

# MINNESOTA DEPARTMENT OF PUBLIC SAFETY



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## Driver and Vehicle Services

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January 25, 2011

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

**RE: In the Matter of the Proposed Rules Governing Credit and  
Debit Card Acceptance by Deputy Registrars and Driver's  
License Agents.**

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt rules governing credit and debit card acceptance by deputy registrars and driver's license agents. We plan to publish a Dual Notice in the January 31, 2011 *State Register*.

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

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

Sincerely,

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

Jacqueline Cavanagh  
Legislation and Rules Coordinator  
Driver and Vehicle Services

Enclosure: Statement of Need and Reasonableness

# Minnesota Department of Public Safety



## STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendments to Rules Relating to  
Driver's License Agents and Deputy Registrars  
For Credit and Debit Card Acceptance  
Minnesota Rules, Chapters 7404 and 7406**

January 2011

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

## INTRODUCTION

Pursuant to Minnesota Statutes, sections 168.33 and 171.061, the Minnesota Department of Public Safety (DPS), through its Driver and Vehicle Services Division (DVS), regulates deputy registrars and driver's license agents. In this rulemaking proceeding, DPS proposes to amend rules in order to require the acceptance of credit and debit cards for motor vehicle and driver's license transactions. Under the proposed amendments, deputy registrars and driver's license agents would be required to accept credit and debit cards as a form of payment, reporting and depositing procedures would be modified to reflect these transaction types, and a variance procedure would be in place to provide a recourse for those registrars or agents that, for reasons of economic hardship, prefer not to offer credit or debit cards as a payment option.

### **Context and Purpose**

In chapter 152 of Minnesota Laws 2009, the legislature authorized the use of credit and debit cards for deputy registrar filing fees. It also authorized the collection of a surcharge or, convenience fee, not to exceed the cost of processing the credit and debit card transactions. A year earlier, the legislature authorized a credit card payment study in order to identify and recommend a method that would allow the Department of Public Safety, its deputy registrars and driver's license agents to collect payment of fees and taxes by credit or debit card.<sup>1</sup> Details of the department's deliberative process are described in greater detail in the "Regulatory Analysis" and "Rule Analysis" sections.

In fiscal year 2010, deputy registrars and driver's license agents processed more than 6.2 million transactions amounting to revenues in excess of \$900 million. This amount represents 72 percent of the nearly \$1 billion in total revenues that DVS collects annually. Payment types for these transactions were either in the form of cash or check. Motor vehicle registration renewals may also be processed through DVS's web-based payment system, or sent in via U.S. Mail to a central processing facility, but these methods account for the remaining 28 percent of related DVS transaction volume.<sup>2</sup> Most DVS customers use the services provided by the 176 deputy registrar and 125 driver's license agent locations throughout the state.

In June 2010, DVS began implementation of its credit card program at the Town Square (main office) location in downtown Saint Paul. In January 2011, two deputy registrar locations are scheduled accept credit and debit cards as part of a pilot to phase in the credit

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<sup>1</sup> Minnesota Laws, c 287, art. 1, sec. 17 (2008)

<sup>2</sup> Most internet transactions are credit card payments, although approximately 15 percent of these payments are conducted via bank account ACH (automated clearing house).

card program to all deputy registrar and driver's license agent offices, as well as to a small number of exam stations.<sup>3</sup>

The rule amendments to chapters 7404 and 7406 are not intended to be overly prescriptive or onerous; rather they are meant to ensure, to the extent possible, that credit card transactions are accounted for, deposited, and reported in the same way by all deputy registrars and driver's license agents. Stated otherwise, the purpose of these rules is to establish uniform procedures for credit card transactions that will result in improved internal controls, thereby improving the quality of DVS' reporting and auditing capability.

Parts 7404.0100, 7404.0400, 7404.0450, and 7404.0500 were last amended in January 2008. (32 SR 1283) Parts 7406.0100, 7406.0400, 7406.0450, and 7406.0500 were last amended in July 2004. (29 SR 97) Parts 7404.0450 and 7406.0450 were also amended statutorily in 2009. (Minn. Laws c 101, art 2, s 109 (2009))

DPS met with representatives of the Minnesota Deputy Registrar Association (MDRA) on two separate occasions to review the department's rule draft and address the association's concerns. DPS also fielded various calls from individual deputy registrars and driver's license agents throughout the rule development process and attempted to respond to all questions and requests for clarification. At this time, DPS believes that the proposed rules sufficiently address the concerns raised by MDRA and reflect compromise where possible and practical.

## **Process**

On October 25, 2010, DPS published a Request for Comments on the proposed rulemaking in the *State Register* and posted a copy of the Request on the department's Driver and Vehicle Services website (<http://www.dps.state.mn.us/dvs/PublicNotices.htm>). The Request described the proposed rules, the persons affected by the proposed rules, and the statutory authority for the rulemaking.

Copies of the Request for Comments were mailed to persons who have requested to be notified of DPS' rulemaking pursuant to Minnesota Statutes, section 14.14. In accordance with that statute, the department also attempted to identify and notify those persons or classes of persons who would be significantly affected by the proposed rules. DPS' efforts in this regard are described in the next subsection, entitled "Additional Notice."

As of January 13, 2011, DVS has received five comments and one telephone inquiry. The phone inquiry and one of the comments came from a large county office. The subject

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<sup>3</sup> On January 18, 2011, Deputy Registrar #107/DL Agent #704 in Cottage Grove began accepting credit and debit cards. The Anoka County License Bureau in Blaine (Deputy Registrar #156/DL Agent # 706) is scheduled to accept credit card transactions on January 26, 2011.

of the phone inquiry primarily dealt with integrating an existing point-of-sale (POS) system with the state's credit card vendor requirements. Larger county offices have expressed the desire to use their existing POS system instead of the credit card processing terminals that are being provided by the credit card vendor. The e-mail comment provided suggestions to the department's rule draft. The remaining four e-mail comments were from citizens who expressed enthusiastic support for being able to use credit cards for motor vehicle transactions. One commenter, however, expressed concern about the "convenience fee" and that it may ultimately dissuade her from using a credit card.

In the January 31, 2011 issue of the *State Register*, the department plans to publish a Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing And Notice of Hearing If 25 or More Requests For Hearing Are Received. The Dual Notice and the proposed rules will be sent by U.S. or electronic mail to the individuals and entities that received the Request for Comments and to the individuals and entities described in the next subsection, entitled "Additional Notice." The Dual Notice, the proposed rules, and this Statement of Need and Reasonableness (SONAR) also will be posted for public review on DPS' Driver and Vehicle Services website (<http://www.dps.state.mn.us/dvs/PublicNotices>), and copies of all three documents will be sent to legislators as required by Minnesota Statutes, section 14.116. A copy of this SONAR will be sent to the Legislative Reference Library as required by Minnesota Statutes, section 14.131.

### **Additional Notice**

In accordance with Minnesota Statutes, section 14.14, DPS attempted to identify those persons or classes of persons who would be significantly affected by the proposed rules, so that they could be notified of these rulemaking proceedings. There are two main classes of persons, or groups, likely would be affected by the proposed rules. The first is comprised of deputy registrars and driver's license agents and affiliated professional organizations. The second can be described as "the general public," comprised of all individuals who must conduct business with DVS, or its deputy registrars or driver's license agents, in order to obtain a driver's license and register their vehicle(s).

With respect to the first group, DPS included MDRA and its lobbying firm. MDRA is a statewide membership organization that promotes common interests of deputy registrars and driver's license agents and serves as a liaison for public affairs. In addition to MDRA, other municipal and county organizations, as well as other state agencies and counties, have played key roles in the promotion and development of the credit and debit card program and its implementation. Some or all have been part of task forces and/or study groups, or have advocated for legislation. These organizations include: Minnesota Inter-County Association; Minnesota Association of County Officers; Association of Minnesota Counties; the League of Minnesota Cities; Anoka County, Washington County; Hennepin County;

Stearns County; Minnesota Management and Budget; and the Department of Natural Resources.

In its effort to reach the general public, DPS mailed copies of the Request for Comments to its agency mailing list. In addition to the mailed notices, the department published the Request for Comments on the Driver and Vehicle Services website, <http://www.dps.state.mn.us/dvs/PublicNotices.htm>, and added notice of the rulemaking to DVS' main web page. Because virtually every individual over the age of sixteen in the state conducts business with DVS in one capacity or another, it was deemed cost prohibitive to notify the public at large. DPS was unable to identify private sector advocacy or interest groups advancing this particular issue.

In anticipation of publishing the Dual Notice, DPS plans to use the list for the Request for Comments. DPS will add those individuals and entities that were not on the original mailing list but who responded to the Request for Comments with comments or requests for more information. DPS will send notice to all deputy registrars and driver's license agents, as well as to the municipal and county organizations previously mentioned in this section. DPS will then submit this additional notice plan to the Office of Administrative Hearings for review.

On January 20, 2011, the Office of Administrative Hearings approved the Additional Notice Plan submitted by DPS on January 19, 2011.

### **STATUTORY AUTHORITY**

The department's authority to adopt the rules is set forth in several statutes. Regarding deputy registrars, Minn. Stat. § 168.33, subd. 9 (2010), provides:

The commissioner may adopt rules for administering and enforcing section 168.0185 and this section.

Regarding driver's license agents:

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 a 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 action.

Minn. Stat. § 171.061, subd. 6 (2010)

Additional authority for this rulemaking is set forth in Minnesota Laws 2009, chapter 152, section 2, now codified at Minn. Stat. § 168.33, subd. 7(a)(2) (2010), which states: "The fees imposed under paragraph (a) may be paid by credit card or debit card. The deputy registrar may collect a surcharge on the fee not to exceed the cost of processing a credit card or debit card transaction, in accordance with emergency rules established by the commissioner of public safety."

Viewed as a whole, this statutory scheme confers upon the department the requisite authority to adopt the proposed rules.

## **REGULATORY ANALYSIS**

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

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

The department has identified "classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule." Minn. Stat. § 14.131(1) (2010). As described in the Additional Notice section above, two main classes of persons, or groups, likely would be affected by the proposed rules. The first are the regulated entities of the department - deputy registrars and driver's license agents - and the second can be described as "the general public," comprised of all individuals who must conduct business with DVS, or its deputy registrars or agents, in order to obtain a driver's license and register their vehicle(s).

The rule amendments do impose costs upon either class. For deputies and agents, the primary cost relates to the delay in which deputies and agents receive the proceeds from credit card transactions. There are other indirect costs including changes to established business procedures and, to a lesser degree, training costs. However, the proposed amendments presumably would benefit the general public with the offering of another payment option. Whether it is simply the convenience of paying by credit card, or the necessity for some who may not otherwise be able to pay for a vehicle registration or a driver's license renewal fee, customers increasingly have come to expect that most



government services can be paid for using a credit or debit card. This is especially true given that certain online DVS transactions can be paid for using a credit or debit card.

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

Neither the department nor any other agency is likely to incur additional implementation or enforcement costs if the proposed rules are adopted. DVS has prepared several online training modules, as well as additional informational documents that all deputies and agents can access easily through the department's E-support website. However, the department expects to be able to handle the implementation, including a temporary upsurge in customer service calls to liaison staff from deputies and agents, without adjusting staffing levels and without incurring extraordinary costs.

The proposed rules would have no effect on state revenues, because the convenience fee is not collected by deputy registrars or driver's license agents at the point-of-sale. The fee is paid by the customer during the transaction and is instantly transmitted to the credit card vendor.

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

The department has considered whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule. *See* Minn. Stat. § 141.131(3) (2010). For the reasons that follow, the department has concluded that there are no such methods.

As directed by the legislature in 2008, the department conducted a credit card payment study in order to identify a method which would allow the Department of Public Safety, its deputy registrars, and its driver's license agents to collect by credit or debit card, motor vehicle registration taxes, certificates of title and related document fees, motor vehicle sales tax and driver's license and Minnesota identification card fees.<sup>4</sup> The proposal further identified the total estimated statewide cost of the processing fees paid to a vendor, financial institution, or credit card company, as well as considered options to finance the acceptance fees through either state fee increases or an agreement with a vendor that allows the addition of a convenience fee to each transaction to be paid directly by customers who choose to use credit or debit cards.

The proposed rules are less intrusive than they might have otherwise been under other scenarios, particularly a tax or fee increase scenario involving a cash discount model. Not only would this model have required an across-the-board increase in taxes and fees, it would have been difficult to determine the amount of the increase, and increasingly difficult to ascertain how many customers would take advantage of a cash discount. Despite the fact that the department lacks the statutory authority to offer discounts on taxes and fees, this

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<sup>4</sup> *See* Minn. Laws, chap. 287, art. 1, sec. 117 (2008)



model, if pursued, would have require calculating a different discount for every dollar amount collected by DVS. It is fraught with implementation issues, not to mention auditing constraints, when considering that 176 deputy registrar and 125 driver's license agent offices would need to apply the discounts consistently.<sup>5</sup>

As a result of its research and analysis, the department recommended the addition of a convenience fee to each transaction as the most equitable solution for providing payment option alternatives for its customers.<sup>6</sup> The other option, which the department did not support, would involve increasing taxes or fees that would, under several models, subsidize a payment method that not all will use.

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

The Minnesota Administrative Procedure Act requires DPS to describe any alternative methods that it seriously considered for achieving the purpose of the proposed rules and the reasons why those alternatives were rejected. *See* Minn. Stat. § 14.131(4) (2010). Although alternative methods exist, DPS believes that through its rigorous analysis of the options, it selected the optimal method of achieving the purpose of the proposed rules.

As discussed in the regulatory section above (page 7) titled "Less Costly or Intrusive Methods", DPS conducted a thorough study of credit card payment options. The department carefully considered alternative methods but found them to be more costly and, in some cases, outside of the department's statutory authority. Moreover, the resulting inequity of having increased fees or taxes subsidize a payment method that only some will use rendered those options not only unfair, but unreasonable. These rule amendments are intended, in part, to provide payment option alternatives to those who prefer to use credit or debit cards and who are willing to pay a convenience fee for this option.

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

The department has analyzed "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals," Minn. Stat. § 14.131(5) (2010), and it has concluded that although the proposed amendments may have a varying degree of compliance costs for deputy registrars and driver's license agents, the proposed rule amendments are necessary and reasonable.

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<sup>5</sup> Minnesota Department of Public Safety. *Proposal to the Legislature: Credit and Debit Card Acceptance, Driver and Vehicle Services*. February 2009, page 13.

<sup>6</sup> The convenience fee, authorized by statute, is established by the credit card vendor in accordance with the state's banking contract that is administered by Minnesota Management and Budget. The fee is subject to periodic review, based on transaction amount and volume, and will be adjusted (up or down) accordingly.

Only deputy registrars and driver's license agents would incur any costs in complying with the proposed rules. For the most part, these are indirect costs that involve changing certain business procedures and short-term training for employees. Of note, however, is that certain larger offices have point-of-sale (POS) information systems that are more sophisticated and complex than the department's credit card system. In order for these offices to integrate credit card acceptance with their system, these offices must have their system requirements certified by the credit card vendor.<sup>7</sup> This is necessary so that the department can be assured that all transactions are processed identically, and that the convenience fee rate is applied uniformly by all offices. In all likelihood, there will be software programming costs associated with the certification.

Finally, DPS recognizes that for smaller offices, particularly those where transaction volume is low, or where the delay in the deposit of credit or debit card transaction proceeds negatively impacts account balances, the costs of compliance may be higher and may result in an economic hardship. Inasmuch as this hardship can be demonstrated through DPS' proposed variance procedure, the adverse impact to the individual deputy registrar or driver's license agent could be mitigated.

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

Under the Administrative Procedure Act, DPS must consider "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals." Minn. Stat. § 14.131(6) (2010). Upon weighing these costs and consequences, the department has concluded that adoption of the proposed rules is nevertheless warranted.

By failing to amend the rules, DPS would be, in effect, ignoring the legislature's intent that the department, specifically DVS and its deputies and agents, accept credit cards as a form of payment.

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

Under section 14.131, clause 7, of Minnesota Statutes, DPS must assess any differences between the proposed rules and existing federal regulations and specifically analyze the need for and reasonableness of each difference. The proposed rules pertain specifically to agents of the department to the extent that the acceptance of credit or debit cards requires modifications to the current reporting and depositing procedures.

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<sup>7</sup> It should be noted that the state's "credit card vendor" and the "state bank" are the same entity. Currently, US Bank provides the state's banking services. As a result, the credit card division of US Bank is providing the department with credit card services.

Although Federal Motor Carrier Safety Administration (FMCSA) regulations relating to motor carrier registration and insurance for commercial vehicle operators provide for the use of credit cards as a method of payment for certain filing fees, the department is not aware of standards within C.F.R., Title 49, that conflict with or overlap the proposed rule amendments.<sup>8</sup> The proposed rules are both needed and reasonable under the circumstances.

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

The proposed rule would have no known impact on farming operations. Accordingly, DPS has not notified the Commissioner of Agriculture of this rulemaking.

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

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

DPS’s primary regulatory objectives in this rulemaking are to administer and enforce the procedures relating to credit and debit card transactions and to ensure that a uniform convenience fee rate for credit or debit card transactions is charged to a citizen regardless of which office he/she uses. However, DPS recognizes that for some offices this additional payment option may prove to be overly burdensome. One issue that is of concern, particularly for smaller offices, is the delay of as much as 48 hours for receipt of credit card proceeds yet they must comply with rules requiring daily deposits of funds owed to the state.<sup>9</sup> Some offices do not have the funds to cover these shortfalls. In order to mitigate this unintended but nonetheless negative impact, the proposed rules include a variance procedure by which a deputy or an agent may demonstrate an economic hardship and receive a variance from having to accept credit or debit cards as a form of payment.

Although the reporting requirements have been amended to include more transactional information than in existing rules, the department believes that the additional payment type information related to each transaction will improve internal controls both for DVS and its deputies and agents, resulting in increased accountability. The department’s reasoning on this point is discussed in greater detail below in the “Rule Analysis” section beginning on page 12.

Furthermore, the proposed amendments would neither increase costs nor decrease the effectiveness of the rules. Rather, the proposed rules make several conforming changes

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<sup>8</sup> Driver licensing and vehicle registration is a matter left mostly to the states, with the exception of commercial motor vehicles (CMV) because of their impact on interstate commerce. *See, eg.*, 49 C.F.R. § 360.3 (2009)

<sup>9</sup> *See* Minn. Rules, part 7404.0450, Subpart 1 and 7406.0450, Subpart 2.

ensuring that offices offering both motor vehicle and driver's license services, which is the case for the majority of offices, are operating under the same provisions.

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

DPS has considered whether the cost of complying with the proposed rule in the first year following adoption will exceed \$25,000 for any business with fewer than 50 full-time employees or for any city with fewer than ten full-time employees. *See* Minn. Stat. § 14.127, subs. 1-2 (2010). The department has based its determination on the regulatory analysis in the section above (page 8) titled "Probable Costs of Compliance." As discussed there, only deputy registrars and driver's license agents could directly incur costs in complying with the proposed rule; therefore, DPS has concluded that neither small businesses nor cities will incur any compliance costs.

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

DPS has consulted with the commissioner of management and budget to evaluate the fiscal impact and benefits of the proposed rule on local governments. On December 28, 2010, prior to publishing the Notice of Intent to Adopt Rules, the department submitted copies of:

- (1) the governor's Proposed Rule and SONAR Form;
- (2) the proposed rules; and
- (3) the December 2010 draft of this Statement of Need and Reasonableness.

On January 20, 2011, Keith Bogut responded on behalf of the commissioner of management and budget. He opined that "[t]he costs associated with the proposed rules apply only to individuals. Local governments will not incur any costs under this rule, unless they voluntarily choose to pay a convenience fee for the purpose of handling vehicle related transactions via credit card."

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

DPS has determined that no town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules. As stated previously, only deputy registrars and driver's license agents regulated by DPS must comply with the proposed rules.

**LIST OF WITNESSES**

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

1. Rich Lange, Client Executive, US Bank Payment Solutions
2. Joe Howe, Finance Services Director, Department of Minnesota Management and Budget
3. Keith Carlson, Minnesota Inter-County Association
4. Kevin Corbid, Washington County
5. Patricia McCormack, Director, Driver and Vehicle Services, Department of Public Safety
6. Tom Nash, Budget Analyst, Driver and Vehicle Services, Department of Public Safety
7. David Davies, Customer Service Program Manager, Driver and Vehicle Services, Department of Public Safety
8. Debra Carlson, Exam Station Manager, Driver and Vehicle Services, Department of Public Safety
9. Maureen Murphy, Deputy Liaison Support Manager, Driver and Vehicle Services, Department of Public Safety

### LIST OF EXHIBITS

To demonstrate the need for and reasonableness of the proposed rules, DPS anticipates that it will enter the following exhibit into the hearing record:

1. Minnesota Department of Public Safety, *Proposal to the Legislature: Credit and Debit Card Acceptance, Driver and Vehicle Services*. February 2009.

### RULE ANALYSIS

The necessity and reasonableness of these rule chapters having been established in earlier rulemakings, DPS is restricting its analysis here to the subject of the proposed amendments. See Minn. R. 1400.2070, subp. 1 (“If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.”).

#### ***Minn. Rules, part 7404.0100* DEFINITIONS**

The amendment to subpart 9a of part 7404.0100 adds a definition. The term “convenience fee” is defined as “an additional amount charged to a person’s credit card or debit card because the person chooses to pay for a transaction by credit card or debit card.”

The term “convenience fee” is an integral part of the credit card acceptance program and is used throughout this rulemaking. This convenience fee is the mechanism by which it is possible for the department to offer a credit and debit card payment option for its agents and not raise fees or taxes to cover the associated processing costs. As stated earlier in the

“Regulatory Analysis” section, item 3, the convenience fee is established by the credit card vendor in accordance with the state’s banking contract that is administered by Minnesota Management and Budget. The fee is subject to periodic review, based on transaction amount and volume, and will be adjusted (up or down) accordingly.

It is both necessary and reasonable that the term be defined so that those affected by this fee are aware that it applies only to credit and debit card transactions.

***Minn. Rules, part 7404.0400 AGENT OFFICE REQUIREMENTS***

The amendment to subpart 4, item I, of part 7400.0400 specifies the technological infrastructure requirements that a driver’s license agent must have in order to install and operate the credit card processing terminals needed for credit and debit card transactions.

The department believes that this requirement is flexible enough to encompass a variety of internet technologies and allows a driver’s license agent sufficient discretion in subscribing to the type of internet connection that meets individual business requirements and financial considerations. The amendment is needed because this infrastructure is required to process credit card transactions using state-provided credit card processing terminals. The amendment is reasonable because agents already have an internet connection in order to access the department’s E-support website for daily reporting purposes.

***Minnesota Rules, part 7404.0450 REPORTING AND DEPOSITING PRACTICES.***

The amendment to subpart 1, item I, of part 7404.0450, was added to improve reporting capabilities when an agent records individual transactions. Currently, when an agent records a transaction online, s/he has the option to select a drop-down box to indicate the payment method used for the transaction – either cash or check. This modification does two things. First, it makes this optional field in the transaction report a required field and, second, it lists “credit card” as a third type of payment method. An agent now must complete this step before advancing to the next screen.

The department sought this change because it will allow DVS to query the number of credit card transactions taking place. Absent the information recorded in this data field, the department currently is unable to produce a report on the rate of credit card usage by customers of its agents. It would be difficult and time-consuming to provide aggregate or individual office information without adding this data entry step. Given that the department is very much a pioneer in the field of accepting credit cards for in-person public sector transactions on such a large and decentralized scale, it is conceivable that the department will be asked to report on its experience to the legislature, as well as to other state agencies or states considering this policy.

The amendment is needed because it improves internal controls and, when required, will facilitate data extraction and reporting at the individual transaction level. The amendment is reasonable in that it is a relatively minor change to a process that agents currently employ.

**The amendments to subpart 1a of part 7404.0450 accomplish the following:**

Item A requires that a driver's license agent settle credit card transactions at the daily close of office records on each working day. In order to "settle credit card transactions", an agent must run a daily report by entering a code on the credit card terminal. This provision is needed so that each day's transactions are recorded in a batch report. This process also clears the credit card processing terminal of the current day's transaction history. For these reasons, the amendment is necessary and reasonable.

Item B specifies the storage location and document retention requirements for credit card transactions. For reasons of convenience, but more importantly, for ease of retrieval in the event of a transaction dispute, the department is requiring that credit card related documentation be retained at the agent's office location. Retention requirements for credit and debit card documents are consistent with department policy on similar data and are required to be maintained according to existing provisions in this rule part. *See* Minn Rules, part 7404.0450, subpart 3 (2010).

Item C states that the driver's license agent is responsible for credit card chargebacks. A chargeback, or credit card chargeback rights, refer to a consumer's rights under the federal Fair Credit Billing Act (FCBA) to dispute charges to their credit card under two separate categories: "billing errors" and "claims and defenses."<sup>10</sup> Debit and ATM card transactions are governed under another federal law, the Electronic Fund Transfer Act.<sup>11</sup> Perhaps the most common reason for a chargeback is the result of a fraudulent transaction where a credit card is used without the consent or proper authorization of the card holder. Chargebacks, however, can occur for a variety of reasons including double-charging, credit card expiration, bank or merchant error, and customer disputes.

Under the department's credit card program, each deputy and agent will receive its own merchant identification (ID) number. The merchant ID number will print on all customer receipts and appear on the card holder's statement. Should a customer have cause to initiate a chargeback, then the customer must work initially with the specific agent (merchant) where the transaction occurred. It would be cost prohibitive and highly ineffective for the department to serve as the point of customer contact for credit card

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<sup>10</sup> 15 USC §§1666, 1666i.

<sup>11</sup> 15 USC 1693 et seq.



dispute resolution for all agent offices. For these reasons, this amendment is both needed and reasonable.

**The amendments to subpart 2 of part 7404.0450 accomplish the following:**

Item B requires a driver's license agent to include any unsettled credit and debit card transactions when accounting for any shortages. If, for any reason, the credit and debit card transactions fail to settle properly, this amendment clarifies that any shortages must also include these transactions.

This amendment is necessary so that depositing and accounting procedures are consistent for all transaction types and it is reasonable because it is essentially a clarification to an existing procedure.

Item C requires a driver's license agent to process credit and debit card transactions through the bank designated by the commissioner. The bank designated by the commissioner is the state bank and it is the entity (ie – credit card vendor) providing the credit and debit card services for all agents and (deputy registrars).<sup>12</sup> The credit card program was designed for DVS and its agents and deputies using the state bank as the initial depository of credit and debit card transaction proceeds, along with the convenience fee amount. The state bank will then deposit each agent's credit and debit card transaction proceeds to the agent's personal or business bank account. If the agent's bank is the same as the state bank, then the transfer of funds occurs the next business day. If the agent's bank is different than the state bank, there could be a delay of up to 48 hours for receipt of these proceeds.

This amendment is necessary because it is part of the contractual agreement made with the credit card vendor to provide credit and debit card services. It is reasonable because this deposit method helps reduce the overall cost of the credit card program.

Item D requires a driver's license agent to authorize the designated bank (in item C) to deposit the proceeds of credit and debit card transactions to the agent's personal or business account. This amendment is both necessary and reasonable because without authorization, the state bank cannot transfer an agent's credit and debit card proceeds.

Item E requires an agent to transfer an amount equal to application and reinstatement fees paid by credit and debit card to the state-designated depository, or to a depository approved under subpart 2a. This amendment clarifies that the amount of application and reinstatement fees that have been paid by credit and debit card must be transferred to the state-designated depository along with those fees that have been paid using cash or check.

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<sup>12</sup> Currently, the "bank designated by the commissioner" or "state bank" is U.S. Bank. Every five years, the state issues a Request For Proposal for its primary financial institution.

This amendment is necessary so that depositing and accounting procedures are consistent for all transaction types and it is reasonable because it is essentially a clarification to an existing procedure.

The amendment to subpart 2a, item B, of part 7404.0450 clarifies that a type of depositing procedure where accounts are debited daily for amounts owed to the state is no longer being authorized by the department. This provision will affect only those driver's license agents with existing authorization. Department staff identified several concerns with continuing a depositing procedure that automatically debits authorized accounts for funds due. These concerns, which are further exacerbated by credit card transactions, include timing of credit card deposits and the availability of funds. The procedure could be particularly troublesome for smaller offices where account balances may not always be current, or sufficient, at the time the account is debited. For these reasons, the amendment is needed and reasonable.

The amendment to subpart 2a, item D, of part 7404.0450 is intended merely as clarification for the reader and, to this extent, is necessary and reasonable.

### ***Minnesota Rules, part 7404.0500* GENERAL OPERATING PRACTICES**

The amendments to part 7404.0500 of subparts 8a, 8b, and 8c create a new subpart and incorporate the substance of the legislation in Minnesota Laws 2009, chapter 152, section 2 (codified in Minnesota Statutes, section 168.33, subdivision 7), by providing for a credit card payment option for driver's license application and reinstatement fees and by authorizing a surcharge, herein called a "convenience fee" to cover the associated processing costs.

The amendment to subpart 8a, item A, of part 7404.0500 requires a driver's license agent to accept credit cards as a method of payment. The directive to driver's license agents that they accept credit cards is both necessary and reasonable because, as a matter of public policy, citizens have the right expect to receive the same level of service from a driver's license agent, including payment options, regardless of which office they use.

The amendment further indicates "[t]he commissioner shall specify the types of credit and debit cards the driver's license agent can accept." This is necessary because not all credit cards companies, namely VISA, are participating in the credit card program. VISA's bylaws prohibit a surcharge or "conveniences fee" for in-person transactions for motor vehicle and driver's license taxes and fees. Driver and Vehicle Services sent a letter requesting that VISA reconsider its policy with regards to these kinds of public sector

transactions, but the company declined to do so.<sup>13</sup> As a result, DVS, its agents and deputies can only accept credit or debit cards issued by MasterCard and Discover. Given this restriction from a credit card company that dominates the market,<sup>14</sup> and the potential for similar policies from other market players, it is also necessary and reasonable that the department reserve the right to specify which types of credit and debit cards its driver's license agents can accept.

The amendment to subpart 8a, item B, of part 7404.0500 specifies that a driver's license agent must operate at least one card-processing terminal in the office. If the agent currently operates a point-of-sale (POS) information system capable of processing credit and debit card transactions and wishes to use it instead of the department's system, then the agent must work, at the agent's own expense, with the state's credit card vendor to ensure that the agent's POS system is compatible with the state's credit card system. This process will culminate in a certification from the state's credit card vendor. When the agent provides the commissioner with documentation that its POS system is certified, then the system can be approved for use. The amendment is needed so that driver's license agents understand that all operation and maintenance costs, including future programming changes, associated with an agent's POS system are the responsibility of the agent. The amendment is reasonable because the department is providing a credit card processing system, specifically the credit card terminals, to agents at no cost.

The amendment to subpart 8a, item C, of part 7404.0500 requires that the commissioner, at no cost to the driver's license agent, provide credit card processing terminals and replace defective credit card processing terminals. One of the advantages of the department's credit card program is that it can be deployed at relatively low cost to driver's license agents. This amendment also reflects MDRA's request that the department add "at no cost" when referring to the provision and replacement of credit card processing terminals. Just as costs and responsibilities borne by the agent are identified, the inclusion of departmental responsibilities regarding requisite program hardware is both necessary and reasonable.

The amendment to subpart 8a, item D, of part 7404.0500 requires that the agent provide the technological infrastructure stated in part 7404.0400, subpart 4, item I. As discussed earlier on page 13, this requirement is necessary for driver's license agents to be able to process credit card transactions using the hardware that is being provided. The amendment is reasonable because agents already have an internet connection in order to access the department's E-support website for daily reporting purposes.

The amendment to subpart 8a, item E, of part 7404.0500 directs the commissioner to provide the agent with signage that states the following: 1) the types of credit and debit

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<sup>13</sup>Minnesota Department of Public Safety. *Proposal to the Legislature: Credit and Debit Card Acceptance, Driver and Vehicle Services*. February 2009, page 11, and Appendix D.

<sup>14</sup> *Ibid*, page 6.

cards an agent can accept for payment; and 2) a convenience fee is added to a transaction paid by credit or debit card.

Research from the credit card study confirms that VISA has a stronghold on the credit card market. MDRA expressed concern that certain customers might react unfavorably when told that VISA could not be accepted as a form of credit card payment. They requested that DPS create uniform signage for all offices that clearly states which types of credit cards can be accepted. DPS and MDRA agreed that the policy regarding the convenience fee should also be posted. These requests were deemed reasonable. The signage from the department will indicate to the public that the policy regarding the types of credit cards that can be accepted was made by the department and is not an arbitrary decision made by an individual agent.

The amendment to subpart 8a, item G, of part 7404.0500 requires a driver's license agent to inform the customer of the amount of the convenience fee and to obtain the person's consent before completing the transaction. This requirement is also found in Minnesota Statutes §16a.626 (d) (2010), where it states, in part, "[a]n agency imposing a convenience fee must notify the person using the credit services of the fee before the transaction is processed." The department believes it is both necessary and reasonable to reiterate this statutory requirement.

The amendment to subpart 8a, item G, of part 7404.0500 specifies that a driver's license agent is responsible for credit card chargebacks. If there is a dispute regarding a credit or debit card transaction, it is up to the agent to take the necessary steps to resolve the matter. The amendment is necessary because it is the department's position that chargebacks are a function and result of an agent's business practice and it is therefore reasonable to maintain that the outcome of any transaction dispute fall upon the agent.

The amendment to subpart 8b of part 7404.0500 establishes a variance procedure to the credit card acceptance requirement in subpart 8a of the same rule part. The amendments to subpart 8b, items A through D list the criteria that an agent must provide to the commissioner in order to apply for a variance. These criteria include: a written statement of the reasons why credit card acceptance poses an economic hardship; bank statements for the preceding three months; transaction history for the prior year; and additional information requested by the commissioner.

The amendment to subpart 8c of part 7404.0500 provides for the commissioner's review of a variance request and specifies deadline requirements for both the commissioner and the agent. The amendment further specifies that this procedure is not a contested case hearing as defined in Minnesota Statutes, chapter 14.

The department recognizes that, for some agents, the financial hardship of providing a credit and debit card payment option may outweigh the benefit. It is not the department's intent to adversely impact the livelihood of its agents. Therefore it is both necessary and

reasonable to include a variance procedure by which an agent can appeal to the commissioner.

### ***Minn. Rules, part 7406.0100* DEFINITIONS**

The amendment to subpart 9b of part 7406.0100 adds a definition. The term “convenience fee” is defined as “an additional amount charged to a person’s credit card or debit card because the person chooses to pay for a transaction by credit card or debit card.”

The term “convenience fee” is an integral part of the credit card acceptance program and is used throughout this rulemaking. This convenience fee is the mechanism by which it is possible for the department to offer a credit and debit card payment option for its deputy registrars and not raise fees or taxes to cover the associated processing costs. As stated earlier in the “Regulatory Analysis” section, item 3, the convenience fee is established by the credit card vendor in accordance with the state’s banking contract that is administered by Minnesota Management and Budget. The fee is subject to periodic review, based on transaction amount and volume, and will be adjusted (up or down) accordingly.

It is both necessary and reasonable that the term be defined so that those affected by this fee are aware that it applies only to credit and debit card transactions.

The amendment to subpart 20a of part 7406.0100 adds a definition. The definition of “next working day” exists currently in subpart 1 of part 7406.0450, but the department believes that it is more aptly placed in the definitions part of the Motor Vehicle Deputy Registrars chapter. In doing so, the term “next working day” accordingly applies to the entire rule chapter and achieves conformity with the parallel rule part for driver’s license agents in Minn. Rules part 7404.0100, subp. 18 (2010). For these reasons, the amendment is both necessary and reasonable.

### ***Minn. Rules, part 7406.0400* DEPUTY REGISTRAR OFFICE REQUIREMENTS**

The amendment to subpart 4, item I, of part 7406.0400 specifies the technological infrastructure requirements that a deputy registrar must have in order to install and operate the credit card processing terminals needed for credit and debit card transactions.

The department believes that this requirement is flexible enough to encompass a variety of internet technologies and allows a deputy registrar sufficient discretion in subscribing to the type of internet connection that meets individual business requirements and financial considerations. The amendment is needed because this infrastructure is required to process credit card transactions using state-provided credit card processing terminals. The amendment is reasonable because deputy registrars already have an internet

connection in order to access the department's E-support website for daily reporting purposes.

***Minnesota Rules, part 7406.0450 REPORTING AND DEPOSITING PRACTICES.***

The amendments to subpart 1 of part 7406.0450 strikes the definition of “next working day”, renames the headnote of “Definition” to “Close of records”, and revises awkward syntax in the existing rule. These amendments are intended solely to clarify, not change the rule’s meaning. The department believes these changes are necessary to improve the readability of the rule part. As discussed earlier in this “Rule Analysis” section (part 7406.0100, subpart 20a), the department believes that it is proper, and therefore reasonable, to place the definition of “next working day” in the part of the rule chapter where most readers are apt to search for it.

**The amendments to subpart 1a of part 7406.0450 accomplish the following:**

Item A requires that a deputy registrar settle credit card transactions at the daily close of office records on each working day. In order to “settle credit card transactions”, a deputy registrar must run a daily report by entering a code on the credit card terminal. This provision is needed so that each day’s transactions are recorded in a batch report. This process also clears the credit card processing terminal of the current day’s transaction history. For these reasons, the amendment is necessary and reasonable.

Item B specifies the storage location and document retention requirements for credit card transactions. For reasons of convenience and ease of retrieval in the event of a transaction dispute, the department is requiring that credit card related documentation be retained at the deputy registrar’s office location. Retention requirements for credit card documents are consistent with department policy on similar data and are required to be maintained according to existing provisions in this rule part. *See* Minn Rules, part 7406.0450, subpart 4 (2010).

Item C states that the deputy registrar is responsible for credit card chargebacks. A chargeback, or credit card chargeback rights, refers to a consumer’s rights under the federal Fair Credit Billing Act (FCBA) to dispute charges to their credit card under two separate categories: “billing errors” and “claims and defenses.”<sup>15</sup> Debit and ATM card transactions are governed under another federal law, the Electronic Fund Transfer Act.<sup>16</sup> Perhaps the most common reason for a chargeback is the result of a fraudulent transaction where a credit card is used without the consent or proper authorization of the card holder. Chargebacks, however, can occur for a variety of reasons including double-charging, credit card expiration, bank or merchant error, and customer disputes.

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<sup>15</sup> 15 USC §§1666, 1666i.

<sup>16</sup> 15 USC 1693 et seq.

Under the department's credit card program, each deputy and agent will receive its own merchant identification (ID) number. The merchant ID number prints on all customer receipts and appear on the card holder's statement. Should a customer have cause to initiate a chargeback, then the customer must work initially with the specific deputy registrar where the transaction occurred. It would be cost prohibitive and highly ineffective for the department to serve as a point of customer contact for credit card dispute resolution for all deputy registrar offices. For these reasons, this amendment is both needed and reasonable.

The amendment to subpart 2, item E (8), of part 7406.0450 was added to improve reporting capabilities when a deputy registrar records individual transactions. Currently, when a deputy registrar records a transaction online, s/he has the option to select a drop-down box to indicate the payment method used for the transaction – either cash or check. This modification does two things. First, it makes this optional field in the transaction report a required field and, second, it lists “credit card” as a third type of payment method. A deputy registrar now must complete this step before advancing to the next screen.

The department sought this change because it will allow DVS to query the number of credit card transactions taking place. Absent the information recorded in this data field, the department currently is unable to produce a report on the rate of credit card usage by customers of its deputy registrars. It would be difficult and time-consuming to provide aggregate or individual office information without adding this data entry step. Given that the department is very much a pioneer in the field of accepting credit cards for in-person credit card transactions on such a large and de-centralized scale, it is conceivable that the department will be asked to report on its experience to the legislature, as well as to other state agencies or states considering this policy.

The amendment is needed because it improves internal controls and will facilitate data extraction and reporting at the individual transaction level. The amendment is reasonable in that it is a relatively minor change to a process that deputy registrars currently employ.

**The amendments to subpart 3 of part 7406.0450 accomplish the following:**

Item A requires a deputy registrar to include any unsettled credit and debit card transactions when accounting for any shortages. If, for any reason, the credit and debit card transactions fail to settle properly, this amendment clarifies that any shortages must also include these transactions.

This amendment is necessary so that depositing and accounting procedures are consistent for all transaction types and it is reasonable because it is essentially a clarification to an existing procedure.



Item B requires a deputy registrar to process credit and debit card transactions through the bank designated by the commissioner. The bank designated by the commissioner is the state bank and it is the entity (ie – credit card vendor) providing the credit and debit card services for all deputy registrars and driver’s license agents.<sup>17</sup> The credit card program was designed for DVS, and its agents and deputies, using the state bank as the initial depository of credit and debit card transaction proceeds, along with the convenience fee amount. The state bank will then deposit each deputy’s credit and debit card transaction proceeds to the deputy’s personal or business bank account. If the deputy registrar’s bank is the same as the state bank, then the transfer of funds occurs the next business day. If the deputy registrar’s bank is different than the state bank, there could be a delay of up to 48 hours for receipt of these proceeds.

This amendment is needed because it is part of the contractual agreement made with the credit card vendor to provide credit and debit card services. It is reasonable because this method helps reduce the overall cost of the credit card program.

Item C requires a deputy registrar to authorize the designated bank to deposit the proceeds of credit and debit card transactions to the agent’s personal or business account. This amendment is both necessary and reasonable because without authorization, the state bank cannot transfer an deputy registrar’s credit and debit card proceeds.

Item D requires a deputy registrar to transfer an amount equal to application and reinstatement fees paid by credit and debit card to the state-designated depository, or to a depository approved under subpart 3a. This amendment clarifies that the amount of application and reinstatement fees that have been paid by credit and debit card must be transferred to the state-designated depository along with those fees that have been paid using cash or check.

This amendment is necessary so that depositing and accounting procedures are consistent for all transaction types and it is reasonable because it is essentially a clarification to an existing procedure.

The amendment to subpart 3a, item B, of part 7406.0450 clarifies that a type of depositing procedure where accounts are debited daily for amounts owed to the state is no longer being authorized by the department. This provision will affect only those deputy registrars with existing authorization. Department staff identified several concerns with continuing a depositing procedure that automatically debits authorized accounts for funds due. These concerns, which are further exacerbated by credit card transactions, include timing of credit card deposits and the availability of funds. The procedure could be particularly troublesome for smaller offices where account balances may not always be

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<sup>17</sup> Currently, the “bank designated by the commissioner” or “state bank” is U.S. Bank. Every five years, the state issues a Request For Proposal for its primary financial institution.

current, or sufficient, at the time the account is debited. For these reasons, the amendment is needed and reasonable.

The amendment to subpart 3a, item D, of part 7404.0450 is intended merely as clarification for the reader and, to this extent, is necessary and reasonable.

***Minnesota Rules, part 7406.0500 GENERAL OPERATING RULES FOR DEPUTY REGISTRARS***

The amendments to part 7406.0500 of subparts 7a, 7b, and 7c create a new subpart and incorporate the substance of the legislation in Minnesota Laws 2009, chapter 152, section 2 (codified in Minnesota Statutes, section 168.33, subdivision 7), by providing for a credit card payment option for motor vehicle transactions and by authorizing a surcharge, herein called a “convenience fee” to cover the associated processing costs.

The amendment to subpart 7a, item A, of part 7406.0500 requires a deputy registrar to accept credit cards as a method of payment. The directive to deputy registrars that they accept credit cards is both necessary and reasonable because, as a matter of public policy, citizens have the right expect to receive the same level of service from a deputy registrar, including payment options, regardless of which office they use.

The amendment further indicates “[t]he commissioner shall specify the types of credit and debit cards the deputy registrar can accept.” This is necessary because not all credit cards companies, namely VISA, are participating in the credit card program. VISA’s bylaws prohibit surcharges or conveniences fees for in-person transactions for motor vehicle and driver’s license taxes and fees. DPS sent a letter requesting that VISA reconsider its policy with regards to these kinds of public sector transactions, but the company declined to do so.<sup>18</sup> As a result, DVS, its agents and deputies can only accept credit or debit cards issued by MasterCard and Discover. Given this restriction from a credit card company that dominates the market,<sup>19</sup> and the potential for similar policies from other market players, it is also necessary and reasonable that the department reserve the right to specify which types of credit and debit cards its deputy registrars can accept.

The amendment to subpart 7a, item B, of part 7406.0500 specifies that a deputy registrar must operate at least one card-processing terminal in the office. If the deputy registrar currently operates a point-of-sale (POS) information system capable of processing credit and debit card transactions and wishes to use it instead of the department’s system, then the deputy must work, at the deputy’s own expense, with the state’s credit card vendor to ensure that the deputy registrar’s POS system is compatible with the state’s credit card system. This process will culminate in a certification from the state’s credit card vendor.

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<sup>18</sup>Minnesota Department of Public Safety. *Proposal to the Legislature: Credit and Debit Card Acceptance, Driver and Vehicle Services*. February 2009, page 11, and Appendix D.

<sup>19</sup> *Ibid*, page 6.

When the deputy registrar provides the commissioner with documentation that its POS system is certified, then the system can then be approved for use. The amendment is needed so that deputy registrars understand that all operation and maintenance costs, including future programming changes, associated with its POS system are the responsibility of the deputy registrar. This amendment is reasonable because the department is providing a credit card processing system, specifically the credit card terminals, to deputy registrars at no cost.

The amendment to subpart 7a, item C, of part 7406.0500 requires that the commissioner provide, at no cost to the deputy registrar, credit card processing terminals and replace defective credit card processing terminals. One of the advantages of the department's credit card program is that it can be deployed at relatively low cost to deputy registrars. This amendment also reflects MDRA's request that the department add "at no cost" when referring to the provision and replacement of credit card processing terminals. Just as costs and responsibilities borne by the deputy registrar are identified, the inclusion of departmental responsibilities regarding requisite program hardware is both necessary and reasonable.

The amendment to subpart 7a, item D, of part 7406.0500 requires that the deputy registrar provide the technological infrastructure stated in part 7406.0400, subpart 3a. As discussed earlier on page 19, this requirement is necessary for the deputy registrar to be able to process credit card transactions using the hardware that is being provided. The amendment is reasonable because deputy registrars already have an internet connection in order to access the department's E-support website for daily reporting purposes.

The amendment to subpart 7a, item E, of part 7406.0500 directs the commissioner to provide the deputy registrar with signage that states the following: 1) the types of credit and debit cards deputy registrar can accept for payment; and 2) a convenience fee is added to a transaction paid by credit or debit card.

Research from the credit card study confirms that VISA has a stronghold on the credit card market. MDRA expressed concern that certain customers might react unfavorably when told that VISA could not be accepted as a form of credit card payment. They requested that the department create uniform signage for all offices that clearly states which types of credit cards can be accepted. The department and MDRA agreed that the policy regarding the convenience fee should also be posted. These requests were deemed reasonable. The signage from the department will indicate to the public that the policy regarding the types of credit cards that can be accepted was made by the department and is not an arbitrary decision made by an individual deputy registrar.

The amendment to subpart 7a, item F, of part 7406.0500 requires a deputy registrar to inform the customer of the amount of the convenience fee and to obtain the person's consent before completing the transaction. This requirement is also found in Minnesota Statutes §16A.626 (d) (2010), where it states in part, "[a]n agency imposing a convenience fee must notify the person using the credit services of the fee before the transaction is

processed.” The department believes it is both necessary and reasonable to reiterate this statutory requirement.

The amendment to subpart 7a, item G, of part 7406.0500 specifies that a deputy registrar is responsible for credit card chargebacks. If there is a dispute regarding a credit or debit card transaction, it is up to the deputy registrar to take the necessary steps to resolve the matter. The amendment is necessary because it is the department’s position that chargebacks are a function and result of a deputy registrar’s business practice and it is therefore reasonable to maintain that the outcome of any transaction dispute fall upon the deputy registrar.

The amendment to subpart 7b of part 7406.0500 establishes a variance procedure to the credit card acceptance requirement in subpart 7a of the same rule part. The amendments to subpart 7b, items A through D list the criteria that a deputy registrar must provide to the commissioner in order to apply for a variance. These criteria include: a written statement of the reasons why credit card acceptance poses an economic hardship; bank statements for the preceding three months; transaction history for the prior year; and additional information requested by the commissioner.

The amendment to subpart 7c of part 7406.0500 provides for the commissioner’s review of a variance request and specifies deadline requirements for both the commissioner and the agent. The amendment further specifies that this procedure is not a contested case hearing as defined in Minnesota Statutes, chapter 14.

The department recognizes that, for some deputy registrars, the financial hardship of providing a credit and debit card payment option may outweigh the benefit. It is not the department’s intent to adversely impact the livelihood of its deputy registrars. Therefore it is both necessary and reasonable to include a variance procedure by which a deputy registrar can appeal to the commissioner.

## CONCLUSION

For the foregoing reasons, the proposed rules are both needed and reasonable.

1/21/11  
Date

Mary Ellison  
Mary Ellison  
Deputy Commissioner

Available for public review on January 26, 2011.