

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Storage, Handling, and Use of Explosives and Blasting Agents.

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are amendments to existing rules of the State Department of Public Safety. The captioned rules were adopted October 15, 1975.

The need to adopt these rules arises because of a need to clarify and reorganize the existing rules; to delete sections which are in conflict with federal regulations; to add provisions for issuance, renewal, suspension, and revocation of explosive dealers licenses and explosives user permits; and to set fees that may be charged for them.

Throughout these rules the Revisor of Statutes has made style and form revisions to conform with their redrafting standards. These modifications do not change the substantive effect of these rules. In addition the department has updated numerous regulatory standards adopted by reference to the most recent federal Department of Transportation standards. The need for such updating is to keep state standards in conformity with federal law and nationally recognized industry standards and to conform with action previously taken by MN/DOT relating to federal standards on hazardous materials. This results in uniformity and greater and easier compliance by affected parties. Also, throughout these rules the term "superintendent" has been replaced with the term "Commissioner" to more accurately reflect the ownership of the rules, since the enabling statute gives the Commissioner of Public Safety the authority to promulgate rules on explosives and blasting agents.

The justification establishing the need for and reasonableness of the substantive provisions of the rules is as follows:

7500.0100, Subp. 1a. A definition of the American Table of Distances, containing the federal code reference is added so that it need not be repeated throughout the rules.

7500.0100, Subp. 3a. A definition of the term Commissioner has been added and the definition of the term Superintendent has been repealed to correspond with the change in ownership of these rules explained above.

7500.0100, Subp. 6. The reference has been updated.

7500.0100, Subp. 6d. The reference has been updated.

7500.0100, Subp. 8a. The term License has been added because the new rules include provisions for licenses.

7500.0100, Subp. 9c. A definition for passenger vehicles has been added so that vehicles are more clearly defined.

7500.0100, Subp. 9d. The term Permit has been added because the new rules include provisions for permits.

7500.0400, Subp. 1. The reference has been updated.

7500.0400, Subp. 5. The procedure for requesting exemption from these rules has been simplified by reducing the number of copies of the request from three to two. One copy is retained by the Commissioner and one copy is returned with the approval. The additional copy is unneeded.

7500.0550 and 7500.0560. The enabling statutes require the issuance of licenses and permits, however procedures for such issuance and control were not included in the original rules. The state and local jurisdictions have been issuing licenses and permits, respectively, since the law has been in effect, without specific procedures by rule. Licenses and permits are now added to these rules to establish standard procedures for issuance and to set forth circumstances for license suspension and revocation. Since these rules were originally promulgated there have been problems concerning suspension and revocation and the circumstances under which a person is prohibited from holding a license or permit under M.S. 299F.77. This statute lists the characteristics of persons prohibited from holding a license or permit and these rules expand upon that by setting out the subsequent procedures relating to initial licensure qualification, renewal, suspension/revocation and contesting a decision. These rules are necessary and reasonable in order to have standard procedures that apply uniformly to all persons and for the department to be able to lawfully and fairly remove a license or permit from any person who is not in compliance.

7500.0550. This rule establishes the standard procedure for completion of the license application, return to the Commissioner, and approval. The rule is needed to provide uniformity of license issuance procedures. The license is valid for one year as provided by statute. ~~This rule establishes a \$10 fee for new license and renewal of licenses. The fee is needed to cover administrative costs of issuance, and the Department feels it is not an unreasonably burdensome amount.~~ The rule establishes procedures for the renewal of licenses, and requires that the Commissioner notify the licensee a month before the license is due to expire. It describes the conditions under which the Commissioner may suspend or revoke a license and describes the specific violations that are cause for actions by the Commissioner. Persons prohibited from holding a license are covered in M.S. 299F.77. This rule requires that prohibited persons notify the Commissioner within 48 hours. In order to provide due process and uniform objective application of the rules it provides an applicant or licensee the opportunity to a hearing under the Administrative Procedure Act.

7500.0560. Since these rules were originally promulgated there has been a question of "local authority" regarding explosives permits. Procedures regarding license and permit issuance are not in the original rules. M.S. 299F.75 requires application for permit be made to the "appropriate local sheriff or chief of police." Permits have been issued in the residence jurisdiction of the applicant. The BCA receives numerous calls every year from citizens and local jurisdictions, regarding the problem of receiving a permit from one jurisdiction and using the explosives in another jurisdiction. This rule allows the applicant to obtain a permit either where he/she resides or intends to use the explosives. It sets a procedure for issuance of a permit for use in another jurisdiction by requiring the applicant to notify the chief of

police or sheriff where the explosives will be used or stored if the permit was not issued in that jurisdiction, so the local authorities will be aware of the explosives. This rule makes it easier for applicants to obtain the permit, especially in situations where the applicant lives in one jurisdiction and intends to use the explosives in another jurisdiction. To further accommodate the cross jurisdictional aspect of permit issuance for use of explosives, this rule requires that the permit be forwarded by the issuing authority to the jurisdiction in which explosives will be used, if the applicant intends to use or store explosives in a jurisdiction other than where the permit is issued. Also, it allows the issuing authority to charge a fee of up to \$25 to cover their administrative costs of processing and issuing permits and of notifying other jurisdictions. This rule also describes the conditions under which the issuing authority may suspend or revoke a permit, by describing the specific violations that are cause for actions by the issuing authority and it requires that prohibited persons notify the Commissioner within 48 hours. This has been a continuing problem for state issued licenses, as discussed previously, and for locally issued permits. Including the specific grounds for suspension/revocation in these rules will allow local jurisdictions to remove a permit from a person who is not in compliance with the rules. In order to provide due process and uniform objective application of the rules, it provides an applicant or permittee the opportunity to a hearing under the Administrative Procedure Act.

7500.0600. Language is changed to limit the degree of Commissioner discretion allowed in the existing rule in order to comply with standard rulemaking authority. The existing language gives a degree of discretion that is no longer acceptable and is not needed. Language is modified to incorporate reasonable prohibitions - manufacture if prohibited unless it is licensed by the Commissioner. This, reasonably, keeps the prohibitions within the realm of licensure qualifications rather than the vague discretion allowed in the existing rule.

7500.0700, Subp. 5. The reference has been updated.

7500.0800, Subp. 3. The reference has been updated.

7500.1200, Subp. 8. This rule changes the distance for posting signs on all roads to warn against the use of mobile radio transmitters from 350 feet to 1000 feet and requires compliance with an Institute of Makers of Explosives Safety guide regarding radiation hazards. The radiation safety guide and increased radius for warning is recommended by the Institute of Makers of Explosives in order to provide greater safety both to the user of explosives in the area and the public in the surrounding area. Since the threat of radiation hazards is more widely recognized and known to be serious, these changes are necessary and reasonable for public safety and protection.

7500.1200, Subp. 8c. The reference has been updated.

7500.1700. Repealed forbidden explosives; now regulated by Minnesota Department of Transportation.

7500.1800, Subp. 5. This rule deletes the requirement for the vendor or transferor to check safety measures at the transferee's location before explosives are transferred to a purchaser or transferee. The old language placed an unreasonable burden

on the vendor by requiring him to check the safety measures required by these rules. In situations where the transfer occurs at the vendor's facility rather than at the transferee's place of use or storage facility, which is often the case, the vendor would have no way of knowing whether the required safety measures were in place.

7500.1900. This rule is repealed. It required reports on quantity of stock of explosives by persons who store explosives, and this report is not used by the department for any purpose.

7500.2100. The reference has been updated.

7500.2200, Subp. 1. The reference has been updated.

7500.2200, Subp. 1a. The reference has been updated.

7500.2200, Subp. 2. The reference has been updated.

7500.2200, Subp. 3. The reference has been updated.

7500.2600, Subp. 6 and 7500.3200, Subp. 3, 4a, & 5. The reference to the National Electric Code is updated to volume 6 of the 1982 National Fire Codes, in order to accurately reflect the published location of the electric code. The National Fire Codes were adopted in 1983 as part of the Uniform Fire Code rules.

7500.3000. The reference has been updated.

7500.3100. The references have been updated.

7500.3200, Subp 3. The reference has been updated.

7500.3200, Subp 4a. The reference has been updated.

7500.3200, Subp 5. The reference has been updated.

7500.3400, Subp 1. The reference has been updated.

7500.3400, Subp 3. The references have been updated.

7500.3500, Subp 1 & 1b. The reference has been updated.

7500.3600, Subp 1,2,3, & 5. The reference has been updated.

The department has considered the requirements of Minn. Stat. 14.115 and has determined that the proposed rules have some impact on small businesses in Minnesota, and the department has considered the methods for reducing the impact as required by Minn. Stat. 14.115, Subd. 2. The universe of small businesses potentially affected by these rules are any small businesses which manufacture, store, sell, transport or use explosives, blasting agents or pyrotechnics. Certain prohibitions, exceptions and exemptions exist, therefore the rules should be reviewed carefully by potentially affected parties to determine specific applicability.

Generally, the purpose of amending these rules is to detail the licensing and permit issuance procedures into the rules so that they are standard and fair for all affected parties. This benefits small business because it prevents arbitrary application, broadening the permit issuance process also benefits small business. The department has determined that instituting less stringent compliance or reporting requirements, less stringent schedules or deadlines, or simplification of requirements for small businesses is neither feasible nor desirable from a public safety standpoint. These rules relate directly to safety of lives and unequal treatment with respect to critical safety measures that could seriously endanger lives. Performance standards, exceptions, and authority for exemptions are already incorporated into the rules. Exemptions are allowed upon showing that the requirement would cause unnecessary hardship.

PAUL J. TSCHIDA
COMMISSIONER