

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Rules  
of the Department of Public Safety  
Governing Training and Certification of  
Over-Dimensional Load Escort Drivers,  
Minnesota Rules Chapter 7455

**AMENDED ORDER OF THE CHIEF  
ADMINISTRATIVE LAW JUDGE ON REVIEW  
OF RULES UNDER MINN. STAT. § 14.16,  
SUBD. 2, AND MINN. R. 1400.2240, SUBP. 4**

On November 27, 2012, the Chief Administrative Law Judge issued an Order approving the proposed rules, as modified and approved by the Revisor on November 15, 2012, as to legality.

On November 29, 2012, the Minnesota Department of Public Safety ("Department") informed the Office of Administrative Hearings that it had been advised by the Office of the Revisor of Statutes that a further revision must be made to the definition of "MUTCD" contained in Part 7455.0100, subpart 8 of the proposed rule. The revision required by the Revisor is shown in italics below:

7455.0100 Definitions

Subp. 8: MUTCD. "MUTCD" means the Manual on Uniform Traffic Control Devices, authored and published by the Federal Highway Administration, December 2009 *and is incorporated by reference*. This MUTCD is updated approximately every five to six years and is available to the public for viewing and free downloading at [http://mutcd.fhwa.dot.gov/kno\\_2009rlr2.htm](http://mutcd.fhwa.dot.gov/kno_2009rlr2.htm).

Based upon a review of the Department's November 30, 2012, letter, Minnesota Statutes, Minnesota Rules, and the record in this matter, and for the reasons discussed in the attached Memorandum,

**IT IS HEREBY ORDERED:** that the proposed rules, as modified and approved by the Revisor on November 15, 2012, and with the further revision required by the Revisor to part 7455.0100, subpart 8 set forth above, are approved as to legality. The revision to part 7455.0100, subp. 8, does not render the rules substantially different from the rules as originally proposed.

Dated: November 30, 2012.

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s/Raymond R. Krause  
RAYMOND R. KRAUSE  
Chief Administrative Law Judge

## MEMORANDUM

The modification required by the Revisor is in keeping with the Department's original intent to incorporate the Manual on Uniform Traffic Control Devices (MUTCD) by reference in the proposed rules. The modification is also consistent with the recommendation made by Administrative Law Judge Barbara L. Neilson on March 29, 2012, to correct the defect that was found in this rule part. Judge Neilson specifically recommended that "the Department consult with the Revisor of Statutes for further assistance regarding incorporation by reference."<sup>1</sup> Finally, the Revisor's modification is required by Minn. Stat. § 14.07, subd. 4(a), which permits agencies to incorporate by reference into their rules publications and documents that the Revisor determines to be conveniently available to the public as long as certain requirements are met. One of the requirements is that "[t]he statement of incorporation by reference must include the words 'incorporated by reference'. . . ." The failure to ensure that this phrase was included in the rules as proposed for final adoption was clearly a mere oversight on the part of the Department.

Accordingly, the Chief Administrative Law Judge finds that the further revision required by the Revisor is necessary and reasonable, and does not reflect a substantial change.

**R. R. K.**

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<sup>1</sup> See Report of the Administrative Law Judge at 27-28 (March 29, 2012).