

MINNESOTA DEPARTMENT OF PUBLIC SAFETY



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November 2, 2011

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

**RE: In the Matter of the Proposed Rules Governing Driver Information,
Licensing, and Testing, *Minnesota Rules*, parts 7410.0100, 7410.0400,
7410.0410; Governor's Tracking AR # 1026**

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt rules governing driver information, licensing, and testing to establish identity and residency requirements related to enhanced driver's licenses and enhanced identification cards. We plan to publish a Notice of Hearing in the November 7, 2011 *State Register*.

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

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

Yours very truly,

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

Jacqueline Cavanagh
Legislation and Rules Coordinator
Driver and Vehicle Services

Minnesota Department of Public Safety



STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendment to Rules Governing School
Bus Drivers and Proposed New Rules Governing
Commercial Driver's License Holders, Minnesota
Rules, Parts 7410.0100, 7410.0400, 7410,0410**

November 2, 2011

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

INTRODUCTION

Pursuant to chapter 171 of Minnesota Statutes, the Minnesota Department of Public Safety (DPS), through its Driver and Vehicle Services Division (DVS), regulates the licensure and driving privilege of individuals who operate vehicles on Minnesota roads. In this rulemaking proceeding, DPS proposes to amend rules governing driver information, licensing, and testing to prescribe the identity and residency requirements for enhanced driver's licenses (EDL) and enhanced identification cards (EID).

Context and Purpose

The U.S. Department of Homeland Security's Western Hemisphere Travel Initiative (WHTI) regulations, a result of the Intelligence Reform and Terrorism Prevention Act of 2004, became effective on June 1, 2009.¹ WHTI requires all travelers to present a passport or other document that denotes identity and citizenship when entering the United States and is intended to strengthen border security and facilitate entry for U.S. citizens.

WHTI regulations also provided for the issuance of the EDL and EID. These documents provide United States citizens with an acceptable, low-cost travel document that denotes citizenship and identity for entry to the U.S. by land or sea from Canada, Mexico, the Caribbean or Bermuda. It contains identifier technology and security features approved by the United States Department of Homeland Security (DHS) to improve both the speed and efficiency at border crossing stations.

The EDL/EID is optional and carries the same privilege as a current Minnesota driver's license and/or identification card. It is only issued to Minnesota residents, who are also United States citizens, and who choose to apply for and purchase it in lieu of a regular driver's license or identification card. Currently, the following states are issuing EDL and EID cards: New York, Michigan, Vermont, and Washington. In Canada, the provinces of British Columbia, Manitoba, Ontario, and Quebec are issuing EDL and EID cards.

The fee charged for an EDL or EID is \$15 higher than the fee for a Minnesota driver's license or identification card. The additional cost in producing these cards include the card design, namely the embedding of the Radio Frequency Identification (RFID) chip and the technology and programming involved in adding a machine-readable zone (MRZ) on the back of the card.

RFID technology refers to systems that allow information contained in a wireless device or "tag" to be read from a distance and has been implemented as part of U.S. border management to move traffic more quickly and efficiently across the border. No personal

¹See 8 CFR 212, 235 (2010); 22 CFR 41, 53 (2010)

information is stored on or transmitted from the card – only a number which points to the document holder’s information housed in a secure database.²

Persons ineligible for EDL or EID include individuals less than 16 years of age, a non-state resident, a non-citizen, and any applicant who is not eligible for a Minnesota driver’s license under Minnesota Statutes, section 171.04.

Federal Agreement and Oversight

The 2010 legislature established the authority for Minnesota to issue EDL and EID beginning in January 2013. In addition to a grant of rulemaking authority, the 2010 legislation also authorized the commissioner of Public Safety to enter into an agreement with the secretary of the United States Department of Homeland Security to develop an EDL and EID to be designated by the secretary as acceptable documents to denote identity and citizenship for the purposes of entering the United States at land and sea ports.³ At the time of SONAR publication, DPS, in conjunction with DHS, continues to negotiate the memorandum of agreement (MOA) that establishes the shared commitment by the state and the federal government to support the voluntary project of EDL/EID issuance in Minnesota.

One of the requirements of the MOA is for the State of Minnesota (DPS) to develop a Business Plan for Implementation of the Enhanced Driver’s License and Identification Card (Business Plan). The Business Plan will outline the State of Minnesota’s business process for implementing the Border Crossing program (of which EDL and EID issuance are part) between U.S. Customs and Border Protection (CBP), a component agency of DHS, and the State of Minnesota to ensure that Minnesota is in compliance with federal requirements governing EDL and EID issuance.

The aforementioned documents comprise the basis of federal requirements for EDL and EID issuance and serve as the rational basis and need for DPS’ proposed rule amendments governing identity and residency requirements for an EDL or EID. As stated in DHS’ Notice in the *Federal Register* when it published approval of Washington state’s EDL document, “[t]o establish an EDL program, each State must enter into agreement with DHS to develop an acceptable EDL document. Each EDL program is specific to each entity based on specific factors such as the entity’s level of interest, funding, technology, and other development and implementation factors.”⁴

The MOA and Business Plan are not complete but discussions with DHS and DPS are ongoing. Consequently, DPS has relied on the draft of the Business Plan provided by

² See <http://www.getyouhome.gov/html/rfid/RFID.html>

³ See 2010 Minn. Laws. ch. 316, s. 16.

⁴ See Designation of an Enhanced Driver’s License and Identity Document Issued by the State of Washington as Travel Document Under the Western Hemisphere Travel Initiative, 73 Fed. Reg. 65, 18421.

DHS and emulated, where practical and applicable, the policies of other states currently issuing EDLs in formulating and proposing its rule amendments so that an applicant for an EDL or EID must provide proof of United States citizenship, full legal name, identity, date of birth, Social Security Number, residence address, and a photographic identity document.

Part 7410.0100 was last amended on September 15, 2003 (28 SR 314)

Part 7410.0400 was last amended on September 15, 2003 (28 SR 314) and by Minn. Laws 2007, ch. 397, art.1, sec. 25.

Part 7410.0410 was last amended on September 15, 2003 (28 SR 314)

Process

On June 27, 2011, DPS published a Request for Comments on the proposed rulemaking in the *State Register* and posted a copy of the Request on the Department's Driver and Vehicle Services website.⁵ The Request described the need for proposed rules and rule amendments, the persons affected by the proposed rule, and the statutory authority for the rulemaking.

Copies of the Request for Comments were mailed to persons who have requested to be notified of DPS' rulemaking pursuant to Minnesota Statutes, section 14.14. In accordance with that statute, the Department also attempted to identify and notify those persons or classes of persons who would be significantly affected by the proposed rule. DPS' efforts in this regard are described in the next subsection, entitled "Additional Notice" (page 4).

DPS received 10 comments or requests for information during its Request For Comments. The state of Washington sent a letter of support and assistance in regards to EDL/EID issuance. The province of Manitoba and the Minneapolis Passport Agency asked for a copy of the Department's rule draft so it could provide comment. Two driver education schools and the Minnesota School Bus Operators Association expressed interest in the matter and requested a copy of the proposed rules. One deputy registrar requested a copy of the proposed rules and another requested to be removed from the Department's rulemaking notification list. An individual with school district 624 (White Bear Lake) responded with several questions on the EDL/EID program, how an EDL or EID was similar or differed from a federal passport card, and inquired generally as to the documents needed to establish citizenship. Finally, a probation officer in Kandiyohi County commented on the problems in his profession related to duplicate driver's license records, especially those without a photo (non-residents), when compiling criminal histories. He expressed concern with duplicate records at the EDL/EID level.

⁵<https://dps.mn.gov/divisions/dvs/news/Pages/enhanced-drivers-licenses-and-id-cards.aspx>

DPS sent notice that a draft of the Department's proposed rules and rule amendments was available on the DVS website and encouraged review and comment by October 21st, 2011. This notice was sent on October 12th, 2011 to: the Department's list of persons registered to receive information on rulemaking activity; the approved Additional Notice Plan list, as well as to the Ontario Ministry of Transportation and to a citizen lobbyist. The notice also informed stakeholders that there would be an additional opportunity to comment once the Notice of Hearing was published. The Department received two comments/questions on the subject of EDL and EID from employees with school districts and from a citizen, and a request by a local trucking company to be added to the rulemaking mailing list. In addition, the Department received a telephone inquiry from a citizen on how EDL/EID is purported to address certain immigration issues.

In the November 7, 2011 issue of the *State Register*, the Department plans to publish a Notice of Hearing. The Notice of Hearing and the proposed rule will be sent by U.S. or electronic mail to the individuals and entities that received the Request for Comments, those who were notified of the proposed rule draft, and to the individuals and entities described in the next subsection, entitled "Additional Notice." The Notice of Hearing, the proposed rule, and this Statement of Need and Reasonableness (SONAR) will be posted for public review on the Driver and Vehicle Services website⁶ and legislators will be notified as required by Minnesota Statutes, section 14.116. A copy of this SONAR will be sent to the Legislative Reference Library as required by Minnesota Statutes, section 14.131.

Additional Notice

In accordance with Minnesota Statutes, section 14.14, DPS strove to identify those persons or classes of persons who would be significantly affected by the proposed rule, so that they could be notified of these rulemaking proceedings. DPS sent copies of the Request For Comments in accordance with the approved Additional Notice Plan on June 14, 2011.

This list included: State and federal transportation departments, Explore Minnesota; Minnesota Trade Office; Ag Marketing and Development Division of MN Department of Agriculture; U.S Commercial Service; Hospitality Minnesota; Minnesota International Center; Midwest Global Trade Association; Minnesota Business Partnership; Canada-Minnesota Business Council; Minnesota Trucking Association; Minnesota Chamber of Commerce; all minority councils and the Confederation of Somali Community in Minnesota; Immigration Law Center of Minnesota; Minnesotans Seeking Immigration Reform; all deputy registrars and driver's license agents, all approved public and private driver education programs and commercial driving training schools in the state; Minnesota Driver and Traffic Safety; Office of Traffic Safety; Transportation Center for Excellence; American Association of Motor Vehicle Administrators; law enforcement; U.S. Department of Homeland Security and U.S. Customs and Border Patrol located in Minnesota; the

⁶ *Id.*

consular offices of Canada, Mexico, and certain Caribbean countries, and the State Court Administrator's Office.

In addition to the delivered notices (electronic and U.S. mail), DPS issued a press release on June 24, 2011 to all statewide media outlets informing the public that a Request For Comment was being published on June 27th, 2011, in the *State Register* and that comments were being accepted on the matter. DPS was able to verify that the press release was picked up and reported on by the following newspapers in the state (and by those publications whose readership includes a portion of the state), including: The Baudette Region; Bemidji Pioneer; Clearwater-West Sherburne Tribune; Fargo Forum, The Grand Forks Herald; International Falls Journal; Jordan News; Montevideo American News; St. Joseph Newsleader; Sebeka Menahga Review Messenger, and Wadena Pioneer.

Lastly, in accordance with Minnesota Statutes, section 16E.07, subdivision 3, the Department published the Request for Comments on the DVS website.

In anticipation of publishing the Notice of Hearing, DPS updated the Additional Notice Plan list that was approved for the Request for Comments. Three organizations were deleted from the list because the mailing was returned with no forwarding address and attempts to locate a new address were unsuccessful. One deputy registrar also asked to be removed from this mailing list. DPS added six individuals or entities that were not on the original mailing list but who responded to the Request For Comments, had general inquiries, or requested more information. The province of Manitoba suggested that DPS include the Ontario Ministry of Transportation and, finally, DPS added a citizen lobbyist with a longstanding interest in privacy matters. DPS then submitted this additional notice plan to the Office of Administrative Hearings for review.

On October 27, 2011, the Office of Administrative Hearings approved the Additional Notice Plan submitted by DPS on October 25, 2011.

STATUTORY AUTHORITY

The Department's statutory authority to adopt these rules is set forth in *Laws* 2010, chapter 316, section 17 in which the Commissioner of Public Safety is directed to amend parts 7410.0100, 7410.0400, and 7410.0410 so that an applicant can comply with Minnesota Statutes, section 171.06, subdivision 3.

Under this law, the Department has the necessary authority to adopt the proposed rule amendments.

REGULATORY ANALYSIS

Statement of Need and Reasonableness for Proposed Amendments to
Minnesota Rules, Parts 7410.0100, 7410.0400 and 7410.0410

November 2, 2011

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

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

The Department has identified “classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.” Minn. Stat. § 14.131(1) (2010).

The rule itself does not impose costs as the EDL or EID is optional. Persons affected are Minnesota residents, who are also United States citizens, who choose to apply for an EDL or EID.

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

Neither the Department nor any other agency is likely to incur prohibitive implementation or enforcement costs if the proposed rule is adopted.

The proposed rule would have no effect on state revenues. The statutory fee for the EDL or EID is \$15.00 more than a regular driver’s license or identification card. It is needed to cover costs so that DPS can comply with additional federal requirements at all levels of the issuing process including identity and residency document intake, applicant interview, as well as the security features of the EDL or EID card itself, namely the RFID chip and MRZ.

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

The Department has considered whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule. The Department has concluded that there are no such methods because the rule’s purpose is to comply with *Laws* 2010, chapter 316, for the issuance of an EDL or EID. In order to issue the documents, DPS must comply with federal requirements.

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

The Minnesota Administrative Procedure Act requires DPS to describe any alternative methods that it seriously considered for achieving the purpose of the proposed rule and the reasons why those alternatives were rejected. *See* Minn. Stat. § 14.131(4) (2010). In DPS’ view, however, there is no alternative method of achieving the rule’s purpose, a purpose that is mandated by legislation and based on federal requirements.

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

The Department has analyzed “the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals,” Minn. Stat. § 14.131(5) (2010), and it has concluded that the proposed amendment has no effect on the costs of compliance.

If an applicant does not already have a driver’s license or identification card from Minnesota or another jurisdiction, there may costs involved in obtaining other acceptable photo identification. However, these costs exist for any person seeking a passport or other acceptable travel document and the compliance is voluntary since the EDL/EID is optional.

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

Under the Administrative Procedure Act, DPS must consider “the probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.” Minn. Stat. § 14.131(6) (2010).

The Department was directed by the 2010 legislature to adopt the proposed rules. By failing to adopt the proposed rule amendments, DPS would not be able to prescribe, in accordance with DHS requirements, the required identity and residency documents required for application of an EDL or EID.

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

Under section 14.131, clause 7, of Minnesota Statutes, DPS must assess any differences between the proposed rule and existing federal regulations and specifically analyze the need for and reasonableness of each difference. Minn. Stat. § 14.131(7) (2010).

The proposed rule amendments are intended to be in compliance with federal (DHS) requirements. Each EDL program is specific to each entity based on specific factors as outlined in the Business Plan. *See* page 2.

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

Although the proposed rule would have no known impact on farming operations, DPS has notified the Agricultural Marketing and Development Division of the Minnesota Department of Agriculture of this rulemaking due to any potential impact on the development of international market opportunities for Minnesota agricultural products.

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

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

Within the parameters of federal requirements regarding the issuance of an EDL or EID, DPS strove to include as many proof of identity and proof of residency documents as possible, particularly with respect to residency requirements.

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

DPS has considered whether the cost of complying with the proposed rule in the first year following adoption will exceed \$25,000 for any business with fewer than 50 full-time employees or for any city with fewer than ten full-time employees. The Department has based its determination on the regulatory analysis in the section above (page 8) titled “Probable Costs of Compliance.” As discussed there, no new costs are imposed on either small businesses or cities. Further, Minnesota Statutes, sections 171.066 and 171.068 prohibit an employer from requiring an EDL or EID as a condition of employment.

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

DPS consulted with the commissioner of Minnesota Management and Budget to evaluate the fiscal impact and benefits of the proposed rule on local governments. On October 12, 2011, prior to publishing the Notice of Hearing, the Department submitted copies of:

- (1) the Governor’s Proposed Rule and SONAR Form;
- (2) the proposed rule amendments; and
- (3) the October 11th draft of this Statement of Need and Reasonableness.

On October 14, 2011, Keith Bogut responded on behalf of the commissioner of Minnesota Management and Budget. He opined that because the proposed changes deal only with citizen’s requirements to prove their identity and residency, and these interactions are the sole responsibility of the Department of Public Safety, there is no impact to local governments.

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

DPS has determined that no town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule. As discussed earlier, the EDL or EID is optional for individuals. *See* page 2.

LIST OF WITNESSES

DPS anticipates having the following witnesses testify at the public hearing in support of the need for and reasonableness of the proposed rule amendments:

1. Ms. Patricia McCormack, Driver and Vehicle Services Director, Department of Public Safety
2. Ms. Joan Kopcinski, Driver Services Program Director, Department of Public Safety
3. Ms. Jane Landwehr, Driver Services Compliance Manager, Department of Public Safety
4. Ms. Sue Kendrick, Driver Services Issuing Supervisor, Department of Public Safety

LIST OF EXHIBITS

At the time of writing, DPS anticipates entering the following exhibits (or a sufficient extract thereof pending final subject matter) into the hearing record to demonstrate the need for and reasonableness of the proposed rules and rule amendments:

1. Memorandum of Agreement between United States Department of Homeland Security and State of Minnesota
2. State of Minnesota Business Plan For Implementation of Enhanced Driver License/Identification Card

RULE ANALYSIS

The necessity and reasonableness of this rule having been established in earlier rulemakings, DPS is restricting its analysis here to the narrow subject of the proposed amendments. *See* Minn. R. 1400.2070, subp. 1 (“If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.”). Specifically, DPS is focusing on the need for and reasonableness of establishing identity and residency requirements for the issuance of an enhanced driver’s license or enhanced identification card.

***Minn. Rules, part 7410.0100* DEFINITIONS.**

The amendment of Subpart 2a adds the definition of “Enhanced driver’s license or EDL.” The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subdivision 37a.

The term means “a license, instruction permit, or provisional license, to operate a motor vehicle issued or issuable under the laws of this state by the commissioner of public safety that denotes citizenship and identity and contains technology and security features approved by the secretary of the United States Department of Homeland Security. An enhanced driver’s license may be used in the same manner as a driver’s license, instruction permit, or provisional license, and is approved by the secretary of the United States Department of Homeland Security for the purposes of entering the United States. All provisions in this chapter relating to drivers’ licenses, instruction permits, and provisional licenses, including cancellation, suspension, revocation, reinstatement, examination, restriction, expiration, and renewal, and unlawful acts and violations, apply to an enhanced driver’s license.”

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

The amendment of Subpart 2b adds the definition of “Enhanced identification card or EDL”. The term is defined by incorporating the statutory reference at Minnesota Statutes, section 171.01, subdivision 37b.

The term means “an identification card issued or issuable under the laws of this state by the commissioner of public safety that denotes citizenship and identity and contains technology and security features approved by the secretary of the United States Department of Homeland Security. An enhanced identification card may be used in the same manner as an identification card and is approved by the secretary of the United States Department of Homeland Security for purposes of entering the United States.”

The definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. It is reasonable to use the term defined in Minnesota Statutes to ensure consistency between the authorizing legislation and administrative rule.

The amendment to Subpart 12 adds “enhanced driver’s licenses” and “enhanced identification cards” to the definition of “Residence address and permanent mailing address.” This amendment is both necessary and reasonable because the definition of residence address and permanent mailing address are the same for a regular driver’s license and identification card as they are for an EDL or EID.

The amendment of Subpart 14b adds the definition of utility services. The definition is needed to clarify to the EDL or EID applicant which type of utility service qualifies for purposes of proof of residency. It is reasonable because the definition includes those services typically contracted for by either a homeowner or a renter. For the most part, the utility services specified in the definition are billed directly to a person’s principal residence and can then be presented as proof of residency.

Minn. Rules, part 7410.0400 DOCUMENTING PROOF OF NAME, DATE OF BIRTH, IDENTITY.

Throughout this part, DPS attempted to keep separate the identity and residency requirements for EDL and EID from the primary and secondary document requirements for a regular Minnesota driver's license and identification card. However, when applicable and when rule subparts or items referred to both EDL/EID and non-EDL/EID documents, or could be construed to apply to both, DPS eliminated ambiguity by adding clauses that either included or excluded EDL/EID requirements from the rule provision.

The amendment to Subpart 1 clarifies that, at the time of application, an applicant for an EDL or EID, in addition to a driver's license, permit, or identification card, must present a Minnesota driver's license, permit, or Minnesota identification card if one of these has been issued to the applicant. The amendment is necessary because it complies with requirements in the draft of the Business Plan. It is reasonable because the definition of EDL provides, in part, that all provisions in this chapter [Minnesota Statutes, chapter 171] relating to driver's licenses [...] apply to an enhanced driver's license and the definition of EID provides, in part, that it is an identification card issued or issuable under the laws of this state by the commissioner of public safety [...].

The amendment to Item A of subpart 1, clarifies that an applicant for EDL or EID cannot present a Minnesota driver's license, identification card, or permit that is expired. It is reasonable because it is consistent with proposed requirements to the draft of the Business Plan and because it applies only to applicants for an EDL or EID, which is an optional form of driver's license or identification.⁷

The amendment to Item B of subpart 1, clarifies that a driver's license, identification card, or permit from any other jurisdiction, including an EID and EDL from any other jurisdiction, must be invalidated and returned to an applicant. The amendment is necessary to comply with the national issuing procedure so that a driver has only one driver's license and that the State of Record has the driver's complete driver record. This procedure is the same for identification cards issued by a bureau or department of motor vehicles. It is reasonable because the definition of EDL provides, in part, that all provisions in this chapter [Minnesota Statutes, chapter 171] relating to driver's licenses [...] apply to an enhanced driver's license and the definition of EID provides, in part, that it is an identification card issued or issuable under the laws of this state by the commissioner of public safety [...].

The amendment to Item C clarifies that the identity requirements of this item apply only to applicants for a regular driver's license, permit, or identification card, and not to applicants for an EDL or EID. The amendment is necessary and reasonable as it eliminates

⁷ As detailed on pages 3 and 4, the Business Plan is currently being discussed and is in draft form only at this stage. Portions of this document are subject to change.

ambiguity in a rule part dealing with enhanced documents and regular driver licenses, permits, and identification cards.

The amendment of Item D to subpart 1 (subitems 1 through 7 inclusive) specify acceptable documents to prove the date of birth of an applicant for an EDL or an EID. The amendments are necessary because the commissioner cannot issue an EDL or EID without proof satisfactory of an applicant's date of birth. The amendments are reasonable because they comply generally with the draft of the Business Plan requirement "to require, at a minimum, documentation showing the applicant's date of birth, [...]."⁸

In subitem 1 of Item D, an applicant may present an original or certified copy of United States or United States territory birth certificate that bears the raised or authorized seal of the issuing jurisdiction or a protective equivalent.

In subitem 2 of Item D, an applicant may present a United States Department of State Consular Report of Birth Abroad (FS-240; DS-1350; FS-545).

In subitem 3 of Item D an applicant may present a valid, unexpired U.S. passport or U.S. passport card.

In subitem 4 of Item D, an applicant may present a Certificate of naturalization (N-550, N-570).

In subitem 5 of Item D, an applicant may present a Certificate of citizenship (N-560 or N-561).

In subitem 6 of Item D, an applicant may present an American Indian Card (Form I-872) or Minnesota tribal identification card that meets the requirements of Minnesota Statutes, section 171.072.

In subitem 7 of Item D, an applicant may present a United States military photo identification card issued to active, reserve, and retired military personnel only.

The amendment of Item E to subpart 1 (subitems 1 through 5 inclusive) sets forth acceptable documents to prove the full legal name of an applicant for an EDL or an EID. The amendments are necessary because the commissioner cannot issue an EDL or EID without proof satisfactory of an applicant's full legal name. Additionally, proof of and verification of full legal name by the state is specified in the draft of the Business Plan. It is reasonable, then, for the commissioner to require an additional document not previously

⁸ Draft of *State of Minnesota Business Plan for Implementation of the Enhanced Driver License/Identification Card*, page 3. (As detailed on pages 3 and 4, the Business Plan is currently being discussed and is in draft form only at this stage. Portions of the Business Plan are subject to change.)

presented for proof of identity or for proof of residency in part 7410.0410, subpart 4a, to verify an applicant's full legal name.

In subitem 1 of Item E, an applicant may present a document from Item D, except a birth certificate or U.S. Department of State Consular Report of Birth Abroad.

In subitem 2 of Item E, an applicant may present a document listed in Item F.

In subitem 3 of Item E, an applicant may present a document listed in Item G.

In subitem 4 of Item E, an applicant may present a document listed in Item H except a birth certificate or U.S. Department of State Consular Report of Birth Abroad.

In subitem 5 of Item E, an applicant may present a government-issued document listed in part 7410.0410, subpart 4a, to prove Minnesota residency.

In subitem 6 of Item E, in the case of an applicant whose full legal name does not match all other identity documents presented for an EDL or EID under part 7410.0400 or under 7410.0410, the applicant must also present one of the following documents:

In subitem 6 (a), an applicant may present a certified marriage certificate.

In subitem 6 (b), an applicant may present a certified divorce decree.

In subitem 6 (c), an applicant may present a certified court order specifying a name change.

The amendment of Item E to subpart 1 (subitem 6) is necessary because the draft of the Business Plan states "[i]f the name on the applicant's Minnesota state driver's license or ID card has changed, or the names on the primary and secondary documents presented at the time of application do not match, the applicant must also present proof of legal name changes."⁹ If there is a discrepancy among identity documents presented by an applicant, then it is reasonable to expect that an applicant would have one of the documents in subitem 6 (a) through (c) specifying a name change, particularly as a result of a marriage or a divorce.

The amendment of Item F to subpart 1 (subitems 1 through 4 inclusive) sets forth acceptable documents to prove the Social Security number of an applicant for an EDL or an EID. The amendments are necessary because this requirement, as well as the documents, is specified in the draft of the Business Plan. Further, the commissioner cannot issue an EDL or EID without proof satisfactory of an applicant's Social Security number.¹⁰ The

⁹ *Id.* p. 4.

¹⁰ *Id.*

amendments are reasonable because they include three additional documents in the event that an applicant does not have his/her original Social Security card.

In subitem 1 of Item F, an applicant may present a federal or Minnesota Income Tax Form W-2.

In subitem 2 of Item F, an applicant may present a federal or Minnesota Income Tax Form 1099.

In subitem 3 of Item F, an applicant may present a federal or Minnesota Income Tax non-SSA-Form 1099.

In subitem 4 of Item F, an applicant may present a U.S. employment computer-printed pay stub with applicant's name, address, and full Social Security number.

The amendment of Item G to subpart 1 (subitems 1 through 10 inclusive) sets forth acceptable documents to prove the photographic identity of an applicant for an EDL or an EID. The amendment is necessary because the commissioner cannot issue an EDL or EID without proof satisfactory of photographic identity. The amendments are reasonable because they are consistent with proposed requirements to the draft of the Business Plan. In addition, DPS looked to other states that currently issue EDL/EID to develop a comprehensive list of acceptable documents that an applicant could provide to meet this requirement.

In subitem 1 of Item G, an applicant may present a valid Minnesota driver's license, identification card, or permit.

In subitem 2 of Item G, an applicant may present a valid driver's license, identification card or permit from another United States state, including the District of Columbia, and any United States territory.

In subitem 3 of Item G, an applicant may present a United States military photo identification card issued to active, reserve, or retired military personnel, or issued to a dependent.

In subitem 4 of Item G, an applicant may present a United States military identification card.

In subitem 5 of Item G, an applicant may present a valid, unexpired United States passport or United States passport card.

In subitem 6 of Item G, an applicant may present an American Indian card (Form I-872) or Minnesota tribal identification card that meets the requirements of Minnesota Statutes, section 171.072.

In subitem 7 of Item G, an applicant may present a valid city, county, state, or federal employee identification card.

In subitem 8 of Item G, an applicant may present a U.S. high school identification card with report card from the same school, both issued no more than 180 days before the EDL or EID application.

In subitem 9 of Item G, an applicant may present a U.S. college or university identification card with transcript if issued within 180 days.

In subitem 10 of Item G, an applicant may present a veterans universal access identification card.

The amendment of Item H to subpart 1 (subitems 1 through 5) sets forth acceptable documents to prove the United States citizenship of an applicant for an EDL or an EID. The amendments are necessary because the commissioner cannot issue an EDL or EID without proof satisfactory of U.S. citizenship. The amendments are reasonable because they comply with the draft of the Business Plan requirements of acceptable documents to prove U.S. citizenship.

In subitem 1 of Item H, an applicant may present an original or certified copy of United States or United States territory birth certificate that bears the raised or authorized seal of the issuing jurisdiction or a protective equivalent.

In subitem 2 of Item H, an applicant may present a United States Department of State Consular Report of Birth Abroad (FS-240; DS-1350; FS-545).

In subitem 3 of Item H an applicant may present a valid, unexpired U.S. passport or U.S. passport card.

In subitem 4 of Item H, an applicant may present a Certificate of Naturalization (N-550, N-570).

In subitem 5 of Item H, an applicant may present a Certificate of Citizenship (N-560, N-561).

The amendment to Subpart 1a clarifies that, in addition to a regular driver's license, or identification card, an EDL or EID can only be issued to an individual who has a residence address in the state at the time of application. The amendment further clarifies

that an applicant for an EDL or an EID must satisfy proof of residency requirements under part 7410.0410, subpart 4a. The amendment is necessary because proof of residency requirements for an EDL or an EID are different than those for a regular driver's license or identification card. It is reasonable to make this distinction in a subpart that deals with the topic of "residence address" for driver's licenses and identification cards to eliminate ambiguity and make it is clear to applicants for an EDL or EID that they must satisfy additional residency requirements.

The amendment to Item A of subpart 1a clarifies that an applicant for a driver's license, identification card, or permit, as well as for an EDL or EID, must indicate the applicant's address on the application form.

The amendment to Item B of subpart 1a clarifies that an applicant for a driver's license, identification card, or permit, as well as for an EDL or an EID, must indicate the applicant's physical description of height, weight, eye color, and sex on the application form.

As discussed earlier, when rule subparts or items referred to both EDL/EID and non-EDL/EID documents, or could be construed to apply to both, DPS eliminated ambiguity by adding clauses that either included or excluded EDL/EID requirements from the rule provision. The preceding two amendments are both necessary and reasonable because they eliminate ambiguity in a rule part that governs two different types of driver's licenses and identification cards.

The amendment of subpart 3b specifies that the commissioner shall verify the authenticity of the documents presented by an applicant for an EDL or an EID. The commissioner routinely verifies the issuance of and validity of documents presented by an applicant for state documents. As with the verification under subpart 3a, this is reasonable because it is the issuing jurisdiction or entity in the U.S. that knows best whether they issued a document and the various security features of that document. It is necessary because it is a requirement of the draft Business Plan - "DPS/DVS license issuance staff will determine eligibility by verifying the information on the source documents submitted [...]".¹¹

***Minn. Rules, part 7410.0410* PROOF OF RESIDENCY.**

The amendment of Subpart 4a establishes acceptable documents to prove the residence address of an applicant for an EDL or an EID. The amendments are necessary because the commissioner cannot issue an EDL or EID without proof satisfactory of an applicant's residence address in the state of Minnesota. The amendments are reasonable because they comply generally with the draft of the Business Plan requirement "to require, at a minimum, documentation stating the applicant's name and address of principal

¹¹ *Id.*

residence.”¹² Additionally, DPS looked to the examples of other states that currently issue EDL/EID to develop a list of 20 acceptable documents that cover a range of socioeconomic and age groups. Of the residency documents enumerated in this Subpart 4a, an applicant must present two different forms in order to meet this requirement.

DPS also considered the cycle in which the residency documents are issued. Some, like utility bills, financial documents, and employment pay stubs are issued bi-weekly, monthly or quarterly. Therefore, the option of nine documents (Items A through I) issued no more than before 90 days an EDL or EID application is reasonable. In the case of Items D and E, the commissioner is looking to correlate the identity of the student applicant for EDL or EID by means of the high school or college/university identification card to the name and address listed on the report card or transcript.

In subitem A of Subpart 4a, an applicant may present a U.S. home utility services bill that is issued no more than 90 days before an EDL or EID application. The commissioner shall not accept a U.S. home utility bill if two unrelated people are listed on the bill.

In subitem B of Subpart 4a, an applicant may present a U.S. home utility services hook-up work order that is issued no more than 90 days before an EDL or EID application. The commissioner shall not accept a U.S. home utility services hook-up work order if two unrelated people are listed on the work order.

In subitem C of Subpart 4a, an applicant may present U.S. financial information that is issued no more than 90 days before an EDL or EID application, with accounts numbers redacted, including a bank statement, cancelled check, or credit card statement.

In subitem D of Subpart 4a, an applicant may present a U.S. high school identification card with report card if issued no more than 90 days before an EDL or EID application.

In subitem E of Subpart 4a, an applicant may present a U.S. college or university identification card with transcript if issued no more than 90 days before an EDL or EID application.

In subitem F of Subpart 4a, an applicant may present a U.S. employment pay stub that is issued no more than 90 days before an EDL or EID application and lists the employer’s name, address, and telephone number.

In subitem G of Subpart 4a, an applicant may present a Minnesota unemployment insurance benefit statement issued no more than 90 days before an EDL or EID application.

¹² *Id.*

In subitem H of Subpart 4a, an applicant may present an assisted living or nursing home statement that is issued no more than 90 days before an EDL or EID application.

In subitem I of Subpart 4a, an applicant may present an insurance policy for life, health, automobile, homeowner, or renter that is issued no more than 90 days before an EDL or EID application.

Other documents, such as property tax, Supplemental Security Income, or income tax statements, that are issued annually may be presented as proof residency. There are seven documents, enumerated in subitems J through P, that an applicant may present provided that the documents are issued to the applicant no more than 12 months before an EDL or EID application.

In subitem J of Subpart 4a, an applicant may present a federal or state income tax sent to the applicant by the IRS or Minnesota Department of Revenue for the most recent N tax filing year.

In subitem K of Subpart 4a, an applicant may present a Minnesota property tax statement for the current year that reflects the applicant's principal residential address both on the mailing portion and portion stating what property is being taxed.

In subitem L of Subpart 4a, an applicant may present a Minnesota vehicle certificate of title if issued no more than 12 months before EDL or EID application.

In subitem M of Subpart 4a, an applicant may present a filed property deed or title for current residence if issued no more than 12 months before EDL or EID application.

In subitem N of Subpart 4a, an applicant may present a Supplemental Security Income award statement that is issued no more than 12 months before an EDL or EID application.d

In subitem O of Subpart 4a, an applicant may present mortgage documents for the applicant's principal residence.

In subitem P of Subpart 4a, an applicant may present a residential lease agreement for the applicant's principal residence that is issued no more than 12 months before EDL or EID application.

Some documents are issued for a defined period of time, such as a professional license, driver's license, or state-issued identification card. The documents enumerated in Items Q through T may be used as proof of residency for an EDL or EID application as specified.

In subitem Q of Subpart 4a, an applicant may present a valid Minnesota driver's license or valid Minnesota identification card.

In subitem R of Subpart 4a, an applicant may present a Minnesota professional license that is not expired.

In subitem S of Subpart 4a, an applicant may present a Selective service card that is not expired.

In subitem T of Subpart 4a, an applicant may present military orders that are still in effect at the time of application.

The amendment of Subpart 4b requires that the commissioner verify the address information provided by an applicant for EDL or EID with the United States Postal Service. This amendment is necessary because it is a requirement of the draft Business Plan - "Automated address verification will be utilized to verify the address with U.S. Postal Service and confirm the applicant's address is legitimate."¹³ It is reasonable because it is consistent with the current and proposed verification requirements of identity documents in part 7410.0400.

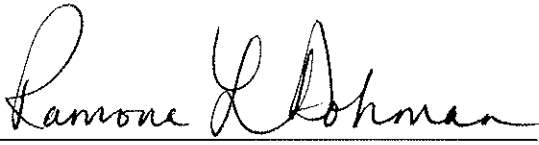
Minn. Rules, part 7410.0410 RELETTERING INSTRUCTION.

Under its editorial powers of Minnesota Statutes, section 3C.10, subdivision 1, the Revisor of Statutes has added a relettering instruction to the Department's proposed rules. This instruction corrects a reference to "items A to C" to "items A and B" because there is no item C in this subpart.

CONCLUSION

For the foregoing reasons, the proposed rule is both needed and reasonable.

11/2/11
Date



Ramona L. Dohman
Commissioner

Available for public review on November 2, 2011.

¹³ *Id.*p.4.