


GENERAL ORDER			
	Effective:	August 24, 2010	Number: 10-25-002
	Subject:	DETERMINATION OF COMMERCIAL MOTOR VEHICLE IMPAIRMENT DUE TO ILLNESS AND/OR FATIGUE AND RELATED ENFORCEMENT	
	Reference:	Minn. Stat. §§ <u>169.025</u> , <u>221.031</u> , <u>221.0314</u> , <u>221.605</u> , <u>299D.03</u> , <u>299D.06</u> , and applicable Federal Motor Carrier Safety Regulations; General Order 70-020	
	Special Instructions:	Rescinds General Order 10-25-002 dated May 5, 2010	Distribution: A,B,C,F

I. PURPOSE

- A. To promote a safe environment on Minnesota roadways through the enforcement of State Statutes and Federal Regulations pertaining to commercial motor vehicles.
- B. To maximize the deterrent effect and to increase the perception of risk of apprehension by those who would operate commercial motor vehicles in violation of established State Statutes and Federal Regulations.
- C. To establish uniform guidelines for members of the Minnesota State Patrol when enforcing State Statutes and Federal Regulations pertaining to ill and/or fatigued drivers of commercial motor vehicles during inspections at roadside, fixed scale, and other inspection sites.
- D. To ensure these operations are conducted within legal requirements and according to appropriate enforcement practices.

II. OBJECTIVE

To reduce crashes caused by illness and/or fatigued operators of commercial motor vehicles through the enforcement of State Statutes and Federal Regulations; and to remove impaired commercial vehicle drivers from the roadways consistent with the North American Uniform Out of Service Criteria.

III. POLICY

The Minnesota State Patrol will conduct inspections at roadside, fixed scale, and other inspection sites to detect ill and/or fatigued drivers of commercial motor vehicles consistent with applicable State Statutes and Federal Regulations and appropriate law enforcement practices. These inspections will be conducted as part of a pro-active commercial vehicle enforcement program intended to promote the safe travel and to deter the unsafe operation of commercial motor vehicles on Minnesota's roadways.

IV. AUTHORITY

Minn. Stat. §299D.03 (State Patrol) authorizes licensed Troopers to enforce the provisions of the law relating to the protection of and use of trunk highways and other roads as conditions may require and to ensure safety. Minn. Stat. §299D.06 authorizes Commercial Vehicle Inspectors (CVIs) to enforce certain laws pertaining to commercial motor vehicles and drivers. Both §299D.03 and §299D.06 authorize State Patrol Troopers and CVIs to enforce the North American Uniform Out of Service Criteria and to issue out of service orders.

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EXHIBIT C

EXHIBIT B
Affidavit of Kent O'Grady
09-CV-1116 (DWF/LIB)



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Minn. Stat. §§221.031, 221.0314, and 221.605 authorize the investigation and compliance with the provisions of the Federal Motor Carrier Safety Regulations adopted in these statutes by instituting the prosecution in the proper district court for their enforcement and through the North American Out of Service Criteria pertaining to commercial motor vehicles, drivers and hazardous materials. Minn. Stat. §169.025 requires commercial motor carriers, drivers, and their vehicles to comply with the Federal Motor Carrier Safety Regulations set forth in Minn. Stat. §221.031 and §221.605.

V. PROCEDURE

- A. During all commercial motor vehicle enforcement activity, Troopers and CVIs who are certified to perform North American Standards (NAST) Inspections will observe commercial vehicle operation and driving conduct for signs of driver impairment.
- B. All commercial motor vehicle drivers subject to inspection will be inspected for impairment as part of the driver inspection of every Level 1, Level 2 or Level 3 inspection consistent with the North American Standards Inspection.
 1. Commercial Motor Vehicle Inspections will only be done by NAST certified personnel.
- C. Commercial Motor Vehicle Driver Inspection:
 1. During the course of each driver inspection, Troopers and CVIs will observe the driver for signs of impairment due to illness and/or fatigue, or any other cause.
 2. Reasonable articulable suspicion is required to expand the routine commercial motor vehicle driver portion of a Level 1, Level 2 or Level 3 inspection for the purposes of determining the absence or presence of driver impairment.
 3. Any questions used during the expanded inspection for impairment to assist the Trooper or CVI in determining the extent of impairment, should it exist, must be reasonably related to whether the driver can continue to safely operate his/her commercial motor vehicle at the time.
 4. A driver cannot continue to safely operate his/her commercial motor vehicle if his ability to operate a commercial motor vehicle poses an imminent risk to public safety.
 5. Untruthful or misleading statements designed to encourage voluntary cooperation of the driver are not permitted.
 6. If the driver inquires about the nature or purpose of the additional questions, the driver shall be told that the purpose is to determine whether he/she is impaired, and if so, whether the driver can continue to safely operate his/her commercial motor vehicle (i.e. whether his ability to operate a commercial motor vehicle poses an imminent risk to public safety).
 7. If a driver refuses to answer the Trooper or CVI's questions, the Trooper/CVI will honor the request, complete the remainder of the inspection to the extent possible, and make his/her determination based upon the information available to the Trooper/CVI at the time.

VI. ENFORCEMENT

- A. Impairment Due to Illness
 1. Discretion: Before taking enforcement action for impairment due to illness, Troopers and CVIs must have probable cause to believe the following:
 - a. The driver's ability to safely operate the commercial vehicle is impaired, and
 - b. The driver's impairment is caused by illness, and

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- c. The driver's ability to safely operate the commercial vehicle is so impaired at the time as to make continued operation of the commercial vehicle an imminent risk to public safety.
2. Enforcement
 - a. If the commercial vehicle driver's operation of the commercial vehicle is so impaired due to illness as to pose an imminent risk to the public safety:
 - i. Place the driver Out of Service consistent with the North American Uniform Out of Service Criteria, and
 - ii. Issue a Uniform Traffic Citation (form 1821) for a violation of 49 CFR 392.3 and the corresponding Minnesota statute.
- B. Impairment Due to Fatigue
 1. Discretion: Before taking enforcement action for impairment due to fatigue, Troopers and CVIs must have probable cause to believe the following:
 - a. The driver's ability to safely operate the commercial vehicle is impaired, and
 - b. The driver's impairment is caused by fatigue, and
 - c. The driver's ability to safely operate the commercial vehicle is so impaired as to make continued operation of the commercial vehicle an imminent risk to public safety.
 2. Proof of impairment in the safe operation of the commercial vehicle is required, not simply indications of tiredness, sleepiness, or unproductive rest periods.
 3. Proof of imminent risk to public safety is required, not simply a perceived risk of future impairment.
 4. Enforcement
 - a. If the commercial vehicle driver's safe operation of the commercial vehicle is so impaired due to fatigue as to pose an imminent risk to public safety:
 - i. Place the driver Out of Service consistent with the North American Uniform Out of Service Criteria, and
 - ii. Issue a Uniform Traffic Citation (form 1821) for a violation of 49 CFR 392.3 and the corresponding Minnesota Statute.

VII. REPORTING REQUIREMENTS

A. Inspection Report

1. A Commercial Vehicle Inspection Report will be completed on every driver subject to a Level 1, Level 2, or Level 3 commercial vehicle inspection.

B. Field Report

1. In every case where a NAST Certified Trooper or CVI takes enforcement action related to commercial motor vehicle drivers who are so impaired due to illness and/or fatigue that their continued operation of their commercial motor vehicle poses an imminent risk to the public, in addition to the Inspection Report, the Trooper or CVI shall complete a narrative Field Report. The Field Report must include a detailed summary of the facts that led the Trooper or CVI to conclude that there was reasonable articulable suspicion to expand the scope of the driver inspection as well as a detailed summary of the facts that led the Trooper or CVI to conclude that probable cause existed to take enforcement action. The Field Report must also include a detailed summary of all of the facts and observations that support Trooper or CVI conclusion that the commercial vehicle driver's ability to safely operate the commercial vehicle was so impaired due to illness and/or


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fatigue as to cause an imminent risk to public safety. Such report shall be of sufficient detail to permit the prosecutor, judge and jury to reach the same conclusion.

2. The Fatigue Inspection Report is no longer to be used to record observations during a driver inspection.

Approved:

Colonel Mark A. Dunaski, Chief
Minnesota State Patrol

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