

4-30-2007

MINNESOTA DEPARTMENT OF PUBLIC SAFETY



Driver and Vehicle Services

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April 25, 2007

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645 State Office Building
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St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Rules Of The State Department Of Public Safety
Relating To Driver's License Agents

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt rules relating to Driver's License Agents. We plan to publish a Dual Notice Of Hearing in the April 30, 2007 State Register.

The Department has prepared a Statement of need and Reasonableness. As required by Minnesota Statutes, sections 14.1341 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 cursive script that reads "Joseph Bowler".

Joseph Bowler
Driver and Vehicle Services
Rules Coordinator

Enclosure: Statement of Need and Reasonableness

State of Minnesota
Department of Public Safety
Driver and Vehicle Services Division

STATEMENT OF NEED AND REASONABLENESS
LICENSING AGENT RULE AMENDMENTS
CHAPTER 7404

INTRODUCTION.

Licensing agents are appointed by the Commissioner of the Minnesota Department of Public Safety (department) to accept and process applications for driver's licenses, instruction permits, and state identification cards. The 122 licensing agents currently conduct business in city, county and private offices across the state.

Chapter 7404 sets standards for the placement of agent offices, appointment of an individual to serve as an agent, and the day-to-day operation of the office including key depositing and reporting practices. Under *Minnesota Statutes*, section 171.061, a licensing agent must be an individual and be appointed by the commissioner of public safety.

The proposed amendments are intended to bring licensing agent office placement, agent appointment, and the operation of agent offices into conformity where possible with amendments adopted in 2004 to deputy registrar rules in *Minnesota Rules* chapter 7406. (Deputy registrars process vehicle title and vehicle registration transactions.)

- Licensing agent application reporting and state tax and fee depositing procedures would mirror those used by all deputy registrars for vehicle transactions. The license application tax and fee reporting and depositing procedures call for the on-line reporting of fees and taxes received and the subsequent timely "sweeping" of the funds collected and owed the state from the agent's account and into a state account. Deputy registrars collected nearly one billion dollars in state tax and fee revenue in 2004 to title and register vehicles. Licensing agents collected over \$12.5 million in fiscal year 2004 in driver's license, permit and identification card fees.
- Because much of what a licensing agent does involves the inspection of identity and driver examination documents, data transmission is not all on-line though key application data will now be entered directly into the department's database by the licensing agent.

- Biennial audit procedures are proposed to mirror those that currently apply to deputy registrars. The audit procedures ensure that internal fiscal controls are in place in each licensing agent's office.
- Initial and ongoing licensing agent training is emphasized. Appointed agents and any other staff that accept and process applications must be carefully and successfully trained to perform duties that involve the identity of applicants and affect homeland security and safety.
- The establishment of application offices and initiation of a licensing agent appointment has been a process that has relied on third party initiative. In this proceeding, a new rule part is proposed that establish criteria for the commissioner to be able to proactively initiate an office location and agent appointment. Additional considerations, other than distance and application numbers, are proposed that include public access, customer convenience, and public interest.
- The commissioner is taking initial steps to consolidate vehicle and driver licensing functions that now are separately administered by deputy registrars and licensing agents. Of the 171 deputy registrar offices, 72 are not also licensing agent application sites. Of the 122 licensing agent office locations, 20 are not also deputy registrar sites. On-line technology, the internet and other electronic tools are allowing both deputy registrars and licensing agents to perform their duties accurately and efficiently. Customer service is paramount with respect to initiative to expand service options statewide. To facilitate one-stop customer service, these rules propose a class of limited licensing agents that are deputy registrars who are not currently licensing agents. The department is also encouraging, via rule, the voluntary assumption of full licensing agent duties by all deputy registrars.
- Technical amendments throughout the proposed chapter clarify that it is the commissioner who has the statutory authority to appoint licensing agents.

Deposit, vehicle transaction, and driver's license application data from fiscal year 2004 indicate deputy registrars processed 4.9 million transactions, down slightly from the 5.3 million the previous fiscal year. Deputy registrar conducted 98.5 percent of all vehicle registration and title deposits in 2004. The remainder was collected by the department's St. Paul office in Town Square.

With respect to driver's license applications, appointed licensing agents handled 1.6 million applications in 2003 and took in \$12.7 million in fees. This was a little over 42 percent of the driver's license, permit and state identification card business. The department's front counter (now closed) and the department-operated application offices throughout the state handled nearly 58 percent of the license application business. In 2004 licensing agent activity generated \$14.5 million in deposits and 30 percent of the

total licensing deposits while the Town Square and local department application offices generated \$33 million, or 69.4 percent of application deposits in 2004.

Six counties operate multiple office locations with Anoka and Hennepin leading with five. Vehicle title and registration revenue collected by Anoka County at the City of Anoka location was \$18.8 million in 2004; the Anoka office, however, is not also a licensing agent office. Stearns County, on the other hand, operates two offices in St. Cloud. One is just a deputy registrar office. It took in \$8 million in vehicle revenue in 2004. The second office in St. Cloud also accepts driver's license applications and serves as a driver's license agent. The second St. Cloud office took in \$20.8 million in revenue in 2004.

At the municipal and private party level, the deputy registrar in Circle Pines that is an incorporated private party, collected \$61.2 million in state vehicle registration and title taxes and fees in 2004 but is not a licensing agent. Vehicle transaction revenue was down about \$4 million for that office from the previous year. The deputy registrar office operated by the city of White Bear Lake, on the other hand took in \$48.2 million in vehicle transaction revenue in 2004, and also operates as a licensing agent. Its vehicle transaction revenue rose \$3 million between 2003 and 2004. The City of Roseville had the highest number of vehicle transactions with 113,000. Roseville collected \$30 million in vehicle transaction revenue compared to Circle Pine's \$61.2 for 99,000 transactions. The deputy registrar in Circle Pines processes a lot of new car registrations and titles for dealers. The City of Roseville's office also provides licensing agent services making it a full-service vehicle and licensing office.

Offices operating with the lowest transaction numbers are the private deputy registrars in Big Fork, Remer, Appleton and Cass Lake. Each collected less than \$400,000 in vehicle transaction taxes and fees with Cass Lake taking in \$151,000 and processing 2,320 transactions. None of these deputy registrars are also licensing agents. The county-operated licensing agents, who are not also deputy registrars, are in Long Prairie, Wabasha, Breckenridge, Ely and Sandstone. Each took in application fee revenue ranging from \$54,000 to \$31,000 in 2004.

State-operated application offices with respect to driver's license application deposits varied from \$46 in Foley to \$2.4 million in Plymouth.

Of the 69 deputy registrars that are not also licensing agents, 19 are located in a municipality that also has a licensing agent office. All the deputy registrars are private entities; all but one of the licensing agent offices in those municipalities are county-operated. The one that is not is city-operated.

ALTERNATIVE FORMAT.

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Joseph Bowler at Minnesota Department of Public Safety, Driver and Vehicle

Services Division, 445 Minnesota Street, Suite 195, St. Paul, Minnesota 55101-5195.
Phone number 651-201-7583 or fax 651-296-3141. TTY users may call the Department
of Public Safety at 651-282-6555.

STATUTORY AUTHORITY.

The department relies on the following statutory authority for the proposed permanent
rules.

Minnesota Statutes, section 14.06, requires that:

- (a) Each agency shall adopt rules in the form prescribed by the revisor of
statutes, setting forth the nature and requirements for all formal and
informal procedures related to the administration of official agency
duties to the extent that those procedures directly affect the rights of or
procedures available to the public.
- (b) Upon the request of any person, and as soon as feasible and to the
extent practicable, each agency shall adopt rules to supercede those
principles of law or policy lawfully declared by the agency as the
basis for its decisions in particular cases it intends to rely on as
precedents in future cases...

Minnesota Statutes, section 171.061, subdivision 6 **Rules**. The commissioner
shall adopt rules that prescribe:

- (1) criteria, procedures, and requirements for appointing an individual as
an agent of the commissioner;
- (2) criteria for establishment, operation, management, location, and
movement of a license application office;
- (3) standards for the uniform administration of laws and rules governing
the receipt of applications and fees for applications;
- (4) number of applications to be processed;
- (5) standards for submitting applications including valid forms of
identification, depositing funds, maintaining records, and holding proper bonds;
and
- (6) standards for discontinuing the individual's appointment and for
enforcement actions.

Minnesota Statutes, section 373.35, which pertains to the establishment of county
licensing bureaus and the appointment, by a county, of a bureau licensing director, states:

Notwithstanding section 168.33, subdivision 2, the commissioner of
public safety may appoint, and for cause discontinue, the director as the
deputy registrar of motor vehicles in the county.

REGULATORY ANALYSIS.

Minnesota Statutes, section 14.131 sets out seven factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness.

(1) A description of the classes of person who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rules and classes that will benefit from the proposed rules.

There are 172 deputy registrar offices and 122 appointed licensing agents. According to the department's *Motor Vehicle/Driver License Deposit Report for Fiscal Year 2004*, 4.9 million vehicle title and registration transactions generated state revenue of \$999,996,807 in 2004. On the driver's license side of the ledger, \$47,580,239 in application fees were collected. Deputy registrars conducted 98.5 percent of the department's vehicle title and registration business while licensing agents undertook 30.5 percent of the driver's license business.

The department delegates vehicle transaction and driver's license application duties to counties, municipalities and private individuals. Some of the private deputy registrar appointments have incorporated their deputy registrar operations. Six county registrars and individuals appointed as licensing agents operate between two and six offices in their respective counties. Twenty deputy registrars each took in over \$10 million in vehicle transactions in 2004. Over the same period, 26 deputy registrars collected less than 1.5 percent of the total vehicle registration and titling revenue and less than a half percent of the total driver's license fees.

The majority of deputy registrar offices are operated as licensing agent offices. However 69 deputy registrar offices are **not** also license agent offices. Indicted by an asterisk below are municipalities where an appointed licensing agent's office is operated by the county or in one case, a municipality, in the same municipality where a private deputy registrar office is located. Indicated by an "S" are the municipalities where a department-operated application office is located that accepts applications and also provides examinations.

Anoka operated by Anoka County. S
Duluth, private deputy registrar * S
St. Cloud operated by Stearns County S
Circle Pines, private deputy registrar
Golden Valley, municipal deputy registrar
Excelsior, private deputy registrar
Rochester 1, private deputy registrar S
Robbinsdale, municipal deputy registrar
Richfield, municipal deputy registrar
Monticello, municipal deputy registrar
Rochester 2, private deputy registrar S

North Mankato, private deputy registrar S
Wayzata, municipal deputy registrar
Cambridge, private deputy registrar *
Elk River, private deputy registrar *
Austin, private deputy registrar S
Waconia, private deputy registrar
Hastings, private deputy registrar * S
Marshall, private deputy registrar *
Brooklyn Park, municipal deputy registrar
Albany, private deputy registrar
Pine River, private deputy registrar
New Brighton, municipal deputy registrar
Annandale, municipal deputy registrar
Princeton, private deputy registrar
Park Rapids, private deputy registrar *
Jordan, municipal deputy registrar
Delano, municipal deputy registrar
New Prague, private deputy registrar
Mora, private deputy registrar *
Cokato, private deputy registrar
Foley, private deputy registrar *
Windom, private deputy registrar *
Kasson, private deputy registrar
Perham, private deputy registrar
Preston, private deputy registrar *
Staples, private deputy registrar
Fosston, private deputy registrar
Long Prairie, private deputy registrar *
Pipestone, private deputy registrar *
Wabasha, private deputy registrar *
Jackson, private deputy registrar *
Pine Island, municipal deputy registrar
Deer River, municipal deputy registrar
Breckenridge, private deputy registrar *
Sleepy Eye, municipal deputy registrar
Rochester 3, private deputy registrar (now closed)
Ely, private deputy registrar *
Bagley, private deputy registrar *
Askov, private deputy registrar (now Sandstone) *
Silver Bay, private deputy registrar
Hawley, municipal deputy registrar
Springfield, municipal deputy registrar
Cook, private deputy registrar
Rosemont, municipal deputy registrar
Canby, private deputy registrar
Grand Meadow, private deputy registrar

Crosby, municipal deputy registrar
Edgerton, private deputy registrar
Dawson, private deputy registrar
Onamia, private deputy registrar
Tyler, municipal deputy registrar
Grand Marias, private deputy registrar * (Now in Lutsen)
Mizpah, private deputy registrar
Fairfax, private deputy registrar
Ivanhoe, private deputy registrar *
Appleton, municipal deputy registrar
Big Fork, private deputy registrar
Remer, private deputy registrar
Cass Lake, private deputy registrar

The following are appointed licensing agent offices that are **not** also deputy registrar offices. The double asterisk indicates that there is also a private deputy registrar's office located in the municipality where the county, or in one case a municipality, also operates a licensing agent office. Indicated by an "S" are the municipalities where a department-operated application office is located that accepts applications and also provides examinations.

Foley, county licensing agent **
Bagley, county licensing agent **
Grand Marais, private licensing agent ** (now in Lutsen)
Windom, county licensing agent **
Hastings, county licensing agent ** S
Mantorville, county licensing agent
Preston, county licensing agent **
Park Rapids, county/court licensing agent **
Cambridge, county licensing agent **
Jackson, county licensing agent **
Mora, county licensing agent **
Ivanhoe, county licensing agent **
Rochester, county licensing agent ** S
Marshall, county licensing agent **
Pipestone, county licensing agent **
Elk River, county licensing agent **
Long Prairie, county licensing agent **
Wabasha, county licensing agent **
Breckenridge, county licensing agent **
Ely, county licensing agent **
Sandstone, municipal licensing agent **

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues.

Costs to the department attributed to adoption of the proposed rules, such as publication, notice and mailing, are absorbed in department appropriations. The department intends to use existing resources, including department deputy registrar and licensing agent liaisons, auditors, and web-based systems to help affected parties comply with rule changes.

The department may incur new costs as a result of the proposed biennial audit authority for licensing agents. However, the department believes any audit costs can be absorbed under the current operating budget. The department also believes, in the long run, the audit authority will result in a cost savings due to better record keeping, ongoing education and training.

The department does not perceive any significant impact on state revenue as a result of the proposed rule amendments.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rules.

Appointments. The department is not aware of less costly methods to ensure that licensing agent appointments are made fairly and offices are operated in a cost effective manner. The legislature can designate, via legislation, new office locations and require the appointment of a licensing agent to administer such office.

Audits. In the process of adopting new audit provisions in the deputy registrar rules in 2004, the department considered other options to the proposed biennial state audit, including requiring all deputy registrars to pay for an independent audit, have the department conduct an annual audit, or have the department conduct random audits. The biennial audit process was adopted for deputy registrars and is reasonable to apply also to licensing agents because so many deputy registrars are also licensing agents.

(4) A description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The department considered several methods for achieving the same goals as the proposed rule amendments.

Appointments. The department considered maintaining the application number and distance requirements for establishing new licensing agent offices that, if met, automatically results in establishment of an office and an appointment when one is requested. The department believes this option could result in greater costs to the department without a significant increase in benefits to customers or revenue to the state.

The department considered dropping the application and distance provisions totally from the rule. Instead the department considered relying totally on the considerations specified in proposed part 7404.0305 and the commissioner's initiative in proposed part

7404.0307. The department decided not to totally eliminate the option for a third party initiative to establish a new office location believing that some option needed to be available for outside parties to apply to the commissioner to operate a licensing agent office.

Leaving the application number and distance requirements in part 74040.0300 as is and not doubling them for the establishment of a new office location as has recently been done with respect to deputy registrar office locations was considered. The department chose not to leave the licensing agent application numbers and distance requirements the same because the department wanted to mirror the distances for new office in metropolitan areas that are contained in the deputy registrar rules. The department does not want more licensing agent-only offices. Customers are better served and auditing is simplified if driver and vehicle services are located in the same office.

The department considered making all existing deputy registrars full-service licensing agents on adoption of the proposed rules or within a fixed period of time. The department considered making all licensing agents to also serve as deputy registrars to ensure one-stop full customer services at all driver and vehicle service office locations. These alternatives have the appeal of providing one-stop customer service for the public, and enhancing state monitoring, training, auditing capabilities and e-commerce efficiencies. However, the department did not pursue these options. They would create too much disruption for existing agents and deputies, many of which are county and municipal offices. In small municipalities and towns, two full-service offices are not needed. There is not a customer demand to justify two offices that function both as a deputy registrar and as a licensing agent. The rapid expansion of the service delivery system to allow many more providers of the same public service could result in some providers totally discontinuing service because of reduced amounts of public business. The end result could actually mean a reduction of public service or lack of service provision in some areas of the state.

Mandating that all deputy registrars become full-service licensing agents would also mean that those deputy registrars would have to acquire state approved camera, signature capture, and vision testing equipment. The cost per camera is about \$10,000. The department's rule could be challenged for imposing an unfounded mandated on local and private parties.

Audits. As mentioned previously, compared to other options, the department believes a biennial audit by the department will provide both an adequate audit and an opportunity to conduct training at reasonable cost to the department and licensing agents.

(5) 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.

Appointments. The department does not believe costs to apply to become a licensing agent will change under the proposed rules. On the contrary, some efficiency may result due to the proposed amendments that should shorten the period of time to fill vacancies.

Reporting and depositing practices. There should be no significant increase in costs to a licensing agent to comply with the proposed amendments to the rules on reporting and depositing practices. The rules propose common accounting practices that should be maintained by responsible licensing agents.

(6) 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.

Appointments. To maintain service to the state's driver's license, permit and state identification card customers and to keep costs to a minimum, it is necessary that the department be provided with additional criteria when considering appointments and office locations. As noted above, whether the state supports 120 license agent office sites or 250, the revenue to the state changes little. The number of licensed drivers, permit holders, or identification card customers does not increase as in the private sector with new or improved products or aggressive marketing techniques.

Reporting and depositing practices. Without the proposed changes, state resources could be put at risk due to poor practices or untimely deposits. Without the new requirements related to improved technology, the department would be required to maintain two systems to process applications. This would be more costly and result in longer turnaround times for customers.

(7) An assessment of any differences between the proposed rules and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no federal regulations governing the appointment of licensing agents or vehicle deputy registrars.

PERFORMANCE-BASED REGULATORY SYSTEMS.

Minnesota Statutes, section 14.131 requires the Statement of Need and Reasonableness to state how the rule-making agency considered and addressed the legislative policy supporting performance-based regulatory systems set forth in *Minnesota Statutes*, section 14.002.

The department believes the rule amendments provide licensing agents with the flexibility to implement the business practices that work best for them and their customers, while at the same time ensuring the fiscal integrity of state funds and provision of state application service. The flexibility of the licensing agent to retain an auditor of the agent's choosing under part 7404.0475, subpart 1, should a second audit be

necessary, is one example. A second example is the flexibility each agent has to develop their own customer service policy and customer service assessment and complaint resolution mechanisms under part 7404.0500, subpart 1b.

Notice to adopt proposed rules; additional notice plan. The department plans to provide the following notice of its proposed rules.

- The department plans to publish the Notice to Adopt the proposed rules and text of the proposed rules in the *State Register*. The description of the subject matter of the proposed rules in the Notice to Adopt will summarize the general nature of the proposed rules.
- The Notice to Adopt rules, text of the proposed rules, and the Statement of Need and Reasonableness will be posted on the agency's web site on or before the day of publication of the notice and rules in the *State Register*.
- The Notice to Adopt rules with a copy of the proposed rules attached will be mailed to all parties on the agency rulemaking list prepared under *Minnesota Statutes*, section 14.14, subdivision 1a no less than three days before publication of the proposed rules and notice in the *State Register*.
- The Notice to Adopt rules and a copy of the proposed rules with information about how to access or obtain a copy of the Statement of Need and Reasonableness will be mailed to all appointed licensing agents, all deputy registrars, and all state-operated application sites with a request to post the notice and rules in their office in a location accessible to the public. Mailing will occur at least three days before publication of the proposed rules and notice in the *State Register*. The public frequents these offices. The notice and rules are of interest to the affected agents, deputy registrars, public, and staff at these sites.
- The Notice to Adopt rules with a copy of the proposed rules and Statement of Need and Reasonableness will be submitted to the Office of the Governor before the proposal of the rules.
- As required by *Minnesota Statutes*, section 14.116, copies of the notice, proposed rules, and Statement of Need and Reasonableness will be mailed to the chairs and ranking minority members of the transportation and public safety policy and finance committees of both the Minnesota House of Representatives and Senate.
- Interested parties, including persons on the rule advisory committee, deputy registrar and agent associations and the Association of Minnesota Counties will be mailed a copy of the notice, rule and Statement of Need and Reasonableness at least three days before publication of the notice and rule in the *State Register*.

A certificate attesting to the required and additional notice made, as well as copies of the notice as mailed and list of parties receiving notice, will be submitted into the record on this proceeding.

CONSULTATION WITH THE COMMISSIONER OF FINANCE.

Minnesota Statutes, section 14.131 **Statement of Need and Reasonableness**, requires that:

The agency must consult with the commissioner of finance to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.

As required by *Minnesota Statutes*, section 14.131, the department consulted with the Commissioner of Finance by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office before the department published the notice of intent to adopt rules. Sent to the Commissioner of Finance were a copy of the proposed rule, draft Statement of Need and Reasonableness, and the Office of the Governor's form titled *Governor's Office Proposed Rule and SONAR Form*. The Commissioner of Finance has no comment on the proposed rules.

The department has determined that the proposed rules will impact local units of government to the extent that filing fees for duplicate driver's licenses, permits and state identification card applications could be collected by deputy registrar offices that are not operated by the county or municipality. The proposal to make existing deputy registrars also limited licensing agents has the potential to reduce duplicate application revenue at county and municipal agent locations that are not also deputy registrar offices. Application filing fees could also be further reduced at county and municipal offices that are not also deputy registrar offices, in locations where a deputy registrar chooses to also become a full-service licensing agent. The department cannot predict the extent to which customers will choose to frequent office locations that provide both deputy registrar and licensing agent services.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by *Minnesota Statutes*, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONOR on pages 6 through 12.

**STATEMENT OF NEED AND REASONABLENESS SENT TO THE
LEGISLATIVE REFERENCE LIBRARY.**

A copy of the Statement of Need and Reasonableness will be submitted to the Legislative Reference Library when the document becomes available to the public (*Minnesota Statutes*, section 14.131).

LIST OF WITNESSES.

If a public hearing is needed on these proposed rules, the department does not anticipate calling any external witnesses to testify on behalf of the department.

If a public hearing is necessary, the following persons will represent the department at the hearing.

Patricia McCormack, director, driver and vehicle services division
Joan Kopcinski, driver services program director
Larry Ollila, vehicle services program director
Dan Southwick, Mankato regional supervisor
E. Joseph Newton, legal counsel

RULE-BY-RULE ANALYSIS.

7404.0100 DEFINITIONS.

Subpart 1. **Scope.** No change.

Subp. 2. **Agent.** The proposed amendment is necessary and reasonable to delete reference to laws that have subsequently been codified into *Minnesota Statutes*, section 171.061. Deletion is reasonable to simplify the subpart.

Subp. 3. **Applicant.** No change.

Subp. 4. **Application.** While *Minnesota Statutes*, section 171.061, subdivision 1, subitem (2) describes the state documents for which application is made at the office of a licensing agent, it is necessary to clarify the means by which application can be made and what is included in a completed application. Licensing agents are appointed to take applications and transmit them to the department for final processing and issuance of the described documents.

Item A. Because the department continues to maximize use of electronic means of communication and service delivery wherever possible, it is necessary to be clear that some applications may be made in an electronic or other format.

- Electronic application processes are secure. Errors are reduced when data is entered only once into the department's database; accuracy is enhanced because the paper application data does not need to be subsequently converted to an electronic or digital record.
- Transmission of captured data, facial images, and signatures is facilitated to the entity that is under contract with the department to produce the state-issued document.
- Electronic or digital applications facilitate the ability of the department to electronically verify information on the application with other databases, such as the social security number, thus enhancing the credibility of the issued document.
- Electronic or digital applications facilitate the ability of the department to electronically transmit data to other state agencies that use information on the application for other purposes required by law such as voter registration or child support enforcement.
- Finally, electronic or digital application processes allow the applicant to review inputted data for accuracy and speeds service delivery. On October 15, 2004, a driver's license, state identification card, or instruction permit was being issued, on average, within seven days of the date of application. Over 56 percent of the application data since January 1, 2004 was inputted on-line by licensing agents.

Item B. Minnesota does not issue state driver or identification documents instantly over-the-counter from licensing agent application sites. Information on the application, along with photocopies of background and supporting documents, are transmitted to the department where the information on the application is processed and verified. Documents may be presented to licensing agents to prove legal presence, residency, identity, or date of birth. If questions arise as to the authenticity of a supporting document or the accuracy of information, the document or information can be verified with the document's issuing authority. Depending on the type of license application, various databases, including those on criminal history maintained nationally, and driving records in other states, may need to be checked.

Note that when amendments to this chapter were discussed with potentially affected parties, the question was raised as to whether licensing agents need to be authorized to collect the driver's license reinstatement fee specified in *Minnesota Statutes*, section 171.29. Under paragraph (e) of that section, licensing agents appointed under section 171.061, are authorized by law to collect the reinstatement fee. Licensing agents are authorized under subdivision 1 of section 171.061 to accept applications for a driver's license. When a driver's license has been suspended, cancelled or revoked, the subject of the adverse action may apply for a license at the end of the penalty time period. In conjunction with the driver's license application, a reinstatement fee is prescribed under section 171.29. The reinstatement fee is no different than any other fee or tax collected by a licensing agent that is due and owed the state.

Subp. 5. **Approved office location.** No change.

Subp. 6. **Bureau.** No change.

Subp. 7. **Certificate of appointment.** No change.

Subp. 8. **Collected or collection.**

Item A. The proposed amendments to this subpart are needed to distinguish between fees collected by the licensing agent as specified by state law for a license, permit or identification card, and the filing fee the licensing agent may keep. What is collected is important within the rules when procedures for the timely deposit of taxes and fees due and owed the state are specified.

Item B is proposed to clarify that an application is not considered to be collected and subject to transmission and fee deposit until all information is provided on and in conjunction with the application including supporting documents. This item is reasonable because it ensures that the department can distinguish between applications for which a fee has been collected and thus must be transmitted to the department, and applications that are pending. It is reasonable to ensure that the agent and public understand that an application is not complete and cannot be processed until all fees and supporting documentation is provided.

Subp. 9. **Commissioner.** No change.

Subp. 10. **County board.** No change.

Subp. 11. **Conviction of crime or crimes.** It is necessary to delete reference to the imposition of a jail sentence in this subpart because the reference unnecessarily limits the ability of the commissioner to take action against a licensing agent. There have been instances when a deputy registrar, for example, has been convicted of a crime related to the operation of the deputy's office, but the deputy registrar did not receive a jail sentence. The proposed language "reasonably related to the function of an agent" mirrors language added in 2004 to the deputy registrar rules in part 7406.0100, subpart 12. Since the conviction of a crime may not have relevance to the performance of the licensing agent's duties, the condition of "reasonably related to the function of an agent" is reasonable. For example, if an agent is convicted of a serious traffic violation, such a conviction may not affect the agent's appointment. With respect to the latest revision of the deputy registrar rules, the Minnesota Deputy Registrar's Association suggested the term "directly" be used instead of "reasonably." The department did not concur with that recommendation for the deputy registrar rules and does not for licensing agents. A person who embezzles money from a company, for example, has not committed a crime directly related to the function of licensing agent duties. However, most would agree that embezzlement is a crime reasonably related to the duties a licensing agent must faithfully perform.

Subp. 12. **Deputy registrar.** No change.

Subp. 13. **Discontinuance or discontinued.** No change.

Subp. 14. **Existing office.** No change.

Subp. 15. **Inventory.** No change.

Subp. 16. **Metropolitan county.** No change.

Subp. 17. **Municipality.** No change.

Subp. 18. **Next working day.** No change.

Subp. 19. **Office.** No change.

Subp. 20. **Proposed office location.** The word “existing” is necessary to delete because it is confusing. The phrase an “approved office location” is consistent with the process specified in chapter 7404 of approving an office site initially before appointment of an agent and the consistent use of defined terms. Addition of the phrase “of an existing office location” is necessary for clearer drafting. Once an office is established and an agent appointed the office goes from being an “approved office location” subject to the appointment of an agent to oversee its operation, to an operational existing office. When it comes to application of provisions on the move of an office, the department is concerned about the move of an existing office, since that office is operational and providing service to the public.

Subp. 21. **Qualified newspaper.** No change.

Subp. 22. **Sufficient cause to believe.** No change.

7404.0200 PURPOSE. No change.

7404.0300 LOCATION OF AGENT OFFICE; PROPOSED BY THIRD PARTY.

Subpart 1. **General.** It is necessary to amend this subpart to clarify its applicability. Because the commissioner is also proposing a rule to provide that the commissioner may designate an office location other than a new location proposed by a party external to the department, it is necessary to clarify that the distance and application numbers in this part pertain to offices proposed by a party other than the commissioner.

Proposed part 7404.0305 lays out factors the commissioner will consider when locating a new licensing agent office and appointing an agent to administer the services at that location. The commissioner may reject a new office location even if it meets the distance and application number criteria due to these other considerations. A potential

office is a proposed office location if it meets the distance and application number criteria, however, it will not automatically be approved and an appointment will not automatically be made for that office location.

Subp. 2. State-operated application sites. [See repealer.] This subpart is necessary to repeal. The department proposes to reverse its current position to not consider the location of application sites operated by the department when determining the distance requirement for the location of new agent offices. Repeal of this subpart is reasonable because there is a finite amount of application business within the state and resources to audit and monitor sites. Improving service delivery or the design of a driver's license does not translate into additional license applications. A driver's license is not a product that can be sold in unlimited quantity to meet unlimited customer demand. The location of new application sites affects the viability and amount of business at state application sites. The state must ensure the geographic dispersal of state application sites throughout the state and oversee the ongoing training, auditing and monitoring of those sites. The state is responsible for auditing operations and training personnel at all sites. An increase in the number of sites does not mean an increase in application revenue to the state. The public may make application at sites operated by the department and at sites operated by local government units or private individuals. Just as the location of a new licensing agent office could affect the number of applications and thus the viability of other licensing agent offices nearby, so too is there an effect on application sites operated by the department.

The inclusion of department-operated application sites in the distance and application number considerations was discussed by members of the rule advisory committee on April 7, 2005. Some agents viewed department sites as primarily testing operations. The department responded that the proposed rules identify department-operated application sites, not every site where written examinations may be given. The department's goal is to provide full vehicle and licensing service at a site. It is department-operated sites that accept license applications that are addressed for inclusion. This is not every state office or every agency office such as fishery, transportation or park locations. This is not department sites that provide only knowledge or skills tests. In 2004 just 30 percent of the license application business was undertaken by licensing agents; the remainder was performed at department-operated application sites. The department has significant expertise in the acceptance and processing of applications. The department currently has application sites located throughout the state. These sites are located where they can maximize customer service delivery. If a department-operated application site is located within the radiuses for a new office proposed by a third party external to the department, it does not make sense to locate a new office near a department application site. Such a decision would not provide for the efficient management of department resources.

Subp. 3. Metropolitan counties. Reference to "Hennepin and Ramsey County" needs to be replaced by the phrase "metropolitan county." The definition of "metropolitan county" under *Minnesota Statutes*, section 473.121, subdivision 4 includes Hennepin and Ramsey counties, along with the counties of Anoka, Carver, Dakota, Scott

and Washington. These counties are similar in nature. It is necessary to change this subpart so office location considerations are applied the same way to similar counties. There has been a significant increase in population density in the five counties surrounding Hennepin and Ramsey in the past 24 years. To balance consideration of office locations within the metropolitan area, the other metropolitan counties need to be addressed in the same manner as Ramsey and Hennepin.

This subpart applies only to new office locations. The subpart is reasonable because it does not cause the immediate displacement of income from an existing licensing agent office. During advisory committee review of rule drafts, concern was raised about the location of sites operated by the City of Rosemount and the movement of existing offices. The department responded that the proposed distance expansion in the metropolitan counties does not affect existing offices that need to move. An existing office with low volume may move to a new location likely to enhance customer service, convenience and volume. Such a move is appropriate.

The terms "considered" and "not considered" are proposed to replace the term "approved" in this subpart to mirror the ability of the commissioner in the deputy registrar system to consider other factors with respect to a request for a proposed office location. The proposed change in terms is reasonable because it ties this rule part to proposed part 7404.0305 that specifies other appointment factors for consideration by the commissioner when an office location is proposed.

Item A. The distance between licensing agent offices in metropolitan counties is proposed to change from five to 10 miles. The proposed distance increase is necessary because the cost to audit and monitor operations, support and train additional licensing agent staff, is not balanced by an increase in revenue to the state or department. The number of applications does not substantially increase from one year to the next. It is in the best interest of the department and public to limit an increase in the number of deputy registrar and licensing agent offices the department must audit, monitor and support. The department continues to explore ways to facilitate more service delivery on-line. With respect to licenses and identification documents, examination of source documents by trained personnel, the capture of applicant images and signatures is critical. However, an applicant can apply for a duplicate license or identification card on-line if there is no change in information other than the applicant's residence address.

Item B. The commissioner is identified as the individual to estimate the number of potential applications at a proposed office site. This amendment is necessary because current rule does not identify who is responsible for estimating potential applications. It is reasonable to name the commissioner as the responsible party because it is the commissioner who oversees the appointment of licensing agents and determines what is in the public interest with respect to applications for and issuance of driver's licenses, instruction permits and state identification cards. The administration of this public service must be done in an efficient, timely, careful and secure manner. The timely deposit of fees and taxes due and owed the state must be ensured. The accurate administration of laws and rules is important.

The distance used to determine which offices will be considered when estimating application numbers is proposed to increase. The qualifying area is identified as over 10 miles and less than 19 miles. This increase is reasonable because it is consistent with the increase adopted for deputy registrar offices in the metropolitan area.

Item C. It is necessary to amend item C to include department-operated application sites when the number of applications a potential new office may collect is estimated. Inclusion of department-operated application sites is reasonable because applications are accepted at department-operated application sites. There are a finite number of applications. It is reasonable to presume that establishment of a new licensing agent office near an existing department-operated application site will affect not only other licensing agents in the vicinity, but also the viability of the department-operated site. It is the commissioner who has authority to appoint licensing agents under *Minnesota Statutes*, section 171.061. It is reasonable that the commissioner be the entity to consider what application numbers will be when determining if an office location will serve the public interest. The proposed application number increase is necessary because of the cost to supply, audit, support and train an additional agent is not balanced by an increase in revenue to the state. The increase proposed for application numbers is consistent with the transaction number increase adopted in 2004 for deputy registrar office location consideration.

Item D. The department proposes to add application sites operated by the department to this item so application numbers from those sites are considered when determining the application numbers a new office would generate. Addition of department-operated application sites is reasonable because there is a finite amount of application business within the state. Improving service delivery or the design of a driver's license does not translate into additional applications. The location of new application sites affects the viability and amount of business at adjacent application sites. The department must ensure the geographic dispersal of application sites throughout the state. The department is responsible for auditing and training at all sites. An increase in the number of sites does not mean an increase in application revenue to the state. The public may make application at sites operated by the department and at sites operated by local government units or private individuals. Just as the location of a new licensing agent office could affect the number of applications and the viability of other licensing agents nearby, so to is there an effect on application numbers from sites operated by the department.

Item E. The amendment identifying the commissioner as the person responsible for the consideration of a proposed office location is necessary because it is the commissioner who has authority to appoint licensing agents and locate offices under *Minnesota Statutes*, section 171.061. It is necessary to double the distance in this subpart to correlate with the doubling of the distance criteria in other provisions. Inclusion of department-operated application sites is necessary because there is not an infinite number of applications and those accepted at department sites affect the overall numbers available for acceptance at all other application sites.

Subp. 4. Municipalities with over 50,000 population. It is necessary to delete “other metropolitan counties” from the heading because other metropolitan counties have been combined with Hennepin and Ramsey counties in subpart 3. This subpart addresses only municipalities with populations over 50,000 other than those in the metropolitan area. These currently are Rochester, Duluth and St. Cloud.

Item A. The distance requirement between licensing agent application sites in a municipality with a population over 50,000 is proposed to change from a five to 10 miles. The increased distance between offices is necessary because of the additional cost to audit and monitor office operations, support and train licensing agents and staff, does not result in additional revenue to the state or department. Application numbers do not increase significantly from year to year. The public should not be inconvenienced because the change does not affect current agent office locations. Inclusion of department-operated application sites is necessary because there is not an infinite number of applications and those accepted by department application sites affect the overall numbers available for acceptance at all other application sites.

Though on-line customer service is not as extensive in the driver’s license arena due to the need for a secure in-person image and signature capture, and identity document review and verification, the need to visit a licensing agent office is generally one fourth that of the requirement for annual vehicle registration. Vehicle registration usually occurs annually – like the payment of other state and federal taxes. After initial vehicle registration, registration renewal can be accomplished on-line. (There is a provision in law for multiple year registration, but the public has not extensively used this option.) Driver’s licenses and identification documents usually require renewal every four years. Applications for a duplicate license or identification card because of a change of residence address only or a lost document with no change to data on the document can be made electronically through a licensing agent because there is no change in the identification information on the state-issued document, the information has already been captured digitally, and is in a department database. State identification cards for persons 65 years and older are valid for the individual’s lifetime.

Item B is necessary because two offices can sufficiently serve a community of 50,000. Item B mirrors the same criteria for the establishment of new deputy registrar offices. It could be argued that even fewer licensing agent locations are needed in such municipalities because the frequency of use for initial or renewal application purposes is likely to be about one fourth the number of vehicle transactions. With respect to deputy registrar office locations, the department determined two offices adequately serve Rochester. Without the proposed restriction in the deputy registrar rules adopted in 2004, a third deputy registrar office did locate in Rochester at a remote site. The third office averaged 308 transactions a month in 2004; the two existing offices 6,423 and 7,471 respectively. All required the same amount of auditing, training, monitoring and support from the department. The third office subsequently closed due to low volume and existing deputy registrar transaction and distance criteria now would preclude the third office from opening.

Item C. The proposed language is necessary to identify the commissioner as responsible for estimating the number of applications a potential office could annually process. This is reasonable because it is the commissioner who has the authority under *Minnesota Statutes*, section 171.061 to appoint licensing agents. The change from five to 10 miles and less than 19 miles is necessary for consistency with the change proposed in subpart 3, item B.

Items D, E and F. The proposed amendments are necessary to identify the commissioner as responsible for consideration of the appointment. The commissioner has the authority under *Minnesota Statutes*, section 171.061 to make, deny and withdraw an appointment. It is necessary to double the application numbers to correlate with the doubling of the qualifying distance requirements. Inclusion of department-operated application sites is necessary because there is not an infinite number of applications and those accepted by department-operated application offices affect the overall numbers available for acceptance by appointed licensing agents. The number of applications has risen by one percent a year since 1999. Applications for a residence address change with respect to an application for a duplicate license can now be accomplished on-line.

Subp. 5. **Other areas.** It is necessary to add department-operated application sites to this subpart for the same reasons specified in subpart 4. The proposed amendment identifying the commissioner as responsible for estimating application numbers and considering proposed office locations is necessary and reasonable because it is the commissioner who has authority under statute to make or deny agent appointments and oversee the application and licensure process. Application numbers are proposed to double to correlate with the doubling of distances between application sites. These "other areas" have populations of less than 10,000 or 10 persons per square mile. Some of the existing offices in these areas do not meet minimum application number criteria, but have been maintained for convenient access to public services.

Subp. 6. **Restriction on processing proposed office location.** Since it is proposed in part 7404.0305 that the commissioner no longer be required to appoint a licensing agent to any location that qualifies based solely on distance and estimated application numbers, it is necessary to change this subpart to provide for consideration of the proposed location. The proposal to increase the distance for a new office from 25 to 30 miles is reasonable to correlate with the distances adopted in 2004 for the location of new deputy registrar sites.

Item A. The proposed amendment to item A is necessary to ensure that the approval of a new office location to meet public service needs and the appointment of a licensing agent to administer that office is resolved before other locations are considered. The proposed change is reasonable because the potential establishment of an office in the proposed location would affect business at a subsequent proposed location.

Item B. No change.

7404.0305 ADDITIONAL OFFICE LOCATION CONSIDERATIONS.

This is a new rule part. It is proposed to mirror the office location considerations adopted in 2004 for the location of deputy registrar offices. This part is needed to indicate the commissioner will consider additional factors when deciding whether or not to establish a new office location. Additional factors are necessary because, under current rule, the commissioner has no discretion to determine if a new location should be approved when the location meets the distance and estimated application numbers specified in part 7404.0300. Discretion is reasonable when the commissioner considers the factors in this rule part.

Item A. The first factor is the accessibility of the office location to the public. A proposed location for a licensing agent that has limited access to a population center or transportation facilities or routes could be denied. Most applications that a licensing agent processes require the presence of the applicant. This factor is reasonable because the cost to establish, maintain and monitor an office and train staff in a low traffic area with low application numbers exceeds the benefits. As the state population continues to change (the influx of immigrants in urban areas and use of mass transit, the aging of baby boomers and reliance again on mass transit or shuttle services) the department must continue to be sensitive to the access needs of its customers. State and agent application sites need to be readily accessible to its customers, including those who may not have a motor vehicle or be able to walk long distances:

Item B. The second factor is the cost to the department associated with the operation of a proposed office. Cost must include supplying inventory, initial and annual staff training, biennial auditing, and the ongoing monitoring of operations. The financial benefit to the state to open an additional licensing agent office does not significantly change the amount of revenue generated for the state.

Item C. The third factor is necessary to consider because even though the site may meet distance and minimum application number requirements, it may not provide adequate service. The public should not be inconvenienced nor the state made to bear the cost of a new office if it will not serve the public convenience. Agent sites should be located and agents appointed to maximize customer benefit. In a 1996 administrative law judge's report on the establishment of deputy registrar offices, Judge Alan Klein, in Finding 14, stated that the legislative standard to appoint "as the public interest and convenience may require allows the commissioner to use discretion when asserting public need and convenience." *Minnesota Statutes*, section 171.061, subdivision 2, paragraph (b) uses "public interest and convenience" as criteria for the appointment of agents by the commissioner.

Subp. 2. **Disapproval of proposed office location.** This subpart is necessary to specify the process an individual must follow if a proposed location for a licensing agent's office was denied under subpart 1. If a location is denied, it is reasonable to allow the applicant to appeal the decision. The appeal would allow the applicant to have the denial reviewed by an impartial third party as a contested case under *Minnesota Statutes*,

chapter 14. This is reasonable because it is the same appeal process used for the suspension or revocation of an existing agent's appointment. This provision is reasonable to ensure that the commissioner's decision is based on the criteria and considerations in these proposed rules and is not arbitrary. This process is reasonable to propose because it is also the process provided in rules governing the denial of a deputy registrar office location in chapter 7406.

7404.0307 OFFICE LOCATION PROPOSED BY COMMISSIONER.

Subpart 1. **Commissioner's initiative; criteria.** This is a new rule part. It is necessary to propose so the commissioner can take a proactive approach to the location of licensing agent office and ensure the public interest and convenience is served. As the current system is structured, parties external to the department generate requests for a licensing agent office. As the entity responsible for the issuance of driver's licenses, instruction permits, and state identification cards, the commissioner is in the best position to assess and analyze the overall statewide system to ensure the fair, fast, and efficient delivery of application and licensing services. Service complaints and needs are directed to the commissioner who is accountable to the Governor and legislature for fair, effective and efficient service delivery. The commissioner may want to initiate change in the service delivery system. Under the existing structure, the commissioner only responds to external office initiatives.

The commissioner recognizes the need for flexibility to deliver service effectively and efficiently as well as the concerns of existing licensing agents who view the operation of their office as a business and may have invested private or local public resources to establish and maintain an office. To preclude the commissioner from arbitrarily establishing an office, the department proposes criteria and procedures when exercising the commissioner's initiative to establish an office.

The department is aware of circumstances where new centers of commerce, new transportation lines, new housing are proposed or under development. For example, locating a state office within the Mall of America, near the Bloomington station of the new light rail line, or in a neighborhood within the metropolitan area with high concentrations of new immigrants requires flexibility to proactively meet emerging or demonstrated needs.

- Access to an office may be by means other than private passenger car, particularly as baby boomers age and increasingly rely on public transit or shuttles as transit alternatives. Location of an office in a major mall may be a convenience for first time teen-age applicants who tend to frequent malls in higher proportions than the rest of the population, or for seniors with limited mobility.
- Locating application sites in areas that have concentrations of immigrants or persons who speak a language other than English would allow the department to gear information to their communication needs. This service approach is

practiced successfully by the food and baking industries – a business sectors that are able to adapt to the service and product needs of their surrounding customer base.

- The department wants to ensure that it can continue to work closely with other state and local government agencies as they plan new or expanded transportation corridors and service delivery outlets. In the past, towns have emerged at the confluence of rivers or along rail lines and new freeways. It is reasonable that the department have the flexibility to place offices in locations that are convenient for customers to find and use. For example, if a new transit system is developed between Minneapolis and St. Paul, it may be reasonable to locate a government licensing office within or immediately adjacent to the new transit mode.
- The department notes that during the legislative session SF 1432 and HF 1604 were introduced to establish another deputy registrar and licensing agent office in Chanhassen. SF 885 and HF 1049 were also put forth to establish a new office in the midtown exchange development in south Minneapolis. In both cases, the distance, application and transaction number requirements were waived and the new locations proposed because of their location on major transportation corridors and within areas of new and expanded development.

Subp. 2. **Notice.** This subpart is necessary to outline the procedures the commissioner will use to locate an office. It is reasonable that existing agents be appraised of the proposed new office location and the opportunity to operate the office.

Item A. If the office location falls within the parameters for distance and estimated application numbers in part 7404.0300, then the procedures applicable to the appointment of a licensing agent are the same as if the office location was generated by a party external to the department.

Item B specifies the procedures for licensing agent appointment that are routinely applied to an appointment and proposed location generated outside the department.

Item C. If the commissioner determines, however, that a new office location is warranted and there is a potential impact on adjacent existing offices and agents, as with a variance to an existing rule as provided by *Minnesota Statutes*, sections 14.055 and 14.056, the commissioner would notify existing licensing agents who may potentially be affected. In this case, the proposal is to allow those potentially affected agents to apply to operate the office at the new location.

Item D. The potential exists that an office proposed by the commissioner could affect more than one existing licensing agent. In this case the department proposes to consider appointing the licensing agent administering the closest existing office first should that agent want to administer the new location.

Item E. It is necessary to specify the procedure the commissioner will use if no agent within the radial distance of the proposed office location accepts appointment as the licensing agent for the office. In this instance, it is reasonable that the commissioner proceed as if the appointment were new, offering designation of an individual for appointment by the commissioner first to the county board and if they decline, then have the commissioner designate an individual and make an appointment.

Item F. Chapter 7404 governs the appointment of licensing agents. These are third parties - individuals appointed by the commissioner to carry out application and fee collection, processing and data input duties delegated by the department. These individuals are not state employees. Their offices are not department-operated application sites. The commissioner may choose to locate department-operated application sites, as well as examination sites, as the commissioner deems necessary for fair, effective and efficient service delivery. The purchase or rental of an office site and staffing of that site are controlled through budgets and appropriations by the legislature and Office of the Governor.

7404.0310 EXCEPTIONS.

Subpart 1. **One agent per county bureau.** No change.

Subp. 2. **Low volume existing office; county board decision.** The proposed addition of language to the lead paragraph is necessary to underscore the applicability of this subpart to the agent appointed to administer an existing office location. The additional phrase "upon the death, resignation, discontinuance, or retirement of an existing agent" is necessary to indicate the circumstances that trigger reevaluation of a low volume office.

Item A. The term "after" is proposed to clarify that notice occurs after the next meeting of the county board. The limit of "60 days" is necessary because some county boards do not meet every month. Loss of a licensing agent in an area means service is disrupted. It is important that a time limit be set so the county board promptly addresses the situation. The term "designate" is proposed for use throughout this chapter with respect to the county board's action because it is the commissioner that has the authority under *Minnesota Statutes*, section 171.061 to appoint licensing agents.

Item B. The proposed amendments to this item are needed to clarify that it is the county board that is responsible for checking the qualifications of the licensing agent. In some cases there already may be a licensing director in the county. That individual, to assume licensing agent responsibilities, must meet the state qualifications for a driver's licensing agent. It is necessary to reduce the decision timeframe from 90 to 60 days to ensure that ongoing service delivery in the county is addressed in a timely manner. Some county boards do not meet every 30 days, but all meet at least four times a year. Calling a meeting within 60 days to act on the vacancy is necessary to ensure the prompt evaluation of service need at the office location.

Item C. It is necessary to add "state-operated application site" to this item for the reasons already stated in subpart 7404.0300, subpart 3, item D.

Item D. *Minnesota Statutes*, section 171.061 was amended in 2000 to specify that the state would maintain the image capture equipment provided to all licensing agents appointed as of January 1, 2000. The amendment to subitem (1) is necessary for consistency with statute. The vision-testing equipment in subitem (2) is addressed in a rule proceeding that went into effect on January 5, 1999. Subitem (3) speaks to "other equipment or inventory." This language is necessary to add to account for future equipment that may be needed to accept, process, and transmit applications. It is unreasonable for the department to specify in detail all equipment that may be necessary for the timely deposit of revenue, application transmission, or capture of biometric identifiers. The department must balance data security and timely deposit needs against specifying in detail all equipment and inventory needed at a particular time. The department believes that if the requirements for service delivery become burdensome, agents may seek legislative relief as they did in 2000 with respect to the provision of photo identification equipment.

Subp. 3. **Low volume location; commissioner's appointment.** This existing subpart is amended to clarify that it is the commissioner who has authority to appoint an agent. The county board may designate an individual, but it is the commissioner who makes the appointment. The phrase "and equipment" and "any equipment or inventory necessary to process applications" are added because the department provides image and signature capture equipment to agents as well as forms, software, training and public information materials. If an office closes, the department-supplied equipment, as well as any unused inventory, reverts to the department. It is noted that in this existing low volume location subpart, state-operated application sites are currently considered when another licensing agent appointment at a low volume site becomes an issue.

Subp. 4. **Minimum distance exception.** No change.

7404.0330 MOVE OF EXISTING OFFICE LOCATION.

Subpart 1. **In general.** It is necessary to add the phrase "before the move" to this existing subpart to ensure that offices are not moved and then approval requested after the fact. The additional language makes the department's policy clear.

Subp. 2. **Variance.** No change.

Subp. 3. **Commissioner's decision.** No change.

Subp. 4. **Right to review commissioner's decision.** No change.

7404.0340 DEPUTY REGISTRAR AS LIMITED LICENSING AGENT.

Subpart 1. **Deputy registrar as limited licensing agent.** This is a new rule part. Under *Minnesota Statutes*, section 171.061, subdivision 2 “the commissioner may establish an office and appoint an individual to accept applications as the public interest and convenience may require.” The commissioner continues to seek ways to make it convenient for the public to obtain services the driver and vehicle services division provides. Ways to integrate databases and streamline data entry continue to be developed so electronic commerce is facilitated. Administrative efficiencies are fostered whenever possible without compromising security, quality, or customer convenience.

If a customer moves and comes to a licensing agent office to promptly change the address on the customer’s driver’s license as required by law, and apply to obtain a new duplicate license with the new address, it is not reasonable that the customer then must go to a different office to also change the address on the customer’s vehicle registration and title to ensure proper notice by the state of registration renewal. The customer may have to make two stops or entries instead of one if the licensing agent is not also a deputy registrar. The customer may want to undertake business at the office of a deputy registrar and at the same time apply for a duplicate driver’s license because of a residence address change. If the deputy registrar is not at least also a limited licensing agent, as described in this rule part, the customer would have to make another stop at a separate office. It makes sense to integrate driver’s license and vehicle service systems so a change in a driver’s license field also triggers an automatic change in the same field in the vehicle service area. It is important that the current and correct address be on the driver’s license or state identification card. Procedures that enhance the ability of the public to comply with the law requiring current and prompt address change on those documents is reasonable.

Conversely, if a customer purchases and registers a vehicle, giving the customer’s residence address, it makes sense and is reasonable that if the residence address differs from that in the driver’s license record and on the license document, the customer is prompted to also update the residence address on the driver’s license. At this time this could only occur from the deputy registrar’s office if the deputy registrar was also appointed as a licensing agent.

The development of the deputy registrar system and subsequent establishment of the licensing agent system does not preclude the commissioner, under section 171.061, from appointing a deputy registrar to also perform the duties of a licensing agent. Most licensing agents already are also appointed deputy registrars.

(A distinction between deputy registrars and licensing agents is that deputy registrars were informally allowed to incorporate several years ago even though *Minnesota Statutes*, section 168.33, subdivision 2, paragraph (e) requires “each deputy, before entering upon the discharge of duties, shall take and subscribe an oath to faithfully discharge the duties and to uphold the laws of the state.” Paragraph (d) presumes that a deputy registrar is a natural person – an individual. Once allowed to incorporate, however, office locations and appointments were viewed by some deputies as a business that could be bought or sold for a profit. Corporate, rather than individual appointments

were made. The legislature acted in 1997 to require that after January 1, 2009, the appointment of any corporation as a deputy registrar would expire. The sentiment expressed by some legislators during discussion on the legislation was that the public service should not be bought or sold as a commodity.

In 1997 when licensing agents were established under section 171.061 as part of the legislative discussion on the bill was the decision that licensing agents be appointed as individuals – not corporations. Discussion by the bill’s authors indicated that licensing duties were an essential public service that must be available statewide and not subject to discontinuance should their provision not be profitable. Vehicle registration and title taxes and fees are restricted by law. The quantity and value of vehicles in the market place, however, is not limited. It is important for the department to be able to identify an individual to hold accountable for the operation and management of the office and service delivery. Subsequently the legislature added paragraph (g) to section 168.33, subdivision 2, limiting the appointment of corporations as deputy registrars and requiring the appointment of individuals only by the year 2009.)

The department believes it necessary to move now in a direction that allows a data field to be entered into one end of its driver and motor vehicle service system and to be able to populate the same data field in other customer databases. The department believes it reasonable to allow deputy registrars to accept applications for a duplicate driver’s license, permit or state identification card because the essential data has already been entered into department databases.

Moving toward the consolidation and integration of licensing agent and deputy registrar functions is reasonable so the customer is not needlessly inconvenienced. Integration and consolidation is also consistent with the establishment of county license bureaus under *Minnesota Statutes*, section 373.32. Section 373.33 authorizes such bureaus to:

- issue, process or assist in preparing an application for any license or permit issued by the state or a state official includingmotor vehicle ...or driver’s license

An individual who is the licensing bureau director oversees a county licensing bureau that may be comprised of more than one office location. If consolidation of vehicle and driver’s license duties can occur at the county level under one individual, such consolidation is reasonable at the state level as well. It is the state-generated laws, rules, databases, forms, training, monitoring and auditing that affects the operation of deputy register and licensing agent offices. It is the commissioner of public safety who is responsible and accountable to the legislature and governor for the fair, effective and convenient delivery of driver’s licensing and vehicle title and registration services to the public.

Subpart 1 proposes to require, as soon as proposed part 7404.0340 is effective, that all deputy registrars also be appointed by the commissioner to assume limited licensing agent duties. Existing deputies already have the basic equipment in place to input data

for vehicle registration and title transactions. By limiting the driver's license, driving instruction permit or state identification card application duties as specified in subpart 2, the deputy registrar can, in one service operation, serve a customer's need to change an address on a vehicle title and registration record as well as on the customer's driver's license, permit or state identification card.

Subpart 1 is reasonable because it does not restrict an existing deputy who assumes limited licensing agent duties because of the office location. The distance standards to establish a new agent office are waived. Existing deputy registrars who are not also licensing agents are grandfathered into the licensing agent system to perform limited duties. This part is reasonable because it enhances the public interest of the state and customer convenience.

Subp. 2. **Limited licensing agent.** This subpart is necessary to delineate the restricted - the "limited" - duties of a limited licensing agent. A licensing agent appointed to accept "applications" as defined in chapter 7404 and *Minnesota Statutes*, section 171.061, has no restrictions on the kind or nature of applications. Such an agent is in essence a "full-service licensing agent." Such an licensing agent must have all the necessary equipment, inventory, and even more important, training, to be able to accept and properly and accurately process applications for the various driver's license classes, instruction permits, motorized bicycle permits, and state identification cards.

- The initial application process for a license, permit or identification card involves a review of identity documents – a critical duty in this time of heightened concern about identity fraud, legal presence, and national security issues.
- For a driver's license or permit, documents indicating completion of certain training or successful passage of certain tests must be reviewed.
- Applicants for new and renewed licenses have their vision screened. This too is very important – particularly as baby boomers age.
- Sometimes documents for medical restrictions, disability certificates, or applications for time-limited agricultural licenses are received.
- Agents also must address applications for the renewal or reinstatement of licenses that have been revoked, suspended or cancelled.

Item A. The duties of a licensing agent require equipment to capture the full facial image, signature, and test the vision of an applicant. Equipment is specialized and vendor specific with unique software, hardware and dedicated transmission lines. Overtime, the equipment needed to transmit data to the department and vendors has become the same for many deputy and agent functions. Transmission and reporting of data and deposits would mirror each other as this rule proceeding proposes. The monitors to view customer records and enter data are the same. Only the pop up computer screens developed by the department and made available to an agent or deputy by the department may differ. Access authorization may vary depending on appointment duties.

The commissioner believes it reasonable at this time to appoint existing deputy registrars who are not also licensing agents, to be licensing agents to perform limited licensing agent duties. Appointment as a limited licensing agent only requires the equipment that the deputy registrar, who is not a full-service licensing agent, already has. Some initial

training on new fields and screens will be required, but it is far less training than what must be successfully completed by a full-service licensing agent.

Item B. The limitations to application duties specified in this item are similar to those already enumerated in part 7410.0450 for the acceptance of duplicate license applications. Subitem (1) describes one of the conditions that is a criteria for a duplicate license or identification card application. This criteria is found in part 7410.0450, item A. Subitem (2) is limited to a residence address change only. This differs from the duplicate document duties of a full-service licensing agent who is trained to review identity documents that could affect a name change, date of birth, or other descriptive information about an applicant.

Items C and D. Though the limited licensing agent may accept applications for a duplicate state document, the procedures for accepting an application and issuing the duplicate must not require capture of the applicant's image because the deputy registrar will not have photo or signature capture equipment or have been trained to use it. Nor will the deputy be trained to review source or breeder documents that establish identity, legal presence, name, date of birth, and other descriptive data. The deputy registrar will have a computer and communication line to the department thus allowing the deputy to review the applicant's image and signature. Some applicants, however, may not have an image on file with the department. In this case, the individual applying for the duplicate document can not be compared by the deputy against the image on record so the deputy has no way to know if the applicant is the same individual. The same is true for signature comparison on the application form.

Item E. Information on the application for a duplicate license is limited to a change in the applicant's residence address. This is reasonable because a change in other identifying data would require the examination of other source documents or information and the deputy registrar has not been trained to examine and review such documents.

Subp. 3. **Designation of individual as agent.** This subpart is necessary to ensure consistency with the requirement in *Minnesota Statutes*, section 171.061 that a licensing agent appointed by the commissioner be an individual. Though there may be some deputy registrars that have incorporated, those entities still have individuals identified as corporate officers and managers of the deputy office. In the instance where the deputy registrar is a corporation, an individual must be designated for appointment as the limited licensing agent. In 2009, the commissioner, under section 168.33, subdivision 2, paragraph (g) shall appoint an individual who is an officer of the corporation as the individual deputy registrar. In proceedings this year amending the deputy registrar rules, the department clarified that when a deputy registrar is appointed, if the deputy registrar is a corporation, the appointment papers must specify and be signed by a corporate officer. It is reasonable that for appointment of the limited licensing agent, that the appointment be the same individual who is indicated on the deputy registrar appointment certificate.

Subp. 4. **Training.** This new subpart is necessary to ensure that all deputy registrars who will be assuming limited licensing agent duties know that department-provided training will be necessary to complete initially and at least annually so the deputy registrar is properly trained to undertake the limited duties of a licensing agent. Initial and ongoing training is reasonable to ensure the individual undertaking licensing agent duties is competent to perform those duties.

Subp. 5. **Bond.** This subpart is necessary to clarify bond requirements. Under the deputy registrar rules the deputy registrar's bond must cover all the vehicle registration and title transaction responsibilities of the deputy registrar. Under the licensing agent rules, the bond for a licensing agent must be separate from that of a deputy registrar, from the functions performed as a department of natural resources registrar, and must cover all application receipts.

Applications for a duplicate license, permit or identification card will comprise only a small portion of a deputy registrar's duties, if the deputy is only a limited licensing agent. The department proposes as reasonable to require the deputy registrar acting as a limited licensing agent to cover all fees due and owed the state for duplicate applications rather than obtain a separate bond for this purpose because the department believes the total amount will be an extremely small amount to cover in the event of any loss of revenue to the state attributed to misappropriated duplicate license document application fees. Using 2004 reported application figures, nonphoto duplicate applications, statewide, made up 18 percent of all applications; and 21 percent of all drivers' license applications.

7404.0345 DEPUTY REGISTRAR AS LICENSING AGENT.

This is a new rule part. The department proposes to allow existing deputy registrars to voluntarily integrate the duties of a deputy registrar in the existing deputy registrar offices with those of a licensing agent. The need to allow for consolidation and integration of vehicle and licensing services to better provide for the public interest and customer convenience are described in part 7404.0340 above. This part is intended to encourage existing deputy registrars - not currently also appointed as full-service licensing agents - to apply to the commissioner to also become a licensing agent and provide license application services at the deputy registrar's existing office locations. The department wants to facilitate the integration of databases, enhance customer convenience, and consolidate licensing and vehicle registration and titling functions where possible. It is in the public interest to allow established deputy registrar offices to provide both department vehicle registration and titling and driver's license application services.

Over 60 percent of all deputy registrars are also appointed licensing agents. Because there is a current cost, under *Minnesota Statutes*, section 171.061, to procure the photo image capture equipment, signature capture equipment, vision testing equipment, and complete the needed licensing agent training, the department is not mandating that all deputy registrar's also become licensing agents.

Item A clarifies that an individual to be appointed as a licensing agent, as well as the office space, must meet the standards and procedures applicable to a licensing agent specified in *Minnesota Rules*, chapter 7404. Compliance is reasonable to ensure that licensing agent application service and quality are consistent statewide. The space needed to process vehicle transactions differ from that needed to securely maintain photo and signature capture equipment and meet customer application needs.

Item B is necessary and reasonable to clarify that this appointment is for a full-service licensing agent – not for limited service. The licensing agent appointment provides all application services.

Item C is necessary to clarify that if the deputy registrar who is not also an appointed licensing agent, must successfully complete the training required to be a licensing agent. This item is reasonable to ensure the competent delivery of application service and protection of the department's and customer's interests.

Finally item D reiterates the existing requirement in state law with respect to the equipment needed to capture the applicant's facial image, signature, and test for vision. A deputy registrar applying to become a licensing agent must procure, at the deputy registrar's expense, the equipment necessary to fulfill all licensing agent duties. The requirement in item D is consistent with *Minnesota Statutes*, section 171.061, subdivision 4. The cost to lease this equipment under the current state vendor contract is about \$10,000.

7404.0350 AGENT APPOINTMENT PROCEDURE, REFERRAL TO COUNTY BOARD.

Subpart 1. **In general.** New language is needed in the lead-in sentence to clarify when the licensing agent appointment process begins. The amendment is reasonable because it clarifies that the licensing agent appointment process begins after the commissioner approves an office location.

Item A. It is necessary to add the word "first" to this item to clearly indicate that the county board has the first option to designate a licensing agent for appointment at an approved office location. This procedure is consistent with the use of county licensing bureau directors as licensing agents under *Minnesota Statutes*, sections 373.33 to 373.38. If the county board chooses not to designate an individual to be a licensing agent, then the commissioner may appoint another individual.

Item B is amended to clarify that the process delineated in this rule part applies to agent appointments at new office locations. It is reasonable that if an office is moved, that the current licensing agent continue to operate the office in the new location.

Subp. 2. **County board.** Amendments to this subpart clarify that it is the commissioner that appoints the licensing agent. The key change, however, to this subpart is to remove the role of the county board to appoint a licensing agent who is not the

director of the county licensing bureau or a county employee or equivalent officer of the county. The appointment is for the commissioner to perform.

Subp. 3. **Notice to commissioner required.** This subpart is necessary to amend to ensure that the language is consistent with the commissioner's authority to appoint a licensing agent. The notice requirement is proposed for change from 30 to 60 days because some county boards do not meet monthly. Sixty days takes into account this fact but also maintains a deadline to ensure that action is taken by the county board in a timely manner and public service is maintained.

Subp. 4. **Failure to notify commissioner; consequences.** The timeframe for the notice of what the county board wants to do is expanded from 30 to 60 days. Some rural counties have part-time board members who work full-time at other jobs and meet less frequently on county business. These counties need more time to respond. There is also a strong correlation between rural counties and deputy registrars who are also not licensing agents.

Subp. 5. **[See repealer.]** This subpart is repealed. It is the commissioner who appoints licensing agents. It is also the commissioner who has the authority to discontinue an appointment and take corrective action with respect to an agent.

Subparts 6 and 7. The text of these subparts is proposed to be moved to part 7404.0500. The content is appropriate to address within the operating practices rule for the licensing agent because the content deals with what a licensing agent is responsible for once appointed.

7404.0360 COMMISSIONER'S APPOINTMENT PROCEDURE.

Subpart 1. **In general.** The proposed amendments to this subpart are necessary to indicate the procedures that apply to the appointment of a licensing agent by the commissioner. The county board does not appoint a licensing agent, that responsibility is the commissioner's under *Minnesota Statutes*, section 171.061. If the commissioner approves an office location within a county, and the county has a licensing bureau with a licensing bureau director, then the county may designate that director as the licensing agent of the new approved office location.

Subp. 1a. **Municipal-administered office.** If the approved office location is in an office administered by a municipality and the county board chooses not to designate an agent to administer the office, the commissioner may directly refer the designation of an employee or official of the municipality to the municipality's governing board for appointment by the commissioner as a licensing agent.

Subp. 2. **Publication of vacancy notice.** It is necessary to amend the language in this subpart to clarify that it is the commissioner who has the authority to appoint licensing agents. When a county or municipal officer or employee is designated by the government body and subsequently appointed by the commissioner as a licensing agent,

no public notice is necessary. However, if a private appointment is needed because the county board and municipality both decline to designate an employee or officer, then notice is made in a qualified newspaper. Qualified newspapers are not necessarily weeklies, so the requirement for publication for two successive weeks is not consistent with the variety of publication schedules of the qualified newspapers allowed under *Minnesota Statutes*, chapter 331A. Single publication simplifies and speeds the appointment process. Section 331A.05 requires publication of the notice only once.

Subp. 3. Appointment application. The language change to the lead paragraph is necessary for clearer drafting. Item C, subitem (1) is proposed to clarify that it is driver training “programs” that are defined in *Minnesota Rules*, chapter 7411 and regulated by the commissioner. It is after the commissioner approves an office location that a notice is published or a request for licensing agent appointment is accepted. Item H is proposed for addition to the information needed on an application for appointment. This required information is consistent with that requested of a deputy registrar for appointment as a deputy. Both appointments are responsible for the transmission of large amounts of public funds to the state. Delinquency in personal taxes, penalties or interest is an indication an individual may have trouble properly managing money. It is reasonable to have the same appointment criteria for both deputy registrars and licensing agents because they may be the same individual.

Proposed item J is modified to ensure that in all cases a check of the national criminal records repository is undertaken. People are very mobile. Limiting a national check only if the individual has not resided in the state for the past five years limits the state from information that could be pertinent to a proper appointment – such as delinquency on federal taxes or criminal conduct in another state. Inclusion of national data is consistent with the appointment criteria for a deputy registrar.

Subp. 4. Age of agent. It is necessary to delete criteria relating to the manager of a licensing agent’s office because the department does not want to monitor and enforce standards for licensing agent employees. The qualifications of employees of a licensing agent are the agent’s responsibility. It is the licensing agent who is responsible for and held accountable for the operation of the office. The proposed deletion is reasonable for consistency with criteria for appointment of a deputy registrar and the operation of a deputy registrar office.

Subp. 5. Criminal history check. No change.

Subp. 6. Change in agent application conditions. The proposed amendment to this subpart is necessary to be clear that a change in vital information about the licensing agent must be reported to the department before the change occurs. “Within” is vague in that it can be interpreted to mean before or after. Some changes will not violate any requirement in this chapter or the underlying state law, but must be known so the department can communicate with, audit and monitor the office. A change without prior approval as required by this chapter and state law will be cause for discontinuance. Whether the commissioner chooses to exercise his discretion to discontinue an

appointment or take appropriate corrective action is another matter. The statute number change is necessary to correct a typographical error.

Subp. 7. **Reasons to deny agent appointment.** It is necessary to change the term "request" to "application" for consistent use of terms throughout chapter 7404. In item C, subitem (4) it is necessary to change "directly relating" to "reasonably related to" for consistency with the term change in the definition of "conviction" in part 7404.0100, subpart 11. The reasons for the change are the same as those described in part 7404.0100, subpart 11.

7404.0370 APPOINTMENT OF AGENT.

Subpart 1. **In general.** It is necessary to change the term "request" to "application" for consistent use of terms throughout chapter 7404. Addition of the phrase "or review of a floor plan" is necessary because some office locations are approved based on a floor plan because the actual site is not built or undergoing renovation at the time of the request for a location. It is part 7404.0400 that prescribes the requirements for the office location.

Item A. A licensing agent is responsible for the operation of an office. Many agents have employees or office managers, operate multiple sites and may not be present on site. Though the licensing agent as an individual must possess communication and customer service skills, it is not enough that only the licensing agent have those skills. Because other employees interact with the public it is reasonable that those persons with regular public contact be able to effectively communicate with the public and be trained to competently carry out their respective duties.

Item B. No change.

Item C. What annual initial and annual training consists of for the appointed licensing agent is specified in part 7404.0500, subpart 1a. The addition of the reference to this part is reasonable for clear understanding of the requirement for completion of training.

Subp. 2. **Certificate of appointment.** The addition of the term "location" to the lead sentence is necessary for consistent use of defined terms.

Item A. No change.

Item B. The proposed changes to item B are necessary to be clear it is the commissioner who is responsible for making the licensing agent appointment under *Minnesota Statutes*, section 171.061. When an individual is designated by a county board or a municipal authority for appointment, in addition to the individual signing the appointment papers, the papers must also be signed by a representative of the county board or municipality.

Item C is a new provision that is necessary to address the problem of approving an office location and making an appointment, but then the office is not built or

completed. Entities often want to know in advance that a location is acceptable to the department and a licensing agent is subsequently appointed to oversee office operations. Then for some reason the office may not open or be completed in a timely manner to provide service to the public. The commissioner must have some assurance that the office will be timely up and operational to ensure service delivery throughout the state.

Subp. 3. **Bond.** The changes proposed to this subpart are necessary to ensure that the bond provisions for a licensing agent are consistent in key respects with those applicable to a deputy registrar as is possible. The camera to capture facial images, signature capture device and vision testing equipment is routinely referred to as equipment. Plates, registration stickers, and forms are usually referred to as inventory.

Item A. No change.

Item B. Many licensing agents also serve a dual role as appointed deputy registrars. Under *Minnesota Statutes*, chapters 84 and 86B, all deputy registrars appointed under *Minnesota Statutes*, section 168.33 must also act as agents for the Minnesota Department of Natural Resources (DNR) to register off-highway motorcycles, off-road vehicles, snowmobiles and all-terrain vehicles. The proposed item B amendments make it clear that the licensing agent's bond does not cover actions taken as a registrar for the DNR. It limits claims under the licensing agent's bond to actions relating to licensing applications.

This distinction is reasonable because in the past claims have been made against a deputy registrar's bond by the DNR. This resulted in the department not having full access to the bond amount held by the deputy registrar to cover vehicle transaction fees and taxes. The commissioner of public safety has no authority over DNR transactions and no way to protect those state funds or discover losses resulting from DNR transactions. The DNR does not routinely visit or do in-person audits of their appointed registrars.

The department notes that deputy registrars and licensing agents who are employees or officials of a county or municipality are not required to post a bond. Advisory committee members discussed the option of a single bond being held by a private party to cover both deputy registrar and licensing agent duties. The bond requirements are specified under two different statutes. For the licensing agent, the bond is written with respect to the appointed individual. For a deputy registrar, in some cases the bond is written for a corporate entity.

Subp. 4. **Change in county board or municipality-designated agent.** It is an individual who is appointed as a licensing agent who is responsible for carrying out the duties of the licensing agent. If the individual designated by a county board or municipality is no longer providing or responsible for the provision of licensing application service, the commissioner must be notified. Timely notice is reasonable because it is the commissioner of public safety who is responsible for the provision of license application services statewide. Prompt notice is necessary so the commissioner can evaluate the continued effectiveness of the office to deliver service and take appropriate action to either request that another individual be designated to oversee the office, or that the office be vacated.

Subp. 5. **Transfer of appointment.** An appointment may not be transferred to another individual without approval and subsequent appointment by the commissioner. The commissioner is responsible for the provision of fast, effective and efficient licensing service statewide. Once an agent dies, retires or discontinues service, it is the commissioner's responsibility to evaluate the continued need for service in that location.

7404.0400 AGENT OFFICE REQUIREMENTS.

Subpart 1. **In general.** The proposed change from "proposed" to "approved" office is necessary and reasonable to ensure ongoing applicability to the office.

Item A. No change.

Item B. The proposed amendments to this item are necessary and reasonable to remove obsolete language.

Subp. 2. **Variance.** The proposed amendments to this subpart are necessary and reasonable to remove obsolete language and ensure that references are consistent with other proposed changes to the proposed rules.

Subp. 3. **Area for applications.**

Item A. The term "processing" is added because the licensing agent reviews and enters application data on-site.

Item B. Technical change to facilitate addition of item D.

Item C. The proposed changes to this item are necessary and reasonable to ensure that the areas for reviewing and processing applications are maintained in a secure manner. The information on an application can be used to commit identity fraud. Information such as the social security number required for a commercial driver's license application is private data.

Item D. The entry of data for an application will take place via a keyboard and on-line tools before transmission to the department. The data will be reviewed for accuracy by the applicant in a secure manner to ensure that the information is correct, but is also protected against privacy invasion and potential identity fraud.

Subp. 4. **Inventory and equipment.** It is necessary to add the phrase "and equipment" to this subpart because computers, camera, signature pads as well as forms, stickers and plates must be securely maintained. It is reasonable that the equipment and inventory be secure at all times to preclude tampering, fraud or theft. Maintaining the equipment in a secure manner differs from allowing the public access to it while under the supervision and control of an on-site licensing agent. In other states, there have been numerous reported instances of equipment being stolen from offices. The department anticipates the public may be able to shortly view application data entered on-line for accuracy. That does not mean, however, that equipment must be left unsupervised, or unsecured.

Item A. Item A is modified to add the term "secure" because it is necessary to ensure that the phone line used for the transmission of data to and from the department is maintained in a manner that precludes tampering and use for other purposes. Data must be able to be transmitted to the department and the department must be able to retrieve

data and contact the licensing agent. The security of the line is reasonable because the information and data being transmitted is private, could be stolen for identity fraud or used for other illegal purposes.

Item B. Proposed changes to the first sentence of this item are technical. The second sentence is necessary to add to ensure that the licensing agent is aware of the responsibility to maintain the vision testing equipment. The department experienced a situation in 2004 where the vision equipment failed to function properly at an application site and the licensing agent did not take action to report or repair the equipment. The agent unilaterally substituted a "how many fingers am I holding up" exercise to replace the inoperable vision testing equipment. Such action is not acceptable and is cause for corrective action.

Item C. The proposed amendments to this item are necessary to bring the rule part into conformity with changes to *Minnesota Statutes*, section 171.061.

Item D. The proposed amendments to this item are necessary to bring the rule part into conformity with changes to *Minnesota Statutes*, section 171.061.

Item E. Technical amendments are proposed to item E to ensure that inventory, such as forms, plates, stickers, and other department-issued materials are returned if service is discontinued. However, in the case of a municipal or county-operated office, if the office location is to be continued and maintained, then it is reasonable to leave the equipment and inventory in place until another employee or official of the government entity is appointed.

Item F. No change.

Item G. Changes are technical for consistent use of defined terms.

Item H. The department maintains a means to electronically communicate with each licensing agent's office location. Each licensing agent must be able to receive communications from the department. Because reporting and the deposit of state taxes and fees collected as well as application data, is to occur electronically, the licensing agent must have the necessary equipment and software to transmit the application data and deposit reports timely to the department. It is reasonable to require such hardware and software so the department can provide fast, accurate and convenient service statewide.

Subp. 5. **Size of office area.**

Item A. The department proposes an increase in the total area of the licensing agent's office. The office space must accommodate not only the camera, signature capture and vision testing equipment, but also customer service space. An office with 300 square feet would be about 15 by 20 feet. The 100 square foot minimum in current rule was intended to be public service area, but has also been used for private office space.

The process to take applications electronically will require the public to view the application monitor. The application processes, both paper and electronic, are designed so the applicant receives a temporary license with a photo to be used as a receipt until a permanent document is issued and mailed to the applicant.

Item B. No change.

Item C. If a licensing agent and deputy registrar duties are located within the same office, there must be sufficient space to accommodate the deputy registrar registration and titling inventory, secure inventory area, and there must be space to accommodate the driver's licensing camera, signature equipment, vision testing equipment, computerized application apparatus, as well as customer service space.

In comment by advisory committee members to the department on this subpart, concern was raised about current offices that would not meet the 500 square foot requirement. The department responded that the public service area may be jointly used for both duties, however the inventory and equipment must be maintained in a secure manner. If the 500 square foot requirement cannot be met or there are significant encroachments due to other uses, the department provided in subpart 2 of this rule part, for consideration of a variance request from the space requirements if compliance poses a substantial hardship. To grandfather in all existing offices that provide both vehicle and licensing duties is not reasonable because there are offices that have woefully inadequate customer service space. The proposed 500 square feet for an office providing both vehicle and licensing functions is 100 square feet greater than the current standard which calls for 300 square feet for a deputy registrar office and 100 square feet for a licensing agent office. The department has received complaints about inadequate customer service space.

Subp. 6. **Accessibility.** No change.

Subp. 7. **Identification.** No change.

Subp. 8. **Conflicting interests.** The proposed change to this subpart is technical for consistent use of terms as defined in *Minnesota Statutes*, chapter 171, and *Minnesota Rules*, chapter 7411.

7404.0450 REPORTING AND DEPOSITING PRACTICES.

The proposed amendments to this rule part are intended to mirror the changes made recently to the reporting and depositing practices for deputy registrars in *Minnesota Rules*, chapter 7406. It is reasonable to use the same reporting and depositing practices where possible for licensing agents as well as deputy registrars because many deputy registrars are also licensing agents. Standardized procedures create efficiencies.

Subpart 1. **Reporting applications; fees.** The department has undertaken numerous technological advances and changes in the way it provides service to the public. These advances and changes allow transmission of much information by means other than written documents and paper forms. The proposed changes to subpart 1 are necessary and reasonable because the electronic transmission of information has become an accepted business practice. Licensing agents have access to electronic technology for reporting application data and fees collected. The electronic transfer of application information reduces data entry errors and enhances document issuance efficiencies. The amendments to subpart 1 clarify that it is not only the application information but also all

application and reinstatement fees due and owed the state that must be reported. Licensing agents are authorized to collect fees for initial, duplicate and renewal applications, and also fees for the reinstatement of a driver's license after cancellation, suspension or revocation.

Item A. The changes to item A are technical. Because of access at the licensing agent's office to the department's database, if the applicant already has a department-issued license, permit or identification card, entering the unique number on the document will bring up the applicant's name, date of birth, and other vitals.

Item B. The amendment to item B is necessary for clear drafting.

Item C. The amendment to item C is necessary to be clear that the reinstatement fee is also a fee related to the collection of an application and as such must also be reported.

Item D. A completed application includes all of the information on the application as well as any supporting or background materials needed to verify or substantiate the information on the application.

Item E. The amendments to this item are necessary to be clear that the reinstatement fee is also a fee related to an application. It is necessary to add reference to the new subpart 2a because the depositing system is proposed to mirror that used by deputy registrars where fees due and owed the state are swept out of the deputy's account after deposit once a report of vehicle transactions and fees and taxes collected is submitted electronically to the department.

Item F. The amendments proposed to item F mirror language in the deputy registrar rules adopted in 2004. It is necessary to identify the information the licensing agent must provide on the report made to the department. The report identifies which office is making the report and the total amount of deposits for completed applications for the day. This requirement is reasonable because the department is responsible for overseeing the operation of agent offices, the fair, accurate and consistent acceptance of applications, and the timely and correct deposit of all fees and taxes due and owed the state.

Item G. For licensing agents, in the past the department has required all application information and fees to be transmitted in paper format as specified in existing item H. As proposed, only copies of the supporting documents reviewed by the licensing agent would be transmitted in paper format. While the department continues to use paper application forms, an on-line application administered by the licensing agent, but that can be reviewed by the applicant for accuracy, is being developed. The department will use an application transaction and fee collection report to sweep reported fees in a timely manner from the licensing agent's account. Transmission of the application and fee report before the end of the next working day is a deadline consistent with the reporting practices in place for deputy registrars. Given the technology now available, it is

reasonable that transmission occur electronically and that procedures for reporting be the same for both deputy registrars and licensing agents so efficiencies are facilitated.

Item H. Amendments to this item are technical to ensure clear drafting. It is necessary to be clear that the report includes the fees as well as the applications collected so the deposited fees can be transferred from the agent's account to the state.

Item I. Amendments to item I are technical and to ensure clear drafting. It is necessary to be clear that the report includes the fees as well as the applications collected each working day. This procedure is the same as that used by deputy registrars to report and deposit vehicle registration and title transactions, taxes and fees.

Items J and K. The amendments to these items are technical for clear drafting.

Item L. This item is necessary to clarify that it is the supporting documents for the applications that must be transmitted in paper form to the department. The means of transmission remains unchanged. The transmission is limited because fees will be reported and swept into the state account electronically. The limitation to supporting documents is reasonable because all deputy registrars now have the ability to report and deposit electronically. It is reasonable that reporting and depositing procedures applicable to licensing agents mirror those of deputy registrars to facilitate efficiencies and reduce data entry errors.

Subp. 2. **Depositing application fees.** The proposed amendments to subpart 2 are necessary to mirror the deposit and reporting practices in the adopted deputy registrar rules, chapter 7406. The proposed language "total of all application and reinstatement" fees is necessary to clarify what fees must be reported and deposited in a timely manner. The licensing agent collects fees that are due and owed the state, along with a filing fee the licensing agent may keep for undertaking the state's business. The proposed amendment is reasonable to make it clear that it is the fees due and owed the state that must be reported and deposited.

Item A. The department has created a new subpart 2a that mirrors the reporting and depositing practices in the adopted deputy registrar rules, chapter 7406. It is reasonable to refer to the new subpart 2a to ensure that reporting and depositing follows the same procedures for reporting and depositing vehicle transactions, taxes and fees collected. Use of the same procedures is reasonable because there are many licensing agents that are also deputy registrars.

Item B. The new language in item B is necessary to ensure that the fees collected cover the applications reported to the department as processed and stamped as paid. It is reasonable to expect that an application not be processed and stamped as paid, if the appropriate fee has not been fully collected. This procedure is necessary and reasonable to ensure that reporting and depositing records are accurate and reflect the actual situation.

Item C. It is necessary to strike the text in this item because new deposit procedures are specified in subpart 2a.

Subp. 2a. **Reporting deposits to the commissioner.** This is a new subpart that is needed to specify the way a licensing agent must timely deposit application and reinstatement fees due and owed the state. *Minnesota Statutes*, section 171.061, subdivision 6 provides that the commissioner shall adopt rules that prescribe "(3) standards for the uniform administration of laws and rules governing the receipt of applications and fees for applications."

The fees for the various driver's license, permit and identification card fees are specified in *Minnesota Statutes*, section 171.06 and 171.29. A processing fee is specified in that section in subdivision 4. For reinstatement fees, *Minnesota Statutes*, section 171.29 specifies in subdivision 2, paragraph (d) that when a reinstatement fee is collected by a licensing agent it must be deposited in an approved state depository as directed under section 171.061, subdivision 4.

The proposed provisions in this subpart are necessary because the use of technology has expanded the methods by which a licensing agent may deposit revenue from fees and transfer the revenue to the state. Licensing agents have been mailing their financial statements to the State Treasurer's office. This resulted in several days delay between deposit and when the state had access to the deposited funds.

The proposed changes reflected in this subpart are reasonable because the electronic transmission of information has become an accepted business and banking practice. All licensing agents have access to the transmission technology. The proposed depositing procedures reduce the time it takes the state to receive financial information and fees due and owed the state. The proposed procedures reduce the time the department can access and process the application, issue the state document.

Item A. It is necessary to clarify the way deposits are to be made. It is necessary that all licensing agents appointed by the commissioner collect and deposit application and reinstatement fees following the same procedures. The consistent application of depositing procedures is fair and necessary to protect the state and public interests.

Item B. The depository used by a licensing agent to deposit application and reinstatement fees due and owed the state must meet the requirements in this subpart. The state must be able to identify where application and reinstatement fees are deposited and timely access the collected funds. The office of the state treasurer has been abolished; funds are now deposited through the treasury division of the state Department of Finance. What is an approved state depository is not clear and may be subject to varying interpretation. If a licensing agent chooses to use the agent's own account in a local bank as a depository, it is necessary that the licensing agent authorize the state to withdraw the funds from the bank when they are reported on the statement of applications made and fees collected that are due and owed the state.

Item C. Licensing agents have only had the option of making their deposits in a state-designated depository. Other depositories are readily available to the agent and there is interest in allowing state funds to be deposited in banks other than those designated by the state as a state depository. The department has discussed alternative options with the Minnesota Department of Finance and with state legislative auditors to ensure adequate protections are in place to protect state-owed fees collected by licensing agents. This proposed subpart gives the licensing agent the flexibility to deposit application and reinstatement fees in a bank other than one designated by the state as a state depository. The department proposes the alternative deposit option to give the licensing agent a choice to make one deposit into a personal business account rather than into two separate accounts as has been done historically. In the past one deposit of state taxes and fees was made into an account in a state-approved depository, the other with the agent's filing service fees was made to a separate account which could be private or public. The licensing agent's account need not have been in a designated state depository.

The licensing agent collects a filing service fee in addition to the state application and reinstatement fees. The filing service fee is money the agent may keep as compensation for undertaking the application duties on behalf of the state. The filing service fee is charged in addition to the fees to the application or reinstatement that are due and owed the state. For licensing agents who are a local government entity, the filing service fee goes to that public entity. For an agent who is a private party, the filing service fee is the private revenue of the agent. Historically, the public and private funds were deposited in separate accounts. Under these proposed rules, a single deposit may be made into a single account. The deposit of state funds would be electronically reported to the department and the funds subsequently swept by the state out of the account designated by the agent.

Other state agencies such as the Department of Natural Resources (DNR) currently allow this deposit practice. The practice has been adopted and used by all appointed deputy registrars in accordance with rule changes adopted in the fall of 2004. All deputy registrars act as agents for the DNR. The majority of deputy registrars are also licensing agents.

Subitem (1). It is necessary to identify a state-designated depository as one of the options for depositing application and reinstatement fees due and owed the state. This option is reasonable because it is what licensing agents as well as deputy registrars have historically used for deposits. A state-designated depository must meet requirements and collateral levels specified in state law to achieve that designation. A state-designated depository must have and maintain a sufficient level of funds to cover all state revenue deposited in that bank.

Subitem (2). It is necessary and reasonable to require any other depository the licensing agent may use for the deposit of fees due and owed to the state to meet equivalent collateral requirements as specified in *Minnesota Statutes*, section 9.031 to ensure that the state fees deposited with that bank are sufficiently protected.

Item D. The intent of proposed item D is to address the situation where a licensing agent has an excess of funds after balancing their application and fee report and subtracting the agent's filing fees and imprested cash. In this situation, the fees were to be deposited along with the daily report of all applications undertaken by the licensing agent. It is necessary to make it clear that the licensing agent must reconcile the reported applications and fees with the deposits and cash on hand in the office each and every working day. It is reasonable to prohibit the licensing agent from "floating" or carrying over monies collected but not deposited or reported from one day to the next. If the licensing agent has an excess of funds after balancing their accounts for a working day, that money must be listed on that working day's report as an overage and deposited as application or reinstatement fees. The procedure in item D is necessary to make the excess funds collected a matter of record so if there is a question later as to whether or not an application fee was collected and paid the audit trail can be used to identify any discrepancies that occurred on that day's report and deposits. It is reasonable to expect that the only monies a licensing agent may retain are the agent's service fees equal to the number and type of applications the agent completed.

At the April 7, 2005 rule advisory committee meeting there was discussion of the issue where there was an excess of funds, and the office provided both deputy registrar and licensing agent services. In that case, a committee member asked what fund an excess should be reported to. The department responded that the key issue is that the excess be reported and deposited. Sometimes it is fairly clear or obvious that the excess may be in the vehicle or licensing area due to the specific amount that correlates with a specific fee. However, if it is not readily apparent what regulatory area the excess pertains to, the department noted that it is important to report the excess and let the department auditor's sort out the situation. Once the situation is clarified, the proper deposit of the excess funds, and any refund to an agent, deputy or customer will be undertaken.

Subp. 2b. **Reconciling reported excess.** This is a new subpart that is necessary because a licensing agent, at a date after the reporting of a excess of fees collected, may be able to identify the excess monies deposited into the state's account. This subpart is reasonable because it provides for a refund to the agent when the agent can document to the department that an accounting or other error was made. This proposed subpart is consistent with the reconciling reported excess provision in existing deputy registrar rules.

Subp. 3. **Maintaining records.** This existing subpart specifies requirements to keep records of applications and deposits as required by this chapter. The proposed changes are not substantial and are either grammatical or necessary for the consistent use of defined terms. With applications for a driver's license or state identification card, supporting documents must be presented to prove identity, residency and legal presence in the state. Some license applications require proof that certain knowledge, skills or road tests have been passed. Copies are made of these documents and attached to the application so they can be reviewed at the department's central office. The review and monitoring of documents is one of the ways the department combats identity fraud or any

illegal activity to obtain licensure or identity documents. Minnesota is not an instant issuance state. Some of the information collected, such as social security numbers, must be verified with the issuing federal agency before the final state identity document is issued. Information on many of the supporting documents is private or confidential information and must be handled in a secure manner.

Subp. 3a. Destroying private or confidential data. This proposed subpart is necessary to protect private and confidential information on an individual applicant that may be collected by a licensing agent in conjunction with an application. The state data practices act, *Minnesota Statutes*, chapter 13, requires protection of private and confidential information collected on an individual and is applicable to the department. As agents of the commissioner, it is reasonable that licensing agents protect private and confidential data collected on an individual in the same manner that such data would be protected were it collected by the department. Information may be block from general access should it be captured in electronic form. It may be stored in a locked placed or secure area until shredded, destroyed, or overwritten or the data may be collected, viewed and returned to the data subject. The essential criteria is that confidential or private information not be retrievable or revealed to parties who have no authority to view the data. This subpart is reasonable because it is consistent with data privacy policy already applicable to the department and to deputy registrars.

Subp. 4. Warning notice. It is necessary to amend this existing subpart part to ensure that licensing agents are notified of late deposit violations. The proposed amendments clarify the subparts that would trigger the notice, and clarify that in addition to an electronic notice, notice will be sent by certified mail to the licensing agent to ensure receipt. The department does not experience a lot of late payment violations, but when they do occur they are serious and must be addressed promptly. Prompt notice allows the licensing agent to take corrective action to avoid recurring penalties.

The current rule limits when a late payment charge may be imposed to the month after the notice is given. The current policy allows a licensing agent to develop a pattern of late deposits every other month, yet not be subject to a late payment charge. It is necessary to extend the period when a late payment charge may be imposed so a licensing agent is not likely to develop a pattern of late deposits, resulting in a loss of revenue to the state.

Subp. 4a. Late payment charge; calculation.

Item A is necessary to clearly specify when the late payment charge begins, how the notice is to be sent, and what information the notice is to contain. These proposed amendments are necessary to ensure that the procedures are clear and fair. These procedures are identical to those in the rules applicable to deputy registrars adopted in the fall of 2004.

Items B, C and D. The proposed amendments to items B, C and D are technical to ensure clear understanding and ease enforcement reference. While “days,” without

qualification, means a calendar day, some may interpret it to mean the day in which the agent is open for business. Calendar day is what is meant and is added to items B and C to ensure there is clear meaning and understanding among affected parties. Interest, or the loss thereof, accrues on a daily basis. It is reasonable to count calendar days when determining a period of delinquency to the state for fees due and owed.

Subp. 5. **Notice of late payment charge.** The department will continue to send a written late payment notice to the licensing agent even though electronic notice is also used. The proposed additional language in item A is necessary and reasonable to address the addition of subpart 2a that specifies the procedures for the reporting and depositing of applications and fees collected by the licensing agent.

Subp. 6. **Unpaid late payment charges.** The proposed addition of the phrase "or municipality" is necessary and reasonable because licensing agents are designated for appointment and serve in offices operated by municipalities as well as counties.

Subp. 7. **Administrative review.** No change.

Subp. 8. **Discontinuance.** No change.

7404.0475 AUDIT.

This is a new rule part. This part is necessary so the department can verify that a licensing agent is following proper reporting and depositing procedures and is in compliance with this chapter and applicable state laws. This part is needed to standardize the methods used to audit for compliance and protect state funds, equipment, and inventory.

Subpart 1. **Biennial audit.** This subpart is necessary because the commissioner has the responsibility to oversee and monitor the actions of licensing agents under *Minnesota Statutes*, section 171.061. It is reasonable for the commissioner to review two-year's fiscal records when an audit of a licensing agent's office is conducted because licensing agents are required to keep records of applications and deposits for three years (part 7404.0450, subpart 3, item A). The audit would include the current fiscal year and two previous fiscal years. This audit period is consistent with that established for deputy registrars.

If irregularities are identified during the biennial audit conducted by the department, the licensing agent may be ordered to pay for another audit to address areas where the commissioner was not able to determine compliance. This discretion is reasonable because it can only be requested after potential problems have already been identified in writing by the department as outlined in subpart 3. It is not the department's intent to invoke an external audit except for cause.

The rule advisory committee discussed this subpart. It was noted by some members that a second audit could be expensive. The department agrees which is why training and

following proper procedures is important as a means to avoid expenses at the back end. It was noted by the department that should a second audit be necessary the auditor could be one of the licensing agent's choosing.

Subp. 2. **Scope of audit.** It is necessary to outline the scope of the audit required in this subpart. This is reasonable because licensing agents and the department need to know the areas an audit is expected to address. This subpart makes it clear that applications and the taxes and fees related to them are covered by the audit. The scope of the audit proposed in this part is consistent with that specified for deputy registrars, the only difference being that deputy registrar's collect and process vehicle transactions, registration and title taxes and fees while licensing agents collect and process license and identification card applications and fees. The department believes the scope of the audit is sufficiently specific. The department believes a qualified auditor would conduct an audit in accordance with the principles of that regulated profession. The proposed subpart covers the minimum requirements to be addressed in the auditor's report.

The criteria in items A to F are detailed in subparts 3 to 8 of this part.

Subp. 3. **Auditor's opinion; compliance and corrective action; administrative sanctions.** This subpart is necessary to make it clear what needs to be included in the written summation provided by the auditor. Since it is important that the report by the auditor be comprehensive and applicable, it is reasonable that a standard format for reporting the findings of the audit be developed. Compliance and noncompliance with requirements specified in state laws and rule applicable to licensing agents are reasonable to specify since these are standards that are in the public domain and known to the department and licensing agents so they may comply. Allowing for a summation of action that needs to be taken to correct deficiencies is reasonable so it is clear to the licensing agent what must be done to come back into compliance with applicable standards. Specifying a time frame for compliance is reasonable and necessary so the licensing agent can come back into compliance within a specified time and this period is known. If timely compliance is not achieved, further administrative actions may be necessary. This subpart is reasonable because it is consistent with a similar provision regulating deputy registrars. Consistency is reasonable since many licensing agents are also deputy registrars.

Subp. 4. **Internal controls.** This subpart addresses one of the areas that must be covered by the audit. An audit of the licensing agent's internal controls is necessary because each licensing agent office is responsible for the collection and processing of applications, security of equipment, data, and inventory, as well as collected fees due and owed the state. It is reasonable for the audit to include an inspection of the licensing agent's internal procedures to ensure that the licensing agent has proper controls in place that protect the state's interests.

It is important that there are safeguards in place to ensure proper reporting and accounting for all applications. It is reasonable to expect that this be done in a standard and orderly fashion.

Item A. Item A is necessary so the department can determine if the licensing agent is properly reporting. Item A is reasonable because the commissioner of public safety is responsible for overseeing the operation of licensing agent offices under *Minnesota Statutes*, section 171.061.

Item B. Item B is necessary because the daily application and depositing reports must be accessible to the department so the department can assure that they have been prepared and filed as required under these rules. A determination of whether reliable reports have been prepared is reasonable because the commissioner of public safety is responsible for overseeing and monitoring appointed licensing agents under *Minnesota Statutes*, section 171.061.

Item C. Item C is necessary because the department has, in the past, identified licensing agents who have not taken proper precautions to protect state monies. An example is a licensing agent who may not be properly balancing accounts at the end of each working day to prevent problems such as internal theft, the improper return of change, or a failure of the agent to identify customer fraud or theft. This item is reasonable to protect state funds.

Subp. 5. **Verify imprest cash.** Subpart 5 is necessary because a licensing agent is expected to balance funds collected on a daily basis. This subpart is reasonable because it is necessary to have an established baseline amount of money when the licensing agent begins a new report. This subpart makes it clear that the audit examines whether or not the licensing agent is complying with part 7404.0500, subpart 8.

Subp. 6. **Material weaknesses.** It is important that the audit identify material weaknesses in a licensing agent's office operations and procedures. Identification of material weaknesses is necessary because it is important that steps be taken to correct the weaknesses and protect money due and owed the state. If weaknesses are not addressed, the result could be the loss of state monies and damage to the credibility and integrity of the license application process. The result could be identity or test fraud, failure to timely receive state documents, or even potential harm to homeland safety and security. Documenting weaknesses is important because it can be used to identify a history of non-compliance within the office.

Items A to G specify types of material weaknesses that may be identified as a result of the audit. These reflect areas of concern identified by the state on previous audits of deputy registrar offices. These items are necessary to establish what must be reviewed in every audit.

Item A. Item A is necessary because without proper safeguards, state applications and fees could be at risk. It is reasonable to protect the public's interest.

Item B. Item B is necessary to identify a pattern of improper control of intake of state monies. It is reasonable because the licensing agent is expected to accurately collect the proper application fees for each application collected.

Item C. Item C is necessary to identify deficiencies in timely reporting of deposits and daily reports. This is reasonable because the licensing agent is required by these rules to make daily reports and deposits.

Item D. Item D is necessary because verification of the licensing agent's proper operation and compliance with specified procedures is not possible if the agent fails to maintain records. The commissioner of public safety is responsible for the proper issuance of driver's licenses, permits and identification cards and the collection of fees for these documents. When the commissioner delegates these duties to an appointed agent, it is the commissioner's responsibility to ensure each appointed licensing agent properly performs the duties. The proper records and reports to be maintained by the licensing agent are addressed in this chapter.

Item E. Item E is necessary because it identifies a pattern of misrepresentation. This item is reasonable because the department must rely on the licensing agent's accurate reporting to ensure the credibility and integrity of the license application process.

Item F. Item F is necessary because there is value in the equipment and inventory issued to a licensing agent. Failure to report missing equipment or inventory jeopardizes the credibility and integrity of the application process. The loss of fees is an indicator of improper controls. Loss of equipment could jeopardize the identity of individuals and public safety. This item is reasonable because licensing agents are responsible for the security of the states' equipment, inventory and monies.

Item G. Item G is necessary to identify lack of action on the part of a licensing agent after being notified to correct areas of deficiency. It is reasonable to expect a licensing agent to take corrective action after being notified of the need to correct a deficiency.

7404.0500 GENERAL OPERATING PRACTICES.

Subpart 1. Management of office. There are two significant amendments to this existing subpart.

Item C. It is necessary to amend item C to require that any manager employed by a licensing agent to oversee the operation of an office location must, at a minimum, be 18 years of age. Licensing agents may be the director of a licensing bureau for an entire county. A licensing agent may oversee the operation of more than one office location and therefore may retain other individuals to manage and administer an office location on a day-to-day basis. It is necessary that any individual who operates an office location is an adult. The responsibilities commensurate with the operation of an office location are

significant. The manager of an office must be able to assume responsibility and accountability for actions as an adult. Minnesota Statutes, section 645.45 defines an "adult" as "an individual 18 years of age or over."

Item E. This new item is necessary to ensure that all employees of the licensing agent understand their responsibility to protect the privacy of the data being given them, to secure the state-issued documents, and that they may be held accountable for any misuse of that data, documents or equipment. The department provides electronic access to private data and the department's databases. It is reasonable to make any employee of a licensing agent with access to data aware of their responsibility to ensure the privacy and confidentiality of that data. This provision is also contained in the recently revised rules governing the operation and management of offices of a deputy registrar.

Subp. 1a. **Training.** This subpart is necessary to ensure that all licensing agents and any employees with responsibility to accept and process applications are properly trained. These individuals must be competent to carry out their assigned duties in a fair and correct manner. The department provides training to appointed licensing agents or to the designated representative of the agent. However, participation has not been 100 percent by all appointed licensing agents. The department has also documented instances where training provided to an appointed licensing agent has not been conveyed to all employees who accept or process applications within the office administered and managed by the appointed licensing agent. Because licensing agents and their employees handle data and documents that are critical to the establishment of identity, residency, that purport to establish legal presence, that are varied, that may be subject to counterfeiting or fraud, it is critical that the appointed licensing agents and any employee who handles application data and documents be thoroughly and properly trained.

Item A. Training is routinely provided by the department on an annual basis. However, circumstances arise where additional materials or information may also have to be conveyed to licensing agents and their employees. The department makes ample use of electronic transmission of information, such as alerts or changes in documents or legal presence status by the United States Bureau of Immigration and Citizenship. Other states, local and federal jurisdictions, and the Association of Motor Vehicle Administrators will from time to time issue alerts when documents, inventory or equipment have been changed, compromised, or counterfeited. Special training is provided to ensure knowledge of the security features present on various documents.

Item B is necessary to hold the appointed licensing agent accountable for the training of all employees who accept and process applications. It is the licensing agent that is appointed and responsible for properly carrying out the duties of a licensing agent. Corrective action will be taken against the licensing agent should actions of an employee violate procedures and policy.

Item C is necessary to ensure that there is a record of training taken and provided by the licensing agent and all staff who accept or process applications. This is reasonable to ensure that the action of the staff and agent are documented and available to the

department for review at the time of on-site monitoring or in the event that complaints or violations of procedures or policy occur.

At the April 7, 2005 rule advisory committee meeting and in comment on a draft of the proposed rules the question was asked as to whether the record of training must be retained for three years for an employee of an agent who dies, retires or discontinues service. The department responded that retention of records for three years is a general policy in existing rule. The actions of and training of a former employee is important to know because it could impact subsequent activity or actions pertinent to the operation of the office.

Subp. 1b. Customer service policy. This is a new subpart proposed for addition to the licensing agent rules to ensure that each office operated by the licensing agent has policy and procedures in place to address customer service issues and complaints. There are not many laws or rules that address the issue of the demeanor of a third party employee or agent in the customer service area. There are laws on discrimination that apply to everyone. There are laws on physical and mental abuse that apply in the domestic and health care delivery system in particular. In the labor area there are employee harassment and unfair labor laws. In the free marketplace there are laws on consumer fraud. But when it comes to having a bad attitude or shoddy, but not necessarily fraudulent service, the market addresses the situation through consumer choice – the customer takes business elsewhere.

The deputy registrar and licensing agent appointment systems are something of an anomaly because they are located and structured to serve a customer base and the customers are compelled to access the office if certain public privileges are to be gained. Geographic service areas are outlined in current rules with the intent that service must be dispersed and maintained statewide. Systems and rules established in the nursing home bed area, the program to provide food subsidies to women, infants and children, and local public health registrars are similar in the need to be available throughout the state. The department particularly reviewed provisions in *Minnesota Statutes*, section 144A.44 (b) to ensure that:

- staff are properly trained and competent;
- the public is treated with courtesy, consideration, and respect and the customer's property (in this case documents) are treated with respect;
- the public is provided with complete, current, and accurate information; and
- the customer's personal and private information is protected.

The proposed requirements in items A to F are patterned after training requirements in the health care area. For example part 4617.0065, subpart 7 governing the Women, Infants and Children (WIC) program operated through grocery stores, requires at least one representative from each office or service location to attend initial and annual training provided by or approved of by the commissioner of health. The individuals must sign and date a form attesting to training attended and submit the attestation to the commissioner. The training provided to the store employees must

include customer service and communication skills. Initial training is presumed good for two years after which refresher training must be completed.

In the WIC as well as the nursing home area a process for receiving, investigating and resolving customer complaints must be in place at each service site. Policy in this area is proposed in subpart 1b below.

Item D elicited comment at advisory committee meetings and during the review of a preliminary draft. Agents and deputies were concerned that specific barriers or stalls would need to be provided. This is not the case. Item D does not specify how information must be protected. It specifies an outcome - the protection of the applicant's personal and private information and leaves how that is to be accomplished up to the licensing agent and the floor plan and service area of each office location.

Item E was initially drafted to compel customer service and communication training by the department of all staff who accept or process applications. It was modified in response to comment from advisory committee members to address concerns that most agents were not already providing good customer service. Item E was redrafted to indicate what circumstances would prompt the need for customer service training, mitigating the need for all licensing agents to undertake training. The item was also modified to indicate that when training is warranted, not all staff must attend. The agent or a designee may be trained and then in turn train other office personnel.

Item F specifies the criteria for a system within each office location to receive, investigate and resolve customer complaints. This item is reasonable because the best place to start with complaint resolution is at the office location level. It is appropriate that a licensing agent have the first opportunity to address a complaint. It is reasonable that the customer have a way to address good or poor service.

The department initially considered requiring the posting of a signage or some other notice at the office location to alert customers of the process to make and hopefully resolve a complaint. Kevin Corbid of Washington County pointed out that a sign implied there would be bad service or inferred that a customer would not know how to complain. Service is usually and should be good and customers, he said, know how to voice complaints. He said Washington County routinely uses random sampling of customers with "what do you think" cards. Subitem (2) is reasonable because it provides the local agent with the opportunity to gather the facts about the complaint and address it. Designation of an individual is necessary to ensure that there is a person available whose role and function it is to address and resolve complaints. Subitem (3) is necessary to ensure that there is a way to appeal an issue to the department should an issue not be satisfactorily resolved by a licensing agent. Subitem (4) is necessary to ensure that no harm or retribution against a customer occurs and that the customer is informed of this. Without such information, a customer may not make a complaint that may be warranted. Subitem (5) is necessary so there is a timely resolution to an issue. The department is not going to mandate time periods. The presenting situations may vary widely. However, it is imperative that a the complaint is timely addressed and the response in writing to

ensure a record and documentation of what occurred and what was taken to resolve the issue. A written response provides a record so patterns and persistently poor service is documented should further action be warranted. It makes the department aware of the need for attention to an area where customers may not be adequately or appropriately served. Subitem (6) is necessary to ensure that the department can review the complaint record and service delivery at an office location. It is reasonable so patterns of poor service are corrected, and patterns of good service are recognized. Three years is the normal time period for the retention of records.

Subp. 2. **Days and hours of operation.** The proposed changes to subpart 2 are necessary to make the licensing agent rules consistent with the rules governing deputy registrars. It cannot be presumed that all office locations are open Monday to Friday. Some agents have chosen to be open a day during the weekend. It is necessary that the public know when the office hours and days of operation are. The department posts the days and hours of all agent offices on its website which can be readily accessed by the public. The department must know what the proposed hours of operation are before appointment of a licensing agent and approval of a location to ensure that the hours are adequate to meet the public convenience and interest.

The proposed amendment to item B, subitem (2) and the addition of item E are necessary to ensure that applications and deposits are reported in a timely manner as required by these rules and the capability of the state to sweep deposited funds out of a designated account is facilitated.

Subp. 3. **Closure of office; variance procedure.** No change.

Subp. 4. **Emergency short-term closure of office.** No change.

Subp. 5. **Application fees.** The public pays a fee as specified in law to make an application as well as a filing fee to the licensing agent to process and handle the application. The proposed addition of language to this subpart is necessary to ensure that both fees are not charge in the instance where a refund is due or an error has occurred that was made by the department or agent. This is reasonable so the public is not charge twice to receive the service.

Subp. 6. **Telephone use charges.** No change.

Subp. 7. **Cash register.**

Item A. The proposed amendment to this item is necessary to accommodate cash receipts from counties that are not county licensing bureaus or municipalities that operate a licensing agent office. The department practice has been to approve the commingling of these other government funds provided there is a means such as a cash register entry to distinguish other funds from state taxes and fees collected. Under current rule receipts cannot be commingled unless there is a means to clearly distinguish state revenue from other money collected. Prior approval is necessary so the department, which is responsible for the safety of state taxes and fees, knows ahead of time how the state taxes and fees collected will be accounted for and secured.

Subp. 8. **Imprest cash.** No change. A separate cash register or imprest cash is not required for the limited licensing agent who is also a deputy registrar.

Subp. 9. **Inventory to remain in office.** No change.

Subp. 10. **State-issued property; accountability.** No change.

Subp. 11. **Displays.** This subpart is necessary to ensure that the licensing agent provides space within the office for notices or other information provided by the department that pertains to driver's licenses, permits and state identification cards.

7404.0800 ACTIONS FOR FAILURE TO COMPLY WITH LAWS OR RULES.

Item E. The proposed addition of item E as grounds for the discontinuance of a licensing agent appointment is necessary for consistency between deputy registrar and licensing agent rules. Many licensing agents are also deputy registrars. It is reasonable that if a deputy registrar loses an appointment due to malfeasance that the deputy registrar no longer be allowed to operate also as a licensing agent. In either case, the appointed authority is responsible for carrying out state laws and regulations. If the deputy registrar is not able to adequately perform in accordance with the state's interest in one area, it is reasonable to expect an inability to properly undertake duties in the public interest in the other.

Item F. Addition of conviction of a felony is necessary for consistent action criteria between the existing deputy registrar rules in chapter 7406 and the licensing agent rules. It is reasonable that if a felony conviction can prompt adverse appointment action for a deputy registrar, it should be cause also to initiate action against a licensing agent. A felony conviction means the licensing agent has committed a serious crime that calls into question the agent's trustworthiness and judgment.

Item G. The department has entered into numerous agreements with individual licensing agents and agent staff as access the department's database has become available to licensing agent and deputy registrar offices. As part of the access agreements, all agents and staff must follow criteria to preclude access to records, files and data by unauthorized persons. Should this agreement be breached, it is reasonable that the department take corrective action against the agent who is responsible for the operation of the office. Such action could include closure of the office, loss of appointment of the agent at that location, or retraining staff. The agent could also be subject to civil damages.

7404.0900 INDEMNIFICATION.

This is a new rule part. This part is necessary to make it clear that the licensing agent is responsible for the actions of the office. It is necessary for the appointed licensing agent to be responsible for financial losses to the public or state resulting from improper action of the agent or agent's employees.

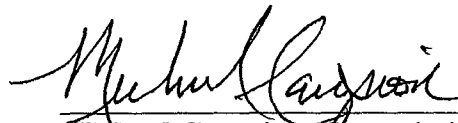
With technological improvements in the way applications are collected and processed, the licensing agent must ensure that applications are made in a secure and accurate manner. The licensing agent and employees will be accessing and entering information directly into the departments databases. Errors committed at an agent's office such as renewing a state-issued document incorrectly or failure to protect private or confidential information could have costly consequences, resulting in claims for damages.

This part is necessary to clarify that claims or causes of action against an agent as a result of action of the agent or an employee that are not consistent with laws, rules or any other order or directive from the department, are not the responsibility of the department.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Dated: 4-25-2007



**Michael Campion, Commissioner
Minnesota Department of Public Safety**

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