most operators will be able to adjust their advertising practices to conform to the rule with little or no cost.

Subpart 5. Use of unauthorized name prohibited. This subpart is another form of advertising regulation. It is needed to protect the public from being uninformed or misled about the identity of an operator who provides service. It also is needed to promote the enforceability of the rule. The public and enforcement agencies must be able accurately to identify limousine operators. If a person has a complaint about an operator, the person will most likely identify the operator to enforcement personnel by its business name. If operators were allowed to get a permit under one name and use another while providing service, addressing complaints would be more difficult. Also, a passenger who is injured in an accident while being transported might only know the operator by the name under which it provided service.

The subpart is reasonable because it meets the need without placing a hardship or burden on limousine operators. During the rulemaking, the department was not informed of any legitimate need of limousine operators to use a name different from that under which a permit was obtained. If the rule allowed use of another name, there would be a need for additional registration regulations to keep track of the various names used. This would require additional paperwork and filings by operators and would involve additional administrative attention by the department and other enforcement agencies. Such additional regulation is unnecessary.

Subpart 6. Fares and records. *Minnesota Statutes*, section 221.84, subdivision 1, clause (4), states that a "limousine service" is one that "charges more than a taxicab fare for a comparable trip." That statutory requirement is repeated in the proposed rule. During the rulemaking the department received unsolicited comments objecting to this provision. However, because it is derived from the statute, the commissioner lacks the authority to eliminate or

change it and it is necessary and reasonable to include the provision in the rule.

The subpart requires a limousine operator to keep a record of each trip provided and the fare charged. This is necessary because, without records, an operator would be unable to show compliance with the statute. If operators were not required to keep fare records, the department's enforcement staff would be required to conduct interviews with limousine management officials, drivers, and passengers to investigate a complaint about fares charged. This would be time-consuming for operators and their staff, as well as for the department. Passenger interviews, in particular, would be a needlessly intrusive means of enforcement.

The department's Limousine Advisory Committee stated that many limousine operators currently keep these records. For those that do not, the rule will involve additional record-keeping. However, the information required is not extensive and the cost of compliance should be minimal. The specific record-keeping requirements are proposed in part 8880.1000, subpart 2. The need for and reasonableness of that part is discussed further on page 64 of the statement of need and reasonableness.

Subpart 7. Trip referrals. The need for this subpart was identified during the rulemaking process. It is common practice within the limousine industry for one operator to hire another to take care of overflow business. For example, a passenger might call ABC Limousine and ask for service. Before the service is provided, ABC determines it will not have enough vehicles and drivers available at the time. ABC calls XYZ Limousine and requests that it provide the service requested by the passenger. XYZ agrees and provides the service.

Usually a passenger is unaware that XYZ, not ABC, is providing the service for two reasons. First, limousine operators prefer not to tell passengers of such arrangements since they do not want to appear unable to provide service. They would rather refer the service in hopes of retaining the passenger as a future client. Second, the vehicles used do not identify the limousine company operating them since they are unmarked.

Limousine operators strongly defend this practice and have cited a need to continue it. There is no specific prohibition of this practice in *Minnesota Statutes*, section 221.84, and the commissioner's rulemaking mandate does not address the issue. Under subdivision 2, clause (7), the commissioner is authorized to adopt "other requirements deemed necessary by the commissioner." It is the commissioner's intention is to limit the use of this broad grant of authority to circumstances where it can be shown that there is a compelling need to adopt rules.

The commissioner has determined that there is no compelling need to prohibit the described practice at the present time. However, there is a compelling need to restrict the practice as proposed in the rule. First, it is necessary to ensure that a limousine operator refers the request for service to another permitted operator. This is reasonable since only limousine operators with a permit may provide limousine service under *Minnesota Statutes*, section 221.84, subdivision 2. A limousine operator who refers service to a person without a permit would do so in violation of *Minnesota Statutes*, section 221.291, subdivision 1. That subdivision states,

in part:

> . . .a person who commits, procures, aids or abets or conspires to commit, or attempts to commit, aid or abet in the violation of a provision of this chapter or a valid order or rule of the commissioner or board issued hereunder, whether individually or in connection with one or more persons or as principal, agent, or accessory, shall be guilty of a misdemeanor, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate a provision of this chapter, is likewise guilty of a misdemeanor. Every distinct violation is a separate offense.

Second, a passenger who has a complaint about the service provided, the fare charged, the driver, or who is injured in an accident, must have some means of identifying the operator that actually provided the service. This is necessary so that a complaint may be properly investigated or so an injury claim may be properly handled. Without this requirement, an injured passenger would have no way of identifying the responsible operator unless the referring operator voluntarily kept referral records.

The proposed rule reasonably addresses this need in two ways. The referring operator must keep a record of the referral meeting the requirements in part 8880.1000, subpart 3, or the operator providing the service must identify itself and keep the fare record required in part 8880.1000, subpart 2. The need for and reasonableness of the specific requirements of those subparts is discussed on page 64 of the statement of need and reasonableness.

It is reasonable, whenever possible, to conform the rules to current industry practices. This subpart allows the referral practice to continue while imposing only minimal record-keeping requirements. It protects the interests of limousine passengers without imposing an undue hardship on operators.

Limousine operators who choose to keep referral records will necessarily incur some additional cost. The number of referrals, and the cost, will vary between operators. However, the information required is not extensive and there is no reporting requirement. This means the actual cost of keeping the records should be minimal.

Subpart 8. Leased vehicles and drivers. The need for this subpart also was identified during the rulemaking process and the commissioner has determined that there is a compelling need to adopt a rule to address concerns about leased vehicles. Obtaining vehicles from leasing companies is a common practice and it is necessary to allow operators to use vehicles they do not own. A typical vehicle lease presents few problems when considered in light of *Minnesota Statutes*, section 221.84. Most lease companies do not attempt to exercise control over a lessee's business affairs and the provisions of this subpart will not present any obstacles to common vehicle leases.

The department's primary concern is about the possibility of one limousine operator leasing a vehicle or vehicle and driver from another limousine operator. One operator might not have enough vehicles while another might have a surplus. In such cases, leases are a

reasonable means of meeting the relative needs of the operators and should be allowed.

However, there is a need to protect against the following opportunities for abuse:

(1) A short-term "lease," especially of a vehicle and driver, could allow operators to avoid the requirements in part 8880.0300, subpart 7, discussed above. Rather than refer the service to XYZ Limousine, ABC could merely "lease" a XYZ vehicle and driver for the length of time necessary to complete the service. If a passenger was injured during transportation, there might be a problem identifying the driver and vehicle actually used to provide the service. And, even if the driver and vehicle could be identified, there would be an additional issue about which operator should be held liable.

(2) A person who wants to provide limousine service but who cannot or does not want to obtain a permit could lease a vehicle with his or her services as a driver to a permitted limousine operator. In itself, this practice would not be objectionable if there are sufficient safeguards to ensure that the arrangement is not a subterfuge for an illegal operation. If the lessee pays for the leased vehicle and controls its use, schedules trips, determines fares, and otherwise uses the vehicle and driver as if they were part of the lessee's operation, the arrangement would be acceptable -- the lessee would still be the person providing "limousine service." If, on the other hand, the lessor pays a fee to the operator, controls the vehicle's use, schedules trips, determines fares, and otherwise acts as if he was a limousine operator with a permit, the arrangement would be a subterfuge to avoid the permit requirement in *Minnesota Statutes*, section 221.84.

The proposed rule is a reasonable means of meeting the need for some regulation of lease arrangements. It allows vehicle and driver leases but includes reasonable measures to avoid the possible abuses described above. First, a lease must be written and both parties must have a copy. A copy also must be carried in a leased vehicle. It would be unreasonable to permit verbal leases since that could easily lead to one of the abuses discussed above. Requiring that a copy of a lease be carried in the vehicle is reasonable to determine ownership of the vehicle, to verify the accuracy of data provided to the department in a vehicle decal application, and to determine compliance with this part.

Second, the proposed rule sets the minimum requirements for the lease document. The parties to a lease might want to include additional items. That is left to their discretion if the lease terms and conditions do not violate the rest of this subpart.

It is reasonable to identify the lease parties, the date and duration of the lease, and the compensation paid. These provisions are routinely included in vehicle leases and they are necessary to determine that the document is a bona fide lease and not a subterfuge.

Requiring the vehicle's vehicle identification number (VIN) is reasonable since all vehicles are issued this unique identifier upon manufacture. The VIN appears on the vehicle and vehicle title and is the easiest way to identify a particular vehicle.

Item D requires a statement concerning the use and control of the vehicle. It is necessary to place the responsibility for a leased vehicle's operation with a particular operator. Under a bona fide lease, the lessee should assume responsibility for the vehicle as if it were owned by the lessee. Since the vehicle will be used by a lessee in its limousine operation, it is reasonable to hold a lessee responsible to make sure the vehicle is operated and maintained in compliance with the rules.

Item E requires a statement concerning the services of a driver if those services are part of a lease. Again, it is reasonable to require the limousine operator to make sure the driver is qualified under the rules and that the proper records are kept.

The requirements in this subpart are not extensive. Except for items D and E, the subpart merely requires items that should be included in any vehicle lease. Items D and E ensure that the lease is not a subterfuge for operating under another's permit.

The remaining language in the subpart clarifies that the lessee is responsible for providing "limousine service" during the term of lease. It is necessary to place this responsibility with a lessee. Once the parties have entered into a bona fide lease, it would be unreasonable to allow a lessor to exercise control over the leased vehicle or any aspect of the lessee's business. This language preserves the lawful distinction between a lessor and lessee and helps to avoid the abuses discussed above.

It is foreseeable that proposed subparts 7 and 8 will have an impact on persons who own and drive a single vehicle. Some of these owner-operators provide limousine service under their business name as well as providing service to other limousine operators in overflow situations. Some owner-operators will want to obtain permits and continue to provide service as they do now. Permitted operators will be able to accept referrals as long as they comply with subpart 7. Others might not want to get a limousine service permit. They might not want to assume the responsibility of complying with the record-keeping and other requirements of *Minnesota Statutes*, section 221.84, and the commissioner's rules. These owner-operators could "lease-in" to a limousine operator's business, receive compensation for their vehicle and services, while remaining owner-operators. The proposed rule allows the continuation of current industry practices while protecting against possible abuse.

Limousine operators who currently lease vehicles should not incur any additional cost because of the proposed rule.

Subpart 9. Solicitation prohibited. Under *Minnesota Statutes*, section 221.84, subdivision 1, clause (3), a limousine service provides only "prearranged pickup." The proposed rule defines that phrase in part 8880.0100, subpart 19, and the need for and reasonableness of the definition is discussed on pages 17 and 18 of the statement of need and reasonableness.

The prohibition is this subpart is needed specifically to prohibit the practice of passenger solicitation. Under *Minnesota Statutes*, section 221.84, subdivision 3, the commissioner may

impose an administrative penalty for rule violations. If a limousine operator or driver personally solicited passengers in a hotel lobby, the practice would not be in keeping with the definition of "prearranged pickup" in part 8880.0100, subpart 19. Therefore, the service provided would not be "limousine service" as defined in the statute.

However, in addition to the definition, it is necessary to make this practice a violation of the rule. A specific prohibition allows the commissioner to impose a sanction for providing service that is not prearranged. The proposed rule is reasonable because it restricts only "in person" solicitation. This means that solicitation through advertising and holding out is allowed. The rule is written narrowly to prohibit limousine operators only from engaging in the practice of personal solicitation.

Part 8880.0400 LIMOUSINE SERVICE PERMIT APPLICATION; FEES.

Minnesota Statutes, section 221.84, subdivision 2, states:

> No person may operate a for-hire limousine service without a permit from the commissioner.

Since the legislature has given the commissioner the responsibility for issuing permits to limousine operators, a rule is needed to establish a procedure governing permit applications. This part establishes that procedure.

Subpart 1. Forms. This subpart requires persons to use the commissioner's forms when applying for a limousine service permit. It also names the office in the department of transportation that distributes forms and processes applications. This subpart is needed to establish a uniform means of gathering and processing the information necessary to issuing a limousine service permit. It is reasonable to require the commissioner to provide the forms since the commissioner has been given the responsibility for issuing permits. The use of a prescribed form will make applying for a limousine service permit easier and will help the department in the fair and efficient processing of applications. It also is reasonable to specify the office within the department that processes the forms. The Office of Motor Carrier Services is located in the Administrative Truck Center. Application forms sent to the Transportation Building in St. Paul will take longer to process. This subpart will reduce the number forms sent to the wrong location.

Subpart 2. Information required. This subpart is needed to specify the information applicants must give to the commissioner when applying for a limousine service permit.

Item A. It is necessary for department to know the name and "doing business as" name, if any, of the applicant. A "person" must have a permit before providing limousine service. The word "person," as defined in part 8880.0100, subpart 16, includes individuals, partnerships, and corporations. Many limousine operators currently use a "doing business as" name and the rule allows this practice. But, the department must know both the actual and "doing business as" name to register properly the persons to which limousine service permits are issued. Part

8880.0300, subpart 5, prohibits an operator from using a name other than that on its permit application.

Item B. It is necessary for the department to know the address and telephone number of a person to which a limousine service permit is issued. The department will be required to contact limousine operators on occasion. The Office of Motor Carrier Services will send informational material to permit holders and administrative staff will be sending decal expiration and other routine notices. Some official notices, like notices of suspension, revocation, and administrative penalty orders, must be sent to a permit holder by certified mail. The department's enforcement staff will need to call limousine operators to arrange appointments for vehicle inspections. Finally, it is foreseeable that some limousine operators will be contacted about complaints. The information required in this subpart will make these necessary contacts possible.

Item C. It is necessary for the department to know the name and title of an individual to contact regarding the matters discussed in Item B. The proposed rule is reasonable since it allows an applicant to select the most appropriate person.

Item D. This item requires an applicant to designate a specific geographical location (street address) as the permit holder's principal place of business. This address might be different from the mailing address required in Item B. It is necessary for the department to know this location if the department's enforcement staff must locate and inspect specific vehicles or records.

Item E. A permit holder's principal business (identified in Item D) might not be located in Minnesota. Under part 8880.1000, subpart 1, required records must be produced upon the commissioner's request at the principal place of business or at another location in Minnesota. The need for and reasonableness of this requirement is discussed on pages 63 and 64 of the statement of need and reasonableness. If the department is to inspect records at a location other than the principal business location, it is necessary for the department's staff to know where the records will be produced. The proposed rule is reasonable since it allows an applicant to designate the most appropriate and convenient place for record inspections.

Item F. Since a "person" might be an individual, partnership, limited liability company, or corporation, it is necessary and reasonable for the department to know what type of "person" the applicant is.

Item G. This subpart is necessary to identify the specific individuals who control the applicant's business affairs. Though responsibility for day-to-day operations might be delegated to an individual, it is reasonable to require identification of those who, through ownership or elected position, control the applicant's business.

Items H & I. Part 8850.0500, subpart 1, states that a limousine service permit may not be issued to an applicant if the applicant is already a permit holder or if the applicant's owners

have had a limousine service permit revoked during the year preceding the application. The need for and reasonableness of that subpart is discussed on pages 35 and 36 of the statement of need and reasonableness. It is necessary for the department to have the information required in Items H & I to determine if the applicant is qualified to receive a permit under part 8850.0500.

Item J. A foreign corporation is a corporation formed under the laws of a state other than Minnesota. Such corporations are required to have a person in Minnesota who is authorized to receive service of an official document. It is necessary for the department to know the name and address of this person since it is foreseeable that it might have to serve official documents on this person.

In proposing this subpart, the department specifically considered ways of making the application process simple and efficient. The proposed rule does not include any reporting requirements or disclosure of financial or other operating information. The rule is reasonable because it requires only the information that is absolutely necessary for the commissioner to administer and enforce *Minnesota Statutes*, section 221.84, and the rules authorized by that section.

Subpart 3. Signature required. This subpart is needed to ensure that only a properly authorized person completes an application. Part 8880.1300, subpart 3, gives the grounds for revocation of a limousine service permit. One of the grounds is making a material false or misleading statement in a permit application. The need for and reasonableness of that subpart is discussed on pages 73 and 74 of the statement of need and reasonableness. Permit revocation is authorized by *Minnesota Statutes*, section 221.84. It is the most severe sanction available to the commissioner. An applicant has the responsibility of determining that the information in an application is correct. Therefore, only an authorized person should be permitted to sign an application. A notary public's acknowledgment verifies the signature and the authority of the person who signs the document.

Subpart 4. Worker's compensation coverage. This subpart is needed because of *Minnesota Statutes*, section 176.182. The relevant part of that section states:

> Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the worker's compensation insurance coverage requirement of section 176.181, subdivision 2, by providing the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. The commissioner shall assess a penalty to the employer of $1,000 payable to the special compensation fund, if the information is not reported or is falsely reported.

The department of transportation is a "state licensing agency" within the meaning of this section. The subpart is reasonable since the department is obligated, by statute, to require proof of compliance with worker's compensation laws before issuing a limousine service permit.

Subpart 5. Fees. *Minnesota Statutes*, section 221.84, subdivision 4, states, "[t]he fee

for each permit issued under this section is $150." Although the permit fee has been set by the legislature, it is necessary and reasonable to include a reference to the fee in the rule. It is foreseeable that persons considering entering the limousine business will request a copy of the rules for study during the decision-making process. This subpart notifies readers of the fee requirement without having to consult the statute.

During the rulemaking process, the department received some comments that the fee is excessive. Readers should note that, under the statute, the commissioner does not have the authority to waive or modify the fee for a permit.

Part 8880.0500 LIMOUSINE SERVICE PERMIT.

Minnesota Statutes, section 221.84, subdivision 2, states,

> "The commissioner shall adopt rules governing the issuance of permits for for-hire operation of limousines . . ."

This part is needed to establish procedures governing the issuance of permits. It also sets general requirements that reflect other provisions of *Minnesota Statutes*, section 221.84, and other requirements deemed necessary by the commissioner.

Subpart 1. Issuance of permit. *Minnesota Statutes*, section 221.84, does not require giving public notice or holding a hearing before the commissioner grants a limousine service permit. This differs from other types of transportation regulated under chapter 221. For example, before issuing a certificate to a regular route common carrier of passengers, the Transportation Regulation Board must find that the applicant is "fit and able" to perform the service and that "the public convenience and necessity" require granting the authority, *Minnesota Statutes*, section 221.071. Likewise, before issuing a charter permit, *Minnesota Statutes*, section 221.121, subdivision 1, paragraph (b), states:

> The board, after notice to interested parties and a hearing, shall issue the permit upon compliance with the laws and rules relating to it, if it finds that petitioner is fit and able to conduct the proposed operations, that petitioner's vehicles meet the safety standards established by the department, that the area to be served has a need for the transportation services requested in the petition, and that existing permit and certificated carriers in the area to be served have failed to demonstrate that they offer sufficient transportation services to meet fully and adequately those needs, provided that no person who holds a permit at the time sections 221.011 to 221.291 take effect may be denied a renewal of the permit upon compliance with other provisions of sections 221.011 to 221.291.

The commissioner has determined that a similar requirement for applicants under section 221.84 is not needed. The department will address problems about vehicles that do not meet safety standards or operators who prove to be not "fit and able" through the administrative sanctions authorized by *Minnesota Statutes*, section 221.84.

The proposed subpart requires the commissioner to issue a permit to a person who completes an application according to part 8880.0400. The rule is needed to set some standard

for issuance of permits. It is reasonable to require applicants to complete an application form before issuing a permit. The department will use the information on the form for the purposes discussed in the statement of need and reasonableness, part 8880.0400, subpart 2.

The commissioner also is required to number and date a permit. This provision is needed and reasonable since the proposed rule requires a limousine operator to show the permit number in advertising materials. [See, part 8880.0300, subpart 4] Questions about whether a person had a permit on a particular date will be resolved by including a date of issuance on the permit. Limousine service permits do not expire so an expiration date is not needed on them.

The proposed subpart includes two additional restrictions on issuance of permits. Both are needed to give effect to language in *Minnesota Statutes*, section 221.84, subdivision 3, stating that, "the commissioner may suspend or revoke a permit for violation of applicable statutes and rules . . ." It was clearly the legislature's intention that suspension and revocation be effective sanctions and the additional restrictions help make them so.

Under the proposed subpart, the commissioner may not issue a permit to an applicant if the applicant or an applicant's corporate directors or officers, general partners, limited liability company board members, or owners of the applicant's business had a permit revoked during the year preceding an application. Since *Minnesota Statutes*, section 221.84, does not give the commissioner discretion in issuing permits, a person with a revoked permit could receive a new permit by simply applying for it -- at least without the proposed restriction. This would frustrate the legislature's intent by rendering the sanction of revocation useless. It is reasonable to include persons who control a limousine operator's business affairs in the restriction. Otherwise, a person with a revoked permit could avoid the restriction by forming a new business entity, applying for a permit, and reentering the limousine business. The restriction is limited, however. A person should be eligible to reapply after sufficient time has elapsed. The department considered various proposals about the length of time that would be appropriate. Suggestions ranged from 30 days to five years. After consideration, a one-year restriction was deemed reasonable. It removes a serious violator from the limousine business for a significant length of time while allowing a reasonable means of reentering the industry.

The second restriction on the issuance of permits is that the commissioner may not issue more than one permit to a single limousine operator. The rationale for this restriction is essentially the same as above. The only reason an operator would want to get more than one permit would be to "insulate" the limousine operation from the administrative sanctions of suspension and revocation. If an operator had multiple permits, it could risk suspension or revocation of one or more of them without any significant impact on the operator's ability to do business. The restriction is needed to eliminate this possibility. Since a limousine operator would have no valid reason for having more than one permit, it is reasonable to prohibit the issuance of more than one permit to a single operator.

Subpart 2. Location of permit. This subpart requires that a copy of the permit must be kept in each limousine and that a permit must be kept at the limousine operator's principal

place of business. The first requirement is needed and reasonable because it reflects *Minnesota Statutes*, section 221.84, subdivision 2, paragraph (4). It states:

> The commissioner shall adopt rules governing the issuance of permits for for-hire operation of limousines that include:
>
> (4) advertising regulation, *including requiring a copy of the permit to be carried in the limousine* and use of the words "licensed and insured"; [emphasis added]

The second requirement is needed to set a place where an original permit will be kept. It is foreseeable that enforcement personnel, potential customers, advertising publishers and others might want proof that a limousine operator has a permit. If questions arise, interested people should be able to go to a specific location to ask for proof of the operator's permit.

The limousine operator's principal place of business is the most reasonable place for an original permit to be kept. Operators will need to keep the original permit at some location so that they can make copies to be carried in vehicles. Even without the rule, it is likely that most operators would keep the original at their place of business.

Subpart 3. Duration. Part 8880.0300, subpart 1, states that a person may not provide limousine service unless the person has a "valid permit." This subpart is needed to clarify when a permit is no longer valid.

This subpart states that a permit is valid until it is suspended, revoked, or until the limousine business is sold. It is reasonable to state that a permit is not valid while it is under suspension or after it is revoked. *Minnesota Statutes*, section 221.84, provides for the administrative sanctions of suspension and revocation. These sanctions remove a limousine operator's legal authority to provide service. It would be unreasonable to consider a permit "valid" after it has been suspended or revoked.

The subpart also states that a permit is no longer valid after a limousine operator sells its limousine business. Once a person no longer owns or controls a limousine business, it is reasonable to deem a permit invalid. This will prevent the existence of "dormant" or unused permits. The department must know the persons who are actively engaged in providing limousine service to effectively and efficiently regulate the limousine industry. It would be an unnecessary use of the department's resources to attempt to locate an operator's vehicles and records for inspection after the operator has gone out of business. If a person chooses to reenter the limousine business, the operator can apply for a new permit. This is not unreasonable since a permit may be obtained simply by applying and the fee is relatively small.

Subpart 4. Not transferable. Permits granted by the Transportation Regulation Board authorizing passenger transportation may be transferred under chapter 221. They acquire value and often become a substantial asset. This subpart is needed to distinguish limousine permits from other types of permits in this respect. It states that a limousine permit may not be transferred.

Since a limousine permit may be obtained simply by applying, it will not acquire significant value as an asset. Allowing operators to transfer a permit would require a rule setting the procedure for reporting the sale and transfer since the department must know the person(s) who control the business. An administrative means of tracking transfers would also be needed. The commissioner believes it is reasonable to avoid any unnecessary rulemaking, to limit reporting requirements whenever possible, and to reduce the administrative costs of running the program. The commissioner proposes to do this by having a person who would otherwise be a transferee simply apply for a permit. The department will get the information needed to administer and enforce the program through the application process and the applicant will receive a permit unless barred under subpart 1.

Subpart 5. Records. This subpart is needed to establish the commissioner's legal obligation to maintain adequate records of permit issuance, suspension, and revocation. Although the Office of Motor Carrier Services would normally maintain records without the rule, the commissioner deems it necessary to establish the requirement by rule.

Subpart 6. Permit holder to keep information current. The need for and reasonableness of gathering the information required in a permit application was discussed on pages 33 and 34 of the statement of need and reasonableness. Some information will undoubtedly become out-of-date through the passage of time. Current information is needed for the effective administration and enforcement of this program. The reasons for the original gathering of the information also support this requirement. It is reasonable to require operators to notify the department of changes in the information since they are in the best position to do so.

Part 8880.0600 LIMOUSINE IDENTIFICATION DECAL APPLICATION; FEES.

Minnesota Statutes, section 221.84, subdivision 4, paragraph (a), states:

> The commissioner shall design a distinctive decal to be issued to permit holders under this section. Each decal is valid for one year from the date of issuance. No person may operate a limousine that provides limousine service unless the limousine has such a decal conspicuously displayed.

Since the legislature has given the commissioner the responsibility for issuing decals to permit holders, a rule is needed to establish a procedure governing decal applications. This part establishes that procedure.

Subpart 1. Forms. This subpart requires persons to use the commissioner's forms when applying for a limousine identification decal. It also names the office in the department of transportation that distributes forms and processes applications. This subpart is needed to establish a uniform means of gathering and processing the information necessary before issuing a limousine identification decal. It is reasonable to require the commissioner to provide the forms since the commissioner has been given the responsibility for issuing decals. The use of a prescribed form will make applying for a decal easier and will help the department in the

efficient processing of applications. It also is reasonable to specify the office within the department that processes the forms. The Office of Motor Carrier Services is located in the Administrative Truck Center. Application forms sent to the Transportation Building in St. Paul will take longer to process. This subpart will reduce the number of forms sent to the wrong location.

Subpart 2. Information required. This subpart is needed to specify the information applicants must give to the department when applying for a limousine identification decal.

Item A. It is necessary for department to know the name and "doing business as" name, if any, of the applicant. Decals may only be issued to permit holders. To correctly identify the permit holder, the department must know the applicant's name and "doing business as" name. This item corresponds with the information required in a permit application.

Item B. It is necessary for the department to know the address and telephone number of a person to whom a decal is issued. This item corresponds with the information required in a permit application. The reasons for requiring an applicant's address and telephone number are discussed on page 33 of the statement of need and reasonableness. Since this information is so important to the effective administration and enforcement of this program, requiring the information in decal applications will help to ensure that the continuing accuracy of the information on a yearly basis.

Item C. It is necessary for the department to know the applicant's permit number. Decals may only be issued to persons with a valid permit. Obtaining the permit number will help the department in checking the status of the permit and will help to ensure that decals are issued to the correct permit holder.

Item D. This item corresponds to the information required in a permit application. Again, since current information is so important, requiring it in decal applications will help to ensure the continuing accuracy of the information on a yearly basis.

Item E. Limousine operators are required to comply with *Minnesota Statutes*, section 168.128 [*Limousine registration, license plates*]. That section was amended at the time section 221.84 was enacted. Together these sections form the basis of limousine regulation. It would be unreasonable to issue a decal to a vehicle that is not equipped with legal license plates. This requirement will help ensure compliance with *Minnesota Statutes*, section 168.128.

Items F & G. These items are required to properly identify the vehicle for which a decal is issued. The year, make, and vehicle identification number (VIN) are the most common and reliable means of identifying vehicles.

Item H. It is important to make sure that decals are only issued for "luxury passenger automobiles" (limousines). This requirement will help to make sure that applications are not processed for other types of vehicles.

In proposing this subpart, the department specifically considered ways of making the application process simple and efficient. The rule is reasonable because it only requires information that is essential to identify the permit holder or the vehicle.

Subpart 3. Signature required. This subpart is needed to ensure that only a properly authorized person applies for a decal on behalf of a permit holder.

Subpart 4. Fees. *Minnesota Statutes*, section 221.84, subdivision 4, states, "after June 30, 1992, the fee for each decal is $80." Although the decal fee has been set by the legislature, it is necessary and reasonable to include a reference to the fee in the rule. This subpart notifies readers of the fee requirement without having to consult the statute. The commissioner does not have the authority to waive or change the fee for a decal.

Part 8880.0700 LIMOUSINE IDENTIFICATION DECAL.

Subpart 1. Issuance of decal. This subpart is needed to set the requirements that must be met before the commissioner issues a decal to a limousine operator. First, the operator's permit must be "valid." The first sentence of *Minnesota Statutes*, section 221.84, subdivision 2, states, "[n]o person may operate a for-hire limousine service without a permit from the commissioner." It is reasonable to limit the issuance of decals to those persons who have a "valid" permit. Part 8880.0500, subpart 3, states that a permit is not valid while it is under suspension, after it has been revoked, or after the permit holder has sold its limousine business. Since a person may not provide limousine service under any of these conditions, the person lacks a legitimate need for a decal.

Second, a permit holder must have the required insurance coverage. This subpart is needed to correspond to part 8880.0300, subpart 3. The last sentence states, "[n]o person may operate a limousine providing limousine service until the person complies with the insurance requirements described in this subpart." The restriction is a reasonable safety requirement designed to protect limousine passengers. It clarifies that the commissioner will not issue a decal unless the insurance requirements have been met.

Third, a permit holder must give the department the information required in the decal application. It is reasonable to require applicants to complete an application form before issuing a decal. This will ensure that a decal is issued to the proper permit holder for the proper vehicle.

Subpart 2. Description. This subpart is needed to set a standard for the information required on a decal. *Minnesota Statutes*, section 221.84, subdivision 4, paragraph (a), states:

> The commissioner shall design a distinctive decal to be issued to permit holders under this section. Each decal is valid for one year from the date of issuance. No person may operate a limousine that provides limousine service unless the limousine has such a decal conspicuously displayed.

The commissioner has carefully considered the appearance of the decal and the information required on it. Limousines are "luxury passenger automobiles." The commissioner does not want to require a decal that would be unsightly, either because of its design or because of the amount of information printed on it. This subpart sets a reasonable standard. Each decal will have an identification number unique to the vehicle for which it is issued. The identification number is needed to help passengers and enforcement staff identify the vehicle and the limousine operator.

Each decal will also show the year and month it expires. This is reasonable because it conforms to the statutory language quoted above. It will allow a permit holder, passenger, or enforcement person to tell at a glance whether the decal is valid.

Each decal also will contain the letters "LM." This is reasonable because it conforms to *Minnesota Statutes*, section 168.128, subdivision 2, which requires that limousine license plates be clearly marked with the same letters.

Since limousines must be "unmarked," the decal and license plate will be the only obvious means of identifying a particular vehicle and its operator. This subpart provides sufficient information to allow that identification.

Subpart 3. Display. This subpart is needed to establish a requirement for how a decal is affixed to a vehicle. It is reasonable to set a uniform standard for decal placement. It will make identification of the vehicle and operator easy.

The department considered whether a decal should be affixed to the windshield, as proposed, or whether it should be affixed to the back of the interior rear-view mirror. There was concern about whether a decal affixed to the windshield could be easily peeled off by unauthorized persons. Also, limousines are washed frequently and the durability of a printed decal was questioned. A decal on the inside of a vehicle that could be viewed from the outside would solve these problems. The department originally decided that the interior rear-view mirror was the best alternative.

However, some limousine operators might prefer not to have an interior rear-view mirror. A darkened partition between the driver and passenger compartments makes an interior mirror useless and, it appears, one is not required if there is an acceptable alternate mirror. *Minnesota Statutes*, section 169.70, provides:

> Every motor vehicle which is so constructed, loaded or connected with another vehicle as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such vehicle.

The commissioner has resolved the various issues by arranging to have the decals printed on "see-through" stock. The printing will be reversed allowing the decal to be affixed to the inside of the windshield and read, through the windshield, from the outside. This is a

reasonable solution. The decal will be secure, visible, and durable.

A transparent decal also is in keeping with the safety requirements reflected in *Minnesota Statutes*, section 169.71, subdivision 1. It states:

> No person shall drive or operate any motor vehicle with a windshield cracked or discolored to an extent to limit or obstruct proper vision, or with any objects suspended between the driver and the windshield, other than sun visors and rear vision mirrors, or with any sign, poster, or other nontransparent material upon the front windshield, sidewings, side or rear windows of such vehicle, other than a certificate or other paper required to be so displayed by law, or authorized by the state director of the division of emergency management, or the commissioner of public safety.

Adopted rules have the force and effect of law under *Minnesota Statutes*, section 14.38, and the commissioner could lawfully require the placement of a non-transparent decal on a vehicle windshield. Nevertheless, a transparent decal seems the most practical and safe solution to the problem of decal location.

Subpart 4. Duration. There are three conditions that make a decal invalid under this subpart. First, a decal is considered no longer valid after it expires. This provision is needed and reasonable since it conforms to *Minnesota Statutes*, section 221.84, subdivision 4.

Second, a decal is not valid after it has been removed from the vehicle. This provision is needed to clarify that decals are designed to be vehicle-specific: each limousine operated under a permit is to be equipped with a decal unique to that vehicle.

It is reasonable to invalidate a decal after removal. An operator might want to remove a decal and place it on another vehicle. This would allow the operator to avoid additional decal fees and could lead to incorrect vehicle identification. It is reasonable to invalidate a decal for attempted subversion of the law in this way.

In addition, under subpart 5, removal is required if the permit holder stops using the limousine to provide service. This would occur if (1) the vehicle is sold or (2) if the operator places it out-of-service permanently for mechanical reasons or (3) if the operator no longer has the right to provide service because of permit revocation. Invalidation is appropriate if any of these conditions occur.

Finally, a decal is no longer valid after revocation of an operator's permit. The permit gives a person the right to provide limousine service. Once it is revoked, the person no longer has any legitimate use for a vehicle decal.

This subpart is further needed to clarify that if a permit is revoked, the fact that a decal appears on a vehicle is of no legal consequence. In other words, the presence of a decal on a vehicle cannot confer authority to operate a limousine service. The decal is deemed invalid. This provision is a reasonable means of implementing the revocation sanction.

Subpart 5. Not transferable. This subpart is designed to harmonize with subpart 4. It is needed to further underscore the vehicle-specific nature of a decal. A vehicle-specific decal allows for proper vehicle identification.

Members of the department's Limousine Advisory Committee emphasized the importance of vehicle identification. In the past, there have been situations where limousine drivers have been issued citations for municipal parking violations and have not informed the limousine operator.

Minnesota Statutes, section 221.84, subdivision 3, states, in part:

> The commissioner may issue an order requiring violations of statutes, rules, and local ordinances governing operation of limousines to be corrected and assessing monetary penalties up to $1,000. The commissioner may suspend or revoke a permit for violation of applicable statutes and rules and, upon the request of a political subdivision, may immediately suspend a permit for multiple violations of local ordinances.

Limousine operators are concerned that drivers might commit violations of state statutes and local ordinances without informing the operator. The operators, understandably, want to be informed violations well before administrative sanctions are imposed. A decal on each vehicle will allow identification of the operator and vehicle and the operator will be given notice of all violations. The operator can then determine which driver was operating the vehicle at the time of the alleged violation.

Without this provision, an operator could transfer a decal to another of its vehicles or to another operator. It would be unreasonable to allow an operator to transfer a decal from one of its vehicles to another. The revenue generated by the sale of decals is to pay for the costs of administering the limousine program. Operators with several vehicles will generally require more administrative and enforcement attention than those with one vehicle. It would be unfair to allow operators of multiple vehicles to buy a few decals and switch them between vehicles. It would be equally unreasonable to allow an operator to "sell" a decal to another operator. This could undermine the system of vehicle identification intended by the legislature.

Subpart 6. Records. This subpart is needed to establish the commissioner's legal obligation to maintain adequate records of decals issued. This requirement is reasonable for the same reasons given in support of part 8880.0500, subpart 5.

Part 8880.0800 DRIVER QUALIFICATIONS.

The need for this part is established by *Minnesota Statutes*, section 221.84, subdivision 2, clause (2). It directs the commissioner to adopt rules for "driver qualifications, including requiring a criminal history check of drivers."

The commissioner's rulemaking mandate to adopt rules for driver qualifications is broad. Drivers of commercial motor vehicles in interstate commerce and intrastate drivers who are

employed by for-hire motor carriers, as well as some private and exempt carriers, are subject to the Federal Motor Carrier Safety Regulations. The federal driver qualification regulations are found in *Code of Federal Regulations*, title 49, part 391. In general, they establish minimum requirements for age, reading and speaking the English language, physical qualifications and examinations (including testing for controlled substances), road tests and written examinations. They also include certain offenses that make a driver unqualified.

The commissioner has determined that it is not necessary to incorporate all the federal driver qualification rules. Drivers subject to those rules generally operate trucks with a gross vehicle weight of more than 10,000 pounds or passenger vehicles with a seating capacity of 15 or more. Instead, the commissioner has reviewed the federal driver qualification rules and proposes to adopt similar, but less restrictive, provisions.

Subpart 1. General qualifications. This subpart is needed to set two general qualifications. A driver must have a valid driver's license and must be at least 18 years old.

The requirement of a valid license is both needed and reasonable because it conforms to existing state law. *Minnesota Statutes*, section 171.02, subdivision 1, states, in part:

> No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon any street or highway in this state unless such person has a license valid under the provisions of this chapter for the type and class of vehicle being driven.

The age requirement differs from the federal regulation. *Code of Federal Regulations*, title 49, section 391.11, states that a driver must be at least 21 years old. *Minnesota Statutes*, section 171.04, subdivision 1, sets the minimum age for eligibility for a driver's license at 16 years and applicants under the age of 18 must have successfully completed a driver education course.

It is reasonable to establish the minimum age for limousine drivers at 18 years. Though a person might obtain a valid license at age 16, it is necessary for drivers to gain additional driving experience before transporting passengers for-hire. The requirement is reasonably necessary to promote the safety of limousine passengers. Such experience could be gained by age 18 and it is not necessary to set a minimum age of 21 years. The higher age limit might eliminate otherwise qualified and competent drivers from employment as limousine drivers.

It is reasonable to conclude that limousine operators will choose their drivers carefully with their passenger's safety in mind. The proposed rule does not mean that operators cannot be more restrictive in their hiring practices. A minimum age requirement of 18 years strikes a reasonable balance between the needs of operators and potential drivers and the safety of passengers.

Subpart 2. Physical qualification. Besides the two general qualifications in subpart 1, it is necessary to establish minimum physical qualifications for limousine drivers. This

subpart is needed because limousine drivers transport passengers for-hire. Passengers have a reasonable expectation that drivers do not have physical conditions that would interfere with their ability to provide safe transportation.

This subpart incorporates the federal physical qualification standards that apply to commercial drivers. The commissioner considered developing and proposing a physical qualification provision unique to this rule but members of the department's Limousine Advisory Committee favored incorporation of the federal regulation. They stated that many limousine drivers are currently required by their employers to comply with the federal rules. Some operators require this as a self-imposed safety standard. Others hold regular route common carrier passenger or charter authority and the federal rules apply to drivers providing transportation under those certificates and permits.

After consideration, the commissioner has determined that it is reasonable to incorporate the federal rules. These rules have been in place for decades. They have proven effective. Adopting a different physical qualification standard might require some drivers to have two physical examinations: one for determining whether a driver is qualified under the federal regulations and another to meet the commissioner's limousine rule. This would necessarily involve additional time, record-keeping, and unnecessary expense.

Code of Federal Regulations, title 49, section 391.41, states:

391.41 Physical qualifications for drivers.

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and, except as provided in 391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person –

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a waiver pursuant to 391.49;

(2) Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has been granted a waiver pursuant to 391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a motor vehicle safely;

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a motor vehicle safely;

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition

which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5--1951.

(12) Does not use a Schedule I drug or other substance identified in appendix D to this subchapter 1, an amphetamine, a narcotic, or any other habit-forming drug, except that a driver may use such a substance or drug if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

(c) Drivers subject to subpart H of his part shall be tested in compliance with the requirements of that subpart.

Readers should note that paragraph (c), relating to testing for controlled substances, is not incorporated. Minnesota has adopted the federal rules for controlled substance testing and procedures in *Minnesota Statutes*, section 221.0313. However, the statute applies only to drivers of commercial motor vehicles, i.e., those with a gross vehicle weight rating of 26,001 or more pounds, or that are designed to transport more than 15 passengers, or that are used in the transportation of hazardous materials. The commissioner has decided not to require such testing without some evidence of a drug abuse problem in the limousine industry. Limousine operators may choose, if they wish, to test their drivers for drugs or alcohol under *Minnesota Statutes*, sections 181.950 to 181.957. However, the commissioner does not propose to make such testing mandatory.

Subpart 3. Evidence of physical qualification. This subpart is needed to establish a means of determining whether a driver meets the physical qualification standards incorporated in subpart 2. The rule is reasonable because it refers to the same medical examiner's certificate (sometimes called as a "health card") required under the federal regulations. Physicians who perform examinations to determine if drivers meet the federal standards routinely use this certificate. Requiring a different form of evidence would involve training physicians in its use and might increase the cost of an examination.

Subpart 4. Waiver for physical defects. The federal driver qualification regulations allow for waivers for certain physical defects. See, *Code of Federal Regulations*, title 49, section 391.49. This subpart is needed to establish the same waiver program for limousine drivers. The substance of the federal waiver program has been adopted in *Minnesota Rules*, parts 8850.7250 to 8850.7675. The text of those rules is shown below.

8850.7250 INTRASTATE TRANSPORTATION; WAIVER APPLICATION SUBMISSION.

Subpart 1. **Joint submission.** A letter of application for a waiver under part 8850.7200 may be submitted jointly by the driver applicant who seeks a waiver of the physical disqualification and by the carrier that will employ the driver applicant if the application is granted. The application must be submitted to the Office of Motor Carrier Safety and Compliance, Minnesota Department of Transportation.

Subp. 2. **By driver applicant.** A letter of application for a waiver may be submitted by a driver applicant alone. The driver applicant shall comply with the requirements of part 8850.7300, except item A, subitem (1). The driver applicant shall provide the information in part 8850.7300, item B, if the information is known to the driver.

8850.7300 WAIVER APPLICATION CONTENTS.

A letter of application for a waiver under part 8850.7200 must contain:

A. the name and address of the applicant, including:
   (1) the name and complete address of the carrier coapplicant;
   (2) the name and complete address of the driver applicant; and
   (3) a description of the driver applicant's limb impairment for which a waiver is requested;

B. a description of the type of operation the driver will be employed to perform, including:
   (1) the average period of time the driver will be driving and on duty, per day;
   (2) the type of commodities or cargo to be transported; and
   (3) whether the driver operation is conducted as a sleeper team, relay, owner operator, or otherwise;

C. the number of years the driver has operated the type of vehicle for which a waiver is requested and the total years of experience operating all types of motor vehicles;

D. a description of the vehicle that the driver applicant intends to drive, including:
   (1) the truck or truck tractor make, model, and year;
   (2) the drive train, including:
      (a) whether the transmission type is automatic or manual and, if manual, the number of forward speeds;
      (b) auxiliary transmission, if any, and number of forward speeds; and
      (c) rear axle designation, whether single speed, two speed, or three speed;
   (3) the type of brake system;
   (4) the steering, whether manual or power assisted;
   (5) a description of type of trailers, such as van, flatbed, cargo tank, drop frame, lowboy, or pole;
   (6) the number of semitrailers or full trailers to be towed at one time; and
   (7) a description of any vehicle modification made for the driver applicant and a photograph of the modification;

E. a certification that the driver is otherwise qualified, as follows:
   (1) certification by the coapplicant carrier that the driver applicant is otherwise qualified under part 8850.7100; and
   (2) in the case of a driver applicant, certification by the driver applicant that the applicant is otherwise qualified under part 8850.7100; and

F. the signature of the applicant as follows:
   (1) the driver applicant's signature and date signed; and
   (2) if the application has a coapplicant, the carrier official's signature, the official's title, and the date signed. The official who signs the application

must be a responsible official of the carrier.

8850.7350 DOCUMENTS ACCOMPANYING WAIVER APPLICATION.

The letter of application for a waiver under part 8850.7200 must be accompanied by:

A. A copy of the results of the medical examination performed according to Code of Federal Regulations, title 49, section 391.43, as amended through October 1, 1987.

B. A copy of the medical certificate completed according to Code of Federal Regulations, title 49, section 391.43, paragraph (e), as amended through October 1, 1987.

C. A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon. The coapplicant carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job tasks the driver applicant will be required to perform.

(1) The medical evaluation summary for a driver applicant disqualified under Code of Federal Regulations, title 49, section 391.41, paragraph (b)(1), as amended through October 1, 1987, must include:

(a) an assessment of the driver's functional capabilities as they relate to the driver's ability to perform normal tasks associated with operating a motor vehicle; and

(b) a statement by the examiner that the applicant is capable of demonstrating precision prehension, that is, manipulating knobs and switches, and power grasp prehension, that is, holding and maneuvering the steering wheel, with each upper limb separately. This requirement does not apply to an applicant who was granted a waiver, absent a prosthetic device, before April 14, 1986.

(2) The medical evaluation summary for a driver applicant disqualified under Code of Federal Regulations, title 49, section 391.41, paragraph (b)(2), as amended through October 1, 1987, must include:

(a) how and why the impairment interferes with the driver's ability to perform normal tasks associated with operating a commercial motor vehicle;

(b) an assessment and medical opinion of whether the condition is likely to remain medically stable over the driver applicant's lifetime; and

(c) a statement by the examiner that the applicant is capable of demonstrating precision prehension, that is, manipulating knobs and switches, and power grasp prehension, that is, holding and maneuvering the steering wheel, with each upper limb separately. This requirement does not apply to an applicant who was granted a waiver, absent a prosthetic device, before April 14, 1986.

D. A description of the prosthetic or orthotic device worn by the driver applicant, if any.

E. A copy of the driver applicant's road test administered by the carrier coapplicant and the certificate issued under Code of Federal Regulations, title 49, section 391.31, paragraphs (b) to (g), as amended through October 1, 1987. A driver applicant is responsible for having a road test administered by a carrier or a person competent to administer the test and evaluate its results.

F. A copy of the driver applicant's application for employment completed according to Code of Federal Regulations, title 49, section 391.21, as revised through October 1, 1987. A driver applicant is responsible for submitting a copy of the employment

application for the last commercial driving position held by the applicant. If not previously employed as a commercial driver, the driver applicant must so state.

G. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state where the driver had a motor vehicle driver's license or permit.

8850.7400 AGREEMENT.

A carrier that employs a driver with a waiver under part 8850.7200 agrees to:

A. evaluate the driver granted a waiver for those nondriving, safety related job tasks associated with the type of trailer to be used and any other nondriving, safety related or job related tasks unique to the operations of the employing carrier;

B. use the driver to operate the type of motor vehicle defined in the waiver only when the driver is in compliance with the conditions of the waiver; and

C. file documents and information with the commissioner within 30 days of the occurrence of the following events: a violation of a motor vehicle and motor carrier law or rule; an accident; an arrest; a license suspension, revocation, or withdrawal; and a conviction that involves the driver applicant. This item applies whether the driver's waiver is a unilateral one or has a coapplicant carrier.

8850.7450 DRIVER SUPPLIES COPY.

The driver shall give each employing carrier a copy of the waiver.

8850.7500 EVALUATION OF DRIVER'S ABILITY.

The commissioner may require a driver applying for a waiver under part 8850.7200 to demonstrate ability to safely operate the motor vehicle the applicant intends to drive. During the demonstration, the driver's ability to perform pretrip and post trip inspections and driving performance must be evaluated. Nondriving, safety related tasks or other nondriving tasks unique to the type of trailer or other carrier operation must not be evaluated during this demonstration.

8850.7550 EXTENT OF WAIVER.

The commissioner may deny the application for waiver under part 8850.7200 or may grant it totally or in part and may issue the waiver subject to terms, conditions, and limitations that protect the traveling public. A waiver is valid for a period not longer than two years from the date of issue and may be renewed 30 days before the expiration date.

The commissioner shall grant or deny the waiver in writing within 30 days from the date that the required information has been submitted.

A denial of the waiver must state the reason for the denial.

8850.7600 WAIVER RENEWAL APPLICATION; REQUIRED INFORMATION.

The application to renew a waiver granted under part 8850.7200 must be submitted to the commissioner. It must contain:

A. the name and complete address of the carrier currently employing the applicant;

B. the name and complete address of the driver;

C. the effective date of the current waiver;

D. the expiration date of the current waiver;

E. the total miles driven under the current waiver;

F. the number of accidents incurred by the driver while driving under the current waiver, including the date of the accident, the number of fatalities, the number of

injuries, and the estimated dollar amount of property damage;

G. the driver's signature and date signed;

H. the carrier coapplicant's signature and date signed;

I. notification of a change in the type of vehicle the driver will operate;

J. a copy of the driver's current state motor vehicle driving record for the period of time the current waiver has been in effect;

K. a current medical examination report; and

L. a medical evaluation summary according to part 8850.7350, item C, if an unstable medical condition exists. Handicapped conditions classified under Code of Federal Regulations, title 49, section 391.41, paragraph (b)(1), as amended through October 1, 1987, are considered unstable. A board certified physiatrist (doctor of physical medicine) or orthopedic surgeon shall determine whether a condition described in Code of Federal Regulations, title 49, part 391.41, paragraph (b)(2), as amended through October 1, 1987, is medically stable.

8850.7650 ON GRANTING WAIVER.

On granting a waiver under part 8850.7200, the commissioner shall notify the driver applicant, and coapplicant carrier if applicable, by letter. The terms, conditions, and limitations of the waiver must be set forth. A carrier shall maintain a copy of the waiver in its driver qualification file. A copy of the waiver must be kept in the carrier's file for three years after the driver's employment is terminated. The driver applicant shall have the waiver or a legible copy of the waiver in possession while on duty.

8850.7675 RESOLUTION OF CONFLICTS OF MEDICAL EVALUATION.

Subpart 1. **Applications.** Applications for determination of a driver's medical qualifications under standards in this part must conform to the requirements of this subpart.

A. The application must contain the name and address of the driver, motor carrier, and the physicians involved in the proceeding.

B. The applicant shall submit proof that there is a disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's qualifications.

C. The applicant shall submit a copy of an opinion and report, including the results of tests, of an impartial medical specialist in the field in which the medical conflict arose. The specialist must be one agreed to by the motor carrier and the driver.

D. If the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant shall submit a statement of agreement to submit the matter to an impartial medical specialist in the field, proof that the applicant has asked the driver to submit to the medical specialist, and the response, if any, of the driver to the request.

E. If the motor carrier refuses to agree on a medical specialist, the driver shall submit an opinion and test results of an impartial medical specialist, proof that the driver has asked the motor carrier to agree to submit the matter to the medical specialist, and the response, if any, of the motor carrier to the request.

F. The applicant shall include a statement explaining in detail why the decision of the medical specialist identified in item C is unacceptable.

G. The applicant shall submit proof that the medical specialist mentioned in item C was provided, before the specialist's determination, the medical history of the driver and an agreed upon statement of the work the driver performs.

H. The applicant shall submit the medical history and statement of work provided to the medical specialist under item G.

I. The applicant shall submit the medical records and statements of the physicians who

have given opinions on the driver's qualifications.

J. The applicant shall submit a description and a copy of the written and documentary evidence upon which the party making the application relies.

K. The application must be accompanied by the driver's statement of intent to drive in intrastate commerce or a statement that the carrier has used or intends to use the driver for such work.

L. The applicant shall submit three copies of the application and records.

Subp. 2. **Information.** The commissioner may request further information from the applicant if the commissioner determines that a decision cannot be made on the evidence submitted.

Subp. 3. **Parties.** For the purposes of this part, a party includes the motor carrier and the driver, or anyone else submitting an application.

Subp. 4. **Action.** The commissioner shall make a determination after a hearing has been held under Minnesota Statutes, chapter 14. The decision of the commissioner may be appealed in the manner provided in chapter 14.

Since the waiver rules are adopted in Minnesota, the department is not required to establish the need for and reasonableness of those rules as part of this rulemaking proceeding. However, the need for and reasonableness of applying the existing waiver program to limousine drivers must be shown.

A provision for granting waivers to limousine drivers is needed because some drivers who are not physically qualified to drive under *Code of Federal Regulations*, title 49, section 391.41, paragraphs (b)(1) or (b)(2) might be otherwise capable of operating a limousine safely. The proposed rule is needed to establish a procedure for granting a waiver to such drivers.

It is reasonable to apply the existing waiver program to limousine drivers. It allows waivers to the same extent and on the same conditions as currently granted by the federal government and the commissioner. Using the same waiver program also will make processing the applications more efficient.

The subpart identifies certain provisions that do not logically apply to limousine drivers because of the type of motor vehicle used to provide limousine transportation or because of references to other driver qualification rules that are not incorporated.

Subpart 5. Driving record. The commissioner has determined there is a need to identify driving offenses that make a driver unqualified to provide limousine service. The specific interest to be protected is the safety of passengers. A driver with a record of violations that shows a lack of regard for laws governing motor vehicle operations might pose a significant threat to the safety of passengers.

The subpart is a reasonable means of meeting the need. It sets specific standards currently found in state law. The need for and reasonableness of each standard is discussed below. The proposed rule also is reasonable in that it sets a three-year limitation on a particular disqualification. A disqualification period of from one to five years was considered for proposal in this subpart. It was determined that a one-year disqualification would be insufficient. A longer period is needed to determine whether a driver is likely to repeat the unlawful behavior

that resulted in the disqualification. On the other hand, a five-year period might unnecessarily prohibit drivers that have demonstrated an ability to comply with the law from providing service. The proposed rule strikes a reasonable balance.

It is reasonable to permit a driver to "requalify" by demonstrating his or her willingness and ability to obey traffic laws. A driver that has operated a motor vehicle for three consecutive years without one of the listed convictions should be deemed to meet the minimum standards required for providing limousine service. An employer's standards might be more demanding and nothing in the rule prohibits an employer from using a more rigorous standard in the hiring process. However, it is necessary and reasonable to ensure that they are not less stringent than those proposed in the rule for the reasons discussed below.

The first standard for disqualification in item A is license cancellation. *Minnesota Statutes*, section 171.14, states:

> The commissioner [of public safety] shall have the authority to cancel any driver's license upon determination that the licensee was not entitled to the issuance thereof hereunder, or that the licensee failed to give the required or correct information in the application, or committed any fraud or deceit in making such application. The commissioner may also cancel the driver's license of any person who, at the time of cancellation, would not have been entitled to receive a license under the provisions of section 171.04

It is reasonable to prohibit someone from providing limousine service if the driver's license has been canceled under this statute. A person who obtains a license, who would not otherwise be entitled to it, has circumvented one of the chief safeguards imposed to protect the public and other motorists. This is especially true of a person who wrongfully obtains a license, whether through providing inaccurate information, deceit or fraud. The driver's license law is designed to place restrictions on who is given the privilege of operating a motor vehicle in the state. Persons who try to avoid those restrictions, for whatever reason, exhibit a lack of regard for the most basic of safety regulations.

The second standard for disqualification in item A is license revocation. *Minnesota Statutes*, section 171.17, subdivision 1, states:

> **171.17 REVOCATION.**
>
> Subdivision 1. **Offenses.** The department shall immediately revoke the license of a driver upon receiving a record of the driver's conviction of:
>
> (1) manslaughter resulting from the operation of a motor vehicle or criminal vehicular homicide or injury under section 609.21;
>
> (2) a violation of section 169.121 or 609.487;
>
> (3) a felony in the commission of which a motor vehicle was used;
>
> (4) failure to stop and disclose identity and render aid, as required under section 169.09, in the event of a motor vehicle accident, resulting in the death or personal injury of another ;
>
> (5) perjury or the making of a false affidavit or statement to the department under any law relating to the ownership or operation of a motor vehicle;
>
> (6) except as this section otherwise provides, conviction, plea of guilty, or forfeiture of bail

not vacated, upon three charges of violating, within a period of 12 months, any of the provisions of chapter 169 or of the rules or municipal ordinances enacted in conformance with chapter 169, for which the accused may be punished upon conviction by imprisonment;

(7) conviction of two or more violations, within five years, of the misdemeanor offense described in section 169.444, subdivision 2, paragraph (a);

(8) conviction of the misdemeanor offense described in section 169.443, subdivision 7, or the gross misdemeanor offense described in section 169.444, subdivision 2, paragraph (b);

(9) conviction of an offense in another state that, if committed in this state, would be grounds for revoking the driver's license.

In addition, *Minnesota Statutes*, section 169.123, provides for revocation upon certification of probable cause to believe that a person was operating a motor vehicle under the influence of alcohol or a controlled substance and the person refused to submit to a chemical test of the person's breath, blood or urine.

Revocation of a driver's license is an extreme sanction. It occurs under these statutes only after a driver has engaged in conduct that exhibits extreme carelessness or recklessness in operating a motor vehicle or a willful disregard for the safety of others. It is reasonable to render such drivers disqualified from providing limousine service for three years.

The third standard for disqualification in item A is license suspension. *Minnesota Statutes*, section 171.18, subdivision 1, states:

171.18 SUSPENSION.

Subdivision 1. **Offenses.** The commissioner may suspend the license of a driver without preliminary hearing upon a showing by department records or other sufficient evidence that the licensee:

(1) has committed an offense for which mandatory revocation of license is required upon conviction;

(2) has been convicted by a court for violating a provision of chapter 169 or an ordinance regulating traffic and department records show that the violation contributed in causing an accident resulting in the death or personal injury of another, or serious property damage;

(3) in an habitually reckless or negligent driver of a motor vehicle;

(4) is an habitual violator of the traffic laws;

(5) is incompetent to drive a motor vehicle as determined in a judicial proceeding;

(6) has permitted an unlawful or fraudulent use of the license;

(7) has committed an offense in another state that, if committed in this state, would be grounds for suspension;

(8) has committed a violation of section 169.444, subdivision 2, paragraph (a);

(9) has committed a violation of section 171.22;

(10) has failed to appear in court as provided in section 169.92, subdivision 4; or

(11) has failed to report a medical condition that, if reported, would have resulted in cancellation of driving privileges.

However, an action taken by the commissioner under clause (2) or (5) must conform to the recommendation of the court when made in connection with the prosecution of the licensee.

Like revocation, suspension of a driver's license is a serious sanction imposed on one who has shown a disregard for the safety of persons and property or who has shown an inability

or unwillingness to comply with motor vehicle laws. It is reasonable to disqualify such drivers for the same reasons.

Item B states that a driver is disqualified after a conviction for operating a vehicle without insurance. *Minnesota Statutes*, section 169.797, subdivisions 2 and 3, state:

> Subd. 2. **Violation by owner.** Any owner of a vehicle with respect to which security is required under sections 65B.41 to 65B.71 who operates the vehicle or permits it to be operated upon a public highway, street, or road in this state and who knows or has reason to know that the vehicle does not have security complying with the terms of section 65B.48 is guilty of a crime and shall be sentenced as provided in subdivision 4.
>
> Subd. 3. **Violation by driver.** Any other person who operates a vehicle upon a public highway, street, or road in this state who knows or has reason to know that the owner does not have security complying with the terms of section 65B.48 in full force and effect is guilty of a crime and shall be sentenced as provided in subdivision 4.

A person who fails to have insurance on his vehicle has not accepted the responsibility that accompanies a grant of driving privileges. Failure to obtain insurance coverage also shows a lack of concern for the welfare and property of others.

Item C renders a driver disqualified if convicted for not having a valid license. A person who drives a motor vehicle without a valid license has not shown the ability or will to comply with the most basic of licensing requirements. This is true despite the type of vehicle driven.

Item D provides for disqualification for those drivers convicted of operating a vehicle under the influence of alcohol or a controlled substance. *Minnesota Statutes*, section 169.121, subdivision 1, states:

> It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or upon the ice of any boundary water of this state:
>
> (a) when the person is under the influence of alcohol;
>
> (b) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;
>
> (c) when the person is under the influence of a combination of any two or more of the elements named in clauses (a), (b), and (f);
>
> (d) when the person's alcohol concentration is 0.10 or more;
>
> (e) when the person's alcohol concentration as measured within two hours of the time of driving is 0.10 or more; or
>
> (f) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle.

Driving under the influence shows an extreme carelessness and indifference to the public in general and passengers in particular. It is common knowledge that educational and enforcement efforts have been increased substantially throughout the United States to reduce the problems associated with drinking and driving. It is reasonable to exclude or remove drivers

with these convictions from providing limousine service. This provision helps to ensure the safety of limousine passengers while allowing for the rehabilitation of convicted drivers.

Item E renders a driver disqualified after a conviction for alcohol-related driving of a commercial motor vehicle. *Minnesota Statutes*, section 169.1211, subdivision 1, states:

> It is a misdemeanor for any person to drive, operate, or be in physical control of any commercial motor vehicle within this state or upon the ice of any boundary water of this state:
>
> (1) when the person's alcohol concentration is 0.04 or more;
>
> (e) when the person's alcohol concentration as measured within two hours of the time of driving is 0.04 or more.

This disqualification provision is reasonable for the same reasons given above.

Each of these provisions would prevent a person from driving only if there had been a conviction within the last three years. Such recent and serious violations suggest that the person does not have a proper concern for the safety of others and for compliance with motor vehicle laws. The protection offered to limousine passengers depends upon adherence to licensing, traffic and regulatory requirements. Temporarily barring someone from providing limousine service is a reasonable protective measure when a driver shows a disregard for basic licensing requirements, traffic regulations and criminal laws relating to the operation of motor vehicles. It is also a reasonable means of safeguarding passengers from careless or unqualified drivers.

Subpart 6. Criminal record. This subpart is needed to fulfill the legislature's direction to adopt rules for driver qualifications, "including requiring a criminal history check of drivers." The subpart is further needed to protect the safety of limousine service passengers. The specific statutes listed involve conduct that is reasonably related to the protection of passengers including murder, manslaughter, criminal vehicular homicide, assault, robbery, kidnapping, false imprisonment, abduction, various sexual crimes and criminal sexual conduct, fleeing a peace officer, misusing a credit card to secure services, burglary (when a person is threatened or assaulted), and felony drug crimes.

The commissioner believes it is necessary to devise a method of screening drivers to prevent those who present an unreasonable risk of harm to limousine passengers from providing service. This subpart is needed to provide that screening method and to give adequate notice to limousine operators and drivers of offenses that are grounds for disqualification.

Limousine drivers transport persons for-hire. Therefore, it is necessary and reasonable to disqualify drivers whose past conduct has harmed, or threatened harm to, other people. Most of the listed offenses involve the inappropriate use of force against another person. Some involve uninvited sexual contact. Others involve serious property crimes. Felony drug crimes are also listed.

The department has recent experience in adopting rules requiring criminal background checks. In 1992, the commissioner proposed and adopted rules governing the provision of

special transportation service. See, *Minnesota Rules*, parts 8840.5100 to 8840.6300. Part 8840.5900, lists 55 disqualifying criminal offenses and was found both needed and reasonable by an administrative law judge after a public hearing.

This rule is less restrictive than the special transportation service provision. Special transportation service is designed to serve those who are elderly or disabled. Many passengers are especially vulnerable due to age or physical or mental impairment. The department's Limousine Advisory Committee carefully reviewed the special transportation service rule. Each offense was discussed and it was determined that those listed in the proposed rule are reasonably related to the provision of limousine service.

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

Subpart 7. Responsibility of limousine operator. This subpart is needed to establish the procedure for conducting "a criminal history check" of drivers. It is further needed to provide additional protection to limousine passengers. Criminal background checks are intended to protect people who receive services through regulated programs. They help to identify individuals whose past actions suggest they are not qualified for certain positions.

Background checks are not new. They have been required under other Minnesota statutes. For example, an investigation into the criminal history of certain workers in human services programs is mandated by *Minnesota Statutes*, section 245A.04. The procedure has also been adopted in other Minnesota rules. The criminal background of an applicant for a school bus endorsement on a driver's license must be checked under *Minnesota Rules*, part 7414.0400.

More recently, in 1991 the legislature adopted *Minnesota Statutes*, section 171.323, relating to special transportation service drivers. That section requires the driver of a special transportation service vehicle to obtain an endorsement on his or her driver's license before driving within the seven-county metropolitan area. Subdivision 3 directs the commissioner of public safety to conduct a criminal records check of an applicant before issuing or renewing an endorsement.

This subpart is needed to require an initial and annual review of the criminal background of all limousine drivers. The department considered various approaches to conducting driver background checks including adopting a procedure requiring the department to certify drivers. However, it concluded that it would need additional statutory authority and resources to conduct background checks of each applicant driver. The commissioner's mandate is to adopt rules "requiring a criminal history check." The commissioner concluded that it is not authorized to investigate drivers and that the requirement for conducting the check should be placed with

individual limousine operators.

The proposed rule requires a limousine operator to request a review of the driving record from the Department of Public Safety, Driver and Vehicle Services Division, to determine if the driver meets the standards in subpart 5. A written printout costs $4.00. The review also must include the conviction records of the Bureau of Criminal Apprehension (BCA). To complete this part of the review, a limousine operator must get an informed consent form meeting the requirements of *Minnesota Statutes*, section 13.05, subdivision 4, from the driver whose records are to be checked. Under that statute, an informed consent form must be:

(1) in plain language;
(2) dated;
(3) specific in designating the particular person or agencies the data subject is authorizing to disclose information about the data subject;
(4) specific as to the nature of the information the subject is authorizing to be disclosed;
(5) specific as to the persons or agencies to whom the subject is authorizing information to be disclosed;
(6) specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;
(7) specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorization given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy.

Sample informed consent forms are available from the BCA. The department also will prepare sample forms for distribution to operators. Or, an operator may develop and use its own forms. The BCA review costs $8.00 and takes one to two working days to do.

The commissioner has decided not to require a provider to check criminal records other than those maintained by the BCA. Criminal records from other states are readily available to law enforcement personnel but not to others. Requiring a check of those records would greatly complicate the hiring process, increase administrative costs to operators, and delay the use or hiring of otherwise qualified drivers. Operators have other means, such as checking employment references, for assessing the qualifications of a prospective driver before employment. It is reasonable to leave the ultimate decision on employment to the limousine operator. Since it is in the operator's best interests to avoid using or hiring drivers that pose a threat to its passengers, it is assumed that providers will resolve questions concerning a driver's qualifications in favor of passenger safety.

Subpart 8. Evidence of compliance. This subpart is needed to set a means of determining whether a driver meets the standards in subparts 5 and 6. It is reasonable to require

some form of evidence. The need for and reasonableness of the specific records required is discussed on pages 65 and 66 of the statement of need and reasonableness.

Subpart 9. Unqualified driver prohibited. This subpart is needed to make the use of an unqualified driver a violation of the rules. *Minnesota Statutes*, section 221.84, subdivision 3, states that administrative penalties may be imposed for violations of the rule. It would be unreasonable to set qualification standards and record-keeping requirements without making it a violation to use an unqualified driver.

Part 8880.0900 VEHICLE REQUIREMENTS.

Minnesota Statutes, section 221.84, subdivision 2, clause (1), directs the commissioner to adopt rules that include provisions for the "annual inspections of limousines." The department will be conducting annual vehicle inspections under part 8880.1100. Therefore, a rule is needed that provides notice to limousine operators of the minimum standards vehicles must meet.

Subpart 1. Operation. There is a need to set a minimum basic safety requirement for the mechanical condition and operation of vehicles used to provide limousine service. The interest to be protected is the safety of passengers and the motoring public. A vehicle that is in poor mechanical condition is dangerous to those who use the state's highways and roads as well as to limousine passengers.

The proposed rule is a reasonable means of meeting the need for a minimum standard. The first sentence of the proposed rule relates to the mechanical condition of a vehicle. The language used is taken from the North American Uniform Vehicle Out-of-Service Criteria adopted in *Minnesota Statutes*, section 221.031, subdivision 9. Incorporation of the criteria in the rule is reasonable. The vehicle out-of-service criteria are used by the Federal Highway Administration, Mn/DOT, and the Minnesota State Patrol in making out-of-service determinations in truck and bus cases. Under the vehicle out-of-service criteria, a vehicle must be placed out-of-service when its mechanical condition is determined to be so imminently hazardous that it is likely to break down or cause an accident or be likely to contribute to loss of control of the vehicle by the driver. The criteria are specific about the operating conditions of the major mechanical components of a vehicle and set definite standards for limousine operators and department inspectors to follow.

Application of these criteria to vehicles used to transport limousine passengers is reasonable. The interest in protecting them is the same as protecting those who ride passenger or school buses. Operation of an imminently hazardous vehicle poses a clear safety threat. *Minnesota Statutes*, section 169.47, makes use of a vehicle that is in an "unsafe condition as to endanger any person" a misdemeanor. The proposed rule, while somewhat more specific, reflects the legislature's concern about the use of unsafe vehicles. A copy of the current out-of-service criteria may be obtained from the Commercial Vehicle Safety Alliance, 1620 Eye Street,

N.W., Suite 1000, Washington, D.C. 20006. A current copy will also be available for distribution or inspection at the Office of Motor Carrier Services, 151 Livestock Exchange Building, 100 Stockyard Road, South St. Paul, MN 55075.

The third sentence in this subpart makes a violation of state statutes and local rules and ordinances a violation of the commissioner's rule. This sentence is needed because of the administrative penalty provision in *Minnesota Statutes*, section 221.84, subdivision 3. It states, in part:

> The commissioner may issue an order requiring violations of statutes, rules, and local ordinances governing operation of limousines to be corrected and assessing monetary penalties up to $1,000.

The rule is needed to state which "statutes, rules, and local ordinances" may be addressed by the department through the imposition of an administrative penalty.

The proposed rule is a reasonable means of meeting the need for clarification. The state statutes "governing the operation of limousines" (other than *Minnesota Statutes*, section 221.84) are found in *Minnesota Statutes*, chapter 169. The rules "governing the operation of limousines" are the rules authorized in *Minnesota Statutes*, section 221.84, and it is not necessary to identify them in the subpart. The term "local ordinances," to which the subdivision refers, is further clarified in *Minnesota Statutes*, section 221.091. That section states:

> **221.091 LIMITATIONS; RELATIONSHIP TO LOCAL REGULATION.**
>
> No provision in sections 221.011 to 221.291 and 221.84 to 221.85 shall authorize the use by any carrier of any public highway in any city of the first class in violation of any charter provision or ordinance of such city in effect January 1, 1925, unless and except as such charter provisions or ordinance may be repealed after that date; nor shall sections 221.011 to 221.291 and 221.84 to 221.85 be construed as in any manner taking from or curtailing *the right of any city to reasonably regulate or control the routing, parking, speed or the safety of operation of a motor vehicle operated by any carrier under the terms of those sections*, or the general police power of any such city over its highways; nor shall sections 221.011 to 221.291 and 221.84 to 221.85 be construed as abrogating any provision of the charter of any such city requiring certain conditions to be complied with before such carrier can use the highways of such city and such rights and powers herein stated are hereby expressly reserved and granted to such city; but no such city shall prohibit or deny the use of the public highways within its territorial boundaries by any such carrier for transportation of passengers or property received within its boundaries to destinations beyond such boundaries, or for transportation of passengers or property from points beyond such boundaries to destinations within the same, or for transportation of passengers or property from points beyond such boundaries through such municipality to points beyond the boundaries of such municipality, where such operation is pursuant to a certificate of convenience and necessity issued by the commission or to a permit issued by the commissioner under section 221.84 or 221.85. [emphasis added]

The emphasized language is repeated in the proposed rule.

Under the proposed rule, the department will be able to address violations of *Minnesota Statutes*, chapter 169, the commissioner's rules, and the local ordinances mentioned, through an administrative penalty process. The administrative penalty process is preferable to criminal

prosecution. The process will be more efficient and will result in more uniform penalty amounts. It also avoids the stigma that sometimes accompanies a criminal conviction.

Subpart 3. Equipment standards. For the same reasons given above, the commissioner is proposing to make violations of the equipment standards in *Minnesota Statutes*, chapter 169, a violation of the rule. These standards are currently found in *Minnesota Statutes*, sections 169.46 to 169.75. They relate primarily to vehicle lighting, brakes, horns, mirrors, windshields, and other required equipment. Including these standards in the proposed rule is both needed and reasonable since limousines, like all passenger automobiles, are subject to the statutes already. This subpart merely allows the department to address violations through the administrative penalty process.

Subpart 4. Safety equipment. This subpart is needed to establish minimum safety equipment standards. The rule is proposed as a necessary requirement under *Minnesota Statutes*, section 221.84, subdivision 2, clause (7).

Item A requires a limousine to be equipped with a fire extinguisher. A fire extinguisher is needed to protect limousine passengers and their property. If a mechanical or electrical malfunction caused a fire, it is likely that passengers could leave the vehicle safely. However, limousines also transport luggage and other personal property belonging to passengers. A fire extinguisher could be instrumental in saving such property from damage.

The proposed rule incorporates *Code of Federal Regulations*, title 49, section 393.95, paragraph (a). This is a reasonable means of identify the type of extinguisher required. That section states:

> 393.95 Emergency equipment on all power units.
>
> (a) Fire extinguisher. (1) Except as provided in paragraph (a)(4) of this section, every power unit must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use. The fire extinguisher must be securely mounted on the vehicle. The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged. The fire extinguisher must have an extinguishing agent that does not need protection from freezing. The fire extinguisher must not use a vaporizing liquid that gives off vapors more toxic than those produced by the substances shown as having a toxicity rating of 5 or 6 in the Underwriters' Laboratories "Classification of Comparative Life Hazard of Gases and Vapors."
>
> (2)(i) Before July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 4 B:C or more. On and after July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 10 B:C or more.
>
> (ii) Before January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 4 B:C or more. On and after January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with either--
>
> (a) A fire extinguisher having an Underwriters' Laboratories rating of 5 B:C or more; or
>
> (b) Two fire extinguishers, each of which has an Underwriters' Laboratories rating of 4 B:C or more.
>
> (iii) Each fire extinguisher required by this subparagraph must be labeled or marked with its

Underwriters' Laboratories rating and must meet the requirements of paragraph (a)(1) of this section.

(3) For purposes of this paragraph, a power unit is used to transport hazardous materials only if the power unit or a motor vehicle towed by the power unit must be marked or placarded in accordance with 177.823 of this title.

(4) This paragraph does not apply to the driven unit in a driveaway-towaway operation.

A fire extinguisher meeting these specifications is required of other for-hire passenger carriers and is widely obtainable at a cost of $20 or less.

Item B requires a telephone or other means of two-way communication. If a limousine breaks down or is involved in an accident while transporting passengers, the driver should have the means to call for help. As a practical matter, most limousines are currently equipped with a means of two-way communication and this rule should involve no extra cost to operators. For those that are not, a citizen's band radio can be obtained for approximately $50.

Item C requires three reflective triangles. These triangles are needed in the event of a breakdown. They alert other motorists to the danger caused by a stalled vehicle. During a breakdown, most passengers remain in the vehicle before help arrives. They could be seriously injured in a rear-end crash if another motorist was unaware of the presence of the stalled limousine. Triangles that conform to the specifications of federal motor vehicle safety standard 125 are required for other for-hire carriers under *Code of Federal Regulations*, title 49, section 393.95, paragraph (f)(2)(i). A set is widely available at a cost of $20 or less.

Subpart 4. Maintenance. This subpart is needed to establish minimal requirements for vehicle maintenance. It is reasonable to expect limousines used to transport passengers for-hire to comply with a manufacturer's recommended maintenance schedule. A manufacturer is most familiar with a vehicle's mechanical components and the maintenance schedule is designed to make sure those components are serviced or replaced at appropriate times.

The department considered several options in setting standards for the appearance and condition of nonmechanical components. For example, the condition of the exterior of a vehicle's body, its paint, and interior equipment and accessories were discussed. After consideration, the commissioner proposes only the minimal requirements shown in the rule. Clean lights, mirrors, and windows are needed to protect the safety of passengers and a clean interior is necessary to protect their health. The public, its expectations and demands will dictate aesthetic requirements. Operators who use dirty vehicles or ones whose bodies and features are not in good repair will most likely not survive in the marketplace. Because of this practical reality, it was decided not to establish requirements for these items.

Subpart 5. Inspections. This subpart is needed to establish daily and annual inspection requirements. *Minnesota Statutes*, section 221.84, subdivision 2, clause (1), directs the commissioner to adopt rules providing for "annual inspections of limousines." Although the department will conduct such inspections, this subpart is necessary to ensure that operators have their vehicles inspected annually by a person who is familiar with and who can repair a vehicle's components. The daily inspection requirement is proposed under *Minnesota Statutes*, section

221.84, subdivision 2, clause (7).

Item A is needed to specify the items that must be inspected on a daily basis. It is reasonable to require a daily inspection of these items. The are essential for the safe transportation of limousine passengers. If a deficiency were found in any of the items, prompt attention would be required before performing limousine service. A daily inspection of these items would take about five minutes. Members of the department's Limousine Advisory Committee agreed that most operators conduct such inspections and that the proposed rule sets a reasonable standard.

Item B is needed to specify the vehicle components that must be inspected annually. Although most limousine operators have these listed components inspected more often than once each year, the proposed rule sets a reasonable minimum requirement. The rule lists a vehicle's major components including the brakes, the exhaust, fuel, steering, suspension systems, and the frame. A failure of any of these would render the vehicle likely to cause an accident or breakdown. As in the case of the daily inspections, members of the department's Limousine Advisory Committee agreed that limousine operators have their vehicles inspected in a way that complies with the proposed rule and that the proposed rule sets a reasonable standard for annual inspections.

Subpart 6. Inspection records. This subpart is needed to establish a record-keeping requirement for proving compliance with subpart 5. It is important to avoid burdening operators with excessive record-keeping requirements. Therefore, although operators are required to conduct daily inspections, they are not required to keep records showing compliance. The department is assuming that reputable operators will follow the rule without keeping records. Specific equipment violations, when detected, will be addressed by the department through the administrative penalty process.

A record of the annual inspection is necessary. First, the statute requires the commissioner to adopt rules for annual inspections. Having proposed a rule that requires an annual inspection, it is important to set a means of determining compliance. The proposal requires the commissioner to provide forms for documenting these inspections. It also allows an operator to use a form that is substantially the same as the commissioner's form. This should benefit operators who use a computer program to record this inspection information. Members of the department's Limousine Advisory Committee stated that this practice is used often. As long as the form meets the requirements in part 8880.1000, subpart 4, it need not be on the particular form provided by the commissioner. The need for and reasonableness of part 8880.1000, subpart 4, is discussed on page 65 of the statement of need and reasonableness.

Part 8880.1000 RECORDS.

This part is needed to establish record-keeping requirements for limousine operators. In proposing this rule, the commissioner considered its impact on small businesses and decided not to impose reporting requirements on permit holders. Instead, the commissioner proposes to

require the keeping of only those records deemed essential to the administration and enforcement of the limousine program established in *Minnesota Statutes*, section 221.84.

Subpart 1. Records required; authority to inspect. There is a need to establish a basic record-keeping requirement. The proposed rule sets minimum requirements with which limousine operators must comply. The commissioner has been given administrative penalty authority and the authority to suspend or revoke permits for violations.

Checking records is one of the least intrusive means of enforcement. It is usually preferable to stopping vehicles, interviewing passengers, or using other investigative techniques that might unnecessarily interfere with a limousine operator's business. If an operator keeps the appropriate records, a department investigator can determine if a violation has occurred relatively quickly in the privacy of the operator's place of business.

This subpart is a reasonable means of meeting the need for a basic record-keeping requirement. It tells who must keep records and what specific records must be kept. It states that they must be kept at the operator's principal place of business and must be available to the department's enforcement personnel upon request. It also states that, if the principal place of business is not in Minnesota, the records must be available somewhere in Minnesota. This is needed because the commissioner lacks the authority to enter other jurisdictions and require the production of records. It is reasonable to require a permit holder to produce records in Minnesota where the commissioner does have the authority to review them and take any necessary enforcement action.

The proposed rule sets a three-year requirement for keeping the records. The commissioner determined that three years is an appropriate period of time. Motor carriers are required to keep similar records for three years to show compliance with the federal motor carrier safety regulations. For example, see, *Code of Federal Regulations*, title 49, section 391.51, paragraph (f). Likewise, Minnesota carriers are required to keep bills of lading and freight bills for the same period of time. See, *Minnesota Rules*, part 7800.3000. Three years is a sufficient period of time to show a pattern of violations. The commissioner would rarely look at records older than three years, even if the record-keeping requirement allowed investigators to do so. Yet, one or two years is not sufficient. The commissioner probably will not have the resources to audit the records of each limousine operator on an annual or bi-annual basis and it is important that an investigator have records to show the pattern of operations over a considerable period of time.

Subpart 2. Trip and fare records. Under *Minnesota Statutes*, section 221.84, clause (4), a limousine service must charge "more than a taxicab fare for a comparable trip." The commissioner is charged with enforcing this statutory requirement. Therefore, a rule is needed to establish a record-keeping requirement that provides a means for the commissioner to determine if a limousine operator is in compliance with the law.

The proposed subpart is reasonable because it only asks for the essential information

necessary to determine if the service charges more than a taxicab for a comparable trip. If the department's enforcement staff is given this information it can be compared with similar information provided by a taxicab operator in the vicinity.

Subpart 3. Referral records. A limousine operator may refer business to another permitted operator. This practice and the reasons for it are discussed in the statement of need and reasonableness under part 8880.0300, subpart 7. That discussion also states why a referral record is necessary. This subpart is needed to specify the contents of the referral record.

The rule is reasonable because it requires only that information essential to determining which operator actually provided the service to the passenger: the date of the trip and identification of the operator and passenger. It also requires the date the referral was made. This is needed because a passenger will most likely identify the service requested by the date of the initial contact. It also shows that the trip was "prearranged."

This record-keeping requirement will allow the commissioner to determine the operator that provided the service if there is a complaint about the service or if a passenger is injured or harmed during the trip. It also serves to protect the limousine operator who makes the referral since it the record can be used to prove that the operator who was originally contacted did not provide the service.

Subpart 4. Vehicle records. This sets a minimum record-keeping requirement covering each vehicle used to provide limousine service. It is needed to specify what information is required to show compliance with the annual inspection requirement.

The proposed rule is reasonable because it asks only for information that is essential to determine compliance. Each vehicle file will contain vehicle-specific information given to the department in the limousine identification decal application. The file also must show the date and mileage of the inspection required by part 8880.0900, subpart 6. The date is needed to make sure that the vehicle is inspected annually.

The commissioner proposes that the mileage be shown so that the department can gather information about the operation of limousines. Because limousine service has not been regulated previously, the department lacks information about how many miles are traveled by vehicles while providing this service. With this information the commissioner will have a basis for proposing amendments to the rules, when necessary. If vehicles travel a large number of miles, on the average, the commissioner might propose more frequent inspections by operators. If, on the other hand, the number of miles traveled annually is relatively small, the commissioner might consider relaxing or eliminating some requirements.

The items checked during an inspection must be shown so the commissioner will know if the operator has complied with part 8880.0900, subpart 6. Maintenance and repair information is needed to show if the operator has operated vehicles with serious defects. If an inspection shows severely worn brake pads, for example, the commissioner has an interest is

whether the vehicle was repaired before being operated in that condition. The commissioner assumes that operators will make necessary repairs. If not, additional rules might be deemed necessary by the commissioner at a later date.

Subpart 5. Driver records. This subpart is needed because of the provisions relating to driver qualifications. Some record must be kept that shows the driver meets the standards.

Item A states that the record must show the driver's name and birthdate. This is necessary to determine compliance with part 8880.0800, subpart 1. The driver's license number (Item B) also is needed to show that the driver has a valid license as required by that subpart.

Item C is needed to show compliance with the physical qualification requirements in part 8880.0800, subparts 2 and 3. Once the medical examination is conducted, the driver is given a medical examiner's certificate. Likewise, a successful waiver applicant is given a waiver letter. This item is reasonable because it simply requires keeping an existing record. This minimizes the record-keeping requirement.

Item D is needed to show that the driver meets the standards in part 8880.0800, subparts 5 and 6, and to show that the operator has complied with the driving and criminal records check provisions of part 8880.0800, subpart 7. Under the proposed rule, a limousine operator has the responsibility for conducting the background check. However, it is reasonable for the department to be interested in making certain that the appropriate check of driving and criminal records was conducted.

The rule is reasonable because it requires only that information essential to determining compliance with other provisions.

Part 8880.1100 VEHICLE INSPECTION BY COMMISSIONER.

The commissioner is directed to adopt rules "for annual inspections of limousines," *Minnesota Statutes*, section 221.84, subdivision 2, clause (1). Part 8880.0900 requires a limousine operator to conduct an annual inspection of a vehicle's major mechanical systems and its frame. This part is needed to establish a requirement that the department also conduct an annual inspection of a vehicle to determine compliance with the rule. These annual inspections are necessary to fulfill the legislature's mandate.

Subpart 1. Authority to inspect. The first sentence of this subpart is needed to establish the basic inspection requirement discussed above. The second sentence is needed to establish the commissioner's authority to conduct additional vehicle inspections when necessary.

Upon issuing a limousine identification decal, the department will record the vehicle's year, make, vehicle identification number, decal number, and permit holder information in a computer data base. Retrieving this information will show how many vehicles a permit holder operates. When a vehicle is inspected by the commissioner, the inspection date and results will

also be recorded. During the first year the limousine program is operating, the department will issue decals upon request. After that time, the department will not issue a decal for a vehicle that it has not inspected sometime during the preceding year.

An annual vehicle inspection by the department is needed to determine if a limousine is in safe mechanical condition and carries the safety equipment required by the rule. Since the department must issue annual decals, it is reasonable to tie the inspection to decal issuance. A decal will show that the vehicle met minimum safety requirements on the date it was issued.

The department also needs the authority to conduct additional inspections throughout the year. It is reasonable to give the department this authority for two reasons. First, the condition of a vehicle, though inspected when a decal is issued, might change during the year. The department must be able to monitor a vehicle's condition throughout the year to make sure it is safe for passenger transportation. Second, if a passenger files a complaint about the condition of a vehicle, the department must be able to determine if the complaint is warranted. This will require a fact-finding investigation, including a vehicle inspection. If the allegations in a complaint are substantiated, the department will act under the commissioner's administrative penalty authority. A thorough investigation will be necessary to support the issuance of an administrative penalty order.

Subpart 2. Inspection report. This subpart is needed to provide appropriate documentation of a vehicle inspection. It is reasonable to require the department to give a limousine operator notice of the results of an inspection by giving the operator a copy of a standard inspection report. This subpart lists the items that must be included in a report.

Items A and B simply identify the inspector and the operator of the limousine. An operator should know the name of the inspector. If an operator takes issue with the inspection report, he should be able to contact the inspector or the inspector's supervisor to discuss it.

Items C and D identify the vehicle and the specific inspection. This information is necessary so that the correct information is entered in the department's data base. This will ensure proper recording of the inspection so that a decal may be issued when requested.

Item E identifies any noncompliance. This is necessary to give notice to the operator of items that need correcting. The department also needs this information if it intends to address the violation through the administrative penalty process.

The rule is a reasonable way to document an inspection. It provides all the information needed by an operator and the department.

Subpart 3. Limousines declared out of service. This subpart is needed to establish a means of temporarily removing a dangerous vehicle from service. It corresponds to part 8880.0900, subpart 1, which prohibits operation of a vehicle when its mechanical condition makes it imminently hazardous. The department will use the criteria incorporated in that subpart

in making out-of-service declarations.

The proposal is reasonable because it addresses a serious safety issue in the most direct way. Assessing an administrative penalty for operating extremely dangerous vehicles would not be an effective means of protecting the public's safety. By using the out-of-service criteria, the department will be able to identify specific dangerous conditions, inform a limousine operator of them, and make sure the vehicle is not used to provide passenger transportation until they are corrected.

Part 8880.1200 ADMINISTRATIVE PENALTIES.

Minnesota Statutes, section 221.84, subdivision 3, states:

> The commissioner may issue an order requiring violations of statutes, rules, and local ordinances governing operation of limousines to be corrected and assessing monetary penalties up to $1,000. The commissioner may suspend or revoke a permit for violation of applicable statutes and rules and, upon the request of a political subdivision, may immediately suspend a permit for multiple violations of local ordinances. The commissioner shall immediately suspend a permit for failure to maintain required insurance and shall not restore the permit until proof of insurance is provided. A person whose permit is revoked or suspended or who is assessed an administrative penalty may appeal the commissioner's action in a contested case proceeding under chapter 14.

The first and last sentences govern the administrative penalty process. This part is needed to establish that process.

Subpart. 1 Orders. This subpart incorporates the language in the first sentence of the statute. It is reasonable to establish, in the rule, the commissioner's administrative penalty authority and to specify that an administrative penalty order must conform to the requirements of this part.

Subpart 2. Issuance, payment, enforcement. This subpart incorporates subdivisions of *Minnesota Statutes*, section 221.036, in which pertinent parts of the commissioner's existing administrative penalty procedure are found. The incorporated subdivisions state:

> **221.036 ADMINISTRATIVE ORDERS AND PENALTIES.**
>
> Subd. 2. **Election of penalties.** The commissioner may not both assess an administrative penalty under this section and seek a criminal sanction under section 221.291, subdivision 3, for violations arising out of the same inspection or audit.
>
> Subd. 3. **Amount of penalty; considerations.**
>
> (a). . .
>
> (b). . .
>
> (c) In determining the amount of a penalty, the commissioner shall consider:
>
> (1) the willfulness of the violation;
>
> (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
>
> (3) the history of past violations, including the similarity of the most recent violation and the violation to be penalized, the time elapsed since the last violation, the number of previous violations,

and the response of the person to the most recent violation identified;

(4) the economic benefit gained by the person by allowing or committing the violation; and

(5) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

Subd. 4. **Contents of order.** An order assessing an administrative penalty under this section must include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, order, or material term or condition of a license that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 5. **Corrective order.** (a) The commissioner may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order was received.

(b) The person to whom the order was issued shall provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The commissioner shall determine whether the violation has been corrected and notify the person subject to the order of the commissioner's determination.

Subd. 6. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the person requests review of the order under subdivision 7, 8, or 9 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the receipt of a notice by the person subject to the order of the commissioner's determination under subdivision 5, paragraph (b), that information supplied to the commissioner is not sufficient to show that the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For a repeated or serious violation, the commissioner may issue an order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due within 30 days after the order was received unless review of the order under subdivision 7, 8, or 9 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties on the date that the penalty is due and payable if no request for review is filed under subdivision 7, 8, or 9.

Subd. 11. **Enforcement by attorney general.** (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At a court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

The incorporation of subdivision 2 [*election of penalties*] is needed to clarify that the commissioner must choose to enforce the law through the criminal process or the administrative penalty process; not both. The department's authority to pursue a criminal prosecution is found in *Minnesota Statutes*, section 221.291. Subdivisions 1 and 2 apply to violations of chapter 221,

including section 221.84. They state:

> **Conspiracy, attempt, aid or abet.** Except as provided in subdivisions 4 and 5, and sections 221.036 and 609.671, a person who commits, procures, aids or abets or conspires to commit, or attempts to commit, aid or abet in the violation of a provision of this chapter or a valid order or rule of the commissioner or board issued hereunder, whether individually or in connection with one or more persons or as principal, agent, or accessory, shall be guilty of a misdemeanor, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate a provision of this chapter, is likewise guilty of a misdemeanor. Every distinct violation is a separate offense.
>
> **Directing another to violate.** Except as provided in subdivisions 4 and 5, and sections 221.036 and 609.671, a person employing or otherwise directing the driver of a vehicle to require or knowingly to permit the operation of the vehicle upon a highway in a manner contrary to this chapter is guilty of a misdemeanor.

It is reasonable to give the "election of penalty" protection to limousine operators since it is available to others subject to the administrative penalty process.

The incorporation of subdivision 3, paragraph (c), [*amount of penalty; considerations*] is needed to provide the factors the commissioner must consider in determining the penalty amount. The department has developed a detailed and thorough method governing how it arrives at a recommended administrative penalty amount. Incorporation of this subdivision is reasonable because it will allow the department to use the same process to arrive at penalties for limousine operators as it currently uses in all other administrative penalty cases.

The incorporation of subdivision 4 [*contents of order*] is needed to specify what an order must include. It is reasonable to use this provision because it gives the person receiving the order sufficient information about the violation, the penalty, and the person's right to a review of the order.

The incorporation of subdivision 5 [*corrective order*] is needed and reasonable because it conforms to the language in *Minnesota Statutes*, section 221.84, subdivision 3, stating that "the commissioner may issue an order requiring violations of statutes, rules, and local ordinances governing operation of limousines to be corrected . . ." One of main goals of the department's enforcement efforts is to achieve compliance with applicable laws and rules. Penalizing violators is secondary. The corrective order provision is essential to achieving compliance with the laws and rules governing the operation of limousines.

The incorporation of subdivision 6 [*penalty*] is needed to establish a system for "forgivable" and "nonforgivable" penalties. A forgivable penalty is appropriate for a minor or "first-time" violation. It assists in achieving compliance without requiring payment in such cases. A nonforgivable penalty is appropriate for a serious or repeated violation. Serious violations must be deterred and a nonforgivable $1000 penalty serves this purpose. A repeated violation shows that the violator has not willingly conformed to applicable laws and rules and must be penalized to achieve compliance. The subdivision also sets out certain times within which actions must be taken. It is reasonable to incorporate this subdivision since it offers the

same amount of time for compliance, and the same "forgivable / nonforgivable" penalties as are applicable to other persons subject to this procedure.

The incorporation of subdivision 11 [*enforcement by attorney general*] is needed to specify how unpaid penalties are collected. It would be unreasonable to provide a procedure for assessing penalties without also providing for their collection.

Subpart 3. Demand for hearing. *Minnesota Statutes*, section 221.84, subdivision 3, states that a person who is assessed an administrative penalty may appeal the commissioner's action in a contested case proceeding under chapter 14. *Minnesota Statutes*, sections 14.57 to 14.62 and *Minnesota Rules*, parts 1400.5100 to 1400.8400 govern contested case hearings. Unlike *Minnesota Statutes*, section 221.84, *Minnesota Statutes*, section 221.036, provides for an "expedited administrative hearing." The department may not incorporate the expedited administrative hearing provisions of that section since they would conflict with the limousine statute.

This subpart is needed to establish requirements for filing a demand for hearing since the statutes and rules do not address the issue. The rule is reasonable because the first sentence of this subpart conforms to the first sentence in *Minnesota Statutes*, section 221.036, subdivision 7. That section (and the proposed rule) provides a reasonable time for filing a demand. Also, setting a different time limit would unnecessary complicate the department's administration of its penalty program.

The subpart also specifies the office within the department to which the demand must be mailed or delivered. The Office of Motor Carrier Services is located in the Administrative Truck Center and is responsible for administering the limousine regulation program. Demands sent to the Transportation Building in St. Paul will take longer to process. This subpart will reduce the number demands sent to the wrong location. A statement of the issues is needed because *Minnesota Rules*, part 1400.5600, subpart 2, item D, requires the department to include a "statement of the allegations or issues to be determined" in the notice of hearing it must give.

Subpart. 4. Hearing. This subpart is needed to set a time limit by which the commissioner must initiate a contested case hearing. *Minnesota Rules*, part 1400.5600, states that a contested case is commenced by service of a notice and order for hearing. Before preparing the notice and order, the commissioner is required to request the assignment of an administrative law judge. *Minnesota Rules*, part 1400.5400, states that the chief administrative law judge has 10 days to act on the request. Therefore, the proposed rule gives the commissioner sufficient time to request the assignment of an administrative law judge and to prepare and serve the notice and order for hearing without allowing for any unnecessary delay. The rest of this subpart is identical to provisions found in *Minnesota Statutes*, section 221.036, subdivision 7.

Part 8880.1300 SUSPENSION OR REVOCATION OF PERMIT.

Minnesota Statutes, section 221.84, subdivision 3, gives the commissioner the authority to suspend and revoke limousine service permits. The language of that subdivision provides that the commissioner:

(1) *may suspend or revoke* a permit for violation of applicable statutes and rules;
(2) upon the request of a political subdivision, *may immediately suspend* a permit for multiple violations of local ordinances; and
(3) *shall immediately suspend* a permit for failure to maintain required insurance and shall not restore the permit until proof of insurance is provided.

Also, under that subdivision "a person whose permit is revoked or suspended . . . may appeal the commissioner's action in a contested case proceeding under chapter 14." This part is needed to establish specific violations that lead to the suspension or revocation of a permit and to set the procedure to be followed in such cases.

Subpart 1. Indefinite suspension period. The commissioner has determined that a rule is needed that states specifically which violations will lead to suspension of a permit. Administrative rules are subject to review by the revisor of statutes, the attorney general, and an administrative law judge. Rules that are not specific enough to tell people what is prohibited, or that do not provide standards for enforcement, or that are likely to be applied inconsistently, or that give the agency too much discretion might be disapproved. This subpart is intended to give greater specificity to the suspension process.

Item A requires the commissioner to suspend a permit for failure to comply with insurance requirements. It is reasonable to include this provision because it is in harmony with that part of *Minnesota Statutes*, section 221.84, subdivision 3, which states:

> The commissioner shall immediately suspend a permit for failure to maintain required insurance and shall not restore the permit until proof of insurance is provided.

Item B requires the commissioner to suspend a permit for a willful refusal to permit an inspection of an operator's permit, the records required by the rule, or a limousine. One of the primary ways the department will enforce the rule is by inspecting records and vehicles. It is reasonable to suspend the permit of one who deliberately frustrates appropriate enforcement efforts.

Item C requires the commissioner to suspend a permit if an operator does not pay an administrative penalty that is due. The administrative penalty process allows for administrative review of an administrative penalty order. A permit could not be suspended until the entire process is completed since a penalty would not be "due under part 8880.1200" until then. However, once a penalty is final it should be paid or satisfactory payment arrangements should be made. Without this provision the department's only recourse in collecting penalties would

be to initiate a collection lawsuit against a violator. If necessary the commissioner will still bring such actions but suspending a permit for failure to pay a penalty is a more efficient and effective tool for promoting compliance.

Under this subpart the commissioner lacks discretion in deciding when to suspend a permit. It requires suspension if any of the above three conditions occur. This gives clear notice to limousine operators of the consequences of committing one of these violations.

The subpart also provides that a permit may not be restored until compliance is achieved. This is in keeping with the language in *Minnesota Statutes*, section 221.84, subdivision 3, at least for insurance violations. The commissioner believes it is necessary and reasonable to continue the suspension until an operator complies with the inspection and administrative penalty provisions as well.

Subpart 2. Definite suspension period. This subpart is needed and reasonable because it conforms to the language in *Minnesota Statutes*, section 221.84, subdivision 3, that states:

> upon the request of a political subdivision, [the commissioner] may immediately suspend a permit for multiple violations of local ordinances.

The commissioner proposes to suspend a permit for 15 days for such violations. A 15-day suspension is a significant sanction because of the income that would be lost by an operator. The commissioner considered a longer and shorter period of time for definite suspensions. It was decided that a shorter time would not be an effective deterrent or an adequate sanction for such violations. On the other hand, a longer period might effectively put an operator out of business and this is not the commissioner's intention. Fifteen days strikes a reasonable balance.

Subpart 3. Revocation. A rule is needed that states specifically which violations will lead to revocation of a permit. This subpart is intended to give greater specificity to the revocation process so that the rule is not subject to challenge on grounds of lack of specificity.

Item A requires the commissioner to revoke the permit of an operator who knowingly made a material false statement in the permit application. It is similar to the driver's license cancellation provision of *Minnesota Statutes*, section 171.14. *Black's Law Dictionary* (Revised Fourth Edition), defines "material" as "important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form." Therefore, a "material statement" is one that is important or that has an effect on the department's decision to issue a permit. This is the meaning intended by using the term in the proposed rule.

An incorrect address, by itself, would not be considered a "material statement." However, a statement that none of the applicant's corporate directors of officers, its general partners, limited liability company board members, or owners of the business has had a permit revoked during the preceding year, if false, would be "material." Under part 8880.0500, subpart 1, the commissioner is prohibited from issuing a permit under those circumstances.

It is reasonable to revoke the permit of a person who is not entitled to it but who obtains it through false or misleading statements. Since the permit would not have been granted in the first place, revocation is appropriate.

Item B requires the commissioner to revoke the permit of a person who operates a limousine service during the time the person's permit is suspended. This provision is needed to give further support to the sanction of suspension. Assessing an administrative penalty would not be an adequate method of addressing such violations. Even if the commissioner assessed a penalty of $1,000 for each day an operator was in violation, an operator might still be able to net sufficient income to justify continued operation. In addition, the process for reviewing administrative penalty orders and for collecting penalties when due would be unnecessarily time-consuming and expensive.

It is reasonable to revoke a permit under these circumstances since there is no other efficient and effective sanction for operating under suspension.

Item C requires the commissioner to revoke the permit of an operator who does not have an indefinitely suspended permit restored within 60 days. A person who is unwilling or unable to comply with the insurance requirements or to pay an administrative penalty or who wilfully continues to refuse an inspection exhibits a lack of fitness and ability to continue in the business of providing for-hire limousine service. It is reasonable to revoke the permit of such a person. If a person regains the ability to provide service, a new permit may be applied for after one year. This provision will help to ensure that only those operators who have the inclination to obey the limousine laws and rules and who have the financial ability to do so will engage in providing limousine service to the public.

Subpart 4. Notice of suspension or revocation. This subpart is needed to establish a procedure the department must follow in issuing notices of suspension or revocation. Timely notice is important to limousine operators so that they may exert their procedural and substantive rights to have suspensions and revocations reviewed by an administrative law judge.

It is reasonable to require that such notices by sent by certified mail. This is the process used in mailing many different types of notices to regulated persons including those described in *Minnesota Statutes*, section 221.185, [*Notice of Cancellation of Operating Authority*]. The commissioner proposes that the certified mailing be sent to "the last known address" of the operator. This places the burden on the limousine operator to keep its application information current as required in part 8880.0500, subpart 6. It would be unreasonable to require the commissioner to search for an operator who fails to give the department its current address.

The proposed rule states that a suspension or revocation is effective five days after it is mailed. Five days is a reasonable time since it allows more than sufficient time for mail delivery within the state. Since the commissioner cannot force operators to pick up or open their mail, it is reasonable to require operators who receive certified mail from the commissioner to take immediate action to discover its contents.

Subpart 5. Demand for hearing. This subpart is needed to establish a procedure to implement that part of *Minnesota Statutes*, section 221.84, subdivision 3, which states:

> A person whose permit is revoked or suspended or who is assessed an administrative penalty may appeal the commissioner's action in a contested case proceeding under chapter 14.

Under the proposed rule, a demand for hearing initiates the appeal procedure. It must be delivered or mailed to the department within 20 days from the date the notice was mailed. Twenty days is a reasonable amount of time for a person to decide if a suspension or revocation should be appealed. Even if it takes five days for a person to receive the suspension or revocation notice and an additional five days for the department to receive a mailed demand for hearing, a person still has ten days to decide on the appeal and to prepare a demand for hearing. The proposed rule does not require that a demand for hearing be in a particular format. It is sufficient if gives the department a reasonable means of determining that a person has demanded a hearing.

However, the proposed rule does require a statement of the issues the limousine operator intends to raise at the hearing. This is a reasonable provision for the same reasons given in the discussion of the administrative penalty provisions. In addition, it gives the department an opportunity to resolve some issues without a hearing. For example, if an operator alleges that the department made a mistake in issuing a suspension for failure to maintain insurance coverage, the department can discuss the matter with the operator, recheck its records, and possibly resolve the issue without the need for a hearing. Such resolutions are in the interests of the department and limousine operators since hearings are expensive and time-consuming for both parties.

Subpart 6. Hearing. This subpart is needed to establish the hearing procedure for contested cases resulting from a demand for hearing under this part. The proposed rule is reasonable because it incorporates the same existing statutory procedure as the commissioner proposes to use for appealed administrative penalties. Uniformity of procedure is in the interests of limousine operators. Establishing two different procedures could lead to unnecessary confusion about procedural requirements. The rule establishes a reasonable procedure to be followed in both types of appeals. It protects the substantive and procedural rights of limousine operators.

Subpart 7. Revocation final. This subpart is needed to clarify that a revoked permit may not be reinstated. It was pointed out earlier in the statement of need and reasonableness that there is no public notice and hearing requirement and the commissioner is allowed no discretion in issuing permits. If a permit is applied for it will be granted with two exceptions. First, a permit will not be issued to a person who already has one. Second, a permit will not be issued to a person who has had one revoked in the preceding year.

There is no need to provide for reinstatement of a revoked permit since a permit will not gain value as an asset. Each permit would gain value if the number of permits available were

regulated. Since that is not so, it is unnecessary to reinstate a permit. A person could simply apply for a new one unless the person were temporarily disqualified because of one of the circumstances mentioned above.

It is reasonable to provide that the holder of a revoked permit may not apply for a new permit for one year. This gives effect to the sanction of revocation. If a person with a revoked permit could apply for and receive a new permit immediately after revocation, there would be no effective sanction at all.

A one year period is a reasonable disqualification time. Longer and shorter times were considered and it was decided that one year is appropriate. Revocation is a serious sanction. It takes place only when one of the circumstances described in subpart 3 occurs. A person that commits one of those violations has demonstrated an inability or unwillingness to follow the laws and rules governing limousine service. It is reasonable and appropriate that a person with a revoked permit be removed from the business of providing for-hire limousine service for a one year period.

Part 8880.1400 COOPERATIVE AGREEMENTS.

Minnesota Statutes, section 221.84, subdivision 2, clause (5), directs the commissioner to adopt rules including "provisions for agreements with political subdivisions for sharing enforcement costs." This subpart is needed to fulfill that mandate.

In addition to the statutory language, this subpart states that cooperative agreements must include provisions for enforcing and implementing the rule; exchanging information; the joint investigation and inspection of limousine operators, drivers, vehicles and records. The rule is reasonable because it provides greater specificity of those items that are necessarily involved in "sharing enforcement costs." "Shared cost" necessarily means that the department and political subdivision will share implementation and enforcement activity. It also means that there must be cooperative exchanges of enforcement information. And, when necessary, the department and political subdivision must conduct joint operations to investigate and enforce the rule.

Limousine Advisory Committee Members

The following persons attended one or more meetings of the department's Limousine Advisory Committee.

Gordon Allison, Metropolitan Airports Commission

Bud Chaldy, Long Lake Limousine

Maurice Driscoll, Gold Crown Limousine

Larry Dunn, Johnson-Williams Limousines

Jeff Gongoll, Manager of Ground Transportation, Minneapolis / St. Paul International Airport

Clara Schmidt-Gonzalez, Minneapolis License Department

Robert Harris, LCL Executive Sedan Service

John Henderson, Henderson Transportation

Tom Luchsinger, Renaissance Limousine

Craig Ludke, Borton Limousine

Charles Mitchell, Minnesota Limousine Owner's Association

Michael P. Ryan, Title & Registration Manager, Department of Public Safety

Maureen Scallen, Airport Express / Twin City Town Car

Grant Wilson, City of Minneapolis

Witnesses and Summary of Testimony

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

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

1. Ward Briggs. Ward Briggs is a staff attorney with the Department of Transportation, Office of Motor Carrier Services. He has chaired the department's Limousine Advisory Committee and has been involved in the development and drafting of the proposed rule. He will be available to testify about the need for and reasonableness of any of the proposed provisions.

2. Shelly Meyer. Shelly Meyer also is an employee of the Office of Motor Carrier Services. Her duties will include administering the limousine service program for the

department. She has been involved in developing the limousine service program and preparing to implement the rule, once adopted. She will be available to testify about the need for and reasonableness of any of the proposed provisions. Specifically, she can be expected to address the administrative provisions in parts 8880.0400 to 8880.0700.

Limousine Advisory Committee. The department may, if necessary to adequately address evidence and argument presented by the public, ask certain members of the department's Limousine Advisory Committee to testify about industry practices and the need for and reasonableness of any the proposed provisions. The members that might be asked to testify are:

Larry Dunn
Jeff Gongoll
Clara Schmidt-Gonzalez
John Henderson
Charles Mitchell
Michael P. Ryan

Conclusion

Based on the above part-by-part justification, the rule is needed to establish the limousine service program enacted by the Minnesota Legislature in *Minnesota Statutes*, section 221.84. The department's proposal is a reasonable means of meeting the need because it fulfills the commissioner's statutory rulemaking mandate while adequately addressing limousine industry and small business concerns. Only those provisions necessary to achieve the legislature's objectives in enacting *Minnesota Statutes*, section 221.84, or those that are required to effectively implement, administer, and enforce that section have been included in the rule.

Dated: Sept. 30, 1993

James N. Denn, Commissioner
Department of Transportation