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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

June 21, 1993

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In the Matter of Proposed Rules of the State Department of Public Safety
Relating To Firearms Dealers Security Standards

Dear Ms. Hruby:

The Minnesota Department of Public Safety intends to adopt rules relating to firearms dealers security standards. We plan to publish a Notice Of Intent To Adopt Rules in the July 6, 1993, State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice Of Intent To Adopt Rules and a copy of the proposed Rules in this matter.

If you have any questions about these rules, please contact me at 296-2631.

Yours very truly,

A handwritten signature in cursive script that reads "Dave Orren".

Dave Orren
Rules Coordinator

enclosures: Statement of Need and Reasonableness
 Notice Of Intent To Adopt Rules
 Rules



**STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF CRIMINAL APPREHENSION**

**In The Matter Of The Proposed Rules
Of The Department Of Public Safety
Relating To Firearms Dealers Security
Standards**

**STATEMENT OF NEED
AND REASONABLENESS**

General Statement

The recent phenomena of smash and grab burglaries of Minnesota gun stores lead to the 1992 enactment of Minnesota Statutes, section 624.7161, subdivision 3. This legislation ordered the Commissioner of Public Safety to adopt rules specifying minimum security standards for firearms dealers in order to reduce the risk of burglaries at firearms dealers' business establishments. This is important because stolen handguns are often used in subsequent crimes. The interest intended to be protected by these rules is the public safety interest in reducing the number of stolen handguns.

In a typical smash and grab burglary, thieves break into a gun store by crashing a stolen vehicle into the store, usually through an entrance or window portion of the outside wall. The thieves then quickly grab every gun that is not locked up or secured, after which they make their getaway, usually in another stolen vehicle. The time from break-in to getaway is often less than two minutes.

Statistics from the Federal Bureau of Alcohol, Tobacco and Firearms show that there were 17 gun store thefts in Minnesota from mid-1989 through mid-1992 with a total of 400 handguns stolen in these thefts. During this same time period, there were nine gun store thefts in Wisconsin netting a total of 160 handguns. These thefts occurred in Twin Cities locations of Blaine, Plymouth, and Fridley, in out-state locations of Rochester, Winona, and Marshall, and many places in between.

The enabling legislation for these rules required the Commissioner of Public Safety to form a task force to recommend firearms dealers' security standards. The task force was to consist of appropriate interested persons, including firearms dealers and crime prevention officers. The persons who served on the task force were:

- Richard Carlquist, Deputy Commissioner of Public Safety
- Lt. Dick Dugan, St. Paul Police Department
- John Gangl, former firearms store owner
- John Gunderson, Bureau of Criminal Apprehension
- Aaron Herzog, Blaine Police Department
- Jim Kostreba, Stearns County Sheriff
- Todd Miller, Willmar Police Chief
- Professor Richard Oakes, Hamline University School of Law
- Dave Orren, Rules Coordinator, Department of Public Safety
- Bill Penney, Bill's Gun Shop/Range
- Carmen Piccirillo, Exec Director, Minnesota Crime Prevention Officers Assn
- Tom Radde, firearms store owner
- Tim Schlehr, interested citizen
- Denise Sjoberg, Bureau of Criminal Apprehension

It was the consensus of the task force that a determined burglar could enter a building no matter how secure it was, if the burglar had enough time. The focus of the task force recommendations was to establish measures which would (1) delay burglars and (2) shorten the time for notification of law enforcement. These measures will reduce the number of stolen handguns. The delaying measures include installing vehicle-resistant barriers, strengthening doors, windows, and other entry points, and securing handguns that are displayed or stored. Law enforcement response times will be shortened by requiring the installation of electronic security systems. The security measures should be part of a coordinated plan with law enforcement to respond to the problem of smash and grab burglaries.

The rules contain a waiver provision which may reduce the burden of the rules on some businesses. Under the waiver provision, a gun store will be able to use measures other than those specifically set out in the rules, if the measures provide a degree of security or delay similar to those they replace.

The enabling legislation required the task force to make its recommendations by September 1, 1992, and the Commissioner to adopt standards by October 1, 1992. The task force met several times in June and July of 1992 and issued its recommendations to the Commissioner. The short time lines of the enabling legislation made it necessary for the Department to use the emergency rulemaking procedures of Minnesota Statutes, sections 14.29 to 14.36, to adopt the rules. The rules were adopted as emergency rules and became effective on October 22, 1992. The emergency rules were effective for a period of 180 days and were continued for an additional 180 days. The emergency rules will expire on October 17, 1993. The purpose of this rulemaking project is to adopt the rules as permanent rules.

Statutory Authority

The rules are mandated by Minnesota Statutes, section 624.7161, subdivision 3, as enacted in Minnesota Laws 1992, chapter 571, article 15, section 11, which states:

"Subd. 3. **Security standards.** The commissioner of public safety shall adopt standards specifying minimum security requirements for small and large firearms dealers. . . . The standards may provide for:

- (1) alarm systems for small and large dealers;
- (2) site hardening and other necessary and effective security measures required for large firearms dealers;
- (3) a system of inspections, during normal business hours, by local law enforcement officials for compliance with the standards; and
- (4) other reasonable requirements necessary and effective to reduce the risk of burglaries at firearms dealers' business establishments."

The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6, "to promulgate such rules pursuant to chapter 14, as are necessary to carry out the [duties of the Commissioner]."

Small Business Considerations

Minnesota Statutes, section 14.115, requires the Department of Public Safety to consider the effect on small businesses when it adopts rules. The rules will have a direct effect on small

businesses engaged in the retail sale of firearms. All or almost all of these businesses are small businesses as defined in Minnesota Statutes, section 14.115.

Section 14.115, subdivision 2, states in part:

"When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses . . . , the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule."

Specific methods for reducing the impact of the rules on small businesses have been considered. There are no reporting requirements in the rules, so the directives of section 14.115 related to reducing the impact of reporting requirements do not apply. The impact of the rules on small businesses has been reduced as follows:

- a. Less stringent requirements. The task force researched gun safes and gun cabinets and wrote specifications that would ensure a sufficient level of security while at the same time permitting the use of the widest range of products that would achieve this level of security. (See the discussion under part 7504.0200, items A and E.) This way, no dealer would have to discontinue using a perfectly good safe or cabinet just because it did not meet the specifications. Part 7504.0300, item B, gives three alternatives for a dealer to secure a perimeter doorway. This allows the dealer to choose the alternative that imposes the least impact on the dealer. Part 7504.0400, item D, requires a line cut alarm that emits an audible alarm. The task force considered recommending a line cut alarm that would be transmitted to a public safety answering point or an alarm-monitoring service, but rejected this because this is not readily available at a reasonable price. The rules also permit the dealer to protect the incoming phone line as an alternative to installing the line cut alarm. The entire set of rules reflects the task force's effort to find the least stringent requirements possible that will achieve an acceptable level of security.
- b. Less stringent schedules. The schedule for compliance with the rules is set by Minnesota Statutes, section 624.7161, subdivision 3. The Department cannot use rules to change this statutory requirement.
- c. Consolidation or simplification of requirements. Throughout the development of the rules, the Department has attempted to set out the requirements clearly and simply.
- d. Performance standards. Part 7504.0300, item A, on vehicle resistant barriers is a performance standard. The task force had considered setting out design specifications for the barriers, but rejected them in favor of just requiring barriers and giving firearms dealers the flexibility to design their own barriers in ways that are the most effective and most cost effective for their own situations. Part 7504.0400 sets out the requirements for electronic security for all firearms dealers. The requirements of part 7504.0400 are, for the most part, performance standards.

For example, item E requires the system to monitor exterior doors, windows, and other entry points, but does not set out specifications for how this must be done. Part 7504.0600 exempts a dealer from complying with the standards if, among other things, the dealer uses alternate security measures that provide a similar degree of security or that will cause a similar delay in unauthorized entry. The standards for the alternate security measures are performance standards.

- e. Exemption. The legislature exempted home-based firearms dealers by excluding them from the definition of firearms dealer in Minnesota Statutes, section 624.7161, subdivision 1, paragraph (b).

Fees Imposed By The Rules

Minnesota Statutes, section 16A.128, subdivisions 1a and 2a, do not apply because the rules do not fix fees.

Fiscal Impact

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

Agricultural Land Impact

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

Other Specific Statutory Requirements

The enabling legislation for these rules, Minnesota Laws 1992, chapter 571, article 15, section 16, required the Commissioner of Public Safety to form a task force to recommend firearms dealers' security standards. The task force recommendations were due by September 1, 1992, and the Commissioner had to adopt standards by October 1, 1992. The task force met several times in June and July of 1992 and issued its recommendations to the Commissioner before September 1, 1992. The Commissioner adopted the rules on September 30, 1992. Because of the short time lines in the enabling legislation, the Department used the emergency rulemaking procedures of Minnesota Statutes, sections 14.29 to 14.36, to adopt the rules. The Department is going through rulemaking again to make the rules permanent.

Other Statutory Requirements

Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6, regarding pollution control and Minnesota Statutes, section 144A.29, subdivision 4, regarding nursing homes are not applicable to these rules.

Witnesses

If these rules go to a public hearing, the following witnesses may testify on behalf of the Department in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and the content of the rules:

- Richard Carlquist, Deputy Commissioner of Public Safety, 211 Transportation Building, St. Paul, Minnesota 55155.
- John Gundersen, Special Agent, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104.
- Denise Sjoberg, Assistant to the Superintendent, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104.
- Nancy Bode, Assistant Attorney General, Attorney General's Office, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.
- Dave Orren, Rules Coordinator, Department of Public Safety, 208 Transportation Building, St. Paul, Minnesota 55155.
- Any other employee of the Minnesota Department of Public Safety.

Rule-By-Rule Analysis

7504.0100 DEFINITIONS.

Subpart 1. **Scope.** This subpart sets forth the scope of the definitions. The defined terms apply throughout this rules chapter.

Subpart 2. **Firearms Dealer.** Minnesota Statutes, section 624.7161, excludes dealers from these requirements if they work out of their homes. Section 624.7161, however, does not clearly define home. The task force recommended that a home not include those stores in which a cot or small living area was included. This was meant to prevent firearms dealers from evading the requirements of these rules merely by putting a cot somewhere in the store and calling it a home.

- A. A gun dealer on property that is zoned commercial is required to meet the standards because the main purpose of commercial property is selling goods, and the dealer is one which would be readily targeted by burglars.
- B. Stores in which the square footage of the firearms store exceeds the square footage for the home are required to meet the standards because they would be readily targeted by burglars and this type of dealership is clearly a commercial business.
- C. A store located in a garage or other non-residential building on the dealer's property does not fit the meaning of home. The building is not occupied during off hours, therefore, entry could be gained without someone noticing during that time.

Subpart 3. **Small Firearms Dealer.** This subpart uses the definition of "small firearms dealer" from Minnesota Statutes, section 624.7161, subdivision 1.

Subpart 4. **Large Firearms Dealer.** This subpart uses the definition of "large firearms dealer" from Minnesota Statutes, section 624.7161, subdivision 1.

Subpart 5. **Pistol.** This subpart uses the definition of "pistol" from Minnesota Statutes, section 624.712, subdivision 2.

Subpart 6. **Displayed for Sale.** The term, "displayed for sale" is used in Minnesota Statutes, section 624.7161, subdivision 1, in defining whether a firearms dealer is treated as a large firearms dealer or a small firearms dealer. If there are more than 50 pistols displayed for sale at any time, the dealer is a large firearms dealer. If there are 50 or fewer pistols displayed for sale at any time, the dealer is a small firearms dealer.

During the task force discussions, it became apparent that this term was ambiguous and problematic. Did it include only pistols displayed in the open where customers could touch them. Did it include pistols that were locked in glass storage cases where customers could see them, but not touch them? Did it include pistols stored by the dealer that were not in plain view by customers, but available for viewing upon request by customers? If the term were not clearly defined, it would be manipulable by a dealer or by law enforcement depending upon how the questions in this paragraph were answered.

The task force felt that the term should include all pistols at the dealer's place of business available for sale by the dealer, regardless of whether the pistols were categorized as displayed or stored. The task force felt that any pistol available for sale and housed at the place of business will be made available for inspection by a customer upon request. The task force also felt that the true measure of the size of the dealer is the number of pistols available for sale and not some arbitrary and manipulable definition of displayed for sale that would only include pistols that are somehow in plain view of customers. This is a reasonable way to define "displayed for sale."

7504.0200 SECURITY MEASURES FOR SMALL FIREARMS DEALERS. Part 7504.0200 sets out security measures for small firearms dealers. The language of the first paragraph of part 7504.0200 comes directly from Minnesota Statutes, section 624.7161, subdivision 2. The statutory language was repeated so that all requirements for a small firearms dealer are included together in the rules. Items A to E of part 7504.0200 set out the specifications for the items that are required by statute.

- A. The task force reviewed literature on available gun safes and found that the type of safe meeting the specifications of item A will delay access to firearms by a potential burglar. It is estimated that it would take at least 15 minutes to gain access to safes meeting these specifications. The task force thought the price range for these safes was reasonable and affordable for most gun dealers. The Group 2 combination lock is Underwriters Laboratory (UL) listed and has been tested for manipulation resistance. In addition, the boltwork has an internal and external relocking device, so if the dial is attacked, the lock cannot be defeated.

In 1992, when proposing the emergency rules, the Department required a 3/16 inch thick steel door and one eighth inch thick steel walls. In response to comments received from a manufacturer of gun safes, the emergency rules were changed to require a seven gauge steel door and 12 gauge steel walls. This allowed a larger number of gun safes to meet the specifications of the rules. This is because seven gauge steel is .1793 inches thick which is slightly less thick than 3/16 (= .1875) inch steel. Twelve gauge steel is .1046 inches thick, which is slightly less thick than 1/8 (= .1250) inch steel. This slight decrease in thickness will not materially affect the security provided by these gun safes.

- B. The requirement that rods or cables must be made of hardened steel comes from statute. At least 1/4 inch diameter rods are available, based upon a review of literature on rods, and is small enough to fit through the trigger guard of a weapon. It should be noted, however, that members of the task force were not aware of any hardened steel cables. The shackle is the weakest point of the lock, therefore, the shackle must be

protected in order to prevent cutting through the lock. Locks which have protected or shielded shackles are commercially available. This would make it more difficult to use a bolt cutter to defeat the lock, which in turn would delay a burglar in gaining access to the weapons.

- C. Item C sets a limit of five on the number of pistols attached to any one rod or cable. This is designed so that a burglar would have to defeat a rod or cable and lock for every five pistols, thus delaying the burglar in obtaining a large number of pistols.
- D. The language of item D is identical to the last sentence of Minnesota Statutes, section 624.7161, subdivision 2. It was included so that a complete list of specifications is included in the rules.
- E. The task force reviewed literature on available gun cabinets, and found that gun cabinets meeting these standards would delay entry by a burglar. Gun cabinets meeting these standards are reasonably priced, according to task force members. Item E requires that the gun cabinet have either a UL-listed Group 2 combination lock or a UL-listed key lock. A key lock must use a restricted key that can only be duplicated by a factory authorized source in order to reduce the chances of unauthorized duplication.

In 1992, when proposing the emergency rules, the Department accepted many suggestions from a manufacturer of gun cabinets so as to allow a larger number of gun cabinets to meet the specifications of the rules, while still maintaining an acceptable level of security. The proposed permanent rules incorporate these suggestions also. It is the intent of the Department to minimize the burden of the rules on businesses by allowing dealers to use a wide range of gun cabinets, as long as there is an acceptable level of security.

7504.0300 SECURITY MEASURES FOR LARGE FIREARMS DEALERS. Part 7504.0300 requires a large firearms dealer to institute security measures to protect its store from burglaries. A large firearms dealer has the option of either site hardening its place of business or to use, with one exception, the security measures for small dealers. Site hardening measures are designed to slow entry of burglars into a gun store. Small dealer security measures are designed to slow burglars in obtaining guns once entry has been gained. The exception for large dealers is that gun cabinets are not considered a permissible alternative to site hardening.

Permitting a large firearms dealer two ways to comply with the rules was done to reduce the impact of the rules on firearms dealers. The large firearms dealer can choose either site hardening or the security measures for small dealers, whichever is more economical and feasible. It is important to note that this option also can reduce the impact of the rules for small dealers because any small dealer can come under the requirements for a large dealer by displaying 51 pistols on one occasion.

Items A to H set out the requirements for site hardening.

- A. Vehicle resistant barriers, including posts, retaining walls, and steel reinforced walls, will serve to prevent the smashing and entry of a store by a burglar using a car to gain entry. Note that this is a performance standard, not a design specification. The task force considered design specifications for the vehicle resistant barriers, but rejected them in favor of this performance standard. This is consistent with the small business considerations of Minnesota Statutes, section 114.15. If this performance standard is met, it will delay entry into a building.

- B. It is important to secure perimeter doorways because they are usually the weakest point in the structure, and thus the most common points of entry by burglars. Item B sets out three choices for securing a perimeter doorway. These choices are based upon recommendations of the task force. Each of the three choices offers extra protection to delay entry. Item B will make it difficult for someone to reach in or slip through the doorway.
- C. Next to perimeter doorways, windows are the weakest points in a structure and thus the next most common points of entry by burglars. Internal anchoring was chosen over external anchoring because bars that are anchored externally can be more easily pulled off the window by attaching a chain to the bars and using a car to pull the bars off. This standard makes entry into a building more difficult, and thus delays entry.
- D. Item D is designed to prevent easy access to pistol storage areas after business hours. This standard serves to slow down a burglar once inside a building.
- E. Item E makes pistols inaccessible to someone reaching through a broken window.
- F. Heating, ventilating, air conditioning, and service openings are also vulnerable entry points to a building. Requiring protection of these openings delays entry into the building.
- G. Illumination allows law enforcement personnel and passers by to see doorways. Burglars prefer to work in the dark to avoid detection. Item G requires illumination of access points which are most easily defeated.
- H. Task force members reported that six inches on center was found to be a common separation for steel bars in county jails. Three inch spaces would prohibit an arm from reaching through and getting a firearm back out through the space.

7504.0400 ELECTRONIC SECURITY FOR ALL FIREARMS DEALERS. Part 7504.0400 requires a firearms dealer to install and maintain an electronic security system. The requirements of this part relate to the second purpose of these standards, that of shortening the time for notification of law enforcement.

- A. An audible alarm will alert persons within hearing distance of a gun shop. It is likely that these persons will notify law enforcement. This adds another method of notifying law enforcement in case the silent alarm signal has been disabled or is out of order. An audible alarm may also serve the added purpose of scaring burglars away before they gain entry to a store.
- B. Transmitting a silent alarm to a public safety answering point or silent alarm monitoring service will shorten the time between burglar entry and notification of a law enforcement authority. The two minute time limit for notifying law enforcement appears to be workable based upon the discussions and experiences of the task force.
- C. A backup system is required for a large firearms dealer in the event the main system is disabled or fails.
- D. An audible alarm must be triggered when the phone line is cut. This will discourage the continued presence of the burglar in the building, and alert persons within hearing range who may contact law enforcement. A line cut alarm that would be transmitted to a

public safety answering point or an alarm-monitoring service was considered by the task force, but was rejected because this is not readily available throughout the state at a reasonable price.

- E. Under item E, the security system must monitor exterior doors and entry points. This is because they are the weakest and most likely points of access into the building.
- F. Pistol storage and alarm control boards must be monitored to detect the presence of an unauthorized person in these areas. These requirements are aimed at the stay-behind burglar who poses as a customer during normal business hours, but then hides in the store to be able to remain there after hours. The two most likely areas this type of burglar will go to after coming out of hiding are the pistol storage area and the alarm control board. Motion and heat sensors are required because they detect humans while minimizing false alarms due to ventilation systems and small animals.
- G. Interior doorways leading to pistol storage areas must also be monitored to detect stay-behind burglars and burglars who have evaded the perimeter alarms.
- H. UL approval of systems helps to ensure that the system is of a high quality and appropriate for the level of security needed for a gun store.
- I. Annual independent testing by an authorized person helps ensure that the system works properly and adequately. Written certification allows local law enforcement personnel to verify testing without actually being on-site for the testing.

7504.0500 INSPECTION BY LAW ENFORCEMENT. Minnesota Statutes, section 624.7161, subdivision 3, states that these standards may provide for "a system of inspections, during normal business hours, by local law enforcement officials for compliance with the standards" The task force suggested random access to ensure that a dealer was meeting standards. Law enforcement is not required to give advance notice in order to discover if standards are being met and followed routinely.

7504.0600 EXEMPTIONS. The exemptions of part 7504.0600 were included as a small business consideration in an effort to reduce the impact of the standards on small businesses. Part 7504.0600 allows performance standards to be used in place of design standards if a dealer can show that its system is as effective as the standards. Some dealers may not be able to comply with each requirement of the standards, especially the subpart relating to vehicle resistant barriers. There may be conflict with city ordinances, lease agreements, and so on which prevent a dealer from complying with the standards. These exemptions will allow a small business to continue operations without extensive effect on the viability of the business while maintaining an acceptable level of security.

Conclusion

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

15 June 1993
Date

Michael S. Jordan
Michael S. Jordan, Commissioner
Department of Public Safety

