

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FISH AND WILDLIFE

IN THE MATTER OF THE PROPOSED AMENDMENT OF
RULES GOVERNING
ELECTRONIC LICENSING

STATEMENT OF NEED AND REASONABLENESS

August 31, 2009

Minnesota Department of Natural Resources

Division of Fish and Wildlife

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Electronic Licensing, *Minnesota Rules*, parts 6213.0100 to 6213.0800.

INTRODUCTION

The Department of Natural Resources (DNR), Division of Fish and Wildlife administers a diverse group of rules governing natural resources, including the transactions of applications, licenses, passes, permits, registrations for game and fish, recreational vehicles, including snowmobiles and watercrafts using the Electronic License System (ELS). An average of 1.2 million angling licenses, six-hundred thousand hunting licenses, 1.5 million recreational vehicles titles and registrations transactions are processed per year.

The proposed revisions to existing rules address a number of issues related to electronic licensing: definitions, selections of Agents, terms of Agent contract, duration of Agent contract, forfeiture or suspension of contract and sale of electronic licenses.

Notification to Persons and Classes of Persons Affected by the Proposed Rules

A "Request for Comments" was published in the State Register on March 9, 2009. The 60-day comment period ended on April 30, 2009. This notice described the general areas of the proposed rules revisions, the persons affected by the proposed rules, and the statutory authority for the proposed rules. A DNR Web page introducing the proposed rules revisions was available on March 9, 2009, and was used to take comments directly related to the proposed changes. In addition, a letter was sent on March 10, 2009, to all the current Agents who could be affected by or would have interest in the proposed rules.

During the Request for Comments period, the DNR received comments from seven point-of-sale (POS) Agents. Two Agents' comments did not pertain to the proposed rules. Two Agents requested a copy of the Request for Comments document, and the copies were sent via email and by mail, with no response received back. One Agent had questions regarding the physical description of the new terminal in development. A comment came from a resort Agent pertaining to the hours of operation in the section "Selection of Agent," and the deposit for terminals in the section "Terms of Agent Contract." The last comment was a request stating that the deposit for the terminal is returned to the ELS Agent upon termination of the contract if there is no outstanding money owed to DNR. Under *Minnesota Statute*, part 6213.0400, subp. 8, it is stated that "The deposit shall be refunded at the time an Agent terminates the Agent's contract if all point-of-sale equipment and related materials are returned to the commissioner in good working condition. If the equipment is not returned within 30-days, the deposit will be used towards the cost of replacing the terminal. An Agent's deposit will be applied to any outstanding debt owed to the DNR."

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Ka Vang at the Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4026; Phone: (651) 355-0141; Fax: (651) 297-8851; email ka.vang@state.mn.us. TTY users may call the Department of Natural Resources at (651) 296-5484 or (800) 657-3929.

STATUTORY AUTHORITY

Minnesota Statutes, section 84.027, subdivision 15 (a) (6) authorizes the Department to adopt rules for electronic transactions. *Minnesota Statutes*, section 97A.485, subd. 11, provides: “The commissioner shall prescribe rules for the accounting and procedural requirements necessary to assure the efficient handling of licenses and license fees. The commissioner may, by rule, establish standards for the appointment and revocation of Agents to assure the efficient distribution of licenses throughout the state.”

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Description of Classes of Persons Affected by the Proposed Rules

The proposed rules affect Electronic Licensing Agents and the general public using the ELS system. The proposed rule changes are technical changes to update recent statutes changes and will allow the DNR to make better selection of Agents and Agent locations to provide the best customer service to the general public. These changes do not have a cost in implementation to the state, Agents or to the general public. The proposed rules may affect current low-sales Agents that may not be selected to sale license in the future. Alternative methods may be offered to these Agents. This will also benefit high-sales Agents who currently are in need of additional terminals.

Probable Costs to the Agency or Other Agencies from the Proposed Rule

There are no probable costs to the Agency or other Agencies from the proposed rules. The proposed rule changes do not have a cost in implementation to the state, Agents, or to the general public. The proposed rules are to expand and clarify the processes that are already in place. No additional costs are expected.

Determination of Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules

There are no less costly or less intrusive methods to the Agency or other Agencies from the proposed rules. The proposed rules changes do not have a cost in implementation to the state, Agents, or to the general public. The proposed rules are to expand and clarify the processes that are already in place. No additional costs are expected.

Description of Alternate Methods for Achieving the Purpose of the Proposed Rules

The proposed rules are revision and clarification to existing rules only. The desired result is to better serve the general public and the proposed rules are to expand and clarify the processes that are already in place.

Probable Costs of Complying with the Proposed Rules

There are no probable costs of complying with the proposed rules. There are no changes to the previous authorized terminal deposit or ELS connection cost in the proposed rules. The current rules required a phone line, the proposed rules allow for additional Internet connection the Agents may have in place.

Probable Costs or Consequences of not Adopting the Proposed Rules

The proposed rules would improve the DNR's ability to distribute ELS equipment to better serve the general public. In addition, the proposed rules will clarify current business practices, allow for future changes in statute and correct any out-of-date statutes cited in the current rule. The consequences of not adopting the proposed rules would hinder the DNR's ability to distribute ELS equipment and better serve our customers. Due to current statute changes, the rules need to be updated to comply with the changes.

Differences Between the Proposed Rules and Existing Federal Regulations

The proposed rules cover areas that are not addressed by federal law.

PERFORMANCE-BASED RULES

The DNR's objective with regard to electronic licensing is to provide an easy process for the general public to purchase game and fish licenses throughout the state. In revision to the proposed rules, the DNR is seeking to extend and clarify existing rules to make the rules less restrictive.

The proposed rules will not cost the DNR or the affected classes of person any additional fees but will help with efficient distribution of ELS equipment and prepare the rules for any future statute changes. The proposed rules changes provide the DNR with the means to improve customer service, meet the agencies regulatory obligation, and bring the rules up-to-date by eliminating obsolete statutes.

The proposed rule changes are technical changes to update recent statutes changes and will allow the DNR to provide the best customer service. For example, including additional Agent information such as, hours of operation will be an important factor to be considered during the selection process to be sure the general public have the best access to the ELS.

ADDITIONAL NOTICE

A notice of intent to adopt rules with or without a public hearing will be sent to all point-of-sale Agents.

At least 30 days before the date set for the hearing, notice of intent to adopt the proposed rules will be mailed to persons on the Department's official list for rulemaking notifications and published in the State Register, as required under *Minnesota Statutes*, section 14.14, subdivision 1a. A statewide news release announcing the proposed rule will be distributed to more than 700 daily and weekly newspapers and electronic media in the state. The announcement will also be distributed to persons who have signed up for the DNR's e-mail distribution list known as CyberNews.

The proposed rule will be available for public review and comment on the Department's Web site at <http://www.dnr.state.mn.us/input/rules/rulemaking.html>.

The dual notice, rules, and SONAR will be sent to legislators, as required under *Minnesota Statutes*, section 14.116.

CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Minnesota Management and Budget (formerly Department of Finance). We did this by sending to the Commissioner copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. The documents included the Governor's Office Proposed Rule and SONAR Form; draft rules; and SONAR. Minnesota Management and Budget's evaluation memo is submitted as a separate exhibit.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

These proposed rules do not require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by *Minnesota Statutes*, section 14.127, the Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Department reviewed the proposed rule changes and did not identify any cost for an agent to comply with the proposed changes. Current rule allows the Commissioner to select agents to adequately serve the public. Many of the rule changes relate to this process. The proposed rule changes do not change this authority and therefore do not have a cost related to the changes.

The proposed rule change that allows an agent to connect to the system does not require the agent to make any changes to their current option to connect to the ELS system. Current rule requires a phone line. This option to connect to the system is still available but, the new system is more flexible and the agent may choose to connect differently. The proposed rule change allows for more options and does not limit the agent to specifically connect by phone. This will not require the agent to make any changes therefore, no cost.

The current rule allows the commissioner to collect a deposit for ELS equipment up to \$500.00. The proposed rules do not change the fee but only clarify the language and better describe what the deposit money may be used for. There is no change in fees.

The proposed rule that states ELS data may only be used for processing ELS transactions will not require any changes to how an agent processes licenses. The proposed rule that states the agent must provide a location for the ELS equipment that prevents damage and authorized use will not require the agent to change the way they currently conduct their business. The proposed rule change clarifies what is stated in other areas of the current rule. The agent is already responsible for the equipment (6213.400 subp. 8) and any sales (6213.400 subp. 11) made on the equipment.

Other proposed rule changes update changes in law or clarifies current processes already stated in rule. None of these changes require the agent to change the way they conduct business.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

These proposed rules do not require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules.

LIST OF WITNESSES

If these rules go to public hearing, the witnesses below may testify on behalf of the DNR in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules. The witnesses for the Department of Natural Resources include:

Ed Boggess, Deputy Director
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4026

Peter Skwira, Administrative Services Section Chief
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4026

Steve Michaels, Electronic Licensing Program Director
DNR Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4026

RULE-BY-RULE ANALYSIS

Scope

Areas covered by the proposed rules include the following sections:

- Definitions
- Selection of Agents
- Terms of Agent Contract
- Duration of Agent Contract; Transferability
- Forfeiture of Suspension of Contract
- Sale of Electronic Licenses

Introduction

The sale of game and fish licenses and the registration and permits for off-road vehicles, watercraft, and snowmobiles has been regulated by the DNR since 1976.

Chapter 6213, Electronic Licensing

6213.0100 Definitions

Subp. 4. Electronic license

The proposed change is to broaden the definition of “electronic licenses” to include any future licenses, passes, permits, etc. that may be added to the Electronic Licensing System (ELS). This will prepare us for any future enhancements to the system.

Subp. 5. Electronic license system

The proposed change is to clarify the definition of “electronic license system” to include online sales, which currently is already in place.

6213.0310 Selection of Agents

Subp. 1. Factors to be considered

The proposed change is to add the business hours of operation for the entire year as a factor to be considered during the selection process to ensure customer access to the ELS. This is an important factor to be considered during the selection process to be sure our customers have the best access to ELS.

6213.0400 Terms of Agent Contract

Subp. 4. Hours of operation

The proposed change is to clarify the hours of operations provided by the Agent during selection process is for the duration of the contract. Hours of operation may change during the duration of the contract. It is the best interest of the DNR and the general public to reevaluate whether the Agent can provide acceptable access to the ELS sales.

Subp. 7. Communication and electrical needs

The proposed change is to add that due to changes in technology, communication connections and electrical needs for Agent have changed, so a phone line will not be the only connection option to the new ELS system. This will broaden the Agent’s ability to connect to the ELS system.

Subp. 8. Lost or missing materials and equipment

The proposed change will clarify a deposit is required for per set of equipment and that the Agent’s deposit will be used towards the replacement of the Point-of-Sale terminal if the terminal is not returned within 30 days of cancellation of the contract, in order to help provide new Agents with terminals in a timely manner.

Subp. 15. Security

The proposed change will require that an Agent must provide a location for the ELS equipment that protects it from damage and unauthorized use. This requirement will help maintain the value and integrity of the equipment and prevent its unauthorized use.

Subp. 16. Data practice

The proposed change will require that the ELS data may only be used in the normal course of business for the use of processing the ELS transactions.

The rules must be amended to be consistent with a change in statute that allows a 3% fee to be collected by Agent when customers use a bankcard and to allow for similar changes in the future.

6213.0410 Duration of Agent Contract; Transferability

Subp. 1. Duration

The proposed change will clarify that a request for termination of the contract by the Agent or a cancellation or suspension by the DNR must be provided in writing. This will provide a more formal process of communicating with the Agent.

Subp. 2. Change in operations

The proposed change will clarify that any change in operation (such as hours, type of business, or ownership) must be provided in writing to the DNR. Changes in operation could affect customer access or representation of the DNR.

Subp. 3. Change in ownership

The proposed change will clarify that if there is a change in ownership, the new owner must submit a new application. Changes in operation could affect customer access or representation of the DNR.

6213.0420 Forfeiture or Suspension of Contract

Subp. 2. Suspension/Cancellation of Agent contract

The proposed changes are to add that an Agent contract may be canceled due to low sales volume, because it is important to get equipment distributed to the best locations to serve the public, or due to misuse of ELS data, which is illegal, and that notice of forfeiture or cancellation will be given formally in writing.

6213.0500 Sale of Electronic Licenses

Subp. 3. Resident licenses

Residency requirements have changed in the past few years and may change again. The rule will be changed to allow compliance with whatever are the current requirements in statute pertaining to residency.

CONCLUSION

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

8-31-09
Date


Mark Holsten, Commissioner