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**DRIVER AND VEHICLE SERVICES DIVISION**

DRIVER LICENSE OFFICE  
TRANSPORTATION BUILDING  
395 JOHN IRELAND BLVD.  
ST. PAUL, MN 55155-1886  
612-296-6911



**STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY**

February 22, 1994

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

Re: In the Matter of Proposed Rules of the State Department of Public Safety  
Governing Motor Vehicle Dealers

Dear Ms. Hruby:

The Minnesota Department of Public Safety intends to adopt the above entitled rules. We plan to publish a dual Notice of Intent to Adopt Rules in the March 7, 1994, State Register.

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

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

If you have any questions about these rules, please contact me at 296-2608.

Sincerely,

Laura Nehl-Trueman  
Administrative Rulewriter

enclosures:           Statement of Need and Reasonableness  
                          Dual Notice of Intent to Adopt Rules  
                          Copy of the Certified Rules

**State Of Minnesota  
Department Of Public Safety  
Driver And Vehicle Services Division**

**Proposed Permanent Rules Relating To Motor Vehicle Dealers**

**Dual Notice: 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**

**Introduction.** The Minnesota Department of Public Safety intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules within 30 days or by 4:30 p.m. on April 6, 1994, a public hearing will be held on May 9, 1994. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after April 6, 1994 and before May 9, 1994.

**Agency Contact Person.** Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to: Andrea Meyer, Department of Public Safety, Room 107 Transportation Building, 395 John Ireland Boulevard, St. Paul, MN 55155 (612) 296-2977.

**Subject Of Rules And Statutory Authority.** The proposed rules are about motor vehicle dealers. The statutory authority to adopt the rules is Minnesota Statutes, section 299A.01, subdivision 6. A copy of the proposed rules is published in the State Register. The proposed rules include provisions relating to the licensing and regulation of motor vehicle dealers. The Commissioner of Public Safety administers motor vehicle dealer licensing under Minnesota Statutes, section 168.27. The proposed rules govern, among other things, definitions, the application, issuance and renewal of a dealer license, the conditions and procedures for license revocation, suspension, and cancellation, the procedures for motor vehicle dealer hearings, consignment sales, a dealer's established place of business, vehicle transactions and record keeping by a dealer, and dealer license plates. It is the Department's position that the proposed rules do not make any major changes in the way dealers are now regulated under the statute. A free copy of the rules is available upon request from Andrea Meyer.

**Comments.** You have until 4:30 p.m., April 6, 1994, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

**Request For A Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on April 6, 1994. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

**Modifications.** The proposed rules may be modified, either as a result of public

comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as printed in the State Register and must be supported by data and views submitted to the Department or presented at the hearing. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation Of Hearing.** The hearing scheduled for May 9, 1994, will be canceled if the Department does not receive requests from 25 or more persons that a hearing be held on the rules. If you request a public hearing, the Department will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Andrea Meyer at (612) 296-2977 after April 6, 1994, to find out whether the hearing will be held.

**Notice Of Hearing.** If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on Monday, May 9, 1994, in Conference Room D, 5th Floor Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155, beginning at 9:00 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Barbara L. Neilson. Judge Neilson can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7604.

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rules. You may also mail written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during this period will be available for review at the Office Of Administrative Hearings. You and the Department may respond in writing with rebuttal arguments or material within five business days after the submission period ends to any new information submitted after the hearing. All written materials and responses submitted to the Administrative Law Judge during the period must be received at the Office Of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200, and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

**Statement Of Need And Reasonableness.** A Statement Of Need And Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules. It also includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing, if one is held. A free copy of the Statement may be obtained from Andrea Meyer at the address and telephone number listed above. The Statement may also be reviewed and copies obtained at the cost of reproduction from the Office Of Administrative Hearings.

**Small Business Considerations.** In preparing these rules, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are required to be licensed as motor vehicle dealers. The Department

has made every effort to minimize the impact of the proposed rules on small businesses. It is the Department's position that the proposed rules do not make any major changes in the way dealers are now regulated under Minnesota Statutes, section 168.27. The Department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement Of Need And Reasonableness.

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

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

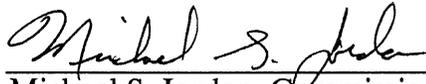
**Departmental Charges.** Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement should be directed to the Ethical Practices Board at First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (612)-296-5148 or 1-800-657-3889.

**Adoption Procedure If No Hearing.** If no hearing is required, after the end of the comment period the Department may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you want to be so notified, or wish to receive a copy of the adopted rules, submit your request to Andrea Meyer at the address listed above.

**Adoption Procedure After A Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may request to be notified of the date on which the Administrative Law Judge's report will be available, after which date the Department may not take any final action on the rules for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. You may also request notification of the date on which the rules are adopted and filed with the Secretary of State. The Department's Notice Of Adoption must be mailed on the same day that the rules are filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rules with the Secretary of State.

18 February 1994  
Date

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

1 Department of Public Safety

2

3 Proposed Permanent Rules Relating to Motor Vehicle Dealers

4

5 Rules as Proposed (all new material)

6 7400.0100 DEFINITIONS.

7 Subpart 1. Scope. The terms used in this chapter have the  
8 meanings given them in this part.

9 Subp. 2. Automatic telephone answering service.

10 "Automatic telephone answering service" means either a human  
11 operator or an automatic device that answers the dealer's  
12 telephone and is capable of taking messages.

13 Subp. 3. Board member. "Board member" means a director in  
14 a corporation and a governor in a limited liability company.

15 Subp. 4. Days. "Days" means calendar days when referring  
16 to the amount of time when the performance or doing of an act,  
17 duty, matter, payment, or thing is ordered, directed, or  
18 prescribed. A period of time measured in days, except as  
19 otherwise provided, must be computed so as to exclude the first  
20 and include the last day of the prescribed or fixed period or  
21 duration of time. When the last day of the period falls on a  
22 Saturday, Sunday, or legal holiday, that day must be omitted  
23 from the computation.

24 Subp. 5. Dealer. "Dealer" has the meaning given it in  
25 Minnesota Statutes, section 168.27, subdivision 1, clause (5).

26 Subp. 6. Franchise. "Franchise" has the meaning given it  
27 in Minnesota Statutes, section 80E.03, subdivision 8.

28 Subp. 7. High value vehicle. "High value vehicle" means a  
29 vehicle that is six years old or older as calculated from the  
30 first day of January of the designated model year that had an  
31 actual cash value in excess of \$5,000 before being damaged, or a  
32 vehicle with a manufacturer's rating of over 26,000 pounds gross  
33 vehicle weight.

34 Subp. 8. Late model vehicle. "Late model vehicle" means a  
35 vehicle that is less than six years old as calculated from the

1 first day of January of the designated model year.

2 Subp. 9. **Motor vehicle.** "Motor vehicle" has the meaning  
3 given it in Minnesota Statutes, section 168.27, subdivision 1,  
4 clause (13).

5 Subp. 10. **Motor vehicle transaction.** A "motor vehicle  
6 transaction" includes the transactions listed in Minnesota  
7 Statutes, section 168.27, subdivisions 2, 3, 3a, 3b, 3c, 4, 6,  
8 and 7, for which a person must be licensed as a motor vehicle  
9 dealer in order to conduct the transaction.

10 Subp. 11. **New motor vehicle.** "New motor vehicle" has the  
11 meaning given it in Minnesota Statutes, section 168.27,  
12 subdivision 1, clause (11).

13 Subp. 12. **Officer.** "Officer" means an officer of a  
14 corporation and a manager of a limited liability company.

15 Subp. 13. **Owner.** "Owner" means:

- 16 A. the sole proprietor of a proprietorship;  
17 B. a partner in a partnership;  
18 C. a corporation shareholder holding five percent or  
19 more of voting power of the shares issued; or  
20 D. a limited liability company member holding five  
21 percent or more of the voting power of the membership interests  
22 issued.

23 Subp. 14. **Primarily engaged in the business of.**  
24 "Primarily engaged in the business of," as it applies to a used  
25 vehicle parts dealer who buys or otherwise acquires vehicles for  
26 dismantling and selling the used parts and remaining scrap  
27 metals, means that the dealer has acquired more than five of  
28 those vehicles in a 12-month period and that acquiring those  
29 vehicles is not incidental to the dealer's business.

30 Subp. 15. **Registrar.** "Registrar" means the registrar of  
31 motor vehicles of Minnesota, acting directly or through  
32 authorized agents. Under Minnesota Statutes, section 168.33,  
33 the commissioner of public safety is the registrar of motor  
34 vehicles.

35 Subp. 16. **Sale, sells, selling, purchase, purchased, or**  
36 **acquired.** "Sale," "sells," "selling," "purchase," "purchased,"

1 or "acquired" has the meaning given it in Minnesota Statutes,  
2 section 297B.01, subdivision 7.

3 Subp. 17. **Sufficient cause to believe.** "Sufficient cause  
4 to believe" means grounds put forth in good faith that are not  
5 arbitrary, irrational, unreasonable, or irrelevant and that make  
6 the proposition asserted more likely than not, provided the  
7 grounds are based on at least one of the following sources:

8 A. written information from an identified person;

9 B. facts or statements supplied by the applicant or  
10 dealer;

11 C. court documents and police records; and

12 D. facts of which the registrar or the registrar's  
13 employees have personal knowledge..

14 Subp. 18. **Used motor vehicle.** "Used motor vehicle" has  
15 the meaning given it in Minnesota Statutes, section 168.27,  
16 subdivision 1, clause (10).

17 Subp. 19. **Vehicle.** "Vehicle" has the meaning given it in  
18 Minnesota Statutes, section 168A.01, subdivision 24.

19 **DEALER LICENSING**

20 **7400.0200 CONTENTS OF APPLICATION FOR DEALER LICENSE.**

21 An initial application for a dealer license must be on a  
22 form provided by the registrar and must contain the following  
23 information:

24 A. The application must contain the name, street  
25 address, and telephone number of the applicant. The application  
26 must also contain each additional name and street address that  
27 the applicant will use to conduct motor vehicle transactions.

28 B. The application must indicate whether the  
29 applicant is an individual, partnership, corporation, or limited  
30 liability company. The application must also list each owner,  
31 officer, and board member.

32 C. The application must contain the full name, date  
33 of birth, and driver's license number of each person named on  
34 the application. If a person does not have a driver's license,  
35 the application must contain the identification card number of

1 that person. If a person's driver's license or identification  
2 card was issued by another state or country, the application  
3 must list the name of the state or country.

4 D. The application must indicate the type of dealer  
5 license sought.

6 E. The application must contain a history of dealer  
7 licensure of each person, partnership, corporation, and limited  
8 liability company named on the application. The history must be  
9 of each dealer license applied for or issued by Minnesota or by  
10 another jurisdiction and must include the issuance and  
11 expiration dates of the license. If a dealer license  
12 application was denied, or a dealer license was suspended,  
13 canceled, or revoked, the history must give the date and the  
14 reason.

15 F. The application must contain the criminal history  
16 of each person named on the application and an authorization for  
17 the registrar to conduct an investigation to verify this  
18 information. The criminal history must include each injunction  
19 or conviction for a violation listed in Minnesota Statutes,  
20 section 168.27, subdivision 11.

21 G. The application must verify that the applicant  
22 meets the established place of business requirements of parts  
23 7400.4000 to 7400.4300 and Minnesota Statutes, section 168.27,  
24 subdivision 10.

25 H. The application must give the name of the provider  
26 and the policy number of the applicant's insurance required  
27 under Minnesota Statutes, chapter 65B.

28 I. The application must list the applicant's normal  
29 business hours. For a new motor vehicle dealer, normal business  
30 hours are the hours personnel are normally available. For a  
31 dealer other than a new motor vehicle dealer, normal business  
32 hours are the hours personnel or a telephone answering service  
33 are normally available.

34 J. Each person named on the application shall sign  
35 the application, verifying that the information on the  
36 application is true. The signatures must be notarized.

1 7400.0300 ITEMS FILED WITH APPLICATION.

2 Subpart 1. **Requirement.** The items described in this part  
3 must be filed as part of an initial application for a dealer  
4 license.

5 Subp. 2. **Fees.** The application must be accompanied by the  
6 license fees and filing fees required by statute.

7 Subp. 3. **Surety bond.** This subpart applies to the  
8 application for a new motor vehicle dealer, used motor vehicle  
9 dealer, vehicle salvage pool, motor vehicle lessor, motor  
10 vehicle wholesaler, or motor vehicle auctioneer license. The  
11 application must be accompanied by a surety bond, as required by  
12 Minnesota Statutes, section 168.27, subdivision 24. This  
13 subpart does not apply to the application for a used vehicle  
14 parts dealer license or a scrap metal processor license.

15 Subp. 4. **Statement of zoning compliance.** This subpart  
16 applies to the application for a new motor vehicle dealer, used  
17 motor vehicle dealer, vehicle salvage pool, motor vehicle  
18 lessor, motor vehicle wholesaler, or motor vehicle auctioneer  
19 license. The application must be accompanied by a statement  
20 from each local zoning authority where the applicant owns or  
21 leases a commercial building or commercial office space. The  
22 statement must acknowledge that the commercial building or  
23 commercial office space conforms to local zoning regulations.  
24 This subpart does not apply to the application for a used  
25 vehicle parts dealer license or a scrap metal processor license.

26 Subp. 5. **Tax information.** The application must be  
27 accompanied by a completed tax information form required by the  
28 commissioner of revenue under Minnesota Statutes, section 270.72.

29 Subp. 6. **Copy of contract or franchise.** The application  
30 for a new motor vehicle dealer license must be accompanied by a  
31 copy of or documentation of each contract or franchise required  
32 under Minnesota Statutes, section 168.27, subdivision 10, clause  
33 (1)(b).

34 Subp. 7. **Proof of ownership of building.** This subpart  
35 applies to the application for a new motor vehicle dealer, used

1 motor vehicle dealer, vehicle salvage pool, motor vehicle  
 2 lessor, motor vehicle wholesaler, or motor vehicle auctioneer  
 3 license. The application must be accompanied by a copy of the  
 4 lease or proof of ownership covering each established place of  
 5 business of the applicant. The proof of ownership may be in the  
 6 form of a deed or tax identification statement or similar  
 7 document. This subpart does not apply to the application for a  
 8 used vehicle parts dealer license or a scrap metal processor  
 9 license.

10 7400.0400 TEMPORARY DEALER LICENSE.

11 The registrar shall grant a temporary dealer license to the  
 12 applicant unless the registrar determines there is a reason to  
 13 deny the temporary license. The registrar shall deny the  
 14 license if the registrar determines there is a reason to deny  
 15 the license. The registrar shall make this determination based  
 16 on the application and the items filed with the application.  
 17 The period of the temporary dealer license is 90 days. The  
 18 registrar may extend the temporary license 30 days.

19 7400.0500 GRANTING DEALER LICENSE.

20 The registrar shall grant a motor vehicle dealer license to  
 21 the applicant at the end of the temporary license period unless  
 22 the registrar determines there is a reason to deny the license.  
 23 If the registrar determines there is a reason to deny the  
 24 license, the registrar shall deny the license at the time of  
 25 making the determination. A denial does not preclude the  
 26 registrar from pursuing revocation or suspension. A temporary  
 27 license expires at the time a license is denied.

28 7400.0600 REASONS TO DENY DEALER LICENSE.

29 The registrar shall deny a temporary motor vehicle dealer  
 30 license and a motor vehicle dealer license for any of the  
 31 following reasons:

- 32 A. The application or the items filed with the
- 33 application do not meet the requirements of parts 7400.0200 and
- 34 7400.0300.

1 B. A person named on the application was an owner,  
2 officer, or board member of a dealer whose license was revoked  
3 under part 7400.1600 or 7400.1900. After the revocation period  
4 has elapsed, an applicant is not disqualified from being  
5 licensed.

6 C. A person named on the application has been  
7 enjoined or convicted for a violation listed in Minnesota  
8 Statutes, section 168.27, subdivision 11. An applicant is not  
9 disqualified from being licensed if the applicant can show that  
10 the person has met the conditions of Minnesota Statutes, chapter  
11 364.

12 D. The applicant's established place of business does  
13 not meet the requirements of parts 7400.4000 to 7400.4300 and  
14 Minnesota Statutes, section 168.27, subdivision 10.

15 E. The commissioner of revenue notifies the registrar  
16 under Minnesota Statutes, section 270.72, that the applicant  
17 owes the state delinquent taxes, penalties, or interest.

18 F. The registrar has sufficient cause to believe that  
19 the applicant, while holding a temporary dealer license, has  
20 committed a violation that is grounds for revocation under part  
21 7400.1600 or 7400.1900, suspension under part 7400.1700 or  
22 7400.1900, or cancellation under part 7400.1800.

23 G. The registrar is unable to verify the applicant's  
24 compliance with location or record keeping requirements because  
25 the applicant has not given the registrar access to the location  
26 or records after a request by the registrar under part  
27 7400.4300, subpart 2.

28 7400.0700 DEALER LICENSE RENEWAL.

29 Subpart 1. Expiration of dealer licenses. A dealer  
30 license expires at midnight on December 31 of each year. A  
31 dealer license is valid upon renewal for the next calendar  
32 year. A temporary dealer license expires at midnight on  
33 December 31 of each year. A temporary dealer license is valid  
34 upon renewal for the remainder of the temporary license period.

35 Subp. 2. Renewal application. A renewal application for a

1 dealer license must be on a form provided by the registrar and  
2 must contain the following information:

3           A. The application must contain the dealer name and  
4 dealer number.

5           B. The application must verify that dealer  
6 information is accurate as of the date of the renewal. Dealer  
7 information includes information or items submitted with the  
8 dealer's initial license application, as amended by a notice of  
9 change.

10           C. One person named on the application shall sign the  
11 application, verifying that the information on the application  
12 is true. The signature must be notarized.

13           Subp. 3. Renewing dealer license; reasons for denial. A  
14 dealer license may be renewed any time on or before December  
15 31. To renew a dealer license, the dealer shall submit a  
16 completed license renewal application and the license and filing  
17 fees required by statute. The registrar shall renew the dealer  
18 license unless the registrar determines there is a reason to  
19 deny the renewal. The registrar shall deny the renewal for any  
20 of the following reasons:

21           A. The application does not meet the requirements of  
22 subpart 2.

23           B. The license and filing fees required by statute  
24 are not paid.

25           C. The license has been revoked under part 7400.1600  
26 or 7400.1900 or canceled under part 7400.1800.

27           D. The commissioner of revenue notifies the registrar  
28 under Minnesota Statutes, section 270.72, that the dealer owes  
29 the state delinquent taxes, penalties, or interest.

30           Subp. 4. Application after lapse. Within 60 days after a  
31 dealer license has lapsed, a former dealer may obtain another  
32 dealer license by following the renewal procedures of this part.  
33 A person who obtains a dealer license under this subpart shall  
34 pay both the initial application fee and the annual fee. A  
35 person loses all dealer privileges after the expiration of a  
36 license and before a new license is granted.

1 Subp. 5. Requirements when license not renewed. When a  
2 dealer license expires without being renewed, the dealer shall  
3 immediately return to the registrar the dealer license  
4 certificate, all dealer license plates, and all temporary  
5 vehicle permits.

6 7400.0800 CHANGE IN DEALER LICENSE CONDITIONS.

7 Subpart 1. Notice of change. A dealer shall notify the  
8 registrar of a change in dealer information. Dealer information  
9 is the current information that the registrar has concerning a  
10 dealer based upon the information or items submitted by the  
11 dealer in its initial license application, as updated by any  
12 notices of change.

13 Subp. 2. Form of notice. A notice of change must be made  
14 on a form provided by the registrar and must meet the following  
15 conditions:

16 A. A notice of change must indicate the dealer  
17 information that has changed.

18 B. A notice of change must be accompanied by initial  
19 license items that have changed.

20 C. One owner, officer, or board member shall sign the  
21 notice, verifying that the information on the notice is true.  
22 The signature must be notarized.

23 D. A person who is removed as an owner, officer, or  
24 board member shall sign the notice, verifying that the person  
25 has been removed. The signature must be notarized. If it is  
26 not possible for this person to sign, the notice of change must  
27 contain the reason.

28 Subp. 3. Timing of notice. The dealer shall submit a  
29 notice of change so that it is received by the registrar before  
30 the change occurs, unless this is not possible, in which case,  
31 the dealer shall give notice as soon as reasonable. When a  
32 dealer adds a new location, the dealer may not sell a vehicle at  
33 that location until the registrar approves the location.

34 Subp. 4. Approval of location. The registrar shall  
35 approve a location if it meets the established place of business

1 requirements of parts 7400.4000 to 7400.4300 and Minnesota  
2 Statutes, section 168.27, subdivision 10. The registrar shall  
3 make this determination based on the notice of change and the  
4 items filed with the notice of change.

5 Subp. 5. Dealer license not transferable. A dealer  
6 license may not be transferred from one person or organization  
7 to another. Another dealer license must be obtained before a  
8 successor dealer may engage in motor vehicle transactions. In  
9 addition, if the successor dealer is required to have a bond,  
10 the bond must be separate and distinct from the bond under the  
11 original license.

12 A dealer license issued to a partnership becomes invalid  
13 when an original partner leaves the partnership or a new partner  
14 is brought into the partnership.

15 A dealer license issued to a corporation or limited  
16 liability company becomes invalid when the entity is dissolved.  
17 A dealer license remains valid when a shareholder of the  
18 corporation or the name of the corporation is changed. A dealer  
19 license remains valid when a member of the limited liability  
20 company or the name of the limited liability company is changed.

21 A dealer license issued to an individual, partnership,  
22 corporation, or limited liability company does not transfer to a  
23 new business entity created by a change in the form of ownership  
24 of the business.

25 7400.0900 CONSIGNMENT SALES.

26 Subpart 1. New motor vehicles. A person who solicits,  
27 accepts, offers for sale, or sells new motor vehicles on  
28 consignment must be licensed as a new motor vehicle dealer and  
29 must have a franchise for each type of new motor vehicle sold on  
30 consignment.

31 Subp. 2. Used motor vehicles. A person who solicits,  
32 accepts, offers for sale, or sells used motor vehicles on  
33 consignment must be licensed as a new motor vehicle dealer, a  
34 used motor vehicle dealer, a motor vehicle wholesaler, or a  
35 motor vehicle auctioneer.

1 Subp. 3. Auctioneers. This part does not apply to a  
2 licensed auctioneer selling motor vehicles at an auction if, in  
3 the ordinary course of the auctioneer's business, the sale of  
4 motor vehicles is incidental to the sale of other real or  
5 personal property.

6 7400.1000 MOTORIZED BICYCLE OR CERTAIN TRAILER DEALERS.

7 Subpart 1. Scope. Subparts 2 to 4 apply to a seller of  
8 motorized bicycles, boat trailers, horse trailers, or snowmobile  
9 trailers.

10 Subp. 2. Requirement. The seller shall obtain a motor  
11 vehicle dealer license under Minnesota Statutes, section 168.27.

12 Subp. 3. Sales of other vehicles. If the seller sells  
13 other motor vehicles in addition to motorized bicycles, boat  
14 trailers, horse trailers, or snowmobile trailers, the seller  
15 shall obtain a new motor vehicle dealer, used motor vehicle  
16 dealer, vehicle salvage pool, motor vehicle wholesaler, or motor  
17 vehicle auctioneer license.

18 Subp. 4. Contract or franchise. The seller must have a  
19 contract or franchise with a manufacturer or distributor of new  
20 vehicles the seller proposes to sell, broker, wholesale, or  
21 auction.

22 LICENSE REVOCATION, SUSPENSION, OR CANCELLATION

23 7400.1500 LICENSE WITHDRAWAL; ACTS ATTRIBUTED TO DEALER.

24 Subpart 1. Acts of owner, officer, or board member. The  
25 registrar shall revoke, suspend, or cancel the dealer license of  
26 a partnership, corporation, or limited liability company if an  
27 owner, officer, or board member acts or fails to act as would be  
28 cause for revoking, suspending, or canceling a dealer license of  
29 that person as an individual.

30 Subp. 2. Acts of employee or agent. A dealer is  
31 responsible for an act of a person while that person is acting  
32 as an employee or agent of the dealer, if the dealer authorizes  
33 or ratifies the act or if the dealer retains the benefits of the  
34 act after actual knowledge of the act.

1 7400.1600 DEALER LICENSE REVOCATION.

2 Subpart 1. Grounds for revocation. Revocation is the  
3 long-term withdrawal of a dealer license under Minnesota  
4 Statutes, section 168.27, subdivision 12. The registrar shall  
5 revoke a dealer license when there is sufficient cause to  
6 believe that the dealer has been convicted of a crime, has been  
7 enjoined due to a violation, has committed an act, or has failed  
8 to perform a duty as follows:

9 A. The dealer is convicted of violating or is  
10 enjoined due to a violation of Minnesota Statutes, section  
11 325F.69.

12 B. The dealer is convicted of violating the Minnesota  
13 odometer law, Minnesota Statutes, section 325E.14, 325E.15, or  
14 325E.16, or the federal odometer law, United States Code, title  
15 15, sections 1981 to 1991, as amended through December 31, 1984.

16 C. The dealer is convicted of a gross misdemeanor or  
17 felony under Minnesota Statutes, section 609.53, for receiving  
18 or selling stolen vehicles or stolen parts.

19 D. The dealer is convicted of a felony related to the  
20 business of buying or selling motor vehicles or motor vehicle  
21 parts. If the felony conviction is from another jurisdiction,  
22 the registrar may not revoke unless the action or omission of  
23 the dealer would constitute a felony under Minnesota Statutes.

24 E. The dealer fails to pay the registrar all taxes,  
25 fees, and arrears due from the dealer within ten days after  
26 notice that the taxes or fees are required to be paid.

27 F. The dealer commits an act or fails to perform a  
28 duty that is grounds for suspension of a dealer license under  
29 part 7400.1700 and there are three suspensions under part  
30 7400.1700 on the dealer's record within the past five years.

31 G. The dealer violates a suspension imposed under  
32 part 7400.1700.

33 H. The dealer submits a fraudulent license  
34 application.

35 Subp. 2. Revocation period and effect. A dealer license  
36 is not valid after it is revoked. An owner, officer, or board

1 member of a revoked dealer may not be an owner, officer, or  
2 board member of another licensed dealer during the revocation.  
3 When a dealer license is revoked, the dealer shall immediately  
4 surrender the dealer license certificate, all dealer license  
5 plates, and all temporary vehicle permits. The length of  
6 revocation is as follows:

7           A. The registrar shall use this item to determine the  
8 length of a revocation if the revocation is based solely or in  
9 part on a conviction of crime or crimes as defined in Minnesota  
10 Statutes, section 364.02, subdivision 5. The revocation lasts  
11 until competent evidence is presented to the registrar that the  
12 person convicted has been sufficiently rehabilitated under the  
13 criteria of Minnesota Statutes, section 364.03, subdivision 3.

14           B. If the length of a revocation is not determined  
15 under item A, the length of revocation is one year.

16 7400.1700 DEALER LICENSE SUSPENSION.

17           Subpart 1. Grounds for suspension. Suspension is the  
18 short-term withdrawal of a dealer license under Minnesota  
19 Statutes, section 168.27, subdivision 12. The registrar shall  
20 suspend a dealer license when there is sufficient cause to  
21 believe that the dealer has been convicted of a crime, has  
22 committed an act, or has failed to perform a duty as follows:

23           A. The dealer willfully violates a provision of  
24 Minnesota Statutes, chapter 168, or this chapter that is not  
25 specifically set out in parts 7400.1600, 7400.1800, and  
26 7400.1900.

27           B. The dealer willfully violates or refuses to comply  
28 with a lawful request or order of the registrar.

29           C. The dealer is convicted of a gross misdemeanor  
30 related to the business of buying or selling motor vehicles or  
31 motor vehicle parts. If the gross misdemeanor conviction is  
32 from another jurisdiction, the registrar may not revoke unless  
33 the action or omission of the dealer would constitute a gross  
34 misdemeanor under Minnesota Statutes.

35           Subp. 2. Description of willfully. For purposes of this

1 part, the term "willfully":

2 A. describes an intentional act or omission by a  
3 dealer when the dealer knows or should reasonably know that the  
4 act or omission violates a law, rule, request, or order and the  
5 dealer is able to comply with the law, rule, request, or order;  
6 and

7 B. also describes an act or omission by a dealer,  
8 whether intentional or unintentional, when:

9 (1) the dealer uses a business practice that  
10 makes it likely that the act or omission will occur;

11 (2) the registrar has given written notice to the  
12 dealer within the past three years that the dealer license may  
13 be suspended or revoked if the business practice is not  
14 corrected;

15 (3) the dealer has failed to correct the business  
16 practice within a reasonable time after receiving the notice;  
17 and

18 (4) the dealer's failure to correct the business  
19 practice is a significant factor in causing the act or omission.

20 Subp. 3. Suspension period and effect. A dealer license  
21 is not valid during a suspension. When a dealer license is  
22 suspended, the dealer shall immediately surrender the dealer  
23 license certificate, all dealer license plates, and all  
24 temporary vehicle permits. After a suspension period ends, the  
25 registrar shall return the dealer license certificate, dealer  
26 license plates, and temporary vehicle permits. A suspension  
27 period ends after the last day of the period regardless of  
28 whether this day falls on a Saturday or legal holiday. The  
29 suspension period is as follows:

30 A. The suspension period is seven days, if there are  
31 no suspensions under subpart 1 on the dealer's record within the  
32 past five years. The suspension period may be shortened if  
33 mitigating circumstances indicate that a shorter suspension  
34 period is appropriate. The suspension period must be at least  
35 three days.

36 B. The suspension period is 14 days, if there is one

1 suspension under subpart 1 on the dealer's record within the  
2 past five years. The suspension period may be shortened if  
3 mitigating circumstances indicate that a shorter suspension  
4 period is appropriate. The suspension period must be at least  
5 seven days.

6 C. The suspension period is 28 days, if there are two  
7 suspensions under subpart 1 on the dealer's record within the  
8 past five years. The suspension period may be shortened if  
9 mitigating circumstances indicate that a shorter suspension  
10 period is appropriate. The suspension period must be at least  
11 14 days.

12 D. When a suspension period is shortened based on  
13 mitigating circumstances, the registrar shall in writing  
14 identify the mitigating circumstances and give the reason for  
15 shortening the suspension period.

16 E. The suspension of a dealer license is on the  
17 record of the suspended dealer. The suspension of a dealer  
18 license is also on the record of another dealer if an owner,  
19 officer, or board member of the other dealer was an owner,  
20 officer, or board member of the suspended dealer at the time of  
21 the acts leading to the suspension.

22 F. When a suspension is imposed for a continuing  
23 violation, the suspension must last until the suspension period  
24 determined under items A to E expires or until the violation is  
25 corrected, whichever is later.

26 7400.1800 DEALER LICENSE CANCELLATION.

27 Subpart 1. Grounds for cancellation. Cancellation is the  
28 withdrawal of a dealer license during the period of time the  
29 dealer does not meet all dealer license requirements. The  
30 registrar shall cancel a dealer license when there is sufficient  
31 cause to believe that the dealer does not meet a dealer license  
32 requirement as follows:

33 A. The dealer holds a new motor vehicle dealer, used  
34 motor vehicle dealer, vehicle salvage pool, motor vehicle  
35 lessor, motor vehicle wholesaler, or motor vehicle auctioneer

1 license and the dealer fails to have a surety bond as required  
2 by Minnesota Statutes, section 168.27, subdivision 24.

3 B. The dealer fails to provide or maintain the  
4 insurance required under Minnesota Statutes, chapter 65B.

5 C. The dealer pays its dealer license fee with a  
6 negotiable instrument that is not honored by the financial  
7 institution on which it is drawn.

8 D. The dealer's established place of business fails  
9 to meet the requirements of parts 7400.4000 to 7400.4300 and  
10 Minnesota Statutes, section 168.27, subdivision 10.

11 E. An owner, officer, or board member of the dealer  
12 is an owner, officer, or board member of another licensed dealer  
13 whose license is revoked. The registrar shall not cancel a  
14 license if the revocation period has elapsed.

15 F. A person is added as an owner, officer, or board  
16 member of the dealer and the person has been enjoined or  
17 convicted for a violation listed in Minnesota Statutes, section  
18 168.27, subdivision 11. If the dealer can show that the person  
19 has met the conditions of Minnesota Statutes, chapter 364, the  
20 registrar shall not cancel the license.

21 Subp. 2. Cancellation period and effect. A dealer license  
22 is not valid after it is canceled and before it is reinstated.  
23 When a dealer license is canceled, the dealer shall immediately  
24 surrender the dealer license certificate, all dealer license  
25 plates, and all temporary vehicle permits. The registrar shall  
26 reinstate the dealer license if the dealer, within 60 days of  
27 the license cancellation, corrects the problem that caused the  
28 registrar to cancel the license.

29 7400.1900 SALE OF MOTOR VEHICLES ON SUNDAY.

30 The registrar shall use Minnesota Statutes, section  
31 168.276, to revoke or suspend a dealer license for a violation  
32 of Minnesota Statutes, section 168.275. The registrar shall not  
33 use parts 7400.1600 and 7400.1700 to revoke or suspend a dealer  
34 license for a violation of Minnesota Statutes, section 168.275.

35 7400.2000 SALE OF VEHICLES AFTER DEALER LICENSE WITHDRAWAL.

1 Except as provided in this part, a dealer whose license has  
2 been revoked, canceled, or surrendered shall not do business as  
3 a motor vehicle dealer after the license is no longer valid.  
4 Upon a written request by a dealer whose license has been  
5 revoked, canceled, or surrendered, the registrar shall issue a  
6 permit to allow the dealer up to 30 days after the license is no  
7 longer valid to sell motor vehicles owned by the dealer,  
8 provided the conditions of items A to G are met. During the  
9 30-day period, the registrar shall immediately rescind the  
10 dealer's permit when there is sufficient cause to believe that  
11 the dealer has violated any of the conditions of items A to G.

12 A. The dealer agrees in writing to observe the  
13 conditions of items B to G and any special conditions imposed by  
14 the registrar, such as inspection of vehicles or other  
15 conditions imposed to protect the interests of the registrar or  
16 the public.

17 B. The dealer's written agreement includes a list of  
18 the motor vehicles that the dealer wishes to sell during the  
19 30-day period, including the vehicle identification number of  
20 each.

21 C. The dealer physically possesses the title  
22 certificate for each vehicle to be offered for sale and each  
23 title certificate is in the dealer's name or is properly  
24 assigned to the dealer.

25 D. Each vehicle to be offered for sale was owned by  
26 the dealer while the license was valid.

27 E. The vehicles are sold only to licensed dealers.

28 F. The dealer does not offer or sell motor vehicles  
29 held by the dealer for consignment sale.

30 G. The dealer does not buy vehicles or accept motor  
31 vehicle trade-ins.

32 DEALER LICENSE WITHDRAWAL PROCEDURES

33 7400.2200 WITHDRAWAL PROCEDURES; DEFINITIONS.

34 Subpart 1. Scope. The terms used in parts 7400.2200 to  
35 7400.3700 have the meanings given them in this part.

1 Subp. 2. Party. "Party" means each person named as a  
2 party by the registrar in the notice of and order for hearing.  
3 The term party includes the registrar and the registrar's  
4 employees and agents, except for the hearing examiner.

5 Subp. 3. Person. "Person" means an individual,  
6 partnership, corporation, limited liability company, joint stock  
7 company, unincorporated association or society, municipal  
8 corporation, or any government or governmental subdivision,  
9 unit, or agency other than a court of law.

10 Subp. 4. Service or serve. "Service" or "serve" means  
11 personal service or service by first class United States mail.  
12 An affidavit of service must be made by the person making the  
13 service. Personal service may be accomplished either by  
14 delivering a document to the dealer or by leaving a document  
15 with someone of suitable age and discretion at the address of  
16 the dealer as listed in the dealer records of the registrar.  
17 Service by mail must be addressed to the dealer at the address  
18 of the dealer as listed in the dealer records of the registrar.  
19 Service by mail is complete upon placing the item to be served  
20 in the mail with postage prepaid or depositing the item with the  
21 Central Mailing Section, Publications Division, Department of  
22 Administration.

23 7400.2300 HEARING; SERVICE OF NOTICE.

24 Subpart 1. Scope. This part governs whether a hearing  
25 must be held to revoke, suspend, or cancel a motor vehicle  
26 dealer license and, if so, when the notice of and order for  
27 hearing must be served.

28 Subp. 2. Summary cancellation. When the registrar has  
29 grounds for cancellation under part 7400.1800, subpart 1, item A  
30 or B, the registrar shall cancel the dealer license without a  
31 hearing.

32 Subp. 3. Summary revocation; request for hearing, notice.  
33 When the registrar has grounds for revocation under part  
34 7400.1600, subpart 1, item A, B, or C, the registrar shall  
35 immediately revoke the dealer license. If a hearing is

1 requested by the dealer within 15 days after the summary  
2 revocation, the registrar shall hold a hearing within 30 days  
3 after the summary revocation. If a hearing is requested by the  
4 dealer more than 15 days after the summary revocation, the  
5 registrar shall hold a hearing within 15 days after the request  
6 for hearing. The registrar shall serve a notice of and order  
7 for hearing on the dealer within a reasonable time before the  
8 hearing.

9 Subp. 4. Hearing and notice. Except as provided in  
10 subparts 2 and 3, the registrar shall conduct a hearing before  
11 revoking, suspending, or canceling a dealer license under parts  
12 7400.1600 to 7400.1800. The registrar shall serve a notice of  
13 and order for hearing on the dealer to commence the  
14 proceedings. The notice must be served not less than 30 days  
15 before the hearing if the notice is personally served and not  
16 less than 34 days before the hearing if the notice is served by  
17 mail. However, a shorter time may be allowed when it can be  
18 shown to the registrar that a shorter time is in the public  
19 interest and that interested persons are not likely to be  
20 prejudiced.

21 7400.2400 HEARINGS BEFORE HEARING EXAMINER.

22 Dealer license revocation, suspension, and cancellation  
23 hearings required to be conducted under part 7400.2300 must be  
24 conducted by a hearing examiner appointed by the registrar.

25 7400.2500 NOTICE OF AND ORDER FOR HEARING; CONTENT.

26 The notice of and order for hearing must contain, among  
27 other things, the following:

28 A. a caption that includes the proposed action and  
29 the name and dealer license number of the dealer;

30 B. the time, date, and place for the hearing;

31 C. the name, address, and telephone number of the  
32 hearing examiner;

33 D. a citation to the registrar's statutory authority  
34 to hold the hearing and take the action proposed;

35 E. a statement of the allegations or issues to be

1 determined together with a citation to the relevant statutes or  
2 rules allegedly violated or that control the outcome of the  
3 case, and the corrective action considered appropriate;

4 F. a statement that if corrective action is  
5 considered appropriate and corrective action is not taken, the  
6 dealer's license may be revoked, suspended, or canceled;

7 G. a statement that the registrar's proposed action  
8 may affect other motor vehicle dealer licenses in which the  
9 dealer or an owner, officer, or board member of the dealer is  
10 involved;

11 H. notification of the dealer's right of  
12 representation:

13 (1) personally;

14 (2) by an attorney; or

15 (3) by a person of the dealer's choice, if not  
16 otherwise prohibited as the unauthorized practice of law;

17 I. a citation to the procedural rules of the  
18 registrar in parts 7400.2200 to 7400.3700 and to the contested  
19 case provisions of Minnesota Statutes, chapter 14, and  
20 notification of how copies may be obtained;

21 J. a brief description of the procedure to be  
22 followed at the hearing;

23 K. a statement advising the dealer to bring to the  
24 hearing the documents, records, and witnesses needed to support  
25 the dealer's position;

26 L. a statement that subpoenas may be available to  
27 compel the attendance of witnesses or the production of  
28 documents, referring the dealer to Minnesota Statutes, section  
29 168.27, subdivision 13;

30 M. a statement advising the dealer of the name of the  
31 registrar's staff member or attorney general's staff member to  
32 contact to discuss informal disposition;

33 N. a statement advising the dealer that failure to  
34 appear at the hearing may result in the allegations of the  
35 notice of and order for hearing being taken as true, or the  
36 issues set out being deemed proved, and a statement that

1 explains the possible results of the allegations being taken as  
2 true or the issues proved; and

3 O. a statement advising the dealer that if not public  
4 data is admitted into evidence it may become public unless the  
5 dealer objects and asks for relief under Minnesota Statutes,  
6 section 14.60, subdivision 2.

7 7400.2600 RIGHT TO COUNSEL.

8 In a dealer license revocation, suspension, or  
9 cancellation, each party may be represented throughout the  
10 proceedings personally, by an attorney, or by a person of the  
11 party's choice if not otherwise prohibited as the unauthorized  
12 practice of law.

13 7400.2700 CONSENT ORDER, SETTLEMENT, OR STIPULATION.

14 Informal disposition may be made of a dealer license  
15 revocation, suspension, or cancellation or any issue by  
16 stipulation, agreed settlement, or consent order at any point in  
17 the proceedings.

18 7400.2800 DEFAULT.

19 The registrar or the hearing examiner may dispose of a  
20 dealer license revocation, suspension, or cancellation adverse  
21 to a dealer that defaults. Upon default, the allegations of or  
22 the issues set out in the notice of and order for hearing may be  
23 taken as true or deemed proved without further evidence. A  
24 default occurs when a dealer fails to appear at a hearing  
25 without the prior consent of the hearing examiner.

26 7400.2900 RIGHTS AND RESPONSIBILITIES OF PARTIES.

27 Parties have the right to present evidence, rebuttal  
28 testimony, and argument with respect to the issues, and to  
29 cross-examine witnesses. A party shall have all evidence that  
30 the party wishes to present at the hearing, both oral and  
31 written, available on the date for hearing.

32 7400.3000 WITNESSES AND TESTIMONY.

33 A party may be a witness and may present witnesses on the

1 party's behalf at the hearing. Oral testimony at the hearing  
2 must be under oath or affirmation. At the request of a party or  
3 upon the hearing examiner's own motion, the hearing examiner  
4 shall exclude witnesses from the hearing room so that they  
5 cannot hear the testimony of other witnesses.

6 7400.3100 BURDEN OF PROOF.

7 The party proposing that certain action be taken must prove  
8 the facts at issue by a preponderance of the evidence. A party  
9 asserting an affirmative defense has the burden of proving the  
10 existence of the defense by a preponderance of the evidence.

11 7400.3200 HEARING RECORD.

12 The hearing examiner shall maintain the official record in  
13 each dealer license revocation, suspension, or cancellation  
14 until issuance of the hearing examiner's final report, at which  
15 time the record must be certified to the registrar.

16 The record in a dealer license revocation, suspension, or  
17 cancellation must contain the evidence offered or considered;  
18 the documents, memoranda, or data submitted by any party in  
19 connection with the case; the audiomagnetic recording of the  
20 hearing; the transcript of the hearing, if one was prepared; and  
21 the hearing examiner's report.

22 7400.3300 HEARING EXAMINER'S CONDUCT.

23 The hearing examiner shall not communicate, directly or  
24 indirectly, in connection with an issue of fact or law with a  
25 person or party, including the registrar, concerning a pending  
26 case, except upon notice and opportunity for all parties to  
27 participate. The hearing examiner may respond to questions  
28 relating solely to procedures for the hearing without violating  
29 parts 7400.2200 to 7400.3700.

30 7400.3400 HEARING EXAMINER'S REPORT.

31 No factual information or evidence that is not a part of  
32 the record may be considered by the hearing examiner or the  
33 registrar in determining a dealer license revocation,  
34 suspension, or cancellation.

1 Following the close of the record, the hearing examiner  
2 shall report the findings of fact, conclusions, and a  
3 recommendation, taking notice of the degree to which the  
4 registrar has documented the statutory authority to take the  
5 proposed action and fulfilled the relevant substantive and  
6 procedural requirements of law or rule. Upon completion, the  
7 report must be delivered to the registrar who shall serve a copy  
8 of the report upon the parties.

9 7400.3500 TIMING OF REGISTRAR'S DECISION.

10 The registrar shall not make a final decision until at  
11 least ten days after service of the hearing examiner's report if  
12 the report was personally served or 14 days after service if the  
13 report was served by mail.

14 7400.3600 REGISTRAR'S DECISION; EFFECTIVE DATE.

15 In each dealer license revocation, suspension, and  
16 cancellation, the registrar shall render a written decision and  
17 order and serve the decision and order on all parties. Part  
18 7400.2200, subpart 4, notwithstanding, the registrar shall serve  
19 the decision and order in the manner provided by Minnesota  
20 Statutes, section 168.27, subdivision 13. Unless a later date  
21 is stated in the order, the order is effective upon service.

22 7400.3700 REGISTRAR'S DECISION; CONTENT.

23 The registrar's decision and order must contain, among  
24 other things, the following:

25 A. a caption that includes the proposed action and  
26 the name and dealer license number of the dealer;

27 B. findings of fact and conclusions on the material  
28 issues;

29 C. the action taken by the registrar; and

30 D. when the license has been revoked without a  
31 hearing, notice of any rights that the dealer may have to a  
32 postrevocation hearing.

33 ESTABLISHED PLACE OF BUSINESS

34 7400.4000 POOLS, USED PARTS DEALERS, AND SCRAP PROCESSORS.

1 Subpart 1. **Vehicle salvage pool.** A vehicle salvage pool  
2 licensee must have an established place of business, which must  
3 include as a minimum a commercial building owned or under lease  
4 by the licensee. The lease must be for a minimum term of one  
5 year. The building must contain office space where the books,  
6 records, and files necessary to conduct the business are kept  
7 and maintained with personnel available during normal business  
8 hours or automatic telephone answering service during normal  
9 business hours. Dealership business hours must be conspicuously  
10 posted on the place of doing business and readily viewable by  
11 the public. The licensee must have an area to display motor  
12 vehicles that is owned or under lease by the licensee. The  
13 display area may be either indoors or outdoors. The licensee  
14 must have a sign that clearly identifies the dealership by name  
15 and that is readily viewable by the public.

16 If a salvage pool maintains more than one place of doing  
17 business in a county, the separate places must be listed on the  
18 application. If additional places of business are maintained  
19 outside of one county, separate licenses must be obtained for  
20 each county.

21 Subp. 2. **Used parts dealer or scrap processor.** A used  
22 vehicle parts dealer or scrap metal processor licensee must have  
23 an established place of business, which must include as a  
24 minimum a street address where the books, records, and files  
25 necessary to conduct the business are kept and maintained and  
26 where there is available during normal business hours either  
27 personnel or an automatic telephone answering service.

28 If a used vehicle parts dealer or scrap metal processor  
29 maintains more than one permanent place of doing business,  
30 either in one or more counties, the separate places must be  
31 listed in the application, but only one used vehicle parts  
32 dealer or scrap metal processor license is required.

33 7400.4100 LOCATION.

34 Subpart 1. **Commercial building.** This subpart applies to a  
35 dealer licensed as a new motor vehicle dealer, a used motor

1 vehicle dealer, a motor vehicle auctioneer, or a vehicle salvage  
 2 pool. The dealer shall own or lease a commercial office space  
 3 that must be enclosed with floor to ceiling walls. The office  
 4 space must be for the exclusive use of the dealer. No person,  
 5 partnership, corporation, or limited liability company other  
 6 than the dealer may conduct business in the office space unless  
 7 the other business is in a separate office space enclosed with  
 8 floor to ceiling walls. The dealer may, however, conduct any  
 9 business in the office space, provided the dealer maintains  
 10 separate records for purchasing or selling motor vehicles or for  
 11 other motor vehicle transactions. The dealer shall maintain a  
 12 separate and identifiable doorway to the office space that leads  
 13 directly to the office space from the outdoors or from a public  
 14 area. The dealer may maintain other doorways to the office  
 15 space. If any of the other doorways leads from commercial or  
 16 residential space in the same building, there must be a door  
 17 that can be shut and locked to close off the entire doorway.  
 18 The dealer shall maintain an address that is separate from the  
 19 address of any other business or entity in the building.

20 Subp. 2. Commercial office space. This subpart applies to  
 21 a dealer licensed as a motor vehicle lessor or a motor vehicle  
 22 wholesaler. The dealer shall own or lease a commercial office  
 23 space that is enclosed with floor to ceiling walls. The office  
 24 space must be for the exclusive use of the dealer. No person,  
 25 partnership, corporation, or limited liability company other  
 26 than the dealer may conduct business in the office space unless  
 27 the other business is in a separate office space enclosed with  
 28 floor to ceiling walls. The dealer may, however, conduct any  
 29 business in the office space, provided the dealer maintains  
 30 separate records for purchasing or selling motor vehicles or for  
 31 other motor vehicle transactions. The dealer may have any  
 32 number of doorways to the dealership. If a doorway leads from  
 33 commercial or residential space in the same building, there must  
 34 be a door that can be shut and locked to close off the entire  
 35 doorway.

36 Subp. 3. Display area. This subpart applies to a dealer

1 licensed as a new motor vehicle dealer, a used motor vehicle  
2 dealer, or a vehicle salvage pool. The area for the display of  
3 motor vehicles offered for sale by the dealer must be at least  
4 large enough for the reasonable display of five of the vehicles  
5 the dealer is selling. The display area boundaries or markings  
6 must make it readily apparent that the dealer is separate and  
7 distinct from other businesses.

8       Subp. 4. **Additional location.** If a dealer has an  
9 additional location in a commercial building or commercial  
10 office space, the location must conform to all of the commercial  
11 building or commercial office space requirements that apply to  
12 the dealer's original location. If the dealer has an additional  
13 location that is outdoors or in a public area, the dealer shall  
14 own or lease the location and it must be readily apparent that  
15 the dealer is separate and distinct from other businesses.

16       Subp. 5. **Phase-in.** The registrar shall waive the location  
17 requirements in this part for a licensed dealer whose location  
18 met the registrar's requirements at the time it was approved by  
19 the registrar, but whose location does not meet the requirements  
20 contained in this chapter. The waiver ends two years after the  
21 effective date of this chapter. Until the waiver period ends,  
22 the location must meet either the requirements under which it  
23 was approved or the requirements of this part.

24 7400.4200 SIGNS.

25       Subpart 1. **Locations.** This subpart applies to a dealer  
26 licensed as a new motor vehicle dealer, a used motor vehicle  
27 dealer, or a vehicle salvage pool. There must be a sign clearly  
28 identifying the dealership by name at each location of the  
29 dealer. If the dealer's display area is not adjacent to the  
30 sign for the dealer's commercial building, the sign at the  
31 display area must also indicate where the commercial building is  
32 located. The sign must be in letters that contrast sharply in  
33 color with the background on which the letters are placed. If  
34 the sign is on a commercial building or a display area, it must  
35 be readily legible during daylight hours from the nearest road

1 or street. If the sign is on a commercial office space, the  
2 sign must be readily legible in the lighting commonly used in  
3 the area of the sign from the nearest access to the sign.

4 Subp. 2. **Vehicles.** This subpart applies to a dealer that  
5 acquires vehicles to dismantle or destroy. There must be a sign  
6 clearly identifying the dealer by name on each vehicle of the  
7 dealer used to transport another vehicle that the dealer has  
8 acquired to dismantle or destroy. The sign must appear on both  
9 sides of the vehicle while it is being used to transport a  
10 vehicle that will be dismantled or destroyed. The sign must be  
11 in letters that contrast sharply in color with the background on  
12 which the letters are placed and must be readily legible during  
13 daylight hours from a distance of 50 feet while the vehicle is  
14 stationary.

15 7400.4300 NORMAL BUSINESS HOURS.

16 Subpart 1. **Absence during normal business hours.** If a new  
17 motor vehicle dealer will not have personnel available during  
18 normal business hours or if any other dealer will not have  
19 personnel available or an automatic telephone answering service  
20 during normal business hours, the dealer shall notify the  
21 registrar. The dealer shall give notice so that it is received  
22 by the registrar at least seven days before the absence will  
23 occur, unless the reason for the absence is not known at that  
24 time, in which case, the dealer shall give notice as soon as  
25 reasonable. The dealer may notify the registrar in writing or  
26 by telephone. If the dealer notifies the registrar by  
27 telephone, the registrar shall give the dealer a verification  
28 number.

29 Subp. 2. **Records and location availability.** The  
30 limitations of this subpart apply only to routine dealer  
31 inspections conducted by dealer examiners of the Driver and  
32 Vehicle Services Division of the Department of Public Safety. A  
33 dealer shall make its records and location available to the  
34 registrar for inspection, upon the request of the registrar. If  
35 the request is made when personnel responsible for maintaining

1 the records and location are available to assist the registrar  
2 at a dealer's established place of business during business  
3 hours, the dealer shall make the records and location available  
4 for inspection at that time. If the request is made when  
5 personnel responsible for maintaining the records and location  
6 are not available to assist the registrar, the dealer shall  
7 inform the registrar and shall make arrangements to make the  
8 records and location available to the registrar within 30 days  
9 of the request. If the request is made by a written notice or  
10 by leaving a message with the automatic telephone answering  
11 service of the dealer, the dealer shall respond by contacting  
12 the registrar within 14 days of the request and shall make the  
13 records and location available for inspection by the registrar  
14 within 30 days of the request.

15 For nonroutine dealer inspections, a dealer shall make its  
16 records and location available for inspection upon request as  
17 required by Minnesota Statutes, section 168A.11, subdivision 3.  
18 Nonroutine inspections include inspections by:

- 19 A. a peace officer;  
20 B. a dealer examiner conducted to follow up on  
21 findings of noncompliance from a previous inspection; and  
22 C. a dealer examiner conducted in conjunction with an  
23 inspection by a peace officer.

24 VEHICLE TRANSACTIONS; RECORDS

25 7400.5000 ACQUIRING NEW MOTOR VEHICLE; DOCUMENTATION.

26 Subpart 1. Documentation required on file. For each new  
27 vehicle acquired and held for resale by a dealer, the dealer  
28 must have on file the originals or copies of the purchase  
29 agreement or dealer invoice and of the manufacturer's statement  
30 or certificate of origin.

31 Subp. 2. Purchase agreement or dealer invoice. The  
32 purchase agreement or dealer invoice must be maintained and made  
33 available for the registrar's inspection for three years after  
34 the vehicle is sold or otherwise disposed of by the dealer. The  
35 purchase agreement or dealer invoice must contain the following

1 information:

2 A. the name and address of the dealer and every  
3 seller;

4 B. a complete description of the vehicle, including  
5 the model year, make, model, body style, and vehicle  
6 identification number;

7 C. the date of acquisition; and

8 D. where applicable, signatures on behalf of the  
9 sellers and the dealer.

10 Subp. 3. **Manufacturer's statement or certificate of origin.**

11 The manufacturer's statement or certificate of origin must be  
12 maintained and made available for the registrar's inspection  
13 until the vehicle is sold or otherwise disposed of by the dealer.

14 7400.5100 ACQUIRING USED MOTOR VEHICLE; DOCUMENTATION.

15 Subpart 1. **Documentation required on file.** For each used  
16 vehicle acquired and held for resale by a dealer, the dealer  
17 must have on file the originals or copies of the purchase  
18 agreement, an odometer statement, the certificate of title, and,  
19 if the vehicle has a Minnesota certificate of title, a dealer  
20 purchase receipt as required by Minnesota Statutes, section  
21 168A.11.

22 Subp. 2. **Purchase agreement.** The purchase agreement must  
23 be maintained and made available for the registrar's inspection  
24 for three years after the vehicle is sold or otherwise disposed  
25 of by the dealer. The purchase agreement must contain the  
26 following information:

27 A. the name and address of the dealer and every  
28 seller;

29 B. a complete description of the vehicle, including  
30 the model year, make, model, body style, vehicle identification  
31 number, license plate number, and state of registration;

32 C. the date of acquisition; and

33 D. signatures on behalf of the sellers and the dealer.

34 Subp. 3. **Odometer statement.** The odometer statement must  
35 meet the requirements of chapter 7402, and Minnesota Statutes,

1 section 325E.15. The odometer statement must be maintained and  
2 made available for the registrar's inspection for three years  
3 after the vehicle is sold or otherwise disposed of by the dealer.

4 Subp. 4. Certificate of title. The dealer shall ensure  
5 that the certificate of title is properly assigned to the dealer  
6 and signed by all sellers. The original or a copy of the  
7 certificate of title must be maintained and made available for  
8 the registrar's inspection until the vehicle is sold or  
9 otherwise disposed of by the dealer.

10 Subp. 5. Dealer purchase receipt. The dealer purchase  
11 receipt must be maintained and made available for the  
12 registrar's inspection for three years after the vehicle is sold  
13 or otherwise disposed of by the dealer. The dealer purchase  
14 receipt must contain the following information:

15 A. the title number of the vehicle, when it is  
16 available, or the license plate number and state of  
17 registration, when the title number is not available;

18 B. a complete description of the vehicle, including  
19 the model year, make, model, body style, and vehicle  
20 identification number;

21 C. the names and street addresses of all sellers and,  
22 if applicable, the seller's dealer number;

23 D. the name, street address, and dealer number of the  
24 dealer submitting the dealer purchase receipt;

25 E. the date of acquisition; and

26 F. a signature on behalf of the dealer.

27 7400.5200 SELLING NEW OR USED MOTOR VEHICLE.

28 Subpart 1. Documentation required on file. For each  
29 vehicle sold by a dealer, the dealer must have on file copies of  
30 the sales agreement, an odometer statement, and, if the vehicle  
31 is sold to a Minnesota retail customer, evidence that taxes and  
32 fees have been collected from the customer and paid to the  
33 registrar and that an application for a Minnesota certificate of  
34 title has been completed and filed.

35 Subp 2. Sales agreement. The sales agreement must be

1 maintained and made available for the registrar's inspection for  
2 three years after the sale of the vehicle. For a sale to a  
3 licensed dealer, this information does not need to be on a  
4 document separate from the manufacturer's statement or  
5 certificate of origin or the certificate of title. The sales  
6 agreement must contain the following information:

7           A. the name and address of the dealer and every  
8 purchaser;

9           B. a complete description of the vehicle, including  
10 the model year, make, model, body style, vehicle identification  
11 number, and, if a used vehicle, the license plate number and  
12 state of registration;

13           C. if the vehicle is sold to a retail customer, the  
14 sale price of the vehicle;

15           D. the allowance for and the description of any  
16 trade-in;

17           E. an itemized list of all fees and taxes collected  
18 in connection with the vehicle transaction;

19           F. the date of sale; and

20           G. signatures on behalf of the purchasers and the  
21 dealer.

22           Subp. 3. Odometer statement. The odometer statement must  
23 meet the requirements of chapter 7402, and Minnesota Statutes,  
24 section 325E.15. The odometer statement must be maintained and  
25 made available for the registrar's inspection for three years  
26 after the sale of the vehicle.

27           Subp. 4. Taxes, fees, and title application. Except as  
28 provided in items A to D, the dealer shall complete a title and  
29 registration application and shall submit the application along  
30 with the excise and registration taxes and all applicable fees  
31 to the registrar within ten days of the sale of the vehicle.  
32 The dealer must have on file an itemized receipt showing a  
33 breakdown of the taxes and fees paid. The receipt must be  
34 stamped as paid by a deputy registrar. The receipt must be  
35 maintained and made available for the registrar's inspection for  
36 three years after the sale of the vehicle.

1           A. If the purchaser is not a Minnesota customer, the  
2 dealer is not required to complete an application or submit the  
3 application, taxes, and fees.

4           B. If the purchaser is eligible to pay a prorated tax  
5 and provides a prorate account number to the dealer, the dealer  
6 shall complete and file a title application, but the dealer is  
7 not required to collect and submit either the excise or  
8 registration tax.

9           C. If the vehicle is currently registered in  
10 Minnesota, the dealer is not required to collect and submit the  
11 registration tax.

12           D. If the vehicle must have an emissions inspection  
13 before registration, the dealer is not required to collect and  
14 submit the registration tax.

15 7400.5300 HOLDING VEHICLE FOR CONSIGNMENT SALE.

16           Subpart 1. Consignment agreement required; content. When  
17 a dealer has possession of a vehicle belonging to another person  
18 and the dealer is holding the vehicle for sale, the dealer must  
19 have on file an original or copy of a written consignment  
20 agreement. The dealer shall give one copy of the consignment  
21 agreement to each owner of the vehicle. The consignment  
22 agreement must be maintained by the dealer and made available  
23 for the registrar's inspection for three years after the vehicle  
24 is sold or otherwise disposed of by the dealer. The consignment  
25 agreement must contain the following information:

26           A. the beginning date and termination date of the  
27 agreement;

28           B. the full name, address, and phone number of each  
29 owner of the vehicle;

30           C. the full name, address, phone number, and dealer  
31 number of each dealer involved in the agreement;

32           D. a complete description of the vehicle, including  
33 the model year, make, model, body style, vehicle identification  
34 number, license plate number, and state of registration;

35           E. the vehicle odometer reading at the time the

1 agreement is signed, unless the vehicle is reported to the  
2 registrar under part 7400.5700;

3 F. the terms of the agreement, including the method  
4 of calculating the dealer's compensation;

5 G. a statement specifying which party is responsible  
6 for maintaining insurance on the vehicle in accordance with  
7 Minnesota Statutes, chapter 65B, during the time the dealer is  
8 holding the vehicle for sale;

9 H. the policy number and the name of the insurance  
10 company providing insurance on the vehicle;

11 I. signatures on behalf of each owner and the dealer;  
12 and

13 J. if the vehicle is returned to the owner, the date  
14 of return and a signature on behalf of each owner acknowledging  
15 the return.

16 Subp. 2. Multiple vehicles under one consignment  
17 agreement. A consignment agreement may cover multiple vehicles  
18 owned by the same person or persons and consigned to the same  
19 dealer. The description, odometer reading, and insurance  
20 information for each vehicle must be contained in the agreement  
21 or in an addendum to the agreement. An addendum to the  
22 agreement must clearly refer to the agreement and must be signed  
23 on behalf of each owner and on behalf of the dealer. The  
24 agreement and each addendum to the agreement must be maintained  
25 by the dealer and made available for the registrar's inspection  
26 for three years after the last vehicle covered by the agreement  
27 is sold or otherwise disposed of by the dealer.

28 Subp. 3. Selling junked vehicle. Before selling on  
29 consignment an unrepairable total loss vehicle with a junking  
30 certificate, a dealer licensed as a vehicle salvage pool or  
31 acting as an agent of an insurance company shall verify that the  
32 purchaser holds a used vehicle parts dealer license from  
33 Minnesota.

34 Subp. 4. Salvage vehicle sold on consignment. If a  
35 vehicle sold on consignment is subject to the requirements of  
36 Minnesota Statutes, section 168A.151, subdivision 1, a dealer

1 may not deliver the title to the buyer unless the title is a  
2 salvage certificate of title.

3 7400.5400 TEMPORARY VEHICLE PERMITS FOR BUYERS.

4 Subpart 1. Permits issued to dealers. A temporary vehicle  
5 permit is a permit issued under Minnesota Statutes, section  
6 168.091 or 168.092, to a purchaser of a motor vehicle. Permits  
7 may be distributed to a dealer for issuance to purchasers of  
8 motor vehicles from the dealer. When the dealer sells a motor  
9 vehicle, the dealer shall not issue more than one permit for the  
10 vehicle. When requested by the registrar, the dealer shall  
11 submit to the registrar the dealer's copy of a permit.

12 Subp. 2. Contents of permit. The dealer's copy of a  
13 temporary vehicle permit must be maintained and made available  
14 for the registrar's inspection until the copy is submitted to  
15 the registrar under subpart 1 or for three years, whichever  
16 comes first. The permit must contain the following information:

17 A. the issue date and the expiration date of the  
18 permit;

19 B. a description of the vehicle, including the model  
20 year, make, and vehicle identification number;

21 C. when applicable, the registered gross weight of  
22 the vehicle;

23 D. either the name and address or the Minnesota  
24 driver's license number of the purchaser;

25 E. the name of the insurance company with which the  
26 purchaser holds an automobile insurance policy conforming to  
27 Minnesota Statutes, chapter 65B, and either the policy number or  
28 a statement that the policy number has not yet been issued;

29 F. the name and dealer number of the dealer; and

30 G. for a resident permit, the address of the dealer  
31 and a signature on behalf of the dealer.

32 7400.5500 LEASING VEHICLES.

33 Subpart 1. Documentation required on file. For each  
34 Minnesota-registered vehicle leased by a dealer, the dealer must  
35 have on file copies of the purchase agreement or dealer invoice,

1 the certificate of title or the registration card, and all lease  
2 agreements transacted in Minnesota. For each leased vehicle  
3 with out-of-state registration, the dealer must have on file  
4 records indicating the state of title and registration, the date  
5 that a licensed location of the dealer took delivery of the  
6 vehicle in Minnesota, and copies of all lease agreements  
7 transacted in Minnesota. These documents must be maintained and  
8 made available for the registrar's inspection for three years  
9 after the vehicle is sold or otherwise disposed of by the dealer.

10 Subp. 2. Selling leased vehicle. For each leased vehicle  
11 that is subsequently sold by the dealer, the dealer shall meet  
12 the requirements of part 7400.5200.

13 7400.5600 ACQUIRING SALVAGE VEHICLE.

14 If a dealer acquires a damaged motor vehicle with an  
15 out-of-state title and the cost of repairs exceeds the value of  
16 the damaged vehicle, the dealer shall apply for a salvage  
17 certificate of title. If a dealer acquires a motor vehicle with  
18 an out-of-state salvage title or certificate as proof of  
19 ownership, the dealer shall apply for a salvage certificate of  
20 title. The dealer shall apply for the salvage certificate of  
21 title within 48 hours of receiving the out-of-state title. If  
22 the dealer sells the vehicle before the 48-hour period lapses,  
23 the dealer shall nevertheless apply for the salvage certificate  
24 of title and shall not deliver the out-of-state title to the  
25 buyer.

26 7400.5700 ACQUIRING VEHICLE TO DISMANTLE OR DESTROY.

27 Subpart 1. Older model vehicle. When a dealer buys an  
28 older model vehicle to be dismantled or destroyed, the dealer  
29 shall report to the registrar and shall surrender the  
30 certificate of title to the registrar. Completion of the title  
31 in the name of the seller is not required. The dealer shall  
32 complete the report and shall submit it to the registrar within  
33 30 days of taking delivery of the vehicle. A dealer's  
34 obligation to report the vehicle is met if the title has  
35 previously been surrendered to an appropriate titling authority.

1 Subp. 2. Late model or high value vehicle. When a dealer  
 2 buys a late model or high value vehicle to be dismantled or  
 3 destroyed, the dealer shall report to the registrar and shall  
 4 surrender the certificate of title to the registrar. The  
 5 "Assignment by Seller" portion of the title must be completed  
 6 and all security interests must be released. A dealer's  
 7 obligation to report the vehicle and surrender the title is met  
 8 if the title has previously been surrendered to an appropriate  
 9 titling authority.

10 A. This item applies to a dealer licensed as a used  
 11 vehicle parts dealer or a scrap metal processor, but not  
 12 licensed as any other type of dealer. Within ten days of taking  
 13 delivery of the vehicle, the dealer shall either complete the  
 14 report or have an authorization from the owner or insurer of the  
 15 vehicle. The dealer shall submit the report and the title to  
 16 the registrar within ten days of receiving the title.

17 B. This item applies to a dealer that is licensed as  
 18 a new motor vehicle dealer, used motor vehicle dealer, vehicle  
 19 salvage pool, motor vehicle lessor, motor vehicle wholesaler, or  
 20 motor vehicle auctioneer. Within 48 hours of taking delivery of  
 21 the vehicle, the dealer shall either complete the report as set  
 22 out in subpart 3 or meet all the requirements of part 7400.5100  
 23 for holding a vehicle for resale.

24 (1) If the dealer completes the report in subpart  
 25 3, the dealer shall submit the report and the title to the  
 26 registrar within ten days of receiving the title.

27 (2) If the dealer meets all the requirements of  
 28 part 7400.5100 for holding a vehicle for resale and later  
 29 decides to dismantle or destroy the vehicle, the dealer shall  
 30 complete a report and shall submit the report and the title to  
 31 the registrar within ten days of making the decision or within  
 32 ten days of receiving the title, whichever is later.

33 Subp. 3. Report. The dealer shall make the report on a  
 34 form created or approved by the registrar. A copy of the report  
 35 must be maintained and made available for the registrar's  
 36 inspection for three years after the decision to dismantle or

1 destroy the vehicle. The report must include the following  
2 information:

3 A. the dealer's name and dealer number;

4 B. a complete description of the vehicle, including  
5 the model year, make, model, body style, vehicle identification  
6 number, license plate number, and state of registration; and

7 C. the seller's name and driver's license number.

8 When the seller is a corporation, limited liability company, or  
9 partnership, the dealer shall include on the report the full  
10 name of the seller and of the person authorizing the sale in  
11 place of the seller's driver's license number. When the person  
12 selling the vehicle does not have a driver's license number  
13 available, the dealer shall include on the report the seller's  
14 full name and date of birth. When a dealer holds a vehicle for  
15 resale and later decides to dismantle or destroy the vehicle,  
16 the dealer may write "NOT AVAILABLE" in place of the seller's  
17 driver's license number. The registrar's acceptance of  
18 information on the report in place of the driver's license  
19 number is only for meeting the reporting requirements of  
20 subparts 1 and 2. The reporting does not serve to relieve the  
21 dealer of liability to the owner of the vehicle if the seller of  
22 the vehicle did not have authority to sell the vehicle.

23 Subp. 4. Title. A title acquired by the dealer must be  
24 maintained and made available for the registrar's inspection  
25 until the title is surrendered to the registrar.

26 7400.5800 SELLING SALVAGE VEHICLE TAKEN OUT OF STATE; REPORT.

27 When a dealer sells a salvage vehicle to a buyer who  
28 intends to remove the vehicle from the state, the dealer shall  
29 report to the registrar. The report must be on a form created  
30 or approved by the registrar. The report must be submitted to  
31 the registrar within ten days of the buyer receiving the title  
32 or of the buyer removing the vehicle from the state, whichever  
33 is earlier. A copy of the report must be maintained by the  
34 dealer and made available for the registrar's inspection for  
35 three years after the sale of the vehicle. The report must

1           Subp. 2. Use by prospective buyer. Under Minnesota  
2 Statutes, section 168.27, subdivision 16, clause (3), a dealer  
3 demonstration plate may be used for demonstration purposes by a  
4 prospective buyer of a motor vehicle. During the demonstration  
5 period, the vehicle may be used for private or business purposes  
6 by the prospective buyer.

7           Subp. 3. Improper use of dealer plate. The registrar  
8 shall immediately revoke a dealer demonstration plate or a  
9 dealer in-transit plate when the registrar has sufficient cause  
10 to believe that the plate was used on a vehicle other than as  
11 provided in subparts 1 and 2 or Minnesota Statutes, section  
12 168.27, subdivisions 16 and 17. When a dealer plate is revoked,  
13 the dealer shall surrender the plate to a peace officer or to  
14 the registrar at the time notice of revocation is delivered to  
15 the dealer. If a revoked dealer plate is not at the dealer's  
16 place of business when a notice of the revocation is served, the  
17 dealer shall surrender the plate to the registrar within 48  
18 hours after notice of the revocation is served. The vehicle on  
19 which the dealer plate was misused must be titled and registered  
20 within ten days of the revocation of the plate.

# Office of the Revisor of Statutes

## Administrative Rules

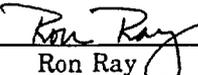


**TITLE:** Proposed Permanent Rules Relating to Motor Vehicle Dealers

**AGENCY:** Department of Public Safety

**MINNESOTA RULES:** Chapter 7400

The attached rules are approved for  
publication in the State Register

  
\_\_\_\_\_  
Ron Ray  
Senior Assistant Revisor

**STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY  
DRIVER AND VEHICLE SERVICES DIVISION**

**In The Matter Of The Proposed Rules  
Of The Department Of Public Safety  
Governing Motor Vehicle Dealers**

**STATEMENT OF NEED  
AND REASONABLENESS**

General Statement

Minnesota Statutes, section 168.27, sets out the statutory framework for the licensing and regulation of motor vehicle dealers. When motor vehicle dealers sell vehicles, they also collect tax and title information on behalf of the state. It is important that the proper amount of tax be collected and then remitted in a timely manner to the state because of the large amount of money that this entails. It is important that title information be correct to protect the integrity of the titles issued by the state. The purpose of licensing and regulating motor vehicle dealers is to ensure that these tasks are done properly.

The authority for administering section 168.27 resides in the Registrar of Motor Vehicles. Under Minnesota Statutes, section 168.33, the Commissioner of Public Safety is the Registrar. The actual administration of motor vehicle dealer licensing is done by the Driver and Vehicle Services Division of the Department of Public Safety.

Currently the Registrar administers motor vehicle dealer licensing solely by using the statutes. Over the years, the Registrar has recognized the need to clarify certain portions of the statutes, to set policy where the statutes allow or require this, and to set up a consistent framework for the administration of the laws related to motor vehicle dealers. This rulemaking addresses these needs.

The Registrar encouraged public participation in the rulemaking in a number of ways. A Notice of Solicitation of Outside Information or Opinions was published in the State Register September 22, 1986, inviting all interested persons to submit data or views on the development of the rules. Another Solicitation was published in the State Register July 16, 1990, also inviting data or views on the development of the rules. The Registrar also convened a task force to advise on the development of the rules. The task force met many times to discuss the issues regarding the rules. The last task force meeting was July 7, 1989. Since that time, task force members have been kept apprised of the development of the rules by mail and their comments and suggestions have been considered and, in many cases, incorporated into the proposed rules.

Task force members represented many of the constituencies that will be affected by the rules. New car dealers, used car dealers, motor vehicle rebuilders, motor vehicle recyclers, and associations representing these types of dealers were on the task force. Representatives from the State Patrol and from local law enforcement agencies were on the task force. Department staff members were also on the task force, including motor vehicle dealer examiners, support staff, and administrators. The task force members provided a broad perspective on the many issues and concerns that needed to be addressed and considered in the development of the rules.

During the development of the rules, there were also many meetings with interested parties, including several meetings with Legislators. The final draft of the proposed rules is the

product of a great deal of experience by the Registrar, by dealers, and by law enforcement. It is the intent of the Registrar that the rules fulfill statutory duties and meet the needs of the Registrar, while at the same time imposing as little burden on dealers as is necessary to accomplish this.

### Statutory Authority

The motor vehicle registrar has authority to administer Minnesota Statutes, section 168.27, otherwise known as the motor vehicle dealer law. Under section 168.33, subdivision 1, the commissioner of public safety is the registrar of motor vehicles. Neither mandatory nor discretionary rulemaking authority is granted under sections 168.27 and 168.33. However, the commissioner of public safety has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6, "to promulgate such rules pursuant to chapter 14, as are necessary to carry out the [duties of the commissioner]." The commissioner also has general rulemaking authority under section 14.06.

### Small Business Considerations

Minnesota Statutes, section 14.115, requires the Department of Public Safety to consider the effect on small businesses when it adopts rules. The rules will have a direct effect on small businesses engaged in the purchase and sale of motor vehicles.

Section 14.115, subdivision 2, states in part:

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

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

Specific methods for reducing the impact of the rules on small businesses have been extensively considered. During the development of the rules, drafts were circulated widely to dealer organizations and to dealers who were representative of many different types of dealers. We requested input on the rules in order to make them more workable for dealers. The Department received and considered many suggestions by dealers to reduce the impact of the rules on businesses. The Department incorporated as many of the suggestions as possible, consistent with the Department's statutory responsibilities to administer the dealer law, Minnesota Statutes, section 168.27, and titling and registration laws in Minnesota Statutes, chapters 168 and 168A.

The impact of the rules on small businesses has been reduced as follows:

- a. Less stringent requirements. In part 7400.0300, subpart 6, we require a copy of the dealer's franchise to sell new vehicles. As an alternative to a copy of the franchise, we allow the dealer to submit documentation of the franchise which reduces the burden of copying a huge franchise document. In part 7400.0300, subpart 7, we allow a tax ID statement as an alternative to the deed as proof of ownership of the dealer's business location. In part 7400.0400 and part 7400.0800, we grant temporary licenses and approve new locations based on the application rather than having to first inspect the location to verify compliance. This eliminates any delay in the dealer starting its business. For renewal applications, we require only one signature instead of signatures from all persons who control the dealership. Part 7400.5900 allows the use of new record keeping technology by dealers. This gives dealers more choices in how to meet record keeping requirements which allows dealers to find creative ways to reduce the burden of the rules.
- b. Less stringent schedules. Part 7400.4100, subpart 5, contains a phase-in period for a dealer's location requirements. This will allow dealers time to make any changes caused by the implementation of these rules. In part 7400.4300, subpart 2, we went to great lengths to reduce the burden of inspections on dealers to the absolute minimum that the Registrar needs to fulfill statutory duties. This will especially benefit one- or two-person dealerships that do not always have personnel on hand to assist a dealer examiner or to make records available for inspection immediately upon request.
- c. Consolidation or simplification of requirements. On a wholesale sale of a vehicle, part 7400.5200, subpart 2, allows the terms of the sales agreement to be contained on the manufacturer's certificate of origin or on the title; the sales agreement does not need to be a separate document. In part 7400.5300, subpart 2, multiple vehicles can be included under one consignment agreement. This means much less paperwork than if a separate agreement were required for each vehicle.
- d. Performance standards. The requirements for a commercial building and a commercial office space were studied and considered extensively in order to impose only the minimum requirements necessary to fulfill the Registrar's statutory duties. Many of the requirements were stated in performance standards rather than design specifications. The requirements for a dealer's display area were also stated in terms of performance standards. The requirements for a dealer's signs are stated in performance standards in terms of the size of the sign and the color and size of the letters. Under part 7400.5900, the permission to use new record keeping technologies is written using performance standards.
- e. Exemption. Under part 7400.4100, subpart 5, dealers are exempt from any new location requirements for two years, if their location was previously approved by the Registrar. Part 7400.5700, subpart 3, allows alternatives for statutory compliance where it is impossible or impractical to comply and where there are other means to ensure that the intent of the statutes is met.

#### Other Statutory Requirements

Minnesota Statutes, section 16A.128, subdivisions 1a and 2a, do not apply because the rules do not fix fees. Minnesota Statutes, section 14.11, subdivision 1, does not apply because

adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, 116.07, subdivision 6, and 144A.29, subdivision 4, do not apply to these rules.

### Witnesses

If these rules go to a public hearing, it is anticipated that the Department will call witnesses. If there will be a hearing, a supplemental Statement of Need and Reasonableness containing a list of witnesses and a summary of their testimony will be issued. The supplemental Statement of Need and Reasonableness will be sent to all persons who requested a copy of the original Statement of Need and Reasonableness.

### Rule-By-Rule Analysis

#### 7400.0100 DEFINITIONS.

Subpart 1. **Scope.** This subpart sets forth the scope of the definitions. The defined terms apply throughout this rules chapter, but do not apply to other rules promulgated by the registrar.

Subpart 2. **Automatic telephone answering service.** This subpart defines the term "automatic telephone answering service." This is necessary because the term is used in Minnesota Statutes, section 168.27, and in the rules and is not defined elsewhere. Section 168.27, subdivision 10, states that a new motor vehicle dealer must have "personnel available during normal business hours." The established place of business requirements for each of the other types of motor vehicle dealer state that the dealer must have "personnel available during normal business hours or automatic telephone answering service during normal business hours." The purpose of having personnel available or an automatic telephone answering service during business hours is so persons can make contact with the dealer. An answering service that merely gives a recorded message does not allow a person to make contact with the dealer. It is reasonable, therefore, that the answering service be capable of taking messages.

Subpart 3. **Board member.** This subpart defines the term "board member." The term is an abbreviated way of referring to the persons who govern a dealer that is a corporation or limited liability company.

Subpart 4. **Days.** This subpart defines how to calculate time periods measured in days. This is necessary because the rules set out many time periods measured in days. Minnesota Statutes, section 645.15, was used as a model for the wording of this definition.

Subpart 5. **Dealer.** This subpart adopts the definition of "dealer" from Minnesota Statutes, section 168.27, subdivision 1, clause (5).

Subpart 6. **Franchise.** This subpart adopts the definition of "franchise" from Minnesota Statutes, section 80E.03, subdivision 8.

Subpart 7. **High value vehicle.** This subpart defines the term "high value vehicle." This definition uses the definition from Minnesota Statutes, section 168A.01, subdivision 6a, but also uses the method of counting model years from Minnesota Statutes, section 325F.6644.

Subpart 8. **Late model vehicle.** This subpart defines the term "late model vehicle." This definition uses the definition from Minnesota Statutes, section 168A.01, subdivision 8a, but also uses the method of counting model years from Minnesota Statutes, section 325F.6644.

Subpart 9. **Motor vehicle.** This subpart adopts the definition of "motor vehicle" from Minnesota Statutes, section 168.27, subdivision 1, clause (13).

Subpart 10. **Motor vehicle transaction.** This subpart defines the term "motor vehicle transaction." This is necessary because the term is used in the rules, but is not defined elsewhere. The term is used to refer to transactions made by a licensed motor vehicle dealer. It is reasonable to use a definition that refers to transactions specifically authorized by statute to be conducted by a licensed dealer.

Subpart 11. **New motor vehicle.** This subpart adopts the definition of "new motor vehicle" from Minnesota Statutes, section 168.27, subdivision 1, clause (11).

Subpart 12. **Officer.** This subpart defines the term "officer." The term is an abbreviated way of referring to the persons who are charged with the important functions of management of a dealer that is a corporation or limited liability company.

Subpart 13. **Owner.** This subpart defines the term "owner." The term is an abbreviated way of referring to persons who exert significant control over a dealer by virtue of their ownership interests in the dealer. The term "owner" is defined so that it applies to persons with ownership interests in a sole proprietorship, partnership, corporation, or limited liability company.

The definition of owner includes shareholders of corporations and members of limited liability companies, but only if they hold a voting interest of five percent or more in the business. These business entities can theoretically have an unlimited number of persons holding ownership interests. It is necessary, as a practical matter, to limit the persons to whom this definition applies. Clearly, majority owners exert significant control over a business. Certain minority owners also exert significant control over a business. Five percent was chosen as the limit for several reasons. The Commissioner has regulated motor vehicle dealers for many years prior to the adoption of these rules and has used a five percent threshold as the basis for requiring a shareholder of a corporation to be listed on an application. This has been workable in the past and there appears to be no reason that this will not continue. A five percent limit is also used by the Department of Health to define "controlling person" in relation to the regulation of nursing homes and their owners. See Minnesota Statutes, section 144A.01, subdivision 4, paragraph (d).

Subpart 14. **Primarily engaged in the business of.** This subpart defines the term "primarily engaged in the business of." This term is used in Minnesota Statutes, section 168.27, subdivision 3b, to set out the criteria for requiring a person to be licensed as a used vehicle parts dealer. In the development of these rules, two possible interpretations of this term were considered. One interpretation would give the term the meaning "the most of." This interpretation would result in a contradiction. For example, a person with no other source of income would have to be licensed for buying one vehicle to be used for parts whereas someone else with a very large income from other sources would not have to be licensed even though buying hundreds of vehicles to be used for parts. We interpreted "primarily" so that it would not result in such a contradictory situation. The sense of "primarily" that eliminated the contradiction and that made the most sense is the sense of "primarily" that means "not incidentally." To define "primarily" using the sense of not incidentally and to be consistent with other licensing requirements, we used the threshold for requiring a dealer license set out in Minnesota Statutes, section 168.27, subdivision 8, which exempts persons from licensing if

they make not more than five motor vehicle transactions in a 12-month period.

**Subpart 15. Registrar.** This subpart defines the term "registrar." The registrar of motor vehicles has the authority to administer the laws and rules governing motor vehicle dealers under Minnesota Statutes, section 168.27. It is reasonable to include authorized agents of the registrar under the definition because the registrar is authorized under subdivision 15 of section 168.27 to employ persons to enforce the dealer laws and rules. The reference to the commissioner of public safety being the registrar is so that persons who have ready access only to the rules know the source of the commissioner's authority to act as the registrar.

**Subpart 16. Sale, sells, selling, purchase, purchased, or acquired.** This subpart adopts the definition of "sale, sells, selling, purchase, purchased, or acquired" from Minnesota Statutes, section 297B.01, subdivision 7.

**Subpart 17. Sufficient cause to believe.** This subpart adopts the definition of "sufficient cause to believe." This is necessary so that there is an objective standard for the grounds upon which the registrar will initiate proceedings to revoke, suspend, or cancel a motor vehicle dealer license under parts 7400.1600, 7400.1700, and 7400.1800, for the grounds upon which the registrar will deny a temporary motor vehicle dealer license under part 7400.0600, item F, and for the grounds upon which the registrar will revoke a dealer license plate under part 7400.6000, subpart 3. This standard is reasonable because it provides a reliable basis for the registrar's decisions to help ensure that the decisions are fair and correct. Further, this standard is reasonable because it is similar to the definition of this term used in parts 7503.0100 and 7510.5520 and other Public Safety rule parts.

**Subpart 18. Used motor vehicle.** This subpart adopts the definition of "used motor vehicle" from Minnesota Statutes, section 168.27, subdivision 1, clause (10).

**Subpart 19. Vehicle.** This subpart adopts the definition of "vehicle" from Minnesota Statutes, section 168A.01, subdivision 24.

#### **DEALER LICENSING. PARTS 7400.0200 TO 7400.1100**

**7400.0200 CONTENTS OF APPLICATION FOR DEALER LICENSE.** The form and contents of an application for a motor vehicle dealer license are governed by Minnesota Statutes, section 168.27, subdivision 9, which states:

"Application for such license and renewal thereof shall be made to the registrar of motor vehicles, shall be in writing, and duly verified by oath. The applicant shall submit such information as the registrar may require to administer this section, on blanks provided by the registrar for such purpose."

Part 7400.0200 requires that an initial application for a dealer license be on a form provided by the registrar. This is authorized by subdivision 9 where it states that the applicant's information shall be "on blanks provided by the registrar . . . ."

The items of part 7400.0200 list the information that must be on an initial application for a dealer license. These items of information are necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. It is reasonable to list these items under a single part so that applicants will readily know what must be on an initial application. Further, the registrar will have a clearly stated basis for determining whether an initial application is complete.

- A. Item A requires that the application contain the name of the applicant and each additional name that the applicant will use to conduct motor vehicle transactions. The registrar needs to know the identity of the applicant to investigate the fitness of the applicant and to issue the license in the name of the applicant. Further, the registrar needs to know the names dealers will use to conduct motor vehicle transactions so the registrar can monitor these transactions to be sure that persons are properly licensed.

Item A also requires that the application contain the street address of the applicant and each additional address that the applicant will use to conduct motor vehicle transactions. The registrar needs to know the address of the applicant to be able to send mail to the applicant. The registrar also needs to know all locations of the applicant so that the registrar can inspect the locations and verify that they meet statutory and rule requirements. It is, therefore, necessary that the applicant list all locations that will be used to sell motor vehicles.

Item A also requires that the application contain the telephone number of the applicant. This is necessary so the registrar can call the applicant about the many day-to-day matters that do not require the formality of a letter.

The information written on the application is under the control of the applicant. Including this information on the application will put little burden on the applicant. Item A is reasonable.

- B. Item B requires that the application indicate whether the applicant is an individual, partnership, corporation, or limited liability company. Item B also requires that the application list each owner, officer, and board member.

Minnesota Statutes, section 168.27, subdivision 11, directs the registrar to investigate the fitness of an applicant for a dealer license. An applicant may be unfit to hold a dealer license if the applicant has had a dealer license revoked or has a criminal record related to dealing in motor vehicles.

The fitness of an individual applicant is based on the licensure and the criminal history of that individual. The fitness of a business entity applicant is based on the licensure and criminal history of the persons who control the applicant. Owners, officers, and board members control business entities. It is reasonable that owners, officers, and board members be identified on the application.

- C. Item C requires that the application contain the full name, date of birth, and driver's license number of each person named on the application. Item C is necessary because the registrar needs to uniquely identify the persons listed on the application before investigating their fitness to hold a dealer license.

A person's name is the primary means used to identify that person. The registrar uses the birth date to differentiate between persons with the same name. Because a person is permitted to have only one driver's license, a license number will uniquely identify a person who uses variations of a name. The requirement of a driver's license number will also likely discourage the use of an alias to prevent the registrar from knowing an applicant's background.

The information required by item C is reasonable because it is readily available to the applicant and because it uniquely identifies each person named on the application.

Not everyone eligible to have a Minnesota motor vehicle dealer license holds a driver's

license. For this reason, item C permits the use of an identification card number (which uniquely identifies a person) in place of a driver's license number. If the driver's license or identification card was issued by another state or country, the application must list the name of the state or country. This allows the registrar to verify that the license or card is authentic.

- D. Item D requires that the application indicate the type of dealer license sought. The type of license affects the requirements that apply to a dealer. Item D is necessary so the registrar can properly verify that the applicant meets the requirements appropriate to the type of license applied for. Item D is also necessary so the registrar can issue the correct license to the applicant. It is reasonable to require the applicant to put this information on the application because the applicant is likely the only person who knows this information.
- E. Under item E, the application must contain the dealer licensure history of each person named on the application. In particular, the history must indicate whether a previous license application has been denied or whether a previous license has been suspended, canceled, or revoked.

A revocation of a previous dealer license may indicate that the applicant is unfit to be a dealer. It is necessary that the registrar know the applicant's dealer license history so the registrar can determine whether to issue or deny the license.

The registrar will review its records of revocations to see if any license applicant has previously been revoked. Members of the public will also occasionally give information to the registrar about an applicant. This will not, however, uncover most revocations from other states. It is also possible that a Minnesota revocation may be overlooked. An applicant's dealer licensure history is readily known to the applicant and can be put on the application with little burden to the applicant. It is reasonable to require dealer licensure history to be contained on the application.

- F. Under item F, the application must contain the criminal history of each person named on the application and an authorization for the registrar to conduct an investigation to verify this information. In particular, the history must list each crime or injunction for a violation listed in Minnesota Statutes, section 168.27, subdivision 11.

Violations listed in subdivision 11 may disqualify the applicant from being issued a dealer license. It is necessary that the registrar know the applicant's criminal history so the registrar can determine whether to issue or deny the license.

The registrar will review its records concerning past dealer history regarding criminal convictions. On occasion, the registrar will also receive information from the public concerning the criminal history of an applicant. This process will not uncover all Minnesota criminal violations or most criminal violations from other states. It is reasonable to require the applicant to disclose relevant criminal history because the applicant has first-hand knowledge of this criminal history. Also, this information can be included on the application with little burden to the applicant.

- G. Under item G, the application must verify that established place of business (location) requirements are met. Item G is necessary because the registrar must verify compliance with location requirements before issuing a dealer license.

After an application is submitted, the registrar inspects the applicant's location to verify compliance with location requirements. Item G approaches compliance from another

direction by ensuring that location requirements are met before an application is submitted.

The registrar includes a checklist of individual location requirements on the dealer license application. An application will be denied if it does not verify compliance with each of these requirements. Applicants know this. Because of this, it is unlikely that an application will be submitted before all location requirements are met.

The requirements of item G are reasonable because the information is readily available to the applicant. Also, these requirements are reasonable because they help the applicant submit an application that will likely be approved.

- H. Item H requires that the application give the name of the provider and the policy number of the applicant's motor vehicle insurance. Item H is necessary so the registrar can verify statutory compliance with insurance requirements. Item H is reasonable because this insurance information is controlled by the applicant and is readily available to the applicant.
- I. Item I requires that the application list the applicant's normal business hours. This is necessary so the registrar knows when the applicant can be contacted. The registrar must be able to contact a dealer because the registrar has the duty to inspect the dealer's location and records to verify compliance with statutory and rule requirements. It is reasonable to require that the applicant include this information on the application because the applicant controls when the dealership will be open.
- J. Each person named on the application must sign the application. The signatures indicate that the information on the application is true. The signatures must be notarized. These requirements are necessary because of Minnesota Statutes, section 168.27, subdivision 9, which says that the application must be "duly verified by oath." A signature witnessed by a notary is a common and reasonable way to verify a document by oath.

#### 7400.0300 ITEMS FILED WITH APPLICATION.

**Subpart 1. Requirement.** The subparts of part 7400.0300 set out the items that must be filed with an initial application for a dealer license. These items are necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. It is reasonable to list these items under a single part so that applicants will readily know what must be filed with an application. Further, the registrar will have a clearly stated basis for determining whether an application is complete.

**Subpart 2. Fees.** Subpart 2 requires that the statutory fees accompany the license application. It is necessary that the registrar collect the fees required by statute. It is reasonable to list this requirement with other license application requirements so that applicants will readily know what must be filed with an application.

**Subpart 3. Surety bond.** Subpart 3 requires that a surety bond accompany the application for a new, used, salvage, lessor, wholesaler, or auctioneer dealer license. No exceptions are made if the applicant also holds a used parts or a scrap metal processor license.

Minnesota Statutes, section 168.27, subdivision 24, requires all licensed motor vehicle dealers to have a surety bond. Subdivision 24 goes on to state, however, that it "does not apply to a used vehicle parts dealer or a scrap metal processor." This subpart is necessary because

subdivision 24 is silent on the bond requirements for a dealer that holds more than one dealer license.

A dealer is required to collect taxes, fees, and title and registration applications when selling a vehicle. The dealer must then submit the taxes, fees, and applications to the state. The purpose of a bond is to protect the state's interest in the taxes and fees and the buyers' interest in the correct transfer of title. The dealers required to have a bond are all licensed to sell motor vehicles. By contrast, a used parts dealer or scrap metal processor is not authorized to sell vehicles unless it also holds another dealer license. It is reasonable to require a bond of a dealer that sells vehicles, regardless of whether the dealer also holds a parts or scrap license, because the state's and buyers' interests still apply.

The last sentence of this subpart makes clear that a dealer does not need a bond if the dealer holds only a used parts dealer license or a scrap metal processor license. This sentence was included at the request of a task force member who felt that a clarification of this point was necessary.

**Subpart 4. Statement of zoning compliance.** Subpart 4 requires that a zoning compliance statement accompany the application for a new, used, salvage, lessor, wholesaler, or auctioneer dealer license. The statement must be from the local zoning authority where the applicant's commercial building or office space is located. The statement must verify that the building or office space complies with local zoning regulations.

Minnesota Statutes, section 168.27, subdivision 1, clause (6), states in pertinent part that a commercial building is "a permanent, enclosed building that . . . conforms to local government zoning requirements." Clause (7) defines commercial office space as "office space occupying all or part of a commercial building."

New, used, salvage, and auctioneer dealers are required to have a commercial building. Lessor and wholesaler dealers are required to have commercial office space. It is necessary, therefore, for the registrar to verify that new, used, salvage, lessor, wholesaler, or auctioneer dealers comply with local zoning regulations.

For any type of business, it makes good business sense to obtain zoning approval of a location before buying or leasing the location. Because of this, it is very likely that a dealer license applicant will verify compliance with local zoning regulations before submitting the license application. It places very little additional burden on the applicant to obtain this verification in writing. It would take a great deal more time and effort for the registrar to verify zoning compliance directly with local authorities. It is reasonable to require the applicant to provide a statement verifying compliance with zoning regulations.

The last sentence of this subpart makes clear that an applicant does not need to verify zoning compliance if the application is for a used parts dealer license or a scrap metal processor license. This sentence was included at the request of a task force member who felt that a clarification of this point was necessary.

**Subpart 5. Tax information.** Under subpart 5, the application must be accompanied by a completed tax information form.

Minnesota Statutes, section 270.72, states in part:

"Subdivision 1. **Tax clearance required.** The state . . . may not issue, transfer, or renew a license for the conduct of a profession, occupation, trade, or business, if the commissioner [of revenue] notifies the licensing authority that the applicant owes the

state delinquent taxes, penalties, or interest.

...

**Subd. 4. Licensing authority; duties.** All licensing authorities must require the applicant to provide the applicant's social security number and Minnesota business identification number on all license applications. Upon request of the commissioner [of revenue], the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant."

It is necessary that the registrar collect the tax information form because it is required by statute. It is reasonable to list this requirement with other license application requirements so that applicants will readily know what must be filed with an application.

**Subpart 6. Copy of contract of franchise.** Under subpart 6, an applicant for a new motor vehicle dealer license must submit a copy of or documentation of each contract or franchise that it has for selling new vehicles.

Minnesota Statutes, section 168.27, subdivision 10, clause (1)(b), requires a new motor vehicle dealer to have a contract or franchise with a manufacturer or distributor of new vehicles that the applicant proposes to sell. Section 168.27, subdivision 15, gives the registrar the responsibility to enforce section 168.27. It is necessary, therefore, for the registrar to verify that an new motor vehicle dealer license applicant has a contract or franchise.

The applicant has entered into many contracts or franchises with manufacturers or distributors of new vehicles. The applicant knows about these contracts or franchises and the registrar does not. It puts very little additional burden on the applicant to make copies of the contracts or franchises or to obtain documentation of the contracts or franchises and to submit this to the registrar. The requirement of subpart 6 is reasonable.

**Subpart 7. Proof of ownership of building.** Subpart 7 applies to the application for a new, used, salvage, lessor, wholesaler, or auctioneer dealer license. Under subpart 7, the applicant must submit proof that it owns or leases its commercial building or office space. The applicant may use a deed, tax identification statement, or similar document to prove ownership.

New, used, salvage, and auctioneer dealers are required to own or lease a commercial building. Lessor and wholesaler dealers are required to own or lease commercial office space. If the commercial building or office space is leased, the lease must be for a minimum of one year. See Minnesota Statutes, section 168.27, subdivision 10, and part 7400.4000, subpart 1.

Subpart 7 is necessary because the registrar has the duty to ensure that these dealers own or lease their commercial buildings or office spaces.

The applicant has access to documents that show the applicant owns or leases its commercial building or commercial office space. The registrar does not have access to these documents. The requirements of this subpart do not put a large burden on the applicant because easily accessible documents may be used to demonstrate compliance. If the applicant leases its building or office space, it is very likely that the applicant has a copy of the lease in its files. If the applicant owns its building or office space, it may have a copy of the deed on file. However, even if a copy of the deed were not on file, the applicant would very likely have a copy of its latest property tax statement. Subpart 7 is reasonable.

This subpart does not apply to used parts dealers and scrap metal processors because these dealers are not required to own or lease a commercial building or office space. The last sentence of this subpart makes this clear. This sentence was included at the request of a task force member who felt that a clarification of this point was necessary.

7400.0400 TEMPORARY DEALER LICENSE. Minnesota Statutes, section 168.27, subdivision 11, states in part:

"Upon the filing of an application for a license and the proper fee, the registrar is authorized, unless the application on its face appears to be invalid, to grant a 90-day temporary license and during said 90-day period shall investigate the fitness of the applicant, inspect the site and make such other investigation as is necessary to insure compliance with the licensing law. The registrar may extend the temporary license 30 days. At the end of the period of investigation the license shall either be granted or denied."

If an application is valid on its face, the registrar has discretion under subdivision 11 to grant or deny the temporary dealer license. It is necessary to set out how this discretion will be exercised.

Part 7400.0400 requires the registrar to grant a temporary dealer license unless there is a reason to deny the application. The registrar is required to make this determination based on the application and the items submitted with it. The accuracy or truthfulness of the application will not be verified before the temporary license is issued. (The reasons that may be used to deny a license are contained in part 7400.0600.)

It has been the registrar's experience that almost all of the information on applications is accurate. If the application indicates that the applicant meets all dealer requirements, the registrar can be reasonably secure in issuing a temporary license to the applicant. If it turns out that information is not accurate, the registrar can quickly remedy the situation during the temporary license period.

The alternative to relying on the accuracy of the application would be to verify all relevant information before issuing a license. This would delay the start of business for all first-time dealers. The registrar can point to no benefit to the state commensurate with the burden to an applicant of such a delay.

It is reasonable to require the registrar to grant or deny a temporary license based strictly on the application and the items submitted with it.

Part 7400.0400 states that the temporary license period is 90 days and that the registrar may extend the temporary license 30 days. These time periods are contained in Minnesota Statutes. It is reasonable to include these time periods with other requirements that govern the temporary license.

7400.0500 GRANTING DEALER LICENSE. Minnesota Statutes, section 168.27, subdivision 11, states in part that "at the end of the period of investigation the license shall either be granted or denied." The registrar must make a license decision at the end of the investigation. It is necessary to state the basis for the decision to grant or deny the license. It is also necessary to state when the decision will be made.

Part 7400.0500 requires the registrar to grant the license if there is no reason to deny the license. The reasons that may be used to deny a license are contained in part 7400.0600. Each of these reasons is discussed in detail under part 7400.0600 of this statement.

In general, the reasons in part 7400.0600 deal with fitness to be a dealer and initial license conditions. An applicant's fitness is based on dealer licensure and criminal histories and on the dealer's compliance during the temporary license period with the laws and rules governing dealers. The initial license conditions relate to having insurance and a bond, complying with place of doing business requirements, and not owing back taxes.

It is reasonable to make the decision to grant or deny a license based on fitness to be a dealer and initial license conditions. It is reasonable to limit the basis for denial to clearly and specifically stated reasons so that both the registrar and the applicant know the basis for making the decision.

Under part 7400.0500, the granting of a license takes place at the end of the temporary license period. The temporary license period is 90 or 120 days, depending on whether the registrar has extended the temporary license. The denial of a license takes place at the time the registrar determines there is a reason to deny. In other words, the registrar will deny a license immediately upon learning of a reason to deny, but will wait until the end of the temporary license period to grant a license.

As stated earlier, subdivision 11 requires a license decision "at the end of the period of investigation." If the registrar finds a reason to deny before the end of the temporary license period, there is no need to continue the period of investigation. For instance, if the applicant had a previous license revoked within the last six months, there would be no other facts that could be found during the temporary license period that could negate this finding. On the other hand, the fact that no reason has been found to deny a license during the first 30 days of the temporary license does not mean that no reason exists. As a practical matter, the period of investigation must end after a reasonable time. This "reasonable time" is the temporary license period, after which the license must be granted if no reason to deny is found. It is, therefore, reasonable to wait until the end of the temporary license period to grant a license, but to deny a license immediately upon finding a reason to deny.

Part 7400.0500 states that a denial does not preclude the registrar from pursuing revocation or suspension. A previous denial will not affect a person's ability to qualify for a dealer license in the future. If the violation that causes a denial is serious enough, the registrar will pursue revocation or suspension in addition to denying the license so that the violation goes on the dealer's record.

Part 7400.0500 also states that a temporary license expires at the time a license is denied. It is necessary to terminate the temporary license of a person who does not meet the requirements to be a dealer. It is reasonable to do this as soon as the registrar determines that there is a reason to deny the license.

**7400.0600 REASONS TO DENY DEALER LICENSE.** Part 7400.0600 lists the reasons for which the registrar must deny a dealer license. These items are necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. It is reasonable to list these items under a single part so that applicants will readily know the requirements that must be met to obtain a dealer license. Further, the registrar will have a clearly stated basis for determining whether to grant or deny a license.

- A. Item A requires the registrar to deny a license if the application and the items submitted with the application do not meet the requirements of parts 7400.0200 and 7400.0300.

Under Minnesota Statutes, section 168.27, subdivision 11, "the registrar is authorized, unless the application on its face appears to be invalid, to grant a 90-day temporary

license . . . ." This means that the registrar has no authority to grant a temporary license if the application does not meet requirements. It follows that the registrar also has no authority to grant a permanent dealer license if the application does not meet requirements.

The items submitted with the application are considered part of the application. If these items do not meet requirements, the registrar has no authority to grant a temporary or permanent dealer license.

Item A is necessary because the statutes require it. It is reasonable to list this requirement with other reasons to deny a license so that all parties will readily know the basis for denying a license.

- B. A dealer's license may be revoked under Minnesota Statutes, section 168.27, subdivision 12 (part 7400.1600 revocations), and section 168.276 (part 7400.1900 revocations), for certain violations of statutes or rules. Under part 7400.1600, subpart 2, a revoked dealer loses its license and may not hold another dealer license during the revocation period. This prohibition applies to owners, officers, and board members of the revoked dealer. These persons are prohibited from being an owner, officer, or board member of another dealer during the revocation period. This prohibition also applies to dealers revoked under part 7400.1900.

If a person is under revocation, it is necessary that the person not hold a dealer license during the revocation period.

Item B requires the registrar to deny a license if a person named on the application was an owner, officer, or board member of a dealer whose license was revoked. An applicant is not disqualified under item B, however, if the revocation period has elapsed. This ensures that a person who is under revocation does not hold a license during the revocation period. Item B is reasonable because it requires denial of a license only during the period of time that a person is ineligible to hold a dealer license.

Note that a person who is not under revocation will be denied a license under item B if another person named on the application is under revocation. This is reasonable because to grant the license would allow the person under revocation to escape the consequences of the revocation. Further, a denial will not impair the eligible person's chances of obtaining a license if the person applies again.

- C. It is necessary that a person not hold a dealer license if the person has committed serious crimes that indicate the person cannot be trusted to perform the duties and discharge the responsibilities of a motor vehicle dealer.

Minnesota Statutes, section 168.27, subdivision 11, states in part:

"The license must be denied if within the previous five years the applicant was enjoined due to a violation of section 325F.69 or convicted of violating section 325E.14, 325E.15, 325E.16, or 325F.69, or convicted under section 609.53 of receiving or selling stolen vehicles, or convicted of violating United States Code, title 15, sections 1981 to 1991, as amended through December 31, 1984."

Section 168.27, subdivision 11, must be read in conjunction with Minnesota Statutes, section 364.03, subdivision 1, which states in part:

"Notwithstanding any other provision of law to the contrary, no person shall . . . be

disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to . . . the occupation for which the license is sought."

Quite clearly, section 364.03, subdivision 1, controls the application of section 168.27, subdivision 11. The registrar cannot deny a license for a crime listed in section 168.27, subdivision 11, unless the crime directly relates to the occupation of motor vehicle dealer. The criteria to determine whether a crime relates to an occupation are contained in section 364.03, subdivision 2, which states in part:

"Subd. 2. In determining if a conviction directly relates to . . . the occupation for which the license is sought, the . . . licensing authority shall consider:

- (a) The nature and seriousness of the crime or crimes for which the individual was convicted;
- (b) The relationship of the crime or crimes to the purposes of regulating . . . the occupation for which the license is sought;
- (c) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the . . . occupation."

The crimes listed in section 168.27, subdivision 11, are serious crimes. Minnesota Statutes, section 325F.69, prohibits consumer fraud in sales schemes. Minnesota Statutes, sections 325E.14, 325E.15, and 325E.16, and U.S.C. title 15, sections 1981 to 1991, are referred to as the Minnesota and federal odometer laws. The Minnesota and federal odometer laws make it a gross misdemeanor to tamper with the odometer of a motor vehicle. Minnesota Statutes, section 609.53, makes it a felony to receive, possess, transfer, buy, or conceal stolen property valued at more than \$300.

The purpose of regulating motor vehicle dealers is related to the integrity of title documents and the collection of tax. When a dealer sells a vehicle, the dealer is required by Minnesota Statutes, section 168A.11, subdivision 1, to execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any secured party. Within ten days of the sale, the dealer is required to mail or deliver to the registrar the old certificate of title, the transferee's application for title, and the appropriate taxes and fees. Further, all dealers except used parts dealers and scrap processors are required to have a bond for the benefit of the state and any transferor, seller, or purchaser of a vehicle for monetary loss caused by failure to meet the obligations of a dealer.

The crimes listed in section 168.27, subdivision 11, clearly relate "to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities" of a dealer. Each crime involves an element of dishonesty or unreliability and gives a strong inference that the person cannot be trusted to comply with a dealer's statutory duties.

The crimes listed in section 168.27, subdivision 11, directly relate to the occupation of a motor vehicle dealer. Section 364.03 does not prohibit the registrar from denying a license to a person convicted of one of these crimes.

It is reasonable to deny a license to a person convicted of one of the serious crimes listed in section 168.27, subdivision 11.

A person with a clean record will be denied a license under item C if another person named on the application has been convicted of one of these crimes. This is reasonable

because to grant the license would allow the person who has committed a crime to escape the consequences of his or her act. Further, a denial will not impair the eligible person's chances of obtaining a license if the person applies again.

Minnesota Statutes, section 364.03, subdivision 3, states in part:

"Subd. 3. A person who has been convicted of a crime or crimes which directly relate . . . to the occupation for which a license is sought shall not be disqualified from the . . . occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of . . . the occupation for which the license is sought."

Section 364.03, subdivision 3 goes on to list the criteria for determining whether sufficient rehabilitation is established. Item C meets the requirements of section 364.03, subdivision 3, by stating that an "applicant shall not be disqualified from being licensed if the applicant can show that the person is sufficiently rehabilitated under the criteria of Minnesota Statutes, chapter 364." It is necessary to allow a person to show evidence of sufficient rehabilitation because it is required by statute. It is reasonable to include this in the rules governing denial of a license so that applicants and the registrar can easily know the bases for denial.

- D. It is necessary that a dealer meet rule and statutory requirements. Item D requires the registrar to deny a license if the applicant's established place of business does not meet the requirements of Minnesota Statutes, section 168.27, subdivision 10, and parts 7400.4000 to 7400.4300.

The established place of business requirements relate to a dealer's location, building, sign, place for storing records, and additional locations. During the temporary license period, the registrar is authorized by Minnesota Statutes, section 168.27, subdivision 11, to "inspect the site and make such other investigation as is necessary to insure compliance with the licensing law." The purpose of inspecting the site is to verify that established place of business requirements are met. It is clearly appropriate that these requirements be initial conditions for obtaining a license. It is reasonable to deny a license if the applicant does not meet established place of business requirements.

- E. Item E requires the registrar to deny a license if the commissioner of revenue notifies the registrar that the applicant owes the state delinquent taxes, penalties, or interest.

Minnesota Statutes, section 270.72, subdivision 1, states in part:

"The state . . . may not issue, transfer, or renew a license for the conduct of a profession, occupation, trade, or business, if the commissioner [of revenue] notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest."

This requirement is necessary because it is required by statute. It is reasonable to have this item in the rules so that a complete list of reasons for denial of a dealer license is contained in the rules.

- F. Item F requires the registrar to deny a license if the registrar has sufficient cause to believe that the applicant, while holding a temporary dealer license, has committed a violation that is grounds for license withdrawal.

Under Minnesota Statutes, section 168.27, subdivision 11, the temporary license period

is a time for the registrar to "investigate the fitness of the applicant, inspect the site and make such other investigation as is necessary to insure compliance with the licensing law." If the applicant commits a violation serious enough to warrant revocation or suspension, it is certainly reasonable to deny the license. Likewise, it is reasonable to deny the license if the applicant does not meet the location or other requirements necessary to have a license.

The applicant is protected from arbitrary actions of the registrar because the registrar must have sufficient cause to believe there is a violation. This ensures that the registrar is acting on reliable evidence and that the evidence makes it more likely than not that the violation has occurred.

- G. Item G requires the registrar to deny a license if the registrar is unable to verify the applicant's compliance with location and record keeping requirements because the applicant has not given the registrar adequate access to the applicant's location or records.

Under Minnesota Statutes, section 168.27, subdivision 11, the registrar has to use the temporary license period to "investigate the fitness of the applicant, inspect the site and make such other investigation as is necessary to insure compliance with the licensing law." Without inspecting the applicant's location and records, the registrar will be unable to determine whether the applicant is fit or is complying with the licensing law. If the applicant's lack of cooperation prevents the registrar from inspecting the applicant's location and records, it is reasonable to deny the license.

In order to deny based on this item, the registrar must make a request under part 7400.4300, subpart 2, to inspect the applicant's location and records. This ensures that the applicant receives adequate notice of the registrar's request and that the applicant has a reasonable amount of time to respond.

#### 7400.0700 DEALER LICENSE RENEWAL.

**Subpart 1. Expiration of dealer licenses.** Subpart 1 states that a dealer license expires at midnight on December 31 of each year. Subpart 1 also states that a dealer license is valid upon renewal for the next calendar year.

Minnesota Statutes, section 168.27, subdivision 11, governs the application for a dealer license. Subdivision 11 states, "If the application is approved, the registrar shall license the applicant as a motor vehicle dealer for the remainder of the calendar year . . . ." This directive does not differentiate between an initial application and a renewal application. A dealer license expires at the end of the calendar year because that is the term of the license under subdivision 11. For the same reason, a license that has been renewed is valid for the next calendar year.

The first two sentences of subpart 1 are necessary because they are required by statute. These requirements were included in the rules so that they are clear to dealers and so that all requirements regarding the expiration of dealer licenses can be read together.

Subdivision 11 indicates that a dealer license is issued and is renewable on a calendar year basis. Subdivision 11 is silent, however, on how the term of the dealer license applies to a temporary dealer license. It is, therefore, necessary to state whether a temporary license expires at the end of the calendar year.

Under subpart 1, a temporary dealer license expires at midnight on December 31 of each

year, the same as other dealer licenses. Subpart 1 states that a temporary dealer license is valid upon renewal for the remainder of the calendar year.

The basis for applying the calendar year to temporary licenses comes from subdivision 11 where it states:

"Each initial application for a license shall be accompanied by a fee of \$50 in addition to the annual fee. The annual fee shall be \$100. . . . If the initial application is received by the registrar after July 1 of any year, the first annual fee shall be reduced by one-half."

Subpart 1 would affect temporary license holders who apply during the last 90 days of the calendar year. It could be argued that a temporary license holder would not have to renew its temporary license at the end of the year since subdivision 11 is silent on this issue. This interpretation would result in a late-year applicant being licensed for more than one year while paying only one-half of the annual fee in addition to the initial fee. By contrast, an applicant who applied early in the next calendar year would be licensed for less than one year, but would pay the full annual fee in addition to the initial fee. The legislature could not have intended this interpretation. It is reasonable to require a temporary license holder to renew the temporary license at the end of the calendar year.

**Subpart 2. Renewal application.** The form and contents of an application for a motor vehicle dealer license are governed by Minnesota Statutes, section 168.27, subdivision 9, which states:

"Application for such license and renewal thereof shall be made to the registrar of motor vehicles, shall be in writing, and duly verified by oath. The applicant shall submit such information as the registrar may require to administer this section, on blanks provided by the registrar for such purpose."

Subpart 2 requires that a renewal application for a dealer license be on a form provided by the registrar. This is authorized by subdivision 9 where it states that the applicant's information shall be "on blanks provided by the registrar . . . ."

The items of subpart 2 list the information that must be on a renewal application for a dealer license. These items of information are necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. It is reasonable to list these items under a single subpart so that applicants will readily know what must be on a renewal application. Further, the registrar will have a clearly stated basis for determining whether a renewal application is complete.

- A. It is necessary for the registrar to know the identity of an applicant to be able to process the renewal application. Item A requires that the renewal application contain the dealer name and dealer number of the applicant. When the registrar grants a dealer license, the registrar issues an identifying number to the dealer. The registrar uses this number as its most common means of organizing records concerning the dealer. The dealer name is the most common means of identifying the dealer. It is reasonable to require the dealer to put the dealer name and dealer number on the renewal application.
- B. As discussed earlier, the information required by parts 7400.0200 and 7400.0300 is necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. Part 7400.0800 requires a dealer to notify the registrar when any of this information changes. It follows that it is necessary to the administration of section 168.27, that this information be kept current.

Item B requires that information given to the registrar under parts 7400.0200, 7400.0300,

and 7400.0800 be verified by the dealer on the renewal application.

The dealer is the only one in a position to easily know whether this information is current. It would put very little burden on the dealer to review this information annually. Further, it would also serve as a regular reminder to the dealer of the importance of notifying the registrar of changes in this information. Requiring the dealer to verify the accuracy of this information at the time of renewal is a reasonable way to meet the need of keeping this information current.

- C. Under item C, one person named on the application must sign the application. The signature must be notarized. This requirement is necessary because Minnesota Statutes, section 168.27, subdivision 9, states that the application must be "duly verified by oath." A signature witnessed by a notary is a common and reasonable way to verify a document by oath.

The requirement to have one person sign the renewal application is different from the requirement for an initial application in which each person named on the application must sign. By signing the initial application, each person verifies that the information is accurate and truthful. This provides proof that the person exists and that the person swears to the truthfulness of the information on the application. Further, each person is the best one to attest to the accuracy of his or her own name and driver's license number. After the initial application, a single signature is adequate to attest to the accuracy of the information contained on the renewal form. Further, requiring only one person to sign reduces the burden on small businesses which are owned by more than one person.

**Subpart 3. Renewing dealer license; reasons for denial.** A dealer may renew its license by submitting a completed renewal application to the registrar. The deadline for this is December 31 of each year, which coincides with the date the license expires.

Subpart 3 states that a dealer must submit a completed renewal application and the license and filing fees required by statute in order to renew a dealer license. These requirements are necessary because they are required by statute. These requirements are included in the rules so that all requirements regarding the renewal of a dealer license are contained together in the rules.

It is necessary to state the basis for the decision to renew or not renew a dealer license. Subpart 3 states that the registrar shall renew the dealer license unless there is a reason to deny. The items of subpart 3 list the reasons for which the registrar may deny the renewal. Each of these reasons is discussed in detail in the next paragraphs of this statement. It is reasonable to limit the basis for granting or denying a renewal to clearly and specifically stated reasons so that both the registrar and the applicant know the basis for making the decision.

- A. The registrar needs the information on the application to administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. Item A requires the registrar to deny a renewal if the application does not meet the requirements of subpart 2. The registrar really has no choice but to deny on this basis because the registrar would be unable to properly administer dealer licensing without the information on the renewal application. It is reasonable to include this in the rules with other reasons to deny a renewal.
- B. Item B requires that a renewal be denied if the license and filing fees required by statute are not paid. These fees are necessary because they are required by statute. Without

the fees, the application is invalid on its face. It is reasonable to include this in the rules with other reasons to deny a renewal.

- C. Item C requires the registrar to deny a renewal if the applicant's dealer license has been canceled or revoked. It is necessary to have a dealer license in order to renew a dealer license. Under part 7400.1600, subpart 2, a revoked dealer license is no longer valid. The same is true for a dealer license revoked under part 7400.1900. Under part 7400.1800, subpart 2, a canceled dealer license is no longer valid. You cannot renew what you do not have. If a person does not hold a dealer license, it is reasonable to deny a renewal application by that person.
- D. Item D requires the registrar to deny a renewal if the commissioner of revenue notifies the registrar that the applicant owes the state delinquent taxes, penalties, or interest.

Minnesota Statutes, section 270.72, subdivision 1, states in part:

"The state . . . may not issue, transfer, or renew a license for the conduct of a profession, occupation, trade, or business, if the commissioner [of revenue] notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest."

This requirement is necessary because it is required by statute. It is reasonable to include this in the rules with other reasons to deny a renewal.

**Subpart 4. Application after lapse.** Every year, there are some dealers who want to renew their licenses, but who fail to do so before the deadline. Human nature makes it likely that this will happen every year.

Under subpart 1, a dealer license expires at midnight on December 31. If the license has not been renewed by this time, it is no longer valid. You cannot renew what you do not have. If the person wants to again be licensed as a dealer, the person must apply for the license.

If it is within 60 days of the time a dealer license has lapsed, subpart 4 allows the former dealer to use the renewal procedures to obtain another license. This provides the former dealer an alternative to using an application for an initial dealer license. Since the renewal procedures are easier to comply with than the initial application procedures, this reduces the impact of the rules on dealers who fail to renew before the deadline. This reduces the impact of the rules on dealers who are small business because it reduces the impact of the rules on all dealers. This also reduces the workload of the registrar because the process of investigation and inspection is much more involved for initial applicants than for renewal applicants.

Under Minnesota Statutes, section 168.27, subdivision 9, an "applicant shall submit such information as the registrar may require to administer this section . . . ." The information that the registrar has on a former dealer is the information that the registrar needs to administer section 168.27. The renewal application requires the applicant to verify that this information is accurate as of the date of application. It is reasonable to accept a renewal application from a former dealer because it meets the registrar's needs.

Minnesota Statutes, section 168.27, subdivision 11, governs the granting of initial dealer licenses. After an initial application is filed, the registrar is authorized under subdivision 11 to "investigate the fitness of the applicant, inspect the site and make such other investigation as is necessary to insure compliance with the licensing law."

Since the applicant is a former dealer, the registrar has already investigated the fitness of the

applicant. The registrar has also conducted regular inspections of the applicant's location to ensure compliance with the licensing law. If it is within a short time after a license has lapsed, the registrar can rely on past investigations and inspections. Sixty days is a reasonable period of time to allow a late renewal application because it is sufficient for late renewing dealers to apply and yet it is not so long that information from past investigations and inspections has become unreliable.

Subpart 4 states that a former dealer who obtains a license using the renewal procedures must pay both the initial application fee and the annual fee. An application under subpart 4 is an initial application even though the renewal procedures are allowed to be used. It is necessary to collect both the initial and annual fees on an initial application because it is required by statute. It is reasonable to include this requirement in the rules so that all requirements regarding application after lapse are contained together in the rules.

Subpart 4 states that a person loses all dealer privileges after the expiration of a license and before a new license is granted. A person who does not have a dealer license does not receive the privileges accorded by statute to licensed dealers. It is necessary to state that privileges are lost during a period that a license has lapsed so that it is clear that relicensing does not retroactively restore dealer privileges during the lapse. It is reasonable to state this in the rules so it is clearly understood by and readily available to dealers whose licenses may lapse.

**Subpart 5. Requirements when license not renewed.** Subpart 5 requires that the dealer license certificate, all dealer license plates, and all temporary vehicle permits be returned to the registrar when a dealer license expires without being renewed.

The dealer license certificate and dealer license plates are issued to licensed dealers under Minnesota Statutes, section 168.27. Temporary vehicle permits are issued to licensed dealers under Minnesota Statutes, sections 168.091 and 168.092. It is necessary to be a licensed dealer to use these items. These items are valuable and would deprive the state of taxes if they were used by a person who did not hold a dealer license. It is reasonable to require a former dealer to surrender these items to the registrar when a license expires.

#### 7400.0800 CHANGE IN DEALER LICENSE CONDITIONS.

**Subpart 1. Notice of change.** Information in an initial dealer license application relates to whether the applicant meets all dealer license requirements. The registrar needs this information to administer dealer licensing under Minnesota Statutes, section 168.27. When any of this information changes, it is necessary for the registrar to know of the change so the registrar can verify that the dealer continues to meet all dealer license requirements.

Subpart 1 requires a dealer to notify the registrar of any change in dealer information. Dealer information is described as information or items submitted with the dealer's initial license application, as updated by any notices of change. A dealer knows its business and a change to the business better than anyone else. It is easy for the dealer to notify the registrar of a change. If the dealer would not notify the registrar of a change, it would be difficult for the registrar to know of the change on a timely basis. It is reasonable to require the dealer to notify the registrar of changes to the dealer's business.

**Subpart 2. Form of notice.** A notice of change in dealer information is an amendment to the dealer license application. For this reason it is treated as an application by the registrar. The form and contents of an application for a motor vehicle dealer license are governed by Minnesota Statutes, section 168.27, subdivision 9, which states:

"Application for such license and renewal thereof shall be made to the registrar of motor

vehicles, shall be in writing, and duly verified by oath. The applicant shall submit such information as the registrar may require to administer this section, on blanks provided by the registrar for such purpose."

Subpart 2 requires that a notice of change be on a form provided by the registrar. This is authorized by subdivision 9 where it states that an application shall be "on blanks provided by the registrar . . . ."

The items of subpart 2 list the conditions that must be met for a notice of change. These conditions are necessary so the registrar can administer motor vehicle dealer licensing under Minnesota Statutes, section 168.27. It is reasonable to list these conditions under a single subpart so that dealers will readily know what must be on a notice of change. Further, the registrar will have a clearly stated basis for determining whether a notice of change is complete.

- A. Item A requires that the notice of change indicate dealer information that has changed. Item A also applies when there has been a change in any amendments to the initial license information. Under subpart 1, a dealer must notify the registrar when there are changes in dealer information, including initial license information. Item A is necessary because it is required by subpart 1. It is reasonable to include item A in the rules so that all requirements for a notice of change are contained together.
- B. Item B requires that the notice of change contain initial license items that have changed. Item B also applies when there has been a change in any amendments to initial license items. Under subpart 1, a dealer must notify the registrar when there are changes in dealer information, including initial license items. Item B is necessary because it is required by subpart 1. It is reasonable to include item B in the rules so that all requirements for a notice of change are contained together.
- C. Under item C, one of the owners, officers, or board members must sign the notice of change, verifying that the information on the notice is true. The signature must be notarized. This requirement is necessary because Minnesota Statutes, section 168.27, subdivision 9, states that an application must be "duly verified by oath." A signature witnessed by a notary is a common and reasonable way to verify a document by oath.

The requirement to have only one person sign a notice of change is the same as the signature requirement for a renewal application. Note that this is different from the requirement for an initial application in which each person named on the application must sign. See the discussion under part 7400.0700, subpart 2, item C for the reasons why one signature is sufficient on a renewal application after the initial application.

- D. Item D requires that the notice be signed by any person being removed as an owner, officer, or board member, verifying that the person has been removed. The signature must be notarized. If it is not possible for the person to sign, then the notice of change must contain the reason.

The registrar has encountered instances where a person has been removed as an owner, officer, or board member without that person's knowledge. This can cause problems if the person continues to take advantage of dealer privileges. It is necessary to require this person to sign the notice of change to make sure that this person is aware of being removed.

In most instances, the person removed will be able and willing to sign the notice of change. If the person has passed away, or is disabled or unavailable, the dealer can

meet the requirements of this item by writing the reason on the notice of change. In either case, the dealer can comply with item D with very little burden. Item D is, therefore, reasonable.

**Subpart 3. Timing of notice.** Subpart 3 requires a dealer to submit a notice of change so that it is received by the registrar before the change occurs. Prior notice is preferred because a change that affects whether the dealer meets all dealer requirements can be addressed by the registrar before any problems occur. It is reasonable to require notice before a change in dealer information because the timing of the notice imposes little if any burden on the dealer in addition to that of giving the notice. An exception to the prior notice requirement is made if it is impossible to give prior notice. In this case, notice must be given as soon as is reasonable. The required timing of this notice is reasonable by definition.

The last sentence of subpart 3 prohibits a dealer from conducting dealer business at a new location until the registrar approves the location. If a dealer adds a new location, this is clearly the type of change that is done with a great deal of planning and for which there would be no reason that would make it impossible to notify the registrar in advance.

**Subpart 4. Approval of location.** Since the use of a location to conduct business hinges on the registrar's approval, it is necessary to state the basis for the registrar's decision. Under subpart 4, the registrar must approve a location if it meets the established place of business requirements of Minnesota Statutes, section 168.27, subdivision 10, and parts 7400.4000 to 7400.4300. This is the same criteria that a location must meet under an initial license application. The reasonableness of the criteria for approving a location under an initial license is discussed under part 7400.0600, item D. It is reasonable for the registrar to be consistent in the criteria used to determine whether a location meets statutory and rule requirements.

Subpart 4 requires the registrar to base approval on the notice of change and the items submitted with it. The accuracy or truthfulness of the notice will not be verified before the registrar approves. It has been the registrar's experience that almost all information on applications is accurate. If it turns out that information is not accurate, the registrar can remedy the situation using license withdrawal procedures. To delay approval until the registrar verifies information would put an undue burden on the dealer who has a new location. It is reasonable to require the registrar to approve a location based strictly on the notice of change and the items submitted with it.

**Subpart 5. Dealer license not transferable.** Under Minnesota Statutes, section 168.27, subdivision 11, when a person applies and qualifies for a motor vehicle dealer license, that person is licensed as a dealer. There is no provision in statute for a licensee to transfer a motor vehicle dealer license to another person. During the years that the registrar has administered motor vehicle dealer licensing, there have been many questions and problems that have arisen when dealers have not applied for another license after changing their business in such a way that a different person or entity owns the business. It is important to clarify the issue of transferability of a dealer license.

Subpart 5 states that a license may not be transferred from one person or organization to another and that another dealer license must be obtained before a successor dealer may engage in vehicle transactions. This statement is necessary because there is no statutory authority for a licensee to transfer its license to another person. It is reasonable to make this statement because it addresses the questions and problems that have arisen regarding the issue of transferability of a dealer license.

Subpart 5 also states that if the successor dealer is required to have a bond, the bond must be

separate from the bond under the original license. Under section 168.27, subdivision 24, a bond is required of all persons licensed as dealers, except used parts and scrap dealers. This requirement is reasonable because separate dealers must have separate bonds.

The second, third, and fourth paragraphs of subpart 5 address specific questions and problems that the registrar has encountered. These items are listed together in the rules because they are related to each other.

Subpart 5 prohibits a license from being transferred from one organization to another. A license issued to a partnership is issued to the specific group of persons who are partners. When a partner is added or removed, this changes the specific group of persons who are partners. The successor partnership is not made up of the identical group of persons to whom the dealer license was originally issued. The second paragraph of subpart 5 is reasonable in stating that a dealer license issued to a partnership is invalid when an original partner leaves or a new partner is brought in.

A corporation is defined in Black's Law Dictionary, Fifth Edition, as "an artificial person or legal entity created by or under the authority of the laws of a state or nation . . . which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership . . ." In other words, a corporation is a legal person in its own right and is separate and distinct from its shareholders.

When a corporation is dissolved, it ceases to exist. The property of the corporation is distributed to the creditors and shareholders of the corporation. Since the creditors and shareholders are separate and distinct from the corporation, a dealer license held by the corporation may not be distributed to the creditors and shareholders. The third paragraph of subpart 5 is reasonable in saying that a dealer license issued to a corporation becomes invalid when the corporation is dissolved.

The underlying existence of a corporation is not affected when a shareholder is changed. A dealer license issued to a corporation, therefore, remains valid when a shareholder is changed. The third paragraph of subpart 5 is reasonable in saying so.

Likewise, a change in the name of a corporation does not affect the underlying existence of the corporation. Much like any other person, a corporation remains the same entity under the law when its name is changed. The third paragraph of subpart 5 is reasonable in saying that a dealer license issued to a corporation remains valid when the corporate name is changed.

The attributes of a limited liability company and its owners (who are called members) are very similar to those of a corporation and its shareholders, especially as these attributes relate to the continuing validity or non-transferability of a dealer license. The discussion in the preceding four paragraphs on the continuing validity or non-transferability of a dealer license issued to a corporation also applies to a dealer license issued to a limited liability company.

The most common problem related to the nontransferability of a dealer license occurs when an individual or partnership dealer incorporates. Many of these licensees are surprised when they find out that another license must be obtained for a new entity. As discussed earlier, a corporation is separate and distinct from its shareholders. The fourth paragraph of subpart 5 states that a dealer license issued to an individual, partnership, corporation, or limited liability company does not transfer to a new business entity created by a change in the form of ownership of the business. It is reasonable to put dealers on notice of this by including this statement in the rules.

## 7400.0900 CONSIGNMENT SALES.

**Subpart 1. New motor vehicles.** Subpart 1 requires that a person have a new motor vehicle dealer license and a franchise to sell new vehicles on consignment. Subpart 1 is necessary to clarify the requirements of Minnesota Statutes, section 168.27, subdivision 5a, when it is read in conjunction with subdivisions 2 and 10 of section 168.27.

Minnesota Statutes, section 168.27, subdivision 5a, states in part that "no person may solicit, accept, offer for sale, or sell motor vehicles for consignment sale unless licensed as a new or used motor vehicle dealer, a motor vehicle wholesaler, or a motor vehicle auctioneer." Subdivision 5a is silent on whether a new motor vehicle dealer license is needed to sell new vehicles on consignment. Subdivision 5a is also silent on whether a franchise is needed to sell new vehicles on consignment.

Minnesota Statutes, section 168.27, subdivision 2, states in part that "no person shall engage in the business of selling new motor vehicles or shall offer to sell, solicit, or advertise the sale of new motor vehicles without first acquiring a new motor vehicle dealer license." Subdivision 2 does not differentiate between new vehicles that are offered for sale on consignment and new vehicles that are offered for sale by the owner. A person who has accepted new motor vehicles for consignment sale is clearly soliciting the sale of these new motor vehicles and must, therefore, be licensed as a new motor vehicle dealer.

Minnesota Statutes, section 168.27, subdivision 10, clause (1), paragraph (b), requires that a licensed new motor vehicle dealer have "a bona fide contract or franchise . . . in effect with a manufacturer or distributor of the new motor vehicles the dealer proposes to sell . . . ." Subdivision 10 also does not differentiate between a consignment sale and a sale by the owner. A person who has accepted new vehicles for consignment sale is clearly proposing to sell these new vehicles and must, therefore, have a franchise for each type of new vehicle offered for consignment sale.

The requirement of subpart 1 is reasonable because it is based on a reasonable interpretation of subdivisions 2, 5a, and 10 of section 168.27.

**Subpart 2. Used motor vehicles.** Subpart 2 requires that a person must be licensed as a new or used vehicle dealer, a vehicle wholesaler, or a vehicle auctioneer to sell used vehicles on consignment. This requirement is a restatement of Minnesota Statutes, section 168.27, subdivision 5a, as it applies to the sale of used vehicles.

**Subpart 3. Auctioneers.** Subpart 3 gives circumstances under which part 7400.0900 does not apply to a licensed auctioneer. This sentence repeats a portion of Minnesota Statutes, section 168.27, subdivision 5a.

Subparts 2 and 3 were added at the suggestion of a task force member who felt part 7400.0900 would be easier to understand if it covered all of the situations for which a motor vehicle dealer license is needed to make consignment sales. It is reasonable to include information that will make the rules easier to understand.

**7400.1000 MOTORIZED BICYCLE OR CERTAIN TRAILER DEALERS.** Throughout the discussion on part 7400.1000, the term "motorized bicycle/trailer" refers to "motorized bicycle, boat trailer, horse trailer, or snowmobile trailer."

The vehicles sold by motorized bicycle/trailer dealers are much less expensive than the cars, trucks, and buses sold by most other motor vehicle dealers. Minnesota Statutes, section 168.27, subdivision 22, creates a dealer license for motorized bicycle/trailer dealers

that has a lower license fee and less stringent requirements than other motor vehicle dealer licenses.

Part 7400.1000 clarifies license requirements for sellers of motorized bicycles/trailers. Part 7400.1000 is necessary because certain requirements under section 168.27, subdivision 22, are unclear or ambiguous.

Section 168.27, subdivision 22, states in part:

"Any person, copartnership, or corporation having a permanent enclosed commercial building or structure either owned in fee or leased and engaged in the business, either exclusively or in addition to any other occupation, of selling motorized bicycles, boat trailers, horse trailers, or snowmobile trailers, may apply to the registrar for a dealer's license. . . . This subdivision shall not be construed to abrogate any of the provisions of this section [section 168.27] as the same relates to the duties, responsibilities, and requirements of persons, copartnerships, or corporations engaged in the business, either exclusively or in addition to other occupations, of selling motor vehicles or manufactured homes."

Subdivision 22 sets a \$10 annual license fee and a \$5 fee for dealer demonstration plates. These fees are in contrast to the \$100 annual license fee and the \$40 to \$75 dealer demonstration plate fee for new and used motor vehicle dealers. The bond for a motorized bicycle/trailer dealer is \$5,000 instead of the \$25,000 bond that is required of other dealers.

**Subpart 1. Scope.** Subpart 1 states that subparts 2 to 4 apply to motorized bicycle/trailer sellers. It is reasonable to limit the application of subparts 2 to 4 to these sellers because these subparts address ambiguities in the statute that creates a license for these sellers.

**Subpart 2. Requirement.** The meaning of the word "may" in subdivision 22 is ambiguous. It is not abundantly clear whether subdivision 22 provides a motorized bicycle/trailer seller with a less expensive dealer license alternative or whether it gives a motorized bicycle/trailer seller a choice between a motorized bicycle/trailer dealer license or no license at all.

Subpart 2 requires a motorized bicycle/trailer seller to obtain a motor vehicle dealer license under section 168.27. Subpart 2 is necessary to clarify the ambiguity in the meaning of the word "may" in subdivision 22.

Subdivisions 2, 3, 3c, 6, and 7 of section 168.27 prohibit a person from selling motor vehicles without first acquiring a motor vehicle dealer license. Motorized bicycles/trailers are motor vehicles as defined in Minnesota Statutes, section 168.011, subdivision 4.

Under subdivision 8 of section 168.27, the only persons exempt from licensing as a motor vehicle dealer are salespeople and other employees of licensed dealers and persons who sell no more than five vehicles in a year. There is no specific exemption from licensing for a bicycle/trailer seller in subdivision 8 or anywhere else. If subdivision 22 were construed to exempt a motorized bicycle/trailer seller from licensing, it would abrogate the provisions of section 168.27, under which all sellers of motor vehicles must obtain a license.

It is, therefore, reasonable to require a motorized bicycle/trailer seller to obtain a motor vehicle dealer license.

**Subpart 3. Sales of other vehicles.** Subpart 3 requires a motorized bicycle/trailer seller to obtain a new, used, salvage, wholesaler, or auctioneer dealer license if the seller sells other motor vehicles in addition to motorized bicycles/trailers. Subpart 3 is necessary because

section 168.27, subdivision 22, is silent on what a motorized bicycle/trailer dealer licensee is entitled to do under the license.

Under section 168.27, subdivision 2, a person holding a new motor vehicle dealer license is entitled to sell new motor vehicles. Under subdivision 3, a person holding a used motor vehicle dealer license may sell used vehicles. Likewise, under subdivisions 3c, 6, and 7, a salvage, wholesaler, or auctioneer licensee may act as a salvage pool, wholesaler, or auctioneer.

Subdivision 22 refers only to motorized bicycle/trailer sellers. It would abrogate the provisions of section 168.27 if subdivision 22 were construed to entitle a motorized bicycle/trailer dealer licensee to sell other motor vehicles in addition to motorized bicycles/trailers. Subpart 3 is reasonable.

**Subpart 4. Contract or franchise.** Subpart 4 requires a motorized bicycle/trailer seller who sells new vehicles to have a franchise for these vehicles. Subpart 4 is necessary because subdivision 22 does not specifically require a franchise nor does it specifically grant an exemption from having a franchise.

Section 168.27, subdivision 10, requires a new motor vehicle dealer to have a "contract or franchise . . . in effect with a manufacturer or distributor of the new motor vehicles the dealer proposes to sell, broker, wholesale, or auction . . . ."

It would be inconsistent to require a franchise to sell new cars, buses, and trucks, but not to require a franchise to sell new motorized bicycles/trailers. Further, it is an industry practice to give franchises to sellers of new motorized bicycles/trailers, as evidenced by the registrar's past practice of verifying that sellers of new motorized bicycles/trailers have a franchise.

Subpart 4 uses the same wording as subdivision 10 to require a motorized bicycle/trailer seller to have a franchise to sell new vehicles. Subpart 4 is reasonable.

## **LICENSE REVOCATION, SUSPENSION, OR CANCELLATION. PARTS 7400.1500 TO 7400.2000**

### **General Overview Of Dealer License Withdrawal: Revocation; Suspension; And Cancellation.**

Minnesota Statutes, section 168.27, gives the registrar broad authority to take away a dealer license for violations by a dealer. Parts 7400.1500 to 7400.2000 set out the specific grounds and time periods for dealer license withdrawal. Parts 7400.2200 to 7400.3700 set out the procedures the registrar will use for dealer license withdrawal. This is necessary so that dealers know the consequences of violations and so that the registrar is consistent in administering dealer license withdrawal.

Revocation is used to address serious violations involving dishonesty or unreliability on the part of a dealer. A revocable violation clearly indicates a dealer should not continue being a dealer. A revocation results in a dealer losing its license and being ineligible to obtain another license for at least a year. Further, if the revocation is based on a criminal conviction, the dealer must show rehabilitation before again being eligible for a license.

Suspension is similar to revocation in that it is used to address serious violations involving dishonesty or unreliability on the part of a dealer. Suspendable violations, however, are less serious than revocable violations. Suspendable violations raise questions, but do not clearly

indicate that a dealer should not continue being a dealer. A suspension results in a dealer losing its license for a short period of time, usually about a week. After the suspension period, the license is returned to the dealer. In addition to the short-term loss of the license, a suspension remains on a dealer's record for five years. If the dealer commits other serious violations, the next suspension period will be increased or the dealer license will be revoked.

Cancellation is used when a dealer fails to meet or maintain all the requirements necessary to have a dealer license. A cancellation does not involve honesty or reliability on the part of the dealer. The dealer is again eligible for a license as soon as the dealer meets all dealer license requirements.

It is reasonable to have revocation, suspension, and cancellation as separate categories of license withdrawal so that each dealer problem is dealt with appropriately.

#### 7400.1500 LICENSE WITHDRAWAL; ACTS ATTRIBUTED TO DEALER.

**Subpart 1. Acts of owner, officer, or board member.** Not all dealer licenses are issued to individuals. Some dealer licenses are issued to partnerships, corporations, or limited liability companies where the control of the dealership is in the hands of the owners, officers, and board members. It is necessary to state how the acts of an owner, officer, or board member will affect the status of a license held by a partnership, corporation, or limited liability company.

Subpart 1 requires the registrar to revoke the dealer license held by a partnership, corporation, or limited liability company if an owner, officer, or board member commits a revocable violation. Likewise, the registrar will suspend or cancel if a suspendable or cancelable violation is committed.

The owners, officers, and board members are the persons who control these business entities. Subpart 1 makes all such "controlling persons" responsible for a violation committed by any of the controlling persons.

Where all controlling persons are involved in a violation, it is clearly appropriate to make all of these persons responsible for the violation. If only one controlling person is actively involved in a violation, but others know about it, this rule makes it less likely that the others will stand passively by and allow the violation to continue. Where a controlling person takes an absentee role in the dealership, this person is relying, for better or worse, on the other controlling persons to operate the dealership. Further, a dealer license is a single license that was issued to the controlling persons as a group. There is no authority or past practice of the registrar for somehow treating the license as a set of separate licenses for each of the controlling persons.

It is reasonable to make all controlling persons responsible for a violation committed by any of the controlling persons.

**Subpart 2. Acts of employee or agent.** Many dealerships hire employees and agents to conduct the business of the dealership. It is necessary to state how the acts of an employee or agent will affect the status of a dealer license.

Subpart 2 makes the dealer responsible for an act of an employee or agent if the dealer authorizes or ratifies the act. The dealer is also responsible for an act of an employee or agent if the dealer retains the benefits of the act after actual knowledge of the act.

When an employee or agent of the dealer commits an act, the act is committed on behalf of

the dealer. By authorizing or ratifying an act, the dealer gives its explicit approval. These elements make it an act of the dealer. It is reasonable to hold the dealer responsible for its own acts.

In many cases, it would be hard to prove that a dealer has authorized or ratified an act of an employee or agent. A dealer could claim ignorance in the hopes of escaping the consequences of the act. If, by claiming ignorance, a dealer were allowed to escape the consequences and yet keep the benefits of an act, it would encourage a dealer to use an employee or agent to commit violations. It is reasonable to make a dealer responsible for a violation if the dealer retains the benefits of the violation after actual knowledge of the violation.

**7400.1600 DEALER LICENSE REVOCATION.** A review of the purpose for licensing motor vehicle dealers can help in understanding the need for and reasonableness of revocation and suspension. As stated in part 7400.0600 of this document on issuing an initial dealer license, the purpose of regulating motor vehicle dealers is related to the integrity of title documents and the collection of tax. When a dealer sells a vehicle, the dealer is required to properly execute the assignment and warranty of title by a dealer. Within ten days of the sale, the dealer is required to send to the registrar the old certificate of title, the transferee's application for title, and the appropriate taxes and fees.

In general, the violations leading to revocation and suspension involve dishonesty or unreliability on the part of a dealer. These violations indicate that the dealer cannot be trusted or relied on to carry out the duties imposed on dealers by statute or rule. If a person cannot be trusted to carry out the duties imposed on a dealer, that person should not be licensed as a motor vehicle dealer.

#### Statutory Authority For Revocation And Suspension

Both revocation and suspension are used to address serious violations by a dealer. Revocation and suspension differ mainly in the degree of seriousness of the violation. Because revocation and suspension are so closely related, the statutory authority for revocation and the statutory authority for suspension are discussed together.

The registrar's authority to revoke or suspend a dealer license comes from Minnesota Statutes, section 168.27, subdivision 12, which states in part:

"Subd. 12. **Grounds for suspension and revocation.** A license may be suspended or revoked by the registrar of motor vehicles upon proof satisfactory to the registrar of any of the following:

- (1) violations of any of the provisions of this chapter;
- (2) violations of or refusal to comply with the requests and order of the registrar;
- (3) failure to make or provide to the registrar all listings, notices, and reports required by the registrar;
- (4) failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer;
- (5) failure to duly apply for renewal of license provided for herein;
- (6) revocation of previous license, of which the records of the registrar relating thereto shall be prima facie evidence of such previous revocation;
- (7) failure of continued occupancy of an established place of business;
- (8) sale of a new and unused current model motor vehicle other than the make of motor vehicle described in the franchise or contract filed with the original application or renewal thereof, without permission from the registrar;

(9) sale of a new and unused current model motor vehicle to anyone except for consumer use, or to a dealer duly licensed to sell the same make of motor vehicle;

(10) material misstatement or misrepresentation in application for license or renewal thereof;

(11) having advertised, printed, displayed, published, distributed, broadcast or televised or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast or televised in any manner whatsoever, or having made orally any statement or representation with regard to the sale, lease or financing of motor vehicles which is false, deceptive or misleading;

(12) having been convicted of violating section 325F.69, or having been enjoined due to a violation of section 325F.69;

(13) having been convicted of violating the Minnesota odometer law, section 325E.14, 325E.15, or 325E.16, or the federal odometer law, United States Code, title 15, sections 1981 to 1991, as amended through December 31, 1984;

(14) having been convicted of violating the sale of motor vehicles on Sunday law, section 168.275; or

(15) having been convicted under section 609.53 of receiving or selling stolen vehicles."

Minnesota Statutes, section 168.27, subdivision 13, sets out when the registrar must revoke or suspend the license of a dealer who commits one of the offenses listed in subdivision 12. Subdivision 13 states in part:

"If the registrar shall find the existence of any of the causes for suspension or revocation as set forth in subdivision 12 and determine that corrective action has not been taken or that corrective action will not prevent repetition of the violations charged or that the public interest will not be served by corrective action and the licensee's license should be suspended or revoked, the registrar shall issue a written order setting out the decision . . . . On finding that the dealer has violated any of the provisions of this section but that the nature of said violation or the circumstances thereof are such that a suspension of the license would be adequate, the registrar may, instead of revoking the license suspend it for a period not exceeding 90 days. On finding that the violation does not justify a suspension only, the registrar shall revoke the license."

To summarize, the statutes require the registrar to revoke or suspend upon making the following findings:

1. there exists any of the causes for revocation or suspension set forth in subdivision 12; and
2. corrective action either is not appropriate or has not been taken.

Upon making these findings, the registrar will suspend if suspension is adequate and will revoke if the violation does not justify a suspension only. It follows that revocation is for more serious violations and suspension is for less serious violations. But to state this only begs the question of which violations should result in revocation because they are more serious and which violations should result in suspension because they are less serious.

Subpart 1. **Grounds for revocation.** Minnesota Statutes, section 168.27, subdivision 11, offers some guidance about which violations are considered more serious and which should, therefore, result in revocation. Subdivision 11 governs the application for and issuance of a dealer license. Subdivision 11 states in part:

"The license must be denied if within the previous five years the applicant was enjoined

due to a violation of section 325F.69 or convicted of violating section 325E.14, 325E.15, 325E.16, or 325F.69, or convicted under section 609.53 of receiving or selling stolen vehicles, or convicted of violating United States Code, title 15, sections 1981 to 1991, as amended through December 31, 1984."

Minnesota Statutes, section 325F.69, prohibits consumer fraud in sales schemes. A person can be convicted of a gross misdemeanor or be subject to an injunction for a violation of section 325F.69.

Minnesota Statutes, sections 325E.14, 325E.15, and 325E.16, and U.S.C. title 15, sections 1981 to 1991, are known as the Minnesota and federal odometer laws. These laws make it a gross misdemeanor to tamper with the odometer of a motor vehicle.

Minnesota Statutes, section 609.53, makes it a felony to receive, possess, transfer, buy, or conceal stolen property valued at more than \$300.

These violations are clearly very serious violations and constitute grounds for revocation under items A to C.

Items D to H list other offenses that are grounds for revocation. These offenses are comparable in seriousness to those listed as grounds for revocation in items A to C.

Each of the grounds for revocation listed in items A to C involves an element of dishonesty or unreliability and gives a strong inference that the dealer cannot be trusted to comply with duties imposed on the dealer by statute or rule. Similarly, each of the grounds for revocation listed in items D to H also gives a strong inference that the dealer cannot be trusted. Each of the first three grounds for revocation involves a serious criminal offense. Only one of the last four grounds for revocation involves a serious criminal offense, but the others all involve very serious violations of the laws and rules governing dealers. Long term license withdrawal is clearly appropriate for each of the violations described in items D to H.

A to C. Item A requires the registrar to revoke if the dealer violates Minnesota Statutes, section 325F.69. Item B requires that the registrar revoke if the dealer is convicted of violating the Minnesota or federal odometer laws. Item C requires that the registrar revoke if the dealer has been convicted of violating Minnesota Statutes, section 609.53.

If an offense is serious enough that a license applicant may not obtain a dealer license, it is reasonable to conclude that the offense is serious enough that a license holder should not retain a dealer license. Further, an offense involving fraud, odometer tampering, or dealing in stolen property is serious enough to warrant long term dealer license withdrawal. Finally, the offenses listed in items A to C are listed in subdivision 12 as grounds for revocation or suspension. It is, therefore, reasonable that items A to C are grounds for revocation.

Note that certain task force members suggested that the words "of a gross misdemeanor or felony" be inserted in item C to make clear that revocation under this item is limited to convictions for gross misdemeanors and felonies. The task force members asserted that a misdemeanor offense was not serious enough to warrant revocation and the consequent loss of livelihood for the dealer. This was also discussed at the October 26, 1989, meeting with Senator Metzen. The registrar is persuaded that this limitation on revocation under item C is reasonable.

D. Item D requires the registrar to revoke if a dealer is convicted of a felony related to the

business of buying or selling motor vehicles or motor vehicle parts.

A felony is a crime for which a prison term of more than one year may be imposed. The length of imprisonment clearly shows that any crime designated as a felony is a serious crime. If a person commits a felony, it indicates a serious disregard for the law. When a dealer commits a felony related to the business of buying or selling motor vehicles or parts, it indicates that the dealer cannot be trusted to comply with the laws and rules governing motor vehicle dealers.

During the process of drafting these rules, the registrar and members of the dealer rules task force discussed what type of license withdrawal would be reasonable in this situation. It was the original position of the registrar that all criminal convictions should be grounds for action against a dealer license. The registrar proposed that a misdemeanor conviction would be grounds for suspension and a gross misdemeanor or felony conviction would be grounds for revocation.

Several members of the task force, while agreeing that all criminal convictions are serious, disagreed with the registrar's proposal. The task force members stated that a revocation or suspension prevents a dealer from doing business during the period of license withdrawal. They argued that the loss of income due to a revocation or suspension would be out of proportion with the seriousness of a misdemeanor or gross misdemeanor offense. They asserted that the criminal penalties for a misdemeanor or a gross misdemeanor were sufficient punishment and that suspending or revoking the dealer license in addition to the criminal penalties was not needed.

The registrar's position and the concerns of the task force members were discussed in a meeting with Senator Metzen and other interested parties. As a result, the registrar was persuaded to make a gross misdemeanor conviction grounds for suspension instead of revocation and to delete a misdemeanor conviction as grounds for suspension.

This item requires revocation regardless of whether the felony was committed in Minnesota or in another jurisdiction. Revocation for a felony committed in another jurisdiction is only required, however, if there is a similar felony under Minnesota Statutes. This is reasonable because the location of a crime has no bearing on a dealer's fitness to continue being a dealer and should, therefore, not affect whether the dealer license is revoked.

Conviction for a felony related to the business of buying or selling motor vehicles or motor vehicle parts is not explicitly listed in section 168.27, subdivision 12, as grounds for revocation or suspension. The registrar's authority to revoke for this reason can be implied from subdivision 12, however, because this violation clearly relates to the fitness of a person to be licensed as a motor vehicle dealer. The registrar's authority to revoke for this reason can also be implied because a felony related to the business of buying or selling motor vehicles or parts is comparable in degree of seriousness to the serious criminal violations that are listed in subdivision 12.

It is, therefore, reasonable to include item D as grounds for revocation.

- E. Item E requires the registrar to revoke if a dealer fails to pay the registrar all taxes, fees, and arrears due within ten days after notice that these monies are due. This applies to monies owed to the registrar by the dealer, whether collected by the dealer when selling a vehicle or owed by the dealer when buying a vehicle.

When a dealer sells a motor vehicle, the dealer collects the taxes and fees for the vehicle

from the buyer. Under Minnesota Statutes, section 168A.11, the dealer is required to submit these taxes and fees to the registrar along with the buyer's title application. The dealer must submit these items within ten days of the sale.

Motor vehicles purchased for resale in the ordinary course of business by a dealer are exempt from excise tax under Minnesota Statutes, section 297B.035. If the dealer is not licensed or not franchised to sell the type of motor vehicle purchased, then the purchase is not considered to be in the ordinary course of business and the dealer is required to pay excise tax. Most of the problems of this type occur when there is a misinterpretation by the dealer as to how the license and franchise requirements apply to a particular situation.

When the registrar finds that a dealer has not submitted taxes and fees within ten days of a sale or that the dealer owes tax on the purchase of a vehicle, the registrar notifies the dealer that these funds are due. After this notice is given, the dealer has ten days to submit the taxes and fees or the dealer will be revoked under this item. (Note, revocation addresses only the dealer's continued failure to submit these funds after notice that the funds are overdue. The dealer may be charged late filing fees or be subject to suspension, even if the overdue funds are paid within ten days to avoid revocation.)

One of the main reasons for licensing motor vehicle dealers is to ensure that the state receives the taxes and fees from the sale of motor vehicles. It is a very important duty of a dealer to collect these taxes and fees and then submit them to the state. Since the registrar can monitor only a small fraction of the transactions of a dealer, it is vital that the registrar be able to rely on the integrity of the dealer to ensure that taxes and fees are being correctly submitted. If the dealer does not pay taxes and fees within a reasonable time after notice that they are due, it is apparent that the registrar can no longer rely on the integrity of the dealer.

The state loses interest on taxes and fees that are not submitted within the time set by law. When a dealer collects taxes and fees on behalf of the state, the dealer should take measures to protect the state's interest in these funds. If the dealer has taken these measures, the dealer will be able to pay the overdue funds within ten days.

The dealer should still be able to pay the amount owed even if the dealer has somehow expended the actual money collected. When a vehicle is purchased, the taxes and fees amount to a small fraction of the purchase price. If the dealer has the financial wherewithal to buy and then sell the vehicle, ten days should be sufficient time for the dealer to come up with the amount necessary to cover the taxes and fees. Ten days is a reasonable time for the dealer to submit overdue taxes and fees.

Failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer is listed in section 168.27, subdivision 12, clause (4), as grounds for revocation or suspension. The public interest would not be served by allowing this dealer to continue to collect taxes and fees on behalf of the state on the sale of motor vehicles. Long term withdrawal of the dealer license is clearly appropriate.

It is, therefore, reasonable to revoke a dealer license for failing to pay the state overdue funds within ten days after notice that the funds are overdue.

- F. Item F requires that the registrar revoke if a dealer commits a suspendable offense after the dealer license has been suspended three times within the past five years. A dealer in this situation clearly has no regard for the laws and rules governing motor vehicle

dealers. Such a dealer has clearly demonstrated that the dealer cannot be trusted to comply with the laws and rules governing dealers.

A suspendable offense by definition would be listed in section 168.27, subdivision 12, as grounds for revocation or suspension. If it is the fourth such offense in the past five years, it is evident that suspension is no longer adequate to deal with this dealer's violations. It is reasonable to revoke the license of a dealer who has committed a suspendable offense after being suspended three times within the past five years.

- G. Item G requires the registrar to revoke if a dealer violates a suspension of the dealer license. A dealer who violates a suspension clearly demonstrates a disregard for the laws and rules governing motor vehicle dealers. A dealer who violates a suspension cannot be trusted to comply with the laws and rules governing dealers. An additional period of suspension would not be adequate for this dealer. Long term license withdrawal is appropriate for this dealer.

Violation of or refusal to comply with the requests and order of the registrar is listed in section 168.27, subdivision 12, clause (2), as grounds for revocation or suspension. Violation of a suspension is clearly a violation of an order of the registrar. It is reasonable to revoke in this situation.

- H. Item H requires the registrar to revoke if a dealer submits a fraudulent license application. A fraudulent application means more than that the application contains an error. A fraudulent application is one that is falsely made with the intent to deceive and with the intent to induce the registrar to issue a license that might not otherwise be issued if the truth were known. A dealer who submits a fraudulent application clearly cannot be trusted to comply with the laws and rules governing dealers.

Material misstatement or misrepresentation in application for license or renewal thereof is listed in section 168.27, subdivision 12, clause (10), as grounds for revocation or suspension. It is reasonable to revoke in this situation.

**Subpart 2. Revocation period and effect.** Revocation is used when a dealer cannot be trusted to comply with the laws and rules governing dealers. It is necessary that a revoked dealer no longer have the rights and privileges of a dealer. Subpart 2 sets out the effects of revocation on a dealer license because these effects are not clearly set out elsewhere and so that the registrar is fair and consistent in administering revocation.

Subpart 2 states that a dealer license is not valid after it is revoked. It is reasonable to invalidate the license so that the dealer cannot continue to exercise its dealer privileges after the revocation.

Subpart 2 prohibits an owner, officer, or board member in a revoked dealer from being an owner, officer, or board member in another licensed dealer. As discussed in part 7400.1500, subpart 1, of this document, these persons control a dealership. It is reasonable that controlling persons of a revoked dealership not be allowed to hold a controlling position in another dealership in order to hold them responsible for the actions of the revoked dealer.

Subpart 2 requires a revoked dealer to immediately surrender the dealer license certificate, all dealer license plates, and all temporary vehicle permits. These items can all be used to obtain the privileges of a dealer. Since a revoked dealer is no longer entitled to these privileges, it is reasonable to require that these items be surrendered.

Items A and B set out how to determine the length of the revocation period.

- A. Minnesota Statutes, section 364.03, subdivision 1, states:

"Notwithstanding any other provision of law to the contrary, no person shall be disqualified . . . from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to . . . the occupation for which the license is sought."

Section 364.07 expands on this by stating:

"The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license . . . on the grounds of conviction of a crime or crimes."

Sections 364.08 and 364.09 give some exceptions to these prohibitions, but the licensing of motor vehicle dealers is not among them. It is therefore necessary that the motor vehicle dealer rules comply with the requirements of chapter 364.

Item A requires that the registrar use chapter 364 to determine a revocation period when the revocation is based solely or in part on a criminal conviction. This is reasonable because it is required by statute.

- B. Not all revocations will be based solely or in part on a criminal conviction. The length of such a revocation will not be determined under item A. It is necessary, therefore, to state the length of such a revocation.

Item B sets a revocation period of one year for a revocation not based on a criminal conviction. Based on the experience of the registrar, the revocable offenses that do not involve a criminal conviction are generally less serious than those offenses that do. Using the criteria of Minnesota Statutes, chapter 364, a revocation involving a criminal conviction will last a minimum of one year. It is reasonable that less serious offenses have a revocation period shorter than more serious offenses.

**7400.1700 DEALER LICENSE SUSPENSION.** The statutory authority for suspension is discussed at length under part 7400.1600 in relation to the statutory authority for revocation.

**Subpart 1. Grounds for suspension.** As discussed in part 7400.1600, revocation and suspension are used to address serious violations that indicate a dealer cannot be trusted or relied on to comply with duties imposed by statute or rule. The more serious violations involving dishonesty or unreliability are listed in part 7400.1600, subpart 1, as grounds for revocation. All other dealer violations involving dishonesty or unreliability are considered grounds for suspension and are addressed in this subpart.

- A. Item A requires the registrar to suspend a dealer license if the dealer willfully violates any provision of chapter 168 of Minnesota Statutes or of this chapter of Minnesota Rules. Item A does not, however, require the registrar to suspend if the violation is listed in part 7400.1600, 7400.1800, or 7400.1900. Parts 7400.1600 and 7400.1800 list the grounds for revocation and cancellation. Part 7400.1900 addresses violations of the Sunday sales law.

As discussed, corrective action is not appropriate where there is a willful violation. Although it is a serious violation to willfully violate chapter 168 or this chapter of Minnesota Rules, short term license withdrawal (suspension) is sufficient to address this.

If a suspension convinces the dealer to comply, then no more action is needed. If the dealer continues to commit violations, then additional suspensions or even revocation can be used.

Violation of any provisions of chapter 168 is listed in section 168.27, subdivision 12, clause (1), as grounds for revocation or suspension. Violation of or refusal to comply with the requests and order of the registrar is listed in clause (2) as grounds for revocation or suspension. Minnesota Rules constitutes a request or order of the registrar. It is, therefore, reasonable to suspend for willful violations of chapter 168 or of these rules.

License withdrawals under parts 7400.1600, 7400.1800, and 7400.1900 address specific violations and instances of noncompliance with the dealer law and rules. This document discusses why the periods of withdrawal under those parts are appropriate for the violations and noncompliances listed in those parts. Item A covers a variety of violations that are serious but that do not fit within the types described in parts 7400.1600, 7400.1800, and 7400.1900. It is reasonable to not require the registrar to suspend a dealer license if the license is withdrawn for other reasons.

- B. Item B requires the registrar to suspend if a dealer willfully violates or refuses to comply with a lawful request or order of the registrar.

As discussed below in subpart 2, corrective action is not appropriate where there is a willful violation. Although it is a serious violation to willfully violate or refuse to comply with a lawful request or order of the registrar, short term license withdrawal (suspension) is sufficient to address this. If a suspension convinces the dealer to comply, then no more action is needed. If the dealer continues to commit violations, then additional suspensions, or even revocation, can be used.

The word "lawful" was added at the suggestion of a task force member to make clear that a dealer has to comply with a request or order only if the request or order is authorized by law. It is reasonable that a dealer should not be suspended for violating an unlawful or unauthorized request or order.

"Violation of or refusal to comply with the requests and order of the registrar" is listed in section 168.27, subdivision 12, clause (2), as grounds for revocation or suspension. It is, therefore, reasonable to include item B as grounds for suspension.

- C. Item C requires the registrar to suspend if a dealer is convicted of a gross misdemeanor related to the business of buying or selling motor vehicles or motor vehicle parts.

A person convicted of a gross misdemeanor may be sentenced to imprisonment of between 90 days and one year or to payment of a fine of from \$700 to \$3,000, or both. The severity of the punishment clearly shows that any crime designated as a gross misdemeanor is a serious crime. A person who commits a gross misdemeanor has a serious disregard for the law. When a dealer commits a gross misdemeanor related to the business of buying or selling motor vehicles or parts, it raises questions about the dealer's fitness to continue to be licensed as a motor vehicle dealer. License withdrawal of some sort is clearly warranted.

This item requires suspension regardless of whether the gross misdemeanor was committed in Minnesota or in another jurisdiction. Suspension for a gross misdemeanor committed in another jurisdiction is only required, however, if there is a similar misdemeanor under Minnesota Statutes. This is reasonable because the location of a

crime has no bearing on a dealer's fitness to continue being a dealer and should, therefore, not affect whether the dealer license is suspended.

Conviction for a gross misdemeanor related to the business of buying or selling motor vehicles or motor vehicle parts is not explicitly listed in section 168.27, subdivision 12, as grounds for revocation or suspension. The registrar's authority to suspend for this reason can be implied from subdivision 12, however, because this violation clearly relates to the fitness of a person to be licensed as a motor vehicle dealer.

It is, therefore, reasonable to include item C as grounds for suspension.

(Note: See the discussion under part 7400.1600, subpart 1, item D, of this statement regarding revocation of the license of a dealer who is convicted of a felony related to the business of buying or selling motor vehicles or motor vehicle parts.)

**Subpart 2. Description of willfully.** Under Minnesota Statutes, section 168.27, subdivision 13, the registrar is required to suspend the license of a motor vehicle dealer when a cause for suspension exists and when corrective action is not appropriate. (See the discussion of the statutory authority for revocation and suspension under part 7400.1600 of this document.)

Section 168.27, subdivision 13, requires the registrar to allow corrective action when appropriate, but does not indicate how to determine when corrective action is appropriate. This makes it necessary to set out how the registrar will determine when corrective action is appropriate and when it is not.

These rules use the term "willfully" to set out the conditions when corrective action is not appropriate. Willfully is used in two senses. One sense of willfully is used in item A to refer to an intentional, knowledgeable, and voluntary violation. The second sense of willfully is used in item B to refer to a violation resulting from continuing poor business practices after the dealer has received notice and had an opportunity to correct the business practice.

As stated in part 7400.0600 of this document on issuing an initial dealer license, the purpose of regulating motor vehicle dealers is related to the integrity of title documents and the collection of tax. The registrar has approximately 50 motor vehicle dealer inspectors. There are approximately 3,500 licensed motor vehicle dealers. The registrar's inspectors can examine only a small fraction of the records of each dealer. The registrar depends to a large degree on voluntary compliance with the dealer law and rules and on the honesty and accuracy of motor vehicle dealers.

- A. Under item A, an act or omission is willful if: (1) it is intentional; (2) the dealer knows or should reasonably know that the act or omission is a violation; and (3) the dealer is able to comply. Corrective action is not appropriate when a violation is intentional, knowledgeable, and voluntary. Period. Allowing corrective action in such a situation would only encourage dealers to commit violations until they were caught. Item A is reasonable.
- B. Under item B, an act or omission is willful, whether or not it is intentional, if: (1) a business practice of the dealer makes the violation likely; (2) the registrar has given written notice to the dealer within the last three years to correct the practice; (3) the dealer has not corrected the practice within a reasonable time; and (4) the failure to correct the practice is a significant factor in causing the violation.

Where violations are not clearly intentional or where the violation is due to a business practice that makes errors likely, the registrar will work to educate the dealer and to

improve the dealer's business practices. This is in line with the registrar's responsibilities under Minnesota Statutes, section 168.27, subdivision 15, where it states that "inspectors shall assist licensees in compliance with laws governing licensees and administered hereunder."

A dealer will be subject to suspension for an unintentional violation only when the dealer fails to use an opportunity to take corrective action before a violation occurs. Allowing further corrective action is not appropriate in this situation because it would serve to reward a dealer who procrastinates. It is reasonable to suspend a dealer for a violation where the dealer has failed to correct the problem that caused the violation. Item B is reasonable.

**Subpart 3. Suspension period and effect.** Suspension is used when a dealer has committed a serious violation of the laws and rules governing dealers. Although a suspendable violation is less serious than a revocable violation, it is nevertheless necessary that a suspended dealer lose the rights and privileges of a dealer during the suspension. Subpart 3 sets out the period of time and the effects of suspension because these are not clearly set out elsewhere and so that the registrar is fair and consistent in administering suspension.

Subpart 3 states that a dealer license is not valid during a suspension. It is reasonable to invalidate the license during this time so that the dealer cannot continue to exercise its dealer privileges while suspended.

Subpart 3 requires a suspended dealer to immediately surrender the dealer license certificate, all dealer license plates, and all temporary vehicle permits. These items are all used to obtain the privileges of a dealer. Since a suspended dealer is not entitled to these privileges during the suspension, it is reasonable to require that these items be surrendered. By the same token, however, once a dealer has served its suspension, it is again entitled to the privileges of a dealer. The requirement that the registrar return the certificate, plates, and permits after a suspension is reasonable.

Subpart 3 states that a suspension period ends after the last day of the period regardless of whether this day falls on a Saturday or legal holiday. The general rule for calculating a time period is to extend the period to the next working day when the last day falls on a Saturday, Sunday, or legal holiday. (See part 7400.0100, subpart 5.) The general rule gives people a grace period to meet government deadlines when government offices are closed. This purpose does not apply to private businesses, such as motor vehicle dealers, that are open for business on Saturdays and legal holidays. It is necessary to define the end of a suspension so that the general rule of counting days does not apply. It is reasonable to end a suspension at the end of the suspension period regardless of which day this falls on.

Items A to F set out how to determine the length of suspension periods.

A to D. It is necessary that the length of a suspension reflect the seriousness of the violation. The registrar has chosen to treat willful violations and gross misdemeanor convictions related to the business of a dealer as equally serious. What will make a violation more serious is if the dealer has previously been suspended. The concept of progressive discipline suggests that it is reasonable to use increasingly severe suspension periods for successive violations.

The registrar originally proposed suspension periods of one week for the first suspension, one month for the second suspension, and two months for the third suspension. This was the subject of much discussion amongst task force members. Many task force members felt that these time periods were too severe and that shorter

time periods would serve the registrar's purpose of ensuring compliance with the dealer law and rules.

The registrar's position and the concerns of the task force members were discussed in a meeting with Senator Metzen and other interested parties. As a result, the registrar was persuaded to shorten the proposed suspension periods for the second and third suspensions to two weeks and four weeks, respectively. This treats suspensions seriously and incorporates increasingly severe suspension periods for successive violations, while at the same time not imposing suspension periods that are so long that they would effectively put the dealer out of business.

Suspensions may be shortened by up to half if there are mitigating circumstances that indicate a shorter suspension is appropriate. This gives the registrar some latitude to tailor the suspension to fit the violation. The registrar's discretion is limited by item D which requires that the circumstances be listed and the reasons for shortening the suspension be given in writing.

Items A to C go back only five years when counting previous suspensions. It is reasonable to allow a suspended dealer to obtain a clean record by not committing any violations for a period of time. Five years is a reasonable period for this because of the frequency of dealer inspections being only once or twice a year and because of the length of time it takes to consider and impose a suspension after a violation has been committed.

- E. As discussed in part 7400.1500 of this document, owners, officers, and board members control a dealership. It is necessary to hold controlling persons accountable for suspendable offenses so that controlling persons will ensure that dealers comply with the dealer law and rules.

Items B and C increase the length of a suspension when a dealer has a previous suspension on its record. Part 7400.1600, subpart 1, item F, will turn a suspension into a revocation if the dealer commits a fourth suspendable offense. The way that suspensions are included or excluded from a dealer's record will obviously affect the withdrawal period for future violations.

Item E includes the suspension of a dealer license on the record of a suspended dealer. Under item E, the suspension of a dealer is also on the record of any other dealer that has an owner, officer, or board member who is an owner, officer, or board member of the suspended dealer.

It is reasonable to include suspensions on the record of each dealer who shares a controlling person with the suspended dealer. To do otherwise would allow a person to commit a series of suspendable offenses and then escape the increased consequences by creating a new corporation or limited liability company and getting that corporation or limited liability company another dealer license.

- F. Item F extends the suspension period beyond that determined under items A to E if the suspension is imposed for a continuing violation and the violation is not corrected at the end of the original suspension period. This is a reasonable way to hold a dealer accountable for this type of violation and to ensure that the dealer will make genuine efforts at compliance.

**7400.1800 DEALER LICENSE CANCELLATION.** Cancellation is used to address a failure by a dealer to meet or maintain all the requirements necessary to have a dealer license.

Cancellation differs from revocation and suspension in that a cancellation offense does not involve honesty or reliability on the part of the dealer. Cancellation also differs from revocation and suspension in that a cancellation can be cured. Once the dealer corrects the problem that caused the cancellation, the dealer is again eligible for a license.

**Subpart 1. Grounds for cancellation.** The statutory authority for cancellation under items C to F bears some discussion. The authority to cancel for these items is based on the registrar's authority to revoke a dealer license under Minnesota Statutes, section 168.27, subdivision 12.

Each of the grounds listed in items C to F is based on a dealer failing to meet or maintain all dealer requirements. None of these grounds, however, relates to the honesty or reliability of the dealer. Since the dealer does not meet all the dealer requirements, it is necessary and appropriate to withdraw the dealer license. It is not appropriate, though, to withdraw the license any longer than it takes the dealer to correct the violation.

For purposes of these rules, it was necessary to either create a category of non-serious revocation that would be treated much like cancellation or to categorize non-serious revocation offenses under cancellation. It made more sense and it was more simple conceptually to reserve the term "revocation" for serious violations related to honesty or reliability and to use the term "cancellation" for technical (and correctable) violations. Categorizing these offenses does not change or affect the procedural rights due under parts 7400.2200 to 7400.3700.

A. Minnesota Statutes, section 168.27, subdivision 12a, states:

"A license may be canceled by the registrar upon satisfactory proof that the dealer has failed to provide or maintain the required surety bond . . . ."

A surety bond is required under section 168.27, subdivision 24,

"for the benefit of the state of Minnesota and any transferor, seller, or purchaser of a motor vehicle for any monetary loss caused by the failure of the licensee to meet the obligations [of a dealer]."

The bond serves a very important purpose. When a dealer does not have the protection provided by a bond, it is necessary to prohibit the dealer from conducting business which could result in a monetary loss by the state or any transferor, seller, or purchaser. This item requires the registrar to cancel the license of a dealer that fails to have the required surety bond. Cancellation is the appropriate response to this violation, and is therefore reasonable, because it will take away a dealer's privilege to transfer or sell vehicles while the bond is not in effect. It would not be reasonable to address this violation with revocation or suspension because there is nothing inherent in a failure to have a bond that would indicate a dealer cannot be trusted or relied upon.

B. Minnesota Statutes, section 168.27, subdivision 12a, states:

"A license may be canceled by the registrar upon satisfactory proof . . . that the dealer has failed to provide or maintain the insurance required under chapter 65B."

Under Minnesota Statutes, section 65B.48, liability insurance must be maintained on a vehicle if the vehicle is registered, licensed, or garaged in Minnesota. Most individually owned vehicles have a separate policy of insurance for each vehicle. It is standard practice for dealers to have a fleet policy that will cover all the vehicles purchased by the

dealer. This is important because insurance is often canceled by a seller when a vehicle is sold to a dealer. The fleet policy will cover a vehicle when it is used by the dealer or an employee of the dealer or when it is being test driven by a potential buyer. If a dealer does not have insurance covering its vehicles, there is a potential for a substantial monetary loss if one of the vehicles causes injury or damage.

Item B requires the cancellation of a dealer license in this situation. Cancellation is the appropriate response to this violation, and it is therefore reasonable, because it will take away a dealer's privilege to do business while the insurance is not in effect. It would not be reasonable to address this with revocation or suspension because there is nothing inherent in a failure to have insurance that would indicate the dealer cannot be trusted or relied upon.

- C. Minnesota Statutes, section 168.27, subdivision 11, requires the payment of a fee in order to obtain a dealer license. Normally, if a license application is not accompanied by the correct fee, the registrar will deny the application. The registrar will occasionally encounter a problem with license fees being paid by a check that bounces. When the registrar learns that a check has bounced, it is sometimes the case that a license has already been issued or renewed. Since the dealer holds a license, but has not paid the fee, it is necessary to take the license away. This item requires the cancellation of the dealer's license in this situation.

Of the three types of license withdrawal, cancellation is the most appropriate in this situation. This item will be used to cancel a license when the violation is unintentional. There is nothing about unintentionally bouncing a check that indicates the dealer cannot be trusted or relied upon. Addressing this situation with cancellation allows the dealer to avoid license withdrawal by paying the license fee before the imposition of the cancellation.

Section 168.27, subdivision 12, clause (4), allows the registrar to suspend or revoke for "failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer . . . ." Item C is reasonable.

- D. Minnesota Statutes, section 168.27, subdivision 10, sets out requirements for a dealer's established place of business. Parts 7400.4000 to 7400.4300 further elucidate the requirements for a dealer's established place of business. There are a number of things that can happen to an established place of business that causes it to no longer comply with these requirements. For instance, the dealer's lease may expire or the zoning may be changed. Since the dealer holds a license, but no longer complies with the established place of business requirements, it is necessary for the license to be withdrawn. This item requires the cancellation of the dealer's license in this situation.

Cancellation is the most appropriate type of license withdrawal in this situation. The expiration of a lease or a zoning change does not indicate the dealer cannot be trusted or relied upon. It is appropriate to withdraw the license in a way that does not prohibit the dealer from again obtaining a license as soon as all requirements are met.

Section 168.27, subdivision 12, clauses (1) and (2), allow the registrar to suspend or revoke for violations of chapter 168 and for violation of or refusal to comply with the requests and order of the registrar. The rules constitute a request or order of the registrar. Failure to meet established place of business requirements constitutes grounds for withdrawing a dealer license. Item D is reasonable.

- E. Under part 7400.1600, subpart 2, an owner, officer, or board member in a revoked

dealer is prohibited from having a similar role in another dealer during the revocation. When a person holds an authority role in two dealerships and one of the dealerships is revoked, it becomes necessary to withdraw the other dealership license.

Item E requires the cancellation of a dealer license if an owner, officer, or board member holds a similar position in another dealer that is revoked. Item E will cover the situation where a new person is brought into a dealer where that person is presently under revocation. Item E will also cover the situation where a person presently involved in a dealership is also involved in another dealership that is revoked in a way that does not reflect directly on the first dealership. The second situation would occur if the second dealership is revoked for a reason unrelated to any actions or duties of the first dealership and unrelated to a criminal act committed by the person involved in both dealerships.

Of the three types of license withdrawal, cancellation is the most appropriate where the revocation of the second dealer is not related to the activities of the first dealer. In this situation, there is nothing that would indicate the first dealer cannot be trusted or relied upon. The first dealer will again be eligible for a dealer license as soon as the disqualified person is dissociated from the dealer. It is worth noting that if the grounds for revocation relate to both dealers, then both dealer licenses will be revoked and item E will not be needed.

Section 168.27, subdivision 12, clause (6), allows the registrar to suspend or revoke for "revocation of previous license . . . ." Item E is reasonable.

- F. Under Minnesota Statutes, section 168.27, subdivision 11, a license application must be denied if the applicant has been enjoined or convicted for a violation listed in subdivision 11. It follows that it is necessary to prevent a person from circumventing this requirement by taking a controlling position in a dealer after the license has been granted. Item F requires cancellation of the license in this situation.

Of the three types of license withdrawal, cancellation is the most appropriate where the main offense committed by the dealer was to not check the background of the person being added as an owner, officer, or board member. With cancellation, the dealer could be reinstated as soon as the disqualified person is dissociated from the dealer.

The statutory authority for withdrawing the license in this situation comes from section 168.27, subdivision 12, clauses (12), (13), and (15), which list the offenses of subdivision 11 as grounds for suspension or revocation. Item F is reasonable.

**Subpart 2. Cancellation period and effect.** Cancellation is used when a dealer does not meet all the requirements necessary to be a dealer. It is necessary that a canceled dealer no longer have the rights and privileges of a dealer. Subpart 2 sets out the effects of cancellation on a dealer license because these effects are not clearly set out elsewhere and so that the registrar is fair and consistent in administering cancellation.

Subpart 2 states that a dealer license is not valid during a cancellation. It is reasonable to do this so that the dealer cannot continue to exercise its dealer privileges while under cancellation.

Subpart 2 requires a canceled dealer to immediately surrender the dealer license certificate, all dealer license plates, and all temporary vehicle permits. These items are all used to obtain the privileges of a dealer. Since a canceled dealer is not entitled to these privileges while under cancellation, it is reasonable to require that these items be surrendered.

The registrar is required to reinstate a canceled dealer license if the dealer corrects the cause of the cancellation within 60 days. Reinstatement allows the relicensing of the dealer without going through all of the initial licensing procedures. It is a benefit to the dealer and the registrar alike to avoid the burdens of the initial licensing procedures. Since it is within a short time after the dealer was licensed and since the dealer is required to correct the cause of the cancellation, it is reasonable to assume that the dealer meets all dealer requirements without the need to conduct the inspections normally done when a first-time dealer is licensed. The 60-day time limit for correction of the problem is reasonable because it is more than enough time to correct any of the six grounds for cancellation listed in subpart 1. Note that the 60-day time limit is on top of the amount of time required to complete the procedures necessary to impose a cancellation.

**7400.1900 SALE OF MOTOR VEHICLES ON SUNDAY.** Sunday motor vehicle sales by motor vehicle dealers are prohibited by Minnesota Statutes, sections 168.274 to 168.276. Violations of the Sunday sales law will lead to suspension or revocation of the dealer's license. The suspension and revocation periods are explicitly set out in section 168.276. These withdrawal periods are not consistent with those set out in parts 7400.1600 and 7400.1700. It is therefore necessary to specify how withdrawals under parts 7400.1600 and 7400.1700 will correspond to withdrawals under the Sunday sales law.

Part 7400.1900 states that withdrawals under the Sunday sales law are to be addressed independently of the withdrawals under other parts of the rules. The withdrawal scheme under parts 7400.1600 and 7400.1700 and the withdrawal scheme under the Sunday sales law both adequately address violations by motor vehicle dealers. Since these withdrawal schemes are inconsistent with each other, it is reasonable to administer them separately.

**7400.2000 SALE OF VEHICLES AFTER DEALER LICENSE WITHDRAWAL.** Every year, there are dealers whose licenses are withdrawn or who surrender their licenses. Occasionally, such a dealer is left with a sizable inventory of motor vehicles. Since it is illegal for a person to sell more than five vehicles in a 12-month period without having a dealer license, it is necessary to provide a means for such a dealer to wind up its business without breaking the law. Part 7400.2000 sets out conditions which will allow the dealer to continue to conduct its dealership business to the extent necessary to wind up the business.

The registrar's authority to issue vehicle sale permits to formerly licensed dealers is implicit in the registrar's authority to withdraw dealer licenses under Minnesota Statutes, section 168.27, subdivision 13. In essence, part 7400.2000 sets out the terms of an agreement between the registrar and the dealer whereby the registrar agrees to delay the date of license withdrawal in exchange for the dealer agreeing to limit what it will do under its license.

- A. For a former dealer to obtain a 30-day permit to sell vehicles, the dealer must apply in writing and must agree in writing to observe the conditions of the permit. The conditions are all reasonably related to the registrar's need to monitor the sales and to limit the dealer to doing only what is necessary to wind up its business.
- B. The list of motor vehicles to be sold is required so the registrar can monitor the sales.
- C. Item C requires the dealer to physically possess the title for each vehicle and to have the title in the dealer's name or properly assigned to the dealer. These requirements ensure that the dealer will be able to fully complete all sales within the 30-day period and that there will not be any loose ends to tie up after the permit expires.
- D. The vehicles to be sold are limited to those the dealer owned while the license was still

valid. To allow otherwise would be outside of the purpose of allowing the dealer to wind up its business.

- E. Limiting the sales to licensed dealers helps ensure that the title transfer paperwork is done correctly because the buyer is knowledgeable about this paperwork. This limitation also reduces or eliminates the need for the dealer to collect tax on the sales.
- F. Consignment sales are prohibited because they are not necessary for the dealer to wind up its business. If a dealer holds a vehicle for consignment sale at the time the license is withdrawn or surrendered, the dealer can return the vehicle to its owner.
- G. Prohibiting the dealer from buying vehicles or accepting trade-ins during the 30-day period is in line with the purpose of this part to allow a dealer to wind up its business, not to continue it.

#### **DEALER LICENSE WITHDRAWAL PROCEDURES. PARTS 7400.2200 TO 7400.3700**

The registrar's authority to conduct dealer license withdrawal hearings is contained in Minnesota Statutes, section 168.27, subdivision 13, which states in pertinent part:

"The registrar shall, at the time and place fixed in the notice, proceed to hear and determine the matter on its merits. All hearings shall be conducted in accordance with the provisions of chapter 14, except that the provisions of section 14.50, shall not apply."

Minnesota Statutes, chapter 14, is the Minnesota Administrative Procedure Act (APA). The APA governs the procedures for contested case hearings such as dealer license withdrawal hearings. The APA also creates the state Office of Administrative Hearings (OAH) which is under the direction of a chief administrative law judge. The chief judge and other administrative law judges conduct most of the administrative hearings in Minnesota.

Section 14.50 states in pertinent part:

"All hearings of state agencies required to be conducted under this chapter shall be conducted by an administrative law judge assigned by the chief administrative law judge. . . . Only administrative law judges learned in the law shall be assigned to contested case hearings. . . . It shall be the duty of the administrative law judge to: (1) advise an agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests; (2) conduct only hearings for which proper notice has been given; (3) see to it that all hearings are conducted in a fair and impartial manner. . . . [I]t shall also be the duty of the administrative law judge to make a report on each proposed agency action in which the administrative law judge functioned in an official capacity, stating findings of fact and conclusions and recommendations, taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, [and] (ii) fulfilled all relevant substantive and procedural requirements of law or rule . . . ."

Minnesota Statutes, section 14.51, directs the chief administrative law judge to "adopt rules to govern the procedural conduct of . . . contested case hearings . . . ." Section 14.51 goes on to state that these rules "shall supersede any other agency procedural rules with which they may be in conflict."

The OAH Rules governing contested case hearings are contained in parts 1400.5100 to 1400.8400. Note, however, that part 1400.5200 states: "The procedures in parts 1400.5100

to 1400.8400 shall govern all contested cases required to be conducted by the office under Minnesota Statutes, chapter 14." Since dealer license withdrawal hearings are not required to be conducted by the OAH, the OAH Rules, by their own terms, do not apply to dealer license withdrawal hearings.

Since the registrar is exempt from section 14.50 and since the OAH rules do not apply to dealer license withdrawal hearings, it is necessary for the registrar to set out procedures that govern dealer license withdrawal hearings.

The reasonableness of each dealer license withdrawal procedure is discussed separately in this document in the section corresponding to the procedure. The reader will note that many of the dealer license withdrawal procedures in parts 7400.2200 to 7400.3700 are similar to procedures set out in the OAH Rules. The OAH Rules were a starting point in the development of the dealer license withdrawal procedures. Based on the registrar's experience in conducting dealer license withdrawal hearings, those portions of the OAH Rules appropriate to dealer hearings were adapted and included in parts 7400.2200 to 7400.3700.

#### 7400.2200 WITHDRAWAL PROCEDURES; DEFINITIONS.

**Subpart 1. Scope.** The terms defined in subpart 1 relate specifically to dealer license withdrawal procedures. Stating the scope of the rules makes this clear.

**Subpart 2. Party.** This term is used throughout parts 7400.2200 to 7400.3700, but is not defined elsewhere. The definition of "party" from the OAH Rules was used, but was adapted to fit dealer license withdrawal hearings.

**Subpart 3. Person.** This term is used throughout parts 7400.2200 to 7400.3700, but is not defined elsewhere. The definition of "person" from the OAH Rules was used, with the addition of limited liability company to the list of entities considered a person.

**Subpart 4. Service or serve.** This term is used throughout parts 7400.2200 to 7400.3700, but is not defined elsewhere. The definition of "service" from the OAH Rules was used, but was adapted to fit dealer license withdrawal hearings. For example, the address at which a document could be left or to which a document could be mailed was specifically limited to the dealer's address as listed in the registrar's dealer records.

#### 7400.2300 HEARING; SERVICE OF NOTICE.

**Subpart 1. Scope.** Part 7400.2300 sets out when a hearing must be held to withdraw a dealer license and when the notice of and order for hearing must be served.

**Subpart 2. Summary cancellation.** Under Minnesota Statutes, section 168.27, subdivision 12a, the registrar "may" cancel a dealer license for failure to have a surety bond or vehicle insurance. It is necessary to state when and how the registrar will exercise this authority.

This subpart requires the registrar to immediately cancel a dealer license when the registrar has grounds for cancellation for failure to have a surety bond or vehicle insurance.

The bond provides economic protection for persons who buy from or sell to the dealer and for the state in the collection of taxes and fees. The insurance provides economic protection to persons who might be injured by vehicles owned or held for resale by the dealer. These economic interests are important and should not be left unprotected. Further, the possible harm to a dealer of being mistakenly canceled is minimized by the fact that the dealer is given

advance notice of cancellation and the fact that it is very easy for the dealer license to be reinstated by submitting proof that the dealer in fact has the required bond or insurance. Subpart 2 is reasonable.

**Subpart 3. Summary revocation; request for hearing, notice.** The last paragraph of Minnesota Statutes, section 168.27, subdivision 12, states: "With respect to clauses (12), (13), and (15), the registrar may suspend or revoke a dealer license immediately upon receiving certification of conviction or permanent injunction." It is necessary to state when and how the registrar will exercise this authority.

This subpart requires the registrar to immediately revoke a dealer license when the registrar has grounds for revocation under part 7400.1600, subpart 1, item A, B, or C. These items set out the violations in clauses (12), (13), and (15) as grounds for revocation.

As discussed earlier in this document, the violations set out in clauses (12), (13), and (15) are very serious and indicate that the dealer is not fit to continue being a dealer. Since immediate revocation is based on a certification of conviction or permanent injunction, it follows that the dealer has had a hearing on the violation. It is reasonable for the registrar to rely on the certification of conviction or permanent injunction in order to summarily revoke the dealer license.

Subpart 3 also sets up a time frame for conducting a hearing after a summary revocation. This is necessary because section 168.27, subdivision 12, requires a hearing within 30 days of the summary revocation, if requested by the licensee.

Under subpart 3, the registrar will hold a hearing within 30 days of the summary revocation if the dealer requests a hearing within 15 days of the revocation. If the request is made more than 15 days after the summary revocation, the registrar will hold a hearing within 15 days of the request. This time frame is reasonable because it takes the registrar approximately two weeks of lead time to make the necessary arrangements for a hearing.

**Subpart 4. Hearing and notice.** It is necessary to set out the procedures that apply to all dealer license withdrawals. Subpart 4 sets out the procedures that apply to all dealer license withdrawals, except those specifically described in subparts 2 and 3.

Subpart 4 requires the registrar to conduct a hearing prior to withdrawing a dealer license. To commence the hearing, the registrar must serve a notice of and order for hearing on the dealer. Subpart 4 also sets out the time frames for serving the notice.

For dealer license withdrawals covered by subpart 4, there is no statutory authority for withdrawing a license prior to a hearing. Further, the registrar can identify no risk of serious harm to the public if a hearing is conducted prior to the withdrawal. Therefore, it is reasonable to conduct a hearing prior to a withdrawal covered by subpart 4.

The requirement to commence the hearing by service of the notice is reasonable because it ensures that the dealer has a meaningful opportunity to know the issues and respond to the charges. The 30-day time frame is reasonable because it gives the dealer sufficient time to prepare for the hearing. This time frame is in line with the time frame in OAH Rules, part 1400.5600, subpart 3, which requires 30-days notice. The extra four days for when service is by mail takes into account three days for the delivery of the mail and an extra day for posting when the report is mailed through the state's central mailing system. These time periods are in line with those of the OAH Rules in part 1400.6100 which adds four days to the prescribed notice period when service is by mail through the state Central Mailing System.

#### 7400.2400 HEARINGS BEFORE HEARING EXAMINER.

Under Minnesota Statutes, section 168.27, subdivision 13, the registrar is authorized to hear dealer license withdrawal matters. The requirements of Minnesota Statutes, chapter 14, make it necessary that the hearing be conducted by someone other than the registrar. This person then makes a recommendation to the registrar.

Part 7400.2400 requires that dealer license withdrawal hearings be conducted by a hearing examiner appointed by the registrar.

As discussed above in the introduction to parts 7400.2200 to 7400.3700, dealer license withdrawal hearings are exempt from the requirement that they be conducted by an administrative law judge assigned by the Office of Administrative Hearings. It is therefore reasonable that the registrar appoint a hearing examiner to conduct these hearings. "Hearing examiner" is a suitable title for a person who conducts the hearing.

7400.2500 NOTICE OF AND ORDER FOR HEARING; CONTENT. Minnesota Statutes, section 14.58, requires in any contested case that all parties be afforded an opportunity for hearing after reasonable notice.

To ensure that the dealer is given reasonable notice of a license withdrawal hearing, the registrar began with the requirements for a notice under OAH Rules, part 1400.5600, subpart 2. We then adapted these requirements to apply to dealer license withdrawal hearings. We also added several requirements unique to dealer license withdrawal hearings.

- A. This item requires that the notice contain a caption which includes the proposed action and the name and dealer license number of the dealer. Putting this information in the caption makes it more prominent and conspicuous. This makes it more likely that the dealer is made aware of the seriousness and importance of the notice and that the dealer will read it carefully and respond promptly.
- B. This item requires that the notice contain the time, date, and place for the hearing. This meets a requirement of Minnesota Statutes, section 14.51, where it states that the "notice shall state the time [and] place . . . ." This item is similar to item A of the OAH requirements for the notice, except that we do not refer to a prehearing conference or to the judge setting the time, date, and place for the hearing. The issues in a dealer license withdrawal hearing are sufficiently straightforward so that a prehearing conference would almost never be needed. Also, it is the registrar's practice to set hearing times, dates, and places prior to serving notice on dealers.
- C. This item requires that the notice contain the name, address, and telephone number of the hearing examiner. This item is similar to item B of the OAH requirements for the notice.
- D. This item requires that the notice contain a citation to the registrar's statutory authority to hold the hearing and take the action proposed. This item is similar to item C of the OAH requirements for the notice.
- E. This item requires that the notice contain the allegations or issues to be determined, a citation to the statutes or rules violated, and any corrective action. This item is similar to item D of the OAH requirements for the notice, except that the phrase "and any corrective action deemed appropriate" was added because Minnesota Statutes, section 168.27, subdivision 13, requires this in the notice for a dealer license withdrawal hearing.

- F. This item requires that the notice contain a statement that in the event corrective action is deemed appropriate and corrective action is not taken, the dealer's license may be revoked, suspended, or canceled. This item was not taken from the OAH requirements for the notice. This statement is required by Minnesota Statutes, section 168.27, subdivision 13, and is repeated in the rules so all requirements for the notice are contained in one place.
- G. This item requires that the notice contain a statement that the registrar's proposed action may affect other motor vehicle dealer licenses in which the dealer or an owner, officer, or board member of the dealer is involved. This item was not taken from the OAH requirements for the notice. This item was included because a revocation, suspension, or cancellation may have a serious effect on other dealer licenses held by persons involved with this dealer. See parts 7400.0600, and 7400.1500 to 7400.1800. It is reasonable to put the dealer on notice of this.
- H. This item requires that the notice inform the dealer of who can represent the dealer at the hearing. This item is similar to item E of the OAH requirements for the notice.
- I. This item requires that the notice contain a citation to these procedural rules and to Minnesota Statutes, chapter 14. This item is similar to item F of the OAH requirements for the notice.
- J. This item requires that the notice contain a brief description of the procedure to be followed at the hearing. This item is similar to item G of the OAH requirements for the notice.
- K. This item requires that the notice contain a statement advising the dealer to bring to the hearing all documents, records, and witnesses needed to support the dealer's position. This item is similar to item H of the OAH requirements for the notice.
- L. This item requires that the notice contain a statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, referring the dealer to Minnesota Statutes, section 168.27, subdivision 13. This item is similar to item I of the OAH requirements for the notice, except that the reference is to the registrar's statutory subpoena powers.
- M. This item requires that the notice contain a statement advising the dealer of the name of the registrar's staff member or attorney general's staff member to contact to discuss informal disposition. This item is similar to item J of the OAH requirements for the notice.
- N. This item requires that the notice contain a statement advising the dealer of the consequences of failing to appear at the hearing. This item is similar to item L of the OAH requirements for the notice.
- O. This item requires that the notice contain a statement advising the dealer about the use of not public data at the hearing. This item is similar to item M of the OAH requirements for the notice.

7400.2600 RIGHT TO COUNSEL. This part permits parties to be represented in dealer license withdrawals by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Part 7400.2600 uses wording very similar to OAH Rules, part 1400.5800.

A dealer license withdrawal hearing is a very important matter for the dealer whose license is in jeopardy. The registrar would have no good reason for denying a dealer the right to be represented by counsel at a license withdrawal hearing. Therefore, it is reasonable to permit such representation. Likewise, since there is no good reason for denying a dealer the right to represent himself or herself at a license withdrawal hearing, it is reasonable to permit such representation.

Representation of a dealer by a nonlawyer is an unresolved issue in Minnesota, which is why part 7400.2600 refers to this issue, but defers the answer to it by permitting such representation "if not otherwise prohibited as the unauthorized practice of law." For a discussion of this issue, see G. Beck, L. Bakken, and T. Muck, Minnesota Administrative Procedure (1987), section 6.5.2.

**7400.2700 CONSENT ORDER, SETTLEMENT, OR STIPULATION.** Minnesota Statutes, section 14.59, states: "Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default." Informal disposition is often used in dealer license withdrawal cases. It is reasonable to reiterate the statutory directive since it commonly comes into play.

**7400.2800 DEFAULT.** As cited above, section 14.59 permits disposition of a contested case by default. In addition to repeating the statutory authorization for default, part 7400.2800 sets out the evidentiary consequences of a default and the definition of a default. The language of OAH Rules, part 1400.6000, was used in the drafting of part 7400.2800.

**7400.2900 RIGHTS AND RESPONSIBILITIES OF PARTIES.** The opportunity to present evidence and argument on the issues involved in the case is required by constitutional due process and by Minnesota Statutes, section 14.58. The rights to cross-examine witnesses and to present rebuttal evidence are given by Minnesota Statutes, section 14.60, subdivision 3. Part 7400.2900 repeats these rights so that they are clearly set out for the dealer whose license is the subject of a withdrawal hearing. Part 7400.2900 also serves as a reminder to the parties that evidence should be prepared so that it is available at the hearing.

**7400.3000 WITNESSES AND TESTIMONY.** Parties have a right to present evidence with respect to the issues involved in the case under Minnesota Statutes, section 14.58. Inherent in this is the right to present evidence using the testimony of witnesses. The administering of an oath is a reasonable means to ensure the truthfulness of the testimony by the witness. It is reasonable to give the hearing examiner authority to sequester witnesses in order to ensure that their testimony is not influenced by previous evidence or testimony given at the hearing. The language of OAH Rules, part 1400.7200, was used as the basis for part 7400.3000.

**7400.3100 BURDEN OF PROOF.** The burden or standard of proof in motor vehicle dealer license hearings is not set out in the APA (Minnesota Statutes, chapter 14) or in the motor vehicle dealer licensing law (Minnesota Statutes, section 168.27). Since this standard is not set out in the statutes, it must be determined from other sources.

Preponderance of the evidence is the general standard of proof in Minnesota administrative hearings conducted by the OAH. This is set out in OAH Rules, part 1400.7300, subpart 5.

There is an extensive discussion and analysis of this issue in G. Beck, L. Bakken, and T. Muck, Minnesota Administrative Procedure (1987), section 9.3.2. The preponderance of the evidence standard is favored unless the substantive law (constitutional provisions, statutes, or case law) requires the use of a different standard. There is no substantive law that indicates a different standard should be used for a hearing of the nature of a motor vehicle dealer license

withdrawal hearing.

In professional licensing proceedings involving disciplinary action against a licensed dentist, the Minnesota Supreme Court affirmed the use of the preponderance standard. However, the court admonished that in applying the preponderance standard in a professional licensing matter, the finder of fact should bear in mind the gravity of the decision and should be persuaded only by evidence with heft. See In re Wang, 441 N.W.2d 488 (Minn. 1989). See also Matter Of Ins. Agents' Licenses Of Kane, 473 N.W.2d 869 (Minn.App. 1991) which followed Wang regarding the standard of proof.

The preponderance of the evidence standard is reasonable in motor vehicle dealer license withdrawal hearings.

7400.3200 HEARING RECORD. Minnesota Statutes, section 14.58, provides that the hearing record is to be maintained by the Office of Administrative Hearings, until issuance of the administrative law judge's report, after which the record must be certified to the agency. Since motor vehicle dealer hearings are exempt from the requirement to use administrative law judges from the Office of Administrative Hearings, it is necessary to set out the responsibility for maintaining the hearing record.

Part 7400.3200 requires the hearing examiner to maintain the hearing record until issuance of the hearing examiner's report. At the time of issuance of the report, the hearing examiner is required to certify the record to the registrar.

It is reasonable to give the responsibility for maintaining the record to the hearing examiner since the hearing examiner is the one responsible for creating the record. The hearing examiner receives all evidence and arguments, makes the recording of the hearing, and writes the report.

The second paragraph of part 7400.3200 lists the items that the record contains. Since the decision of the registrar must be made on the record, it is important that the record contain all items that will be considered in making the decision. The items listed in the second paragraph of part 7400.3200 are reasonable because they are the items that are considered by the registrar in making a decision.

The language of OAH Rules, part 1400.7400, subpart 1, was used in the development of part 7400.3200.

7400.3300 HEARING EXAMINER'S CONDUCT. The hearing examiner's report and recommendation must be based on the record. It is also essential that the hearing examiner be fair and impartial in conducting the hearing and issuing the report. Part 7400.3300 provides a reasonable way to ensure these things by prohibiting the hearing examiner from communicating with persons about any issue of fact or law concerning the case unless all parties have notice and opportunity to participate.

The last sentence of part 7400.3300 provides an exception for purely procedural questions, since they will not affect the fairness or impartiality of the hearing examiner.

7400.3400 HEARING EXAMINER'S REPORT. Minnesota Statutes, section 14.62, subdivision 1, requires that the decision of the registrar be based on the record. It follows from this that the hearing examiner's report must also be based on the record since the report becomes part of the record upon which the registrar's decision is based. Part 7400.3400 is reasonable in clarifying this by requiring that the decisions of the hearing examiner and the registrar be based on the record.

Following the close of the record, the hearing examiner must issue a report that is made available to the parties. The contents of the report for a contested case are contained in Minnesota Statutes, section 14.50. However, since motor vehicle dealer license withdrawal hearings are exempt from section 14.50, it is necessary to set out the contents of the report of the hearing examiner. Part 7400.3400 is reasonable because it sets out the same criteria for a hearing examiner's report as are set out for an administrative law judge under section 14.50.

Part 7400.3400 requires the hearing examiner to deliver the completed report to the registrar. The registrar is then required to serve a copy of the report on all parties. Minnesota Statutes, section 14.61, requires an agency to wait to make a final decision until at least ten days after the report has been available to the parties. Since section 14.61 does not provide a mechanism for the distribution of the report to all parties, it is necessary to do so. It is reasonable for the hearing examiner to deliver the report to the registrar who is then responsible for the distribution of the report since the registrar appoints the hearing examiner to conduct the hearing.

**7400.3500 TIMING OF REGISTRAR'S DECISION.** Minnesota Statutes, section 14.61, requires an agency to wait until at least ten days after the report has been made available to the parties. Part 7400.3500 ensures that the parties have the required ten days by taking into account the method of service. The extra four days for when service is by mail takes into account three days for the delivery of the mail and an extra day for posting when the report is mailed through the state's central mailing system. These time periods are in line with those of the OAH Rules in part 1400.6100 which calculates extra time when service is by mail.

**7400.3600 REGISTRAR'S DECISION; EFFECTIVE DATE.** Minnesota Statutes, section 14.62, requires an agency in a contested case to render a written decision and order and to serve this on the parties. It is, therefore, necessary and reasonable that the registrar do this in each dealer license revocation, suspension, and cancellation.

Part 7400.3600 sets an effective date for orders that do not specify one. These orders are effective upon service, which means these orders are effective immediately upon receipt by the dealer. An earlier effective date would be unreasonable to the dealer because the dealer would not yet be informed of the order and would therefore be unable to comply. When there are special circumstances related to the dealer or the violation that call for a later effective date, the order will specify this. When there are no special circumstances, the order will be silent on the effective date, in which case an immediate effective date is appropriate.

Minnesota Statutes, section 168.27, subdivision 13, governs the manner of service of the registrar's decision. It is referred to so that the rules contain all hearing requirements.

**7400.3700 REGISTRAR'S DECISION; CONTENT.** Items A to D set out the contents of the registrar's decision and order. This is necessary to ensure that the decision and order meet all statutory requirements and that the contents of these documents are consistent. The reasonableness of the individual requirements is discussed below.

- A. This item requires that the notice contain a caption which includes the proposed action and the name and dealer license number of the dealer. This is reasonable because it clearly identifies the case.
- B. This item requires findings of fact and conclusions on all material issues. This repeats a requirement of Minnesota Statutes, section 14.62, subdivision 1, so that all contents of the decision and order are listed here.

- C. This item requires that the decision and order contain the action taken by the registrar. The action taken by the registrar is another name for the order. This item is included here so that all contents of the decision and order are listed here.
- D. This item requires that the decision and order contain notice of any rights that the dealer may have to a post-revocation hearing when the license has been revoked without a hearing. The registrar has limited authority under Minnesota Statutes, section 168.27, subdivision 12, to revoke a dealer license without a hearing. When a license is revoked under this authority, the dealer has a right to a hearing within 30 days of the revocation. This right would be meaningless to the dealer if the dealer did not know of it. Therefore, it is reasonable to include notice of this right in the decision and order revoking the dealer license.

**ESTABLISHED PLACE OF BUSINESS. PARTS 7400.4000 TO 7400.4300**

**7400.4000 POOLS, USED PARTS DEALERS, AND SCRAP PROCESSORS.**

Subpart 1. **Vehicle salvage pool.** The Vehicle Salvage Pool motor vehicle dealer license was created by Minnesota Laws 1988, chapter 496, section 6. The place of doing business requirements for a vehicle salvage pool are contained in section 8 of chapter 496, which states in part:

"Sec. 8. Minnesota Statutes 1986, section 168.27, subdivision 10, is amended to read:

Subd. 10. **PLACE OF DOING BUSINESS.** All licensees under this section shall have an established place of business which shall include as a minimum:

...

(2) For a used motor vehicle dealer or vehicle salvage pool, the following: a ~~permanent enclosed commercial building on a permanent foundation and an area to display motor vehicles~~, owned or under lease by the licensee. The lease shall be for a minimum term of one year. The building shall contain office space ~~for where~~ the books, records, and files necessary to conduct the business ~~are kept~~ and maintained with personnel available during normal business hours or automatic telephone answering service during normal ~~working~~ business hours.

...

~~(7)~~(6) If a new or used motor vehicle dealer or salvage pool maintains more than one place of doing business in a county, the separate places shall be listed on the application. If additional places of business are maintained outside of one county, separate licenses shall be obtained for each county."

Minnesota Statutes 1986, section 168.27, subdivision 10, was also amended in 1988 by Minnesota Laws 1988, chapter 634, section 5. Due to an oversight, chapter 634 did not contain the place of doing business requirements for a salvage pool that were added by chapter 496.

The Revisor of Statutes determined that the two amendments to subdivision 10 of section 168.27 could not be codified together in the statutes. The Revisor put the amendment from chapter 634 in the body of section 168.27 and put the amendment from chapter 496 as a

note following section 168.27. Consequently, section 168.27 does not contain the place of doing business requirements for a salvage pool.

It is necessary that the motor vehicle dealer rules contain place of doing business requirements for a salvage pool because these requirements are not in the statutes.

In chapter 496, salvage pools and used motor vehicle dealers were included together in the same clause of subdivision 10 and were given the same place of doing business requirements as each other. Subpart 1 requires that a salvage pool meet the same place of doing business requirements as a used motor vehicle dealer, including requirements added after chapter 496 was enacted.

The place of doing business requirements for used motor vehicle dealers were amended by chapter 634, which states in part:

"Sec. 5. Minnesota Statutes 1986, section 168.27, subdivision 10, is amended to read:

Subd. 10. **ESTABLISHED PLACE OF DOING BUSINESS.** All licensees under this section shall have an established place of doing business which shall include as a minimum:

...

(2) For a used motor vehicle dealer, the following:

(a) a permanent enclosed commercial building on a permanent foundation, owned or under lease by the licensee. The lease shall be for a minimum term of one year. The building shall contain office space for where the books, records and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or automatic telephone answering service during normal working business hours. Dealership business hours must be conspicuously posted on the place of doing business and readily viewable by the public;

(b) an area either indoors or outdoors to display motor vehicles which is owned or under lease by the licensee; and

(c) a sign clearly identifying the dealership by name which is readily viewable by the public.

...

~~(7)~~(6) If a new or used motor vehicle dealer maintains more than one place of doing business in a county, the separate places shall be listed on the application. If additional places of business are maintained outside of one county, separate licenses shall be obtained for each county."

Chapter 634 has several requirements for a used motor vehicle dealer that were not imposed on a salvage pool by chapter 496. These additional requirements include the posting of normal business hours and a sign that clearly identifies the dealership.

It is reasonable to have the same place of business requirements for salvage pools and used motor vehicle dealers because the legislature grouped salvage pools and used motor vehicle dealers together in chapter 496. Grouping salvage pools and used motor vehicle dealers

together in the rules is clearly consistent with legislative intent. Further, these additional requirements create little, if any, additional burden for a salvage pool. Almost all salvage pools would post their normal business hours and have a sign identifying the salvage pool because it is good business to do so.

Subpart 2. **Used vehicle parts dealer or scrap metal processor.** The scrap metal processor and used vehicle parts dealer licenses were created by Minnesota Laws 1988, chapter 496, section 4. The place of doing business requirements for a scrap metal processor or a used vehicle parts dealer are contained in section 8 of chapter 496, which states in part:

"Sec. 8. Minnesota Statutes 1986, section 168.27, subdivision 10, is amended to read:

Subd. 10. **PLACE OF DOING BUSINESS.** All licensees under this section shall have an established place of business which shall include as a minimum:

(4) For a ~~motor vehicle broker~~ used parts dealer or scrap metal processor, the following: a ~~commercial office space~~ street address where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or an automatic telephone answering service during normal business hours.

(8)(7) If a motor vehicle lessor, ~~broker~~ wholesaler, used parts dealer, scrap metal processor, or auctioneer maintains more than one permanent place of doing business, either in one or more counties, the separate places shall be listed in the application, but only one license shall be required."

Minnesota Statutes 1986, section 168.27, subdivision 10, was also amended in 1988 by Minnesota Laws 1988, chapter 634, section 5. Due to an oversight, chapter 634 did not contain the place of doing business requirements for used parts dealers and scrap metal processors that were added by chapter 496.

The Revisor of Statutes determined that the two amendments to subdivision 10 of section 168.27 could not be codified together in the statutes. The Revisor put the amendment from chapter 634 in the body of section 168.27 and put the amendment from chapter 496 as a note following section 168.27. Consequently, section 168.27 does not contain the place of doing business requirements for used parts dealers and scrap metal processors.

It is necessary that the motor vehicle dealer rules contain place of doing business requirements for used parts dealers and scrap metal processors because these requirements are not in the statutes.

Subpart 2 contains the place of doing business requirements that were enacted in chapter 496. These requirements are reasonable because they were clearly intended by the legislature.

#### 7400.4100 LOCATION.

Subpart 1. **Commercial building.** A dealer licensed as a new motor vehicle dealer, a used motor vehicle dealer, a vehicle salvage pool, or a motor vehicle auctioneer is required to own or lease a commercial building. See Minnesota Statutes, section 168.27, subdivision 10, and part 7400.4000, subpart 1, of these rules.

Subpart 1 allows the dealer to meet the commercial building requirement by owning or leasing either a commercial building or an entire commercial office space. This interpretation of the commercial building requirement is necessary to clarify ambiguities in the definition of a commercial building. Commercial building is defined in section 168.27, subdivision 1, clause (6), which states:

"(6) "Commercial building" means a permanent, enclosed building that is on a permanent foundation and connected to local sewer and water facilities or otherwise complying with local sanitary codes, is adapted to commercial use, and conforms to local government zoning requirements. "Commercial building" may include strip office malls or garages if a separate entrance and a separate address are maintained and the dealership is clearly identified as a separate business."

Strip office malls or garages were included within the definition of commercial building by Minnesota Laws 1988, chapter 634, section 1. Prior to this amendment, the registrar interpreted the commercial building requirement to mean the dealer had to own or lease an entire commercial building.

In light of the 1988 amendment that included strip malls within the definition of a commercial building, the registrar has been urged by the attorney general's office to reconsider its interpretation that requires the dealer to own or lease the entire building. The registrar was advised that it would be difficult to provide a rational basis for not requiring licensees in strip malls to own or lease the entire mall, while requiring licensees in a commercial building other than a strip mall to own or lease the entire commercial building.

The statutes do not provide any guidance in defining "strip mall." This makes it difficult to clearly and fairly set out the attributes of a strip mall that distinguish it from a commercial building. Any decision on where to draw the line between a strip mall and a commercial building would be arbitrary. To illustrate this difficulty, consider a stereotypical strip mall and the questions set out below. The stereotypical strip mall consists of a long narrow building with several stores, each having a separate enclosed area and each having an entrance directly to the outside. There is a walkway in front of the stores so that customers can walk from one store to another.

- Is this still a strip mall if an awning is put over the walkway?
- Is this still a strip mall if the walkway is enclosed to protect against Minnesota weather?
- Is this still a strip mall if there are store entrances on both sides of the enclosed walkway?
- Is this still a strip mall if one store has two stories? (For instance, the dealership's display area is on the first floor and the business office is on the second floor.)
- Is this still a strip mall if a second story is added to the entire strip mall and each store on the second story has a separate entrance and stairway that leads directly to the common walkway?

Because there is no statutory definition of strip mall, a negative answer to any of these questions would likely be unenforceable if challenged. It follows that there is no legal distinction between an enclosed walkway in a typical mall and a common hallway in a commercial building. It also follows that there is no legal distinction between an office in a strip office mall and an office in a commercial building.

Allowing a dealer to use a commercial office space as its commercial building also reduces the burden of the rules on small businesses. The dealer will now have a wider choice of locations for its commercial building. Among the office spaces made available, there may be one that better meets the needs of the dealer and does so at less cost.

It is reasonable to allow a dealer to use a commercial office space as its commercial building because it is a reasonable interpretation of the definition of "commercial building." Further, by allowing a dealer to use a commercial office space as its commercial building, the impact of the rules on small businesses is reduced.

Subpart 1 requires that a commercial office space be for the exclusive use of the dealer and that the office space have a separate address. As discussed above, a commercial office space is allowed as a form of strip office mall or garage. Under the definition of commercial building, a strip office mall or garage must have "a separate entrance and a separate address . . . [and must be] clearly identified as a separate business." It is both necessary and reasonable that the commercial office space be used exclusively by the dealer and have a separate address so that the dealer meets the statutory requirements of a separate entrance, address, and business.

The separate business requirement is interpreted to mean that the dealer be the only business entity (sole proprietor, partnership, corporation, or limited liability company) in the office space. The separate business requirement was not interpreted to prohibit the dealer from conducting any business other than buying and selling motor vehicles. This is reasonable because it is common for dealers to do business other than strictly buying and selling motor vehicles. Motor vehicle transaction records are required to be kept separate so that the registrar can adequately monitor the dealer's compliance with record keeping requirements without intruding on the dealer's other business that is not related to motor vehicle sales.

Subpart 1 requires that a building or office space be enclosed with floor to ceiling walls. The definition of commercial building in section 168.27 requires that it be enclosed. Floor to ceiling walls is a reasonable way to enclose a building.

Subpart 1 allows a dealer to have other entrances to the dealership. All commercial buildings have more than one entrance. Many commercial office spaces can be entered from more than one area of the building in which they are located. The registrar has no reason to prohibit other entrances to a dealership as long as the dealer meets the minimum statutory requirement of having an entrance that leads directly to the dealership from the outdoors or from a public area. If there are other entrances, however, subpart 1 requires that there be a door that can be shut and locked to close off the entire entrance. This is a reasonable means to allow entrances and yet still meet the statutory requirements of the dealer being clearly identified as a separate business. Further, allowing other entrances to the dealership reduces the burden of the rules on small businesses by increasing the number of locations that will meet the requirements of these rules.

**Subpart 2. Commercial office space.** A dealer licensed as a motor vehicle lessor or a motor vehicle wholesaler is required to own or lease a commercial office space by Minnesota Statutes, section 168.27, subdivision 10.

Subpart 2 requires that the office space be enclosed with floor to ceiling walls. The books, records, and files of a lessor or a wholesaler must be kept in the dealer's commercial office space. This makes it necessary that the office space be clearly defined so the registrar and the dealer will know the limits of where books, records, and files may be stored. Requiring floor to ceiling walls is a reasonable way to clearly define this area.

Subpart 2 allows a dealer to have any number of entrances to the dealership. However, if an entrance leads from commercial or residential space, subpart 2 requires that there be a door that can be shut and locked to close off the entire entrance. Many commercial buildings have commercial office space that can be entered from other parts of the building. The registrar

has no reason to prohibit such access for a dealer as long as the dealer's commercial office space is clearly defined. Requiring doors that can be shut and locked is a reasonable way to allow access to the dealership while still clearly defining the dealership area.

The requirement that the office space be for the exclusive use of the dealer is identical to a requirement under subpart 1 and is included for the same reasons as discussed under subpart 1.

**Subpart 3. Display area.** A dealer licensed as a new motor vehicle dealer or a used motor vehicle dealer must own or lease an area to display motor vehicles under Minnesota Statutes, section 168.27, subdivision 10. A dealer licensed as a vehicle salvage pool must meet the same requirements under part 7400.4000, subpart 1, of these rules.

It is necessary to clearly set out the size of the display area because this is not done in the statutes or elsewhere in the rules. This will help dealers and the registrar's dealer examiners know exactly what is required. Five vehicles was chosen as a measure of the size of the display area because it is large enough to give some meaning to the display area requirement and yet it is small enough to not put an undue burden on the dealerships that are small businesses. It is, therefore, reasonable to require that the display area be large enough to display five of the vehicles the dealer is selling.

It is necessary to clearly define the boundaries of the display area so the public and the registrar's dealer examiners know the identity of the dealer who is selling vehicles and know which vehicles the dealer is selling. This is important when dealers are in close proximity and when a parking lot or vehicle storage lot is in close proximity to a dealer's display area. Subpart 3 requires that the display area boundaries or markings make it readily apparent that the dealer is separate from other dealers. This is a small business consideration because it gives performance standards in that the display area must be marked only if it is not readily apparent that the dealer is separate from other businesses.

**Subpart 4. Additional location.** Dealers may have additional licensed locations under Minnesota Statutes, section 168.27, subdivision 10, and under part 7400.4000 of these rules. The dealer must either have a separate license for each additional location or must list the location in its original license application.

The books, records, and files of a new or used dealer, an auctioneer, or a salvage pool must be stored at the dealer's commercial building. The books, records, and files of a lessor or wholesaler must be stored at the dealer's commercial office space.

These requirements make it necessary that boundaries of additional locations be clearly defined so the dealer and the registrar can easily tell that the dealer is complying with these requirements. Subpart 4 requires that additional commercial buildings and commercial office spaces meet the requirements of the dealer's original location. It is reasonable to make the requirements consistent for all locations.

**Subpart 5. Phase-in.** These rules will clarify many of the location requirements for motor vehicle dealers. There are locations which met with the registrar's approval prior to the date of these rules, but which will not meet the requirements in these rules. It is important that all dealers meet the requirements of these rules, but it is necessary to allow a reasonable time for dealers to make changes to their locations to bring them into compliance with these rules. Two years is a reasonable amount of time to make the necessary changes because it will allow a dealer time to determine the best way to make the necessary changes and enough time to implement the changes.

## 7400.4200 SIGNS.

**Subpart 1. Locations.** A dealer licensed as a new vehicle dealer must have "a sign clearly identifying the dealership by name which is readily viewable by the public." Minnesota Statutes, section 168.27, subdivision 10, clause (1)(e). The identical wording is used to impose this requirement on used vehicle dealers and salvage pools. See Minnesota Statutes, section 168.27, subdivision 10, clause (2)(c), and part 7400.4000, subpart 1, of these rules. These statutory and rule passages do not, however, set out the specifications for the sign on the dealer's commercial building. Subpart 1 is necessary because it sets out the specifications for the sign.

The specifications for signs apply only to new and used dealers and salvage pools. It is reasonable to limit subpart 1 to new and used dealers and salvage pools because these are the only dealers required by law or rule to have a sign.

Subpart 1 requires a sign that clearly identifies the dealership by name. This requirement is reasonable because it comes directly from the statutory and rule portions that require a sign.

Under subpart 1, there must be a sign at each location of the dealer. If a dealer has more than one location, the only way the dealer can be "clearly identif[ied]" by a sign that "is readily viewable by the public" is to have a sign at each location. It is, therefore, reasonable to require a sign at each location.

If the dealer's display area is not adjacent to the sign for the dealer's commercial building, subpart 1 requires that the sign at the display area indicate where the commercial building is located. The commercial building is where the dealer stores its records. Also, as a practical matter, most of the paperwork involved in buying a vehicle is done at the dealer's commercial building. A sign at a display area cannot truly identify the dealer to the public unless it tells the public where the main part of the dealer's business can be found. It is reasonable to require that a sign at a display area indicate the location of the commercial building.

Subpart 1 requires that the letters of the sign contrast sharply in color with the background of the sign. If the background color did not contrast with the letters, it would be hard to read the sign. This requirement is a reasonable way to make the sign "readily viewable by the public."

Subpart 1 requires that an outdoor sign be readily legible during daylight hours from the nearest road or street. Similarly, an indoor sign must be readily legible in the lighting commonly used in the area of the sign from the nearest access to the sign.

The requirements of subpart 1 set performance standards based on readability to measure compliance with the rule. The sign must be readily legible in the light in which the public most often sees the sign (daylight for outdoor signs and commonly used lighting for indoor signs). The sign must be legible from where the public will see the sign (nearest road or street for outdoor signs and nearest access for indoor signs).

By contrast, operational standards would mandate such things as the size of the sign and the coloring of the letters and background. Performance standards, as opposed to operational standards, are preferable because they reduce the burden of the rules on small businesses. These requirements are a reasonable way to make the sign "readily viewable by the public."

The requirements of subpart 1 set out reasonable specifications for the sign of a new or used dealer or salvage pool.

**Subpart 2. Vehicles.** Subpart 2 requires a dealer to have a sign on a vehicle used to transport

another vehicle that the dealer has acquired to dismantle or destroy.

In Minnesota, a person who acquires vehicles to dismantle or destroy must have a motor vehicle dealer license. This requirement first became effective on January 1, 1989, as part of Minnesota Laws 1988, chapter 496. Under chapter 496, the scrap metal processor license and the used vehicle parts dealer license were created for persons who acquire vehicles to dismantle or destroy. These licensing requirements were coded under Minnesota Statutes, section 168.27, subdivisions 3a and 3b. In addition, chapter 496 amended section 168.27, subdivisions 2 and 3, to authorize new motor vehicle dealers and used motor vehicle dealers to acquire vehicles to dismantle or destroy.

The purpose of chapter 496 was to reduce motor vehicle theft. Dealers who acquire a vehicle to dismantle or destroy are required to report to the registrar so the title to the vehicle can be permanently retired. See chapter 496, section 21, and Minnesota Statutes, section 168A.153. This takes the title out of circulation and makes it more difficult for a car thief to buy a damaged vehicle for a nominal price and then use the title to cover a stolen vehicle of a similar make and model.

A vehicle that will be dismantled or destroyed is rarely in condition to be driven. The person who acquires the vehicle often picks up the vehicle from its owner and transports the vehicle to a processing site. The licensed place of doing business for scrap processor or used parts dealer is where the dealer stores its records. The actual place where the dealer does most of its business of acquiring damaged vehicles is constantly changing and is often not the dealer's licensed location. People who see the dealer at work cannot identify the dealer by the sign at the dealer's licensed location because the dealer is not at its licensed location when it is acquiring damaged vehicles.

A person who sells a vehicle or a witness to the transaction will have difficulty remembering the identity of the buyer if there is no sign on the vehicle of the buyer. Likewise, it will be difficult for the registrar to verify that the buyer was licensed if the identity of the buyer is unknown. The registrar needs to know the identity of persons acquiring vehicles in order to verify compliance with dealer licensing and reporting of damaged vehicles. Law enforcement representatives also asserted that requiring a sign on a vehicle used to transport other vehicles would be helpful to police if it later turned out that the vehicle was stolen instead of purchased. Witnesses to the theft would more likely remember the name on the truck than the license plate number. Subpart 2 is necessary so the dealer can be identified when the dealer is acquiring vehicles to dismantle or destroy.

Subpart 2 applies to dealers that acquire vehicles to dismantle or destroy. This is reasonable because the necessity for signs relates directly to persons that are acquiring vehicles to dismantle or destroy.

A sign on a vehicle used to transport another vehicle will identify the dealer. This requirement puts little, if any, additional burden on the dealer because almost all businesses put signs on their service vehicles as a means of advertising. A sign on the dealer's service vehicles is generally good business. The requirement of a sign on the dealer's vehicle is a reasonable means to identify the dealer when the dealer acquires a vehicle to dismantle or destroy.

Subpart 2 requires that the sign appear on both sides of the vehicle while it is being used to transport a vehicle that will be dismantled or destroyed. Requiring a sign on both sides of the vehicle is reasonable because it will identify the dealer to persons regardless of where they are in relation to the vehicle. Limiting the sign requirement to those times when the dealer is acquiring vehicles is reasonable because it relates directly to the purpose of subpart 2.

Subpart 2 also sets performance standards based on readability of the sign. Setting performance standards was done as a consideration for small business because performance standards generally result in less of a burden than operational standards. These readability standards require that the letters contrast sharply in color with the background of the sign and that the sign be readily legible during daylight hours from a distance of 50 feet while the vehicle is stationary. These standards ensure readability and yet still allow the dealer to choose the colors, size, and style of the sign. The wording for this requirement was taken from federal requirements for the size, shape, location, and color of markings on vehicles belonging to motor carriers covered by section 390.21 of the Federal Motor Carrier Safety Regulations, November 1988. The requirement of commonly used performance standards is a reasonable means to ensure that the dealer is clearly identified when acquiring vehicles to dismantle or destroy.

Subpart 2 sets out the reasonable requirement to have a sign as a means of identifying a dealer who is acquiring vehicles to dismantle or destroy. Subpart 2 also sets out reasonable specifications to ensure that the sign clearly identifies the dealer.

#### 7400.4300 NORMAL BUSINESS HOURS.

The need for part 7400.4300 relates directly to the registrar's responsibility to inspect dealer records and dealer locations.

Minnesota Statutes, section 168.27, subdivision 15, states in part: "The registrar is hereby authorized to enforce this section . . . ." As part of the registrar's authority to enforce section 168.27, the registrar inspects dealer locations to verify that these locations comply with the established place of business requirements in section 168.27, subdivision 10, and part 7400.4000 of these rules.

The registrar also inspects dealer records of vehicles acquired by dealers. These records must be made available to the registrar under Minnesota Statutes, section 168A.11, subdivision 3, which states in part:

"Every dealer shall maintain for three years at an established place of business a record . . . of every vehicle bought, sold, or exchanged, or received for sale or exchange, which shall be open to inspection by a representative of the department or peace officer during reasonable business hours."

The registrar employs dealer examiners to inspect dealer locations and examine dealer records. For most dealer inspections, the examiner arrives at the dealer's location without making an appointment. This works out well with larger dealers who have regular business hours because a larger dealer will usually have an employee present to make records available for inspection. For smaller dealers whose normal hours are irregular and who do not always have an employee present or available to assist the examiner, this may present problems for the examiner and dealer alike. An examiner arriving at a small dealer without an appointment will have wasted a trip if the dealer is closed. If the examiner arrives at a one-person dealership when the dealer is with a customer, the dealer cannot help the examiner without inconveniencing the customer.

Dealer examiners also have duties in addition to inspecting dealers. These duties include conducting driver's license examinations. It is a top priority of the registrar to serve driver's license applicants as quickly and efficiently as possible. Some time is set aside for dealer inspections, but for the most part, the majority of dealer inspections are conducted when the demand for driver's license examinations is low. Also, the length of dealer inspections will

vary depending upon what the examiner finds. An examiner will not know if he or she will have time that day to conduct a second inspection until the first inspection is complete. Because of these time constraints, the majority of a dealer examiner's scheduling is done on very short notice. It is important to the efficient use of examiner time that the majority of dealer examinations be conducted without an appointment.

If all dealers had regular hours and were large enough to always have an employee present to assist the examiner, part 7400.4300 would not be necessary. In general, part 7400.4300 is necessary to balance the registrar's responsibility to inspect dealer locations and records with the special needs of dealers who are small businesses.

Specifically, subpart 1 is necessary because the registrar needs to know when a dealer can be contacted to arrange for the inspection of the dealer's location and records. Subpart 2 is necessary to balance the registrar's responsibility to inspect a dealer's records with the dealer's need to have the inspection conducted during hours that are reasonable to the dealer.

**Subpart 1. Absence during normal business hours.** As discussed earlier in this statement, the registrar needs to know when a dealer can be contacted to arrange an inspection of the dealer's records and location.

A new motor vehicle dealer is required to have "personnel available during normal business hours." Minnesota Statutes, section 168.27, subdivision 10, clause (1)(a). All other dealers are required to have "personnel available during normal business hours or automatic telephone answering service during normal business hours." Section 168.27, subdivision 10, clause (2)(a)(used motor vehicle dealer), clause (3)(motor vehicle lessor), clause (4)(motor vehicle wholesaler), and clause (5)(motor vehicle auctioneer), and part 7400.4000, subpart 1 (vehicle salvage pool), and subpart 2 (used vehicle parts dealer and scrap metal processor).

Under part 7400.0200, item I, a dealer must list its normal business hours on the dealer's license application. The registrar relies on this list of normal business hours to know when the dealer can be contacted.

Subpart 1 requires a new motor vehicle dealer to notify the registrar if the dealer will not have personnel available during normal business hours. Subpart 1 also requires all other dealers to notify the registrar if the dealer will not have personnel available or an automatic telephone answering service during normal business hours. The dealer is the one who controls when personnel will be available and when an answering service will be used. Since the dealer is the one who knows when the dealership will be closed, it is reasonable that the dealer be the one who notifies the registrar.

Subpart 1 requires that the notice be received by the registrar at least seven days before the absence. Seven days gives the registrar ample time to notify the appropriate dealer examiner of the dealer's absence. For a planned absence, such as a vacation, the dealer will likely know about it long in advance. It is reasonable to require at least seven days notice in this instance because the timing of the notice imposes little if any burden on the dealer in addition to that of giving the notice. An exception to the seven days is made for unforeseen circumstances, in which case the notice must be given as soon as is reasonable. The required timing of this notice is reasonable by definition.

Subpart 1 allows the dealer to give notice either in writing or by telephone. This reduces the burden of the rules because it allows the dealer to give notice in a manner most convenient to the dealer. The verification number for a telephone notice is a means for the dealer to confirm that the notice has been received.

The requirements of subpart 1 are reasonable because they give the registrar the notice needed while making reasonable exceptions that will lessen or eliminate any undue burdens on dealers.

**Subpart 2. Records and location availability.** As discussed earlier in this statement, a dealer at a one-person dealership may not be able to help an examiner without inconveniencing a customer. There may also be situations where a one-person dealer would not be able help an examiner without neglecting business or responsibilities that the dealer has at someplace other than the dealer's location. Subpart 2 is necessary to balance the registrar's responsibility to inspect a dealer's records with the dealer's interest in having the inspection conducted during hours that are reasonable to the dealer.

As stated earlier, every dealer must make its records available for "inspection by a representative of the department or peace officer during reasonable business hours." Minnesota Statutes, section 168A.11, subdivision 3.

The registrar's original position was that if the dealer was open for business when the examiner arrived and if the examiner requested to see the records, the dealer should make its records available. Members of the dealer rules task force expressed concern about this and said there would be situations where an inspection at the demand of an examiner would impose a hardship on a dealer.

The registrar contended that a required inspection was reasonable because dealer examiners do not demand to see records if it would pose a hardship for the dealer. It is the registrar's practice that if the dealer is scheduled to leave for an auction or if the dealer is with a customer, the examiner will make arrangements to come back at another time.

Certain members of the task force asserted that the rule should allow a dealer to refuse to make records available unless an appointment had been scheduled. The registrar did not feel that this measure was necessary to protect dealers because examiners do not make unreasonable requests to inspect records. Further, many dealers have an employee present who can make records available to an examiner at any time the dealership is open for business. The registrar was concerned that it would not be able to make efficient use of examiner time if all inspections were by appointment. Task force members were not comfortable with leaving the issue of reasonable hours up to the discretion of individual examiners.

State Senator James Metzen was made aware of the disagreement and requested to meet with interested parties to bring them together on this issue. Meetings were held on October 12 and October 26, 1989. In attendance were Senator Metzen, representatives of the registrar, and interested members of the task force. Changes to the wording for subpart 2 were agreed to at the October 26, 1989, meeting.

The amended wording for subpart 2 was circulated to law enforcement personnel and dealer examiners at the registrar's annual examiner review school in September 1992. Several concerns were raised with respect to the scope of the exceptions created by subpart 2 and to the possibility of some dealers abusing the flexibility worked into the rules as a small business consideration. Law enforcement personnel asked whether it was intended that the limitations of subpart 2 apply to inspections of dealer records by a peace officer. This was not intended, nor is it within the authority of the registrar to limit the activities of law enforcement personnel. Dealer examiners raised the concern that a non-complying dealer would use the small business considerations built into subpart 2 to conceal evidence of noncompliance. For these reasons, language was added to make the limitations of subpart 2 apply only to routine dealer inspections conducted by dealer examiners. Specifically, a dealer could not refuse an

inspection request when it is made by a peace officer or when it is by a dealer examiner to follow up on findings of noncompliance.

Subpart 2 now balances many concerns. If the request is made when a person responsible for maintaining the records and location is available, the dealer must make the records and location available at that time. If the dealer cannot make the records and location available at that time, the dealer does not have to make them available, but the examiner can request that the dealer make arrangements for the inspection at a later time. The inspection would have to be arranged within 30 days of the request. If the request is made by telephone or in writing, the dealer has to contact the examiner within 14 days and must make the appointment within 30 days. These time periods give the dealer sufficient time to make the records and location available while still meeting the needs of the registrar to inspect the records and location.

Subpart 2 is reasonable because it requires a dealer to make the records and location available for inspection and yet ensures that inspections will be conducted in a way that will not put an undue burden on small businesses.

### **VEHICLE TRANSACTIONS; RECORDS. PARTS 7400.5000 TO 7400.5800**

Minnesota Statutes, section 168A.11, subdivision 3, states, in part:

"Every dealer shall maintain for three years at an established place of business a record in the form the department prescribes of every vehicle bought, sold, or exchanged, or received for sale or exchange, which shall be open to inspection by a representative of the department or peace officer during reasonable business hours."

Parts 7400.5000 to 7400.5800 prescribe the form of record and clarify the time frame during which records must be maintained by a dealer on the acquisition, sale, or consignment of a motor vehicle.

7400.5000 ACQUIRING NEW MOTOR VEHICLE; DOCUMENTATION;  
7400.5100 ACQUIRING USED MOTOR VEHICLE; DOCUMENTATION; and  
7400.5200 SELLING NEW OR USED MOTOR VEHICLE.

Parts 7400.5000 to 7400.5200 prescribe the records which must be maintained by a dealer on the acquisition and sale of new and used motor vehicles. The requirements of parts 7400.5000 to 7400.5200 reflect the long-established record keeping practices of motor vehicle dealers. These practices are necessary because the information is used by the registrar in issuing titles and verifying tax amounts. The record keeping practices have proven to be workable in the everyday operation of motor vehicle dealers and thus, the requirements are reasonable. For these reasons, the specific details of parts 7400.5000 to 7400.5200 are discussed only briefly in this document.

The information, signatures, and documents required are necessary to ensure the integrity of the transaction and the integrity of the information on the certificate of title issued by the registrar. This information is also used to validate the taxes collected. These requirements are reasonable because they represent the minimum documentation needed for issuance of a valid certificate of title.

With two exceptions, the records required by parts 7400.5000 to 7400.5200 must be maintained for three years after the vehicle is sold. This is in line with Minnesota Statutes, section 168A.11, subdivision 3. The two exceptions are the manufacturer's statement or

certificate of origin and the certificate of title. These records must be kept by the dealer until the vehicle is sold. This is reasonable because these documents are submitted as part of the application for title by the buyer. It is reasonable to start the three year period at the time the vehicle is sold or otherwise disposed of to ensure that the records are maintained during the entire period the dealer owns or has possession of the vehicle and for a consistent period of time afterwards. If the three year time period started running at the time of acquisition, the potential would exist for the problem of records being disposed of while the dealer still owns the vehicle.

#### 7400.5300 HOLDING VEHICLE FOR CONSIGNMENT SALE.

**Subpart 1. Consignment agreement required; content.** In a consignment transaction, the owner of the vehicle and the seller of the vehicle are two different persons. Because the seller of the vehicle is not the owner, it is necessary for the owner to give the seller the authority to transfer the vehicle. Also, since the owner and seller are two different persons, it becomes possible for insurance on the vehicle to lapse because of a misunderstanding as to who is responsible for maintaining the insurance.

The requirements of subpart 1 and items A, B, C, D, F, and I are reasonable because they show the basis for the dealer having the authority to sign on behalf of the owner for purposes of transferring title to a buyer. Item E is required for proper transfer of title. Items G and H are reasonable means to ensure that the vehicle is covered by the insurance required under Minnesota Statutes, chapter 65B. Item J comes into play when the vehicle is returned to the owner and is a reasonable means to verify that the dealer no longer holds the vehicle for consignment sale.

**Subpart 2. Multiple vehicles under one consignment agreement.** An insurance company acquires many damaged vehicles in the ordinary course of its business. It is a common practice for insurance companies to dispose of all such vehicles by consigning the vehicles to one motor vehicle dealer, who then sells the vehicles. Many of the terms for the consignment of these vehicles are the same from vehicle to vehicle. It would greatly reduce the burden of the rules if the common terms of these agreements could be contained in one master agreement rather than be repeated for each separate vehicle.

Subpart 2 allows multiple vehicles to be consigned under one consignment agreement. The terms that are in common for all vehicles under the agreement only need to be set out once. The terms that are unique to each vehicle, such as the description of the vehicle and its odometer reading, are required to be set out separately in the agreement or in an addendum to the agreement.

Subpart 2 is reasonable because it reduces the burden of the rules when multiple vehicles are consigned by the same owner to the same dealer. At the same time, subpart 2 meets the needs of the registrar by requiring the information necessary to ensure the integrity of the title transaction.

**Subpart 3. Selling junked vehicle.** Minnesota Statutes, 168A.151, subdivision 6, states "A junking certificate authorizes the holder only to possess and transport the vehicle, except that a salvage pool or insurance company, or its agent, may sell an unrepairable total loss vehicle with a junking certificate to a licensed used parts dealer."

Subpart 3 requires a salvage pool or a dealer acting as the agent of an insurer to verify that a buyer of an unrepairable total loss vehicle has a used parts license. This requirement is based on the registrar's experience that some dealers were selling these types of vehicles to persons who did not have the proper dealer license. This requirement is reasonable because it places

very little burden on the dealer while ensuring compliance with the statute.

**Subpart 4. Salvage vehicle sold on consignment.** When an insurer acquires a vehicle through payment of damages, it is required by Minnesota Statutes, section 168A.151, to apply for a salvage certificate of title. The insurer has the ultimate responsibility to apply for the salvage title even if the vehicle is consigned to a dealer. The registrar does not have jurisdiction over insurers, so the registrar cannot enforce this requirement on insurers. It is necessary nevertheless that all title transactions processed by dealers are proper. Subpart 4 is a reasonable means to accomplish this within the limitations of the registrar's authority to regulate dealers, but not insurers.

**7400.5400 TEMPORARY VEHICLE PERMITS FOR BUYERS.** This part provides details regarding the issuance of temporary vehicle permits under Minnesota Statutes, sections 168.091 and 168.092. It is necessary to clarify some of the statutory references.

**Subpart 1. Permits issued to dealers.** Subpart 1 clarifies that the statutory reference to "a permit" is intended to mean that only one permit may be issued to each vehicle. This ensures that the vehicle is registered, taxes are paid, and licensing indicia are displayed in a timely manner.

Subpart 1 also clarifies the statutory time period for submitting the dealer's copies of the permits by requiring the dealer to submit the dealer's copy of the permit to the registrar when requested by the registrar. This requirement strikes a practical balance between the statutory reference to "immediately" and the needs of the registrar to ensure the proper use of these permits. The easiest way for the registrar to ensure proper use of the permits is to review copies of the permits at the dealer's location and to compare them to the dealer's sales records. If the copies were submitted to the registrar, it would be difficult to do this comparison.

**Subpart 2. Contents of permit.** The items of subpart 2 set out the requirements for what a temporary vehicle permit must contain.

Items A, B, and D are required by sections 168.091 and 168.092. It is reasonable to include these requirements in the rules so that all temporary vehicle permit requirements are contained in one place. This makes it easier for the dealer to reference these requirements.

Items C and E require that certain registration information be included on the permit. This is reasonable because it is information the dealer must obtain from the purchaser for title and registration purposes, and it demonstrates the compliance of this temporary registration with the statutory requirements of vehicle registration.

Items F and G are necessary to identify the dealer who issued the permit, and to attest to the validity of the information contained on the permit. This is reasonable because it demonstrates that the permit was issued by a properly authorized agent, and allows a tracking of the vehicle documentation until the vehicle is titled and registered in the proper jurisdiction.

**7400.5500 LEASING VEHICLES.**

**Subpart 1. Documentation required on file.** This subpart details the documents which must be maintained when a vehicle is leased by a dealer. The document retention period clarifies that the time period stated in Minnesota Statutes 168A.11, subdivision 3, begins upon disposal of the vehicle. The different requirements for out-of-state registered vehicles are necessary to determine the validity of retaining the out-of-state registration on vehicles being operated in

Minnesota. These are reasonable because they represent the minimum documentation required to identify the vehicle, the vehicle ownership, the registration requirements, and the terms of the vehicle lease.

**Subpart 2. Selling leased vehicle.** This subpart explains that a licensed motor vehicle lessor must maintain the same records as a new or used vehicle dealer in regard to the sale of a vehicle. This is necessary because of the unique privilege granted to a licensed motor vehicle lessor of being able to sell formerly leased vehicles without having to obtain a license to sell vehicles. This is reasonable because the requirements are identical to those imposed on new and used motor vehicle dealers.

**7400.5600 ACQUIRING SALVAGE VEHICLE.** Minnesota Statutes, section 168A.151, subdivision 1, (as amended in 1993) states in part: "Any person who acquires a damaged motor vehicle with an out-of-state title and the cost of repairs exceeds the value of the damaged vehicle or a motor vehicle with an out-of-state salvage title or certificate, as proof of ownership, shall immediately apply for a salvage certificate of title." This requirement applies to all persons, including motor vehicle dealers. Part 7400.5600 repeats this requirement as it applies to dealers so that it is clear that a dealer puts its dealer license at risk if the dealer does not apply for a salvage certificate as required. Part 7400.5600 also uses 48 hours as the time limit for complying. The statute uses the rather nebulous term "immediately." It is reasonable to use 48 hours as a measure of immediately because this time period is used in the first paragraph of subdivision 1 as the time period within which an insurer must "immediately" apply for a salvage title.

#### **7400.5700 ACQUIRING VEHICLE TO DISMANTLE OR DESTROY.**

**Subpart 1. Older model vehicle.** Minnesota Statutes, section 168A.153, subdivision 1, requires a dealer to report to the registrar upon acquiring an older model vehicle to be dismantled or destroyed. Section 168A.153 does not require the surrender of the title. However, Section 168A.15, subdivision 3, requires all titles to be mailed or delivered to the Department when vehicles are scrapped, dismantled, or destroyed. Subpart 1 interprets these two statutory sections together to require a dealer to report and to submit the title to the registrar upon the acquisition of a vehicle to be dismantled or destroyed.

The registrar wants a high level of compliance with surrendering of titles. Therefore, incomplete intermediate transfers between the owner of record and the dealer need not be completed. This is reasonable because neither statute requires that the certificate of title be completed.

If the certificate of title has already been surrendered, it is reasonable that the dealer's obligation is met because the purpose behind the reporting requirement has been satisfied.

**Subpart 2. Late model or high value vehicle.** When a dealer acquires a late model or high value vehicle to be dismantled or destroyed, Minnesota Statutes, section 168A.153, subdivision 2, requires the dealer to surrender the certificate of title and to complete an application for a salvage certificate of title within ten days of acquiring the vehicle. In order to maintain the integrity of the certificate issued by the registrar and to protect the interest of the secured parties, it is reasonable to require that documentation of all transfers be completed.

There are different statutory timing requirements for acquiring a vehicle to scrap or to hold for resale. These timing requirements are further complicated by the fact that they may be different for different kinds of dealers. Items A and B reconcile these different statutory timing requirements.

**Subpart 3. Report.** This subpart details the information which must be included on the form submitted by the dealer for vehicles which are to be dismantled or destroyed. This rule is necessary because the statute requires a report, but does not adequately state what the report must contain. Further, the statute requires the seller's driver's license number, which is not always available. The vehicle information required by subpart 3 is the minimum necessary to properly identify the vehicle, so that the proper record is marked. The seller information is the minimum necessary to allow the registrar to reasonably believe that the seller has given the dealer the authority to junk out the vehicle. When the seller has a driver's license number and the number is readily available, the report must contain the number. When this number is not readily available, the report must contain other information that will verify the identity and authority of the seller. It is reasonable to require this information, since it is readily obtained from the vehicle, the certificate of title, and the seller.

The three year period of time for retaining the records is reasonable because it is in line with Minnesota Statutes, section 168A.11, subdivision 3.

**Subpart 4. Title.** This subpart states that dealers are responsible for the certificates of title submitted to them until the titles are surrendered to the registrar. This is necessary because the certificate of title may be held by the dealer until it is determined whether the vehicle will be resold. Since the dealer submits the title to the registrar with the report, the three year standard period set out in section 168A.11 obviously does not apply. The requirement of subpart 4 is reasonable because the registrar should be able to inspect the title while in the dealer's possession. It is also reasonable because current practices have proven that such requirements are workable in a dealer's daily business.

#### **7400.5800 SELLING SALVAGE VEHICLE TAKEN OUT OF STATE; REPORT.**

This part details the report which must be filed with the registrar to comply with Minnesota Statutes, section 168A.154, when a salvage vehicle is sold by a dealer to a buyer who intends to remove it from the state. This is necessary so that the reporting of these vehicles is standardized, and that complete vehicle and purchaser information is provided on the report. It is also necessary to state that this report is part of the records which must be maintained by the dealer in accordance with Minnesota Statutes, section 168A.11, subdivision 3. Items A, B, and C are reasonable because they require the minimum information necessary to accurately identify the vehicle and the parties to the transaction.

**7400.5900 RECORD KEEPING.** Presently, all records required under chapter 7400 are paper records. Subpart 1 officially makes this practice part of the rules. Subpart 2 anticipates the future by providing for other media upon which records might be kept. The concerns addressed under items A and B of subpart 2 ensure that records stored on other media are accessible and permanent. In developing this language, we reviewed Minnesota Statutes, sections 15.17 and 15.171, which deal with records kept by public officers. Sections 15.17 and 15.171 contain provisions which ensure that information on records is accessible and permanent regardless of the media on which the records are stored. It is reasonable to ensure the accessibility and permanency of records. Item C is included because some documents, out of necessity, will continue to be kept on paper. A certificate of title is one such document. It is reasonable to acknowledge this in the list of conditions the registrar will use to determine whether records may be kept on media other than paper.

## **DEALER LICENSE PLATES. PART 7400.6000**

### **7400.6000 DEALER LICENSE PLATES.**

**Subpart 1. Use by a dealer.** Minnesota Statutes, section 168.27, subdivision 16, governs the issuance and use of dealer demonstration plates. Under clause (1) of subdivision 16, a vehicle owned by a dealer and bearing a dealer demonstration plate may be used "by the motor vehicle dealer or dealer's spouse, or any full-time employee of the motor vehicle dealer for either private or business purposes." The statute is silent as to who is considered a dealer for purposes of dealer demonstration plate use when the dealership is a partnership, corporation, or limited liability company. Subpart 1 treats all owners, officers, and board members as dealers for purposes of dealer demonstration plate use. These are the persons who control the dealership and as such, must be named on the dealer license application. The decision to grant or deny a dealer license is based in part on the fitness of these persons. These persons are held responsible for the acts of the dealership. It is reasonable that the privileges of using dealer demonstration plates be given to the persons who are held responsible for the actions of the dealership.

**Subpart 2. Use by prospective buyer.** Minnesota Statutes, section 168.27, subdivision 16, governs the issuance and use of dealer demonstration plates. Under clause (3) of subdivision 16, a vehicle owned by a dealer and bearing a dealer plate may be used "for demonstration purposes by any prospective buyer thereof for a period of 48 hours or in the case of a truck, truck-tractor, or semitrailer, for a period of seven days." The statute does not state whether the prospective buyer can use the vehicle for private and business purposes during the demonstration period. The question of permissible uses has been presented to the registrar. Subpart 2 states that the vehicle may be used for private or business purposes by the prospective buyer. The statute clearly states that the use must be for demonstration purposes. The statute clearly limits the time period for such use. For many prospective buyers, vehicle performance under likely operating conditions is a key factor in the buying decision. It is reasonable to allow dealer plate use for a legitimate demonstration of a vehicle's performance under the conditions the vehicle will likely face.

**Subpart 3. Improper use of dealer plate.** Subpart 3 requires the registrar to immediately revoke a dealer demonstration plate or a dealer in-transit plate when the registrar has sufficient cause to believe that the plate has been used improperly. The dealer is required to surrender the plate immediately upon receiving notice or, if the plate is not at the dealership when the notice is received, within 48 hours. In addition to surrendering the plate, the dealer is required to title and register the vehicle within ten days of the plate revocation.

Under Minnesota Statutes, sections 168A.02 and 168.013, a motor vehicle using the public streets or highways in Minnesota must be titled and registered. Section 168A.03, clause (2), exempts motor vehicle dealers from titling vehicles owned by the dealer and held for sale. Section 168.27, subdivisions 16 and 17, allow dealers to obtain dealer plates and use them on vehicles without registering the vehicles. When a dealer plate is used improperly, it can be concluded that the vehicle is no longer held for sale and therefore the vehicle is no longer exempt from titling. Further, when a dealer plate is used improperly, it means the dealer is not meeting the dealer plate requirements and is therefore no longer eligible to hold the plate. It follows that it is reasonable to revoke a dealer plate for improper use and to require the dealer to title and register the vehicle upon which the plate was used.

Conclusion

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

\_\_\_\_\_  
Date

Michael S. Jordan 2-8-94  
Michael S. Jordan, Commissioner  
Department of Public Safety