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October 4, 2011

Legislative Reference Library
645 State Office Building
100 Rev. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155

RE: In the Matter of the Proposed Rules Governing School Bus Driver Qualifications and Medical Qualifications for Commercial Driver's License, Minnesota Rules, Parts 7414.0100, 7414.1460, 7414.1550, 7414.1600, 7421.0100, 7421.0200, 7421.0300, 7421.0400, 7421.0500, 7421.0600, 7421.0700, 7421.0800, 7421.0900.

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt rules governing school bus driver qualifications and medical qualifications for commercial driver's license. We plan to publish a Dual Notice in the October 10, 2011 *State Register*.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-201-7583.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Cavanagh".

Jacqueline Cavanagh
Legislation and Rules Coordinator
Driver and Vehicle Services

Minnesota Department of Public Safety



STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendment to Rules Governing School
Bus Drivers and Proposed New Rules Governing
Commercial Driver's License Holders Minnesota
Rules, Parts 7414.0100, 7414.1460, 7414.1550,
7414.1600, and Proposed Chapter 7421**

September 30, 2011

NOTICE: Upon request, the Department can provide this Statement of Need and Reasonableness in an alternative format such as large print, Braille, or other electronic media format. Requests should be directed to Jacqueline Cavanagh at the Minnesota Department of Public Safety, Driver and Vehicle Services, 445 Minnesota Street, Suite 195, Saint Paul, Minnesota 55101-5195; 651-201-7583 (telephone); DVS.Rules@state.mn.us (e-mail). TTY users may call the Department at 651-282-6555.

INTRODUCTION

Pursuant to chapter 171 of Minnesota Statutes, the Minnesota Department of Public Safety (DPS), through its Driver and Vehicle Services Division (DVS), regulates the licensure and driving privilege of individuals who operate vehicles, including commercial motor vehicles, on Minnesota roads. In this rulemaking proceeding, DPS proposes to promulgate a new rule chapter governing the medical certification requirements of commercial driver's license (CDL) holders and to amend rules governing school bus driver qualifications.

Context and Purpose

Drivers of commercial motor vehicles have been required to obtain a CDL since 1992 due to the federal enactment of The Commercial Motor Vehicle Safety Act of 1986. The Department of Public Safety began issuing commercial driver's licenses in December of 1989. Prior to the implementation of the CDL program, Minnesota had a commercial vehicle operation classification system that included a special endorsement for school bus drivers.

One of the tenets of the federally mandated CDL program is that many holders of commercial driver's licenses are required to provide periodic certification of their fitness to drive from a medical examiner. School bus drivers in Minnesota have been required to submit a biennial school bus physical, which is the equivalent of a medical examiner's certificate, for nearly forty years. The current Minnesota driver's license application requires a driver to indicate if he/ she has a medical examiner's certificate, or indicate if the driver is exempt from medical requirements. Current practice requires that the CDL driver must carry the medical certificate, and any required waiver, at all times while operating a commercial motor vehicle in the event of a review by law enforcement during a road side stop. The employer must also maintain current medical information and driving history in the driver's qualification file.

More than 250,000 individuals hold Minnesota commercial driver's licenses issued by DVS. Of those, just over 18,000 CDL holders have a school bus endorsement.

Recently promulgated federal rules require states to collect driver's self-certification information, medical certificates, and any required medical waivers from persons holding commercial driver's licenses and to update the CDL holder's driving record with this information within ten days. (*Sæ* Docket No. FMCSA-1997-2210 RIN 2126 AA10) Drivers who are exempt from the medical certificate requirements, such as drivers for local and state governments, will continue to be exempt. If a CDL holder certifies that he/ she is not exempt from the medical requirements, then the state will collect the medical certification information and it will become part of the driver's record.

Beginning January 30, 2012, all new and renewing CDL holders must certify their operating status as a commercially licensed driver before the licensing jurisdiction can issue a CDL. To do this, CDL holders or applicants are required to submit a self-certification form and indicate their category of commercial motor vehicle operation (interstate or intrastate) and if they are subject to medical examination requirements. DVS cannot issue or renew a CDL unless the applicant has, at a minimum, certified to an exempt category of motor vehicle operation. If the applicant certifies that he/ she is subject to medical examination requirements, then a valid medical examiner's certificate, along with any required medical waiver, must be submitted before DVS can issue a CDL.

The changes in federal regulations have effectively added an oversight role by the states on the medical status of CDL holders. Commercial licensed drivers will also be held more accountable by having to submit timely medical certificates, if applicable, to the state driver licensing agency (SDLA) that issues their license. The SDLA is charged with reviewing and accepting the documents, and then updating the information to the driving record so that law enforcement and employers can more easily determine if a CDL holder is medically qualified.

The 2010 legislature enacted legislation that complies with the federal record keeping requirements for CDL holders and authorized rulemaking for compliance with federal provisions.¹ The legislation also authorized DVS to withdraw the commercial motor vehicle driving privilege from a driver who fails to file a current medical certificate, and any required medical waiver with the Division. Although not all of the federal rules apply to intrastate drivers, the 2010 legislation treats interstate and intrastate drivers alike to make administration of the law more efficient and to help ensure that all drivers of commercial motor vehicles meet the necessary medical qualifications.

DPS is proposing amendments in four rule parts governing school bus driver qualifications in chapter 7414. The first set of amendments updates the definitions section. The second amendment is a technical change that eliminates obsolete construction. The third set of amendments clarifies the amount and remittance procedure of a processing fee that has been superseded by statute since 2000. In the same part, DPS clarifies that failure to submit timely medical examination certificates will trigger the new CDL downgrade process. For school bus drivers, this means not only the loss of the school bus endorsement, but the entire CDL privilege. Finally, the fourth change represents a significant policy change by discontinuing medical waivers for epilepsy and loss of consciousness for school bus drivers.

This rulemaking has given DVS an opportunity to review its medical waiver policies relative to school bus driver qualifications and the Department believes that, in the interest of public safety, DVS' waiver policy with respect to epilepsy and loss of consciousness

¹ 2010 Minn.Laws. ch. 242

should be consistent with that of the other federal and state regulatory agencies that have authority in this area.²

Those affected by this rulemaking include commercial driver's license holders and their employers, school bus drivers and related educational organizations, and motor carrier and trucking organizations. It also impacts CDL training schools, third party testers, motorist safety organizations, organized labor, and state and federal transportation agencies.

Part 7414.0100 was last amended on June 29, 1998 (22 SR 2343) and by 1998 Minn. Laws. ch. 397, art. 11. s. 3.

Part 7414.1460 was last amended on June 29, 1998 (22 SR 2343)

Part 7414.1550 was last amended on June 29, 1998 (22 SR 2343)

Part 7414.1600 was last amended on November 14, 1994 (19 SR 1131)

Process

On March 28, 2011, DPS published a Request for Comments on the proposed rulemaking in the *State Register* and posted a copy of the Request on the Department's Driver and Vehicle Services website.³ The Request described the need for proposed rules and rule amendments, the persons affected by the proposed rule, and the statutory authority for the rulemaking.

Copies of the Request for Comments were mailed to persons who have requested to be notified of DPS' rulemaking pursuant to Minnesota Statutes, section 14.14. In accordance with that statute, the Department also attempted to identify and notify those persons or classes of persons who would be significantly affected by the proposed rule. DPS' efforts in this regard are described in the next subsection, entitled "Additional Notice" (page 6). DPS did not receive any comments or requests for information during its Request For Comments. The only response was an e-mail advising of a change of contact person for the Minnesota Department of Transportation.

In an additional attempt to elicit comment and participation in the rulemaking, DPS sent notice that a draft of the Department's proposed rules and rule amendments was available on the DVS website and encouraged review and comment by August 23rd, 2011, so that any questions could be addressed and comments considered before publishing the Notice of Intent To Adopt Rules. This notice was sent on August 16th, 2011, to the

² The Federal Motor Carrier Safety Administration has authority to issue medical waivers to physical qualifications under 49 C.F.R. §391.41 to interstate drivers and the Minnesota Department of Transportation has authority to issue medical waivers to physical qualifications under Minnesota Statutes, chapter 221, to intrastate drivers.

³ The website address (<http://www.dps.state.mn.us/dvs/PublicNotices.htm>) has changed since the date of RFC posting. The Department launched a new website on June 1, 2011 with a new web address. Accordingly, all web/url links were changed.

following: the Department's list of persons registered to receive information on rulemaking activity; the approved Additional Notice Plan list, as well as to the Epilepsy Foundation, Teamsters, MADD, Minnesotans for Safe Driving, and all CDL third party testers that are approved by the Department.⁴ The notice also informed stakeholders that there would be an additional opportunity to comment during the NIAR comment period.

On August 23rd, 2011, a lobbyist representing the Minnesota School Bus Operators Association telephoned the Department and requested a meeting to discuss the organization's questions on the rule draft. The Department agreed to the meeting, but explained that any such meeting would be open to all interested parties. On August 24th, 2011, the Department sent notice to everyone who had been notified about the rule draft, as well as to the Minnesota Petroleum Marketers Association and the Minnesota School Boards Association, that the Department was holding an informational meeting on August 31st, 2011. The purpose of the meeting was to explain and clarify the provisions of the proposed rule draft and rule amendments and answer questions from stakeholders. Notice of this meeting was also posted on the Driver and Vehicle Services' website.

Representatives from the following organizations attended the meeting: Minnesota School Bus Operators Association, Minnesota Association of Pupil Transportation, Minnesota Petroleum Marketers Association, Minnesota School Boards Association, Minnesota State Patrol, and FMCSA. The following questions/ comments were addressed:

- DVS clarified what "self-certification" means and the process by which drivers self-certify to their category of motor vehicle operation.
- DVS explained the rationale and ramifications of discontinuing epilepsy waivers for school bus drivers.
- DVS clarified those amendments that are stylistic or technical in nature.
- Clarification on the CDL downgrade process:
 - (1) DVS is sending a courtesy warning letter 60 days prior to a CDL holder's medical certification expiring. This process allows the driver time to take appropriate action so that DVS can update his/ her driving record.
 - (2) "Not Certified" means the CDL holder's CDL privilege is no longer valid and the person cannot legally drive a commercial motor vehicle until the driver's record reflects a "certified" medical certification status.
- Concern was expressed about DVS' ability to record and enter medical information within the 10 day period. *A nswer:* DVS explained that this is a federal requirement; compliance is not optional. To facilitate this effort, this data entry function would be performed not only by central office staff in Saint Paul, but also in the field by exam staff and driver's license agents.
- School bus operators asked if drivers could get some kind of "receipt" showing they submitted their paperwork. *A nswer:* No, the existing mainframe is not set up to

⁴ See 2010 Minn. Rules, §§ 7410-6000-7410.6540.

generate transaction receipts. DVS explained that all in-person transactions will be entered and updated at the time of transaction. If information is time sensitive, then DVS discouraged mailing or faxing information.

- Do drivers need to carry medical examiner's certificates with them? *Answer:* As new CDLs and renewals are issued after 1/ 30/ 2012, CDL holders will no longer need to carry medical examiner's certificate with them, *but they will need to carry any medical waivers issued by FMCSA, MnDOT, or DPS.* Once the information is submitted, the information on the driving record will be accessible to employers and law enforcement.
- DVS explained that CDL holders/ employers will also be able to check their medical certification and status on DVS' website. All data accessible online in this capacity is public data.
- Forms available "electronically" means that all related CDL forms will be available on the Department's website and will be "fillable."
- Clarification on what constitutes an "altered" document with regard to false information/ fraud provisions. *Example:* Drivers cannot write in the date of the medical certificate if the physician forgets.
- Discussion on the remainder of the rulemaking process and timelines.

In the October 10, 2011 issue of the *State Register*, the Department plans to publish a Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing And Notice of Hearing If 25 or More Requests For Hearing Are Received. The Dual Notice and the proposed rule will be sent by U.S. or electronic mail to the individuals and entities who received the Request for Comments and to the individuals and entities described in the next subsection, entitled "Additional Notice." The Dual Notice, the proposed rule, and this Statement of Need and Reasonableness (SONAR) also will be posted for public review on the Driver and Vehicle Services website⁵, and copies of all three documents will be sent to legislators as required by Minnesota Statutes, section 14.116. A copy of this SONAR will be sent to the Legislative Reference Library as required by Minnesota Statutes, section 14.131.

Additional Notice

In accordance with Minnesota Statutes, section 14.14, DPS strove to identify those persons or classes of persons who would be significantly affected by the proposed rule, so that they could be notified of these rulemaking proceedings. DPS sent copies of the Request For Comments in accordance with the approved Additional Notice Plan. This list included: Minnesota Trucking Association, Minnesota School Bus Operators' Association, Minnesota Association of Pupil Transportation, all CDL training schools, Minnesota State Patrol, Minnesota Chiefs of Police Association and Minnesota Sheriffs Association, Minnesota

⁵ <https://dps.mn.gov/divisions/dvs/news/Pages/cdl-medical-certificates.aspx>

Department of Transportation, Federal Motor Carrier Association, Minnesota State Colleges and Universities Truck Driving School Programs, and the Office of Traffic Safety. In addition to the mailed notices, and in accordance with Minnesota Statutes, section 16E.07, subdivision 3, the Department published the Request for Comments on the DVS website.

In anticipation of publishing the Dual Notice, DPS updated the Additional Notice Plan list that was approved for the Request for Comments (March 15, 2011). It did so by adding DPS approved CDL third party testers, Teamsters, Mothers Against Drunk Drivers, Minnesotans For Safe Driving, the Epilepsy Foundation of Minnesota, all deputy registrars and driver's license agents, and the Minnesota Deputy Registrar Association. As a result of the August 31st public meeting, it also added the Minnesota Petroleum Marketers Association and the Minnesota School Boards Association. DPS then submitted this additional notice plan to the Office of Administrative Hearings for review.

On October 3, 2011, the Office of Administrative Hearings approved the Additional Notice Plan submitted by DPS on September 23rd, 2011.

STATUTORY AUTHORITY

The Department's statutory authority to adopt these rules is set forth in Minnesota Statutes, section 171.162 and section 171.09, subdivision 1. These statutes comprise the grant of rulemaking authority in Laws 2010, chapter 242 to implement and administer required medical record requirements governing commercial driver's license holders. Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Under Minnesota Statutes, sections 14.002, 14.111, 14.127, 14.128, and 14.131, the Department must weigh certain factors in determining the need for and reasonableness of the proposed rule amendment. Each factor is addressed in turn here.

1. Persons Affected (Minn. Stat. § 14.131(1))

The Department has identified "classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule." Minn. Stat. § 14.131(1) (2010).

The rule itself does not impose costs. Persons affected are Minnesota residents who either currently hold a CDL or are working toward obtaining a CDL. The operation of certain commercial motor vehicles requires a driver to possess a CDL and to qualify

medically. Until this new federal regulation, CDL holders subject to medical examination requirements were required to keep a medical examiner's certificate in their possession when operating a commercial motor vehicle. Under the new regulation, the requirement of having to carry the medical examiner's certificate will be discontinued because the information will be provided to the state of licensure and entered into the driver's driving record. There is a cost for the medical examination that has always existed, and will continue, for the commercial licensed driver.

2. Probable Costs/ Effect on State Revenues (Minn. Stat. § 14.131(2))

Neither the Department nor any other agency is likely to incur additional implementation or enforcement costs if the proposed rule is adopted. The Department will send notice of medical status expiring and, if necessary, notice of intent to downgrade. However, the Department expects to be able to handle the notification without adjusting staffing levels and without incurring extraordinary costs. Notices will be generated automatically from the driver's license database based on the date of the medical documents.

The proposed rule would have no effect on state revenues, because no new tax or fee is associated with it.

3. Less Costly or Intrusive Methods (Minn. Stat. § 14.131(3))

The Department has considered whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule. The Department has concluded that there are no such methods because the rule's purpose is to implement federal policy that has been adopted by the legislature.

4. Alternative Methods Considered (Minn. Stat. § 14.131(4))

The Minnesota Administrative Procedure Act requires DPS to describe any alternative methods that it seriously considered for achieving the purpose of the proposed rule and the reasons why those alternatives were rejected. See Minn. Stat. § 14.131(4) (2010). In DPS' view, however, there is no alternative method of achieving the rule's purpose, a purpose that is mandated by statute and based almost entirely on federal regulations.

5. Probable Costs of Compliance (Minn. Stat. § 14.131(5))

The Department has analyzed "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals," Minn. Stat. § 14.131(5) (2010), and it has concluded that the proposed amendment has no effect on the costs of compliance.

Since implementation of the CDL program, drivers have had to qualify medically for a commercial driver's license. School bus drivers, however, have had this requirement for nearly forty years. The current driver's license application requires a driver to indicate if they had a medical examiner's certificate, or indicate if the driver is exempt from medical requirements. Because the medical certificates were carried by the driver, they were only reviewed by law enforcement during roadside stops or by the employer. The fact that the state is now the designated repository for medical examiner certificates and any required medical waiver(s) does not impose costs on a CDL driver other than nominal costs associated with submitting the documents such as postage or faxing.

6. Probable Costs or Consequences of Non-Adoption (Minn. Stat. § 14.131(6))

Under the Administrative Procedure Act, DPS must consider "the probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals." Minn. Stat. § 14.131(6) (2010).

The Department was directed by the 2010 legislature to adopt the proposed rules. By failing to adopt the proposed rules and rule amendments, DPS would not be in compliance with federal regulations in this area and Minnesota could lose 5-10% of its annual Federal-aid highway funding (approximately \$23-46 million).⁶

7. Comparison with Existing Federal Regulations (Minn. Stat. § 14.131(7))

Under section 14.131, clause 7, of Minnesota Statutes, DPS must assess any differences between the proposed rule and existing federal regulations and specifically analyze the need for and reasonableness of each difference.

The Department's proposed rules are the direct result of recent changes in federal regulations and subsequent legislation to comply with the federal medical record requirements. The proposed rule and rule amendments are consistent with the federal mandate that the state driver licensing agency (SDLA) oversee the medical record keeping requirements of CDL drivers and restrict the operating privilege in accordance with federal regulations.

8. Impact on Farming Operations (Minn. Stat. § 14.111)

The proposed rule would have no known impact on farming operations. Farmers operating farm trucks are exempt from possessing a CDL as well as from medical

⁶ See Commercial Driver's License Testing and Commercial Learner's Permit Standards, 76 Fed. Reg. 89, 26856.

examination requirements. Accordingly, DPS has not notified the Commissioner of Agriculture of this rulemaking.

9. Performance-Based Regulation (Minn. Stat. §§ 14.002, 14.131)

Section 14.002 of Minnesota Statutes requires agencies to “develop rules . . . that emphasize superior achievement in meeting the agency’s regulatory objectives” while striving toward “maximum flexibility for the regulated party and the agency in meeting those goals.” Minn. Stat. § 14.002 (2010). The proposed rule amendment meets this standard.

Although compliance by CDL holders is mandatory, it is facilitated by the fact that a driver can submit their self-certification and other medical documentation at 14 exam stations in the state, at any of the 125 driver’s license agent offices throughout the state, or at the central office in Saint Paul. Unless urgent timing considerations exist, CDL holders may also mail or fax the self-certification form and any medical documentation. In addition, DVS will send a warning notice to CDL holders sixty days in advance of expiring medical documents. This effort is being done as a courtesy so that CDL holders are reminded of their obligation in this area. The 60 day notice is intended to give a CDL holder enough time to make a medical appointment and submit updated medical documentation well in advance of the CDL holder’s medical status expiring.

10. Compliance Costs for Small Business or City (Minn. Stat. § 14.127)

DPS has considered whether the cost of complying with the proposed rule in the first year following adoption will exceed \$25,000 for any business with fewer than 50 full-time employees or for any city with fewer than ten full-time employees. The Department has based its determination on the regulatory analysis in the section above (page 8) titled “Probable Costs of Compliance.” As discussed there, no new costs are imposed on CDL drivers or the regulated industry; therefore, DPS has concluded that neither small businesses nor cities will incur any compliance costs that were not already required under federal regulations.

11. Consultation on Local Government Impact (Minn. Stat. § 14.131)

DPS consulted with the commissioner of management and budget to evaluate the fiscal impact and benefits of the proposed rule on local governments. On September 8, 2011, prior to publishing the Notice of Intent to Adopt Rules, the Department submitted copies of:

- (1) the Governor’s Proposed Rule and SONAR Form;
- (2) the proposed rules and rule amendments; and
- (3) the September 8th draft of this Statement of Need and Reasonableness.

On September 29, 2011, Keith Bogut responded on behalf of the commissioner of Minnesota Management and Budget. He opined that no costs are expected to be incurred by local governments by the Department's proposed rules and rule amendments.

12. Necessity for Local Implementation (Minn. Stat. § 14.128)

DPS has determined that no town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule. As discussed above, only CDL holders must take steps to comply with the proposed rules.

LIST OF WITNESSES

If a public hearing is held, DPS anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rule:

1. Ms. Debra Carlson, Driver Exam Program Manager, Department of Public Safety
2. Ms. Joan Kopcinski, Driver Services Program Director, Department of Public Safety
3. Ms. Patricia McCormack, Driver and Vehicle Services Director, Department of Public Safety

LIST OF EXHIBITS

At the time of this writing, DPS does not anticipate entering any exhibits into the hearing record to demonstrate the need for and reasonableness of the proposed rules and rule amendments.

RULE ANALYSIS

Minnesota Statutes, chapter 14, requires the Department to explain the facts establishing the need and reasonableness of the rules as proposed. "Need" means that a problem exists which requires administrative attention. "Reasonableness" means that there is a rational basis for the Department's proposed action. The need for and reasonableness of the proposed rules, amending Minnesota Rules parts 7414.0100, 7414.1460, 7414.1550, 7414.1580, 7414.1600, and proposed new rules in chapter 7421 is here explained.

Minn. Rules, part 7414.0100 DEFINITIONS.

The amendment of subpart 1a adds the definition of “CDL holder”. The term is needed to clarify what is meant by the use of defined and undefined terms such as “driver” and “licensee” in Minnesota Statutes, chapter 171, with respect to the commercial licensed driver. Further, it provides consistency for the reader and regulated industry, particularly when consulting both Minnesota Statutes and Code of Federal Regulations. CDL holder is used throughout Code of Federal Regulations, title 49, but is not a federal term of art. As used in this chapter, “CDL holder” means a person who was issued a commercial driver’s license or a commercial learner’s permit by the commissioner or another jurisdiction as long as the CDL or CLP is not expired, or if expired, expired less than one year from the date of expiration. It is reasonable to create a unifying, defined term when referring to a CDL driver, or a person with a commercial learner’s permit.

The amendment of subpart 3 adds the definition of “Commercial driver’s license (CDL)”. The term is defined by incorporating by reference the federal regulation at 49 C.F.R. § 383.5. The term means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 C.F.R. part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicle.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

The amendment of subpart 7a adds the definition of “Medical examiner”. The term is defined by incorporating by reference the federal regulation at 49 C.F.R. § 390.5. The term means a person who is licensed, certified, and/ or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in the Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

Minn. Rules, part 7414.1460 EPILEPSY, LOSS OF CONTROL WAIVER; MORE INFORMATION

The amendments to part 7414.1460 strike language relating to the necessary medical qualifications that a school bus driver must satisfy in order to apply for a waiver due to epilepsy or any other condition likely to cause loss of consciousness or loss of ability to control a motor vehicle safely. The amendments also prohibit the commissioner from

approving an application of any applicant seeking a waiver under this subpart. The uncodified language grandfathers in those existing school bus drivers with epilepsy waivers. As of September 2011, only 4 school bus drivers have epilepsy waivers. Under the proposed rule amendments, those individuals will be grandfathered in and can continue to operate a school bus provided that they continue to qualify medically and meet waiver requirements.

The government agencies with authority over commercial vehicle operators are the Federal Motor Carrier Safety Administration (FMCSA), the Minnesota Department of Transportation (MnDOT), and the Department of Public Safety (DPS). Pursuant to 49 C.F.R. § 391.41, FMCSA does not grant waivers to the physical qualifications for epilepsy and loss of consciousness for interstate drivers. Under Minnesota Statutes, chapter 221, MnDOT complies with federal policy in this area and does not grant waivers to the physical qualifications for epilepsy and loss of consciousness for intrastate drivers. Only DPS issues epilepsy waivers for interstate, school bus drivers under chapter 7414.

This rule part was originally proposed in September 1997 and adopted in June 1998. In DPS' rulemaking governing school bus drivers, the Department presented arguments from the medical community that advances in medicine and epilepsy research warranted a waiver policy in this area. It was reported in DPS' SONAR that, in 1992, the United States Department of Transportation was planning an epilepsy/ loss of consciousness control pilot project designed to consider waivers in this area but the project was halted.⁷

The Department is citing public safety interests and continued inconsistent intrastate waiver policy between DPS and MnDOT/ FMCSA. It is reasonable because there has been relatively low use of the policy (fewer than 10 have been granted) and there does not appear to be a commitment on the part of the federal government to reconsider its waiver policy in this area given that the last attempt was nearly twenty years ago. Further, DPS will grandfather the existing 4 waivers provided that the drivers continue to meet waiver requirements.

The amendment to this subpart also strikes part of the Code of Federal Regulations reference in subpart E in section 391. DPS is proposing to truncate CFR references after the section/ part because recent changes to Code of Federal Regulations in part 383.73 have already resulted in renumbering changes.

Minn. Rules, part 7414.1550 EFFECT OF WAIVER.

The amendment to part 7414.1550 merely makes a technical change by striking the phrase "have the force and effect" and revising the sentence to read: "The driver is subject to the alternative measures, conditions, or limitations attached to the waiver and to the enforcement actions and penalties of the applicable law or rule."

⁷ See OAH Docket No. 6-2400-11311-1, Statement of Need and Reasonableness, 44-52.

The use of the phrase “force and effect” is a legal phrase typically used in reference to properly adopted rules, which are legally distinct from conditions granted in a waiver. The amendment still provides the Department with the authority needed to enforce the conditions attached to a medical waiver issued under chapter 7414.

The amendment is necessary so that the rule part conforms to the standards of statutory construction and current standards of review by the Office of Administrative Hearings. It is reasonable to make this technical change in a rulemaking that is already amending portions of chapter 7414.

Minn. Rules, part 7414.1600 FEDERAL COMMERCIAL CARRIER MEDICAL EXAMINATION.

The amendment to subpart 1 of part 7414.1600 strikes the words “Department of Public Safety” and replaces it with “commissioner”. The amendment is a technical and stylistic change to conform to the Revisor’s style of generally naming the commissioner in lieu of the Department. It is reasonable to make this technical change in a rulemaking that is already amending portions of chapter 7414.

The amendment to subpart 2 clarifies that the processing fee amount paid by school bus drivers is actually the fee set forth in Minnesota Statutes, section 171.06, subdivision 2, paragraph (c). The amendment is necessary because it clarifies that the processing fee must be submitted at the time of initial application or renewal, which is consistent both with the statute and current practice.

The existing \$2 processing fee has been in place since the mid-1980s and was promulgated in 1994, but statutory fee enacted by the 2000 legislature supersedes it.⁸ In practical terms, the amount paid is the same but because all DVS fees are enumerated in statute, it is reasonable to strike the reference to a specific fee amount in rule and instead reference the statute in the event of a legislative change.

The amendment further clarifies that failure to pass the physical examination and submit required medical information will trigger the CDL downgrade process in part 7421.0800. The amendment is both necessary and reasonable because, as CDL holders, school bus drivers are subject to the downgrade provisions in chapter 7421. Failure to submit medical documents will result not only in the loss of school bus endorsement, as it did historically, but in the loss of the CDL privilege.

⁸ See 2000 Minn. Laws. ch. 489, art. 5, s. 32. (The Department did not provide a fiscal note.)

MINNESOTA RULES, CHAPTER 7421 – CDL MEDICAL QUALIFICATIONS

The proposed rules in chapter 7421 are new. Each part and its subparts are discussed in turn below.

***Minn. Rules, part 7421.0100* DEFINITIONS**

Part 7421.0100 adds 19 definitions and a statement of scope. The majority of the definitions reference defined terms in either Minnesota Statutes or in the Code of Federal Regulations. Each definition is discussed in turn.

Subpart 1 adds the definition of “scope”. The definition is necessary to indicate the applicability of the words and phrases defined in chapter 7421. It is reasonable to apply specifically defined words and phrases to chapter 7421 because many of the terms used within the chapter may have more than one meaning given in existing state and federal laws and rules. Precise definition is needed to ensure appropriate application of the rules and clear understanding by the regulated industries and enforcement authorities so compliance may be achieved.

Subpart 2 adds the definition of “cancel or cancellation.” The definition is needed to comply with 49 C.F.R. § 383.73 (k)(2), in order to restrict the commercial operating privilege of a CDL holder or an applicant for failure to pass either the knowledge or road test, or both, when the commissioner suspects and has sufficient cause to believe that a CDL holder or applicant has committed fraud in the issuance or testing process.

As used in this chapter, “cancel or cancellation” means the commissioner’s rescission of a CDL holder’s or driver applicant’s commercial driving privilege for which the CDL holder or driver applicant must meet commercial license testing requirements under chapter 7410. It refers to the permanent withdrawal of a CDL privilege under chapter 7421 until such time that the CDL holder or applicant initiates reinstatement of the CDL privilege.

The definition is reasonable because it is consistent with federal intent to provide states with the flexibility needed to restrict operating privileges for violations of fraud in the CDL issuance and testing process when FMCSA added the definition of “disqualification” in its recent final rule.⁹ In its response in the Discussion of Comments on the definition, FMCSA stated that “[i]n the final rule, FMCSA will remove the terms “cancel” and “revoke”

⁹ “*Disqualification* means any of the three following actions: (1) The suspension, revocation, or cancellation of a CLP or CDL by the State or jurisdiction of issuance. (2) Any withdrawal of a person’s privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations). (3) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this subchapter.” (See Commercial Driver’s License Testing and Commercial Learner’s Permit Standards, 76 Fed. Reg. 89, 26878)

and replace them with “disqualify.” This change is consistent with other parts of the rule: part 383 defines “disqualification” to include, among other things, the suspension, revocation or cancellation of a CLP or CDL. FMCSA believes that this change will give States the flexibility to manage their programs within the parameters of their existing rules.”¹⁰

Subpart 3 adds the definition of “CDL holder.” The term is needed to clarify what is meant by the use of defined and undefined terms such as “driver” and “licensee” in Minnesota Statutes, chapter 171, with respect to the commercial licensed driver. Further, it provides consistency for the reader and regulated industry, particularly when consulting both Minnesota Statutes and Code of Federal Regulations. CDL holder is used throughout Code of Federal Regulations, title 49, but is not a federal term of art. As used in this chapter, “CDL holder” means a person who was issued a commercial driver’s license or a commercial learner’s permit by the commissioner or another jurisdiction as long as the CDL or CLP is not expired, or if expired, expired less than one year from the date of expiration. It is reasonable to create a unifying, defined term when referring to a CDL driver, or a person with a commercial learner’s permit.

Subpart 4 adds the definition of “Commercial driver’s license (CDL)”. The term is defined by incorporating by reference the federal regulation at 49 C.F.R. § 383.5. The term means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 C.F.R. part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicle.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

Subpart 5 adds the definition of “Commercial learner’s permit (CLP)”. The term is defined by incorporating by reference the federal regulation at 49 C.F.R. § 383.5. The term means a permit issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which, when carried with a valid driver’s license issued by the same State or jurisdiction, authorizes the individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training in a commercial motor vehicle for which the holder’s current CDL is not valid.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

¹⁰ *Id.* at 26867.

Subpart 6 adds the definition of “Commercial motor vehicle”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subdivision 22. The term means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

- (1) has a gross vehicle weight of more than 26,000 pounds;
- (2) has a towed unit with a gross vehicle weight of more than 10,000 pounds and the combination of vehicles has a combined gross vehicle weight of more than 26,000 pounds;
- (3) is a bus;
- (4) is of any size and is used in the transportation of hazardous materials that are required to be placarded under Code of Federal Regulations, title 49, parts 100-185; or
- (5) is outwardly equipped and identified as a school bus, except for type III vehicles defined in section 169.011, subdivision 71.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the chapter of the authorizing legislation and administrative rule.

Subpart 7 adds the definition of “Commissioner”. The term is needed to clarify that use of the term commissioner refers to direct actions by the commissioner or actions of authorized officers and agents.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable because the same definition of “commissioner” exists in other administrative rule chapters governing driver’s license issuing and privileges, including chapters 7409 and 7410.

Subpart 8 adds the definition of “Current medical waiver”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subdivision 29a. The term means: (1) a medical variance, as defined in Code of Federal Regulations, title 49, section 390.5, that has been granted to the applicant or licensee by the Federal Motor Carrier Safety Administration and that is not expired, removed, or rescinded;

(2) a waiver of physical qualifications that has been granted to the applicant or licensee by the commissioner under section 171.321, subdivision 2, and rules adopted under that section, and that is not expired or revoked; or

(3) a waiver of physical qualifications that has been granted to the applicant or licensee by the commissioner of transportation under section 221.0314, subdivision 3 or 3a, or rules adopted under that section, and that is not expired or revoked.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

Subpart 9 adds the definition of “Department”. The definition is necessary and reasonable because it is used in chapter 7421 to refer to the Department of Public Safety.

Subpart 10 adds the definition of “Department of Transportation (MnDOT)”. The definition is necessary and reasonable because it is used in chapter 7421 to refer to the Minnesota Department of Transportation.

Subpart 11 adds the definition of “Disqualification or disqualify.” The definition is needed to restrict the commercial operating privilege for violations related to false information and/ or conviction of fraud related to the issuance and testing process in accordance with 49 C.F.R. § 383.73.¹¹

The federal definition of “disqualification” is overly broad for purposes of this rule as it encompasses several forms of withdrawing a driving privilege.¹² Moreover, in its response in the Discussion of Comments on the definition, FMCSA stated that “[i]n the final rule, FMCSA will remove the terms “cancel” and “revoke” and replace them with “disqualify.” This change is consistent with other parts of the rule: part 383 defines “disqualification” to include, among other things, the suspension, revocation or cancellation of a CLP or CDL. FMCSA believes that this change will give States the flexibility to manage their programs within the parameters of their existing rules.”¹³

As used in this chapter, “disqualification or disqualify” means the commissioner’s withdrawal of the privilege to drive commercial motor vehicles for a specific period of time under parts 7421.0600 and 7421.0700. It is reasonable because it refers to a temporary withdrawal of the CDL privilege for a violation under chapter 7421 and it is consistent with federal intent to provide states with the flexibility needed to restrict operating privileges for violations of false information and fraud.

Subpart 12 adds the definition of “Driver”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subd.31. “Driver” means “every person, who drives or is in actual physical control of a motor vehicle.” It is reasonable to use the term defined in Minnesota Statutes, chapter 171 to ensure consistency between the chapter of the authorizing legislation and administrative rule.

Subpart 13 adds the definition of “Driver applicant”. The term is defined by incorporating by reference the federal regulation at 49 CFR § 383.5. The term means an individual who applies to a State or other jurisdiction to obtain, transfer, upgrade, or renew a CDL or to obtain or renew a CLP.

¹¹ *Id.* at 26885.

¹² *See* footnote #10.

¹³ *Id.* at 26867.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

Subpart 14 adds the definition of “Federal Motor Carrier Safety Administration (FMCSA)”. The term means the agency of the United States Department of Transportation. It is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to define FMCSA because it is used in chapter 7421 and its regulations under 49 CFR §§ 383.71, 383.73 and 383.95 are the basis of the authorizing legislation.

Subpart 15 adds the definition of “Interstate or foreign commerce”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subdivision 36a. The term means: (1) any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of that state, including a place outside of the United States, and (2) trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in clause (1).

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

Subpart 16 adds the definition of “Intrastate commerce”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subd. 36b. The term means any trade, traffic, or transportation that occurs entirely within the state of Minnesota and that is not interstate or foreign commerce.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

Subpart 17 adds the definition of “License”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subd. 36b. The term means any operator's license or any other license or permit to operate a motor vehicle issued or issuable under the laws of this state by the commissioner of public safety including:

- (1) any temporary license, instruction permit, or provisional license;
- (2) the privilege of any person to drive a motor vehicle whether or not the person holds a valid license; and
- (3) any nonresident's operating privilege.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the chapter of the authorizing legislation and administrative rule.

Subpart 18 adds the definition of “Medical examiner”. The term is defined by incorporating by reference the federal regulation at 49 CFR § 390.5. The term means a person who is licensed, certified, and/ or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Code of Federal Regulations to ensure consistency between the underlying federal law of the authorizing legislation and administrative rule.

Subpart 19 adds the definition of “Sufficient cause to believe”. The term is needed to establish a standard of good cause that the commissioner must meet in order to cancel or disqualify a CDL holder’s CDL privilege under parts 7421.0600 and 7421.0700. It is reasonable because the same definition of “sufficient cause to believe” exists in chapter 7409 (Driver’s licenses privileges; loss and reinstatement) that the commissioner must meet in order to cancel or otherwise withdraw a person’s driving privilege, including a commercial driving privilege.

Subpart 20 adds the definition of “Valid medical examiner’s certificate”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subd. 49b. The term means a record, on a form prescribed by the department:

- (1) of a medical examiner's examination of a person who holds or is applying for a class A, class B, or class C commercial driver's license;
- (2) upon which the medical examiner attests that the applicant or license holder is physically qualified to drive a commercial motor vehicle; and
- (3) that is not expired.

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

Minn. Rules, part 7421.0200 SELF-CERTIFICATION

Part 7421.0200 clarifies and implements the self-certification requirement under Minnesota Statutes, section 171.162, subd. 2.

Subpart 1 specifies that the commissioner is prohibited from issuing any class of commercial driver's license until an applicant for a CDL or CLP submits the self-certification form and, if necessary, a valid medical examiner's certificate and any required medical waiver that may be indicated on the medical examiner's certificate.

Subpart 2 is the requirement that an applicant for a CDL or CLP must certify, as part of the license application, the category of commercial motor vehicle operation (interstate or intrastate) that the applicant operates, or expects to operate. The four categories are enumerated in Minnesota Statutes, section 171.162, subd. 2, and are incorporated by reference.

Subpart 3 informs the regulated industry and public that the self-certification form is available electronically from the Department's website.

Currently, and until January 30, 2012, an applicant for a Minnesota class D or commercial driver's license must answer a question on the license application regarding the applicant's medical qualification status. No other action is taken to verify this information unless the driver is stopped by law enforcement during a roadside check. The federal government has now formalized and strengthened this requirement by requiring that states "post the driver's self-certification of type of driving under part 383.71 (a)(1)(ii)." (*See* 49 C.F.R. § 383.73).

FMCSA does not define or use the term "self-certification". The use of the term "self-certification" is found in Minnesota Statutes, section 171.162, subd. 2, where the commissioner is directed to create a form so that a CDL holder (or driver applicant) may certify to his/ her category of commercial motor vehicle operation.

Subparts 1 through 3 are necessary because the applicant self-certification is a central component of the CDL medical certificate program and indicates to the commissioner if the driver applicant must provide additional medical documentation before a CDL or permit may be issued. The amendments are reasonable because they comply with both federal regulation and the statutory provisions, and the amendments further clarify that the requirements in this area apply to both CDL holders and to applicants for a CLP.

***Minn. Rules, part 7421.0300* CDL HOLDER INFORMATION UPDATED; RECORD RETENTION**

Subpart 1 requires that the commissioner update a CDL holder's driving record by entering information from the self-certification form, the valid medical examiner's certificate, and any required current medical waiver issued by FMCSA, MnDOT, or DPS within ten days of receipt.

The reason for this mandated timeframe is because all other licensing jurisdictions, as well as law enforcement, must have ready access to other jurisdictions' record information. Access to this information is obtained via the Commercial Driver License Information System (CDLIS) that is maintained by AAMVA (American Association of Motor Vehicle Administrators).¹⁴ To be clear, CDLIS is not a separate database of CDL record information; rather, it is a pointer system which directs the authorized end-user to the State of Record.

This subpart is necessary because it is a requirement of all state driver licensing agencies under federal regulations. Moreover, law enforcement is now dependent upon the Department to update the information in a timely manner since CDL holders will no longer be required to carry the medical examiner's certificate with them while operating a commercial motor vehicle. Law enforcement will verify a CDL holder's driving status and issue any citations according to the record, and not according to the medical documents a driver may have on his/ her person. The amendment is reasonable because the commissioner must comply the federal requirement under 49 C.F.R. § 383.73 (j)(iii). Further, under Minnesota Statutes, section 171.167, the Department of Public Safety must participate fully with CDLIS. Failure to update as required under federal law, or restricting access to portions of the commercial driving record is a violation of both state and federal law.

Subpart 2 requires that the commissioner retain medical information for a period of three years. The amendment is necessary and reasonable so that the regulated industry and public are aware of how long the Department is required to retain medical information submitted by CDL holders.

Minn. Rules, part 7421.0400 CDL MEDICAL CERTIFICATION STATUS; PROOF OF PERIODIC PHYSICAL REEXAMINATION REQUIRED

Subpart 1 requires that a CDL holder who has certified that he/ she is subject to the medical examination requirements under 49 C.F.R. § 391.41 or Minn. Stat. chapter 221, must submit proof of a physical examination every two years, or more often if required by the medical examiner, in order to maintain a medical certification status of "certified".

Subpart 2 of part 7421.0400 specifies that the reexamination period starts from the date of the most recent valid medical examiner's certificate that is submitted by a CDL holder, or received electronically via facsimile and, eventually, electronic mail.

¹⁴“Established under the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, CDLIS is the nationwide computer system that enables State Driver Licensing Agencies (SDLAs) to ensure that each commercial driver has only one driver license and that the State of Record (SOR) has the driver's complete record.” See <http://www.aamva.org/TechServices/AppServ/CDLIS/>

Subparts 1 and 2 are needed because, until the change in federal regulations in this area, only CDL holders with a school bus endorsement needed to submit a physical examination form or medical examiner's certificate. They are reasonable because this requirement now applies to all CDL holders.

***Minn. Rules, part 7421.0500* GENERAL CRITERIA FOR ACCEPTING INTERSTATE AND INTRASTATE WAIVERS**

Subpart 1 specifies that the commissioner must accept a medical waiver from a CDL holder or driver applicant who has certified to an interstate category of motor vehicle operation where the driver is subject to medical examination requirements.

Subpart 2 specifies that the commissioner must accept a medical waiver from a CDL holder or driver applicant who has certified to an intrastate category of motor vehicle operation where the driver is subject to medical examination requirements, with the exception that the commissioner cannot accept an intrastate hearing waiver issued by MnDOT when a CDL holder is seeking a school bus endorsement because existing rules under chapter 7414 prohibit a waiver to the hearing qualifications.

Subparts 1 and 2 are needed because they direct the commissioner to accept medical waivers issued by FMCSA and by MnDOT. Other than DPS's authority over CDL holders with school bus endorsements, these entities are the only authorized issuers of interstate and intrastate medical waivers for commercial drivers. Waivers are necessary for some drivers to be considered medically qualified on a limited basis as long as established requirements for maintaining the medical waiver are met.

Subpart 3 requires that the commissioner update the CDL holder's driving record with medical waiver information to indicate that (1) an interstate medical waiver has been issued by FMCSA and a medical restriction exists, or that a driver is prohibited from interstate or foreign commerce because an intrastate waiver has been issued by either MnDOT or DPS and a medical restriction exists.

This subpart is necessary because the commissioner is required under federal regulations to update the driving record within ten days with the medical waiver information. It is reasonable because the driving record must reflect all relevant medical information, including waiver information, in the event of a roadside check by law enforcement. Waivers will continue to be carried by drivers, in addition to being indicated on the driving record. Having the waiver indicated on the driving record also alerts law enforcement in the event of a medical roadside emergency.

Minn. Rules, part 7421.0600 FALSE INFORMATION; DISQUALIFICATION

A new federal rule relating to the CDL medical certification program was published in the *Federal Register* on May 9th, 2011 and is effective July 8, 2011. Included in this new rule are changes that expand upon the false information provision in 49 C.F.R. § 383.73 by including administrative sanctions for any conviction of fraud that DPS receives, as well as suspected fraud in the issuance and testing process of a CDL.¹⁵

Subpart 1 authorizes the commissioner to disqualify a CDL privilege if there is sufficient cause to believe that the CDL holder or driver applicant falsified information in any of the application forms, self-certification form, or medical documents required under Minnesota Statutes, section 171.162 or 49 C.F.R. §§ 383.71, 383.73, or 383.95.

This subpart is necessary because if there is a need on the part of the driver or applicant to falsify information on the self-certification form or medical documents, then, in all likelihood, the CDL holder or applicant has reason to know that the commissioner would not otherwise issue a CDL. It is reasonable because the commissioner must have sufficient cause to believe that a document was falsified or altered.

Subpart 2 provides for a 60 day disqualification period under subpart 1 and requires the commissioner to record the disqualification on the CDL holder's or driver applicant's driving record. State driver licensing agencies are required under federal regulations to link convictions to the withdrawal action taken against a CDL holder.

This subpart is needed to implement and comply with the federal requirement that a violation of false information be sanctioned for a minimum of 60 days. It is reasonable because law enforcement has indicated that reviewing falsified or altered medical documents during roadside stops of CDL drivers is "common." It will help to ensure that CDL holders have no known medical impediments to controlling the largest vehicles on the roadways and is consistent with the authorizing legislation in which the commissioner must restrict operating privileges in accordance with 49 C.F.R. § 383.73.

Subpart 3 provides an appeal process for a CDL holder or applicant who disagrees with the decision of the commissioner with respect to falsifying information in subpart 1. Under this part, the CDL holder or applicant may avail themselves of a contested case hearing. To do so, the CDL holder or applicant must submit a written request to the commissioner within 15 days of the notification informing the CDL holder or applicant that the driving privilege is disqualified. The commissioner must schedule a hearing with the Office of Administrative Hearings within 30 days after the request is received. The decision of the administrative law judge will be submitted for the commissioner's consideration but

¹⁵ See Commercial Driver's License Testing and Commercial Learner's Permit Standards, 76 Fed. Reg. 89, 26885.

the commissioner's decision of the issue under appeal is the final decision of the Department.

This subpart is needed because the commissioner's action under subpart 1 affects the livelihood of CDL holders. Although the commissioner must meet a burden of proof standard, it is reasonable to provide a means of due process by which a person who disagrees with the commissioner's findings may seek a possible change of outcome by having the matter reviewed by an independent third party. Although there is a cost associated with a contested case procedure, the cost is less than seeking resolution at the district court level.

Subpart 4 requires the commissioner to send written notice when disqualifying the CDL privilege under part 7421.0600. This subpart is necessary and reasonable because it informs the CDL holder or applicant of any administrative action that the commissioner is taking with respect to the person's commercial driving privilege.

Subpart 5 prohibits the commissioner from reinstating the CDL privilege of a driver whose CDL was disqualified under subpart 1 until the driver has met the disqualification period and provides the commissioner with the necessary documentation required for the class of motor vehicle operation to which the driver or applicant has certified on the self-certification form. This subpart is necessary and reasonable because federal regulations specify minimum sanction periods that must be met by the CDL holder before the CDL privilege may be reinstated.

Minn. Rules, part 7421.0700 FRAUD; DISQUALIFICATION, CANCELLATION

Whereas part 7421.0600 is concerned with falsification of documents, part 7421.0700 is concerned with fraud related to the issuance and/ or testing process.

Subpart 1 authorizes the commissioner to disqualify the CDL privilege for one year when the commissioner receives notice of conviction of fraud by a CDL holder or driver applicant and to record the conviction on the driving record of the CDL holder so convicted. This subpart is needed to implement and comply with the federal requirement that a conviction of fraud result in a one year disqualification. Although notice of convictions with regard to CDL issuance are rare, the proposed subpart is nonetheless reasonable because the proposed sanction will prevent unqualified drivers from driving commercial motor vehicles and is consistent with the authorizing legislation in which the commissioner must restrict operating privileges in accordance with 49 C.F.R. § 383.73. It is reasonable because a state driver licensing agency must record a conviction and correlate it to the sanctioned withdrawal to comply with federal regulation. This record of conviction remains in the driver's record history.

Subpart 2 authorizes the commissioner to require that CDL holder or applicant re-take either the knowledge or road test if there is sufficient cause to believe that the CDL holder or driver applicant is suspected of fraud related to the testing or issuance of CDL or CLP. A typical example is suspecting that an applicant had another person take either the road or knowledge test. If the commissioner meets the burden of proof and confirms fraud, then the commissioner must send written notice to the applicant stating that the applicant must re-take the applicable test(s).

Precedent has been established in this area over the past several years. Minnesota has been informed of testing fraud within the CDL process in other states, including Illinois, Florida, Missouri, Tennessee, and most recently in Pennsylvania. Drivers who obtained a CDL fraudulently through the testing process were required to retest in order to maintain their CDL. Minnesota retested 50 drivers who obtained CDL's in Missouri in 2005 and 70 drivers from Tennessee in 2009.

Subpart 3 authorizes the commissioner to cancel the CDL privilege of a CDL holder for failure to pass required test(s) within 30 days of written notice from the commissioner. This is consistent with current practice and authorization under chapter 7410 and Minnesota Statutes, section 171.13, as well with federal regulations.

Subpart 4 provides an appeal process for a CDL holder or applicant who disagrees with the decision of the commissioner under subpart 2. Under this part, the CDL holder or applicant may avail themselves of a contested case hearing. To do so, the CDL holder or applicant must submit a written request to the commissioner within 15 days of the notification informing the CDL holder or applicant that the driving privilege is disqualified. The commissioner must schedule a hearing with the Office of Administrative Hearings within 30 days after the request is received. The decision of the administrative law judge will be submitted for the commissioner's consideration but the commissioner's decision of the issue under appeal is the final decision of the Department.

This subpart is needed because the commissioner's action under subpart 2 affects the livelihood of CDL holders. Although the commissioner must meet a burden of proof standard, it is reasonable to provide a means of due process by which a person who disagrees with the commissioner's findings may seek a possible change of outcome by having the matter reviewed by an independent third party. Although there is a cost associated with a contested case procedure, the cost is less than seeking resolution at the district court level.

Subpart 5 requires the commissioner to send written notice when disqualifying or canceling the CDL privilege under part 7421.0700. This subpart is necessary and reasonable because it informs the CDL holder or applicant of any administrative action that the commissioner is taking with respect to the person's driving privilege.

Subparts 2 through 5 are needed to implement and comply with the federal requirement to verify a CDL holder's qualifications and ability to operate a commercial motor vehicle when fraud is suspected with respect to the issuance and testing process and to cancel the CDL privilege when a CDL holder cannot demonstrate sufficient skill and ability. They are reasonable because, after having sufficient cause to believe that fraud was committed, the commissioner's first action is to require a re-test within 30 days; an administrative sanction follows only if the CDL holder fails the required test(s). In addition, an appeal procedure is provided as a means of due process. These provisions will prevent unqualified drivers from driving commercial motor vehicles, will ensure public safety, and they are consistent with the authorizing legislation in which the commissioner must restrict operating privileges in accordance with 49 C.F.R. § 383.73.

***Minn. Rules, part 7421.0800 NOTICE OF INTENT TO DOWNGRADE
COMMERCIAL DRIVER'S LICENSE***

Subpart 1 directs the commissioner to send written notice to a CDL holder stating that the CDL holder's medical status, according to Department records, will expire within 60 days of the date of the notice. The notice further states that the commissioner will update the CDL holder's medical status to "Not Certified", which will result in the CDL privilege no longer being valid, if the CDL holder fails to submit the updated medical document(s) prior to the expiration of the medical documents on file. If the operating status has changed, a CDL holder may submit a new self-certification form in which the CDL holder certifies that he/ she is exempt from state or federal medical requirements.

Subpart 1 is necessary because it will alert the CDL holder in a timely manner to update medical information that is about to expire. These letters are date-driven, that is to say they are based on the information entered at the time of submission and, for the most part, CDL holders will take action upon receiving the notice because their livelihood depends on having a valid CDL privilege. It is reasonable because DPS is sending the warning notice as a courtesy to CDL holders; it is not a federal or statutory requirement. However, it is anticipated that these notices will also yield savings to the Department by reducing the number of call and inquiries received. It also allows the CDL holder sufficient time to schedule any required medical examination and submit the documents.

Subpart 2 directs the commissioner to send written notice to a CDL holder who failed to submit a valid medical examiner's certificate or a current medical waiver before either expired, or failed to submit a new self-certification form in which the CDL holder certifies that he/ she is exempt from state or federal medical requirements. The notice must inform the CDL holder that the medical certification status has been updated to "Not Certified", that the CDL privilege is not valid, and the CDL will be downgraded to a class D

license within 30 days without further action by the CDL holder.¹⁶ Subpart 2 is necessary and reasonable to implement the downgrade provisions of Minnesota Statutes, section 171.162, subdivision 6.

Subpart 3 specifies what a driver whose CDL has been downgraded to a class D license must do to obtain a valid CDL privilege if the timeframe is less than one year, or if it has been more than one year since the license downgrade. This subpart is necessary because the CDL downgrade changes a person's CDL to a class D license. The license holder's actual card may read "Commercial Driver's License" but the driving record will indicate that the license holder only has a valid class D license. At this point, the downgraded CDL holder has up to one year to submit a new self-certification form or submit updated medical documents to upgrade the status to CDL without any retesting requirements. After one year, the driver must reapply for a CDL as a new applicant. The amendments are reasonable because they implement federal law at 49 C.F.R 383.73 (j)(4).

Minn. Rules, part 7421.0900 TESTING REQUIRED AFTER CDL DOWNGRADE

Subpart 1 is the requirement that an applicant for a CDL, after having been downgraded to a class D license for more than one year, must pass all applicable knowledge tests and a road test administered by the commissioner.

Subpart 2 specifies that an applicant for CDL must pass all knowledge tests required for the class of license and any endorsements required for the vehicle that the applicant expects to operate.

Subpart 3 specifies that an applicant for CDL must pass the applicable road test, or tests, in a commercial motor vehicle that represents the class of license they expect to operate. This includes a bus, as well as a school bus, if the applicant is seeking a passenger or school bus endorsement.

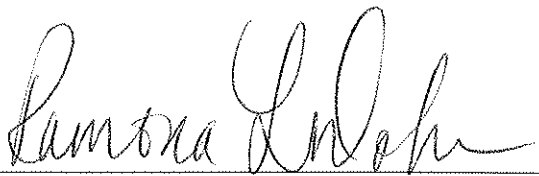
Subparts 1 through 3 are necessary because they clarify the issuing requirements for a CDL applicant and they are reasonable because they treat similarly situated applicants the same. In other words, the applicant whose CDL was downgraded for more than one year does not incur any additional requirement other than having to start the process over as a new CDL applicant.

¹⁶ During this 30 day period, the CDL holder's driving record will continue to indicate a class A, B, or C commercial license, but the commercial driving privilege (ie -- status) will not be valid. On day 31, without any action by the CDL holder, the class of license will automatically change to a class D. A driver so described under this part always has a valid class D driving privilege.

CONCLUSION

For the foregoing reasons, the proposed rule is both needed and reasonable.

9-30-11
Date


Ramona L. Dohman
Commissioner

Available for public review on October 4, 2011.