STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Adoption of the Rules of the State Department of Transportation Governing Limousine Service and Permit Requirements, Minn. Rules Parts 8880.0100-8880.1400

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for a public hearing before Administrative Law Judge Bruce D. Campbell, commencing at 9:00 a.m. on December 14, 1993, at the State Capitol in St. Paul, Minnesota, and continued until all interested persons present had an opportunity to participate by asking questions and presenting oral and written comments.

This Report is part of a rulemaking hearing procedure required by Minn. Stat. §§ 14.01 - 14.28 (1992) to determine whether the proposed rules of the Commissioner of Transportation governing limousine service and limousine permit requirements should be adopted by the Commissioner. The Agency panel at the hearing consisted of the staff attorney for the Department of Transportation (DOT), Ward Briggs. Also present at the hearing representing the Department were Fred Danzl, Richard Norberg and Shelly Meyer. Melissa Wright, Assistant Attorney General, 525 Park, Suite 200, St. Paul, Minnesota 55103, appeared in the proceeding on behalf of the Commissioner of Transportation. No witness was solicited by the Commissioner to appear on behalf of the Department at the hearing.

Forty-five members of the public signed the hearing register at the hearing and 20 persons provided oral comments. At the hearing, the DOT submitted DOT Exhibits A - K, inclusive. Subsequent to the hearing, the Agency supplemented the record, at it had promised to do at the hearing, by sumitting DOT Exhibits L - O, inclusive. At the public hearing, the Administrative Law Judge received Public Exhibits 1 - 5, inclusive. During the period for submitting written comments, the Administrative Law Judge received a submission from Duane Wilson, the president of White Glove Limousine Service, Inc., a submission from Richard P. Golden, president of Golden Limousine, a submission from Robert S. Harris, president of LCL, The Business Sedan, a submission from James W. Ruprecht, vice-president of Kids Around Town, Inc., with an attachment, and a submission from Edwin E. Cain, on behalf of the Minnesota Limousine Owners Association. The DOT provided an initial written summary of testimony and comment and a written submission responsive to the filings made with the Administrative Law Judge during the comment period.

The record of this proceeding closed for all purposes on January 10, 1994.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule. If the Commissioner of Transportation makes changes in the rule other than those recommended in this report, he must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On October 4, 1993, the Department of Transportation filed the following documents with the Chief Administrative Law Judge:

(a) A copy of the proposed rules certified by the Revisor of Statutes.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) The Statement of Need and Reasonableness.
(f) A Statement of Additional Notice.

2. On November 1, 1993, a Notice of Hearing and a copy of the proposed rules were published at 18 State Register 1178.

3. On October 26, 1993, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On November 10, 1993, the Department filed the following documents with the Administrative Law Judge:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) A Statement of Additional Notice.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) A copy of the Notice of Intent to Solicit Outside Opinion, published at 16 State Register 736 on September 23, 1991. The Department did

not receive any response to its Notice of Intent to Solicit Outside Opinion.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The period for submission of initial written comment and statements remained open through January 3, 1994. The record closed on January 10, 1994, the fifth business day following the close of the initial comment period.

6. At the hearing herein, the Department filed with the Administrative Law Judge as DOT Exhibits J and K proposed amendments to the rules and a supplemental Statement of Need and Reasonableness related to the amendments. Additional amendments were made in the submission by the Department in response to public testimony, received by the Administrative Law Judge on January 3, 1994. For purposes of this Report, the Administrative Law Judge will rely on an amalgam of DOT Exhibits A, J and the written submission in response to public comment from the Department received by the Administrative Law Judge on January 3, 1994, for the text of the Department's final proposals in this proceeding. The proposed amendments were either presented at the hearing prior to the receipt of any testimony or were available for public review at the Office of Administrative Hearings during the responsive comment period.

Nature of Proposed Rules

7. The Commissioner of Transportation is required by Minn. Stat. § 221.84 (1992) to adopt rules governing the issuance of permits to entities providing for-hire limousine service, as that term is defined in Minn. Stat. § 221.84, subd. 1 (1992). The statute requires that no for-hire limousine service shall be provided unless the entity providing the service has a permit from the Commissioner of Transportation. Subdivision 2 of Minn. Stat. § 221.84 includes a listing of the required content of the rules and allows the Commissioner to adopt other requirements "deemed necessary". Minn. Stat. § 221.84, subd. 3 (1992), authorizes the regulation of limousine service through a permitting system and provides for a contested case appeal procedure under the Minnesota Administrative Procedure Act. The rules proposed by the Department also relate to the issuance of administrative penalties. Minn. Stat. § 221.84, subd. 4 (1992), sets the fee for a permit issued to provide limousine service at $150 and the fee for a limousine decal at $80 per vehicle.

Statutory Authority

8. The Commissioner's statutory authority to adopt rules governing the issuance of permits for the provision of limousine service and otherwise regulating the provision of the service is contained in Minn. Stat. § 221.84 (1992). That section not only authorizes but specifically directs the Commissioner to adopt rules governing the regulation of the provision of limousine service in Minnesota. The statutory authority relied upon by the Board in its Statement of Need and Reasonableness (SONAR), Minn. Stat. § 221.84 (1992), clearly authorizes the adoption of the proposed rules.

Small Business Considerations

9. Complying with the proposed rules will have some unknown monetary impact on small businesses, as defined by Minn. Stat. § 14.115 (1992). In its Statement of Need and Reasonableness, the Department stated that it has considered the impact of the proposed rules on small business and concluded that uniformity of application for the protection of the public is necessary so that the safety of the public and the ability of the government to effectively regulate the provision of limousine service will not vary as a result of the size of the limousine business involved. In the SONAR, at page 4, the Commissioner states that he considered the methods for reducing the impact on small businesses listed in Minn. Stat. § 14.115, subd. 2 (1992). At pages 5-6 of the SONAR, the DOT states the efforts it used to attempt to acquaint small businesses with the pendency of this rulemaking proceeding, including the following: participation by representatives of small businesses as members of the Department's Limousine Advisory Committee; cooperation with the Minnesota Limousine Owners Association (MLOA) to keep its members informed of proposals under consideration; distribution of drafts of the proposed rules to small businesses requesting a copy; and a direct mailing of the proposed rules to any individual or company, including small businesses, that had expressed an interest in the rulemaking proceeding.

In its Notice and Order for Hearing, the Department also specifically stated that the proposed rules would have an impact on small businesses and stated its rationale for not constructing less stringent requirements for entities meeting the definition of a small business. It should be noted that without exception the limousine operators in the State of Minnesota all qualify as small businesses under Minn. Stat. § 14.115, subd. 1 (1992). At the hearing, several individuals stated that they believed that Minn. Stat. § 14.115 (1992) had not been satisfied. Initially, it was argued that the Department should have sent a copy of the Notice of and Order for Hearing to all individuals in the State of Minnesota who held a "LM license plate". This comment was made by the secretary of the MLOA, Christine Boniarccyk, Ronald Riach, on behalf of the MLOA, Edwin Cain, on behalf of the MLOA, and Anthony Staffenhagen, on behalf of Aristocrat Limousine Service. Comments on the subject of accommodation to small businesses included the desire to see a cost impact statement on small business, and a relaxation of the requirements of proposed Rule 8880.0300, subp. 7 and 8, relating to trip referrals and the leasing of vehicles to provide service.

In its Response to Public Comments, the Department reiterated that, in the adoption of the rules, it had considered all limousine operators as small businesses and adopted only the minimum rules and recordkeeping required by Minn. Stat. § 221.84 (1992). It also reaffirmed its earlier position that the public safety could not be jeopardized on the basis of the size of the service provider. The Administrative Law Judge finds that the Commissioner has appropriately accommodated the interests of small businesses as required by Minn. Stat. § 14.115 (1992).

Other Statutory Requirements

10. The adoption of the proposed rules will not require a total expenditure of public monies by local public bodies of more than $100,000 in

either of the two years immediately following adoption. Therefore, Minn. Stat. § 14.11, subd. 1 (1992), is not applicable to this rulemaking proceeding.

11. The adoption of the proposed rules will not have a direct or substantial adverse impact on agricultural land. Therefore, Minn. Stat. § 14.11, subd. 2 (1992), is not applicable to this rulemaking proceeding.

12. Although the rules as proposed do establish fees for the issuance of permits and decals, compliance with Minn. Stat. § 16A.128 (1992), is not required because the amount of the fees is established by Minn. Stat. § 221.84 (1992). Minn. Stat. § 16A.128 (1992), only applies when the amount of the fee is not established by statute.

Request for Continuance

13. The most frequent comment received by the Administrative Law Judge in this rulemaking proceeding was that the Commissioner should refrain from adopting rules related to the provision of limousine service to give the industry an opportunity to present a comprehensive livery proposal to the Legislature. Persons making oral comments related to a request for postponement included: Richard P. Golden; Robert Harris; Pat Mancuso; Christine Boniarccyk; Maurice Driscoll; William Bishop; Craig Ludke; and James Ruprecht. Written submissions containing a similar request were received from the following: Richard P. Golden; Robert Harris; and Edwin E. Cain. Persons advocating a continuance cite a report to the Legislature from the Department of Transportation issued in 1993 that the entire transportation regulatory system, which has been amended in a piecemeal fashion, now requires a comprehension reexamination. Pub. Ex. 4; DOT Ex. L. The request for a continuance involves primarily two distinct subject matters: the current status of the Personal Transportation Services (PTS) section, Minn. Stat. § 221.85 (1992), which is scheduled for repeal; and asserted defects in the quality and quantity of participation afforded the industry by the Department in formulating its rules.

14. The status of the PTS section, Minn. Stat. § 221.85 (1992), is discussed at length in the SONAR at pages 1 through 4. The Department's reasons for not delaying the rulemaking hearing are contained in DOT Ex. M. It is apparent to the Administrative Law Judge that the proposed rules can be applicable irrespective of the regulatory treatment afforded Personal Transportation Service under Minn. Stat. § 221.85 (1992). The Legislature may consider any proposal it deems relevant during the 1994 Session without hindrance from the proposed rules. The Commissioner is under a statutory directive, contained in Minn. Stat. § 221.84 (1992), to adopt rules related to the provision of limousine service in the State of Minnesota. The Commissioner has already accommodated requests for delay to make presentations to the Legislature, earlier, as described in the Statement of Need and Reasonableness at pages 1-4. The Administrative Law Judge, at the hearing, asked persons requesting a delay to provide any legal authority that exists for the Administrative Law Judge to prevent the Commissioner from adopting the proposed rules because the Legislature, it is hoped, may adopt a more comprehensive statute. No such authority was provided and the Administrative Law Judge knows of none. At best, the request for a continuance or a delay in adopting the proposed rules is addressed to the discretion of the

Commissioner. It is the Commissioner who must finally decide whether rules are adopted and, within statutory limitations, the timetable for such adoption.

15. A second argument for a continuance is that some members of the industry believe that they were not appropriately consulted, either apart from the Advisory Committee process or as members of the Advisory Committee in the formulation of the final draft of the proposed rules. That position is reflected in Pub. Ex. 1. As noted by the Department, however, the substance of the proposed rules had been approved by the Advisory Committee and the Department believed that it had sufficient information upon which to make reasonable determinations regarding the changes it made after the last Advisory Committee meeting. Moreover, certain of the changes related to the particular expertise of the Department. The Administrative Law Judge finds that the Department was not required by law to obtain any industry advice on the form of the proposed rules and in attempting to involve the industry in the formulation of the rules it made substantially more than a good faith effort to accommodate industry participation. Finally, the persons requesting more Advisory Committee meetings were not able to specify in any detail how additional meetings would correct any asserted deficiencies in the proposed rules.

16. As a consequence of Findings 13-15, supra, the Administrative Law Judge finds that the granting of a postponement in the adoption of the proposed rules is a matter directed to the discretion of the Commissioner. Absent a substantive defect, the Administrative Law Judge may not impose upon the Commissioner his view of the advisability of postponing further action on the rules.

Description by Type of Vehicle

17. An additional overall comment about the structure of the proposed rules was repeated by a number of commentators. Individuals stated that rules which regulated in terms of the type of vehicle providing service rather than the service offered were entirely inappropriate. Pub. Ex. 5; Testimony of Robert S. Harris; Testimony of John Henderson; Testimony of Ronald Riach; Written Submission of Richard P. Golden; and Written Submission of Robert S. Harris. The commentators suggested that the more progressive livery legislation relies on the service provided rather than the type of vehicle providing service. As noted in Public Exhibit 5, only 40% of all livery vehicles nationwide that offer limousine service are stretch limousines. The majority of the vehicles providing such service are sedans of various types. As noted by the Department, however, Minn. Stat. § 221.84, subd. 1, clause (2) (1992), states that limousine service must be provided in "an unmarked luxury passenger automobile that is not a van or stationwagon and has a seating capacity of not more than 12 persons excluding the driver." The focus of the statute is on the type of vehicle used, as well as the service provided. Therefore, the Department lacks the authority to draft rules for the provision of limousine service under the statute that ignores the type of vehicle in which the service is provided. The limitation of the statute to luxury passenger automobiles precludes a definition solely in terms of the type of service provided. The Administrative Law Judge, therefore, rejects the comments offered that the rules are defective in that they consider the type of vehicle used rather than the service provided.

Rule Enforcement

18. A number of commentators suggested that the rules were generally defective in that they provide for no specific enforcement mechanism. Some commentators also questioned the ability and commitment of the Department to enforce the rules, given the small amount of revenue that would be generated as compared to the government's enforcement expenses. This comment was made by the following persons: Patrick Mancuso; Maurice Driscoll; Anthony Staffenhagen; Craig Ludke; and Cynthia Enright. The Administrative Law Judge agrees that no specific enforcement mechanism is provided in the rules to police the limousine permitting system established. However, enforcement responsibility under the statute is on the Department. The Administrative Law Judge must assume that enforcement costs will be provided by the Legislature as a regular portion of the budget of the Department. The Administrative Law Judge does not believe that this licensing program must, in fact, be self-sustaining. That result was not intended by the Legislature because it permanently fixed the amount of the fees in the statute. The Administrative Law Judge finds that concerns about enforcement are not specific to this individual set of rules. Enforcement is the responsibility of the Department for which the Legislature must provide resources. The Administrative Law Judge cannot assume that the Department has no commitment to enforcement given its statutory responsibility or that the Legislature will not provide sufficient resources for the task. The Department has stated that the rules will be enforced. DOT Ex. N.

19. Several commentators, including John Henderson, William Bishop and Edwin Cain, testified that they attended a meeting between the Minnesota Department of Transportation and MLOA representatives on September 7, 1993. They stated that Betsy Parker, at that meeting, made statements that the proposed limousine rules were unenforceable. Ms. Parker's explanation of the meeting is contained in DOT Ex. N. Ms. Parker, the Director of the Office of Motor Carrier Services, Department of Transportation, states that she made no statements at the meeting of September 7, 1993, which should be construed to imply that the limousine statute and the proposed rules are unenforceable. Ms. Parker states her opinion that her office has the ability to enforce the rules. The Department, in its Response to Testimony, at page 18, states that the Department believes the proposed rules are enforceable.

20. The Administrative Law Judge does not find that the rules, in general, are unenforceable. With respect to any particular provision, there only needs to be such clarity as is required to avoid a "void for vagueness" argument. Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980); Colten v. Kentucky, 407 U.S. 104 (1972). Any enforcement beyond determining the meaning of the rules will, of course, depend on the resources made available by the Legislature to the Department to accomplish enforcement. That is true, however, of any function commited to the Department. As previously stated, the Administrative Law Judge cannot assume that the Legislature will not provide funds sufficient to enforce the limousine rules.

Uncontroverted Portions of the Proposed Rules

21. A number of provisions in the proposed rules did not generate public comment and were not amended by the Department, either at the hearing or in subsequent written submissions. Such uncontroverted portions of the proposed rules are fully discussed in the SONAR filed by the Department. They are within the statutory authority of the Commissioner to adopt and are found to be both needed and reasonable. The remaining portion of this Report will deal with those portions of the proposed rules that generated public comment at the hearing or in subsequent written submissions or that have been amended by the Department as a consequence of the rulemaking process.

Part 8880.0100 -- Definitions

22. Part 8880.0100, in 26 subparts, contains the definitions that are used throughout the remainder of the rules. The definitions in Part 8880.0100 that received public comment included the following: Subpart 9, Limousine; Subpart 11, Limousine Service; Subpart 12, Luxury Passenger Automobile; Subpart 19, Prearranged Pickup; Subpart 21, Regular Route; Subpart 23, Taxicab; and Subpart 26, Van.

23. Subpart 9 of Part 8880.0100 defines the term "limousine". The definition requires that the limousine be an unmarked "luxury passenger automobile that is not a van or stationwagon and has a seating capacity of not more than 12 persons, excluding the driver." Mr. Anthony Staffenhagen stated that the use of the word "unmarked" in the definition of the word "limousine" was unclear. The word "unmarked" is, however, defined in subpart 25 of this part. Subpart 25 is supported as to need and reasonableness in the Department's SONAR at page 20. A definition of the word "unmarked" is needed because it is used in Minn. Stat. § 221.84, subd. 1, clause (2) (1992), without definition. The proposed definition is reasonable because it prohibits advertising by the limousine service while allowing markings that might be required by state and federal law. The remainder of the definition of a "limousine" is in accordance with the general description of the type of vehicle contained in Minn. Stat. § 221.84, subd. 1, clause (2) (1992). The definition is also in accordance with an additional definition of the word "limousine" contained in Minn. Stat. § 168.011, subd. 35 (1992).

24. Several commentators, as previously discussed, stated that an attempt to define the rules in terms of the type of vehicle providing service, rather than the type of service provided, was inappropriate. These comments were made about the rules generally, but more particularly, about subpart 9 of this part, "Limousine", and subpart 12 of this part - "Luxury Passenger Automobile". For the reasons previously discussed, the Administrative Law Judge believes that a definition of the terms which describes not only the type of vehicle providing service, but also the type of service provided is required by Minn. Stat. § 221.84 (1992).

25. Several commentators argued that the term "limousine" should not automatically exclude vans and stationwagons, but that appropriate market forces should determine the types of vehicles used. Minn. Stat. § 221.84, subd. 1, clause (2) (1992), however, specifically states that "limousine service" must be provided in an "unmarked luxury passenger automobile that is

not a van or stationwagon and has a seating capacity of not more than 12 persons, excluding the driver". Hence, the statute limits the type of vehicle that can be defined as a "limousine", or a "luxury passenger automobile". The Department cannot modify the statute to include prohibited vehicles in the definition of "limousine" contained in subpart 9 of the proposed rule.

26. As a consequence of Findings 23-25, supra, the Administrative Law Judge finds that subpart 9 of part 8880.0100, the definition of "limousine" is needed and reasonable.

27. Subpart 11 of Part 8880.0100 defines the term "limousine service". No specific comments particular to this section were received. Lawrence Dunn did, however, testify about the definition of "prearranged pickup" contained in subpart 19 of this part. The term "prearranged pickup" is used in subpart 11, item D. Since a number of other comments were made on the definition of "prearranged pickup", those comments will be discussed with particularity in the later consideration of subpart 19 of this part. The Administrative Law Judge finds that subpart 11 of part 8880.0100 is needed and reasonable.

28. Subpart 12 of Part 8880.0100 defines the term "luxury passenger automobile". The term "luxury passenger automobile" is used in the definition of the word "limousine" contained in subpart 9 of this part. Hence, to provide limousine service, a vehicle must be a limousine which includes the requirement that it be an "unmarked luxury passenger automobile". Subpart 12 defines a "luxury passenger automobile" as a passenger automobile without a meter that meets any one of three criteria, as stated in items A, B or C of this subpart. The Administrative Law Judge has previously discussed the comments that the rules should not define the service with reference to the type of vehicle providing the service. The same findings made by the Administrative Law Judge relating to those comments are appropriate to this subpart. The statute uses the term "luxury passenger automobile". A definition of the term is needed to avoid the entire set of rules being "void for vagueness". Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980); Colten v. Kentucky, 407 U.S. 104 (1972). The Department, under Minn. Stat. § 221.84 (1992), is not free to ignore the type of vehicle providing the service.

29. Item A of subpart 12, which includes a "stretched" vehicle in the definition of "luxury passenger automobile", received no adverse public comment. As stated in Pub. Ex. 5, approximately 40% of livery vehicles providing limousine service on a nationwide basis are "stretched" vehicles. The Administrative Law Judge finds that item A of subpart 12 is both needed and reasonable.

30. Item B of subpart 12 attempted to define a second type of luxury passenger automobile in terms of the included amenities that could be "controllable from the rear passenger seating area". At the hearing, the Department proposed to amend item B of subpart 12 by strike the initial definition proposed and including the following: "is an executive sedan that the manufacturer characterizes as a luxury automobile in sales or promotional material regularly distributed to the public . . . ." The Department proposed to amend item B of subpart 12 of this part for the reasons stated in the Supplemental Statement of Need and Reasonableness, DOT Ex. K, provided by the Department at the hearing. The Department decided to define a "luxury

passenger automobile" in item B in terms of the public's subjective perception of particular vehicles as "luxury cars" by reference to the advertising of manufacturers because that is the most objective means of limiting the subjective concept of the public perception.

At the hearing, several commentators argued that the revised item B would create a problem because many manufacturers identify their vehicles as luxury vehicles, even when such vehicles do not have characteristics commonly associated with the provision of limousine service. For example, Pub. Ex. 2 contains advertisements that term a Chevy S Blazer as a "luxury accommodation" and as having "luxury features". Similarly, the Chrysler Town & County Minivan advertisement contained in Pub. Ex. 2 speaks of the vehicle as having a "high level of luxury". Other commentators posed questions as to whether specific vehicles would be considered "luxury passenger automobiles" under this item or under item C of this subpart.

Ronald Riach stated that the word "executive" as modifying the word "sedan" used in this item and item C of this subpart has no real meaning and is superfluous. The Department, in its Response to Testimony, proposed to drop the word "executive" before the word "sedan" in both item B and C of this subpart. The Department agreed that the term had no precise definition and was mere surplusage in the two proposed items. The Department, therefore, proposed to amend the definition of luxury passenger automobile contained in DOT Ex. J, in item B and C, by dropping the word "executive" before the word "sedan". The Administrative Law Judge finds that the amendments to items B and C of subpart 12 are not prohibited substantial changes because clarity is improved and the amendments were made in response to public comment.

The Administrative Law Judge finds that the Department has demonstrated the need for and reasonableness of item B of subpart 12, as amended, by an affirmative presentation. The fears of the commentators about the type of vehicle that may be used are largely eliminated when one considers that the subpart 12 definition, after the three items, specifically excludes a bus, a pickup truck, a stationwagon, a taxicab, a truck or a van. It is also important to note that the only type of advertising that would qualify under item B of this subpart to establish a particular vehicle as a luxury passenger automobile would be one which relates to a vehicle that is not specifically excluded from the definition and that characterizes the entire vehicle, and not only particular features, as a luxury vehicle.

31. Item C of this subpart was also amended at the hearing, as stated in DOT Ex. J and the Department's Response to Testimony, page 4. As originally proposed, the vehicle would have had to be a sedan with a present fair market value of more than $25,000 which had four doors and a seating capacity of not more than five persons, excluding the driver. The item was amended by dropping the word "executive", for the reasons previously stated, and allowing either a present fair market value of more than $25,000 or an original manufacturer's suggested price of $25,000. The language limiting item C to a four-door vehicle with a seating capacity of not more than five persons, excluding the driver, was dropped. A number of commentators suggested that use of a fair market value of $25,000, either as the present value of the vehicle, or the original selling price of the vehicle, would include within the definition of "limousine" many sedans which are not commonly thought of as luxury passenger automobiles. Virtually any full-size, fully-equipped

American manufactured vehicle would qualify as a luxury passenger automobile under item C because its sales price would exceed $25,000. The Administrative Law Judge finds that item C of subpart 12, as amended, is needed and reasonable. A cutoff price of $25,000 either in original purchase price or present fair market value is a reasonable means of identifying a car that could be considered a luxury vehicle. The amendment to item C is not a prohibited substantial change. The amendment does not change the nature of the item, it improves clarity and was made in response to public comments.

32. Several commentators argued that subpart 12 of this part should not exclude from the definition of "luxury passenger automobile" a stationwagon or van. As previously discussed, however, the exclusion of vans and stationwagons is required by Minn. Stat. § 281.84, subd. 1, clause (2) (1992).

33. As a consequence of Findings 28-32, supra, subpart 12 of Part 8880.0100, as amended, is found to be both needed and reasonable. The amendments to the subpart proposed by the Department at the hearing and in its post-hearing response to testimony do not constitute prohibited substantial changes.

34. Subpart 19 of this part defines the term "prearranged pickup". The term "prearranged pickup" is used in Minn. Stat. § 221.84, subd. 1, clause (3) (1992). Mr. Lawrence Dunn asked for an interpretation of the definition of "prearranged pickup", by referring to page 17 of the Department's SONAR. He questioned whether using a "walkup desk" would be prohibited. Ms. Clara Schmidt-Gonzalez stated that the definition of "prearranged pickup" would be too broad if the definition of the type of vehicles that would be included within "luxury passenger automobile" (as modified) was made any broader. Finally, Mr. Matt Johnson commented on the definition of prearranged pickup and the prohibitation against solicitation contained in part 8880.0300, subp. 9. The point of his comment was that a limousine operator should be able to pay agents such as hotel doormen, and airport desk personnel, to refer limousine business to the limousine operator.

35. In response to Mr. Dunn's comments, the Department orally clarified his interpretation of "prearranged pickup" by using ordinary principles of statutory construction, enunciated in Minn. Stat. § 645.16 (1992). Mr. Dunn was apparently satisfied with the Department's interpretive clarification. Ms. Schmidt-Gonzalez was satisfied with the definition of "prearranged pickup" and did not seek a modification, as long as the definition of the type of vehicle that could provide limousine service was as restricted as it is in the proposed rules, as amended. With respect to the comment of Mr. Johnson, what the limousine operator should not be able to do directly, he or she should not be able to accomplish through the indirect method of payment to an agent who falsely appears to the public as being knowledgeable and unbiased. The Administrative Law Judge finds the Department has demonstrated that subpart 19 of part 8880.0100 of the proposed rules is both needed and reasonable.

36. Subpart 21 of part 8880.0100 defines a "regular route". The only comment received on this subpart was made by Mr. Ronald Riach, on behalf of the MLOA. Mr. Riach stated that the word "habitually" is unclear and the term is not defined. The term "habitually" is commonly defined as "established by long use". Under prior caselaw which related to regular route and irregular route common carriage, the concept of "habitually" is well defined as a

regularity of service that is so fixed and definite that it becomes known to and relied upon by the users of the service. The Department also gave reasons for the proposed definition of the term in the SONAR at pages 18 and 19. The Administrative Law Judge finds that the definition of "regular route" contained in subpart 21 is both needed and reasonable. It is not unduly vague, even though the term "habitually" is not specifically defined.

37. Subpart 23 of part 8880.0100 defines the term "taxicab". The only member of the public that commented on the definition of "taxicab" contained in subpart 23 of this part was Mr. Edwin Cain, who spoke on behalf of MLOA. The fear he expressed was that the definition, which did not describe a type of vehicle but relied on the method of compensation or service provided, was inappropriate. The fear he expressed was that every vehicle other than a limousine that transported passengers would be termed a taxicab and subjected to municipal and other local regulation and licensing as a taxicab. Mr. Cain repeated his concern about the definition of the term "taxicab" in a written submission to the Administrative Law Judge dated January 3, 1994. This comment by Mr. Cain is in sharp contrast to the comments received from other members of MLOA that it would be inappropriate to define vehicles in terms of their characteristics, rather than the service provided. In its Response to Public Comments, the Department proposed to amend the definition of "taxicab" contained in subpart 23 as follows:

> Subp. 23. Taxicab. "Taxicab" means a motor vehicle, other than a limousine or bus, used for transporting passengers for compensation as determined by a meter~~,~~; or by a flat rate schedule, according to the distance traveled, the time elapsed, ~~and~~ or number of passengers carried, irrespective of whether the transportation extends beyond the boundaries of a city.

38. The Administrative Law Judge finds that Mr. Cain's concerns that the term "taxicab" is expanded by these rules to include every vehicle that provides a "taxi-like" service and subjects those additional vehicles to local regulation are misplaced. The definition of the term "taxicab" in the rules is required for two reasons. First, one must define "taxicab" because the definitions of "limousine" and "taxicab" are mutually exclusive. Limousine service may only be provided in a limousine under Part 8880.0100, subpart 11, item C. By definition, a taxicab means a motor vehicle other than a limousine. The second reason that it is necessary to define a taxicab is because, under Minn. Stat. § 221.84 (1992), a limousine must charge more than a taxicab for a comparable trip. Therefore, it is reasonable to define the word "taxicab" by reference to the way fares are charged for taxi service.

It is true that the definition of the word "taxicab" contained in subpart 23 includes all vehicles other than a limousine or bus that provide a "taxi-like" service, even though not all such vehicles might be subject to municipal regulation as a taxicab. That is apparently Mr. Cain's prime concern. The proposed definition of the term "taxicab" will not and cannot subject vehicles to muncipal taxicab regulations that would not otherwise be within Minn. Stat. § 412.221, subd. 20 (1992), under which municipalities derive their authority to license taxicab operations. The Department cannot, by creating a definition in these rules for purposes of regulating the provision of limousine service, enlarge or reduce the regulation of taxicabs

and the authority of local municipalities to regulate taxicab operations under Minn. Stat. § 412.221, subd. 20 (1992). The definition contained in subpart 23 cannot and does not modify other definitions of the same terms currently found in state statutes or municipal ordinances. It is also clear from subpart 1 of part 8880.0100 that the definitions contained in this part are proposed only for purposes of this chapter of rules, and not for general application.

It may be necessary, however, to specifically exclude buses from the definition of a taxicab because it is possible that the method of compensation used by a charter bus carrier might otherwise bring that vehicle within the definition of "taxicab", requiring the limousine operator to charge more than would the operator of a more costly and substantially larger vehicle like a bus. The Administrative Law Judge finds that subpart 23 has been demonstrated to be both needed and reasonable, as amended. The amendments to subpart 23 are merely clarifying amendments made in response to public comments and do not constitute a prohibited substantial change.

39. Subpart 26 defines the term "van". Mr. Edwin Cain objected to using the phrase "box-like" in the definition of the term "van". Given the aerodynamic shaping of some modern vans, he suggested that the definition was inappropriate. The phrase "box-like" with respect to a van appears in Minn. Stat. § 168.01, subd. 28 (1992). The Administrative Law Judge finds, for the reasons discussed in the SONAR at page 20, that the Department has demonstrated the need for and reasonableness of subpart 26 of this part.

Part 8880.0300 - General Requirements

40. Part 8880.0300 contains nine subparts. Comments were received on subpart 3, subpart 4, subpart 6, subparts 7 and 8, and subpart 9.

41. Subpart 3 of this subpart relates to the insurance requirement. Brian Iversrud of MLOA stated that the insurance limits were too low. Brian Meyer, a representative of Northland Insurance Company, stated that the insurance limits should be raised to $500,000. The Department, in its Response to Public Testimony, at page 7, states that the insurance limits for limousine operators has been fixed in Minn. Stat. § 168.128, subd. 3 (1992). The Department states that it lacks the authority to change the insurance limits set by statute. It is also argued that the Department would create confusion if it attempted to set a different limit for insurance for purposes of providing limousine service than is fixed by statute to register a limousine vehicle. SONAR, p. 7. The Administrative Law Judge accepts the arguments of the Department contained at page 7 of its Response to Testimony. Part 8880.0300, subp. 3 has been demonstrated to be both needed and reasonable.

42. Subpart 4 of Part 8880.0300 places a restriction on advertising which requires a limousine operator to "conspicuously display its permit number in advertisements or information that calls attention to or describes services offered by the limousine operator". Mr. Patrick Mancuso objected to subpart 4's requirement of the prominent display of the permit number in promotional materials. He argued that it would be too expensive to change all of the advertising, including yellow pages, promotional items like jackets and caps and other novelty items to include the permit number of the carrier. In

its Response to Testimony, the Department relied on the reasons offered in the SONAR at page 26 to establish the need for and reasonableness of the proposed rule. Moreover, it states that only items which describe the service offered, hours of service, fares charged or types of vehicles or amenities available would be required to carry the permit number of the limousine operator. Hence, the permit number would not be required to be put on pens, hats, caps and like promotional materials. The Department also stated that it realizes that it cannot affect yellow page advertising during the currency of the current yellow pages phone books. It would not enforce the proposed rule against a limousine service provider that had contracted for current yellow pages advertising on or before the effective date of the rules. Finally, the Department states that changes in other types of advertising materials could be accomplished by the limousine operator with little or no expense. For the reasons stated at page 26 of the SONAR and page 8 of the Department's Response to Testimony, the Administrative Law Judge finds that subpart 4 of Part 8880.0300 is needed and reasonable.

43. Subpart 6 relates to fares and records. The first sentence of subpart 6 requires a limousine operator to charge a fare greater than a taxicab fare for a comparable trip. Mr. Ronald Riach stated that the rule was unduly vague because the phrase "comparable trip" is not self-explanatory and is not defined in the rules. He further stated that the first sentence of subpart 6 is unenforceable. The term "comparable trip" is taken from Minn. Stat. § 221.84, subd. 1, clause (4) (1992). Further, the rule does not require further definition. "Comparable" means "similar" or "equivalent". If a similar or equivalent trip by taxicab, as defined in the rules, is readily available to the public, a limousine operator must charge more than that fare. If a comparable taxi service is not available, as in the outstate area, there is no comparable service available. Hence, a limousine operator could charge any fee the market would bear. The Administrative Law Judge finds that the Department has demonstrated the need for and reasonableness of subpart 6 of the proposed rules by an affirmative presentation of fact.

44. Subparts 7 and 8 of this part relate to trip referrals and the leasing of vehicles and drivers. It was apparent at the hearing that many persons in attendance did not appreciate the distinction between referrals and the leasing of vehicles and drivers, as those terms are commonly understood in the trucking industry. The commentators were generally concerned that the procedure for trip referrals or the leasing of vehicles seemed cumbersome, expensive and incomprehensible. Brian Iversrud, William Bishop and Christine Boniarccyk commented on subpart 7. Subpart 7 in no way prohibits the practice of a trip referral as long as the trip is referred to a licensed limousine service operator and either the referor or the referee maintains the records required by part 8880.0100, subpart 2 or 3. Subpart 7 is needed and reasonable to require a referral to be made to a licensed limousine service provider. The maintaining of the required records are necessary for the protection of the public. SONAR, pp. 28-29. The Administrative Law Judge finds that subpart 7 is both needed and reasonable. Brian Iversrud, William Bishop and Christine Boniarccyk commented on subpart 8. The comments were to the effect that the requirements of leasing were oppressive. As explained by the Department, however, at pages 29-31 of the Statement of Need and Reasonableness, subpart 8 is designed to accommodate lease relationships which are of a significant duration, rather than extremely temporary relationships which are governed by subpart 7. The needs of operators may require leasing

in a longterm, nonoccasional situation. Any rule, however, should protect against abuse of the regulatory system. The rule requires that a lease be written and that both parties have a copy. The proposed rule sets the minimum requirements for the lease documents. The requirement of a lease with the specificity contained in subpart 8 is the minimum documentation required to protect against abuse in a leasing situation. No operator is required to lease vehicles. The proposed rule also allows the continuation of current industry practice, while protecting against possible abuse. The Administrative Law Judge finds that subpart 8 of part 8880.0300 has been demonstrated to be needed and reasonable.

45. Subpart 9 prevents solicitation of passengers by a limousine operator, its agent or its employees. As a response to anticipated public comment, in DOT Ex. J, the Department proposed the following amendment to subpart 9 at the hearing:

> Subp. 9. Solicitation prohibited. A limousine operator, its agents or employees, may not solicit passengers in person to provide limousine service at the time of or shortly after the solicitation. <u>This subpart does not prohibit a limousine operator from advertising the service it provides in the normal course of business.</u>

At the hearing, Lisa Geller, Matt Johnson and William Bishop commented on this subpart. At the hearing, the Department stated that this subpart must be read in conjunction with the definition of "prearranged pickup", contained in part 8880.0100, subp. 19. The amendment proposed by the Department at the hearing clearly states that promotional activities in the ordinary course of business or soliciting passengers for future trips is not prohibited. This comports with the normal expectation that a business person will be allowed to promote his or her business in a manner that is consistent with the type of service offered. All of the commentators appeared satisfied by the proposed amendment to subpart 9 of Part 8880.0300 and no written submissions requesting a further modification were received by the Administrative Law Judge. The Administrative Law Judge finds that subpart 9 of Part 8880.0300, as amended, is needed and reasonable. Because the proposed amendment merely states explicitly what was always implicit in the subpart and was made in response to public comment, the proposed amendment to subpart 9 does not constitute a prohibited substantial change.

<u>Part 8880.0400 - Limousine Service Permit Application; Fees</u>
<u>Part 8880.0600 - Limousine Identification Decal Application; Fees</u>

46. Subpart 5 of Part 8880.0400 sets the permit fee at $150 and subpart 4 of Part 8880.0600 sets the limousine identification decal fee at $80. Several commentators stated that the fees were excessive. Others questioned whether the fees would be sufficient to make the enforcement program self-sustaining. As pointed out by the Department, and as previously discussed in this Report, the fees for a limousine operator's permit and for a vehicle identification decal are stated in Minn. Stat. § 221.84, subd. 4 (1992). The Department lacks the authority to alter the fees fixed by statute in this rulemaking. As noted by the Department in its Response to Public Testimony at page 10, the DOT does not maintain a separate budget for

enforcement of the limousine service statute and the rules adopted under that section. The Office of Motor Carrier Services currently has an adequate budget to ensure that the rules will be enforced. Any deficiencies or needs in the area of enforcement by the Department will be addressed to the Legislature.

47. At the hearing, in DOT Ex. J, the Department proposed an amendment to item H of subpart 2 of Part 8880.0600 requiring that an applicant who seeks to obtain a decal for a "luxury passenger automobile", described in Part 8880.0100, subpart 12, item B, provide to the Commissioner a copy of the manufacturer's promotional material before a limousine identification decal is issued to the applicant and keep a copy of the promotional material in the vehicle's record. This amendment to item H was necessary because of the amendment to item D of subpart 12 of Part 8880.0100, previously discussed in this Report. The amendment to item H of Part 8880.0600, subpart 2 is needed and reasonable because of the amendment to subpart 12, item B, Part 8880.0100, which has previously been found to be both needed and reasonable. Because it was made in response to public comment, does not result in a rule that is fundamentally different or go to a different subject matter, the amendment does not constitute a prohibited substantial change.

48. As a consequence of Findings 46-47, supra, Part 8880.0400 and Part 8880.0600, as amended, are found to be both needed and reasonable.

Part 8880.0800 - Driver Qualifications

49. Lisa Geller of Morton Limousine testified at the hearing in support of the driver qualification rule, Part 8880.0800. She stated that she was concerned, however, about who would pay to make sure that drivers are qualified. The Department explained that it would be the responsibility of the provider of limousine service to ensure that all drivers hired qualify under Part 8880.0800 and that determining qualifications would be fast and inexpensive.

50. Ronald Riach commented on subpart 2 of this part by stating that the Department should make a copy of the incorporated federal regulations available to limousine operators. The Department reprinted the federal regulations at pages 45 and 46 of the SONAR.

51. Anthony Staffenhagen commented on subpart 3 by asking whether a federal aviation administration physical examination would be sufficient under the rules. He stated that he had obtained an FAA physical certification at some expense and did not wish to incur an additional expense. The proposed rule states that a medical examiner's certificate under Code of Federal Regulations, Title 49, Section 391.43 is required. This does not include a FAA certificate. There are many different kinds of physical examinations required under state and federal statutes and rules. It would be impossible to investigate all such required physical examinations to determine whether acceptance of a particular certificate might be appropriate. Moreover, certain physical examination certificates might have waiver rules under which a certificate was granted which would be inappropriate in the context of limousine operation. It is most reasonable to incorporate the regulations with which drivers employed by motor carriers must comply. These standards

were developed specifically for those drivers who transport passengers for-hire in motor vehicles. The Administrative Law Judge finds that subpart 3 of Part 8880.0800 has been demonstrated to be both needed and reasonable.

52. Edwin Cain, in commenting on item C of subpart 5 of Part 8880.0800, stated that an individual had been convicted of driving a motor vehicle without a valid license merely because he had failed to notify the Department of Public Safety of a change of address. In response to Mr. Cain's comment, in its Response to Public Testimony, at page 11, the Department proposed to amend item C of Part 8880.0800, subp. 5, by adding after the word "driven" and before the semicolon, the following: "under Minn. Stat. § 171.02." This insertion in item C makes the rule more specific and avoids the type of problem stated by Mr. Cain. Subpart 5 of Part 8880.0800, as amended, is found to be needed and reasonable. Because the amendment was made in response to a public comment and merely clarifies the intent without changing the substance of the rule, it does not constitute a prohibited substantial change.

53. Ronald Riach commented that subpart 9 of Part 8880.0800 should contain a knowledge or scienter requirement. He suggested inserting the word "reasonable" or "knowingly" into the subpart. The Department, in its Response to Public Testimony, at page 11, declined to accept the suggested modification of the rule. The Department stated that it was the intent of this subpart to place an affirmative duty on the limousine operator to ensure that its drivers meet the requirements of the rule. The Department intends this to be a "strict liability" requirement that requires no showing of fault. The Department believes that it is important to provide limousine operators with a strong incentive to ensure that their drivers are qualified. The driver qualification requirements are simple and determining compliance with the requirements is inexpensive and easy. Moreover, a violation of this rule without knowledge would be addressed through the administrative penalty process, with a maximum penalty of $1,000, even for willful conduct. No person would risk incarceration as a result of this rule. Finally, the proposed rules incorporate Minn. Stat. § 221.036, subd. 3, paragraph (c), clause (1) (1992) in proposed Part 8880.1200, subp. 1, dealing with administrative penalties. That section requires the Commissioner to consider the "willfulness of the violation in determining the amount of administrative penalty". For a nonwillful violation, a small penalty would result. For the reasons stated by the Department at pages 11 and 12 of its Response to Public Comments, the Administrative Law Judge finds that the Department has demonstrated the need for and reasonableness of subpart 9 of Part 8880.0800.

54. As a consequence of Findings 49-53, the Administrative Law Judge finds that the Department has demonstrated that this part, as amended, is needed and reasonable.

Part 8880.0900 - Vehicle Requirements

55. The only portion of this part that received public comment was subpart 4. Mr. Ronald Riach commented that subpart 4 was unenforceable and should be deleted from the proposed rule. In its Response to Public Comment, at page 12, the Department stated that it was necessary to establish some minimum vehicle maintenance requirements. It declined to propose a uniform maintenance schedule for all limousines because maintenance requirements vary

from one type of vehicle to another. The burden of proof of establishing a violation of subpart 4 of Part 8880.0900 would be on the Department in an administrative penalty proceeding. Establishing a violation of the rule would, of course, require proof of failure to maintain the vehicle in accordance with the manufacturer's recommended maintenance schedule or failure to keep the windows, lights, mirrors and interior of the limousine clean or in good repair. Periodic checks of vehicles could be made by the Department at the operator's garage. A visual inspection of the vehicle and questioning of personnel would disclose whether this subpart had been violated. The Administrative Law Judge finds that subpart 4 of Part 8880.0900 has been demonstrated to be both needed and reasonable. He does not find that the subpart is, in any manner, unenforceable. The Administrative Law Judge finds that the Department has established the need for and reasonableness of Part 8880.0900.

Part 8880.1000 - Records

56. Part 8880.1000 relates to records that must be maintained by the operator. Mr. Ronald Riach asked if operators were required to keep the records required by this part for a certain period of time. The Department commented that subpart 1 of Part 8880.1000 provides that the records required by this part be maintained by the operator for a period of three years. Mr. Riach stated that the retention requirement was unreasonable. In its Response to Public Comment, the Department stated that the recordkeeping requirement and the record retention for three years were reasonable requirements. The Department cited to both federal regulations and Minn. Stat. § 221.172, subd. 10 (1992), which use a similar three-year retention period. The Department's SONAR, at page 63, also includes additional reasons for the three-year retention period for records. The Administrative Law Judge finds that Part 8880.1000 has been demonstrated to be both needed and reasonable by an affirmative presentation in the record.

Part 8880.1100 - Vehicle Inspection

57. Part 8880.1100 relates to vehicle inspection by the Commissioner. The only comment received on this part was made by Mr. Duane Wilson at the hearing and in a subsequent written submission. Mr. Wilson wishes the Department to incorporate into this part of the rules the motor vehicle safety standards promulgated by the National Highway Traffic Safety Administration. Cynthia Enright also stated that the safety standards governing the installation and usage of seatbelts should also be incorporated into this portion of the rules or in a separate part. The Administrative Law Judge agrees with the Department in the statement made at page 17 of its Response to Public Comment that Minn. Stat. § 221.84 (1992), does not address the subject of the type of safety standards discussed by Mr. Wilson and Ms. Enright. The Administrative Law Judge finds that Part 8880.1100 has been demonstrated to be both needed and reasonable by an affirmative presentation of fact.

Part 8880.1200 - Administrative Penalties

58. Part 8880.1200 provides for administrative penalties. Mr. Ronald Riach commented on this section, stating that subpart 1 of the part should

specify in line 1 of page 18 of the proposed rules the local ordinance violations that could be the subject of an administrative penalty. He further objected to the authority of the Administrative Law Judge stated in subpart 4 of this part to impose the cost of the services of the Office of Administrative Hearings on a party when a request for hearing is found to have been made solely for purposes of delay or for a frivolous reason. In its Response to Public Testimony at page 13, the Department declined to limit the types of ordinance violations that might be the subject of an administrative penalty. The language used appears in Minn. Stat. § 221.84, subd. 3 (1992). Any change would also force the Commissioner to address any nonlisted violations through the criminal justice system, rather than the milder administrative penalty, or ignore the violations entirely. It should be noted that the phrase "local ordinances" is modified by the phrase "governing the operation of limousines" in subpart 1. Hence, only a violation of a local ordinance "governing the operation of limousines" would be included within the authority of the Commissioner to impose an administrative penalty. The Administrative Law Judge finds that subpart 1 of Part 8880.1200 has been demonstrated to be both needed and reasonable.

59. The authority of an administrative law judge to impose the cost of providing a hearing, including the cost of the services of the Office of Administrative Hearings, when a hearing request is frivolous or is made solely for purposes of delay is taken from Minn. Stat. § 221.036, subd. 7, paragraph (b) (1992). Other administrative penalty statutes governing other departments likewise include that authority on behalf of the Administrative Law Judge. The purpose of the imposition is not to deny hearings, but to avoid an undue burden of the system and the public treasury for frivolous reasons. Statement of Need and Reasonableness, pp. 67-70. The Administrative Law Judge finds that subpart 4 of Part 8880.1200 has been demonstrated to be both needed and reasonable and within the statutory authority of the Department to adopt.

Part 8880.1300 - Suspension or Revocation of Permit

60. The only member of the public who commented on Part 8880.1300 was Mr. Ronald Riach. In response to Mr. Riach's request that the Department delete this subpart because it was indefinite, the Department agreed that it was unnecessary and dropped subpart 2 of Part 8880.1300 from the proposed rules. The Commissioner has authority under Minn. Stat. § 221.84, subd. 3 (1992), to invoke such a suspension and his authority to do so is not affected by whether this provision is included in the rule or not. The Administrative Law Judge accepts the deletion of subpart 2 of Part 8880.1300 and the appropriate renumbering. The deletion of this subpart has no effect on the proposed rules, because the same authority is included in the statute. Its deletion is not, therefore, a prohibited substantial change.

61. Mr. Ronald Riach also commented on subpart 5. He suggested that a suspension or revocation be stayed if a hearing is demanded. In response to Mr. Riach's comments, the following amendment was proposed by the Department:

> Subp. 5. **Demand for hearing.** A limousine operator whose permit is suspended ~~under subpart 1 or 2,~~ or revoked ~~under subpart 3~~, may within 20 days after the notice of suspension or revocation was mailed, demand a hearing.

> Failure of a person to respond to a notice of suspension or revocation by demanding a hearing within 20 days after the date on which the notice was mailed constitutes a waiver of the person's right to appear and contest the suspension or revocation. A demand for hearing must be delivered or mailed to the Minnesota Department of Transportation, Office of Motor Carrier Safety and Compliance, Minnesota Administrative Truck Center, 100 Stockyard Road, South St. Paul, Minnesota 55075, and must include a statement of the issues the limousine operator intends to raise at the hearing. A demand for hearing stays the effective date of a suspension under subpart 1, item B or a revocation under subpart 2, item A.

In its Response to Public Testimony, the Department stated that a stay of suspension or revocation for certain violations would be in conflict with statutory requirements. With respect to other items listed in subpart 1, there can be no serious question of material fact. A request for hearing could easily be used to allow an operator to continue his operations even in the face of a serious violation. Response to Public Testimony, pp. 14-15. The Department and the Administrative Law Judge believe that an automatic stay of revocation or suspension whenever a hearing is requested is unreasonable. The Administrative Law Judge agrees with the Department that a stay under subpart 1, item B or a revocation under subpart 2, item A is reasonable, however. These items might involve genuine issues of material fact and involve items that would not endanger the public safety, potentially, if a stay were allowed. The Administrative Law Judge finds that subpart 5, as amended, has been demonstrated to be both needed and reasonable. Since the amendment to subpart 5 was made in response to public testimony, does not go to a different subject matter and really increases the protection of persons who might be affected, the Administrative Law Judge finds that the proposed amendment to subpart 5 of this part does not constitute a prohibited substantial change.

62. As a consequence of Finding 60 and 61, supra, Part 8880.1300, as amended, has been demonstrated to be both needed and reasonable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department gave proper notice of the hearing in this matter.

2. The Department has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, and all other procedural requirements of law or rule.

3. The Department has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. The additions and amendments to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, Minn. Rule 1400.1000, Subp. 1 and 1400.1100.

6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

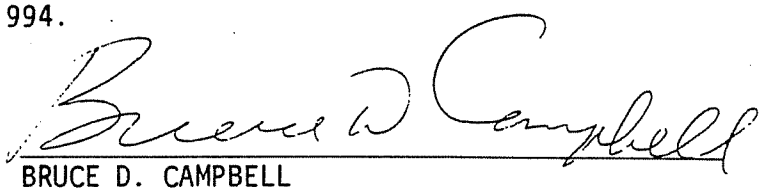
7. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the proposed rules, as amended, be adopted consistent with the Findings and Conclusions made above.

Dated this 8th day of February, 1994.



BRUCE D. CAMPBELL
Administrative Law Judge

Reported: Tape Recorded; No Transcript Prepared.