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

IN THE MATTER OF THE PROPOSED STATEMENT OF NEED
RULE OF THE DEPARTMENT OF PUBLIC AND REASONABLENESS
SAFETY GOVERNING THE DISQUALIFICATION
OF COMMERCIAL MOTOR VEHICLE DRIVERS

GENERAL STATEMENT

Minnesota has approximately 225,000 licensed commercial motor vehicle drivers. The Minnesota Legislature has recognized the need to establish safeguards necessary to protect public safety as a result of driving violations. Minnesota Statutes, section 171.165, authorizes the Minnesota Department of Public Safety to disqualify commercial drivers under specified circumstances. The department has proposed a permanent addition of parts 7409.0100 through 7409.0600 to the Minnesota Rules to implement the statutory provision cited above.

Although the rule making authority in Minnesota Statutes, section 14.06, is broad, the department must establish safeguards that are necessary to protect the public from unsafe drivers. In addition, the proposed rules are needed to specify a standardized set of conditions and procedures for implementing the cited statute. The proposed rules ensure that all drivers are treated similarly when disqualification is imposed.

Minnesota Statutes, section 14.23, requires the department to make a factual statement that establishes the reasonableness of the proposed rules. The rules are reasonable if there is a rational basis for the department's proposed action. The department believes that proposed parts 7409.0100 through 7409.0600 are reasonable because driving privileges are limited only where necessary to enforce relevant statutes and to protect the rights of the affected individual and the general public.

STATUTORY AUTHORITY

Minnesota Statutes, section 171.165, subdivision 5, directs the Commissioner of Public Safety to "...adopt rules to administer this section [Commercial Driver's License, Disqualification.]. The rules must include procedures for issuing class C licenses to persons who have been disqualified from operating commercial motor vehicles but whose drivers' licenses have not otherwise been revoked, suspended, canceled, or denied." These rules spell out the

administration of disqualification together with procedures for issuing class C licenses when appropriate.

Additionally, other rights and procedures available to the public to perform driver's license administration are authorized by Minnesota Statutes, section 14.06, which reads, "Each agency shall adopt rules, ...setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public."

EFFECT OF THE RULES

These rules will have a direct impact on:

- (1) every person who uses a commercial motor vehicle in the commission of a felony and is convicted of that felony;
- (2) every person who leaves the scene of an accident while operating a commercial motor vehicle;
- (3) every person who is convicted of the manufacture, sale or distribution of a controlled substance when the use of a commercial motor vehicle is involved;
- (4) every person who operates a commercial motor vehicle and is convicted of a serious traffic violation; and
- (5) every person convicted in another state for a violation of a state statute or ordinance in conformity with one of the Minnesota provisions described above.

In addition, businesses whose employees drive within the scope of employment may be indirectly affected by these rules if its employee is disqualified from operating commercial motor vehicles.

SMALL BUSINESS CONSIDERATIONS

The 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, is 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 for employees of small businesses 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 the legislative mandate of section 171.165, the department has not placed any undue burden on small businesses. The department is merely implementing legislative requirements.

FEES IMPOSED BY THE RULES

The rules do not fix any fees nor do the statutes authorizing promulgation of the rules require that any fees be fixed. Therefore, no approval from the Commissioner of Finance is required.

FISCAL IMPACT

Adoption of these rules will not require the expenditure of public money by local public bodies.

ENVIRONMENTAL EFFECTS

Adoption of these rules will not affect the quality of air or water in the state nor will the rules affect the quality and amount of agricultural land.

RULE BY RULE ANALYSIS

7409.0100 DEFINITIONS.

This part provides definitions necessary for the chapter. Several of the terms defined in this part require definitions for clarity and consistency. Other terms are substantive and have special significance as used in this chapter. This part includes subparts defining terms used in the statutes and throughout the rules. Some of these definitions are taken directly from the statutes, and some pertain to terms that are used throughout the rules that are not defined in the statutes. Some of the definitions taken from the statutes have been expanded to address problems not addressed in the statutory definition.

Subpart 1. Scope. This definition is necessary to specify the limits within which the definitions are applicable. This provision is reasonable because the limits set for the

Subp. 2. Felony, using commercial motor vehicle. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 1, clause (3).

The need and reasonableness of Items A., B., and C. is based on the argument set forth above to substantiate the need and reasonableness of part 7409.0200, subpart 1, Items A., B., and C.

Subp. 3. Out-of-state convictions. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 1, clause (4).

The need and reasonableness of Items A., B., and C. is based on the argument set forth above to substantiate the need and reasonableness of part 7409.0200, subpart 1, Items A., B., and C.

Subp. 4. Manufacture, sale, or distribution of controlled substance. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 3, clause (3).

Subp. 5. Serious traffic violations. This subpart implements the disqualification set forth in Minnesota Statutes, section 171.165, subdivision 4.

This subpart is also necessary to specify how the two- or three-year period will be determined for counting the number of serious traffic violations. It is reasonable for the department to use the driving incidents from which the violations arise because conviction records may not truly represent the time frame in which the offenses occurred. The date of the driving incident is recorded by the department and truly reflects the time frame in which the offenses occurred.

Subp. 7. Reduction of lifetime disqualification. The federal standards allow states to reduce lifetime disqualifications to a minimum of ten years disqualification if the person can demonstrate that the driving practices that led to lifetime disqualification have been rehabilitated. See Commercial Motor Vehicle Act of 1986 (Title XII, Public Law 99-570, Section 12008). 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 driving practices have been rehabilitated and that issuing a commercial driver license to that person no longer poses a threat to public safety.

7409.0300 NOTICE OF LICENSE ACTION.

Subp. 1. Notice of possible disqualification. This subpart is necessary to set out the contents of the form required to serve notice of possible disqualification when the department serves notice pursuant to Minnesota Statutes, section 171.166, subdivision 2. Such notice is also necessary to inform the persons of their due process rights. It is reasonable to include the contents of the form so that all persons subject to possible disqualification receive consistent, uniform, and effective notice.

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

Item B. is necessary to further identify the person.

Item C. is necessary to compute the effective date of the disqualification period in compliance with the administrative review process set out in Minnesota Statutes, section 171.166.

Item D., together with item G., provide the means for computing the date on which the disqualification period expires.

Item E. requires the form to include the reason for the disqualification, and is necessary to invoke disqualification under the applicable subdivision of Minnesota Statutes, section 171.165, subdivisions 1, 3, or 4. In addition this item indicates that the department

subpart restates the basic eligibility requirements 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 7409.0100, subpart 6, above. That unique feature of disqualification necessitates a procedure by which the department 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 60 days 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 7409.0600 and the imposed disqualification period. Subpart 5 below further explains the effect of disqualification on the class A, B, or CC license status.

Subp. 4. Obtaining 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 two methods by which a person may receive a class C license. 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.

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. Therefore, this

subpart is also 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. 5. Class A, B, or CC license status. The first sentence of this subpart is necessary to reinforce the reinstatement requirements of part 7409.0600, 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.

7409.0500 ADMINISTRATIVE REVIEW.

This part is necessary as a reference to Minnesota Statutes, section 171.166, which sets out the administrative review process for those persons who are disqualified under this chapter. It is reasonable to include this citation in the rule so that everyone is informed of the availability of and procedures for administrative review.

7409.0600 REINSTATEMENT.

Subp. 1. Reinstatement following disqualification. 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. Reinstatement notice. 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 to verify that the reinstatement requirements have been met to implement subpart 1.