

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES

In the Matter of the Proposed
Amendment to Rules of the State
Department of Public Safety
Governing Driver's License
Revocation and Disqualification
for Incidents Involving Alcohol
or Controlled Substances

STATEMENT OF NEED
AND REASONABLENESS

The above captioned rules are amendments to existing rules of the Department of Public Safety. The captioned rules were adopted in December, 1985.

The department has considered the requirements of Minnesota Statutes, section 14.115, and determined that the rule as amend will have additional effect on small businesses.

SMALL BUSINESS CONSIDERATIONS

The amended rules governing the disqualification of commercial motor vehicle drivers will have an indirect effect on small businesses. A significant part of the motor carrier industries covered by the Commercial Motor Vehicle Act of 1986 and subject to disqualification under Minnesota Statutes, section 171.165, are made up of small businesses. These businesses range from one-person, one-truck operators to small fleet operators. An example of an adverse indirect effect on small business is when an employee is disqualified from operating commercial motor vehicles in compliance with section 171.165, under part 7409.0200. Even if the person is eligible for a class C license under part 7409.0400, the licensee would be prohibited from operating commercial motor vehicles. Under these circumstances, the trucking company would have to replace the disqualified person for the duration of the disqualification period.

Unsafe drivers pose the same threat whether they are employed by a large or small business. Therefore, the rules are equally applicable to the small business component of the industry. Exempting small businesses or proposing less stringent compliance with these rules would be contrary to the statutory objective of disqualifying commercial motor vehicle drivers who pose a threat to the safety of the general public. Since the rule parallels legislative mandate of section 171.165, the department has not placed any undue burden on small businesses. The department is merely implementing legislative requirements.

Rule by Rule Analysis

7503.0100 DEFINITIONS

Subpart 3. Alcohol- or controlled-substance-related incident. Although the current definition intends to include "license revocations under Minnesota Statutes, section 169.123," it is not legally correct to refer to those revocations as "violations" because these revocations are the result of administrative action, not convictions. Therefore it is necessary to change the wording of the definition to reflect that difference. In addition to that change, Minnesota Statutes, section 169.1211, has been included as an alcohol-related incident. It is necessary and reasonable to include violations of 169.1211 as alcohol-related incidents. The National Academy of Science established a committee to produce the study mandated by the Commercial Motor Vehicle Safety Act of 1986 (Title XII, Public Law 99-570) to determine the appropriateness of reducing the blood alcohol concentration level for persons driving commercial motor vehicles to be deemed driving while under the influence. The Committee on the Benefits and Costs of Alternate Federal Blood Alcohol Concentration Standards for Commercial Vehicle Operators conducted the study and determined the alcohol concentration level at which a person becomes impaired when driving a commercial motor vehicle. The result of that study set .04 alcohol concentration as the national standard for commercial motor vehicle drivers. See Federal Register (1988), volume 53, page 16,656. The Minnesota Legislature adopted that national standard during the 1989 session when it adopted the Commercial Drivers License Act which contained section 169.1211, and which added language to Minnesota Statutes, section 169.123, to include the .04 alcohol concentration standard applicable to commercial motor vehicle drivers when applying administrative revocations.

Minnesota Statutes, sections 169.127 and 171.245 have been deleted and those sections added to the list of sections falling under this definition. This change is reasonable as it clarifies in one area of the definition the applicable statutory section.

Additional statutory citations have been added to this definition to coincide with Minnesota Statutes, sections 169.121, subdivisions 1a and 3, and 169.129. All three of those subdivisions include the citation to Minnesota Statutes, section 609.21, subdivision 3, clauses (2) and (3) and subdivision 4, clauses (2) and (3) which refer to convictions resulting in death or injury to an unborn child while the driver was under the influence of alcohol or controlled substance, or with an illegal alcohol concentration level. Clause (4), which was added to section 609.21 by the 1990 legislature has also been added to all

the applicable subdivisions to coincide with the statute change. See Laws of Minnesota, 1990, chapter 602, article 4, section 1. It is reasonable to add these convictions to this definition when the legislature has seen fit to specifically categorize this negligence involving the use of alcohol and controlled substances as "Criminal Vehicular Homicide and Injury". See Minnesota Statutes, section 609.21.

Subp. 5. Chemical Dependency Treatment. The definition of Chemical Dependency Treatment has been broadened by the additional language. This change is necessary because chemical dependency is an individual problem with individual causes and solutions. Allowing an alternative treatment which contains the requirement of abstinence and the approval of the commissioner of public safety, allows the individual to be considered and the most successful treatment for that particular individual to be identified. It is reasonable to believe that if the individual is considered, the treatment is more likely to be successful and the driving habits of that individual to be improved. Additionally, it is necessary to require any program that the commissioner approves to include an abstinence requirement. This is reasonable because the treatment program must comply with the standards set out in part 7503.1700.

Subp. 5a. Commercial Motor Vehicle. This reference to the definition of commercial motor vehicle is both necessary and reasonable to include. The new sanctions which were created by the Commercial Driver License Act during the 1989 Minnesota Legislative session are applicable only when the driver is operating a commercial motor vehicle. These rules will only be comprehensible if it is clear what a commercial motor vehicle is.

The final paragraph of this definition is necessary to exempt some specific vehicles from the definition and therefore the license sanctions that are imposed against persons driving commercial motor vehicles. These vehicles were exempted by the legislature when it specified that they could be operated in Minnesota with a class C driver's license by the language set out in Minnesota Statutes, section 171.02, subd. 2, paragraph (a), clauses (1), (2), and (3). Without this exemption, the vehicles specified in those clauses could fall within the definition found under Minnesota Statutes, section 171.01, subd. 22, which would be adverse to the directive of the legislature.

Subp. 6a. Department. This definition is necessary to specifically identify the department of public safety as it is referred to throughout the rule.

Subp. 6b. Disqualification. It is necessary to define the new driver sanction designated disqualification under Minnesota Statutes, section 171.165. This definition is necessary because it differs from the other types of sanctions. It is imposed against the driver, not his or her license and is only levied when the driver was driving, operating, or in physical control of a commercial motor vehicle at the time of the incident. The periods of disqualification differ from other driver license sanctions and a disqualification also only affects the person's privilege to operate commercial motor vehicles.

Subp. 8. Personal injury. The amendments to this subpart are necessary to clarify and simplify the language of this definition. The current rule definition, which was taken from the Police Traffic Accident Report Instruction Manual, was published by the agency in 1985. By using the definitions set out by the legislature, the agency adds consistency to the determination of what constitutes a personal injury. A close look at the language in those statutory sections reveals that the statutory definitions are not substantially different from the rule. However, since the legislature has chosen to define personal injury, the agency will defer to that definition. The decision not to include the definition of "bodily injury" within Minnesota Statutes, section 609.01, subdivision 7, has been made because an injury within that definition could be a minor injury and not one which the agency intended to utilize when imposing additional revocation periods. That intention is clearly stated in the Statement of Need and Reasonableness prepared for the original rule in Chapter 7503.

Subp. 11. Revocation. Minnesota Statutes, section 169.121, 169.123, or 171.17 authorizes the commissioner of public safety to revoke drivers' licenses. However, the revocation originally applied to a person's license is only a minimum period. That revocation period can be longer if the person does not fulfill the requirements set out in the rules for reinstatement of a license which has been revoked. It is reasonable and necessary to add the word "minimum" for clarity.

7503.0300 SUSPENSION PERIODS.

Subp. 1. For revocable offenses. The additional language added to this subpart is necessary to state exactly how this suspension period relates to the revocation period which is imposed upon conviction. Because the basic effect of a revocation or suspension is virtually identical, the person is prohibited from driving. It is reasonable that the time served under the initial suspension is credited toward the revocation period.

Subp. 2. For failure to complete assessment. The amendments made are to clarify and simplify the language within this subpart.

7503.0600 REINSTATEMENT FOLLOWING SUSPENSION

The introductory clause to this part of the rule has been reworded. This change is necessary to accurately state the exception within the reinstatement requirements. The current language makes a broad exception of the issuance of the limited license. In reality, the reinstatement fee is not excepted but must be paid before a limited license will be issued. See part 7503.1800, subpart 3, item C.

In addition a new item B. has been included within the requirements. Item A. states that all conditions of suspension must be satisfied, however, it is possible that the person seeking reinstatement has other withdrawals on record. If the person satisfies the reinstatement requirements for only one suspension, the license will not be reinstated. All conditions of all license withdrawals must be satisfied before a person can legally drive again. Item B. reasonably states that requirement.

All remaining changes have been made to clarify and simplify the language within this subpart.

7503.0800 REVOCATION PERIODS

Subp. 2. For criminal vehicular operation. Four major changes have been made within this subpart. The first amendment adds language to specify when the commissioner shall revoke which is left to interpretation in the present rule. Such ambiguity could result in inconsistent treatment of the offender. The new phrases referring to the commissioner receiving a record of conviction is necessary to clarify when the commissioner shall revoke and to assure consistency.

A second change deletes the language "is reported to the commissioner" in two sentences, and substitutes "the date the record of conviction is received." The current language is ambiguous, since a report of a conviction could be given to the commissioner before the record of conviction is received. The new language is necessary to clarify when the conviction under this subpart becomes effective and to assure consistency in the imposition of revocation periods.

The third change adds subdivisions 3 and 4 of section 609.21, which refer to the death or injury of an unborn child to this subpart. This addition is necessary to set out the revocation for convictions under those subdivisions, since license revocation is mandatory under Minnesota Statutes, section 171.17 (1), yet the statute is silent on the period of revocation. These subdivisions were added to

the criminal vehicular operations statute by the 1986 legislature. See Laws of Minnesota for 1986, chapter 388, sections 3 and 4. Since the legislature decided to classify such offenses under criminal vehicular operation and treat such convictions the same as those under subdivisions 1 and 2 of the statute, it is necessary and reasonable that the agency do as well.

Furthermore, reference to clause (4) has been added to the citation to each subdivision. Clause (4) was added to each subdivision of section 609.21 by the 1990 legislature. Minnesota Statutes, section 171.17 (1) requires revocation for a conviction under any subdivision and clause of section 609.21. Therefore it is necessary and reasonable to add clause (4) to the rule.

Subp. 3. For aggravated violations. The title of this subpart has been changed so the affect of this rule is truly represented. The revocation periods spelled out in subpart 3 apply to violations of Minnesota Statutes, section 169.129. Such violations are aggravated violations of Minnesota Statutes, section 169.121. Such aggravated violations also are often violations of the driving after withdrawal statute set out in Minnesota Statutes, section 171.24, but not always. Therefore the old subpart title, "Driving after withdrawal" does not fit all violations which have fallen under this subpart. That phrase has been deleted throughout subpart 3 and the correct application of the rule referring to violations of sections 169.129 or 171.24 has been inserted in its place.

Another change within this subpart is the substitution of the phrase "Upon receiving a record of conviction" for the word "convicted." This change reflects the true administration of revocation periods. The commissioner cannot revoke any license immediately upon conviction unless he or she knows of the conviction. Adopting the new phrase makes it clear that the revocation period is not measured from the day the conviction is handed down, but from the day that the commissioner receives it.

It is also necessary to add the phrase "or under a statute from another state in conformity with it" following the citations to sections 169.129 and 171.24. A Minnesota driver who is convicted of an aggravated violation in another state should also have his or her license revoked. The revocation must be the result of the illegal driving behavior, not the location of the driving violation.

In addition the scope of the driving record which will be reviewed to determine the length of the revocation period for aggravated violations has been increased from one to three years. This increase is both reasonable and necessary because the person who repeatedly drives after his or her license has been withdrawn (M.S. 171.24) or who continues to violate Minnesota section 169.121, (M.S. 169.129), must be identified and have his or her license revoked for an appropriate amount of time to make some impact so the

driving behavior will improve. In addition, repeat offenders of the driving laws should be off the road in order to protect the public. Limiting the driving record review to one year can result in repeat offenders receiving the same revocation period as first time offenders. The proposed rule assures that repeat offenders will receive longer revocation periods than first time offenders.

The final change within this subpart is necessary to clarify how a revocation under this subpart affects other revocations resulting from the same driving incident. The negative phrase "shall not run concurrently" has been replaced by the specific phrase "shall run consecutively".

Subp. 5. For personal injury or fatality. Minnesota Statutes, section 169.121, subdivision 4(d), contains the legislative directive that an additional period of revocation be added to a DWI conviction "whenever department records show that the violation involved personal injury or death to any person..." That directive also gives the agency discretion to determine the additional revocation period provided that "not less than 90 additional days shall be added to the base periods..." The proposed rule raises the additional revocation periods from 90 to 180 days in item A and from six months to one year in item B. The additional periods continue to be progressive by imposing a longer revocation for a violation involving a fatality than a violation involving personal injury. Additionally, the proposed revocation period within this subpart continues to be significantly shorter in duration than the three-year revocation period imposed for criminal vehicular operation resulting in personal injury or the five-year revocation period imposed for criminal vehicular operation resulting in fatality.

It is reasonable to increase the revocation periods for these incidents. The person has been convicted under Minnesota Statutes, section 169.121, and the incident which resulted in that conviction involved either a personal injury or a fatality. The additional revocation period is intended as a punishment as well as a deterrence mechanism.

Subp. 7. Terminating revocation periods after assessment action completed. The change made within paragraph A. of this subpart is necessary to explain how the agency can terminate the revocation period if the court does not require any further action by the person. The current language of the rule states that the agency will automatically terminate the revocation upon receiving notification from the court. In actuality, the record received by the court rarely contains sufficient detail for the agency to determine that no action was required. Therefore, the person must notify the commissioner of the results of the alcohol problem assessment. Stating that necessity in the rule is reasonable so that the public will be on notice that the individual must notify the agency so

prompt termination can be accomplished. Allowing the person to notify the agency by telephone is offering the most convenient method to the public as is possible.

The remaining changes have been made to clarify and simplify the language within this subpart.

7503.0900 NOTICE OF REVOCATION AND ISSUING OF TEMPORARY LICENSES.

Subp. 2. Notice served by court. The changes in the introductory paragraph are to clarify and simplify the language within this subpart.

Item E. The word "minimum" has been added to this item so the person understands that the revocation period set out in the notice is only the minimum period. As stated in the definition of revocation, the license remains revoked until all reinstatement requirements are fulfilled. See part .0100, subpart 11 above.

Item H. The wording "after seven days or" has been deleted from this item. This deletion is necessary to follow Minnesota Statutes, section 169.121, subdivision 7, which allows the court to issue a temporary license "effective only for the period during which an appeal from the conviction may be taken." The wording referring to a seven day period is inconsistent with the statutory authority for this portion of the rule.

Subp. 3. Notice served by peace officer. In order to use the correct legal language, the wording "found to be in violation of" has been replaced by "subject to revocation under." This change is necessary because a person cannot be in violation of Minnesota Statutes, section 169.123, as that section is an administrative action. Instead persons are subject to revocation as a result of that administrative action. The remaining changes to the introductory paragraph are for clarification and simplification.

Item G. The need and reasonableness of the change made to this item are based on the argument set out above to substantiate the need and reasonableness of subpart 2, item E.

Item L. It is necessary to replace "because" with the word "if", as a statement is acceptable in lieu of surrender only "if" the license is truly lost, stolen, already surrendered or unavailable.

Subp. 4. Notice served by commissioner. The need and reasonableness of the language change in the introductory paragraph of this subpart is based on the argument set out to substantiate the need and reasonableness of subpart 3 above.

Item E. The need and reasonableness of the change made to this item are based on the argument set out above to substantiate the need and reasonableness of subpart 2, item E.

In addition an introductory phrase has been added to items H, I, and J. This phrase is necessary and reasonable because it clarifies that the review notice served by the commissioner must contain the specified information if the person is subject to revocation under Minnesota Statutes, section 169.123.

All remaining changes within this subpart have been made for the purpose of clarifying and simplifying the language within it.

Subp. 5. Notice of revocation to other states. The change in language is necessary to use correct legal language. A person cannot be in violation of Minnesota Statutes, section 169.123, but is subject to revocation under that section and the other sections listed in this subpart. Therefore it is reasonable to delete the violation language and retain the revocation language.

7503.1000 ADMINISTRATIVE REVIEW OF REVOCATION OR DISQUALIFICATION.

The language changes made in the title of this part are necessary for two reasons. The addition of disqualification to the title comes from the legislative changes made in Minnesota Statutes, section 169.123, during the 1989 legislative session. This change applied the administrative review process laid out in statute for implied consent revocations to disqualifications that result from implied consent revocations in commercial motor vehicles. Adding disqualification to the title is reasonable to truly reflect the contents of this part of the rule.

The other changes have been made to simplify and clarify the language within the title.

Subp. 1. Right to administrative review. It is necessary to add the phrase referring to disqualification under M.S., section 171.165, because this is a new sanction within Minnesota law as of the 1989 legislative session. Since disqualification of a driver will result from an implied consent revocation in a commercial motor vehicle, those who are disqualified are also given the same right to administrative review as is available for any implied consent revocation. This right has been added to the language of Minnesota Statutes, section 169.123, and now must be added to the corresponding rule. See Laws of Minnesota 1989, section, chapter 307, section 11.

Subp. 2. Requesting written administrative review. The need and reasonableness of the additional phrasing referring to disqualification in the subpart is based on the argument set out for subpart 1 above.

Item A. Requiring the request for written administrative review to carry the incident date is

necessary and reasonable. If there is more than one revocation or disqualification on record, the agency may not be able to identify which incident is to be reviewed. Including the date on the request will assure that the agency is considering the correct incident and avoid unnecessary delays in the review.

The remaining changes have been made to clarify and simplify the language within this subpart.

Subp. 3. Performance of administrative review. The need and reasonableness of the amendments within this subpart are based on the argument set out in subpart 1 above.

Subp. 4. Appearances. The need and reasonableness of the addition of the phrasing referring to disqualification is based on the argument set out in subpart 1 above.

Additional changes have been made within this subpart for the purpose of simplifying personal appearances for the person seeking review. The deletions are necessary to remove the requirement that the person make a second written request (besides the original written request for administrative review) for a personal appearance. It is reasonable to remove the written requirement so a person may make a personal appearance more promptly. The promptness of the personal appearance is necessary because written administrative reviews are completed expeditiously by the agency. The addition of the telephone appearance is also necessary to allow for prompt access to the agency. For those persons who are outside the Twin Cities area or unable to get to the driver evaluation office in St. Paul, the telephone is another method for relaying information to the agency.

Subp. 5. Scope and standard of review. The need and reasonableness of the additional phrasing referring to disqualification in the subpart is based on the argument set out for subpart 1 above. The remaining changes have been made to clarify and simplify the language within this subpart.

Subp. 6. Administrative review distinguished. The need and reasonableness of the additional phrasing referring to disqualification in the subpart is based on the argument set out for subpart 1 above. The remaining changes have been made to clarify and simplify the language within this subpart.

7503.1200 REINSTATEMENT FOLLOWING LICENSE REVOCATION.

Subp. 1. Conditions. The majority of changes have been made to clarify and simplify the language within this subpart.

Item E. It is necessary to add the citation to Minnesota Statutes, section 169.129, to this item to correctly state the conditions of reinstatement. Minnesota Statutes, section 169.121, subdivision 3b., requires chemical use treatment for habitual violators convicted under both sections 169.121 and 169.129. Therefore, it is reasonable that violators who complete court-ordered treatment or rehabilitation certify that completion, no matter which statute violation resulted in the treatment requirement. This rule change merely coincides with the statutory requirements.

7503.1300 LICENSE CANCELLATION AND DENIAL FOLLOWING ALCOHOL OR CONTROLLED-SUBSTANCE-RELATED INCIDENTS.

Subp. 2. Multiple alcohol or controlled-substance-related incidents. It is necessary to add a time period to the portion of this provision which deals with a third incident after a special review. A person may have two alcohol- or controlled-substance-related incidents on record, undergone the special review and then kept a driving record free of such incidents for a number of years after that special review. When a third incident is reported, the person would have to be cancelled, whether the special review was completed last month or thirteen years ago. As written, the rule can have a very harsh effect.

The amendment reasonably reduces the possibility of cancellation for a few persons without threatening public safety. Cancellation would occur only if the third incident had occurred within ten years of the special review. If the special review was done over ten years ago, the person's license would be revoked and a second special review completed under part 7503.2100. The ten year period is reasonable because it represents two driver's license record periods. In this situation, two driver's license record periods free of alcohol- or controlled-substance-related incidents. A ten-year period free of such incidents would indicate that rehabilitation had been somewhat successful for this person, but since another incident has occurred, a second special review should be done to evaluate the person's alcohol or substance abuse and driving practices. Because the person will be taken off the road through revocation of his or her license, it is reasonable to do a special review as opposed to cancelling the license.

The remaining changes have been made to clarify and simplify the language within this subpart.

Subp. 3. Consumption of alcohol or controlled substance after completing rehabilitation. This subpart has been amended to correctly state the circumstances upon which the commissioner shall cancel. Part .1700, subpart 2., item C., sets out the requirement that a person must abstain from using alcohol and controlled substances to complete

rehabilitation. Subpart 4, of part .1700, requires the person to acknowledge that abstinence is a condition of licensure and document the last date such substances were consumed. Therefore it is necessary and reasonable to cancel a person's driver's license if the commissioner has sufficient cause to believe that the person has used alcohol or controlled substances at any time after that documented date to correctly implement part .1700.

7503.1600 REINSTATEMENT FOLLOWING LICENSE CANCELLATION

Paragraph C. The need and reasonableness of the amendment to this paragraph is based on the argument set out above to substantiate the need and reasonableness of part .1300, subpart 2.

The addition of a second paragraph to this provision is necessary to clarify the reinstatement conditions following cancellation. A requirement of part 7503.1700, subpart 4, is that people who lose their driving privileges as a result of alcohol or controlled substance use are reinstated only after acknowledging that the reinstatement is conditioned on "abstinence from the use of alcohol and controlled substances", and document the date of last use. It is reasonable that this reinstatement requirement be repeated in this part of the rule so there is no question that abstinence must be maintained.

The remaining changes have been made to clarify and simplify the language within this subpart.

7503.1700 REHABILITATION

Subp. 1. When applicable. The need and reasonableness of the amendment to this subpart is based on the argument set out above to substantiate the need and reasonableness of part .1300, subpart 2.

Subp. 2. Rehabilitation requirements. Item A. is amended by clarifying that the treatment requirement of rehabilitation must be repeated for those persons who are involved in alcohol- or controlled-substance-related driving incidents after completing any previous rehabilitation. This clarification is necessary because the current language can be interpreted to mean that if a person once completes chemical dependency treatment this requirement is fulfilled. However, since the person has incurred another incident, it is evident that the earlier treatment was unsuccessful. Just as with other conditions, if a symptom recurs, another treatment is needed. With chemical dependency if a person uses alcohol or controlled substances again, the treatment must be repeated.

Item B. is amended in two ways. The first amendment is necessary to broaden the language identifying participation

in a "chemical awareness program" by replacing that phrase with "abstinence-based support group." The new language is reasonable because it allows participation in different types of groups to be used to fulfill this requirement. Since alcohol and controlled substance abuse is an individual problem, the support group which will best deter a person from abusing those substances again may also be individual. Broadening the acceptable type of group while continuing to require abstinence as an element of that group, addresses the substance abuse and the individual problem simultaneously.

The second amendment to this item adds an additional sentence which specifies what constitutes participation. The original reason for requiring participation in an on-going program is to act as a means to assure the department that the person is involved in a long-term activity designed to cure the chemical abuse problem. However, the rule as it now reads does not explain what evidence would actually indicate participation. Continued attendance for a minimum of three months is reasonable to indicate that the person is actually participating as opposed to occasionally attending a meeting. Requiring that the three month period be immediately prior to the submission of the evidence is also reasonable so the department can be assured that the person continues to participate. As stated in the original Statement of Need and Reasonableness for this rule: "The department adopts the position set forth at the DWI Colloquium, [sponsored in 1983 by the AAA Foundation for Traffic Safety] that 'treatment of alcoholics must be based on the philosophy that recovery is a lifelong effort with abstinence and use of support systems such as AA as required elements.'"

Item C. is amended by deleting the broad phrase, "in this chapter", and replacing it with the specific reference to the location of abstinence periods in subpart 5. This amendment is necessary and reasonable so that readers of this chapter can easily follow the cross references within it.

Item D. The changes which have been made to this item are to clarify and simplify the language within it.

Subp. 4a. Removing restriction following rehabilitation. This subpart is necessary to implement a change in department policy. Currently, as spelled out in part 7503.1700, subpart 4, a restriction is placed on the person's license when he or she is reinstated after completing rehabilitation. The restriction indicates that licensure is conditioned on abstinence. As the rule is implemented currently, once the restriction is placed on a person's license, it is never removed. A license that is restricted in this way has limited the availability of automobile insurance and significantly raised insurance rates for the licensee. This new subpart provides the opportunity for the removal of the restriction for those

persons who have successfully completed a first rehabilitation and fulfilled the requirements for removal. It is reasonable not to remove the restriction for those persons who are reinstated after a second or subsequent rehabilitation. Those persons have consumed alcohol or controlled substances at least once, despite the abstinence condition of licensure. Retaining the restriction on those licenses follows the consideration set out in the Statement of Need and Reasonableness for the original chapter 7503 which stated, "...persons who have undergone rehabilitation once and failed are less likely to be successfully rehabilitated a second time." With that knowledge, the restriction should remain on the license of such a person despite its effect on automobile insurance.

Item A. is necessary to assure that the rehabilitation was successful. Five years was chosen because it is the length of a driving record period. When five years have elapsed and there are no indications of any consumption of alcohol or controlled substances, it is reasonable to believe that the person's rehabilitation has been successful and therefore should not be penalized by the repercussions of a restriction.

Item B. is necessary to inform the public of the procedure to follow in order to request the removal of the restriction. It is reasonable to require the person to appear at a driver evaluation office so the driving record can be evaluated to determine that the person fulfills the requirements for removal of the restriction.

Item C. is necessary to comply with Minnesota Statutes, section 171.06.

The final sentence in this subpart is necessary to clarify that the abstinence requirement of subpart 4 is not affected by the removal of the license restriction.

Subp. 5. Abstinence periods. The first amendment in this subpart is the addition of the word "documented" preceding abstinence. This addition is necessary to clarify that only the period of abstinence that the person can verify using the means within subpart 4 will be counted by the department.

Item C. has been added to this subpart to specify a period of abstinence that must be demonstrated by a person who has twice completed rehabilitation. When the original periods of abstinence were established, the department did so on its knowledge that the chances of recidivism are smaller the longer the period of abstinence. The Minnesota Court of Appeals decided that the driver who "...is never entitled to reinstatement of his license. ...is deprived of a right to a hearing on the matter." Wangen v. Commissioner of Public Safety, 437 N.W.2d 120, 124 (Minn. Ct.App. 1989). This decision necessitated an amendment to the present rule because the rule does not contain an opportunity for regaining driving privileges for a person who completes rehabilitation more than once. Providing the person with an

opportunity for reinstatement after the appropriate rehabilitation has been completed, also assures the person of a right to a hearing to petition for reinstatement as allowed under Minnesota Statutes, section 171.19.

Since abstinence is a condition of reinstatement, abstinence periods had to be determined for those persons who complete rehabilitation two or more times. The reasoning behind the establishment of the abstinence periods was explained in the Statement of Need and Reasonableness that accompanied the original rule. The following is an excerpt from the statement justifying abstinence periods set within this subpart:

Requiring a person in rehabilitation to demonstrate a history of sobriety is more convincing evidence of future sobriety than a person's mere promise to abstain.

The periods prescribed are not sanctions associated with the incident for which a person's license is cancelled or sanctions associated with a person's driving record as a whole, and have no relationship to the legal penalties for intoxicated driving imposed by statute or rule. The periods, like chemical dependency treatment, are medically oriented and are a necessary means of establishing that a person's chemical dependency or chemical abuse problem is brought under control before he or she resumes driving.

The duration of the periods set forth is based on three considerations. First, a longer history of intoxicated driving suggests a chemical abuse problem of progressively greater severity. Second, persons who have undergone rehabilitation once and failed are less likely to be successfully rehabilitated a second time. Finally, a short abstinence period is not an accurate indicator of future success.

Under the [then] existing driver's license rules, Minnesota Rules, chapter 7412, the abstinence period required for rehabilitation is a discretionary period of not less than six months. After initial adoption of chapter 7412 in 1976, the agency began imposing only a six month sobriety period in all but exceptional cases. Unfortunately, the recidivism rate for persons who completed rehabilitation after six months of sobriety was unreasonably high. About half [the number] of persons who were rehabilitated under such programs had reoffended at least once within seven years. As a result, in 1983 the department began imposing one year periods for persons undergoing rehabilitation for the first time. The period was extended further for persons undergoing a second rehabilitation. Imposing the longer period seems to have shown an improvement in the recidivism rate, except among persons with several incidents on record. Because of the short time span

involved, it is impossible to assess statistically the long term effectiveness of the discretionary periods imposed. It is believed, however, that the longer periods of abstinence have been more effective. ...

...The abstinence period table set forth in subpart 5 is computed based on the conservative assumption that there is a linear relationship between the number of past incidents and the traffic safety risk index defined by the abstention period.

The agency retains that justification when setting the additional periods of abstinence. Item C requires a six year period of abstinence for those who have twice completed rehabilitation. The six year period is double the period required for those who complete rehabilitation once. Doubling the abstinence period is reasonable because the person would have once completed rehabilitation, maintained abstinence for three years and yet combined alcohol or substance abuse with driving. Six years is progressive and provides that longer abstinence period, so the agency can reinstate the driver's license with substantive knowledge that the person is less likely to abuse the driving privilege again. Item D requires the abstinence period to double each subsequent time the person is required to complete rehabilitation. Again, this is reasonable to base the hope of recovery on progressively longer abstinence periods for each rehabilitation.

The addition of new abstinence periods in items C and D creates the opportunity for petitioning for reinstatement and regaining driving privileges after progressively longer abstinence periods. This reasonably balances the individual privilege to drive and the safety of the public in general.

Subp. 6. Failure to abstain following rehabilitation.

The new language within this subpart is needed to correctly state the consequences of using alcohol or controlled substances following rehabilitation. The current rule incorrectly states that cancellation is imposed if the consumption occurs after completing rehabilitation. Although that may be the case, the actual authority to cancel results from consumption after the date of abstinence. The need and reasonableness are based on the argument set out above to substantiate the need and reasonableness of part .1300, subpart 3.

The remaining deletions within this subpart are necessary to comply with the rule change in subpart 5 which sets forth additional periods of abstinence for those persons who complete rehabilitation more than twice. This change is reasonable as it results from the Minnesota Court of Appeals case, Wangen v. Commissioner of Public Safety, 437 N.W.2d 120, 124 (Minn. Ct.App. 1989) which concluded that subpart 6 as it now reads, "...is in excess of statutory authority and is invalid." The proposed changes to this subpart allow the reinstatement of driver's licenses

to those persons who complete rehabilitation requirements. Providing the person with an opportunity for reinstatement only following rehabilitation implements this part of the rule which is authorized by the legislature through Minnesota Statutes, section 169.121, subdivision 4. In addition this amendment conforms with the Minnesota philosophy regarding chemical abuse as a disease, therefore allowing the person as many treatments as necessary to cure his or her disease.

7503.1750 RESTRICTED LICENSES

This entire part is a new addition to the rule to coincide with the return of driving privileges to those drivers who have completed a third or subsequent rehabilitation, which is now possible under part .1700 above.

Subp. 1. Authority. It is necessary to add a new category of license for those drivers who are repeat offenders and who have completed their third or subsequent rehabilitation. Since these drivers have already twice completed rehabilitation and again been revoked for an alcohol- or controlled-substance-related incident, the department must closely monitor their driving practices as they return to the road. It is reasonable to grant these drivers restricted privileges as the commissioner is given authority to restrict as he or she "determine[s] to be appropriate to assure the safe operation of a motor vehicle by the licensee." See Minnesota Statutes, section 171.09.

Subp. 2. Issuance of restricted license. This subpart is necessary to set out the requirements that must be fulfilled before the restricted license will be issued. It is reasonable to require the person to fulfill item A because a person must apply for a driver license and pay a fee as required by Minnesota Statutes, section 171.06. The person must fulfill item B because Minnesota Statutes, section 171.13, requires the commissioner to examine each applicant for a driver license. Item C is required by Minnesota Statutes, section 171.20, subdivision 4. It is reasonable to require a person to fulfill item D, so the department can review the driver's record and material which indicates he or she is eligible for a restricted license at this time. Only after it is shown that the rehabilitation requirements of part 7503.1700 have been fulfilled can the department allow the person to apply for a license. In addition, the department can fully explain the restrictions on the driving privilege and the consequences of not driving within the restrictions.

Item E is reasonable to clarify that restricted driving privileges can be granted only if all requirements of all prior license withdrawals are satisfied before the restricted license can be issued. No license of any kind

can be issued if reinstatement requirements are not satisfied.

Item F is reasonable so that the driving privilege which is returned is less than full privileges. These drivers may drive to destinations which are identified as necessary. The reasons identified as necessary have been modeled after the conditions specified for issuance of a limited license in Minnesota Statutes, section 171.30, subdivision 1. The legislature has determined that the conditions listed in that subdivision warrant driving privileges for persons who have otherwise been suspended or revoked. Using those same conditions for the restrictions placed on the person who is eligible for a restricted license is reasonable. If the person can demonstrate that he or she can safely and responsibly operate a motor vehicle under these restrictions, the department has good reason to grant full privileges at the time specified in subpart 3.

Subp. 3. Length of restricted license period. Because the restricted license is a method for the department to monitor the driving practices of a person who has completed rehabilitation three or more times, it is necessary to set out a duration during which a person's driving privilege will be restricted before full privileges can be reinstated. After completion of a third rehabilitation, the person's driving privileges will be restricted for a period of three years. It is reasonable to require three years of restricted driving because the periods progress with the number of rehabilitations completed. The progression of those periods reasonably follows the progression of the abstinence periods set out in part 7503.1700, subpart 2.

After completion of a fourth or subsequent rehabilitation, the person's driving privileges will be restricted for periods of six years, twelve years, and so on for each additional rehabilitation completed. This is reasonable because the department has two interests to balance; the safety of the general driving public and the need for the offender to regain driving privileges. A person who has repeatedly been convicted of alcohol- or controlled-substance-related incidents, gone through rehabilitation a number of times, and continues to combine driving and substance abuse is a risk when allowed to drive again. Yet since substance abuse is viewed as a disease, all cases are individual; therefore each individual recovers differently. Perhaps the fourth rehabilitation will be the successful one. Allowing persons to drive with restricted privileges for a longer period of time allows the department to balance the risks.

Subp. 4. Informal hearing following denial of restricted license application. This subpart is necessary to inform the reader that an informal hearing is available to review the denial of a restricted license.

7503.1800 ISSUANCE OF LIMITED LICENSES

Subp. 2. Persons not eligible. Two changes have been made within this subpart, one is the correction of statutory authority and the other is the deletion of repetitive statutory language.

The references to Minnesota Statutes, sections 171.14 and 171.04, subdivision 8, have been removed. A person not eligible for a limited license is any person who has been cancelled and denied under any statute. The statutory authority stating this ineligibility is Minnesota Statutes, section 171.04, subdivision 11.

The language at the conclusion of this subpart has been deleted because it is merely a repetition of Minnesota Statutes, section 171.30, subdivision 3. The section is referenced in the rule and there is no purpose in repeating it.

The remaining changes have been made to clarify and simplify the language within this subpart.

Subp. 3. Conditions of issuance of limited license.

This subpart has been amended by specifying the statutory subdivision, Minnesota Statutes, section 171.30, subdivision 1, that authorizes the commissioner to impose conditions on limited licenses issued under that subdivision. In addition, the homemaker responsibilities need has been added to the rule to comply with the change in the statute passed during the 1987 legislative session. See Laws of Minnesota, 1987, chapter 171, section 11. The decision has been made to repeat the statutory definition of homemaker responsibilities in the rule because the term is relatively new and leaves itself open to varying interpretations.

All other changes have been made to clarify and simplify the language within this subpart.

Subp. 4. Restrictions and limitations. The amendment within this subpart deletes the reference to Minnesota Statutes, section 171.30, subdivision 3, from the statement referring to restrictions on the time and use of the limited license. Such restrictions are only authorized for the limited licenses issued under subdivision 1 of section 171.30.

Subp. 5. Informal hearing following denial. All changes have been made to clarify and simplify the language within this subpart.

7503.2000 ALCOHOL PROBLEM ASSESSMENTS REQUIRED BY THE COMMISSIONER.

Subp. 1. Assessment required after 0.07 test. The changes have been made to simplify the language within this subpart.

Subp. 2. By whom conducted. The amendment in this subpart is needed to comply with statutory changes which removed the authorization of the agency to do alcohol problem assessments. See Laws of Minnesota, 1987, chapter 315, section 4.

7503.2200 CHEMICAL ABUSE REVIEW PANEL

Subp. 1. Establishment and composition This subpart has been changed by removing "an alcohol problem assessment" from the issues eligible for review by the Chemical Abuse Review Panel. This change is necessary because the results of an alcohol problem assessment are not eligible for review by the panel. The assessments are conducted by the court system and not the Department of Public Safety, therefore the agency has no authority to review court assessments.

Subp. 2. Procedure. The amendments within the chemical abuse review panel procedures have been added to simplify the procedure for both the applicant and the department so the review can be done quickly and thoroughly for everyone involved yet maintain the complete accumulation of evidence necessary for the panel to make a knowledgeable decision.

Item A. This change allows the applicant for review to submit additional materials for consideration by the panel. The materials should be submitted at the time the person makes written request for review. Allowing the materials to be submitted with the request is necessary to expedite the procedure. The current rule requires the person to submit a request and ten days before the scheduled review submit any additional materials. That is an unnecessary added step for both the person and the department. The person must make sure that the additional materials are submitted before the deadline and the department must make sure the panel receives the additional materials and integrates them with the original request. A person who is requesting the review would have already considered what information and materials will be necessary to present before the panel. Having those materials submitted with the request should be no extra burden to the applicant since the time limitation for request is also being amended as discussed in the following paragraph.

This item has also been amended by removing the time limitation for requesting a review. The current rule requires a request within 30 days of special review or order of cancellation. Once that thirty day period has expired,

the person can no longer request a review. Removing this limitation allows a person to compile the materials to be submitted and prepare for the review prior to making a request. It is also necessary and reasonable that a person be given an unlimited amount of time to request a review now that the rule requires that additional materials be submitted at the time of the request.

A third change to this item is to require the person requesting review to include any written request for copies of materials submitted to the panel by the commissioner. Requiring the early request for the agency's materials adds no burden to the person submitting the request. In actuality, requiring all written requests in one letter, without a deadline for submission, simplifies the process.

Item B. The amendment to this item is necessary to require the commissioner to submit the person's request and materials to the chemical review abuse panel within 30 days of receipt of those items. It is reasonable if the person is requested to submit those materials to the commissioner with his or her request for review, that the commissioner be required to promptly forward all materials to the panel. Since no personal appearances are granted and time periods are spelled out both for submission to the panel and for the panel recommendation to the commissioner, it is reasonable to remove the requirement that the person be notified of the review date. This also aids in simplifying the review process.

Item C. The original item C has been deleted. This deletion is necessary to simplify the review process. The amendment to item A, requiring the person to submit additional materials for consideration at the time of request makes this item unnecessary. The deletion of this item also simplifies the process for the person by removing the requirement to submit four copies.

Item D. This item has been relabeled **item C.** The deletion in this item removes the time restriction for the commissioner to submit additional materials to the panel for review. This change is necessary to simplify the review process. As time restrictions are removed for the person requesting review, similar restrictions are removed for the department. Removing this restriction also allows the panel to be fully informed when making its recommendation. The department should not be precluded from submitting evidence to the panel at any time before the review if it is pertinent to the issue being reviewed. A time restriction can result in the panel's making an ill-advised recommendation to the commissioner.

Another change to this item adds language that requires the commissioner to automatically send copies of the department's materials to the person requesting review, if that person requested receipt of those materials. This amendment is necessary to assure that all persons who are interested in receiving the materials are sent them.

Items E, F, G, H, and I, have been relabeled.

Item H. has been amended by adding explanatory language. Rules cannot contradict statute, so the additional language is necessary to clarify the authority of the panel.

Item I is necessary to avoid frivolous requests for review. This limitation is reasonable since the scope of the panel's review encompasses only two issues: the type of chemical dependency treatment imposed and the diagnosis of chemical abuse. Item F. above places the burden of proof regarding the appropriateness of the diagnosis or treatment of the applicant for review, and Item A. above requires the applicant to supply sufficient evidence to meet that burden. This new item allows the person a second chance to present evidence to the panel if his or her first review does not provide the results the person had sought. Requiring a minimum of one year to elapse before the second review is requested will enable a fresh approach by the panel and allow adequate time for the applicant to strengthen his or her evidence. Since the issues for review are limited and the applicant has the burden of proof, to allow more than two reviews during the cancellation period is superfluous.

7503.2300 COMMERCIAL DRIVER LICENSE DISQUALIFICATION FOR ALCOHOL AND CONTROLLED-SUBSTANCE-RELATED INCIDENTS.

The following subparts set out the violations which will result in disqualification. Although these violations are spelled out in statute, it is reasonable to include them in the rules also since all driver and driver license sanctions resulting from alcohol- and controlled-substance-related incidents are included in this chapter and organized in the following arrangement.

Subp. 1. Driving under the influence of alcohol or controlled substance. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 1, item (1), resulting from a conviction under Minnesota Statutes, section 169.121.

Subp. 2. Alcohol-related driving. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 1, item (1), resulting from a conviction under Minnesota Statutes, section 169.1211.

Subp. 3. Implied consent revocation. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 2, resulting from a revocation under Minnesota Statutes, section 169.123.

Subp. 4. Out-of-state incidents. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 1, item (4), resulting from the commission of an offense in another state

that would be grounds for disqualification under Minnesota Statutes, section 171.165, subdivisions 1 or 2.

7503.2400 DISQUALIFICATION PERIODS.

The following subparts set out the disqualification periods that are imposed for disqualifications under part 7503.2300 above. Although these disqualification periods are spelled out in statute, it is reasonable to include them in the rules also since all the corresponding withdrawal periods for driver and driver license sanctions resulting from alcohol- and controlled-substance-related incidents are included in this chapter and organized in the following arrangement.

Subp. 1. One year disqualification. This subpart implements the one year disqualification period set out in Minnesota Statutes, section 171.165, subdivisions 1 or 2, for a first conviction or revocation. It is also necessary to spell out in the rules when the disqualification period begins. Starting the disqualification period on the date the record of conviction is received by the agency is reasonable because it ensures consistent imposition of the disqualification period and consistent treatment of disqualified persons.

Subp. 2. Three year disqualification. This subpart implements the three year disqualification period set out in Minnesota Statutes, section 171.165, subdivision 3, clause (1). It is also necessary to spell out in rule when the disqualification period begins. Starting the disqualification period on the date the record of conviction is received by the agency is reasonable because it ensures consistent imposition of the disqualification period and consistent treatment of disqualified persons.

Subp. 3. Lifetime disqualification. This subpart implements and further specifies the disqualification period set out in Minnesota Statutes, section 171.165, subdivision 3, clause (2). That clause calls for a disqualification period of "not less than ten years..." The rule specifies the disqualification period as lifetime. A lifetime disqualification is necessary to comply with the federal regulation found in 49 CFR Ch. III, section 383.51, setting out the disqualification period for subsequent offenders as lifetime. Under the Commercial Motor Vehicle Safety Act of 1986 (Title XII, Public Law 99-570), Minnesota is required to adopt the federal standards regarding commercial vehicles and the persons who drive such vehicles or lose a portion of federal highway funds. Starting the disqualification period on the date the record of conviction is received by the agency is reasonable because it ensures consistent

imposition of the disqualification period and consistent treatment of disqualified persons.

The federal standards allow states to reduce lifetime disqualifications to a minimum of ten years disqualification if the person can demonstrate that he or she is rehabilitated. The department has elected to offer a reduction in the lifetime disqualification. It is necessary to state what constitutes demonstrable rehabilitation allowing the department to consistently reduce the lifetime disqualification. When a person is disqualified, he or she is not eligible to drive commercial motor vehicles; therefore, the operation of a person's private passenger vehicle should be the only conduct the department has to evaluate. Minnesota Statutes, section 171.165, subdivisions 1 and 2, include the following violations and revocations:

1. Driving under the influence, M.S. 169.121;
2. Alcohol-related driving, M.S. 169.1211;
3. Leaving the scene of an accident, M.S. 169.09, subd. 1 and 2;
4. Use of a commercial motor vehicle in the commission of a felony;
5. Implied consent revocation; and
6. Similar violation or revocation in another state.

If during the initial ten years of a person's disqualification period, one of the violations or revocations listed above appears on the driver's record it is evident that that person has not made any changes in his or her driving practices. This is a reasonable conclusion when you look again at the violations and revocations listed above. They are not petty misdemeanors nor violations that are common to the majority of drivers. They are serious offenses. However, if the person has no such violations or revocations on his or her record during that ten year period, it is reasonable for the department to believe that the person has been rehabilitated and that issuing a commercial driver's license to that person no longer poses a threat to public safety.

7503.2500 NOTICE OF DISQUALIFICATION.

Subp. 1. Notice served by peace officer. This subpart is necessary to set out the contents of the notice of disqualification supplied by the department to law enforcement agencies. It is reasonable for the department to supply the forms so that all persons subject to disqualification receive consistent, uniform, and effective notice. Such notice is necessary to inform the persons of their due process rights. This notice would only be served by the peace officer when the person's license has been revoked under Minnesota Statutes, section 169.123, therefore it mirrors the notice given by the peace officer for the administrative revocation which is set out in part 7503.0900, subpart 3, above. Since the person will not be

disqualified unless his or her license has been revoked while operating a commercial motor vehicle, it is reasonable that the same notice be given. The notice will be contained in one form so the person receiving notice has only one document to review to be fully informed of his or her rights and duties arising from the revocation and disqualification.

Item A. is necessary to identify the person upon whom notice is served.

Item B., together with item H., provide the means of computing the date on which the disqualification period expires.

Items C. and D. specify that the form must include the date of the incident and the traffic citation number. This information is necessary to distinguish between revocation/disqualification notices in the case of a person who has been convicted under the DWI statute on more than one occasion.

Item E. is an item listed on a notice of disqualification that is not required on the notice of revocation. The inclusion of this item is necessary to record that the person was driving a commercial motor vehicle at the time of the incident. The type of vehicle being driven is a critical detail to include in the notice of disqualification, because it is a legal element of disqualification. See Minnesota Statutes, section 171.165.

Item F. is necessary so that the agency can contact the peace officer for purposes of investigating the incident, or to obtain the incident reports in the event the officer fails to submit them.

Item G. requires the form to include the reason for the disqualification, and is necessary to invoke disqualification under the applicable subdivision of Minnesota Statutes. See Minnesota Statutes, section 171.165 subdivision 1, clause (1) and subdivision 2.

Items I. and L. are necessary to give the person notice of the statutory requirement to surrender his or her driver's license upon disqualification. See Minnesota Statutes, section 171.20. Including this information on the notice form is a reasonable means of protecting the person from ignorance of the consequences for failing to surrender the license and it encourages persons to surrender their licenses after disqualification.

Item J. is necessary to inform the person that he or she may not drive a commercial motor vehicle for twenty-four hours from the time this notice is served. This portion of the notice implements Minnesota Statutes, section 169.1215.

It is reasonable to contain the out-of-service order within the notice of disqualification because it is the driving incident upon which disqualification is based which results in the issuance of an out-of-service order. Also, because the notice of disqualification includes a seven-day temporary license period, it is necessary to include this item within the notice so it is clear that the out-of-service order precludes the first twenty-four hours of the seven-day temporary license regarding the commercial driving privilege. Those persons who are disqualified may not operate commercial motor vehicles for the first twenty-four hours of that period as set forth in Minnesota Statutes, section 169.1215.

Item K. and M. indicate whether a temporary license is issued and if not issued, the reason for non-issuance. This information is necessary to inform the driver, law enforcement personnel, and the agency whether the notice of disqualification form is also valid as a temporary license for the period specified on the form.

Item N. is necessary to inform the person that the submission of a sworn statement that the person does not have a driver's license is acceptable to fulfill the requirements of Minnesota Statutes, section 171.20, subdivision 1. This item is a reasonable manner to address the situation where a person's license is no longer in his or her possession and cannot be recovered.

Items O., P., Q., and R. require the forms to include information explaining the right to and procedure for administrative and judicial review of an order of disqualification issued pursuant to Minnesota Statutes, section 169.123 and the consequences of failing to request judicial review promptly. This is necessary because the legislature provided the right to administrative and judicial review in Minnesota Statutes, section 169.123, subdivisions 5b, 5c, 6, and 7. It is also necessary that a person be informed of the availability of and procedures for review.

Subp. 2. Notice served by commissioner. This subpart is necessary to set out the contents of the form required to serve notice of disqualification when the agency serves notice. Included in this subpart are the circumstances under which the agency serves notice.

The need and reasonableness of the majority of the items which comprise this notice are based on the arguments set out above to substantiate the need and reasonableness of the items comprising the form for notice of disqualification in part .2500, subpart 1.

The need and reasonableness of item A. is based on the argument set forth above to substantiate the need and reasonableness of part .2500, subpart 1, item A.

The need and reasonableness of item B. is based on the argument set forth above to substantiate the need and reasonableness of part .2500, subpart 1, item E.

Item C. is necessary for the record-keeping function of the agency.

Items D. and F. are necessary to compute the date when the disqualification period expires. The date is computed by counting the years of the disqualification period (item F.) from the effective date (item D.).

The need and reasonableness of item E. is based on the argument set forth above to substantiate the need and reasonableness of part .2500, subpart 1, item G.

Item G. is necessary to inform a person subject to disqualification of the procedures and substantive requirements for reinstatement of commercial driving privileges. This item is a reasonable means of informing persons of the reinstatement requirements while reducing the agency's cost to do so.

Item H. implements the legislative mandate of Minnesota Statutes, section 171.20, subdivision 1, that demands surrender of the disqualified person's driver's license. Submission of a sworn statement that a persons does not have a driver license is acceptable if the person's license is no longer in his or her possession and cannot be recovered.

The need and reasonableness of items I., J., and K. is based on the argument set forth above to substantiate the need and reasonableness of part .2500, subpart 1, items O., P., Q., and R.

Item L. is necessary to inform the disqualified person of the right to informal review as provided for in part .2700 below.

Subp. 3. Notice to other states. This subpart implements the mandate of Minnesota Statutes, section 171.15, subdivision 1, which authorizes the agency to forward the report of a conviction under Minnesota law to other jurisdictions. Specifically it is necessary for the conviction of a nonresident under Minnesota Statutes, section 169.1211, because no other provision in statute or rule requires the agency to forward a section 169.1211 conviction notice. Furthermore, it is reasonable that this conviction be reported to the person's state of residence, as it is the state of residence that is authorized to take

action against the person's driver's license and/or full driving privileges.

7503.2600 ISSUANCE OF CLASS C LICENSES.

Subp. 1. Class C eligibility. This subpart is necessary to implement the legislative mandate that the agency include in rule the eligibility requirements for a class C license for those persons disqualified. The first sentence of this subpart restates the basic eligibility requirement set out in Minnesota Statute, section 171.165, subdivision 5. Furthermore, disqualification only affects the commercial driving privilege not a person's privilege to drive other vehicles. See the definition of disqualification in part .0100, subpart 8, above. That unique feature of disqualification necessitates a procedure by which the agency can issue the class C license to a person who maintains those driving privileges. Since the class C license is in actuality the driving privilege remaining after disqualification, it is reasonable that license be valid for the earlier of either the period of disqualification or license validity. However, it is imperative that the person realize that although the disqualifying incident may not have invoked a suspension, revocation, or cancellation of the full driving privilege, any license withdrawal during the disqualification period will result in the loss of the class C license.

Additionally, since a disqualification under these rules will result in a disqualification period of 1 year to lifetime, the person's license may expire during the disqualification period. If the license expires, the licensee has to make a decision at renewal. The license fee for the original commercial privilege (class A, B, or CC) may be paid or the person may pay only the class C fee therefore relinquishing the commercial driving privilege. If the choice is made to pay the class A, B, or CC license fee, the fee element of reinstatement has been satisfied, but the person's commercial driving privileges will not be reinstated until all requirements are met. This is necessary to implement and reinforce the reinstatement requirements of part .2800 and the imposed disqualification period. Subpart 3 below further explains the affect of disqualification on the class A, B, or CC license status.

Subp. 2. Obtaining paper class C license. This subpart is necessary to explain how a disqualified person can obtain a paper class C license or a class C license card. It sets out the three methods by which a person may receive a paper class C. If the agency is mailing notice of disqualification to the person, the paper class C will be enclosed with that notice. It is reasonable for the class C to accompany the notice of disqualification for three reasons. First, the person is disqualified upon receipt of

notice, therefore the class A, B, or CC license is no longer valid though class C driving privileges still exist. Secondly, it is more convenient for the licensee to receive the paper class C by mail than to require a trip to a driver license examination station. Thirdly, the cost to the agency is minimized if the notice and paper class C can be mailed simultaneously.

If the person received notice of disqualification from a peace officer, the person most likely received a seven-day temporary license. Either during that seven-day period or after that period has expired, those persons who retain their class C privileges must bring the notice to a driver examination station to receive a record of examination that serves as a 90-day temporary class C license. This requirement is necessary so that a person can obtain a class C license as soon as possible. After the seven-day temporary license has expired, the person will no longer have a valid license though he or she may retain the class C privilege. However, seven days is not an adequate amount of time for the department to be notified of disqualifying incident, process a paper class C license, and mail it to the licensee. Since the record of examination is a valid license for 90 days for all persons who receive one, it is reasonable that the 90-day period be used for those persons who receive the record as a result of being disqualified. If the period of disqualification exceeds 90 days, (which all disqualification imposed under this part will) the department will automatically mail a paper class C to the person disqualified. The paper class C shall be mailed to all retaining class C privileges whether they received a record of examination or not.

Subp. 3. Obtaining class C license card. Due to the fact that a license card serves as a picture identification for its holder, most persons prefer to have a class C card instead of a paper license. This paragraph is necessary to set out the process for obtaining a class C license card. The requirement to make application for the card is reasonable because the information listed on an application is used in the manufacture of the card. Requiring the payment of a duplicate fee is reasonable, because that fee was set to cover the cost of producing the card. Mailing the class C license to the person is convenient for the person and the agency alike. Limiting the issuance of a class C license card to those persons with a minimum of 90 days remaining in the disqualification period is necessary, due to the time factor involved in manufacturing a license card. It would be unreasonable to require the agency to process, manufacture, and distribute a license card and for a person to pay for a license card which will be used only a period of a few weeks or less.

Subp. 4. Class A, B, or CC license status. The first sentence of this subpart is necessary to reinforce the reinstatement requirements of part .2800, while conveniently returning the commercial driver license to the person. Minnesota Statutes, section 171.27, allows for the renewal of an expired license only on or before expiration or within one year after expiration. It is necessary to comply with that statutory section by requiring a person to reapply and retest for a commercial class license if more than one year has elapsed since the expiration date .

7503.2700 INFORMAL HEARING FOLLOWING DISQUALIFICATION.

This part is necessary to inform disqualified drivers that they may have the order of disqualification reviewed by the commissioner in an informal hearing. The opportunity for an informal hearing regarding these disqualifications is reasonable because no other form of agency review of disqualifications is provided in the statutes than for disqualifications which are set out in the implied consent statute. Additionally, Minnesota Rules, part 7503.1100, allows for informal review of revocation resulting from alcohol- or controlled-substance-related incidents other than M.S. 169.123. A similar review process should also be available to those persons disqualified.

7503.2800 REINSTATEMENT FOLLOWING DISQUALIFICATION.

Subp. 1. Conditions of reinstatement. This subpart is necessary to set out the requirements to be fulfilled by a disqualified driver, before his or her commercial driving privileges can be reinstated. Items A and B set out the requirements which are found in statute. Item C logically requires all disqualification requirements to be satisfied. Item D requires the return of class C license if issued as is necessary to comply with Minnesota Statutes, section 171.02, subpart 1, prohibiting persons from possessing more than one license.

Subp. 2. Notice of reinstatement. This subpart is necessary to inform the public when reinstatement becomes effective. It is reasonable to require the department to mail notification to the person because it is the department that records each requirement as it is fulfilled. Additionally, it is essential that the person not be reinstated until the department has sent the notice verifying that the reinstatement requirements have been met to implement subpart 1.