

020208

IGNITION INTERLOCK PILOT PROGRAM

A SUMMARY REPORT TO THE LEGISLATURE

PREPARED BY:

THE COMMISSIONER OF PUBLIC SAFETY
IN REPSONSE TO

M.S. 171.305

JANUARY 2002

OVERVIEW: IGNITION INTERLOCK DEVICE; PILOT PROGRAM

The purpose of an ignition interlock device is to prevent a person who has consumed alcohol from operating a vehicle. The device measures the alcohol concentration of a breath sample and is attached to a vehicle's ignition system. Before the car can be started, a driver must blow a sample of his or her breath into the interlock device. If the driver's breath alcohol is below a specified concentration, the driver will be able to start the vehicle's engine. However, if the driver has a breath alcohol concentration above the established level, the vehicle will not start and the device records the failure. The system also monitors operational times of the vehicle, records all events associated with the use of the vehicle and requires random breath re-testing during the operation of the vehicle.

Forty-three states currently have laws providing for either the discretionary or mandatory use of ignition interlock devices for DWI offenders.

PARTICIPANTS

An ignition interlock program allows individuals who have lost their driver's license through an impaired driving conviction(s) an opportunity to gain conditional driving privileges.

Restrictions for participation need to be established. Specific eligibility criteria vary by the individual states.

DEVICES

Most states permit only the use of newer models of ignition interlock devices in order to avoid circumvention of the device and false positive results that were sometimes associated with older versions. States certify individual devices and manufacturers to meet or exceed established performance criteria of a device for use in their programs. Individual vendors are identified to meet the requirements of dealing with the target population within the established parameters of the program. Numerous vendors currently provide devices that meet the individually established state criteria and most states have approved devices and vendors from more than one manufacturer.

The National Highway Traffic Safety Administration (NHTSA) has established minimum operational specifications for breath alcohol interlock devices.

EFFECTIVENESS

North Carolina conducted a study to determine the effectiveness of breath alcohol ignition interlocks in reducing recidivism for second time DWI offenders. Offenders were allowed to petition for a limited license for the final two years of their four year suspension with the provision that they be on the breath alcohol ignition interlock. Comparisons of this group to those that completed their four-year suspension without having their license reinstated or for offenders given a limited license without the ignition interlock, showed that they had a reduced recidivism rate while the ignition interlock was installed. These findings were corroborated by a study done in Hamilton County, Ohio. In this study, the recidivism for multiple DWI offenders was reduced during the period

that the ignition interlock was installed, but after it was removed the recidivism rate was comparable to those offenders who only had their licenses suspended

The University of Maryland study further corroborates the North Carolina and Hamilton County, Ohio study results. The Maryland study randomly assigned repeat DWI offenders to a control group or an ignition interlock group. The results of this study showed that those offenders participating in the ignition interlock group recidivated at a rate of 65% less than the offenders in the control group. After the ignition interlock was removed the recidivism rate rose to the same level as the control group. (NHTSA, State Legislative Fact Sheet January 2001)

The Traffic Injury Research Foundation Safety Institute has published a "Best Practices for Alcohol Interlock Programs" which summarized an effective ignition interlock program.

"Participating in an alcohol interlock program is a method proven to reduce the incidence of repeat drinking-driving offences," says Dr. Doug Beirness, Vice President of Research at TIRF and author of the report. "The recommendations in this report will help interlock programs become even more effective."

The *Best Practices for Alcohol Interlock Programs* guide recommends that interlock programs incorporate the following key elements:

- an interlock device that has been certified to meet or exceed established performance specifications;
- a reliable service provider that understands and is committed to dealing with the offender population;
- mandatory participation of all convicted DWI offenders, with the option of voluntary early entry into the program by low risk offenders;
- authority for the program to reside within the driver licensing administration;
- regular monitoring of offenders, including a review of interlock data records;
- duration of program participation linked to the success of the individual in the program;
- integration of the interlock program with other DWI sanctions and programs, particularly rehabilitation.

PUBLIC SAFETY RECOMMENDATION

Within the current structure of administrative licensing sanctions for repeat DWI offenders in the State of Minnesota, an ignition interlock program based on the requirements of the pilot program could be readily implemented statewide. Additional resources to perform ongoing evaluation and monitoring of participants would be necessary to oversee a state program by the Department. The resources necessary to provide the program throughout the state would be dependent on the determined level of

opportunity, access and convenience that would be afforded to potential participants throughout Minnesota. The program would be established and administered through the rulemaking procedure for eligible devices and participants.

Significant changes to the pilot program operation would be necessary to provide for an effective program with any changes to current administrative licensing sanctions or the acceptance of judicial usage of the interlock device in dealing with DWI offenders. Changes to administrative licensing sanctions, or judicial sanction use, would provide a significant increase in eligible participants, oversight of the program, and operational costs.

PILOT PROGRAM

OVERVIEW

The objective of the pilot program was to determine how an ignition interlock program could be administered within the State of Minnesota under the current DWI laws and licensing operational procedures. The program was carried out as an administrative sanction program – early reinstatement, for those drivers whose privileges had been cancelled and denied by the commissioner of public safety for multiple alcohol related incidents. Voluntary participants were eligible for a limited-use license after certain conditions were met and maintained. No attempt was made to address the long-term effectiveness of ignition interlock devices on DWI recidivism. Numerous published studies have addressed this issue.

The Minnesota Department of Public Safety worked with Anoka County Community Corrections to establish an ignition interlock program for issuing a limited-use license between April 1, 2001 and October 31, 2001.

INTERLOCK DEVICE

A manufacturer was chosen to provide a device during the pilot program and the device was able to meet NHTSA specifications and all performance and operational parameters of the program established by the Department of Public Safety and as outlined in MS 171.305.

A control device was installed in a vehicle and tested for ninety days. During this time, the device was thoroughly tested and met all established performance criteria. The unit was subjected to normal vehicle operation. Various levels of alcohol were also introduced into the device. At no time did the device allow operation of the vehicle when alcohol was introduced above the established limits and the device never failed to allow the vehicle to operate when alcohol was absent. Common attempts to circumvent the device were unsuccessful.

PROGRAM PARTICIPATION

Nine participants from the Twin Cities Metro area completed the application process and had devices installed in their vehicles during the pilot program. Each participant had been cancelled and denied for at least one year for alcohol related driving offenses. Each participant had successfully completed at least one-half of the required cancelled and denied period; demonstrated successful completion of chemical dependency treatment, aftercare, and were currently participating in a generally recognized support group based on ongoing abstinence. The participant agreed to pay for, install and drive only a designated motor vehicle equipped with a functioning and certified ignition interlock device. The participants were also required to demonstrate proof of insurance for the vehicle equipped with an interlock device.

PROGRAM PARTICIPANTS

The program participants were allowed to drive between work each day, attend chemical dependency treatment and to a monthly meeting with an interlock program coordinator. In no instance has any participant have the vehicle "lock-out" for registered alcohol usage. No major malfunctions occurred in which a participant was unable to operate the vehicle when necessary. Participants had the interlock device installed in their vehicle for a time period of two months to just over a year. The average installation time was four months. Overall, participants were satisfied with the program and indicated it was useful for their individual situation.

Of people interested in the program who did not participate, many indicated that the cumulative cost of judicial proceedings along with the administrative costs of the program and automobile insurance, made it difficult to participate. Three candidates were rejected for not meeting the statutory participation requirements of the program or failed background check.

PERFORMANCE STANDARDS

Performance standards were established for the operational parameters of the ignition interlock device based upon the NHTSA standards. The device was set to "lock-out" any operator who had consumed a set level of alcohol prior to vehicle operation. This set point was established to be less than one alcoholic drink for an average sized person. Re-testing of the driver was also set to occur during the operation of the vehicle at random intervals. The first interval occurred within ten minutes of starting the vehicle, and continued at random intervals within an hour thereafter. The device was also set to require that registered an alcohol reading above the set limit begin a lock-out mode that would render the vehicle inoperable within five days and required contact with an interlock coordinator. The device was also required to have a mechanism to determine that the sample provided was from a human subject. A positive test for alcohol caused the horn to blast every few seconds until the vehicle was shut off. The vehicle then required the passing of another test prior to starting the vehicle. At no time would the

vehicle stop running based on a failed alcohol test. Most interlock manufacturers offer a wide variety of programmable features to meet the requirements of individual programs.

CERTIFICATION

Certification of ignition interlock devices for a Minnesota Program would be handled through the Commissioner of Public Safety and would meet the minimal requirements established through the rulemaking process. Each model offered for certification would be required to demonstrate compliance to NHTSA standards and meet the individual requirements of the Commissioner through actual testing of any such device. Costs associated with the testing program could be offset through the certification fee. Manufacturers would also need to demonstrate sufficient liability insurance and other requirements as established by the Commissioner.

ISSUANCE OF LIMITED LICENSE

Currently the commissioner may issue a limited license to any person whose driver's license has been canceled and denied due to an alcohol or controlled substance-related incident. The interlock device has no mechanism to determine the presence of a controlled substance and eligible participants for alcohol only related instances would need to be established through the rulemaking process. The current program would typically include a person whose driving privilege has been removed for a period of at least one year and the participant would be eligible for early reinstatement, with an interlock device, for a limited license after six months. (Or one-half of the canceled time, whichever is greater). The current program requires that a participant continue to attend an abstinence based support group during the time of device installation. This requirement is not in place for all other state interlock programs. Minnesota Statute and Rule currently govern limited license issuance and requirements.

MONITORING

Monitoring of participant usage and associated information was performed by monthly review of the usage log of each participant by an interlock coordinator. The log was checked for any indication of alcohol usage, operation of the vehicle outside of the established limited license hours, and operation of the vehicle at scheduled support group times. This information is obtained from the device by the manufacturer/vendor and provided to the interlock coordinator on a timely basis. A five-day response was established for the purposes of this program. The information received from the manufacturer/vendor is settable by the program requirements and is available for review in various formats. The review frequency of the usage log can be established by the program but will have an associated cost impact to the program or participant.

PAYMENT

The participant in the pilot program paid costs associated with the use of an ignition interlock device. Costs associated with the administration of the program were born by the Department of Public Safety and Anoka County. Costs to the participant were as follows and could be expected to be similar in a statewide program.

Initial payment	\$165.00 (includes 1 st month lease)
Installation	\$ 75.00
Monthly lease	\$ 75.00
Closing fee	\$ 50.00

Lock-out fees \$ 75.00 (per incident, if necessary)

The participant depending on frequency of calibrations or units and how it would be handled may incur other fees. Additionally, the participant will incur costs associated with license re-instatement and automobile insurance.

PROOF OF INSTALLATION

Installation of an ignition interlock device is dependent upon the manufacturer and how they establish providing devices in a particular state. Independent vendors usually have an agreement with the manufacturer/provider for the installation and removal of the device from the vehicle. For the purpose of the pilot program, an individual vendor was chosen to perform all installations and removals. Participants were required to bring the vehicle to the dedicated service location. Depending upon the structuring of the program and determined equitable access to the service for all eligible participants in Minnesota, the maximum distance that a participant must travel to have a device installed will need to be established. Any defined distance will impact device service costs.

MISDEMEANOR AND CANCELLATION - SANCTIONS

No violations were identified during the pilot program relating to these sections. Whether or not these sanctions were appropriate to the possible violation would need further discussion based on changes to DWI statutes since the inception of this program.

Draft March 4, 2002

Minnesota Department of Public Safety

Alcohol and Gambling Enforcement Division

STATEMENT OF NEED AND REASONABLENESS
Proposed Rules Related to Liquor, Minnesota Rules, Chapter 7515

I. GENERAL STATEMENT OF INTRODUCTION

In 1933, the Liquor Control Act was passed and a state agency was subsequently established in 1934 to regulate the manufacture, distribution, retail sale and consumption of alcoholic beverages in the state of Minnesota. Prior to that time, alcohol distribution and consumption was seemingly unregulated. Alcohol products were often sold direct to consumers, and even children, right at the manufacturer's premises or a manufacturer owned retail outlet. The product flowed freely and abundantly night and day, and was often advertised as therapeutic. The large producers distributed, advertised, sold and provided alcohol without restriction. The unregulated alcohol product ultimately led this country and all its states into the Volstad Act of 1920 and complete prohibition. At that time, any alcoholic beverage containing less than 3.2% alcohol by weight was termed "non-intoxicating" which made it legal for sale. The term non-intoxicating malt liquor remained statutorily until 1996 when Minnesota lawmakers were convinced that 3.2% alcohol by weight is not necessarily non-intoxicating and now prohibit the term nonintoxicating to be used in conjunction with a 3.2 percent malt liquor license. Minn. Stat. §340A.411, subd. 3.

The 21st amendment repealed the Volstad Act and alcoholic beverages became the most highly regulated commercial product in America. Each state is responsible for how alcohol beverage products are manufactured, distributed, and sold or provided to its citizens. Minnesota Statutes, chapter 340A and supporting Minnesota Rules, chapter 7515 regulate alcohol beverage producers, wholesalers, retailers, and the consuming public and determine how, when, where and to whom products are sold or provided. Local jurisdictions have also been given the authority to further restrict alcohol product sales and manufacture within their respective jurisdictions. The fundamental concept behind Minnesota Rules, chapter 7515, was and still is to promote a responsible alcohol beverage environment in the State of Minnesota for its citizens and businesses.

The Alcohol and Gambling Enforcement Division of the Department of Public Safety is responsible for the administration of the state's liquor laws and rules through licensing and enforcement. Minnesota Rules, chapter 7515 expands upon Chapter 340A to define the licensing and brand label registration process, the requirements or prohibitions in obtaining a license or permit, and to define and clarify authority granted to the commissioner in the execution of enforcement of liquor law. The contents of Chapter 7515 are continuously being challenged, especially as the rules relate to recent judicial decisions, such as *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), that deal with liquor price advertising. The *Liquormart*

decision dramatically changed the regulation of where and how alcohol beverage products are advertised in the marketplace.

Although there have been periodic amendments to chapter 7515, there has not been a comprehensive rulemaking on this subject since 1977, and many of the rules are outdated. Therefore, the Department published a Request for Comments in the *State Register* on August 28, 1998, and placed it for public review on the Alcohol and Gambling Enforcement Division's webpage. The Request was also sent directly to a list of persons, organizations, and legislators identified by the Department as affected or interested parties to these rules. Comments were accepted until November 30, 1998, during which time the Department received seven comments.

The Department elected not to convene a rulemaking advisory group since the majority of these proposed amendments are technical or clarifying in nature, build upon existing rules, and are not expected to be controversial. The Department did, however, send copies of its draft rules to interested parties in an informal mailing on October 23, 2000, in order to gauge industry feelings concerning the proposed amendments as drafted. As a result of this mailing, the Department received 3 comments.

Affected parties to the rules and their amendments include the entire liquor industry, which is comprised of manufacturers, wholesalers, importers, and retailers, and the organizations that represent these groups. The current rules affect these groups in the way they conduct their business, advertise, introduce their product into the state, obtain a license or permit, record keeping, and trade practice. City clerks and county auditors are affected parties, because of the reporting requirements for licensing, which include licensee data and violation information, and limitations on the number and type of licenses they are permitted to issue. Although all of these parties will be affected by the proposed amendments, this impact should be minimal because they are largely technical and clarifying amendment.

There are a number of other parties that are affected by the current rules but will not be affected by the proposed amendments to those rules. These parties include insurance companies; private investigators; attorneys; the general public.

The decisions of the Department to propose a rule or an amendment to a rule in this rulemaking proceeding are explained and justified in the rule by rule analysis section of this statement.

II. STATUTORY AUTHORITY

Minnesota Statutes, section 14.06 requires:

- (a) Each agency shall adopt rules in the form prescribed by the reviser of statutes setting forth the nature and the requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

Additionally, the Commissioner of Public Safety has specific statutory authority to undertake this rulemaking. In particular, the Commissioner is authorized to do rules under the following statutory provisions.

Minnesota Statutes, section 299A.02, subdivision 3

This section reads as follows:

The Commissioner shall have power to require periodic factual reports from all licensed importers, manufacturers, wholesalers and retailers of intoxicating liquors and to make all reasonable rules to effect the object of chapters 297C and 340A. The rules shall include provisions for assuring the purity of intoxicating liquors and the true statement of its contents and proper labeling thereof with regard to all forms of sale. No rule may require the use of new containers in aging whiskey. No rule may require cordials or liqueurs to contain in excess of 2-1/2 percent by weight of sugar or dextrose or both.

Minnesota Statutes, section 340A.507, subdivision 1

This section provides that the commissioner may regulate the advertising of alcoholic beverages by rule.

III. TIMELINESS OF RULEMAKING

The rulemaking authority found in Minnesota Statutes, sections 299A.02, subdivision 3, and 340A.507, subdivision 1, are not affected by the statutory time limitations established in sections 14.101 and 14.125 since the authority therein was effective prior to June 1, 1996.

IV. NOTICE and ADDITIONAL NOTICE

Notice

The Department has mailed a copy of the notice of intent to adopt with or without a hearing, the statement of need and reasonableness, as well as the proposed rules, to all persons registered to be on its department rulemaking list under Minnesota Statutes, section 14.14, subdivision 1.

Pursuant to 2001 Minnesota Laws, Chapter 179, section 4, the agency is not required to send a copy of the Notice and the Statement to legislators who were chief authors of Minnesota Statutes, section 299A.02, subdivision 3 and 340A.508, subdivision 3, because neither law became effective within the last two years.

Pursuant to 2001 Minnesota Laws, Chapter 179, section 4, the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over this subject matter have been given copies of the notice and the statement of need and reasonableness. Included in this mailing was a copy of the proposed rules. The following is a list of these legislators: House Commerce, Jobs and Economic Development Chair and DFL Lead; House Judiciary Finance Chair and DFL Lead; House Local Government and Metropolitan Affairs Chair and DFL Lead; Senate Commerce Committee Chair, and Ranking Minority Member; and Senate Transportation and Public Safety Budget Division Chair and Ranking Minority Member.

Additional Notice

Additionally, Minnesota Statutes, sections 14.131 and 14.23, require that this statement contain a description of the department's efforts to notify persons or groups who are, or may be, affected by changes to these rules above and beyond the mandatory rulemaking list.

The Division of Alcohol and Gambling Enforcement has identified and compiled a discretionary list of interested persons and groups. The following persons, associations, organizations and agencies have received copies of the Request for Comment, proposed rules, the Statement of Need and Reasonableness, and the Notice of Intent to Adopt Rules:

Minnesota Municipal Beverage Association
Server Trainers (2)
National Server Trainers
*Minnesota Beer Wholesalers Association
*Minnesota Licensed Beverage Association
*League of Minnesota Cities
*Association of Counties
Wine Institute of America
Distilled Spirits Council of the United States
Wine and Spirits Wholesalers of America
National Beer Wholesalers Association
National Association of Beverage Importers
Beer Institute
Minnesota State Sheriff's Association
Minnesota Chief's of Police Association
Minnesota Department of Revenue
Minnesota Newspaper Association
*Minnesota Retail Merchants Association
*Municipal Beverage Association

Persons who specifically requested to be added to a mailing list for this rulemaking

The associations and organizations starred and included in the list above have been asked to disseminate the Dual Notice via newsletters, publications or mailings to their member lists via whatever means is available and they have consented. In some cases, these organizations have agreed to mail a copy of the proposed rules and/or Statement of Need and Reasonableness as well.

Finally, the department has placed the Statement of Need and Reasonableness, the proposed rules and the Dual Notice on the Department of Public Safety's website. The above documents can be accessed from the Department of Public Safety's website at www.dps.state.mn.us.

V. LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

Frank Ball, Director, Alcohol and Gambling Enforcement Division, 444 Cedar Street, Suite 133, St. Paul, Minnesota 55101

Norm Pint, Special Agent in Charge, Alcohol and Gambling Enforcement Division, 444 Cedar Street, Suite 133, St. Paul, Minnesota 55101.

Marlene Kjelsberg, Supervisor, Alcohol and Gambling Enforcement Division, 444 Cedar Street, Suite 133, St. Paul, Minnesota 55101.

David Ramp, Assistant Attorney General, Office of the Attorney General

Kristine M. Hernandez Pierce, Rules and Extradition Coordinator, Office of the Commissioner, Department of Public Safety, 445 Minnesota Street, Suite 1000, St. Paul, Minnesota 55101.

VI. FEES

Pursuant to Minnesota Statutes, section 16A.1285, the Department of Public Safety is prohibited from increasing fees without legislative action. The proposed rules do increase some fees, however, the increases reflect fees that have already been set by statute.

The proposed registration fee increase found in Minnesota Rules, part 7515.0820 is authorized by the fee set in Minnesota Statutes, section 340A.311 paragraph (a). Likewise, the proposed permit fee increase found in Minnesota Rules, part 7515.1200 is set in Minnesota Statutes, section 340A.414, subdivision 6.

VII. REQUIRED ANALYSIS

Persons Who Probably Will Be Affected By the Proposed Rules

To the extent that these amendments and repeals do not reflect mere statutory changes that are already in effect, those persons most likely affected by these rules include retailers, wholesalers, manufacturers, and importers of alcoholic beverages and their trade associations, local law enforcement and licensing officials, servers and their training associations, some municipal employees and the general public.

The liquor industry is affected in the way it conducts its business, as it relates to advertising, introduction of its product into the state, licensing and permit requirements, record keeping, and trade practice.

1. Persons Affected Who Will Bear the Costs of the Proposed Rules

Since most of the changes are technical in nature, it is highly unlikely that anyone will bear any costs that are not already assessed due to the proposed rules.

2. Persons Affected Who Will Benefit From the Proposed Rules

The regulated industries will benefit from the clarifications to the law and will be able to rely upon these interpretations as they conduct their business. The liquor industry will also benefit from the adoption of the federal regulations in many areas and the resulting repeal of specialized rules particular to Minnesota.

Costs to Agencies and Anticipated Effect on State Revenues

1. Probable Costs to the Department of Public Safety to Implement and Enforce

Since these proposed rules are basically housekeeping in nature, there should be no costs to the Department of Public Safety to implement and enforce these amendments.

2. Probable Cost to Other Agencies to Implement and Enforce

Since these proposed rules are basically housekeeping in nature, there is no anticipated cost to other agencies in order to implement and enforce these amendments.

3. Anticipated Effect on State Revenues

The amendments should have no real effect on State Revenues. Although this rulemaking reflects increased fees, the General Fund does not experience a corresponding increase. This is due to the fact that the fees have already been changed by statute. Therefore, this rulemaking simply makes the rules consistent with existing statutes.

Less Costly or Less Intrusive Methods

Less costly or intrusive methods for achieving the purpose of the proposed rule, in this case do not appear to apply. This is because the majority, if not all, of the rules amendments are housekeeping in nature and are meant to clarify existing statutes and rules that have been in place for several years.

Alternate Methods Seriously Considered and Reasons for Rejection

Because these amendments are mainly technical in nature, per the department's decision, there was not much debate over alternate methods in these rules. To the extent possible, the department has tried to avoid great substantive changes in this rulemaking. There were instances, however, where the department did look at alternatives.

1. The Minnesota Retailers Association commented on the proposed rules in the preliminary stages of this rulemaking. Included in their comments was a proposal to allow on-sale retailers to use slush dispensing machines when selling alcoholic beverages. Although the department advised the association that this rulemaking was technical rather than substantive, the department did review this proposal.

Based on its review, the department concluded that it did not have the necessary statutory authority or guidance to approve this type of machine. The association disagreed. Since the department was hesitant about permitting this type of machine without the guidance of the Legislature, it was suggested that the association pursue this issue in legislation. In 2001, the

association was successful in its attempt and slush dispensing machines are now permitted per statute.

2. The department considered proposing in rule a requirement that importers, wholesalers, manufacturers and rectifiers keep a records retention schedule. This requirement would be similar to one already imposed by rule on retailers. This suggested amendment was commented on by the Distilled Spirits Council of the United States (DISCUS) and declared unnecessary and burdensome. Although the department acknowledged this to be a new requirement, we did not feel that it would be unduly burdensome or unnecessary.

Ultimately, though, the department did reject its proposal because in its comments, DISCUS informed the department that there was a national campaign underway to implement and utilize standardized shipment reporting forms that would transmit information electronically. Presently, this form is being test piloted in several states including Minnesota at the Department of Revenue. In light of this information, the department concluded that it would be premature to proceed with this rule in the event that a standardized form may be instituted in the near future. Therefore, the department withdrew its suggested language in order to allow the DISCUS initiative for standardization of nationwide reporting to be fully tested and its merits appreciated.

Please note that there were other alternatives/changes that were suggested by the department and in comments. However, many of these demanded sweeping substantive changes or changes that the department was not ready to make at this point. Since this was not the intent of this rulemaking, the department did not seriously consider these suggestions.

Probable Costs of Complying

The probable cost of complying with these rule amendments is not really a factor because of the technical nature of most of the amendments. Any costs should be minimal because most of what is proposed is already required or supplements existing requirements.

Differences Between the Proposed Rules and Existing Federal Regulations

The federal regulations governing liquor control are found in Title 27 of the Code of Federal Regulations. Minnesota statutes and rules have traditionally been more restrictive in certain areas of liquor control than the federal regulations require. This current rulemaking, however, has little further impact on the rules and their consistency with the federal regulations because it is generally a technical and clarifying rulemaking. Most changes, if resulting in substantive changes at all, are the direct result of changes in statutory law. Indeed, the substantive changes in this rulemaking that have no basis in statutory law officially adopt the federal regulations for standards of fill, for standards of content, for standards of labeling and for standards of identity of all alcoholic beverages sold in Minnesota.

Agency Consideration and Support of Performance-Based Regulatory Systems

Since the proposed rules are amendments to current rules, most of which need only technical or clarifying changes, the agency did not actively consider further ways to amend the rules so as to make the rules more performance based. To the extent that the rules do, however, reflect

performance-based regulations, these are explained in greater detail in the rule-by-rule analysis for the specific rules in question.

VIII. RULE-BY-RULE ANALYSIS

Most of the following proposed amendments are either technical or clarifying in nature. There are some amendments that contain grammatical changes in order to clarify current rules. There are some amendments that eliminate duplicative or unnecessary language. In particular, the Department has proposed amendments that allow for consistent and up to date terms throughout the statutes and rules i.e. changing the term “wholesale distributor” to “wholesaler” or “retail dealer” to “retailer.”

To the extent that there are any substantive changes in the rules, these are explained and justified in the below, rule-by-rule discussion. Changes that are merely technical and do not alter the meaning of the rules are not explained in any great detail.

Please note that terms used to define the alcoholic content of alcoholic beverages are referred to within Minnesota Statutes, chapter 340A and Minnesota Rules, chapter 7515 as either alcohol by volume or alcohol by weight. To understand the difference between the two, one must consider what each term means in terms of chemical analysis of an alcoholic beverage. Alcohol by volume is the same as one half the proof as noted on a brand label. For instance, a 100 proof container of distilled spirits would translate to 50% alcohol by volume. To determine the alcohol by weight of the same 100 proof product, multiply the volume percentage by .8. In the above example, this would equate to $50 \times .8 = 40\%$ alcohol by weight.

7515.0100 Definitions

Subpart 1. “Scope”

The proposed amendment deferring to statutory definitions except for those terms explicitly defined in the rules is necessary to clarify that terms defined in statute but not rule shall use the statutory definition. The current rule implies that the definitions found in the rules apply to the statutes as well. This leads to confusion when the same term is defined differently in the statutes and the rules. In order to avoid such confusion, and since the Department is attempting through this rulemaking to make terms consistent and up to date with the statutory terms, it was necessary and reasonable for the Department to clarify this rule.

Subpart 3. “Alcoholic Beverage”

The proposed repeal of this definition is necessary in order to bring consistency to the definitions found in the statutes and the rules. Minnesota Rules, part 7515.0100, subpart 3 defines, in part, “alcoholic beverages” as products containing in excess of 3.2 percent alcohol by weight. This definition is not consistent with the definition found in Chapter 340A. The current statutory definition found in Minnesota Statutes, section 340A.101, subdivision 2, defines “alcoholic beverage” as any beverage containing more than one-half of one percent alcohol by volume. This latter definition is supported by current federal regulations. The Federal Alcohol Administration Act has regulated beverages as “alcoholic beverages” if they contain more than one-half of one percent alcohol by volume. See 27 CFR §16.10 Therefore, it is reasonable to

simply substitute the rules definition with the current statutory definition because the statutory definition is more representative of current industry standards and legislative intent.

Subpart 5, "Brand label"

This proposed change is not substantive in nature. Minnesota Statutes, section 340A.311 replaced Minnesota Statutes, section 340.46 and this amendment reflects this statutory change.

Subpart 6, "Commissioner"

This definition is unnecessary since it duplicates information already contained in Chapter 340A.

Subpart 9, "Distilled Spirits"

The proposed repeal of this definition is necessary to bring consistency to the definitions found in statute and rules. Minnesota Statutes, section 340A.101, subdivision 9, defines distilled spirits as all dilutions of mixtures and products that have undergone a distilling process, such as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits. The statutory definition is more comprehensive than the definition found in Minnesota Rules, part 7515.0100, subpart 9. This inconsistency results in confusion. The Department does not feel it is reasonable or necessary to continue to differentiate the term as it is used in the rules from the term as it is used in the statutes.

Subpart 10, "Importer"

The proposed amendments in this subpart replace the phrase "wholesale distributor" with the term "wholesaler" for consistency purposes. This amendment is necessary and reasonable in order to clarify that the "wholesale distributor" mentioned in the rules is the same as a "wholesaler," in the statutes.

Subpart 11, "Licensee"

The proposed amendment in this rule is necessary for consistency reasons. Pursuant to Minnesota Statutes, section 340A.402, all persons who directly or indirectly or by any pretense or device, sell, barter, keep for sale, charge for possession or otherwise dispose of "alcoholic beverages" as part of a commercial transaction must obtain the required license or permit. The statute does not limit the requirement to obtain a license for just "intoxicating liquor or malt beverages." Therefore, it is necessary and reasonable that this amendment be adopted in order to be consistent with the provisions of chapter 340A, as they apply to regulating who must obtain licenses.

Subpart 12, "Licensed Premises"

This subpart is repealed because the current rule definition is an oversimplification and inconsistent with Minnesota Statutes, section 340A.101, subdivisions 7 and 15.

The statutory term for "licensed premises" is found in Minnesota Statutes, section 340A.101, subd. 15 which defines a licensed premises as the following:

"Licensed premises" is the premises described in the approved license application, subject to the provisions of section 340A.410, subdivision 7. In the

case of a restaurant or club, or exclusive liquor store licensed for on-sales of alcoholic beverages and located on a golf course, "licensed premises" means the entire golf course except for areas where motor vehicles are regularly parked or operated.

Minnesota Statutes, section 340A.410, subdivision 7 refers to the licensed premises as that specified in the approved license application, which is compact and contiguous, and gives authority to the municipality to issue licenses only if the premises meets the compact and contiguous requirement. The rules, on the other hand, define a licensed premises as "only the area described in the application for such license." According to the rules, it is conceivable that an applicant may describe the proposed area to be licensed as any area confined within an issuing authorities jurisdiction such as several separate areas that are not compact or contiguous. The concept and notion of the sale of alcohol flowing into an uncontrolled area without specific confines is a matter of public safety.

The current rule is insufficient, in that it does not add clarification to definitions found in Chapter 340A, and may even cause public safety concerns and confusion if left to remain. Therefore, the Department feels the repeal is necessary and reasonable. The remaining statutory definition is sufficient for regulatory purposes and the repeal would eliminate possible confusion.

Subpart 14, "Place of business"

Currently, the rule definition for a "place of business" is outdated and only includes the public business establishment or private club that sells soft drinks or liquor with an alcohol content of 3.2% or greater. At the time when this definition was first proposed, there were no alcoholic products on the market that did not fall within the meaning of intoxicating liquor or 3.2% malt liquor. Since then, not only has the Legislature redefined the terms for alcohol products, but there has also been a wave of innovative products introduced into the alcohol beverage marketplace that fall outside of the old definitions. These include beverages with at least .5% alcohol content. The Department believes that this amendment will bring the rule up to date with current marketplace trends and statutory definitions by allowing for the new products to be included as part of the products sold within establishments falling under the definition of a place of business.

To only refer to establishments selling intoxicating liquor and 3.2% malt liquor as "places of business" for purposes of alcohol enforcement, neglects consideration of products that fall into neither category but are still considered "alcoholic beverages" under Minnesota Statutes, chapter 340A. Without changing this rule to reflect "alcoholic beverages" as defined in the statutes, the potential exists for a public business establishment to sell one of these products that do not fall within the meaning of the current definition found in the rules but which are considered alcoholic beverages by statute. Since this is a result that is inconsistent with the regulatory requirements found in Minnesota Statutes, chapter 340A, it is necessary and reasonable to amend this definition to reflect that a place of business for regulatory purposes under the rules includes businesses that sell "alcoholic beverages" and not just intoxicating liquor or 3.2 percent malt liquors.

Subpart 15, "Wine"

The current definition for “wine” found in the rules is unnecessary and confusing because it is inconsistent with the current statutory definition of “wine”. Minnesota Statutes, section 340A.101, subdivision 29, defines “wine” as a wine product with an alcoholic content of between 0.5% of alcohol by volume and 24% alcohol by volume. The current rules confuse the meaning of wine by adding references to parts of the rules that govern “standards of fill” not “alcohol content.” The Department believes that this extra dimension to the definition of “wine” is confusing and that the “standard of fill” (or amount of liquid in a bottle) has no bearing on what constitutes “wine”. The Department feels that it is necessary and reasonable to simply repeal the existing rule definition and follow the statutory definition.

7515.0200 Permits and fees

This amendment is necessary since it clarifies that payment for a license or permit does not automatically ensure issuance of a license unless preconditions have been met. These preconditions are found elsewhere in the current rules.¹

7515.0210 Regulatory permits and fees

The following amendments to the subparts in this section are necessary to bring consistency to the rules and the statutes. Some changes clarify the mandatory nature of the regulation and others substitute terms found in rules for terms found in the statutes. Finally, some changes are simply technical changes since they update form numbers found in the rules.

Subpart 1 Regulatory Permits and Fees.

This subpart is amended in order to clarify the mandatory nature of the regulation and to eliminate any confusion that may ensue due to the introduction in the rules of the term “alcoholic beverages” as it is defined in statute. Since other proposed amendments substitute the term “intoxicating liquors” with the term “alcoholic beverages”, the Department believes it is necessary to change the current rule’s use of “intoxicating alcoholic beverage” to “alcoholic beverages of more than 3.2 percent alcohol by weight” in order to clarify that the application of this rule has not changed and that the rule is still limited to beverages that are more than 3.2% alcohol by weight.

Subpart 1a, Expiration dates coordinated – repealer

This section is repealed in its entirety because it contains deadlines and timelines that have already passed.

Subpart 2. Representatives’ identification cards required.

The amendments are not substantive in nature and merely reflect current and statutorily consistent terms and updated form numbers.

¹ For example: Minnesota Rules, part 7515.0210, subparts 1 to 4, require appropriate applications be submitted to the commissioner in order to apply for regulatory permits or identification cards to purchase, sell, or use for any purpose other than personal consumption; Minnesota Rules, part 7515.0430, subpart 7, provides for certification to the commissioner within ten days of the issuance of an on-sale license within a municipality; Minnesota Rules, part 7515.0440, subparts 1, 3 and 4, provide that municipalities submit to the commissioner various forms for licensure to sell alcoholic beverages at off-sale, for wine licenses, club licenses, and county on-sale licenses; Minnesota Rules part 7515.0650 requires notice to the commissioner when transfer of business is occurring from one owner to another.

Subpart 3. Retailer's or pharmacist's identification card.

The requirement that pharmacists have retailer identification cards in order to sell medicinal liquor on prescription, found in Minnesota Statutes, section 340.18, subdivision 2, was repealed in 1985. 1985 Minn. Laws, Ch. 305, Art. 13, Sec. 1. Therefore, the changes proposed in this rule that relate to pharmacists or druggists reflect this repeal. The rest of the amendments are technical and merely reflect updated form numbers and current and statutorily consistent terms.

Subpart 4. Salesperson's identification card.

The amendments in this subpart are not substantive in nature and reflect updated form numbers and current and statutorily consistent terms.

7515.0220, Permit expiration dates

The amendments to this rule part are not substantive in nature. These are technical changes that are necessary and reasonable since they eliminate unnecessary or outdated wording, update form numbers to reflect the current numbered forms, and clarify responsibilities where outdated language can lead to confusion.

7515.0300, Duties and restrictions

Subpart 1. In general

The term wholesale distributor is replaced with wholesaler to remain consistent within this rule and the statutes.

Subpart 2. Sales to retailers

Currently, the rules allow manufacturers and wholesalers and their respective employees to sell or deliver alcoholic beverages to persons, clubs and business establishments if the purchaser is licensed to sell at retail. This rule neglects to recognize that there are "agents" of manufacturers and wholesalers who, although they are not considered an "employee," execute as part of their responsibilities the sale and delivery of alcohol beverage products to licensed customers. It is burdensome on the manufacturer and wholesaler to strictly adhere to the current rule because the current rule does not consider the realities of the industry today. Therefore, the Department thinks it is necessary and reasonable to allow "agents" along with "employees" of manufacturers and wholesalers to sell to licensed customers.

Subpart 3. Written invoices.

The proposed amendments to this subpart contain editorial revisions only. The phrase "in lieu thereof" is deleted because it is superfluous and unnecessary. There is no substantive change to this rule.

Subpart 5. Financial interest forbidden.

The purpose of these proposed amendments is to make the rules and the statutes consistent.

Additionally, "alcoholic beverages" has been substituted for "intoxicating liquors" since the statute governing this provision, Minnesota Statutes, section 340A.309, regulates "products" of

the manufacturer, brewer, or wholesaler, and is not limited to "intoxicating liquors." Finally, "or" is added to Item J in an attempt to clarify that any of the three listed actions are forbidden.

Subpart 6. Gifts forbidden.

The amendments to this rule subpart are not substantive in nature and serve only to update and make consistent the terms used throughout the statutes and the rules as well as clarify the mandatory nature of this rule.

Subpart 7. Sales discrimination forbidden.

The proposed amendments to this subpart are not substantive in nature and merely update the terms used in this rule to be consistent with statutory language.

Subpart 8. Peddling forbidden.

The proposed amendments to this subpart are not substantive in nature and merely update the terms used in this rule to be consistent with statutory language.

Subpart 9. Container limitation

The amendments to this section are not substantive in nature, but rather reflect the current standards of fill for distilled spirits as provided for under Minnesota Rules, part 7515.1040.

Currently, the rules are inconsistent with the provisions found in statutes concerning container limitations. Currently, Minnesota Rules, part 7515.0300, subpart 9, allows for distilled spirits to be sold to retailers as long as the containers sold hold anywhere from 8 to 64 ounces, or their metric equivalent but no more nor less. Minnesota Statutes, section 340A.511 was enacted in 1996 to allow for sale of distilled spirits in containers less than 8 ounces. 1996 Minn. Laws, Ch. 418, Sec. 12. The rules amendment allowing distilled spirits miniatures (many of which are smaller than 8 ounces) to be sold to off-sale retailers makes the rules consistent with the statutory changes.

Additionally, language referring to container size for wine is also added to this section to clarify that on-sale retailers must still dispense wine in containers not less than 1/20 gallon or 6 2/5 ounces. This language does not change how wine container limitations are treated under the current rules, part 7515.1070 and is consistent with the standards of fill requirements proposed in this rulemaking.

This amendment also deletes obsolete language that concerns pharmacists. As with earlier discussed amendments concerning pharmacists, this repeal merely reflects similar repeals of requirements found in statute.

Subpart 10. Sale or delivery prohibited in certain municipalities.

The language changes found in this section are not substantive in nature, but reflect the current statutory changes found in Minnesota Statutes, section 340A.316 addressing sacramental wine sale. The statutes that required rabbi, priests, ministers, or other established religious organizations to obtain licenses to purchase wine for sacramental use was repealed in 1996. 1996 Minn. Laws Ch. 418, Sec. 2. The current statute actively exempts rabbi, priests, ministers

of a church or other established religious organization from licensing requirements for sacramental wine. Minn. Stat. §340A.316.

Subpart 11. Transfer of business license.

The proposed amendments to this rule update the terms used in order to be consistent with the statute and rules and clarify the mandatory nature of this rule.

Additionally, the requirement that an inventory must be notarized has been repealed because the Department feels that this requirement only serves as an additional burden on the regulated parties and it does not have any useful or necessary purpose with respect to the rules. In view of the recent mandate by the Legislature that agencies create performance-based rules, the Department feels that this amendment is justified and reasonable in that it creates a less burdensome rule.

Subpart 12. Branch establishments.

The proposed amendments to this rule are not substantive in nature but merely replace outdated language to be consistent with the terminology used in the statutes.

7515.0310 Information

All requirements for wholesaler price schedules and rules related to wholesaler filing are no longer supported by statute. Minnesota Statutes, section 340A.313 was repealed in 1987 which eliminated the requirement that wholesale price schedules be listed or filed. 1987 Minn. Laws, Ch. 310, Sec.14. To the extent that the following subparts supplemented this repealed statutory requirement, those subparts dealing with wholesale price schedule filings and listings have been either repealed or amended as necessary.

Subparts 1 to 10, Repealed.

Subparts 1 to 10 of this rule are being repealed because of the repeal of statutes governing wholesaler price postings and filings.

Subpart 12. Equal information to retailers.

This amendment reflects changes that occurred because of the repeal of statutes governing wholesaler price postings and filings. Unlike subparts 1 through 10, however, subpart 12 is not repealed in its entirety. This is because it contains language that does not pertain to price postings and filings but is relevant to providing price information equally to all retailers.

Minnesota Statutes, section 340A.308 provides that no wholesaler may give a thing of value to a retailer. Subpart 12 supports this statute in that it prohibits a wholesaler from providing information to one retailer and not to another. This information, itself, is an item of value in that it may be used to the advantage of the retailer who has knowledge of the information to the disadvantage of the other retailers.

Subparts 13-17, Repealed.

Minnesota Rules, part 7515.0310, subparts 13 through 17, refer to wholesaler price posting requirements which have been repealed. As with the previous amendments to this rule part, these are housekeeping amendments to make the statutes and rules consistent.

Subpart 19, Repealed. Minnesota Rules, part 7515.0310, subpart 19 refers to reporting regulations concerning price postings and brands that are being closed out. As already discussed, the statute authorizing this type of regulation has been repealed. Therefore, this subpart is repealed in order to stay consistent with the statutes.

The changes noted above are not substantive in nature, but rather are housekeeping amendments eliminating obsolete language which no longer has basis in law.

7515.0320 Sales to wholesalers and manufacturers

Subpart 1. Offers for sale.

This proposed amendment does not contain substantive changes to this rule, rather the amendment simply replaces outdated language.

Subpart 2. Price posting.

These amendments do not alter the substance of this rule. Rather, they serve to rearrange the rule in such a way as to make the rule clearer and easier to read and understand.

Subpart 3. Price restrictions -- Repealer

Minnesota Rules, part 7515.0320, subpart 3 is repealed because supporting statutory language found in Minnesota Statutes, section 340A.307, subdivision 3, was repealed in 1987. 1987 Minn. Laws, Ch. 152, art. 1, sec. 1.

7515.0410 Eligibility requirement

Item A

This is a housekeeping amendment. The citizenship requirement found in Minnesota Statutes, section 340A.402 was repealed in 1994. 1994 Minn. Laws, Ch. 611, Sec. 15.

Item B

This is a technical amendment. Pursuant to Minnesota Statutes, section 340A.402, clause (1) a person must be 21 years of age in order to be eligible for a license.

Item C

Currently, there is no definition for "good moral character" although the phrase is found in these rules and is mandated by statute. Minn. Stat. §340A.402(3). This amendment is an attempt to define good moral character.

Pursuant to Minnesota Statutes, section 340A.402, clause (3), a retail liquor license may not be issued to a person who is not of good moral character or repute. "Good moral" character is not defined in Chapter 340A, nor is it defined in the liquor rules. Because this attribute is subjective in nature, it is necessary for guidelines to be set in rule so that this requirement can be easily followed and enforced. Without such guidelines, this requirement is meaningless.

The proposed definition is directly borrowed from gambling statutes which, like the liquor laws, require that a person be of a certain character. The gambling statute currently allows the Gambling Board to deny, suspend, revoke, or refuse to renew a license to, among other things, a person who demonstrates the following:

based on past activities or criminal record poses a threat to the public interest or to the effective regulation and control of gambling, or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gambling or the carrying on of the business and financial arrangements incidental to the conduct of gambling.
Minn. Stat. §349.155, subd. 4(9).

This language has proven reliable, useful and enforceable for gambling control and the Department does not believe it will prove otherwise concerning liquor control. The Department feels that it is reasonable for the above activities to define what is "good moral" character to be used for purposes of revoking, suspending, or denying liquor licenses.

Item D

The amendments found in Item D are simple, technical amendments that reflect changes found in the current statute governing eligibility requirements.

Minnesota Statutes, section 340A.402, governs eligibility requirements and reads as follows:

"...In addition, no new retail license may be issued to, and the governing body of a municipality may refuse to renew the license of, a person who, within five years of the license application, has been convicted of *a felony or a willful violation* of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of an *alcoholic beverage*."
(emphasis added)

The term "violation" corrects the currently mismatched "willful violating" to state "willful violation". Felony is added because felonies were included as an eligibility obstacle for licensure in 1993. 1993 Minn. Laws, Ch. 350, Sec. 9. Finally, the term "alcoholic beverages" replaces the old term "intoxicating liquor" because the statute refers to alcoholic beverages and not the more limiting term "intoxicating liquor".

Item E

Item E is amended in order to clarify that this section is applicable to a more limited group of persons than it implies. The original language found in rule was written badly. The current rule seems to imply that anyone who is interested in the business is subject to this rule. This is misleading since it applies only to licensees and persons with business interests in the entity pursuing licensure. These amendments will clarify this issue

In addition, item E is amended to include the phrase "any felony". As with item D, this amendment is intended to mirror current statute. It clarifies that having a felony on your record,

even if it is a felony associated with your business interests, may affect eligibility requirements for licensure as per requirements found in Minnesota Statutes, section 340A.402. Minnesota Rule 7515.0410 currently makes no reference to this statutory prohibition to licensure. The Department feels this is a necessary and reasonable amendment because the statute specifically includes a felony conviction as a measure of eligibility for licensure.

Item F

The proposed amendment to Minnesota Rules, part 7515.0410, item F, is a housekeeping amendment to provide for the inclusion of the term "off-sale" to clarify the meaning of the currently used provision "retail liquor store." Minnesota Statutes, section 340A.412, subdivision 3, provides that a municipality may not issue more than one off-sale intoxicating liquor license to any one person or for any one place. The statute has no provision for restricting the number of on-sale licenses issued by a municipality to any one person or for any one place. A restriction such as that may be imposed at the discretion of the municipality but not required. Minn. Stat. §340A.509. Currently, the rule does not make any distinction between on-sale or off-sale licenses and therefore, it is necessary and reasonable to clarify that this rule only applies to restrictions concerning off-sale intoxicating liquor licenses.

7515.0420 Limited number granted

The proposed repeal of this section is necessary because the rule is no longer consistent with current statutes. Currently, limits on the number of licenses permitted is governed by statute. Minnesota Statutes, section 340A.413, subdivision 1, provides for the number of on-sale liquor licenses allowed to cities according to their size. Furthermore, Minnesota Statutes, section 340A.413, subdivision 3, authorizes referendums for cities that would like to issue more licenses than allowed under subdivision 1. The Department feels that the current rule confuses the situation because most of the limitations found in this rule are now obsolete, superceded by new statutory guidelines. Those provisions that are consistent are duplicative and unnecessary.

Additionally, those portions of the rule that deal with the types, rather than the numbers, of on-sale licenses that may be issued within a city are similarly found in Minnesota Statutes, section 340A.404 which provides for licensure of hotels, restaurants, bowling centers, clubs, sports facilities, and exclusive liquor stores.

The Department believes that the repeal is necessary and reasonable in order to eliminate inconsistencies, confusion and duplication which have resulted with the statutory changes which have occurred over the years.

7515.0430 On-sale applications

Subpart 1. Filing application and bond.

This is a housekeeping amendment. The statute, Minnesota Statutes, section 340A.412 requiring this bond was repealed in 1989. (1989 Minn. Laws, Ch. 49, Sec. 8)

Subpart 2. Description of premises

Minnesota Statutes, section 340A.410, subdivision 7, provides that “[a] licensing authority may issue a retail alcoholic beverage license only for a space that is compact and contiguous. A retail alcoholic beverage license is only effective for the licensed premises specified in the approved license application.” The proposed change to Minnesota Rules, part 7515.0430, subpart 2, proposes terminology that will be consistent with the statutory requirements. The current description of a premises as found within this rule part fails to reflect the compact and contiguous requirements found in the statutes and instead contains a brief description of a licensed premises. Additionally, this amendment includes physically connected patios, decks, and/or pavilions in its definition in an attempt to clarify that attachments to a compact and contiguous building must be permanently attached to the main structure in order to satisfy the compact and contiguous requirement.

This is necessary because today’s highly competitive alcohol industry has retail entrepreneurs expanding what they perceive to be their licensed premises into innovative expanses. Areas that licensees have requested to sell alcoholic beverages that are adjacent to their licensed premises include such expanses as highways, streets, sidewalks, parking lots, cornfields, patios, gardens, volleyball courts, decks, pavilions, and the like. The proposed language is intended to clarify what constitutes a licensed premises and to aid local issuing authorities, state licensing officials, and dram shop insurers in determining approval or rejection of applications as well as adequate liability coverage prescribed by law. Additionally, this clarification will also act as a record as to what and where a license covers when disputes develop after a license has been approved. For public safety purposes, it is unreasonable to provide rules that may allow the licensed business community to sell alcohol on undefined and uncontrolled areas such as highways, streets, or cornfields because they happen to be adjacent to their licensed premises.

Subpart 3. Location Restrictions

This amendment merely clarifies and updates a citation.

Subpart 4. Amount of bond – Repealer; Subpart 5. Application check

These amendments are housekeeping amendments. The statute requiring a bond was repealed in 1989. 1989 Minn. Laws, Ch. 49, Sec. 8.

Subpart 7. Certificate to Commissioner

This is not a substantive change in language or procedure, but rather a change to reflect form number changes that have occurred, and to clarify the requirement for reporting to the commissioner effective date and expiration dates of licenses when issued by municipalities. This information has always been included on the form prescribed by the commissioner, and the amendment is only for clarification purposes and not new in terms of additional requirements for the regulated parties.

7515.0440 Off-sale, combination, and certain on-sale applications

Subpart 1. Commissioner’s Approval Required

Currently, Minnesota Rules, part 7515.0440, subpart 1 requires the commissioner’s approval for all off-sale, club on-sale, and county on-sale retail liquor licenses. The amendment to this rule expands the required commissioner’s approval to on-sale wine licenses. Justification for this amendment is found in Minnesota statutes.

Pursuant to Minnesota Statutes, section 340A.404, subd. 5, municipalities may issue on-sale wine licenses only to certain facilities and only with the approval of the commissioner. Therefore, it is necessary and reasonable for consistency purposes to include on-sale wine licenses within the rules subpart that deals with when the commissioner's approval is required for licensure.

Subpart 2. Application procedure.

As with subpart 1, subpart 2 has been amended to include the category of on-sale wine. In this case, the amendment includes on-sale wine to the list of types of applications and license forms the commissioner shall furnish to municipalities and counties.

Since on-sale wine seems to occupy a category on its own, it is necessary to specifically include it to the listing so that it may be definitively included. References to "bonds" have been stricken because the statute requiring bonds has been repealed. *See* earlier discussion for rule part 7515.0430.

Subpart 3. Materials forwarded to commissioner.

This amendment clarifies the forms required to complete the licensing process and which must be submitted to the commissioner for approval. These amendments complement the changes found in subparts 1 and 2 of this rules part and include on-sale wine application forms in the list of forms that must be forwarded by the clerk to the Commissioner.

Item A is stricken but has not disappeared. The requirement is now found, verbatim, in the *proposed* Item B.

Item B loosens the rule by requiring only a single form, rather than two forms, because two are unnecessary. On-sale wine as a category is reflected to coincide with amendments to subparts 1 and 2. "Club on-sale" is not a substantive change, merely a clarification of the included type of license at issue.

Item C drops the requirement for bond forms because the requirement for bonds, as previously discussed, was repealed in 1989 by the Minnesota legislature. The additional phrase "as applicable" is proposed to clarify that a Sunday license is separate from a regular on-sale license and therefore should be submitted separately. Since not all on-sale licensees are issued Sunday licenses, the requirement in this section is only "applicable" for certain licensees.

The rest of the amendments in Items D through F merely update form numbers and drop unnecessary and burdensome requirements for notarization.

Subp 4. Items forwarded at renewal.

This is a Revisor's technical amendment.

Subp. 5. Disposition of Documents

The amendments to this rule refer to the disposition and retention schedules of the commissioner and local licensing authorities. In general, the amendments to this rule are reasonable because, by

eliminating the requirement that they retain copies of the applications as well, the amendments are less burdensome for clerks and auditors. This was unnecessary for regulatory and public purposes and therefore, the Department proposes its repeal.

Additionally, the proposed amendments eliminate the requirement that one copy of the bond be submitted as the requirement for a bond was repealed, as previously discussed, in 1989.

7515.0450 Change of location

This section clarifies reporting requirements for retail licensees who change location. The proposed amendment provides that the change in location must be accompanied by a corrected liquor liability insurance certificate showing the new location but deletes the requirement that they submit a written statement from a bonding company. This is appropriate because licensees are no longer required to provide bond, 1989 Minnesota Laws, chapter 49, section 8, and because Minnesota Statutes, section 340A.409, subdivision 1, specifically states that no license may be maintained, renewed, or issued unless proof of financial responsibility is provided to the commissioner and issuing authority.

Pursuant to Minnesota Statutes, section 340A.410, licenses are issued and approved with respect to specific locations described in the license application. Therefore, it is reasonable for the agency to require that information concerning financial responsibility be included in applications when a retailer changes locations. Additionally, pursuant to Minnesota Statutes, section 340A.409, liquor liability insurance demonstrates proof of financial responsibility. Therefore, liquor liability insurance showing the new address will provide sufficient proof of financial responsibility.

7515.0460 Liquidation of business; report

These amendments result in no substantive changes, rather they clarify existing requirements. This section concerns liquidation of business and reporting requirements. The amendment clarifies that inventories of intoxicating liquor stock as well as statement of disposition must be submitted in writing to the commissioner. This is already implied, understood and followed but it should be stated specifically in rule.

The new language also clarifies that retailer's identification cards and retail licenses shall be surrendered to the issuing authorities for cancellation. This latter is reasonable since the retailer will no longer be able to use the retail license and therefore it should be surrendered in order to guarantee its continued non-use. These amendments reflect past practice and interpretation of the current rule.

7515.0470 Municipal liquor stores

Item A; Item B

This rule refers to reporting requirements by municipalities operating municipal liquor stores and has been amended, in Items A and B, to eliminate notarization requirements. The Department found that notarization of these documents was an unnecessary burden on regulated parties.

Because there is no good justification for continuing this practice in rule, the Department has elected to strike its requirement. In light of the recent legislative mandate that agencies, to the extent possible, create performance-based rules, the Department feels this is a reasonable amendment in that it meets that goal.

Item C

This amendment concerns the issue of reporting to the commissioner when a municipality establishes a municipal liquor store. The new language clarifies that reporting will be done in writing to the commissioner, and deletes the requirement that reporting will be completed on a form furnished and prescribed by the commissioner. The purpose of this amendment is to clarify and simplify the reporting process for a municipality that establishes a new municipal liquor store. It allows the municipality to write to the commissioner reporting the establishment of a store without regard to specific format.

The requirement that the municipality submit a report on a form prescribed by the Commissioner has proven unnecessary and furthers no regulatory purpose. Therefore, in light of the Legislature's recent mandate that agencies create performance-based rules, the Department has eliminated this requirement to allow the municipality greater flexibility in fulfilling its requirements under the rule.

Item D

This amendment concerns reporting requirements for municipal liquor store location changes and clarifies what must be submitted to the Commissioner. The current rule requires reporting to be made to the Commissioner on forms prescribed by the Commissioner. As with previous amendments in Items A, B, and C of this section, the Department has eliminated this requirement to allow greater flexibility to the regulated party for reporting purposes. Although the information that a location has changed is necessary for regulatory purposes, specific forms for providing this information serve no necessary or useful regulatory purpose for the Department.

Additionally, this section is amended to include reporting information concerning new liquor liability insurance showing the new location. This is consistent with statutory requirements found under Minnesota Statutes, section 340A.603, that require a municipal liquor store to provide proof of financial responsibility as required by licensees under section 340A.409, relating to the liquor liability insurance.

Additionally, this is amended to eliminate the requirement to have notarized statements of liquor inventory on hand and only requires a written inventory. The result of this amendment is to make the requirements of this rule less burdensome. The Department does not feel that notarization of the inventory is necessary for regulatory purposes and has elected to eliminate this requirement.

7515.0500 Retail license required

This amendment substitutes the terms distilled spirits, wines, and strong beer with the term "alcoholic beverages". This amendment to the rules finds its support and justification from requirements already found in statute. Pursuant to Minnesota Statutes, section 340A.401, "no

person may directly or indirectly...dispose of alcoholic beverages as part of a commercial transaction without having obtained the required license or permit.” (emphasis added)

7515.0510 Identification card required

This amendment is technical and serves to update the terms used in the rules so that they are consistent with the rest of the amendments and the terms used throughout the statutes.

7515.0520 Purchase from licensed manufacturers

This amendment is technical and serves to update the terms used in the rules so that they are consistent with the rest of the amendments and the terms used throughout the statutes.

7515.0550 Retention of records

This section again keeps continuity in terms between statute and rule. This is not a substantive change. Presently, the rule states that retailers must have records on their premises for two years of all sales and purchases of two cases or more of intoxicating liquor, wine and malt beverages. The use of the term “alcoholic beverages” results in no substantive change to the rule since intoxicating liquor, wine and malt beverages comprise the full spectrum of beverages covered by the term “alcoholic beverages” as defined by Minnesota Statutes, sections 340A.101, subdivisions 2,14,16, and 29.

7515.0560 On-sale dealers

Subpart 2. Liquor to be consumed on premises

This amendment clarifies and closes inconsistencies between statute and rule relating to on-sale liquor licensees and which alcohol beverage products may be sold by the drink on the licensed premises. Minnesota Statutes, section 340A.101, subdivision 21, defines “on-sale” as “the sale of alcoholic beverages for consumption on the licensed premises only.” The proposed rule changes intoxicating liquor to alcoholic beverage to avoid confusion and promote continuity of terms between statute and rule. This is not a substantive change, but rather clarifies the intent of law.

Subpart 3. Display forbidden

This amendment deletes references to requirements found in repealed laws.

Subpart 4. Dilution or changing containers

This section contains editorial revisions only and no substantive changes.

Subpart 5. Containers subject to seizure

Minnesota Statutes, section 340A.508, subdivision 3, provides the commissioner authority to seize open “alcoholic beverages” that indicate tampering, refilling, dilution or impurities upon inspection. This rule is amended to accurately reflect this authority.

Subpart 6. Containers must be visible to public

The changes in this subpart are editorial changes that do not alter the meaning or substance of this rule.

7515.0570 Off-Sale by package only

Minnesota Statutes, section 340A.101, subdivision 20, defines “off-sale” as “the sale of alcoholic beverages in original packages for consumption off the licensed premises only.” By amending this rule to replace the term “intoxicating liquors” with “alcoholic beverages” the rule becomes consistent with the law found in the statutory definition of “off-sale”.

7515.0580 Delivery

Subpart 1. Restrictions

This section is amended to clarify that “only” licensed off-sale liquor retailers may make liquor deliveries of “alcoholic beverages.” Additionally, “alcoholic beverages” is substituted for “intoxicating liquors” because this section pertains to “off-sale” retailers and “off-sale”, as defined in Minnesota Statutes, section 340A.101, subdivision 20, includes the sale of “alcoholic beverages” for consumption off the premises. It would be unreasonable to limit off-sale delivery to liquor with alcohol content of 3.2 percent when an off-sale retailer may sell “alcoholic beverages” for off-premises consumption.

Pursuant to Minnesota Statutes, section 340A.503, a person must be 21 years of age or over in order to purchase alcoholic beverages. Therefore, amending the rule from 19 years to 21 years is necessary since it is only reasonable to limit delivery of off-sale alcoholic beverages to persons legally able to purchase the beverages.

Finally, this section is amended to prohibit delivery to licensed alcohol beverage establishments in violation of law or ordinance. This additional amendment is for context purposes since Minnesota Statutes, section 340A.505, states that a retailer is prohibited from selling “alcoholic beverages” to any person whom the retailer has reason to believe intends to resell without the approval of the Commissioner. A licensed alcohol beverage establishment is, by its very terms, an establishment that intends to sell liquor. It is reasonable, therefore, to prohibit not only the sale of alcoholic beverages to these establishments but also the delivery of such by an off-sale retailer because delivery by a retailer necessitates sale as well.

Subpart 2. Delivery tickets required

This section is amended to reference “alcoholic beverages” instead of “intoxicating liquor” for the same reasons as are stated in subpart 1 above.

Subpart 3. Retailer may refuse to deliver

This section is amended for many of the same reasons already discussed in the previous subparts. The term “retailers” is used to update the language of this rule. The term “alcoholic beverages” is substituted for “intoxicating liquors” because this section pertains to “off-sale” retailers and “off-sale”, as defined in Minnesota Statutes, section 340A.101, subdivision 20, includes the sale of “alcoholic beverages” for consumption off the premises. It would be unreasonable to limit off-

sale delivery to liquor with alcohol content of 3.2 percent when an off-sale retailer may sell “alcoholic beverages” for off-premises consumption.

Furthermore, this section is amended to more accurately reflect governing statutes. Minnesota Statutes, sections 340A.502, .503, and .505 are not referenced in the current rule, but all three pertain in some way to delivery requirements as has been discussed above. Minnesota Statutes, section 340A.502 prohibits a retailer to sell, give, or furnish alcoholic beverages to obviously intoxicated persons. Minnesota Statute, section 340A.503, subdivision 2, clause (1), prohibits a retailer from selling, bartering, furnishing, or giving an alcoholic beverage to a person not yet 21 years old. Likewise, Minnesota Statutes, section 340A.505 prohibits a retailer from selling, and thus delivering, an alcoholic beverage to any person whom the licensee has reason to believe will resell the alcoholic beverage without written permission.

Finally, the reference to section 340A.503, subdivision 6, refers to the types of written proof that will be accepted to establish 21 years of age or more. This is a reasonable reference since it refers to forms of evidence already approved by law. The fact that the Department can require written evidence of age is already allowed in the current rule.

7515.0590 Sales restrictions

Retail dealer not to sell for resale

The amended language in this section substitutes “retailers” for “retail dealers” and does not result in a substantive change to the rule. The amendment serves to keep the terms found in rule consistent with those found in statute.

Subpart 2. Cancellation of identification card

The amended language in this section does not result in a substantive change. The term “retailers” merely updates the terms used in rule to make it consistent with statutory terms.

Subpart 3. Refusal to sell

The term “retailers” in this subpart, as above, serves to make the terms used in rule consistent with those terms used in statute.

7515.0600 Solicitation

This section replaces the term “retail dealers” with “retailer” to maintain continuity of terms throughout the liquor rules. Additionally, this section is further amended to provide for solicitation outside of the licensed premises if solicitation is permitted by law. This was necessary since current law provides that no rule may prohibit advertising of wines by off-sale licensees by catalog. an exception to the prohibition of not using the telephone, telegraph or US postal service to solicit customers. Minn. Stat. §340A.507, subd. 2.

7515.0620 Gifts forbidden

Minnesota Statutes, section 613.19 was repealed in 1963. Therefore, reference to this law is deleted from the rule.

This rule remains justified by statute. Minnesota Statutes, section 340A.308, paragraph (b), provides that no retailer may solicit any item of value from a wholesaler for manufacturer that is prohibited by law, if the retailer knew that furnishing the item of value is prohibited.

Additionally, Minnesota Statutes, section 340A.702, clause (3), makes violating this provision, through Minnesota Statutes, section 340A.308, paragraph (b), a gross misdemeanor. Therefore, the Department is retaining the rest of the rule.

7515.0630 Storage

The language proposed within this section mimics statutory language. Minnesota Statutes, section 340A.412, subdivision 12, states that retailers may store excess stocks of intoxicating liquor if they have the written approval of the commissioner.

7515.0640 Fires and other damage

The proposed changes in this part are not substantive in nature. The terms intoxicating liquor, 3.2 percent malt liquor, and wine as defined in Minnesota Statutes, section 340A.101, subdivisions 3, 14, 19, and 29 constitute the full spectrum of beverages covered by the term “alcoholic beverages”. Therefore, the change in terms simplifies this rule and makes it consistent with the proposed changes found elsewhere in these rules and the terms found in statute.

7515.0650 Transfer of license or business

Pursuant to Minnesota Statutes, Section 340A.401, no person may sell, barter, keep for sale, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without a license or permit to do so. Additionally, under current law, this license may be transferred but only with the consent of the issuing authority. Minn. Stat. §340A.412, subd. 9.

The proposed amendments to this section require that a seller must return its retail license to the issuing authority for cancellation. Although a seller can transfer a license, the actual documents must be returned because the licensee listed on the license will not be the actual entity to which the business is sold. The new owner must apply for a new license issued specifically to that new entity.

Since the issuing authority must consent to the transfer, and take steps to properly issue a new license to the entity, to whom the license is transferred and who will be engaged in selling liquor at the establishment, it is only reasonable to require the original licensee’s license to be returned. Without returning the actual license, invalidated by the sale of the business, an issuing authority would have two licenses for the same premises, for the same period of time, held by two distinct and separate entities.

The requirement that a notary witness a signed inventory has been eliminated since it is an extra burden that has proven unnecessary and furthers no regulatory purpose. In view of the recent

legislative mandate that agencies attempt to create performance-based rules, the Department feels that this amendment meets that goal.

Finally, all other language changes in this section are not substantive and merely update rules language to make it consistent with statutory terms.

7515.0720 Mandatory statements

This section contains editorial revisions. The amendments here replace the term “shall” with “must” to maintain continuity throughout the liquor rules by updating its language. So likewise, subpart 4 is amended for ease in reading.

Amendments to subparts 5 and 6 reflect the fact that, pursuant to Minnesota Statutes, section 340A.507, subdivision 1, the Commissioner has the authority to regulate advertising as it relates to “alcoholic beverages” and not the more limiting “intoxicating liquor” as found in the current rule.

7515.0760 Statements of acts prohibited

Subpart 2. Item G. Prohibitions on Advertisements’ Contents

The Supreme Court in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), held prohibitions on liquor price advertising are unconstitutional. Therefore, item G of this rule is invalid as it prohibits statements and displays relating to liquor prices and must be deleted from the rules.

Subpart 6. Restrictions on references to prices

This subpart is repealed for the same reasons as discussed in the preceding section.

7515.0780 Mailing forbidden

As in Minnesota Rules, part 7515.0760, this rule currently regulates price advertising by allowing for distribution of price lists within a licensed premises. The Department has determined that all regulation of liquor price advertising should be repealed from the rules, in light of the decision found in *Liquormart*. The Department also found it reasonable to strike “hand circulars” from the rules since this might give the perception that the Department is only allowing hand circulars to be handed out in the licensed premises and this might imply an indirect restriction on price listing. This decision is based on advice obtained by the Department from the Office of the Attorney General and in view of the possible, and enormous, liabilities the State of Minnesota may be subject to if the Department adheres to any provisions regulating price advertising.

7515.0800 Brand label approval

Subpart 1. Commissioner’s approval required

As in other sections, the term “alcoholic beverages” replaces the current list of beverages in order to provide continuity of terms within the statute and rules. This amendment does not result

in a substantive change. The list found in the current rule comprises all the beverages covered by the term "alcoholic beverages".

Subpart 2. Imports for sample purposes only

The current requirement that sample reports must be manifested as provided for in part 7515.0930 is no longer valid. Minnesota Rule, part 7515.0930 reflects requirements found in Minnesota Statutes, section 340.485, subdivision 3, which was repealed in 1985. 1985 Minn. L. Ch. 305, Art. 13, Sec.1. This amendment reflects the repeal of this requirement.

Subpart 3. Confiscation

Finally, subpart 3 includes an amendment that clarifies who may confiscate alcoholic beverages whose brand label is not approved and registered. The Commissioner is authorized to register and approve this type of product pursuant to this rule, and it is reasonable then to authorize the Commissioner to seize unregistered or approved products. This authority is reasonable and consistent with authority granted to the Commissioner in Minnesota Statutes, sections 340A.7035 and 340A.904. Likewise, licensed peace officers are also authorized, by statute, to seize alcoholic beverages imported or possessed in violation of Minnesota Statutes, section 340A.7035. It is reasonable and consistent with authority granted licensed peace officers elsewhere in Minnesota Statutes, to authorize these same peace officers the ability to seize unregistered alcoholic beverages.

7515.0810 Brand label ownership

This amendment clarifies which types of products' brand labels will not be registered unless it is determined that the owner is the registrant or the owner has authorized the applicant to register the brands on the owner's behalf. Pursuant to Minnesota Statutes, section 340A.311, paragraph (c), a label cannot be registered for a brand of wine or intoxicating or nonintoxicating malt beverage except by the brand owner or authorized agent. This amendment is consistent with requirements found in statute.

7515.0820 Registration

The increase in fee amount denoted in this section, as well as the registration renewal fee, reflect fee amounts for brand registration found in Minnesota Statutes, section 340A.311, paragraph (a).

The term "photostatic" is deleted because it is unnecessary and antiquated.

7515.0840 Expiration

The current rule reflects old law that required brand labels to be registered only once. If the registered product was not sold in the State for more than two years, then it was deemed abandoned and had to be reregistered before resuming sales. Minn. Stat. §340A.311(1990). Today, Minnesota Statutes require registration of brand labels to be renewed every three years. Minn. Stat. §340A.311, paragraph (a)(2000). If a product is not registered every three years, it expires and is deemed abandoned. Id. No longer is the fact that a product has not been sold in

Minnesota for two years material to abandonment. The rule amendment recognizes these changes to the law and attempts to more closely reflect these changes to the statutes.

7515.0850 Importers to ascertain registration

“Wholesalers” replaces “wholesale distributors” to make terms consistent throughout the rules and statutes.

7515.0900 Importation

The proposed amendments found in this section reflect current statutory requirements that alcoholic beverages and ethyl alcohol be licensed for importation. Minn. Stat. §340A.302, subd. 1.

The term “wholesalers” is consistent with terms used in statute.

Subpart 2 Sacramental Wine --repealer

Subpart 2 is repealed to reflect statutory repeal of the requirement that sacramental wine or wine used by appointed or ordained rabbis, priests, or pastors of any established religious organization be subject to regulation. 1996 Minn. L. Ch. 418, Sec. 2.

7515.0920 Import license required

Minnesota Statutes, Section 340A.302, subdivision 1, requires an importer’s license in order to ship, or cause to be shipped, alcoholic beverages or ethyl alcohol. This amendment reflects this statutory requirement.

The rest of this amendment refers to statutory exemptions where import licenses are not required. These exemptions include sacramental wine and direct shipments from reciprocal wineries for personal use of up to two cases per winery per year. This amendment is necessary because it adds context to this rule and lessens the possibility that these exemptions, found in statute, will be overlooked.

7515.0930 Manifest or invoice – repealer

The current requirement that sample reports must be manifested as provided for in part 7515.0930 is no longer valid. Minnesota Rule, part 7515.0930 reflects requirements found in Minnesota statutes, section 340.485, subdivision 3, which was repealed in 1985. Minn. Laws Ch. 305, Art. 14, Sec. 1. This amendment reflects the repeal of this requirement.

7515.0940 Transportation

“Wholesalers” is used for consistency of terms between statute and rule.

7515.0950 Confiscation

This amendment reflects current statutory citations and the requirements found therein. The present rule cites to Minnesota Statutes, section 340.54, subdivision 1, which was repealed in 1985, and therefore it is necessary to reflect this repeal. 1985 Minn. L. Ch. 305, Art.13, Sec. 1.

Both the current and proposed rule provide that non-tax paid alcoholic beverages, which are not considered exempt, are subject to confiscation. There is no substantive change except insofar as the proposed rule includes substantive changes already found in statute.

7515.0960 Samples for analysis

The amendments to this section are editorial changes and do not change the substance or affect of the provision.

7515.1020 Aging of whiskey -- Repeal

Pursuant to written comments the Department received during the past two years on this rulemaking, the Department has decided that separate aging standards for whiskey found in this rule part no longer serve a necessary regulatory purpose. Therefore, this rule is repealed because it is no longer necessary or reasonable. The result of this repeal is that whiskey will no longer be distinguished from the other distilled spirits and subject to any separate standards except where statute or other rule require.

Pursuant to the proposed Minnesota Rules, part 7515.1040, the provisions of the Code of Federal Regulations will govern standards of identity and fill for distilled spirits. The cited federal regulations provide minimum standards of identity and fill for whiskey that is bottled and sold in the United States. Adoption of the federal regulations for whiskey, as a distilled spirit, is necessary in order to stay current with the ever-changing characteristics of the liquor trade and it is reasonable to choose to adopt the federal regulations as our minimum standards since the industry must already meet these standards. By adopting the federal regulations proposed in Minnesota Rules, part 7515.1040, Minnesota is opening its rules to a variety of whiskey-related products that the federal regulations acknowledge and cover but that are not likewise covered under current Minnesota rules. This, in turn, will serve to bring Minnesota standards up-to-date with current marketplace trends.

7515.1030 Cordials and liqueurs

This rule determines the minimum amount of sugar an alcoholic beverage product must contain in order to be classified as a cordial or liqueur. The proposed amendment allows for a lower amount of sugar to be added (from ten percent by weight to 2.5 percent by weight) to meet the definition of a cordial or liqueur. This change is in line with current federal regulations governing this type of alcoholic beverage. 27 CFR §5.22 This change is reasonable in that the 10 percent requirement is not necessary for public safety or health purposes. Additionally, by aligning the current rules with federal standards, manufacturers of these products will be relieved of additional production burdens in order to meet Minnesota's higher, and unnecessary, 10 percent requirement.

7515.1040 Standards of fill for distilled spirits

The current rule reflects former, outdated federal requirements governing standards of fill for distilled spirits. Since Minnesota has traditionally accepted federal standards on this subject matter, it was reasonable to adopt the federal regulations with amendments directly rather than to duplicate current federal standards in rule as was done previously. As a result, the Department will be able to keep current with changing federal requirements without necessitating frequent rules revisions.

Additionally, because the States may have laws that are more restrictive in nature, the Department has recognized this legislative prerogative by conditioning this adoption on statutory law found in Chapter 340A. This amendment requires that Minnesota rules and laws, to the extent they are inconsistent with the federal regulation, take precedence. Therefore, to the extent that the Legislature or the Department disagrees with the standards set, and wants to enforce stricter standards, the Legislature and Department may still pass laws or rules that will achieve this goal and the rest of the rules, not inconsistent, will remain valid law.

This amendment does not result in looser standards that do not serve the purpose of public safety or fulfill legislative intent. The federal regulations will not take precedence over statute or other rule where the regulations are inconsistent with Minnesota law. For instance, Minnesota Statutes, section 340A.506, subdivision 1, prohibits neutral spirits from being sold at retail as beverages except if they are used to manufacture other products as defined in the Revenue Code identifying standards of identity for distilled spirits. Nothing in Title 27 of the Code of Federal Regulations, section 5.22, that is inconsistent with the cited Minnesota statute, will take precedence over the Minnesota law. Therefore, if the federal regulations imply, allow or are amended to allow, retail sale of neutral spirits as beverages, neutral spirits will continue to be prohibited for retail sale as beverages in Minnesota as long as Minnesota law prohibits this type of transaction.

Finally, adoption of the federal regulations and any future amendments is reasonable and necessary in that it allows the agency to keep current with minimum federal standards without requiring new rules every time the federal regulations are amended. This will save the government time and money, and will provide the industry with a reliable and current source regulatory policy on this issue.

7515.1050 Wine general requirements

The amendments found here clarify which federal regulations have been adopted as pertain to identity and labeling requirements for wine. Current language merely refers to the Code of Federal Regulation but is not specific. In order to avoid confusion, it was necessary and reasonable to clarify the specific regulations that have been adopted. No substantive changes are included in this amendment.

7515.1060 Packaging of wine to conform to federal regulations

These amendments reflect the Revisor's editorial changes.

7515.1070 Standards of fill for wine

As with distilled spirits, the Code of Federal Regulations is adopted for standards of fill for wine. The Department has traditionally followed federal regulations on this subject and former federal standards are reflected in the current rule. However, because the federal regulations are subject to frequent change, the Minnesota rules become outdated easily and new rules become necessary. In order to avoid this problem, the Department, as with distilled spirits, believes it is necessary and reasonable to eliminate specific requirements and replace them with requirements found in the Code of Federal Regulations including future amendments.

7515.1090 Packaging of malt beverages to conform to federal regulations

Amendments reflect Revisor's editorial changes.

7515.1100 Labeling Requirements and Alcoholic Content

This part is amended to eliminate the word "photostatic" copies as it is an outdated term that is no longer necessary since the requirement for copies is generally understood without need for clarification.

7515.1120 Standards of content for malt beverages

For the same reasons federal requirements are adopted for distilled spirits and wine, the Federal standards are adopted for malt beverages.

Additionally, the Department is eliminating variance language because federal standards, by law, refer to minimum standards and variances to these standards unless more restrictive are not possible.

"Content" has been substituted for "fill" to reflect that malt beverage containers are filled according to specific weights distinguishing malt beverages from wine and distilled spirits which are filled by pints, gallons, liters, etc.

7515.1200 Permit applications

This rule refers to permits for consumption and display of alcoholic beverages and/or setup permits. The amendment to this rule requires a check, in the amount of \$150, to be submitted to the Director of Alcohol and Gambling Enforcement. Authority for this increase in fee is found in statute. Pursuant to Minnesota Statutes, section 340A.414, subdivision 6, the fee for issuance of an annual permit for consumption and display is \$150. Therefore, this amendment is necessary and reasonable as it makes the rules consistent with statutory requirements.

The requirements that the payment be in the form of a money order, bank draft, or certified check have been changed to simplify the payment process. Instead, the proposed rules call for a

check to be made payable to the Director thus making payment of the annual fee less burdensome on the regulated party.

7515.1210 Disqualifications

Subpart 1 Federal tax stamps -- repealer

The supporting statute for this rule was repealed in 1985 and therefore, we are repealing this rule to make the rules consistent with statute. 1985 Minn. Laws, Ch.305, Art. 13, Sec.1.

Subpart 3 Conviction of Liquor Violation

This rule is amended to use the term "alcoholic beverage" rather than "intoxicating liquor and non-intoxicating malt beverages" because this rule subpart applies to all alcoholic beverages that contain not less than one-half of one percent alcohol by volume.

Minnesota Statutes, section 340A.414, subdivision 2, clause (1), provides that an applicant is not eligible for a consumption and display permit if the applicant has been convicted of a felony or of violating any provision of this chapter or rule within the previous five years. Since Minnesota Statutes, chapter 340A governs "alcoholic beverages" not just intoxicating liquor and nonintoxicating malt beverages, it is reasonable and necessary to update this rule to reflect this fact.

7515.1220 Regulation of establishments granted permits

Subparts 1 and 2

The amendments in these subparts contain Revisor's editorial changes.

Subpart 5. No Transfer of Permits.

The current rule is amended to refer to the current statutory citation for issuance of consumption and display permits.

7515.1300 Permit required for pharmacists – Repealer

Subpart 1. General – Repealer

This subpart is obsolete because the statutory authority for this rule, Minnesota Statutes, section 340.18, was repealed in 1985. 1985 Minn. R. Ch. 305, Art. 13, Sec. 1. As a result of this repeal, pharmacists no longer have the authority to fill medicinal liquor prescriptions and are therefore no longer required to have a license to sell medicinal liquors and ethyl alcohol by prescription. Thus this rule is obsolete and unnecessary and should be repealed.

The authorization and requirements of the above repealed statute should be distinguished from the requirement that a pharmacist who needs to purchase ethyl alcohol for compounding medicines must still obtain a permit to purchase, use, and possess ethyl alcohol for such purposes. Minn. R. part 7515.0220, item D.

Subpart 2. Federal Tax Stamp – Repealer

Subpart 2 pertains to pharmacists who are applying for a permit to sell medicinal liquors. This subpart is obsolete and should be repealed because pharmacists are no longer authorized to sell medicinal liquors by prescription and therefore no longer need such a permit.

Subp. 3. Confiscation

This section is amended for clarification purposes. Although pharmacists are no longer authorized to sell liquor by prescription, they must still obtain a permit to buy ethyl alcohol to make medicines. (Minn. R. part 7515.0220, Item D) Therefore, it is necessary to clarify that pharmacists must still have this type of permit or the ethyl alcohol they hold will be subject to confiscation. This is not a substantive change. The amendments in this subpart serve to clarify that this subpart still pertains to ethyl alcohol and to provide contextual reference to the law still requiring the permit at issue.

7515.1310 Purchase requirements for pharmacists

Subpart 2. Identification card – Repealer

As with subparts 1 and 2 of the preceding rule, this subpart is repealed because the statute that authorized pharmacists to fill medicinal liquor prescriptions, Minnesota Statutes, section 340.18, was repealed in 1985. Since this section requires a pharmacist who has a permit to sell medicinal liquors on prescription to obtain an identification card in order to purchase liquor for this purpose, this rule is clearly obsolete.

Subpart 3. Purchase from licensed dealers

For the reasons stated for repeal of 7515.1310, subpart 2, this subpart is amended to delete reference to medicinal liquors because pharmacists can no longer fill prescriptions prescribing medicinal liquors. This subpart is not repealed in its entirety because pharmacists may still purchase ethyl alcohol in compounding medicines. Minn. R. part 7515.0220, Item D.

Subpart 5. Invoices mailed to commissioner – Repealer

This subpart is repealed because it is obsolete. As already discussed, when Minnesota Statutes, section 340.18 was repealed in 1985, pharmacists were no longer authorized to fill prescriptions for medicinal liquors. Since this subpart pertains to sales of medicinal liquors to pharmacists holding permits to sell the liquor by prescription, this subpart is no longer valid and should be repealed.

7515.1320 Prescriptions

Subpart 1. One container only – Repealer: Subpart 2. Prescription label – Repealer

Both subparts 1 and 2 pertain to medicinal alcohol by prescription. As with the preceding rules, this rule is repealed because it is now obsolete. Minnesota Statutes, section 340.18, which authorized pharmacists to sell medicinal liquors by prescription and required a permit to do so was repealed in 1985.

Subpart 3. Confiscation

This subpart, unlike subparts 1 and 2, can still be applied to ethyl alcohol. Therefore, it has been amended to refer to only ethyl alcohol rather than the broader “alcoholic liquors” and required

permits has been clarified to include only those permits still required under Minnesota Rules, part 7515.0220, item D.

7515.1330 Records

The amendments to this rule do not have substantive impact. These amendments reflect the continued record keeping responsibilities for pharmacists who purchase ethyl alcohol in order to compound medicines. The amendments clarify that records are still expected for purchases of ethyl alcohol by pharmacists for compounding medicines.

7515.1340 Irregularities in stock

Subpart 1. Grounds for confiscation; Subpart 2. Grounds for revocation

These amendments delete reference to medicinal liquors because of the repeal of Minnesota Statutes, section 340.18, for reasons already discussed in the rule-by-rule analysis of parts .1300, .1310, .1320, and .1330. Ethyl alcohol may still be used for compounding medicines and therefore, these subparts are not deleted in their entirety.

7515.1350 Storage and display -- Repealed

This section is repealed in its entirety since it applies to the storage and display of prescription medicinal liquors. Since pharmacists no longer fill prescriptions for medicinal liquor, as already discussed, this rule is now obsolete.

7515.1360 Selling or liquidating business

The amendments to this rule delete reference to medicinal liquors for the same above-mentioned repeal of Minnesota Statutes, section 340.18.

As well, the requirement for notarized inventories is repealed since notarization is not necessary and is, in practice, no longer required because it is unnecessary for regulatory purposes and adds an extra burden on regulated parties. Therefore, this requirement is obsolete.

Furthermore, the term "brand name" is also deleted because pharmacists no longer dispense brands of medicinal liquors due to the repeal of Minnesota Statutes, section 340.18. Likewise, pharmacists are no longer licensed off-sale retailers and therefore do not need an identification card and the amendments reflect this fact.

All other language remains in force as it concerns ethyl alcohol that pharmacists use to compound medicines since a pharmacist must still obtain a permit to purchase this ethyl alcohol.

7515.1400 Importation for resale

This amendment is not substantive in nature and merely updates the citations to the statutes now governing this issue.

7515.1410 Importation limited

This amendment contains no substantive changes in law. Terms have been changed to be consistent with current terms used throughout the rules and statute and confusing language has been simplified for ease in reading and comprehension.

7515.1450 Purchases, physicians, dentists, veterinarians

No substantive changes are found here. Wholesaler is used, as elsewhere, for consistency purposes.

CONCLUSION

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

DATE:

Charles R. Weaver, Jr.
Commissioner, Minnesota Department of Public Safety