DRIVER AND VEHICLE SERVICES DIVISION
MOTOR VEHICLE OFFICE
TRANSPORTATION BUILDING
[illegible]5 JOHN IRELAND BLVD.
2-296-6911
TDD: (612) 297-2100

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
ST. PAUL, MN 55155-1888

December 19, 1995

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

Re: In the Matter of Proposed Permanent Rules of the State Department of Public Safety Relating to Deputy Registrars

Dear Ms. Hruby:

The Minnesota Department of Public Safety intends to adopt the above entitled rules. We plan to publish a Dual Notice of Intent to Adopt Rules in the December 26, 1995, State Register.

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

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

If you have any questions about these rules, please contact me at 282-6060, or Hope Jensen at 296-2906.

Sincerely,

Larry Ollila
Assistant Manager, Title and Registration

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

cc: Hope Jensen, DVS Rules Coordinator

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

In The Matter Of The Proposed Rules Of The Department Of Public Safety Governing Deputy Registrars

STATEMENT OF NEED AND REASONABLENESS

GENERAL STATEMENT

The deputy registrar rules establish guidelines for the establishment of a deputy registrar office, appointment of a deputy registrar, operation of a deputy registrar office, reporting and depositing requirements, and enforcement mechanisms for deputy registrar violations. Deputy registrar rules were first promulgated in 1983. The rules in 1983 established criteria for establishing a new office, office requirements, general operating rules, and the existing penalty provision for deputy registrars. In 1988 amendments were made to further define the criteria by which a deputy registrar office is established. Also, in 1988, in a separate rule proceeding, amendments were made to the rules to add a new section to the rules regarding reporting and depositing practices of deputy registrars.

The current proposed rule amendments update the rules since the 1988 amendments. Clarification has been made to existing sections of the rules. In addition, new sections have been added to the rules which establish appointment procedures for deputy registrars and discontinuance procedures for deputy registrar appointments.

The amendments to the rules were the product of much discussion among the deputy registrars and the department through the use of the Deputy Registrar Advisory Committee (advisory committee). The advisory committee was composed of deputy registrars from throughout the different geographic areas of the state, members and non-members of the Deputy Registrar Association, a county auditor and legislative representatives.

STATUTORY AUTHORITY

The statutory authority for the promulgation of rules on deputy registrar requirements is set forth in Minnesota Statutes, section 299A.01, subdivision 6 and section 14.06 of the Administrative Procedure Act. Minnesota Statutes, section 299A.01, subdivision 6, provides that the commissioner of public safety shall have the power to promulgate such rules pursuant to chapter 14, as are necessary to carry out the purposes of Laws 1969, chapter 1129. The act transferred authority over the registration of motor vehicles to the

registrar, and authorized the registrar to adopt rules concerning deputy registrar reports, deposits and records.

Section 14.06 of the Administrative Procedure Act gives the Department of Public Safety general rulemaking authority. Under section 14.06, the commissioner of public safety has the authority to promulgate rules that directly affect the rights of and procedures available to the public.

Minnesota Statutes, section 168.33, subdivision 1, provides that the commissioner shall be the registrar of motor vehicles of the state of Minnesota, and shall exercise all the powers granted to and perform all the duties imposes by chapter 168. Such powers granted to the commissioner include the power to appoint, and for cause discontinue, a deputy registrar for any city as the public interest and convenience may require. Other powers include the regulation of the location of the registration and motor vehicle tax collection bureau. The commissioner also oversees the record keeping and reporting of all records and receipts required to be filed by the deputy registrars.

The above listed powers of the commissioner under Minnesota Statutes, section 168.33, affect the general public and the public who operate the deputy registrar offices. Therefore, when such policies of the department directly affect the public, the procedures should be adopted through the formal rulemaking process. The rulemaking process allows the public the opportunity to comment and participate in the development of the procedures of the department.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, subdivision 2, requires the department, when proposing new rules, or an amendment to an existing rule, to consider the impact such rules will have on small businesses. The department is to consider the following methods for reducing the impact of the rules on small businesses:

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

A small business is defined under section 14.115 as "a business entity, including farming and other agricultural operations and its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses." The majority of the deputy registrar offices are small businesses as defined under the statute.

Because the rules involve small business the department considered the above methods for reducing the impact on small businesses. During the rule development process, the registrar has considered alternative methods and procedures for reducing the impact of these rules on small businesses.

Examples of less stringent requirements include: 1) under part 7406.0330 a variance procedure has been proposed for the move of an existing office; 2) under part 7406.0400 a variance procedure is proposed for those deputy registrars who do not meet certain office requirements. Also, under the same part, the registrar has proposed the establishment of a separate processing area for incomplete motor vehicle transactions; 3) under part 7406.0450, less stringent reporting requirements remain which allow deputy registrars to have individual daily close-out times that work with the unique circumstances of each deputy registrar office; and 4) under part 7406.0500, the registrar is proposing that persons operating their own individual offices do not have to remain in the office on a full time basis as is consistent with the policy for corporate and public operated offices. See the rule-by-rule analysis of each specific section for a more detailed discussion regarding these and other examples of less stringent requirements for deputy registrars.

OTHER STATUTORY REQUIREMENTS

Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not fix fees. Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, 116.07, subdivision 6, and 144A.29, subdivision 4, do not apply to these rules.

WITNESSES

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

RULE BY RULE ANALYSIS

7406.0100 Definitions

Subpart 2. Registrar. The term "registrar" has been renumbered to subpart 21 by the Office of the Revisor of Statutes.

Subpart 3. Application for registration. Repealed. The phrase "application for registration " has been deleted because it is an outdated term that has a limited meaning. The more inclusive term that better conveys the meaning sought is "transaction." Therefore, "transaction," instead of "application for registration" will be used in the rule. It is reasonable to use the term transaction because it is a term that is commonly used in the deputy registrar business to refer to the work that is processed by the office.

Subpart 4. Metropolitan area. Repealed. It is necessary and reasonable to delete this subpart from the rules because the term is not used in the rules or in the section 168.33.

Subpart 6. Municipality. An amendment has been made to this subpart to add the term "township" as an additional geographic area that can be used in determining the location of a deputy registrar office. Although the term township does not denote a governmental body, in this definition it is being used for location purposes only.

Subpart 7. Approved office location. The term "approved office location" means a location in a municipality that has been approved by the registrar as meeting the requirements of part 7406.0300 but for which a deputy registrar appointment has not been made. The term "approved office location" is one of three terms that has been used in the rules to define the certain stages of the deputy registrar office during the appointment process. The other two terms are "proposed office location" as defined under subpart 24 and "existing office" as defined under subpart 15.

The first stage of the appointment process involves a "proposed office location" as defined under subpart 24. A proposed office location means a location that has been submitted to the registrar for consideration as a deputy registrar office under part 7406.0300, or a move under part 7406.0330. This term is necessary to describe the situation where an office is first under consideration for location. A person has made a request to the registrar and has "proposed" a specific geographic location for the office.

The second stage in the appointment process uses the term "approved office location," as defined above. At this point in the appointment procedure, the proposed office location has met the location requirements under part 7406.0300, but the appointment has not yet been made.

The third stage in the appointment process uses the term "existing office," as defined under subpart 15. An existing office means a deputy registrar office for which the location has been approved and the appointment of the deputy registrar has been made by the registrar, as specified in the certificate of appointment.

Using the three separate terms of "proposed office location," "approved office location," and "existing office," is a reasonable way to describe the status of an office as it moves through the appointment process. The terms also provide standardization to the rules in the establishment of a location and in the appointment sections of the rules.

Subpart 8. Certificate of appointment. "Certificate of appointment" means the documents appointing the deputy registrar. Using the term "certificate of appointment" provides a common term that can be used to describe the appointment papers of a deputy registrar.

Subpart 9. Collected or collection. The term "collected or collection" has been defined to clarify the term as it has been used in Minnesota Statutes, section 168.33, subdivision 2. Subdivision 2 provides that "the deputy shall report to the registrar by the next working day following receipt all registrations made and taxes and fees collected by the deputy registrar." (Emphasis added.)

As further explained in the rule analysis under part 7406.0400, subpart 2, item A, defining the term "collected" was necessary to clarify when a transaction is complete and therefore, when it should be

reported on the deputy registrar's summary report to the registrar. See the analysis under part 7406.0400, subpart 2, item A, for a discussion as to why the term "collected" has been defined as it has and why it was necessary to establish such a definition.

Subpart 11. County Auditor. "County auditor" has been defined to mean the county auditor elected in accordance with Minnesota Statutes, chapter 384 or, if the position of county auditor has been abolished or combined with another county office under Minnesota Statutes, chapter 375A, the principal county officer or county office that performs the majority of the functions formerly performed by the position of county auditor.

To further define and clarify the term county auditor is necessary because, under Minnesota statutes, section 375A, counties are allowed to restructure their county offices. For example, under section 375A.04, subdivision 2, when a county has adopted either the elected executive or county manager plan, the offices of county auditor are abolished. Under other provisions of chapter 375A, the office of county auditor may be combined with the office of treasurer. Therefore, it is necessary to update the term county auditor to reflect the authorized changes that counties may make to the office of the county auditor under chapter 375A.

The definition is reasonable, because it allows for the appointment of a deputy registrar to be made by the person who holds the title of county auditor or a person who performs the functions of that office if the office is combined with another office or has been abolished. It is reasonable to have the definition of county auditor match the reorganization changes that have been authorized by the legislature under Minnesota Statutes, chapter 375A. Without such a definition, counties that have reorganized and no longer have an office of "county auditor" would not be able to make an appointment of a deputy registrar.

Subpart 12. Conviction of crime or crimes. "Conviction of crime or crimes" means convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. This definition comes from the definition of "conviction of crime or crimes" under the criminal offenders, rehabilitation chapter, Minnesota Statutes, section 364.02, subdivision 5.

It is necessary to define this term to set forth what types of crimes will be considered. For example, a petty misdemeanor would, by definition, not be considered by the registrar under the relevant provisions of the rules that deal with crimes. It is reasonable to use the definition from chapter 364 because it sets forth the limitations of what will be considered a crime by the registrar.

Subpart 13. Deputy registrar. The definition is a broad term that is used to define persons who are appointed to be a deputy registrar. Use of the term provides consistency throughout the rules.

Subpart 14. Discontinuance or discontinued. "Discontinuance or discontinued" means the immediate suspension, suspension, or revocation of a deputy registrar appointment. Under Minnesota Statutes, section 168.33, subdivision 2, the registrar has the authority to "...appoint, and for cause discontinue, a deputy registrar for any statutory city or home rule charter city as the public interest and convenience may require..." The term "discontinue" is not further defined in statute. Therefore, it is necessary to define the term further in rule. The term reasonably describes the methods of discontinuance that are proposed by the registrar under parts 7406.0800 to 7406.1000.

Subpart 15. Existing office. See the explanation of this definition under subpart 7.

Subpart 16. Five percent shareholder. The term "five percent shareholder" means a person holding a direct or indirect financial interest of five percent or more in a corporation. The use of the term five percent shareholder is a reasonable shorthand way of referring to such individuals.

Subpart 17. Incomplete motor vehicle transaction. "Incomplete motor vehicle transaction" means a motor vehicle transaction that has not been collected by the deputy registrar. The definition uses the term "collected" which is explained under subpart 9. See subpart 9 for the discussion of the use of incomplete motor vehicle transaction and how the term fits in with the use of the term "collected."

Subpart 18. Inventory. The use of the definition "inventory" is a shorthand way to refer to license plates, temporary registration permits, month sticker, and motor vehicle registration validation and weight stickers that are given to the deputy registrar as part of the operation of the office.

This definition is necessary to point out that not everything that is obtained by the registrar for the operation of the office is considered inventory for purposes of this rule. For example, a deputy registrar office will also receive certain forms and a paid/date stamp from the registrar that are excluded from this definition for purposes of the rules.

Subpart 21. Registrar. Renumbered from subpart 3.

Subpart 22. Office. "Office" is defined as "a deputy registrar office." The term "office" is being added for simplification of the rules. Office is a shorthand term for the phrase "deputy registrar office." For example, instead of referring to a new "deputy registrar office," the rule language will just say new "office". The term "office" reasonably streamlines the rule language.

Subpart 23. Person. "Person" means an individual, corporation, or governmental organization. It is necessary to define "person" because the term is used in the Minnesota Statutes, section 168.33 without adequate definition. It is reasonable to define person to include an individual, corporation or governmental organization because the registrar has the power to appoint each of these. However, the registrar does not have the authority to appoint partnerships for example, so it is necessary to limit the definition to the above three references.

Subpart 24. Proposed office location. See subpart 7 for a discussion of this term.

Subpart 25. Qualified newspaper. The term "qualified newspaper" means a newspaper that meets the requirements of Minnesota Statutes, section 331A. Each county has at least one qualified newspaper. Under 331A.02, a qualified newspaper is required to be published at least once per week for 50 weeks. It is necessary to define this term so that the statutory reference can be referred to to provide guidance as to the what the requirements are for a qualified newspaper.

Subpart 26. Sufficient cause to believe. This subpart sets forth the definition of "sufficient cause to believe." "Sufficient cause to believe" means grounds that are put forth in good faith; that are not arbitrary, irrational, unreasonable, or irrelevant; that make the proposition asserted more likely than not; and that are based on at least one of the grounds listed in items A through D. This definition is necessary

so that there is an objective standard for the grounds upon which the registrar will make decisions. This standard is reasonable because it provides a reliable basis for the registrar's decisions to help ensure that the decisions are fair and correct.

This is the same standard that has been adopted in Minnesota Rules, chapter 7503, for the withdrawal of licenses for alcohol and controlled-substance-related offenses and Minnesota Rules, chapter 7409 governing disposition of a driver's license following non-alcohol-related vehicle offenses. It is reasonable that these proposed rules be consistent with other rules promulgated by the department regarding licensing actions.

The definition of sufficient cause to believe contains objective standards used to determine when it is necessary for the registrar to take administrative action. Administrative action taken by the registrar affects private interests. Therefore, it is necessary to include safeguards in the rules to prevent arbitrary action or the appearance of arbitrary action by the registrar. Sufficient cause to believe is a proposition which rests on good faith and reasonable grounds, is based on one or more of five specified sources, and is more likely than not to be true.

Item A. Item A includes written information from an identified person. Such identified information is reasonable because it allows for people in the system, such as the police, as well as the public to provide relevant information to the registrar. Anonymously submitted information is not acceptable. Anonymously submitted information is excluded to protect persons from bad faith or frivolous allegations.

Item B. Item B refers to facts or statements by the applicant or deputy registrar. Such facts or statements provide a reasonable basis for action by the registrar since they are provided by the individual whose deputy registrar conduct is in question.

Item C. Item C refers to court documents and police records. It is reasonable to rely on such documents because they are the official documents of these agencies and are provided to the department based on department procedures and statutory authority.

Item D. Item D relates to facts within the personal knowledge of the registrar or the registrar's employees. This provision is reasonable in that it applies to the information gathered at a hearing or to the personal appearances made by a deputy registrar which concerns the deputy registrar's conduct. This is information which is conveyed to the agency by an identified source and is relevant to the conduct currently under discussion.

7406.0300 ESTABLISHING THE LOCATION OF DEPUTY REGISTRAR OFFICE.

The title of part 7406.0300 has been amended from "Establishing New Office or Appointing New Deputy Registrar" to "Establishing the Location of Deputy Registrar Office." It was necessary to change the title because this part deals with establishing the location of a deputy registrar office and not with the appointment procedures of a deputy registrar. The appointment procedures for deputy registrars are set forth in parts 7406.0350, 7406.0360 and 7406.0370. Therefore, all references to appointment procedures of a deputy registrar have been removed from this part and are dealt with in the new appointment sections.

This part has also been amended to streamline the subparts to make them more understandable and easier to interpret. The paragraphs have been put into outline form. Subparts 1, 1a, and 2 all contain items A through E which pertain to the establishment of a deputy registrar office. Item A contains the mileage restriction that is maintained between deputy registrar offices. Item B contains the percentage that will be used to estimate the number of transactions that a deputy registrar office must maintain. Item C contains the calculations needed to determine if a proposed office's location will reduce the number of transactions of an existing office below an allowable limit. Item D contains the limitation on using an existing office's transaction count within a two year period. Item E contains a limitation on establishing a new office next to one that has not been in existence for two years.

The department and the advisory committee discussed all of the factors used in the establishment of a deputy registrar office in items A through E. While many of the advisory committee members agreed that the current method of establishing an office was sometimes confusing and cumbersome, it was decided that the system did work well to maintain an appropriate balance of viable deputy registrar offices throughout the state. There were no other alternative methods that were proposed for the establishment of an office. Therefore, it was decided that the current method was to remain, with a few amendments, as are discussed below.

The justification of the current methods of establishing a deputy registrar office under this part have been established and approved under previous rule proceedings. Therefore, those justifications and their analysis established in earlier rule proceedings will not be repeated here.

Subpart 1. Hennepin and Ramsey counties. The majority of the amendments in this subpart have been made for clarification and for consistency with the language in the other subparts. For example, in the introductory sentence of this subpart and throughout this part, the phrase "new deputy registrar office" has been replaced by the phrase "proposed office location." The phrase "proposed office location," is defined under part 7406.0100, subpart 24, as "a location that has been submitted to the registrar for consideration of a deputy registrar office under part 7406.0300, or a move under part 7406.0330."

Since this part deals with the establishment of an office it is more accurate to state that the office location is one that is being "proposed." When an office location has qualified and the deputy registrar has been appointed then an office is said to be "new." Therefore, the phrase "proposed office location" is a more accurate description of the office at this stage in the process.

Item A. The amendments in item A are also made for clarification and consistency. The phrase "new office" has been replaced by the phrase "proposed office location," and the phrase "existing deputy registrar office," has been shortened to "existing office." The phrase "existing office," is defined in part 7406.0100, subpart 15. By being consistent in the use of terms and then defining those terms the rules will be more easily understood and allow for better interpretation. As previously explained, these changes in describing the office occur throughout this part. Therefore, the changes in terminology will not be further discussed each time they occur throughout this part.

Item B. In item B, the phrase "applications for registration" has been deleted and replaced with the word "transaction." As previously explained in part 7406.0100, subpart 3, the term "application for registration" is an outdated term from Minnesota Statutes, section 168.011, subdivision 2 that is no longer applicable to the operation of a deputy registrar office.

Also, under item B, the year for calculating has been clarified to mean "calendar" year. The transaction count for offices is currently calculated at the end of a calendar year. The calendar year figures are the figures that would be used to determine the transaction count in this section.

Item C. Item C contains the clarification changes that were made in items A and B above. However, item C also contains new language under subitems (2) and (3). Currently, item C states that an office may not be established if the percentage of transactions processed by an existing office in Hennepin and Ramsey counties, as calculated under item B, would reduce the number of transactions of that existing office to below 35,000.

New subitems (2) and (3) specify what transaction count will be used when the proposed office affects existing offices that are within the 9 1/2 mile radius but outside Hennepin and Ramsey counties. In other words, a proposed office may affect the transaction count of existing offices that are in other geographical areas under subparts 1a, or 2, outside Hennepin and Ramsey counties. This "adjoining area" situation had not been previously addressed in the rules and language was needed to address this situation.

Therefore, subitems (2) and (3) state that if an existing office, outside Hennepin and Ramsey counties, is affected, the proposed office cannot reduce the existing office's transaction count to below 20,000 under subitem (2) and below 4,000 under subitem (3). The 20,000 and 4,000 transaction count figures are the estimated number of transactions that a proposed office must meet in order to qualify for a location in the other geographical areas under subparts 1a and 2.

Whether to use the transaction count of the area where the proposed office was located or the transaction count of the area where the existing office was located was discussed at length in the advisory task force meeting. Using the transaction count of the location of the existing office was one of three options that were discussed at the advisory committee meetings. The other two options were: 1) to use the transaction count of the area where the proposed office was located, or 2) to use the most restrictive transaction count of the two adjoining geographical areas. The advisory committee recommended using the transaction count for the area in which the existing office was located because such calculation would provide for the fairest way to determine an office.

Item D. Item D contains the amendments that were previously mentioned and also clarifies the two year period requirement in this section. Item D states that the two year period starts from the date the deputy registrar was appointed. The establishment of a reference point for the two year period is reasonable because it provides for a less ambiguous rule.

Item E. Item E also adds the amendment regarding the two year starting point as was discussed in item D.

Subpart 1a. Other metropolitan counties; municipalities with over 50,000 population. The amendments in items A through E in this subpart are the same kind of amendments made in subpart 1. Amendments have been made to reflect the new definitions and for clarification. Item C also adds the additional calculations regarding adjoining areas. The 35,000, 20,000 or 4,000 figures are used depending on where the existing office is located within the specified radius under item B.

Subpart 2. Other areas. Items A through E contain the same amendments as in subparts 1 and 1a that make the language consistent throughout the part.

Item A. An amendment has been made in item A to remove the reference of driving time to determine if a proposed office location qualifies. Therefore, as in subparts 1 and 1a, the establishment of a deputy registrar office will be determined using radius miles.

Having only one way to establish the qualifying miles is reasonable because it provides for uniformity and less ambiguity in the determination of the location of a proposed office. Furthermore, radius miles is a method of determining distance that can be easily ascertained by using a map. Whereas, driving miles is not an accurate means of measuring distance and has been difficult for the registrar to administer because driving time varies depending on what road a person takes and the speed at which a person drives.

The term radius miles, while it may be more rigid, was determined by the advisory committee to be a method that could be easily administered and allowed for more consistency in determining distance requirements between deputy registrar offices.

Subitem (1). Subitem (1) states that a proposed office must not be located within a 15-mile radius from an existing office, except in municipalities having a population of 25,000 to 50,000. The rule allows for two offices to operate within that municipality. However, there is currently no restriction for distances between offices. Therefore, the following sentence was added: "The proposed office must not be located within a five-mile radius of the existing office in that municipality."

The five mile distance is the minimum distance requirement that has been used in the previous subparts, 1 and 1a. Therefore, a five mile distance requirement is reasonable to protect the viability of both offices. In addition, the geographic separation is more customer orientated. By putting the office in different locations throughout the town customers have better access to the services in different parts of the city, instead of having both offices located right next to each other.

Item B. In item B, subitem (2), the requirement of a new car dealer survey, that was located in item A, has been replaced by a new formula for estimating the number of transactions for a proposed office location in this area.

Item A provided that if there was not an existing deputy registrar office located within a 20 mile radius of the proposed office the number of transactions would be estimated as "the total number of new car sales multiplied by four, made by all new car dealers within 25 miles of the proposed new office as determined by a survey taken by the registrar, plus one half of the population of the municipalities that are closer to the proposed office than to an existing deputy registrar office."

Over the years that the rules have been in place, the new car dealer survey has not been an effective means of determining the estimated number of transactions for a proposed office location. Car dealers have been reluctant to give out information to the registrar about the number of new car sales they have had during the past year. The only way to determine this information is through the dealership itself. Since the dealerships are not required to give out the information to the registrar it is necessary to find another method by which to establish the transaction count.

Instead of using the new car dealer survey the registrar will expand the use of the population of the area to estimate the number of transactions. Instead of using the new car survey and one-half of the population of the municipalities that are closer to the proposed office, the registrar will now use 110 percent of the population of the municipalities that are closer to the proposed office location than to an existing office.

One hundred and ten percent of the population was chosen as a reasonable alternative because it is based on the average number of cars owned by people in Minnesota. The number of vehicles that were registered in Minnesota as of December 31, 1990 was 4,375,283. The 1990 census has determined that the population in Minnesota is 4,375,099. Therefore, there is a little over one car per person in the state of Minnesota. The number of cars per person can be related to the population of an area for purposes of determining the estimated transactions of an office.

The population in an area can accurately be used to determine the estimated number of motor vehicle transactions that an area may receive. If the radius mile line touches part of a municipality, the whole population of the municipality will be used in the calculations. The benefit of the calculation will go to the establishment of the proposed office. The method of using the population of an area rather than a car dealer survey was approved by the advisory committee.

Item C. Item C contains the calculations that address the adjoining area situation that was previously discussed. This item mirrors item C in both subparts 1 and 1a.

Items D and E. Items D and E are similar to items D and E in subparts 1 and 1a. These requirements have been added to this subpart so that all the requirements for determining whether a proposed office location qualifies are consistent between the other geographical areas under subpart 1, and 1a. Item D adds a two year limitation for using the transaction count of an existing office to establish another office. Item E adds a two year limitation on establishing another office within thirty miles.

The addition of these requirements to subpart 2 was a recommendation made by the advisory committee. Reasons for adding the restrictions under items D and E were to maintain the viability of existing offices in rural Minnesota. Sparse population areas may not be able to support more offices. Also the offices that are there will have enough business to allow for better customer service through more efficient and experienced deputy registrar staff.

From an agency standpoint, if an office is too small, they do not transact enough business to become familiar with all of the types of transactions that are necessary to operate the business. It has been the registrar's experience that an office that is not familiar with all of the procedures associated with the transactions leads to a greater number of errors from the office. Therefore, while the public may not be able to have a deputy registrar in every small town, the offices that are available will be efficient and effective.

7406.0330 MOVE OF AN EXISTING OFFICE LOCATION.

Subpart 1. In general. Subpart 1 states that a move of an existing office location must meet the requirements of part 7406.0300 and be approved by the registrar. See the discussion in part 7406.0300 for further information on the location requirements.

Subpart 2. Variance. Subpart 2 sets forth the criteria under which a deputy registrar office will able to obtain a variance from the requirements of subpart 1. It was determined that a variance procedure should be implemented for deciding whether an existing office should be allowed to move if a deputy registrar does not meet the location requirements under part 7406.0300. Whether the office will be able to move to another location will be determined on a case-by-case basis under the variance procedure.

When previously considering a move of a deputy registrar office, the registrar did not have a written procedure in the rule for determining when a move of an office should be allowed. However, when a move was previously considered by the registrar, there were certain factors that were considered by the registrar before a move would be denied or granted. These factors are now incorporated into these rules in this part. Additional factors, as established through the advisory committee process, have also been added to the variance procedure.

The factors outlined in items A through K are necessary to provide guidance to the registrar in deciding whether to grant or deny the variance. The factors provide fairness to ensure that each case goes through the same analysis. The factors, in effect, provide boundaries to the registrar's decision making process. The reasonableness of each factor is further discussed below.

To request a variance for a move of an existing office, the deputy registrar must submit a written request on a form prescribed by the registrar. Before a move of an office can be considered, it is necessary that the deputy registrar of the office make a request for a move to the registrar. A written form provides an effective way for the registrar to gather the necessary information to decide whether a variance should be granted.

In determining whether a variance will be granted, the first factor is that an existing office will not be allowed to move to a different county. This factor takes precedence over all of the other factors listed in items A through K. This is reasonable because moving to a different county involves going to the jurisdiction of a different county auditor. If a deputy registrar was appointed by a county auditor the county auditor who appointed the deputy registrar is responsible for the acts of deputy registrar. Therefore to avoid transferring the responsibility of a deputy registrar office to another county auditor by the move of an office, such a move will not be allowed. Advisory committee members had no objection to this factor.

Item A. Under item A, the request for a waiver must state the rule part from which the waiver is requested and why the proposed office location does not meet the rule part. It is reasonable to include this information because this is the basis for the variance. It is also necessary to have this information in the variance record for future reference.

Item B. Under item B, the request for a waiver must state the reason for the move from the existing office location. This is necessary information for the decision makers. Each variance will be determined on a case-by-case basis. Therefore, the reasons for the variance will vary and must be considered in each individual case.

Items C and D. Under item C, the request for a waiver must state the distance of the proposed office location from the requester's existing office. This provides important information to the registrar. First, this means that the deputy registrar must have selected a possible site to which the office would be moved. Second, the distance between the existing office and the proposed office is important because, as item D states, another factor is whether the proposed office location would service the same community and/or neighborhood.

Even though a deputy registrar is requesting to move the location of the deputy registrar office, the move should not be of such a distance that it would not serve the same community and/or neighborhood. This is reasonable because the people of that area have come to expect that this service will be provided to them. Deputy registrars are appointed to a particular location because there is a need for that particular service in that location. While it may be necessary to change a location based on factors such a new building or better access, such moves need to be in the same area so that the customers of that area are still being provided the service. Therefore, moves may be allowed but they will be limited to staying within the same service area.

Item E. Under item E, the request for a waiver must state whether the proposed office location is in another county. The requirement of not moving to a different county is explained above in the introductory paragraph of subpart 2.

Item F. Under item F, the request for a waiver must state whether the deputy registrar has received any comments, opposition and or support from other existing offices of the proposed office location. Since the move is based on a case-by-case evaluation of a move, the comments from surrounding deputy registrars play a factor. If another deputy registrar office feels that a move of an existing office to another location that is closer to them would jeopardize their business transactions the registrar would consider their input. It may also be the case that an existing office would be in support of another office moving. For example, an office may want to comment that they have no opposition to the move because it would not affect their business transactions.

Item G. Under item G, the request for a waiver must state any building considerations of the proposed office location. The registrar would like to know if the proposed office location provides for better access, especially access to the disabled, and parking facilities. These factors weigh in favor of providing better customer service to the public.

Item H. Under item H, the request for a waiver must state whether the move is requested because the deputy registrar no longer has access to their building because of destruction to the building or the loss of a lease. This is reasonable because if the deputy registrar no longer has a building to operate out of they will not be able to provide the service to the public.

Item I. Under item I, the request for a waiver must state the number of previous moves of the existing office and the reasons for the move. If a deputy registrar is requesting to move every six months or every year, the registrar would further examine the reasons for the move. Is the deputy registrar failing to pay rent and therefore being evicted or is the number of moves purely a set of unforseeable circumstances? These are questions that the registrar needs to ask.

Item J. Under item J, the request for a waiver must state whether the proposed move is a result of or in connection with any misfeasance or malfeasance on the part of the deputy registrar. As in item I, the registrar should be aware of any bad business practices that the office has been involved with. Would a move merely avoid the initial problem or are there other alternatives that would help the deputy registrar maintain its current location without a need for a move?

Item K. Under item K, the request for a waiver requires other information that is either requested by the registrar or supplied by the deputy registrar. Either the registrar or the deputy registrar is free to submit other information as they deem relevant to the request for a move.

Subpart 3. Registrar's decision. As subpart 3 states, all requests for a variance will be reviewed by the registrar. A written decision on the variance will be provided within 60 days of the written receipt of the request by the registrar or within 60 days after the date of the registrar's request for additional information. It is necessary to provide written justification of the reasons for the decision to allow the deputy registrar the opportunity to find out how the above factors were used to make the decision. Written justification will also provide accountability to the process and will provide a written record for the registrar.

Sixty days is a reasonable period of time for the registrar to make a decision. Once a request is made, if further information is needed the parties have 30 days to submit the information. The 60 days allows enough time for the gathering of that additional information and time to make a decision. However, nothing would preclude the registrar from issuing the decision before the 60 days expires once the registrar has all the information necessary to make a decision.

Subpart 4. Right to review of registrar's decision. Subpart 4 states that a deputy registrar may contest the denial of a variance and request a hearing on the matter under part 7406.0900 to 7406.1400. Providing a hearing to the deputy registrar is a reasonable way for the deputy registrar to present his or her evidence to a hearing examiner to review and evaluate.

7406.0350 COUNTY AUDITOR APPOINTED AS DEPUTY REGISTRAR; PROCEDURE.

Part 7406.0350 is an entirely new part regarding deputy registrar appointments. The registrar has always had a policy for appointing deputy registrars. However, only part of the policy was previously contained in the rules. By adding this section, it is the goal of the registrar to clarify the method by which the appointments are made. Because the registrar and the county auditor have the authority to appoint a deputy registrar the public has not always been able to determine under what circumstances the registrar can appoint as opposed to when the county auditor can appoint. This new section will set forth the order of priority in which the appointments are made.

Subpart 1. In general. Subpart 1 informs the public that appointments will only be made for office locations that qualify under part 7406.0300. An appointment will not be considered unless the registrar has gone through the calculations to determine that an area can support another office by meeting the location requirements under part 7406.0300. Secondly, subpart 1 states that if a location qualifies, the county auditor will be given the first opportunity to make the appointment. See subpart 5 for a discussion on the exclusive authority of the county auditor appointment authority.

Subpart 2. County auditor appointment. When the registrar informs the county auditor about a qualifying location in the county auditor's county, the county auditor has five options under items A through E regarding the action that the county auditor could take on the appointment.

Item A. Item A involves the situation where the county auditor for the qualifying location has not been appointed as a deputy registrar for that county. Under this situation, the county auditor can be appointed a deputy registrar and operate the office as the county auditor.

Item B. Item B involves the situation where the county auditor has not been appointed a deputy registrar and agrees to be appointed as county auditor. However, instead of running the office, the county auditor, using the appointment power under Minnesota Statutes, section 168.33, subdivision 2, will appoint a clerk or equivalent officer or other person as deputy registrar. This situation will require two appointments, one for appointing the county auditor and one for the county auditor to appoint another person as deputy registrar for the location. The appointment by the county auditor needs the approval of the director of the division of motor vehicles and the county board as specified in Minnesota Statutes, section 168.33, subdivision 2.

Item C. Item C involves the situation where the county auditor has previously been appointed as a deputy registrar for his or her county and agrees to operate the office as the county auditor.

Item D. Item D involves the situation where a county auditor has previously been appointed as deputy registrar for his or her county and does not want to operate the office. However, using the appointment power under Minnesota Statutes, section 168.33, subdivision 2, the county auditor will appoint a clerk or equivalent officer or other person as deputy registrar. The appointment by the county auditor needs the approval of the director of the division of motor vehicles and the county board as specified in Minnesota Statutes, section 168.33, subdivision 2.

Item E. Item E provides that the county auditor also has the option to decline the deputy registrar appointment or decline to appoint a deputy registrar.

Subpart 3. Notice to registrar required. Under subpart 3, the county auditor must provide written notice to the registrar of the decision of which option has been chosen. The decision must be made within 30 days after the county auditor was given the option to appoint. A timeline is necessary so that the appointment process continues.

Subpart 4. Failure to notify registrar; consequences. Subpart 4 states that, if within 30 days, the county auditor has not notified the registrar of a decision as to what option is selected under subpart 2, then the registrar may consider making the appointment if the county auditor has not previously been appointed a deputy registrar.

Subpart 5. General authority of county auditor as deputy registrar. Minnesota Statute, section 168.33, subdivision 2, sets forth the appointment authority of the county auditor which provides that "the registrar may appoint, and for cause discontinue, the county auditor of each county as a deputy registrar." Subdivision 2 goes on to state that "Upon approval of the county board, the auditor, with the approval of the director of motor vehicles, may appoint, and for cause discontinue, the clerk or equivalent

officer of each statutory or home rule charter city or any other person as a deputy registrar as public interest and convenience may require, regardless of the appointee's county of residence."

Under subdivision 2, the registrar also has appointment authority to appoint a deputy registrar. Subpart 5 states that between the two appointing authorities, once appointed a deputy registrar, the county auditor has exclusive authority to make subsequent deputy registrar appointments in that county. Although Minnesota Statutes, section 168.33, subdivision 2, does not expressly state that once appointed a deputy registrar, the county auditor shall have exclusive authority to appoint in that county, the legislative intent, as determined through legislative history and the registrar's policy and practice, shows that is the meaning and intent of the statute.

The legislative history of section 168.33, subdivision shows that in 1976 the following language was added to subdivision 2:

> As of the effective date of this act, the registrar may appoint, and for cause discontinue, a deputy registrar for any city as the public interest and convenience may require, without regard to whether the county auditor of the county in which the city is situated has been appointed as the deputy registrar for the county or has been discontinued as the deputy registrar for the county, and without regard to whether the county in which the city is situated has established a county license bureau which issues motor vehicle licenses as provided in section 373.32.
>
> Effective August 1, 1976, the registrar may appoint, and for cause discontinue, a deputy registrar for any city as the public interest and convenience may require, if the auditor for the county in which the city is situated chooses not to accept appointment as the deputy registrar, or if the county in which the city is situated has not established a county license bureau which issues motor vehicle license as provided in section 373.32. Any person appointed as a deputy registrar for any city shall be a resident of the county in which the city is situated.

In 1989, a revisor's bill deleted the first clause of each of the paragraphs, removing the effective dates of the language. Except for the removal of the first clause of each paragraph, and the addition of reference to statutory and home rule charter city, the language in the statute remains the same today.

House File 2188, which contained the above amendments, was discussed at length in the Transportation Committee on February 17, 1976. According to the committee discussion, one of the main reasons for the legislation was so that the commissioner of public safety could again appoint private deputy registrars. Such appointment authority of the commissioner was inadvertently taken out of the statute in 1969. Another reason for the legislative amendments was to set the priority between the county auditor and registrar as to who could appoint a deputy registrar as is apparent from the discussion of the committee members with Mary Williams, the Director of Driver and Vehicle Services in 1976.

A summary of the discussion between committee members and Mary Williams at the February 17, 1976 committee meeting is as follows:

> Representative: Under the bill, if passed, say you have a county where the county auditor is the deputy registrar and he is, wants to do it all. Now, if the bill passes, the commissioner then can go over the county auditor's head and appoint somebody, even if the county auditor doesn't like the idea?

Williams: No-that's not quite correct. If the county auditor is already a deputy registrar, he's in control of that county. If he does not wish to put any branch offices around or make any other appointments, that's up to him. That doesn't bother us because I feel that public pressure, if it's needed, an office needed, would get that county auditor, to create that office. So we would have no power, once the county auditor is in there, except to remove him. While it doesn't say so, we certainty wouldn't remove a county auditor from this position unless he mishandled funds or refused to follow the few simple rules that we do set up for deputy registrar, like office space and opening hours, and so on.

Representative: So, if there was a private individual in that county that wanted to get into this- this bill is not going to help them?

Williams: No- he right now could go to the county auditor and ask for an appointment.

Representative: But if he's getting turned down, this bill isn't going to help him?

Williams: That's right.

Representative: He can't go to the commissioner instead?

Williams: That's correct.

This committee discussion shows that the legislative intent was to give the county auditor the exclusive authority to appoint in that county once he or she has been appointed as the deputy registrar in that county. The registrar has followed this intent of the statute since 1976. Therefore, the rule merely sets that policy forth in writing. Where legislative research provides an insight and helps to guide the statutory language it is reasonable to use it in the interpretation of this legislation.

Subpart 6. Change in county auditor appointment. Subpart 6 requires notification to the registrar if a county auditor, for whatever reason, no longer retains the position of county auditor. Notification is important because, as is provided for in subpart 7 below, the appointments may have to be transferred to the registrar or a subsequent county auditor.

Subpart 7. Transfer of County Auditor Appointments. Subpart 7 lists the situations under which a county auditor appointment may be transferred to the registrar.

Item A. Item A provides for transfer of deputy registrar appointments to the successor county auditor if the previous county auditor no longer retains his or her position as county auditor. Although this seems like common sense it is necessary to put this into the rule so that everyone is clear about what the procedures are.

Item B. Item B is another situation under which a deputy registrar appointment may be transferred. The provision in item B allows for the transfer of the deputy registrar appointment to the registrar if the county auditor appointment is discontinued. The appointments will also be transferred to the registrar if the county auditor relinquishes the appointments. If a county decides, for whatever reason,

that they no longer want to manage the deputy registrar appointments, the appointments will transfer to the registrar.

The situations listed in item B will not occur very often. However, in the event that such a situation occurs the rules need to be specific as to how the appointments will be handled. Item B also provides for a time frame under which the appointments will be transferred to provide guidance to the county auditor during the transferring process.

7406.0360 DEPUTY REGISTRAR APPOINTMENT PROCEDURE FOR COUNTY AUDITOR OR REGISTRAR.

Subpart 1. In general. This subpart reiterates that the county auditor has the option of making the first appointment and if the county auditor does not make the appointment then the registrar may make the appointment if the county auditor has not been appointed as a deputy registrar. The appointment procedures in this section will be used for the appointment of individuals, public entities, and corporations. The appointment procedures will not apply to counties who elect to operate the new office. Cities will be treated equally in the appointment process with private individuals and corporations.

Subpart 2. Publication. Before appointing a deputy registrar the registrar or county auditor shall publish notice of the opening in a "qualified" newspaper of general circulation. The notice will be published in the county in which the location exists.

Under Minnesota Statutes, section 331A.01, subdivision 8, a qualified newspaper "means a newspaper which complies with all of the provisions of section 331A.02. The following terms, when found in laws referring to the publication of a public notice, shall be taken to mean a qualified newspaper; `qualified legal newspaper,' `legal newspaper,' `official newspaper,' `newspaper,' and `medium of official and legal publication.'" Section 331A.02 sets forth the requirements of a qualified newspaper. The requirements listed under section 331A.02 include language, distribution, advertising, circulation, and requirements for filing with the secretary of state.

In addition to setting forth the qualifications of a newspaper for publication, chapter 331A also sets forth requirements for notice of publication, such as the form of the public notice, fees for publication and affidavit of publication. The guidelines that are set forth in chapter 331A will be used by the registrar and county auditor when publishing notice of the qualifying location. The guidelines presented in Chapter 331A present a reasonable method by which the notice of the qualifying location will be published. Publication in a qualified newspaper is a common method of publication used for other public notices, such as hearings or foreclosure notices.

A list of qualified newspapers is available from the Office of the Secretary of State. The list contains the qualified newspaper for each county in Minnesota. Each county has at least one legal newspaper and some counties have several legal newspapers. If a county has more than one legal newspaper, the notice for deputy registrar will be published in the newspaper whose circulation and distribution best cover the area of the qualifying location.

The notice of an opening for a deputy registrar office at a qualifying location shall provide information regarding the area of the qualifying location, how to obtain an application form and the deadline for getting the application to the registrar's or county auditor's office.

Subpart 3. Restriction on processing proposed office locations. Subpart 3 allows the registrar to consider one request for a deputy registrar office within a 15 mile radius area at a time. This subpart is necessary because of the mile restrictions that are set forth in part 7406.0300. If an appointment is made for that area, it could preclude a subsequent appointment in that same area because of the mileage restrictions. The restriction is lifted once it is determined that the proposed office location does not meet the requirements of part 7406.0300 or once the appointment process is completed for an office in a proposed area.

Subpart 4. Application for appointment. Subpart 4 requires a person applying for the position of deputy registrar to complete an application form. The registrar or county auditor shall supply the form to the applicant upon request. Items A through K sets forth the information that is required on the application or to be submitted with the application.

Items A through F are designed to provide information on the nature of the applicant. Such information can be used to select applicants for an interview, as well as, provide information for future reference should the applicant be appointed as a deputy registrar. The registrar or county auditor needs this information to adequately evaluate deputy registrar applications, and to assist the registrar in deciding whether or not to appoint a deputy registrar.

The rule is reasonable because it is within the limits of the registrar's or county auditor's statutory authority. It allows the registrar and county auditor to have accurate information before issuing or denying an appointment, and it serves to protect the interests of the public who will be served by the deputy registrar.

Item A. Item A asks the applicant to provide the name, address, telephone number, and information regarding residency. This information is necessary background information to identify the applicant. The registrar needs to know who is applying and needs to know how to contact the person in the future. The rule also requires an applicant to be 18 or older. Eighteen years is reasonable because that is the accepted age of majority for obtaining various responsibilities, such as entering into a contract or owning a motor vehicle.

Item B. Item B asks for information on the status of the applicant applying for the deputy registrar appointment. Either an individual, public entity or corporation may apply. If a corporation is applying to be a deputy registrar additional information on each corporate officer is requested to establish who is operating or managing the corporation.

Item C. Item C requests information regarding other federal, state, or municipal licenses the applicant may have or have had in the past, the status of the license and whether any disciplinary proceedings were taken with regard to the license. This information is necessary to ascertain whether any other licenses a person may have would conflict with the deputy registrar appointment.

In addition, information surrounding any disciplinary proceedings in connection with another license is important to determine the credibility and trustworthiness of an applicant. Prior disciplinary actions for a license may warrant an applicant to be unfit for a deputy registrar appointment.

Item D. Item D asks whether the person named on the application owns or is a partner, officer, or five percent shareholder in a financial institution, motor vehicle dealership, or automobile insurance business. It is necessary to know if the applicant has an interest in these other businesses because under part 7406.0400, subpart 7, a deputy registrar may not own, or be a partner, officer, or hold an interest of five percent or more in a financial institution, motor vehicle dealership, or automobile insurance business. Such an interest in one of these businesses would disqualify the applicant from obtaining the deputy registrar appointment. See part 7406.0400, subpart 7, for more information regarding the conflict of interest issue.

Item E. Item E requires the applicant to name the person who will be in charge of the day-to-day operation of the office, if known. This is important to get the applicant involved in thinking ahead as to who they would have run the office on a day-to-day basis. This is particularly important for the corporate offices, where the actual officers may not be the person who will be in the deputy registrar office conducting business on a daily basis.

Item F. Item F requires the address of the proposed office location. This information is necessary to determine if that location meets the location and office requirements under the rules. Item F is necessary because the registrar or county auditor must verify compliance with location requirements before appointing the deputy registrar.

Item G. Item G requires a floor plan of the proposed office, including the area and dimensions of the space allocated for the processing areas, public service area and storage area. A floor plan is necessary to determine whether the office space meets the area requirements under part 7406.0400. The floor plan does not have to be to scale, but should be an accurate representation of the office space and how it is to be allocated. The floor plan will also be used as a comparison factor between applicants' available office space.

Item H. Item H asks for information regarding work experience and training as specified on the application. For example, the application will ask the applicant what work experience and training they have had in business, financial management, public service, and other related matters. It is reasonable to consider who a qualified candidate is based on the prior business experience of the candidate.

Item I. Item I asks for information regarding the history of prior deputy registrar appointments. How many times the person has applied for appointment and whether or not the appointment was granted. If the appointment was granted, the reasons why the appointment was suspended, revoked, or canceled, if applicable.

In determining the qualifications of an applicant prior denials of an application or disciplinary proceedings of a deputy registrar are an important indicator of the fitness of the applicant. Suspensions and revocations of a deputy registrar appointment are a serious matter. An applicant may be unfit to hold a deputy registrar appointment if the applicant has had a deputy registrar appointment discontinued.

Therefore, it is reasonable to take this information under consideration in the appointment process. This is one of many factors that will be evaluated in making the appointment decision.

Item J. Item J requires a certified copy of the criminal history of each person named on the application, including a national criminal history check if the applicant is a non-resident or has resided in Minnesota for less than five years. Violations of specific crimes listed in subpart 7, item C, will be reason to deny a deputy registrar appointment. Therefore, the criminal history check will be necessary to determine if a person has been convicted of one of the specified crimes.

Item K. Item K requires each person named on the application to sign the application, verifying that the information on the application is true. The signatures must be notarized. By signing the application the applicant is indicating under oath that the information on the application is true. A signature witnessed by a notary is a common and reasonable way to verify a document by oath.

Subpart 5. Criminal history check. Subpart 5 provides that the registrar may conduct a criminal history check at any time while a person is serving as a deputy registrar. This is necessary to ensure that once a person is appointed a deputy registrar that they continue to obey the laws. If the registrar has sufficient cause to believe that a deputy registrar has been convicted of a crime, a criminal history check will be necessary to prove the validity of the allegation.

Subpart 6. Change in deputy registrar conditions. Subpart 6 requires a deputy registrar to report changes or anticipated changes of the items listed in subpart 4 above. The information must be supplied to the commissioner in writing within ten days of the date the change occurs or within ten days of the date the deputy registrar learns that the change will occur, whichever occurs first. The changes may be approved by the registrar who will make a decision as to whether the changes are in compliance with the rules and the applicable statutes.

This subpart is necessary to ensure that the deputy registrars continue to be in compliance with the initial requirements of the appointment. For example, a deputy registrar that has no disqualifying criminal offense when appointment but is later convicted of a crime, as specified under subpart 4, would have to notify the registrar of such a conviction. The registrar would then have to determine if such a conviction warrants revocation of the deputy registrar appointment.

Notification to the registrar is a reasonable way to implement this section. It allows the deputy registrar to provide notice to the registrar on his or her own. The deputy registrar knows its business and a change to the business better than anyone else. Without notification by the deputy registrar, it would be difficult for the registrar to know of a change on a timely basis. However, if the registrar is notified of changes from outside sources, the registrar will still make the necessary inquiries and take the appropriate action.

Subpart 7. Reasons to deny deputy registrar appointment. Subpart 7 sets forth the reasons that the registrar may deny a deputy registrar appointment. These items are necessary so the registrar can administer deputy registrar appointments under Minnesota Statutes, section 168.33. It is reasonable to list these items under a single part so that applicants will readily know the requirements that must be met to obtain a deputy registrar appointment.

Item A. Item A requires the registrar to deny a deputy registrar appointment if the application and the items submitted with the application do not meet the requirements of subpart 4 of this part. In order for the registrar to make an appointment the registrar needs to have all of the information to determine if the applicant qualifies. If the application is not complete, the registrar will have to deny the appointment to that person. This is a reasonable requirement in that it requires every applicant to submit a completed application form to the registrar when being considered for an appointment.

Item B. Item B requires the registrar to deny a deputy registrar appointment to an applicant(s) who is currently discontinued or under investigation for discontinuance. If a person's previous appointment was discontinued, it means that the person was found to have committed a violation of the rules or statute. It is reasonable to deny a person who has committed a violation of a deputy registrar rule or statute because they have been found to be unfit and have not operated a deputy registrar office within the confines of the law.

In the case where the investigation of a disciplinary action is pending, it is reasonable to deny the appointment until a determination is made as to whether a discontinuance will occur. This item is necessary to prevent a person who is currently undergoing an investigation for a violation in a current deputy registrar appointment to obtain another deputy registrar appointment before those issues are resolved. It would be unreasonable to appoint a person only to have the appointment later withdrawn if the discontinuance action prevails. However, this requirement does not prevent the applicant from applying again after the investigation is complete and the investigation does not result in discontinuance of his or her appointment.

The denial of an appointment under item B will affect all persons named on the application. Therefore, if one officer of a corporation has been previously discontinued as a deputy registrar, they will not be eligible for this appointment with a new set of officers and a new corporate name. This is reasonable because to appoint such a person would allow the person under discontinuance to escape the consequences of the discontinuance.

Item C. Item C requires the registrar to deny a deputy registrar appointment when a person named on the application has committed one of the crimes specified in this item. The information regarding an applicant's criminal background is requested on the application. If the applicant's criminal history indicates that they have committed one of the specified crimes the registrar will deny their appointment.

This part is necessary so that a person does not hold a deputy registrar appointment if the person has committed serious crimes that indicate that a person cannot be trusted to perform the duties and uphold the duties of the deputy registrar appointment as is required by Minnesota Statutes, section 168.33, subdivision 2.

The crimes listed in item C are crimes that directly relate to the operation of a deputy registrar office by the nature and seriousness of the crime or crimes; the relationship of the crime or crimes to the purpose of regulating the occupation for which the license is sought; and the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the appointment.

The crimes listed in item C are serious crimes. Crimes, as defined under part 7406.0100, subpart 12, means convictions for felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. Other criminal convictions of a lessor degree may not be considered in the denial of an appointment.

However, crimes such as crimes affecting public officer or employee, theft and related crimes, forgery and related crimes are all crimes which relate directly to the occupation of deputy registrar and will be considered in the denial of an appointment. The denial for convictions for felony crimes goes directly to the persons ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the appointment. Persons who have been convicted of a felony committed a serious crime and as such have shown a lack of trustworthiness and a disregard for the law. As a deputy registrar the person must faithfully uphold the laws governing the appointment.

A person with no criminal background will be denied a license under item C if another person named on the application has been convicted of one of these crimes. This is reasonable because to appoint a corporation where one of the officers has been convicted of a listed crime would allow the person who has committed the crime to escape the consequences of his or her act. However, if the person with the criminal background removes his or her name from the application, the other persons listed on the application, will become eligible for appointment.

Item D. Item D requires the denial of an application if the applicant's proposed office location does not meet the requirement under part 7406.0300, or part 7406.0400. Part 7406.0300 contains the location requirements. As has been previously stated, the proposed office location must meet the mileage and transaction requirements before an office can be considered for that particular location.

Part 7406.0400 is the rule part that sets forth the deputy registrar office requirements. Prior to appointment the applicant is going to have selected an office that meets the requirements of part 7406.0400. The office requirements require that an office have a certain size processing area, appropriate security features, accessibility, no conflicting business interests, and proper identification. If an office has not met those requirements they will not be eligible for appointment.

Item E. Item E requires the registrar to deny an appointment if the person owes the state delinquent taxes, penalties, or interest. Minnesota Statutes, section 270.72, subdivision 1, states in part:

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

Even though the registrar is not "licensing" a deputy registrar, it is reasonable to have such a requirement in that a deputy registrar appointment is similar to a license. In the case of a deputy registrar appointment, the deputy registrar is conducting business of the state, i.e., collecting taxes and fees for the state. If the person already has outstanding taxes, penalties, or interest owed to the state, they would not be a good candidate for the operation of an office that collects taxes and fees.

Item F. Item F requires the registrar to deny an appointment if a person named on the application owns, is a partner, officer, or holds an interest of five percent or more in a financial institution, motor

vehicle dealership, or automobile insurance business. These businesses, as specified under part 7406. .0400, subpart 7, are determined to be conflicting businesses interests. Therefore, it is reasonable to deny an appointment if a person has a connection to one of those businesses. (See part 7406.0400, subpart 7 for further discussion of conflicting business interests.)

Item G. Item G requires the registrar to deny an appointment if a person named on the application has provided fraudulent or false information on the application. This part is necessary to ensure that a person does not obtain an appointment based on false information. The registrar uses the information in the application as part of the basis of making an appointment. If the person supplies false information, then the registrar is evaluating a person who has not been honest with the registrar and who may be ineligible but for the fact that the person supplied false information to the registrar.

7406.0370 APPOINTMENT OF DEPUTY REGISTRAR.

Subpart 1. In general. Subpart 1, generally describes that the appointment will be based on several factors such as the application, an interview, an inspection of the proposed office, and approval of the bond. This part is necessary to inform the applicant of all the necessary requirements that must be met before an appointment can be made.

Subpart 2. Certificate of appointment. Subpart 2 sets forth the requirement that a person appointed as a deputy registrar must complete a certificate of appointment. The certificate provides information regarding the location of the approved office, who was appointed, and the duties and responsibilities of the deputy registrar.

The subpart also sets forth who is authorized to sign the appointment papers based on whether the appointment goes to an individual, public entity, or a corporation. The person signing the certificate of appointment is either the person appointed, a person who is authorized to sign on behalf of the entity, if it is a public entity, or in the case of a corporation, an officer of the corporation.

This subpart is necessary to provide guidelines to the appointed person as to who is authorized to sign. In addition, the registrar needs to make sure that a person who can accept responsibility for the office signs because the signer is verifying that they are responsible for upholding the duties and responsibilities of the deputy registrar office.

7406.0400 DEPUTY REGISTRAR OFFICE REQUIREMENTS.

Subpart 1. In general. The amendments to subpart 1 make clear that the office requirements not only relate to existing offices but also to offices that are being proposed, either as a new office, or as a move of an existing office, and offices that are in the approval stage.

Subpart 1a. Variance. Subpart 1a allows for a variance for existing deputy registrars from subparts 4 and 7. Under subpart 4, if an office does not currently have the required amount of square footage, or under subpart 7, if an existing deputy registrar office is currently operating in conjunction with

a conflicting business interest, a variance could be requested if adding the additional space or moving the deputy registrar office to another location would be a substantial hardship.

The variance applies only to offices in existence at the time of the adoption of the rules. The variance for these existing offices must be submitted within six months from the adoption of these rules. It is reasonable to have the variance only apply to existing offices and to have a limited time for submitting the variance to limit the number of offices that continue to operate in this way because the goal of the registrar is to eventually phase out the businesses that do not meet the requirements of subparts 4 and 7.

Currently, there are only three known offices that are operated in conjunction with a financial institution and three known offices that are located with an automobile insurance business that would qualify for the variance. There are no known deputy registrar offices that are operated in conjunction with a motor vehicle dealership. Even though the deputy registrar offices that are operated in conjunction with an automobile insurance business were grandfathered in under previous rule amendments, they will still have to apply for a variance under this subpart to continue their variance. The proposed variance procedures add a few new requirements that the registrar wants all of these existing deputy registrar offices to be aware of. By applying for a variance under this subpart, the deputy registrar offices will all be aware of the new requirements. Furthermore, having all the offices apply for a variance under this subpart will provide the registrar with an up-to-date and consistent file on all the offices that qualify and have been granted a variance.

Item A. Under the variance procedure, the deputy registrar will have to indicate whether they are in non-compliance with subpart 4 or subpart 7, and explain to the registrar specifically why the deputy registrar office is not in compliance.

Item B. Under item B, the deputy registrar must explain to the registrar the options that are available to the deputy registrar to bring the office into compliance with the rules. For example, is there an option for the deputy registrar to rent additional space so that the square footage requirement could be met? Other options may include expansion of the existing office space through remodeling. Another option may be to move one of the conflicting businesses to a separate location.

Item C. Under item C, the deputy registrar must estimate, with reasonable efforts, the cost of the options listed in item B. Some options will obviously be less expensive than others. The registrar will evaluate each situation individually. However, the registrar does want to make sure that all the available options have been considered by the deputy registrar and that if there is a reasonable way for the deputy registrar office to come into compliance then, that option should be explored to the fullest extent.

Item D. Based on the information provided in items A through C, the registrar may request additional information from the deputy registrar to help the registrar in the decision making process. Likewise, the deputy registrar may want to submit additional information with the variance form for the registrar to consider in the decision making process.

Subpart 1a also provides that the variances will expire upon the death, resignation, revocation, or retirement of the existing deputy registrar whose office does not comply with subpart 4 and 7. The purpose of this provision is to phase out the offices that are in non-compliance. It is in the best interests of

the registrar and the public to have the offices meet the minimum square footage requirement and to operate separately from conflicting business interests.

Subpart 2. Exclusive processing areas for complete and incomplete motor vehicle.

Item A, subitems 1 and 2. Under item A, subitems 1 and 2, a distinction has been made between processing areas. The rules now provides that an office may have an additional, separate and distinct processing area for incomplete motor vehicle transactions. Under item A (1), the office must contain at least one processing area to process transactions that will be collected on the same day that they are taken into the office. Under Item A (2) the office must have a separate processing area if the office takes in work that is not collected on the day it is received.

The reasons for having a separate processing area for incomplete motor vehicle transactions was recommended by deputy registrars on the advisory task force because of problems the deputy registrars were having with getting all transactions that were received on a particular day processed completely so that it could be included on that day's summary report. In addition, the registrar was in support of such a provision because it would better serve the registrar's auditing needs. The registrar will be able to accurately determine the status of the transactions and where the transaction is in the processing stage.

Whether or not transactions received in an office had to be reported on that day's summary report was an area of much discussion at the advisory task force meeting. The registrar's initial interpretation of the current rule was that if a transaction comes into a deputy registrar's office, it is considered received and should be processed and reported on that same day's summary report. The registrar's reason for the rule was to avoid the backup of unprocessed paperwork in an office. In addition, when the registrar conducts an audit of the office, the registrar has to balance the paperwork in the office with the amount of money taken it that day. Therefore, paperwork cannot be left unprocessed while the funds for the transaction are deposited because the funds will not match the documents taken in.

However, deputy registrars on the advisory committee explained that this rule provision becomes unworkable in some circumstances. For example, if a dealer drops off a stack of paperwork five minutes before the office is scheduled to close, the deputy registrars said that they cannot process that paperwork that day and include it in the same day's summary report. The deputy registrars also pointed out that motor vehicle dealers provide a control to some degree because they want timely stamps on their work to comply with statutory requirements for transferring titles.

After taking into consideration the concerns of the deputy registrars and the small business aspect of most offices, the registrar was in agreement to work out an alternative solution that would meet the requirements of both parties. One alternative solution that was suggested by the advisory committee was to define the word "collected" that appears in Minnesota Statutes, section 168.33, subdivision 2. Minnesota Statutes , section 168.33, subdivision 2 provides that " The deputy registrar shall report to the registrar by the next working day following receipt all registrations made and taxes and fees collected by the deputy registrar." (emphasis added.)

Therefore, under part 7406.0100, subpart 9, "collected or collection" has been defined to mean, the (1) receipt of the payment of registration fees and taxes to the deputy registrar by the customer; (2) the receipt of the completed motor vehicle and other application documents for the transaction by the deputy registrar from the customer; and (3) issuance of the required inventory for the transaction to the customer

by the deputy registrar. All three factors must have occurred before the transaction can be considered collected. If all three factors are not present, the transaction is considered incomplete. Those transactions would then be kept in the "incomplete motor vehicle transaction" processing area. If a deputy registrar receives an incomplete motor vehicle transaction, the procedures in part 7406.0450, subpart 2a, must be followed for the processing of the transactions. (See rule analysis of part 7406.0450, subpart 2a for further information regarding the processing of incomplete motor vehicle transactions.)

The transaction would not be considered "collected" until the transaction was paid for, the documents were completed, and the inventory was transferred to the customer. However, all work that comes in that day that would not be completed in that day, would be date stamped with the day it came into the deputy registrar's office. Work then that could not be completed that day would go into the "incomplete motor vehicle transaction" area in the deputy registrar's office. For example, a large amount of dealer work that is delivered late in the day would be date stamped with the day it was delivered to the office and then would be placed into the "incomplete motor vehicle transaction" processing area.

A separate processing area for incomplete transactions would satisfy the registrar's requirements for purposes of auditing an office. Now, when the registrar goes into an office to conduct an audit, the registrar will be readily be able to ascertain which transactions are incomplete and whether the deputy registrars are following the procedures under part 7406.0450, subpart 2, for the completion of those transactions. The goal is to avoid a backlog of incomplete transactions, especially transactions for motor vehicle dealerships.

The processing area does not have to be a certain dimension, it should just be clearly marked as the area where incomplete transactions are being stored and worked on. For example, a particular desk, or portion or the service counter, may be designated as a processing area for incomplete motor vehicle documents. This section is reasonable because it is not a mandatory requirement. However, those deputy registrars that take in incomplete motor vehicle transactions need to establish such a separate processing area.

Item B. Item B provides that a deputy registrar office may not be used for transacting other business with some exceptions that are allowed by statute. For example, some deputy registrars are authorized to process driver's license, Department of Natural Resources transactions, and transactions under Minnesota Statutes, section 373.33.

Item C. Item C has been amended to clarify that the purpose of the counter or divider is to separate the public from the processing area of the deputy registrar office.

Item D. Item D requires the deputy registrar to submit a floor plan of their office showing the various requirements under this part, if the information was not provided with the appointment papers. This is reasonable because it is a way to ensure compliance with the requirements of this part.

Subpart 3. Inventory security. Subpart 3 requires that the inventory be stored in a secure area that is not accessible to the public. The requirement that an office must contain a safe or vault was removed from the subpart as an unnecessary requirement. The requirement for a safe or a vault was part of the 1983 rule adoption. At that time, the SNR stated that "[l]arge amounts of taxes and fees are collected by the Deputy. These monies must also be kept in a secure place so that theft does not occur."

It appears that the intent for having a safe was to store fees and taxes. However, deputy registrars make daily deposits of their monies into the state depositories and there is no need to store the fees and taxes in a vault or safe. However, the deputy registrar is still responsible for securing the inventory from theft.

Subpart 4. Size of office area. Subpart 4 sets forth the requirement for the size of the office space of a deputy registrar office. Under the current rules, the office must have been either 300 or 400 hundred square feet depending on the number of transactions the office completed.

Under the current rule, the deputy registrar's were not clear as to what the office space was to include. Did it include the waiting area for the public or just the area where the transactions were conducted? In the past, the waiting area has been included in the calculation of square footage. Some members of the advisory committee stated that it would be more important to concentrate on the space available for the employees and space for storage. Therefore, an amendment was added to the rule to clarify that the size of the office area includes the processing area, the public service area and the inventory storage area of the office.

A recommendation was made by the advisory committee to remove the two tier footage requirement since there was not a big difference in the amount of square footage required. The registrar agreed to the recommendation of the advisory committee as reasonable. Therefore, a minimum 300 square foot requirement remains.

Subpart 5. Accessibility. Subpart 5 has been amended to replace the word "handicapped" with the word "disabled," which is the term used in the Americans with Disabilities Act. Subpart 5 was also clarified to state that the accessibility of an office must comply with federal, state laws and regulations. The deputy registrar or building owner is responsible for knowing and meeting those requirements.

Subpart 6. Identification. Subpart 6, was amended to allow indoor as well as outdoor signage to identify an office. This is reasonable because some offices, such as those located inside a public courthouse did not have a sign outside the building. In this situation it is reasonable to have the proper signage inside the building to direct the customer to the proper room inside the building. This was a recommendation that the advisory committee proposed and the registrar agreed with.

Subpart 7. Conflicting business interests. Amendments were made to subpart 7 to expand the list of conflicting businesses and to clarify the existing requirements regarding those conflicting business interests. The three businesses that have been identified as conflicting are: automobile insurance companies, motor vehicle dealerships, and financial institutions. Financial institutions have been added to the list in this rule draft.

The addition of financial institutions was necessary because of complaints from the public over the years. The public did not feel comfortable with having the bank as a deputy registrar because the bank could find out the details of a person's car loan through the deputy registrar transaction. Some people felt uncomfortable with having the bank find out that they had a loan and where the loan was obtained. For existing offices that do not comply with this subpart a variance may be obtained as previously explained under subpart 1a.

In addition to adding a financial institution as a conflicting business, the phrase "operated in conjunction with" was stricken and replaced with the phrase "located in the same office space." There was alot of confusion among the deputy registrars as to what the phrase "operating in conjunction" meant. Now these rules more clearly state that you cannot be physically located in the same space as one of those businesses. In addition, if you are located adjacent to one of those businesses, you must separate yourself from that building by floor to ceiling walls and must have a separate entrance for the deputy registrar office.

Not only must a deputy registrar have a physical separation from the conflicting business but must also not have a financial interest in those businesses. A financial interest would provide the opportunity to influence the operation of the business. It is in the best interest of the public and the state that these businesses not be combined.

7406.0450 REPORTING AND DEPOSITING PRACTICES.

Subpart 1. Definition. In subpart 1, the definition of "next working day" has been amended to include in the list of exceptions as to what is not a working day. Under the definition, a working day will not include days that an office is not open for business, upon approval from the registrar. Therefore, days in which a particular deputy registrar does not work will be excluded from the next working day definition provided that approval is received from the registrar. This exclusion can be used for days that a smaller office is closed for vacation purposes or in cases where a deputy registrar has alternative or flexible business hours.

This change in the definition of "next working day" is consistent with the Administrative Law Judge's interpretation of working day in the 1988 Administrative Law Judge's report (ALJ report) on the prior amendment to the rules. Judge Lunde wrote in finding number 15, "The words "working day" are not defined in the statute. Therefore, the words must be given their common meaning. The word "workday" means "a day on which work is performed as distinguished from Sunday or holiday." Webster's New Collegiate Dictionary, 1351, (1975)." 1988 ALJ report, p. 7.

In addition, Judge Lunde wrote in finding number 17, "In determining what days do not constitute working days for purposes of the rule, several different standards could be applied. Days which generally are not considered to be working days can be excluded, days in which a particular deputy registrar does not work can be excluded, or some other method can be used to determine the days that must be excluded." 1988 ALJ report, p.8. Therefore, amending the definition of "next working day," to exclude days that an office is not open for business, with approval from the registrar, is within the recommendation of Judge Lunde's report.

Subpart 1 has also been amended to add a requirement that the deputy registrar provide written notification to the registrar of the time of the daily close of the office. Changes in the times of the daily close of an office must be reported in writing to the registrar at least 15 days prior to the effective date of the change. Because the definition of next working day is based on the 24 hour period following the daily close of the deputy registrar records, the registrar needs to have an accurate listing of the deputies daily close out times. A change in those times must be reported in writing to the registrar for purpose of administration.

Because the deputy registrars are not required to close out their daily records at a particular time, it is reasonable to notify the registrar of the times they have chosen to close out. With 169 deputies, the registrar needs to have that information provided from the deputy registrar office itself. With written records, the registrar will be able to more accurately assess that the deputy registrar is making the deposit within 24 hours of the daily close. This list provided will be a master list of close-out times that will work in conjunction with the reporting of close-out times on the "cash receipt" form as is further explained in subpart 2.

Subpart 1a. Submitting documentation. Repealed. This subpart has been repealed and the methods of delivering the documents and summary report to the registrar have been consolidated with subpart 2 of this part.

Subpart 2. Reporting registrations, fees, and taxes. In subpart 2, the requirements of the summary report have been itemized into a list for easier reading. Item D which requires the supporting completed motor vehicle documents to be contained with the summary report was previously set forth in subpart 1a. Therefore, the requirement is not new but has just been placed in subpart 2 for purposes of consolidation.

Item E is amended to state that on the financial report that the deputy registrar submits to the registrar, the deputy registrar must provide the time of the daily close of the deputy registrar office, and the date and time that the deposit was made. The deputy registrar must also provide the validated bank deposit slip or other written verification by the bank showing the deposit for that day.

The addition of the reporting requirements is reasonable because under the 1988 rule amendment the deputy registrars were allowed to establish their own daily close-out times. However, even though the deputy registrars were allowed to establish their own close-out times, the deposits and mailings of the reports still had to made within 24 hours of those close-out times. For example, if a deputy registrar closes its records at 3:00 p.m., the funds collected must be deposited no later than 3:00 p.m. the following day. (1988 ALJ report, p. 11). However, the 1988 rules omitted to put into the rules procedures as to how the registrar would be notified of these close-times and how the registrar could accurately determine if the deposits were made within 24 hours of the close-out times. The rule now adds those reporting requirements.

While the registrar has monitored, to some extent, to determine whether a deputy registrar is depositing by the next working day, determining the extent of compliance would be better monitored through the additional reporting requirements by the deputy registrar. The amendments to item E fill in the missing procedures regarding reporting requirements by requiring deputy registrars to state the close-out time and deposit date and time on the "cash receipt" form that is submitted to the registrar. Through these reporting requirements, the registrar will be able to tell by looking at the one document whether the 24 hour deadline has been met.

The deputy registrars may indicate that the additional reporting requirements on the "cash receipt" form is an overly burdensome requirement. However, the other alternative is to have all deputy registrars have the same end of the day close-out time at the end of the work day. The registrar is not opposed to this idea and, in fact, having one close-out time for all deputy registrars would be easier for the registrar to administrate for the reporting and depositing requirements.

Having the same close-out time was a suggestion by the registrar at one point in the rule development process. However, the comments received by some deputy registrars stated that they could not, without substantial hardship, change their current close-out time. The hardships listed were financial, staffing difficulty, and coordination with other computer programs that could only be run during certain times of the day.

Therefore, in order for the deputy registrars to continue to have separate close-out times, the registrar needs to have easier access to the deposit information. The registrar believes that the reporting requirement is reasonable in light of the fact that the burden of having to write the depository information on the "cash receipt" form should be less of a burden than requiring one close-out time for all deputy registrars.

The additional reporting requirement that is added to item E is that the deputy registrar must provide a validated bank deposit slip or other written verification by the bank of the deposit. This is not a new requirement. Deputy registrars have been required to provide such verification since 1988.

This submission of the validated bank deposit slip was also a recommendation made by the Administrative Law Judge in the 1988 rule amendment report. The report states: "At the present time, the registrar's administrative procedures require deputy registrars to provide the Registrar with a validated bank deposit slip when their daily reports are filed. The bank's validation must show the date and the amount of the deposit. This administrative requirement has not been incorporated into the rule, even though it directly affects deputy registrars and is material to other requirements in the rules. Therefore, it is recommended that the Registrar consider adding these additional requirements to the rule at the earliest opportunity." 1988 ALJ report, p. 10. The requirement is now being added to the rules to make the rule reporting requirements complete.

Subpart 2 also was amended to specify that all transactions collected in a deputy registrar office must be included on the summary report for the day the transaction was collected in the deputy registrar office. Collected as previously explained has a distinct meaning which requires three elements as defined under part 7406.0100, subpart 9. Therefore, if a transaction remains incomplete by the end of the business day, the transaction should be placed in the incomplete processing area and not be reported as collected on the summary report. See subpart 2a of this part for a description of what constitutes an incomplete motor vehicle transaction.

Subpart 2 also states that at least one summary report has to be completed for each working day. However, more than one report may be completed in a day if this is approved by the registrar. Even if no transactions are completed on a particular working day, the summary report still must be filed indicating that no business was transacted that day. This is reasonable, because then the registrar will have a complete record of business for the deputy registrar. If no records were submitted for a particular day, in looking back on a deputy registrars records, the registrar could not be certain, without further checking, that the record wasn't lost or misplaced instead of just no transactions being conducted on that particular day.

The last paragraph of subpart 2 sets forth the delivery methods available to the deputy registrar by which their summary report may be delivered to the registrar. The delivery options form subpart 1a of this part have been consolidated into this paragraph. This paragraph also specifies that, if a delivery is made through he United States mail, the date of mailing is the actual date on which the summary report was

deposited in the depository, regardless of whether that date is the same as the date the deposit is recorded by the United States post office.

This is somewhat of an honor system since the postmark may not match the date that the mail was deposited. However, if the reports are coming in a consistent daily manner there would be not reason for the registrar to question the mailing date. If, however, the registrar notices a change in the mailing pattern or summary reports start showing up late, the registrar will monitor the deputy registrar's reports more closely and contact the post office, if necessary.

Subpart 2a. Processing and reporting incomplete motor vehicle documents. Subpart 2a, regarding the reporting of incomplete motor vehicle documents by a deputy registrar, is a new provision in the deputy registrar rules. The need for the establishment of an incomplete motor vehicle processing area was previously explained in part 7406.0400, subpart 2. This subpart explains the procedures that are to be used when an office has an area for processing incomplete motor vehicle transactions. Items A through G set forth the processing and reporting requirements that must be met if a deputy registrar receives incomplete motor vehicle transactions.

Item A. Item A states that the transaction must not be considered accepted and must not be listed on the summary report by the deputy registrar until the collection of the transaction. This is reasonable because prior to collection of the transaction it is still incomplete. Any transaction that is not completed should not be listed on the summary report.

Item B. Item B states that the inventory must not be released to the customer by the deputy registrar prior to the time of the collection of the transaction. This requirement would avoid the customer receiving inventory before the completion of those documents. All processing of the documents is to be completed before the money is received and the inventory is exchanged to the customer.

Item C. Item C states that the registration fees and taxes must not be deposited prior to the time of the collection of the transaction. This is to prevent a deputy registrar from taking in incomplete paperwork and the check and depositing the check before the documents are completed and the inventory is issued.

Item D. Item D states that incomplete transactions that cannot be collected the same day that they were received by the deputy registrar must be dated with the date that they were received by the deputy registrar and placed in the incomplete motor vehicle transaction processing area as required under part 7406.0400, subpart 2. It is important that the documents are date stamped with the day that the deputy registrar receives the document. The registrar is still requiring that the documents are processed in a timely matter. This requirement is consistent with item E.

Item E. Item E provides that the deputy registrar must collect for the transaction or return the incomplete transaction to the customer within two working days following receipt of the transaction. The two day turnaround time was seen as reasonable by the registrar. The two day requirement takes into consideration the definition of "working day," so that weekends, holidays, and other non-working days, would not interfere with processing the transaction in a timely manner.

Item F. Item F provides that the deputy must inform the customer that the motor vehicle transaction will not be considered accepted by the deputy registrar and stamped with a paid/date stamp until the collection of the transaction. This item is necessary to avoid confusion on the part of the customer. Even though the customer drops off work, they have to be informed, that if the deputy cannot complete the work that day, the paperwork will not be stamped "paid," until the paperwork is completed, the fee received, and the inventory issued. Dealers, for example, who have to have the work completed in a certain time frame must be made aware that just because they bring in incomplete work to the deputy registrar or a large amount of work at the end of the day, they will not be able to have the work marked "paid" for that day and meet their statutory timeline.

Item G. Item G provides that the deputy registrar must notify the registrar if their office intends to receive incomplete motor vehicle transactions and submit to the registrar a floor plan of the office space as required under part 7406.0360, subpart 4. If the deputy registrar ceases to accept incomplete motor vehicle transactions, the deputy registrar shall notify the registrar within ten days of the change.

This requirement will inform the registrar that a deputy registrar office is taking in incomplete work, so that if the registrar conducts an audit of an office they could take into consideration in their audit that paperwork in that particular area will not be complete and the funds for those transactions will not have been deposited by the deputy registrar for that day.

Since an office is not required to have an incomplete motor vehicle transaction processing area, the registrar would like to keep an accurate record of which office will have this special processing area for incomplete motor vehicle documents. After the rules are adopted, the registrar intends to send out a form to all the deputy registrars which will allow the deputy registrars to indicate their compliance with certain portions of the rules and will allow for them to indicate if they will have an incomplete motor vehicle transaction processing area and submit a floor plan of the area they have selected to set aside to process the incomplete work. The floor plan does not have to be to scale, but just provide an rough estimate as to the layout of the office and the area set aside as the processing areas.

Subpart 4. Maintaining records. Under subpart 4, a requirement has been added that the records be maintained for a period of three years. Deputy registrars have always retained these records for a period of three years. This is not a new requirement for deputy registrars. It is reasonable to add it to the rules for completeness of the rules.

Subpart 4 also provides that records received by the deputy registrar become property of the state of Minnesota and therefore, are subject to the data practices act. Therefore, information regarding such documents cannot be given out without prior approval from the registrar. The registrar will then check to see that the information that is requested is public data and can be released. However, if the data is not public, the deputy registrar will not be able to release the information requested. There are exceptions for law enforcement and court orders as specified by law.

Subparts 5 through 8. Subparts 5 through 8 have been amended throughout by deleting the word penalty and substituting the phrase "late-payment charge." The amendment is necessary because it incorporates the comments that were made in the 1988 Administrative Law Judge's Report. In the Administrative Law Judges report, Judge Lunde concluded:

the Commissioner does not have statutory authority to impose fines. Nonetheless, he does have authority to require deputy registrars to make restitution for lost interest income resulting from a deputy registrar's failure to make timely bank deposits under Minn. State. (section) 168.33, subdivision. 2....Although subpart 5 of the rule is called a `penalty', it is not intended to punish deputy registrars for violations of the requirements in the statute and it should not, therefore, be considered to be a penalty as that term is generally understood. In substance, subpart 5 merely imposes a late-payment charge that is equivalent to the amount of money the state loses as a result of a deputy registrar's failure to remit state monies to the Commissioner in a timely manner."

In light of Judge Lunde's conclusions it is reasonable for the registrar to remove the word "penalty" from the subpart and substitute the phrase "late-payment charge" to more accurately describe the action that is being taken by the commissioner.

In addition, under subpart 5, the late payment charge has been increased from $10 to $30. The increase in fees reflects the registrar's actual cost of processing the late payment charge. The $10 amount has remained unchanged since the charge was first implemented. The $30 figure is based on staff time to investigate the late payment charge, completion of paperwork, and providing notice to the deputy registrar regarding the late payment charge through certified mail.

Subpart 9. Discontinuance. The amendment in this subpart clarifies that the late payment charge is not the exclusive method of enforcement for late payment violations. If the situation warrants, other discontinuance provisions may apply as specified under parts 7406.0800 to 7406.1000.

7406.0500 General Operating Rules for Deputy Registrars

Subpart 1. Management of office. Subpart 1 has been amended to remove the distinction between individual, public, and corporate offices in the management of the offices. Currently, only individuals appointed as deputy registrars are required to actively participate in the processing of applications and be in the office on a full-time basis. Whereas, corporate officers and other public officials, such as county auditors do not have to follow those restrictions. In reviewing this rules, the registrar could not see a need to have a distinction between the different types of offices because the same safeguards of accountability and responsibility apply to individual offices as apply to public and corporate offices. Therefore, it is not necessary to hold the offices that are run by individuals to a different standard in the management of the office.

A review of the department history on this rule provision indicates that the general operating rules, items A and B, were first adopted in 1983. Item C was adopted in 1988 in response to the establishment of corporate offices in 1984. In 1983, the Statement of Need and Reasonableness states the reasons for items A and B as follows:

Minnesota Statute, 168.33, subdivision 2, requires that each Deputy before entering upon the discharge of his duties, shall take and subscribe to an oath to faithfully discharge his duties and to uphold the laws of this state. The legislative intent of the statute is that the Deputy Registrar must be the principle person in charge of the office. This is the Deputy's personal responsibility and he cannot fulfill it if he does not actively participate in supervising and working in his or her

office. An individual, who has taken the oath and does not actively participate in the operation of the office, could be held criminally liable for any unlawful acts which could occur in the office. 1983 SNR, p. 4.

In 1988, item C was added, and the 1988 Statement of Need and Reasonableness stated that the reason for item C was as follows: "Minnesota Statute 168.33, subdivision 2, allows for the incorporation of private deputy registrars. Previously, a deputy registrar was an individual who could be held responsible for any problems with the deputy registrar office such as in the mishandling of state monies. Without designating an officer of the corporation as the responsible party for the duties of the corporation as deputy registrar, the state is left without direction, and possible without recourse, if problems arise with the deputy registrar office."

The main concern for the rule provisions in 1983 and in 1988 was who was responsible for the operation of the office if state monies were mishandled. That responsibility will not change under this amendment to the rule. What has changed is that, like corporate and public entities, the individual appointed will not have to actively participate in the processing of applications and be in the office on a full time basis.

Like corporations and public entities, an individual can hire someone to actually run the office on a day-to-day basis. This is reasonable because, the person (individual, corporation or public entity) still is responsible for the operation of the office overall. As the rule states, the deputy registrar cannot delegate to another person the authority or responsibility of operating the office. The responsibility for overall operation of the office will always fall back on the individual, corporation, or public entity appointed, regardless if they are in the office on a full-time basis.

Subpart 2. Hours. Subpart 2, regarding the hours of a deputy registrar office, has been updated and clarified. In the first paragraph, it has been clarified that the calculation of the forty hour work week includes authorized holidays. The second portion of subpart 2 requires that the deputy registrar provide the registrar with a written schedule of the hours the office is open for business.

Deputy registrars are required to provide the registrar with their hours of business. However, under the current rules there is no provision that the office schedule be in writing and that advance notice be given of office closures. Written notification of hours of the deputy registrar office are necessary for the registrar so that the hours are set and can be passed on to the customer. Written notification of hours leaves less room for uncertainty.

If the hours change, a deputy registrar must submit a request into the registrar for approval. This is necessary, so that the deputy registrar can first approve the changes to make sure that the 40 hour work week is being maintained. A ten day request for approval prior to the change in hours is reasonable because it prevents offices changing their hours at the spur of the moment without adequate notification to the registrar and the public.

Subpart 2a. Closure of office; variance procedure. Subpart 2a is a new provision which sets forth the variance procedure for the closure of an office. It is necessary to put into writing the guidelines of the registrar when it considers closure of an office for a limited period of time. Closure of an office is necessary when a small deputy registrar office, with one or two individuals running the office, go on vacation, become ill, attend funerals, and attend work-related conferences or meetings. Because the work

is so technical, it is not always possible or efficient to get someone to fill in while the owner is on vacation. Therefore, the office is closed down during the period of absence.

The variance procedure allows the deputy registrar to make a written request for closure of an office when the office will be closed for more than one day. Upon receiving the request and before granting or denying the request, the registrar will consider the factors that are listed in items A through F. These factors were discussed and decided upon with the help of the advisory committee.

Item A. Under item A, the registrar requests the reason for the closure. Vacation and medical issues have been some of the reasons listed in the past.

Item B. Under item B, the length of time the closure is requested must be provided. A request for a one month closure may not be considered reasonable, whereas, a week or two closure with adequate notice to the public may be considered reasonable. The main concern here is how service to the public will be affected.

Item C. Under item C the day of the month and time of year that closure is requested is to be provided. Is this the best time of the year for the office to close, or are there other alternative dates that would work for the deputy registrar? If it is a slow time of the year and month, closure of the office will not put as much of a burden on the public to find alternative means to acquire the necessary service.

Item D. Item D asks for information regarding the number of transactions that an office processes on an annual basis and the number of transactions that are processed at the requested time of closure, if known. The number of transactions that an office processes is important because there is a point at which an office processes enough transactions that they should have a sufficient number of staff to keep the office running on a full-time basis.

Item E. Item E asks for information regarding the ability to keep the office open with current, additional or temporary staff. If it is a two person staff and one person goes on vacation, would the office be able to operate with one staff person? Is there a person from another office who would be available to switch offices for awhile? Is there a temporary person with deputy registrar skills that could fill in while the deputy registrar is on vacation? If at all possible, the registrar would like to avoid closure of an office, if there is sufficient staff to operate the office.

Item F. Item F requests information on the number of previous variances that have been granted that year. If a deputy registrar is asking for a number of vacations and closures of an office, the customers in that area are really affected unfairly because they are not able to obtain the motor vehicle service.

The registrar will review the above factors and make a decision within two business days as to whether the variance will be granted. Two days to decide whether a variance will be granted is a reasonable amount of time. It will provide a quick turnaround of the request and enable the deputy registrar to make plans to notify the public of the closure.

If the variance is granted, the deputy registrar must provide notice to the public of the office closure, the time and dates that the office will be closed and the location and address of the nearest office where alternative service can be obtained. The type of notice that will have to be given will depend on the

length of the closure of an office. If an office is to be closed for four days or less, the deputy registrar must publish notice in a conspicuous place inside and outside the office for at least two consecutive weeks prior to the closure, where practicable. If the office is to be closed for five or more days, we ask that the notice of closure not only be posted in the office, but that notice be broadcast on the local radio station or published in the local newspaper for two consecutive week prior to closure.

Providing advance notice to the public of the office closure is reasonable so that customers may make alternative arrangements to obtain the service or come in early to obtain the service. If an office is going to be closed for five days or more, it is reasonable to require more notice that just at the office because this is an extended period of time and some transactions have deadlines that must be met and therefore the extended closure requires a wider circulation of that closure to provide the best notification possible for obtaining alternative service.

Subpart 2b. Emergency and short-term closure of office. Subpart 2b deals with emergency situations where it is not always possible to provide a two week advance notice of closure of an office. Examples are, a death in the family, a snowstorm, sickness, etc. In these emergency situations, subpart 2b allows for the deputy registrar to contact the registrar by telephone or other means at the earliest possible time and inform the registrar of the situation. The registrar will assess the situation at that time and make the appropriate decision. If it looks like the office will be closed for more than one day, the deputy registrar is required to file written request for a variance under subpart 2a.

Subpart 2b also allows for short-term closure of an office. For example, an office may be closed a half day to attend a funeral. Because the closure is less than one day, notification of the closure can be made to the registrar by telephone as soon as is practical. Notice of the closure must be passed on to the public as soon as possible.

This provision is reasonable, because it allows for a procedure to handle those emergency and short term situations that will arise. The registrar wants to be informed about the closures and to have a procedure to handle those situations when they arise. This part is reasonable because in emergency situations there needs to be some flexibility. There is not always time for written notification. This procedure allows the registrar to act immediately in the case of short term closures and emergency situations.

Subpart 3. Solicitation. Subpart 3 has been repealed and replaced with subparts 3a through 3c.

Subpart 3a. Service area. Subpart 3a describes what constitutes a deputy registrar's service area. Like the repealed subpart 3, the service area is determined by the 75 percent distance to another deputy registrar office. Subpart 3a clarifies that within the 75 percent area, the deputy registrar may provide or promote the service of the deputy registrar office by any method within the boundaries of these rules and relevant statutes. This requirement is similar to the existing solicitation rule.

However, the proposed rule clarifies that outside the 75 percent service area, the deputy registrar, an employee of the deputy registrar, or an agent of the deputy registrar may not promote or provide service, or, by any method, pick-up transactions beyond the 75 percent service area. For example, a deputy registrar will not be able to send an employee to pick up work at an automobile dealership that is located outside the 75 percent service area. However, such a dealership would not be precluded from bringing work into any deputy registrar of their choice.

Unlike, the previous subpart 3, the new language specifically states that a deputy registrar, an employee or an agent of a deputy registrar may not promote, provide or pick up work outside the 75 percent service area. This was the intent of the subpart 3. However, because the rule did not specifically state that, it was difficult for the registrar to enforce the rule. The clarifying language provides both the deputy registrars and the registrar with a better understanding of what service can be provided within and outside the 75 percent service area.

Subpart 3b. Variance. Subpart 3b is a variance provision that would allow deputy registrars to continue to provide service to a customer that is outside the 75 percent service area that they are currently providing service to. A variance is necessary because of the ambiguity of the previous subpart 3 that has now been repealed and replaced with subpart 3a. As previously explained in subpart 3a, the ambiguity of the previous rule made it difficult for either the deputy registrar or the registrar to follow. For example, there was no clear definition of what "solicitation" meant. Secondly, if a deputy registrar's 75 percent service area boundary changed, it was not clear as to whether the deputy registrar could continue to service those customer who were now outside the 75 percent service area. Therefore, over the past several years, some deputy registrars have been providing service to customers outside the 75 percent service area. Such a practice may or may not have been in violation of the current rule. However, the practice of providing service continued and now, the customers and deputies have a customer service relationship that has been established.

The issue then became whether the registrar should allow such business relationships to continue through a variance procedure or whether the registrar should discontinue all such relationships and apply the rule in a strict manner. With certain restrictions, the registrar decided in favor of allowing a variance for such business relationships to continue. Therefore, at this time, the status quo of a deputy registrar's business relationship with its customers can be maintained if a variance is granted. The registrar balanced the needs and benefit of existing established customer relationships against having all deputy registrars stop their current business practices. The harm in providing the variance was less than the harm of having the deputy registrar offices be in strict compliance with the rule.

However, the variance procedures does provide some limitations which should provide some ease in administration for the registrar over the years. The conditions that a deputy registrar must meet are contained in item A through G.

Item A. Item A provides that the deputy registrar must apply for a variance by submitting a written request, on a form prescribed by the registrar, to the registrar. The requirement provides for uniformity in all variance requests. The written form also will ensure that all the necessary information is provided for the variance for the registrar to make the decision.

Item B. Item B states that the request for a variance must be submitted to the registrar within six months of the effective date of the rules or within six months of a move of another deputy registrar office or the appointment of a new deputy registrar office that changes the distance of their current 75 percent service area. The limitations in this item will ensure that the variance procedure is not an ongoing procedure. If a deputy meets the requirements of the variance it is not unreasonable to ask that the deputy registrar apply for the variance within a six month period. Knowing who is under a variance will also make enforcement of subpart 3a more effective.

Item C. Item C provides that variances will only be considered for a deputy registrar office that has been providing service to a customer, outside the deputy registrar's 75 percent service area, for over a year prior to the effective date of these rules, unless the request for a variance is made as a result of a move of a deputy registrar office or the appointment of a new deputy registrar office. In such a case, Item D will apply.

This item is necessary to ensure that only deputy registrar offices that have maintained an established business relationship with a customer continue that relationship. The limitation in this item will prevent deputy registrars, who became aware of the variance procedure during the rulemaking process from going out and servicing customers outside their 75 percent service area in hopes that they would then be able to obtain a variance through this subpart. The purpose of the variance is to allow current business practices to continue but not to allow for new business practices to be established outside the 75 percent service area that would be in violation of subpart 3a.

Item D. Item D provides that if the request for a variance is made as a result of a move of a deputy registrar office or the appointment of a new deputy registrar office, the request will be considered only if the service to the customer has been provided prior to the effective date of the move or the appointment of a new deputy registrar office. Item D provides the same limitation as item C does except that it applies to variances that will be granted because of the move of an office or the appointment of a new deputy registrar office. Again, the purpose of the variance is maintain established business practices that have existed over a period of time within that deputy registrar's service area.

Item E. Item E provides that the deputy registrar submit an affidavit from the customer who has been provided service from the deputy registrar. The affidavit is necessary in that it provides credibility in the variance procedure. The affidavit will provide a check on the trustworthiness of the deputy registrar's statement that they have been providing service to this customer.

Subitem (1). Subitem (1) asks for the name and address(es) of the customer and the deputy registrar that has been providing that service. This information is necessary to establish the parties that are involved in the business relationship and the exact location(s) of each of the respective parties.

Subitem (2). Subitem (2) asks for a description of the service that has been provided by the deputy registrar to the customer. For example, does the deputy registrar currently pick up a dealer's transactions and process them back at the deputy registrar office.

Subitem (3). Subitem (3) asks for information regarding the date that the service from the deputy registrar began. Again, this information will provide information that can be verified by the registrar to determine that the relationship has been established over a period of time and not just created for purposes of this variance procedure.

Item F. Under item F, the deputy registrar must verify that the information provided by the customer on the affidavit is true and correct. This verification is necessary so that the deputy registrar has read the affidavit of the customer and agrees with its content so that there can be no misunderstandings about the extent of the variance at a later point in time.

Item G, subitem (1). Item G, subitem (1) provides that the deputy registrar agrees that upon death, resignation, revocation, or retirement of the deputy registrar, the variances that have been granted will expire. This provision is necessary to decrease the number of variances over the years. This provision should allow for a gradual phase out of some of the variances. Less variances will make it easier for the registrar to administer.

Item G, subitem (2). Item G, subitem (2) provides that the deputy registrar must agree that if the service of a customer, listed on an affidavit in item E, is discontinued or the customer changes locations, the variance for providing the service to the customer expires. The variance is for the customer at that particular location. The provision will allow for more variances to be phased out over a period of time.

The purpose of the variance is to preserve the present status quo of the existing deputy registrar offices. If a customer no longer receives service from a particular deputy registrar or moves from its current location, then the status quo has been broken and the variance will expire. Even if the variance expires, the customer still has the option of bringing their work to that same deputy on their own.

Subpart 3c. Advertising. Subpart 3c is a new provision which clarifies the advertising aspect of promoting the service of a deputy registrar office. While deputy registrars have been able to advertise under the current rule, the advertising has been limited to the deputy registrar's 75 percent service area. This provision states that the distance limitation in subpart 3a does not apply to advertising by the deputy registrar in any print, broadcast, or electronic media. However, such advertising may not contain any financial incentives for the service provided by the deputy.

Trying to limit the advertising to within the 75 percent service area has been difficult because of the distribution of most forms of media that is beyond the control of the deputy registrar. For example, the local community newspaper may cover the deputy registrar's service area, but its circulation may very well extend beyond the 75 percent service area. Therefore, the deputy registrar advisory committee proposed that no distance limitation be applied to advertising. The department is in agreement with this proposal as it creates no enforcement problems for the registrar and should benefit the public by providing them with more information regarding the deputy registrars in their area.

The only restriction on the advertising is that no financial incentives may be contained in the advertising. For example, the deputy registrar cannot offer the customer a discount or provide anything of value in connection with their motor vehicle transaction if they go to their deputy registrar office. This is reasonable because it goes beyond the promoting the deputy registrar business through advertising.

Subpart 4. Location. Subpart 4 has been eliminated. The procedures for whether or not an office can change locations is now set forth in part 7406.0330. Please see the discussion in that part regarding the variance procedure that have been established regarding the move of an office location.

Subpart 5. Filing fees.

Item B. Item B has been updated to conform to the requirements of Minnesota Statutes, section 168.33, subdivision 7, as to what a filing fee cannot be charged for. Subdivision 7 states that "...a filing fee may not be charged for a document returned for a refund or for a correction of an error made by the registrar or a deputy registrar....No filing fee or other fee may be charged for the permanent surrender of a

certificate of title and license plates for a motor vehicle." The change in subpart 5 is made to make it consistent with the statutory language of subdivision 7.

Item C. Item C is a new item which states that a deputy registrar may not charge a customer for long-distance telephone calls unless; the charge is for the exact per minute charge of the telephone call and does not include any charges for other basic or optional telephone services; the long-distance telephone call was made at the request of the customer; and the deputy registrar maintains a record of the long-distance telephone calls made each day which includes the charges assessed and the name and address of the customer for whom the telephone call was made.

It has been determined that deputy registrars charge customers for long distance phone calls when they need additional verification information from the St. Paul central office to complete the customer's transaction. For example, if a customer does not bring in his or her prebill, the deputy registrar will call the central office in St. Paul to verify the customer's information. It has been reported to the registrar by customers, that charges for long distance phone calls range from $1 to $4.

Charging for long distance telephone calls was debated at the advisory committee meetings. Deputy registrars outside the seven county metropolitan areas who would be affected by this proposal thought they should be able to charge the customer for the long distance telephone call and, in some cases for the time that it took the staff to make the telephone call and complete the verification for the customer.

The registrar does not agree with the practice of charging the customer for the staff time to make and complete a verification telephone call to the central office. Staff time it takes to verify information from the central office is something that all deputy registrar offices experience, not just those offices that have to make a long distance telephone call. Other deputy registrar offices that do not have the long-distance telephone charges still provide the same service to the customer at no additional charge.

Therefore, at most, the deputy registrar will only be allowed to charge the customer the exact per minute charge of the telephone call. And this amount may only be charged if the customer requests that the telephone call be made to the central office. This is a benefit to the customer that the deputy will make a long-distance telephone call to the central office when the customer fails to bring in the correct information. If the deputy registrar needs to make a long-distance telephone call to the central office other than at the request of the customer for verification on information, the deputy registrar may not charge the customer for that long-distance telephone call. This includes not charging for long-distance telephone calls made to the central office for procedural questions, ordering supplies and other such telephone calls.

The provisions in this subpart are reasonable because this allows for the deputy registrar to continue to provide good customer service to the customer. In addition, the cost of providing that customer service by the deputy is reasonable in light of the options for the deputy registrar to communicate with the St. Paul central office. For example, deputy registrars costs associated with making long distance telephone calls can be reduced through the use of hooking up to the 1 800 service or by obtaining on-line access to the registrar's motor vehicle records. According to the Department of Administration, setting up an 800 phone number for deputy registrars would be at no cost to either the department of Public Safety or to the deputy registrars. In addition, the deputy registrar offices do not need any additional equipment to get the service. The rate for 800 phone calls is 14.6 cents per minute. This rate is compared to ATT which may charge up to 50 cents for the first minute and then 37 cents for each additional minute and MCI

which may charge 49 cents for the first minute and 36 cents for each additional minute. The 800 service would be a significant decrease in the rate at no additional cost to the deputy registrar.

Another option for the deputy registrar to gain access to the department's motor vehicle records is by obtaining on-line access through a computer to the motor vehicle records. There are several deputies that are connected through this on-line service. Therefore, the deputy registrar does not have to make a long-distance telephone call to the central office, the deputy registrar is able to verify the information for the customer through the information provided through the on-line access. This is a service that the registrar is encouraging all deputy registrars to take advantage of, especially the larger deputy registrar offices. Currently, a deputy registrar with on-line access to the department's motor vehicle records is able to obtain eight free hours of on-line access per month.

Therefore, deputy registrars should be charging the customer little or nothing for the long-distance telephone call. Other available options for the deputy registrar is to have the telephone call charged to the customer's calling card, have the customer charge the telephone call to the customer's own telephone where that is possible, or ask the customer if they want to return to the office with the missing or correct information. The purpose of this provision is to provide efficient service to the customer at that customer's request and not to recapture money for staff time that should already be included in the cost of the transaction.

Subpart 6. Cash register. Subpart 6 is a new subpart which sets forth the requirements of a deputy registrar maintaining a cash register or cash receptacle for deputy registrar funds. Subpart 6 provides that a separate cash register or cash receptacle must be maintained for deputy registrar funds. No other funds from other businesses shall be kept with deputy registrar funds with one exception. If a deputy registrar's cash receipt system is able to differentiate between funds from different sources then funds from other sources may be kept in the same cash registrar.

Item A. Under item A if the other funds are from driver's license, department of natural resources or county license bureau funds then they may keep them with motor vehicle funds if they can be differentiated. These funds are common other funds for most deputy registrars to collect. Therefore no written approval is necessary to maintain these types of funds with the deputy registrar's funds.

Item B. Under item B, a deputy registrar may also keep other funds, other than those listed in item A, with deputy registrar funds when the deputy registrar's fee receipt system is able to differentiate those funds. In addition, the deputy registrar also needs to receive written approval from the registrar to also include those other funds with the deputy registrar funds. Written approval is necessary because these funds are not normally collected by a deputy registrar.

It is important that deputy registrar funds be kept separate for audit purposes. If the registrar conducts an audit of a deputy registrar's office they need to be able to account for all the funds that are in the office at that time. If the funds from other sources are commingled it is difficult and time consuming to determine what source the funds came from.

This subpart is reasonable because it allows those deputy registrars that have the capability to separate the funds out to maintain all of their funds in one cash registrar. This eliminates the need to have one cash registrar for just motor vehicle funds. However, those offices that do not have that capability will

have to continue to separate out the funds in a separate cash register or cash receptacle. This is a policy that the registrar has had for some time but has not previously had in the rule. Having the policy in the rule will provide better guidance to the deputy registrars and will provide better enforcement procedures for the registrar.

Subpart 7. Imprest Cash. Subpart 7 is a new provision that requires deputy registrars to maintain a verifiable and identical amount of start-up funds in their cash registrar or cash receptacle on a daily basis. The deputy registrar must inform the registrar, in writing, of the amount of money that will be used during the day for start-up funds. The amount of start-up funds must not be changed without prior written notification to the registrar.

This subpart works in conjunction with the previous subpart, subpart 6. The registrar must be able to identify which funds collected for that day are motor vehicle funds. That amount must be set so that it cannot be changed during an audit. This rule provision, like subpart 6, is cleaning up and clarifying the business practices used by the deputy registrars and requiring consistency between the deputy registrar's business practices. Consistency in business practices allow for easier administration of the 169 deputy registrar offices by the registrar and provides for better financial control by the registrar.

Subpart 8. Inventory to remain in office. Subpart 8, provides that unsold inventory that is assigned to a deputy registrar by the registrar must remain in the office, except when inventory is returned to the registrar, if the inventory is destroyed, if it is authorized for destruction because it is obsolete or for other removal of the inventory that is authorized by the registrar. This rule provision has been added to these rules to prevent the selling of inventory other than at the location for which a deputy registrar was appointed.

One reason for the proposed rule is that when inventory is removed from the office, the inventory, such as motor vehicle tabs and license plates, are out of sequence with those being used at the deputy registrar office. Inventory that is at other locations and out of sequence makes it more difficult for the registrar when the registrar conducts an audit of the deputy registrar's office. In addition, inventory that is removed form the office presents a security problem. The potential for inventory to be lost, misplaced or stolen is greater once the inventory is removed from a deputy registrar's office prior to it being sold.

Currently, the registrar is aware of a couple of deputy registrar offices that remove inventory from the office to sell "off-site." However, there is nothing in the current rule that prevents other deputy registrars from removing inventory from the office. For example, there is nothing in the rule to prevent an office from removing inventory to sell at emission stations, or from setting up a van in a shopping mall to sell to customers. Up until now, the registrar has been able to verbally deny such requests for removal of inventory from the office. However, the registrar would like to have the policy in rule so that there is no question as to what the policy is and to treat all deputy registrars the same.

Therefore, deputy registrars that have been removing inventory from the office will no longer be able to continue with that practice. Deputy registrars that have been removing inventory from the office are, obviously, not in support of the proposed rule. These deputy registrars have indicated that they have never had any problem with the inventory that has been removed and have not encountered any theft of inventory.

A proposal was made to grandfather in those deputy registrars that have been removing inventory from the office and to allow them to continue that practice because they have relied on that "off-site" business and have relied on the prior approval of the registrar to conduct that business outside their office. The registrar is not going to grandfather in those deputy registrars based upon the following reasons. First, in the past several years the registrar has denied requests from other deputy registrars to remove inventory to the office to be sold out of the office. For example, a request to sell inventory at emission stations was denied.

Second, those deputy registrars that sell inventory outside their office will be able to continue to serve those same customers at the customers place of business even if the inventory cannot be removed from the office. Deputy registrars will still be allowed to go to the place of the customers business, collect the documents and fees and return to the deputy registrar office, process the paperwork and return to the customers place of business with the inventory.

Third, the initial purpose for allowing deputy registrars to sell inventory outside their deputy registrar office no longer exists today. The registrar has been informed that one of the reasons that deputy registrars were allowed to sell inventory at other locations several years ago was because of the limited number of deputy registrars in the area. Today, there is a well established number of deputy registrars in the area. In the metropolitan area there are approximately 30 deputy registrars within a five mile distance from each other. This allows for ample service for customers.

Therefore, even though approval may have been granted several years ago for the removal of inventory, that purpose no longer exists. And the registrar's policy of preventing other removal of inventory from the office outweighs the approval that may have been granted several years ago.

Items A and B. Other exceptions where inventory can be removed is under items A and B. Under item A the deputy registrar can return inventory to the registrar. For example, they were given the wrong amount of inventory or the wrong kind of inventory. Under item B inventory that is destroyed or obsolete may also be removed upon destruction.

Item C. The advisory committee, with the exception of one member, agrees with the registrar's proposed rule to require inventory to remain in the office. The one member who voted in opposition to the rule had a concern regarding new technology, such as inventory being sold through kiosks. The advisory committee member did not want the rule to limit the expansion of new technology. The proposed rule allows for flexibility in the event that new technology becomes available for the distribution of inventory. Item C would allow for some flexibility of the selling of the inventory "off-site" with the use of the new technology.

Subpart 9. Mail order transaction. Subpart 9 provides that deputy registrars will be allowed to mail out validation stickers or license plates to customers if they follow the guidelines established under this subpart. Originally, the registrar had proposed that deputy registrars would not be allowed to mail out the inventory themselves. All of the mail order transactions would be mailed out through the registrar's central office in St. Paul. Members on the advisory committee were opposed to a requirement that would require all mail order transactions processed at the central office in St. Paul. Advisory committee members commented that they have not had a problem with mailing out inventory through the mail, such as inventory getting lost in the mail.

One reason that the central office should process mail transactions is that the transactions are handled consistently if the inventory should get lost in the mail. If the central office mails out inventory to a customer which subsequently gets lost in the mail, the customer will receive a no-fee duplicate of the inventory. The reason the customer of the central office receives a no fee duplicate is because the registrar pays for the replacement cost of the inventory and uses a good control process in ensuring the proper mailing of the inventory. Therefore, the cost of no-fee duplicates is low.

However, when a deputy registrar office mails out inventory and the inventory gets lost in the mail, the customer does not always get a no-fee duplicate from the deputy registrar. Some deputy registrar offices are charging the customer for the duplicate inventory. With proper control factors for mailing, the deputy registrars should also not have high costs in providing no-fee duplicates if inventory should happen to get lost in the mail.

Another reason for the central office to process all mail order transactions is to prevent fraud. For example, if the customer mails money to deputy registrar for stickers, the deputy registrar may claim to have mailed out the sticker and that it must have gotten lost in the mail. The truth is that the stickers were never mailed. The deputy registrar then sells the sticker to another person and the original customer would have to get a duplicate sticker, at an additional cost.

Despite the registrar's concerns, the registrar was willing to consider alternatives that would allow the deputy registrar to mail out inventory to their customers and at the same time reduce the potential for fraud and the customers not having to pay extra should the inventory get lost in the mail.

An alternative solution that was proposed was to have control factors that would provide uniform mailing procedures for deputy registrars that choose to mail out inventory. The guidelines for mailing out inventory are set forth in items A through E of this subpart and are required of only those deputy registrars who choose to mail out inventory. Those that do not want to mail out inventory may continue to forward their mail order transactions to the central office in St. Paul for processing and mailing.

Item A. Item A provides that deputy registrars must provide written notice to the registrar if the office intends to mail out inventory to its customers. Once written notification is provided to the registrar the deputy registrar must accept and process all mail transactions that are ready for issuance of inventory. Incomplete transactions that are received by mail must follow the procedures set forth in part 7406.0450, subpart 2a. Therefore, if a deputy registrar chooses to mail out inventory they must handle all the mail transactions for that office. They cannot pick and choose which transactions they will process and then send the rest on to the central office for processing or return to the customer.

Item B. Under item B, the deputy registrar must maintain a record of the inventory that was mailed and the name and address where the inventory was mailed. The record may be maintained on the daily summary report under part 7406.0450, subpart 2, or other report maintained separately by the deputy registrar. This is reasonable so that if there is a problem with the mailing of inventory, an adequate record is available to retrace the mailing transaction to determine the source of the problem.

Item C. Item C requires that the inventory be mailed out under uniform mailing standards. The United States Postal office has a publication that sets out uniform postal addressing standards. The

registrar will have a copy of the standards available at the central office. Or the standards are available from the post office if the office wants to have a copy of its own. By addressing the mail according to the postal guidelines it makes the chance of the mail getting lost less likely.

Item D. Item D requires that the deputy registrar pay the replacement cost of inventory if the inventory is lost in the mail or the customer did not otherwise receive the inventory. If the deputy registrar chooses to mail out inventory, they have to take the financial responsibility for replacing the inventory if the customer does not receive the inventory. Since deputy registrars will have the option of whether they want to mail out inventory, paying the replacement cost of the inventory is a reasonable requirement. That way all customers will be treated the same regardless of whether the inventory is sent out by the deputy registrar or the central St. Paul office.

Currently, the replacement cost for a duplicate sticker is $.50 and the replacement cost for a duplicate plate is $2.50 to $9.75. If it is really true that inventory that is mailed out does not readily get lost, as the deputy registrars indicated, then the issuance of a no-fee duplicate to the customer should not be a financial burden to the deputy registrars compared to having the option of being able to mail out the inventory from their office. If deputy registrars are having to pay for alot of duplicates then maybe this is an area that should be totally handled by the registrar as previously suggested. Furthermore, deputy registrars are under no obligation to mail out inventory and can always choose to have the registrar issue the mail transaction requests.

Item E. Item E requires that the deputy registrar mail the inventory by first class United States Mail, unless a request is made by the customer for other special delivery services. The deputy registrar must incur the cost of mailing the inventory unless the customer requests a special delivery of the inventory, then the deputy registrar may allow the customer to incur the cost of those special delivery charges.

Item E is reasonable because the customer should not be expected to pay more because his or her transaction is mailed to the deputy registrar office. However, the provision also allows the customer to get faster service if they pay for that service. But if a deputy registrar chooses on its own to mail inventory by a faster more expensive method and the customer did not request such a method, then the deputy registrar will incur those additional charges on its own because they were not requested by the customer.

Subpart 10. Registration stickers unaccounted for. Subpart 10 provides that stickers assigned to an office, except for the monthly sticker, must be accounted for by issuance and money collected, by affidavit of missing initial inventory, or by submitting the defective sticker to the registrar. A sticker that is not accounted for by the deputy registrar is deemed to have been sold.

If the sticker is unaccounted for, the deputy registrar will be responsible for payment of the registrar's tax loss for each unaccounted for sticker. The amount of the registration tax that a deputy registrar must pay will be either the full, average, or minimum registration tax, or the replacement cost of the sticker.

Subpart 10 puts into rule the current practice and procedures that have been used by the registrar for dealing with unaccounted for stickers. Stickers that are unaccounted for include stickers that are lost or issued in error. An inventory of all stickers issued to a deputy registrar is taken in March, an

unaccounted for sticker can be identified at this time as well as other times audits are conducted of an office.

The registrar proposed an alternative method for dealing with lost stickers and stickers that are issued in error. Currently, deputy registrars are charged the minimum tax for a sticker that is unaccounted for. Under the proposal the deputy registrars would be charged the average value of a sticker that is unaccounted for. However, the deputy registrars would be allowed a "reasonable error rate" before the average value would be assessed. The idea behind the proposal was that deputy registrars that do a good job should not be penalized if they have a limited number of stickers that are unaccounted for.

The stickers would have been broken down into three categories: ad valorem, gross weight, and miscellaneous. The average value of the ad valorem sticker would be determined from the Fiscal Year Registration Summary Report and would be recalculated at the end of each fiscal year. The current average value of the ad valorem is $90. The average value of the gross weight stickers would be based on the Minnesota Base Rate Schedule. Miscellaneous stickers would have an average value of $10. The average value of a sticker would not be available to deputy registrars who have committed fraud or are subject to discontinuance. The deputy registrars on the advisory committee were in favor of keeping the current system of dealing with lost stickers.

Under the current system, the deputy registrar will either pay the full, average, minimum value, or the replacement cost of the sticker depending on the circumstances of the lost or missing sticker.

Item A. Under item A, a deputy registrar must pay the full registration tax for the sticker if the registrar has sufficient cause to believe that the full amount of the registration tax was paid for by the customer. Usually, in this case, the customer will have documented proof that the sticker was paid for, such as a receipt.

Item B. Under item B, the deputy registrar will have to pay the average or minimum registration tax or replacement cost of the registration sticker after consideration of a number of factors by the registrar. The factors are as follows:

(1) timely notification to the registrar and to the law enforcement agency, if applicable, regarding the unaccounted for stickers;

(2) the investigation and follow-up measures taken by the deputy registrar regarding the unaccounted for stickers;

(3) the action taken by the deputy registrar to recover the stickers and the number of stickers that were recovered;

(4) the security measures that were in place to protect the stickers;

(5) the value of the sticker;

(6) the circumstances under which the stickers became unaccounted for; and

(7) the result of an audit conducted by the registrar, if applicable.

The factors provided in item B are used to provide for an individual analysis of the circumstances that led to the missing stickers. For example, missing stickers may be the result of misconduct on the part of the deputy registrar, such as fraud, or the result of unforseeable circumstances such as a fire. A department advisory committee uses these factors to investigate reasons for the missing stickers and make a decision as to what tax should be paid based on that investigation.

Subpart 11. Other inventory or state-issued property unaccounted for. Subpart 11 provides that inventory, other than stickers and other state issued property provided to an office must be accounted for by issuance and fees collected, by affidavit of missing initial inventory, or by submitting the defective inventory or state property to the registrar.

If inventory other than stickers or other state issued property is unaccounted for, the deputy registrar will be responsible for the replacement cost of the inventory or state property. Replacement cost for this inventory is reasonable because the inventory has no additional value that can be sold for more than the replacement cost.

7406.0600 PENALTY

Repealed. This section has been deleted and has been replaced with the discontinuance and hearing provisions set forth in parts 7406.0800 through 7406.2600.

7406.0700 EXEMPTION.

This provision allows the registrar to appoint a deputy registrar for an office location upon the death, resignation, discontinuance, or retirement of an existing deputy registrar whose office does not comply with the requirements of part 7406.0300 for the establishment of an office. An amendment has been made to this section to add, "discontinuance" as another exception under which the registrar may make an appointment for a location that no longer qualifies under part 7406.0300.

Deputy registrar offices appointed under this exemption must still meet the office requirements under part 7406.0400. Part 7406.0400 is the section requiring that an office must maintain the required processing areas, inventory security, office size, and not be involved with conflicting business interests. It is reasonable to bring the new appointment into compliance with these office requirements if it is not already meeting the requirements. When a new appointment comes in this is a good time to update the office requirements. More than likely, the office will already have met these requirements. However, it is reasonable to set forth in this section that this new appointment will have to meet these requirements to clarify that they will not be exempt from the office requirements but only the location requirements under part 7406.0300.

DISCONTINUANCE OF APPOINTMENT

General Need and Reasonableness.

Under the current rules, the only method of discontinuing a deputy registrar appointment is through revocation under part 7406.0600. Part 7406.0600 provides that the registrar shall revoke the appointment of any deputy registrar who violates any requirement of Minnesota Statutes, section 168.33, or this chapter, unless the violation is corrected or discontinued or any deficiency supplied within 30 days after the registrar has given notice to the deputy registrar of the violation. Notice shall be given by certified mail.

The proposed rule sets forth a system of progressive discontinuance that bases the registrar's action on the type of violation committed instead of having revocation be the only method of enforcement. The proposed rule is necessary because the current revocation section is inadequate to handle the discontinuance matters of deputy registrars.

The current method of enforcement is inadequate, because not all violations of Minnesota Statutes, section 168.33, or of this chapter warrant the severe action of revocation. There are some violations that are less severe and require enforcement by the registrar, but not revocation of the appointment. Second, violations that warrant revocation should not be allowed to be corrected and some violations that are committed cannot be corrected as the current rule allows. Finally, the current rules do not give adequate notice and hearing procedures to deputy registrars that are subject to revocation.

The proposed rule, instead of having a single enforcement method of revocation, offers a progressive method of discontinuance. For less severe violations, a deputy registrar may receive a correction order that will allow the deputy registrar to correct the violation without any further action being taken. More serious offenses would be grounds for suspension or revocation. Violations that require immediate action will be subject to immediate suspension. In all cases of discontinuance, unlike the current rule, the proposed rules set forth in detail what notice and hearing requirements must followed by the registrar and deputy registrar during the discontinuance process. The analysis under the discontinuance rule parts further describes all of the proposed discontinuance rules in more detail.

The proposed system of progressive enforcement is reasonable because it fits within the statutory framework of Minnesota Statutes, section 168.33, subdivision 2. Under that statute, the registrar has the authority to discontinue a deputy registrar for cause as the public interest and convenience may require. The statute does not specify by which method the discontinuance shall take place. However, the method of discontinuance should be in the public interest. It is in the public interest to have levels of discontinuance to allow the registrar to take the necessary action that is appropriate to the severity of the violation committed by a deputy registrar. In that way, the registrar is able to effectively regulate the operation of the deputy registrar office that is most beneficial to the public.

For example, it is more cost effective to suspend the operation of a deputy registrar office, rather than revoking an office and making a new appointment when the violation committed was not severe. Likewise, it is beneficial to the public for the registrar to take some action versus no action at all. Under the proposed rule the registrar will be able to individually assess deputy registrar violations under the guidelines in the rules and make a determination as to which level of discontinuance action should be taken.

Therefore, the rule is reasonable because it conforms to, and is consistent with, the legislative intent of the statute. The proposed rule is consistent with and is not contrary to the provision of the statute, and does not defeat the purpose of the statute because it provides the public with the most beneficial and efficient method of enforcement of the operation of a deputy registrar office.

7406.0800 ACTIONS FOR FAILURE TO COMPLY WITH LAWS OR RULES.

This part provides that the failure of a deputy registrar or employee of a deputy registrar to comply with applicable laws or rules governing the operation of a deputy registrar office may be cause for discontinuing the deputy registrar appointment or for issuing a correction order under parts 7406.0800 to 7406.1000.

Most deputy registrars hire employees to help in the deputy registrar office. It is necessary to state how the acts of an employee will affect the status of a deputy registrar appointment. The deputy registrar is responsible for the actions of the employees it hires. A deputy registrar should not be able to disregard

the responsibility of supervising the employee it hires. It would not be reasonable for the deputy registrar to escape the consequences of a violation merely because it was committed by an employee. A deputy registrar is not able to delegate the responsibility for the operation of the office. Therefore, the deputy registrar will have to accept the consequences that may result from an act of an employee.

7406.0900 IMMEDIATE SUSPENSION OF APPOINTMENT

Subpart 1. Grounds. Subpart 1 provides that the registrar may immediately suspend a deputy registrar appointment if the registrar has sufficient cause to believe that an immediate suspension is necessary to ensure the security of the revenues of the state and the public or the operation of the deputy registrar office. In making the determination to immediately suspend a deputy registrar appointment, the registrar shall consider the factors listed in items A through C.

Immediate suspension is necessary to carry out the legislative mandate of discontinuing a deputy registrar appointment for cause. In this case, the cause for the discontinuance is an egregious violation of the law or rule that requires immediate action to protect and ensure the security of the revenues of the state and the public or the operation of the deputy registrar office.

Over the years, the registrar has seen a need for immediate suspension because of the actions of some deputy registrars in which a significant amount of revenues have been stolen by deputy registrars. For example, in one case, the registrar received a complaint from a customer about a delay in the transfer of the customer's motor vehicle transaction by the deputy registrar office. The registrar conducted a surprise audit of the office. The audit found approximately $10,000 worth of motor vehicle transactions without the money to support the documents. During the time of the investigation, it was determined that the deputy registrar was holding back documents and not reporting them to the registrar for a time period the deputy registrar felt that they would not be noticed. The deputy registrar would then deposit the money into a private bank account and use the money as her own and turn in money and paper work when she determined people would start getting suspicious about the transaction. The deputy registrar was floating the state funds in her own account for her own use. At the point of the audit, approximately $10,000 was missing from the deputy registrar office. That was a significant amount of missing state revenues that justified immediate closure of the office to prevent further damage of loss of funds.

In another case, the registrar became suspicious about the deputy registrar's business practices upon being informed that the deputy registrar was providing plates to motor vehicle dealers without first getting the registration tax. When the registrar went in to conduct the audit, the registrar discovered that the deputy registrar was illegally keeping a portion of the farm registration fees by improperly reporting the fees. The illegal activity that was discovered on that day was serious enough to close the office down immediately. The documented loss from those illegal activities totaled approximately $14,000.

These are a couple of examples in which state monies have been stolen and misappropriated by deputy registrars. This does not happen very often. But when it does happen, the state needs to act immediately to prevent further loss of funds. Even if the theft of funds takes place over a period of time, when the registrar does discover the theft, immediate action is needed to prevent further loss of funds or to prevent depletion of the funds already collected. These are the types of situations which place the state and public revenues in immediate danger. Such situations constitute cause for discontinuance, that of immediate suspension.

Immediate suspension is reasonable because the registrar has the authority under Minnesota Statutes, section 168.33, subdivision 2, to discontinue the appointment of a deputy registrar in the best interests of the public. Immediate suspension is a reasonable step in the discontinuance process. The action allows the registrar to carry out the powers of administering the operations of the deputy registrar office as required by statute by being able to take immediate action to protect the revenues of the state and the public.

The public interest in immediate suspension lies in the prompt action of the registrar when justified. However, immediate suspension, will not be taken without a through analysis of the factors listed in items A through C. Furthermore, under subpart 2, the registrar is required to conduct a prompt post-suspension hearing to give the deputy registrar the opportunity to explain his or her actions.

A brief analysis of the case law in this area indicates that the Supreme Court has recognized that there are exceptions as to when a predeprivation hearing is required, e.g. North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 320, 29 S.Ct. 101, 106, 53 Led. 195 (1908) (seizure of contaminated food). However, the Supreme Court has also stated that its "cases have consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation." National Association for the Advancement of Colored People v. Federal Power Commission, 425, U.S. 662, 669, 96 S.Ct. 1806, 1811, 48 L.Ed.2d 284 (1976). The Court explained that in order to give meaning to the words "public interest' in a particular statute, it is necessary to look at the purposes for which the statute was enacted. Id. Heritage Pub. Co. V. Fishman, 634 F. Supp. 1489, 1500 (D. Minn. 1986)

In reading Minnesota Statutes, section 168.33, it is clear that the purpose is to regulate deputy registrars in several aspects of the operation of the deputy registrar business and that the registrar does have the right to discontinue a deputy registrar appointment in the public interest. What the proposed discontinuance rule does is further define the parameters of what is in the public interest as far as the discontinuance of an appointment for cause. In rare cases public interest will require an immediate shutdown of the office. For other violations, a hearing will be held first before any discontinuance action is taken.

Other literature has further explained the rationale for the use of immediate suspension. Such justification applies to the registrar's use of such action. "The justification for summary action lies in the necessity for the government to act immediately-against an epidemic of a contagious disease, against the distribution of putrid meat or adulterated drugs, against the sale of worthless securities, against bank officers whose conduct is jeopardizing the interest of depositors- if public policy is to be enforced at all. If an administrative agency were to provide a hearing before acting in such circumstances, the attendant delay would often render any eventual action or order ineffective to protect the public interest." University of Chicago Law Review, Vol. 40, No. 1 Fall 1972, p. 1.

"In weighing the need for effective administrative action against the possibility of error in the administrative determination to act, the law has struck the balance in favor of permitting summary action in certain circumstances." Id, p. 2. The deputy registrar might be insolvent long before a prior hearing could be concluded. A prior hearing then would be of little value. "...it permits an agency to act at what may be the only point in time at which effective action can be taken....preserves the status quo." Id, p. 57

The existence of the guidelines in this part will provide the registrar with the means to analyze the factors involved, and promote consistency in the exercise of the immediate suspension and thereby reduces the likelihood of an arbitrary action by the agency. Therefore, prior to the use of immediate suspension, the registrar will analyze the factors in items A through C. It should also be noted that the immediate suspension of an office does mean that this is final determination of the status of the office. Immediate suspension ensures that the status quo will be maintained and prevents further damage from occurring. A deputy registrar will receive notice at the time of immediate suspension informing the deputy registrar of the hearing date which must be held within 20 days to discuss the allegations contained in the notice.

Item A. Under item A, the registrar must consider whether grounds exist for the revocation of an appointment. Under this factor, the registrar will consider the type of violation and the magnitude of the violation.

Item B. Under item B, the registrar must consider whether the deputy registrar's failure to comply with an applicable law or rule has placed the revenues of the state or public, or the operation of the deputy registrar office in imminent danger. This factor provides for an analysis of the seriousness of the violation to the states revenues or property.

Item C. Under item C, the registrar must consider whether the risk of harm to the revenues of the state or the operation of the deputy registrar office outweighs the harm to the deputy registrar of discontinuance of the operation of the office during the pendancy of a hearing. This factor will take into consideration, the substantiality of the agency's evidence, the availability of alternative relief, and the special characteristics of the individual involved, including his prior record of violations, his degree of culpability, and his vulnerability to successful action. The registrar, in its analysis will have to make a determination of the risk of state and public funds versus the harm to the deputy registrar of closing down the business until the decision of the hearing.

The registrar's analysis of the factors outlined in item A through C will reduce the risk of error in what may be a decision with serious consequences for the individual involved. To date, when the registrar has taken such action, the reason for immediate closure has always led to a finding of permanent closure of an office.

Subpart 2. Immediate suspension hearing. Subpart 2 provides that the deputy registrar will receive a full post-suspension hearing within 20 days after the notice of immediate suspension before a neutral body. The hearing will be held in accordance with the provisions of Chapter 14 and the rules of the Office of Administrative Hearings. Having a hearing within 20 days of the immediate suspension is prompt so that the adverse impact of the immediate suspension, if any, on the deputy registrar will be confined to the shortest period possible.

Subpart 3. Suspension period and effect. Subpart 3 provides that when a deputy receives an immediate suspension notice, the deputy registrar shall immediately cease operation of the office and surrender all inventory, fees and taxes, and other state-issued property. This is reasonable because part of reason for the immediate suspension is to protect the revenues of the state. Therefore, all fees, taxes and inventory must be surrendered to protect those revenues. In this situation, it is reasonable for the state to take immediate control of its revenues and inventory.

7406.1000 SUSPENSION OR REVOCATION OF DEPUTY REGISTRAR APPOINTMENT.

Subpart 1. Conviction in another jurisdiction. Subpart 1 provides that the term conviction includes conviction of a crime in another jurisdiction that, if committed in Minnesota, would be a violation of a Minnesota statute. This is reasonable because the deputy registrar should not be able to escape the consequences of his or her illegal actions just because they were committed in another jurisdiction. Therefore, those crimes, as well as, crimes committed in Minnesota will be considered by the registrar under this section.

Subpart 2. Grounds for suspension or revocation. Subpart 2 lists the violations which would be grounds for suspension or revocation of a deputy registrar appointment. Subpart 2 is to be read in conjunction with subpart 3, which lists the criteria for what action will be taken against the deputy registrar.

Item A. Item A lists the convictions that will be grounds for suspension or revocation. The convictions listed in this part are for felony convictions or other serious convictions that indicate that the deputy registrar cannot be trusted or relied on to comply with the duties relating to the operation of a deputy registrar office. Deputy registrars who are convicted of the offenses listed in item A have a serious disregard for the law. When a person is convicted of theft and related crimes for example, it raises questions about the deputy registrar's fitness to continue to be appointed as a deputy registrar.

Item B. Item B states that if a deputy registrar violated or failed to comply with any provision of this chapter; Minnesota Statutes, chapter 168; or an order issued by the registrar, it would be grounds for suspension or revocation. The criteria set forth in subpart 3 will be used to analyze the particular violation of statute, rule or order. It is not possible for every violation of statute or rule to be listed and a determination made as to whether each violation constitutes suspension or revocation. A serious willful violation or multiple violations will be subject to revocation, while a less serious, non-willful violation will be subject to suspension.

Items C, D, and E. Item C lists as grounds for suspension or revocation, the forging of documents or providing false or fraudulent information to the registrar or the public. Item D lists misappropriation, conversion, or illegal withholding of fees and taxes required to be deposited as grounds for revocation and suspension. Item E lists failing or refusing to provide the registrar access to office, documents, persons served, and employees as grounds for suspension or revocation. Like convictions for crimes, if these violations are committed they illustrate that the deputy registrar or employee cannot be trusted to comply with the laws required by Minnesota Statutes and these rules.

An example of misappropriation, conversion, or illegal withholding of funds is in the case where the deputy registrar misstates to the customer the amount of registration tax due. The amount due on a particular vehicle is a $10 flat fee but the deputy registrar will charge the customer the 6.5% sales tax and charge the customer $65 in fees. The deputy registrar will then pocket the $55 overage.

By committing these violations the deputy registrar has shown the state that they are not willing to abide by the laws necessary to operate a deputy registrar office in the best interest of the state and the

public whom they serve. Therefore, it is reasonable to impose a suspension or revocation, depending on the criteria as listed in subpart 3.

Item F. Under item F, an immediate suspension would be grounds for suspension or revocation of a deputy registrar appointment. As previously stated in the discussion of immediate suspension, immediate suspension is taken because of the serious nature of the action of the deputy registrar. Therefore, such a violation would also warrant a recommendation of revocation by the Administrative Law Judge after a contested case hearing.

Item G. Under item G, grounds for denial of an appointment under part 7406.0360, subpart 7, would also constitute grounds for revocation or suspension. This is reasonable because if an applicant does not qualify upon initial application for an appointment, then if they commit an act during their appointment that would have initially disqualified them, then that act would also be severe enough to revoke the deputy registrar appointment.

Subpart 3. Criteria for discontinuance action. Subpart 3 provides that in deciding what discontinuance action to take under subpart 2, the registrar shall consider the factors in items A through H. As stated in the discussion in subpart 2, it is not administratively feasible to set forth each possible violation and to determine whether that violation constitutes a revocation or suspension. Some violations are intentional, while others are not. Some violations are severe, others, less severe. Therefore, it is reasonable for the registrar to evaluate each violation and deputy registrar under the circumstances that led up to the violation.

In addition, by setting forth a standard set of criteria by which the registrar will base its decision on which action to take, the registrar is not using "unbridled discretion" without standards to guide the use of that discretion. (See Minn. Credit Unions v. Dept. of Commerce, 467 N.W.2d 42, 44-45, (Minn. App. 1991), aff'd. 486 N.W.2d 399 (Minn. 1992).

After a determination is made by the registrar as to which course of action it will take, based on its investigation of the violation, the decision to revoke or suspend will be sent out in a notice to the deputy registrar that meets the requirements in part 7406.1400. The notice will inform the deputy registrar of the allegations and of the proposed action that the registrar intends to take. A hearing date will be set forth in that notice. At the hearing, the deputy registrar will have the opportunity to present evidence in support of his or her position.

The criteria set forth in this subpart is a list of factors that the registrar has been using for such matters for a number of years. However, this is the first time that the discontinuance procedures have been set forth in the rules in such detail. Information regarding these factors is gathered during the investigative process.

Item A. Under item A, the registrar will consider the laws or rules that have been violated. The department committee will pinpoint the particular reference to the rule or statute that has been reported as a violation.

Item B. Under item B, the registrar will consider the nature and severity of the violation and conduct of the deputy registrar. The registrar will consider whether this is a minor violation, such as

missing information on the title application, or a severe violation, such as failing to make a deposit for a day. The severity of the violation will have a bearing on the outcome of the registrar's decision as to the type of administrative action to take.

Item C. Under item C, the registrar will consider the relevant facts, conditions, and circumstances concerning the violation and the operation of the office. Under this factor, one of the things that the registrar will try to determine will be is whether the deputy registrar's act was intentional or non-intentional. Was the violation an oversight on the part of the deputy registrar or did the deputy registrar deliberately violate the law? The registrar will list all such relevant factors surrounding this violation.

Item D. Under item D, the registrar will examine the aggravating or mitigating factors related to the violation. The registrar will examine such facts such as whether this was a new employee still in training that committed the violation or was this an employee who knew that the action taken was a violation. Was the violation connected to the implementation of a new law or program or was this a long standing, well known provision that was violated? These are the types of questions that will be addressed under this item.

Item E. Under item E, the registrar will consider the frequency of the violator's failure to comply with laws or rules related to a deputy registrar. For example, is this the first time a deputy registrar has been late in depositing the fees and taxes, or is a deputy registrar consistently late day after day, month after month in making late deposits? Or it may be that one violation is so severe that once is enough to revoke the appointment of the deputy registrar.

Item F. Under item F, the registrar will consider the likelihood that the violations will occur again. This provision follows item E. Was this violation an inadvertent mistake that will probably not be made by the deputy registrar again? Was this violation made during the implementation of a new program and once learned, the violations will cease? These are the types of questions that will be addressed in this analysis.

Item G. Under item G, the degree of the violators cooperation during the course of the investigation surrounding the violation will be considered by the registrar. Is the deputy registrar willing to talk with the registrar and give the registrar facts surrounding the violation? Is paperwork provided when asked for? Or is the deputy registrar reluctant to provide the deputy registrar any information. It may be that the deputy registrar does not want to provide any information until the hearing stage. The deputy registrar has the option of limiting the information until the hearing. However, the registrar will then have to make its initial decision on the discontinuance action based on the information available to it at the time of the investigation.

Item H. Under item H, the harm to the public because of the alleged violation will be considered. What problems did the deputy registrar's violation cause to the public? Was the public directly or indirectly affected?

Subpart 4. Suspension and revocation hearing. Subpart 4 refers the reader to the hearing procedures that will apply in the case of a suspension or revocation.

Subpart 5. Effect of revocation. Subpart 5 states that an owner, officer, director, or five percent shareholder of a revoked office may not be an owner, officer, director, or five percent shareholder of

another deputy registrar office during the period of revocation. This is necessary to prevent the person responsible for the violation that cause the revocation to operate another deputy registrar office.

Subpart 5 also requires a deputy registrar to immediately surrender all inventory, fees, and taxes and other state issued property upon revocation. Since a revoked deputy registrar is no longer entitled to the use of the inventory, it is reasonable to require that these item be surrendered.

Subpart 6. Effect of suspension. When a deputy registrar is suspended, the deputy registrar shall surrender all fees and taxes. It is necessary to collect all fees and taxes up to the point of suspension so the registrar can get an accurate accounting of the office prior to the suspension and so that all fees and taxes are deposited in accordance with the statute prior to the suspension.

Subpart 6 also states that the registrar shall consider the factors in subpart 3, when determining the length of suspension and any terms and conditions of the suspension. These factors, as previously discussed, will allow the registrar to base the suspension on the nature and severity of the violation, among other factors. This is reasonable, because multiple or more severe violations may warrant a longer suspension than less severe violations. The suspension period should be appropriate to the type of violation that has been committed and to ensure the future compliance with the statutes and rules.

Subpart 7. Issuance of correction order. Subpart 7 provides that the registrar may issue a correction order and not a suspension after consideration of the factors listed in subpart 3. The use of the factors in deciding whether a correction order instead of a suspension should be issued, serve as criteria to guide the registrar's discretion to prevent the registrar's abuse of that discretion. Minn. Credit Unions v. Dept. of Commerce, 467 N.W.2d 42, 45 (Minn. App. 1991).

The rules and statutes consist of many requirements. Not all violations of these requirements warrant a suspension, yet it would be extremely difficult to categorize each violation as to its severity level to determine what level of enforcement should be used. Subpart 3 allows for a case-by-case analysis and investigation, based not only on the violation itself, but on the nature of the circumstances surrounding that violation. As has been stated, it is not the purpose of the registrar to suspend deputy registrars for every violation. However, in certain circumstances, the registrar does need that enforcement mechanism. The factors are reasonable in that they allow the registrar to conduct an investigation of the violation and to find out what circumstances led to the violation.

Item A. Notice and content of correction order. Item A sets forth the contents of the correction order. The correction order must state, the specific law or rule violated; the conditions that constitute a violation of law or rule; the requirements to correct the violation; the consequences of the correction order; and the time allowed to correct the violation, if applicable; and how to obtain a review of the correction order.

It is necessary to provide adequate notice to the deputy registrar as to the reasons for the correction order so that the deputy registrar is clear on the meaning and consequences of the correction order. Information as to the review process is necessary so that the deputy registrar always has adequate notice of the right to challenge the order of the registrar.

Item B. Reconsideration of correction order. Item B provides that if the deputy registrar believes that the contents of the registrar's correction order are in error, the deputy registrar may ask the registrar to reconsider the part(s) of the correction order that are alleged to be in error. The request for reconsideration must be in writing and received by the registrar within ten days of the date of the correction order.

A deputy registrar who submits a written request for a reconsideration must, specify the parts of the correction order that are alleged to be in error; explain why the parts of the order are in error; and include documentation to support the allegation of error, if applicable. It is necessary to include a provision that allows for the review of the correction order. If the deputy registrar is able to prove that the order was issued in error the order should be withdrawn.

Under item B, the registrar shall respond to requests for reconsideration within 15 days after receipt of the request. Fifteen days is a reasonable amount of time to review the facts presented to the registrar and to respond to the deputy registrar with a written decision.

Item C. Failure to comply. Item C states that a deputy registrar who fails to comply with a correction order may be subject to suspension or revocation of their appointment under part 7406.1000. Under part 7406.1000, subpart 1, item B, it provides that failure to comply with an order issued by the registrar may be grounds for revocation or suspension. Therefore, it is reasonable to reference this consequence in item C.

PROCEDURES FOR SUSPENSION AND REVOCATION HEARINGS

The hearing procedures for suspension and revocation are taken from the procedures used for contested cases conducted by the Office of Administrative Hearings under Minnesota Statutes, chapter 14 and Minnesota Rules, part 1400. The Office of Administrative Hearings (OAH) rules governing contested case hearings are contained in parts 1400.5100 to 1400.8400.

7406.1100 Definitions.

Subpart 1. Scope. This provision states that the terms used in parts 7406.1100 to 7406.2600 have the meanings given them in this part. This is reasonable because this informs the public that the defined terms are applicable only to the procedures dealing with suspension and revocation hearings of deputy registrars.

Subpart 2. Party. Subpart 2 states that "party" means each person named as a party by the registrar in the notice of and order for hearing. The term "party" includes the registrar and the registrar's employees and agents, except for the hearing examiner. It is necessary and reasonable to define the parameters of the term. The definition follows OAH rule 1400.5100, subpart 7, with a slight modification to comply with deputy registrar hearing procedures.

Subpart 3. Person. The definition of person in subpart 3 follows the definition of person in the OAH rule 1400.5100, subpart 8.

Subpart 4. Service or serve. The definition of service or serve under subpart 4, for the most part, mirrors the definition in OAH rule 1400.5100. Some language, that was not applicable to the deputy registrar hearings has been omitted.

7406.1150 Time. This part describes how time will be computed under the deputy registrar hearing provisions. The part also sets forth that extra time is required when service is made by mail. These provisions follow the time provisions in the OAH rules 1400.6100.

7406.1200 Hearing; Service of Notice. To commence a hearing, the registrar must serve a notice of and order for hearing on the deputy registrar. The time frame for the service of the notice is set forth in this part. The service of the notice ensures that the deputy registrar has a meaningful opportunity to know the issues and respond to the charges. The 30 day time frame is reasonable because it gives the deputy registrar sufficient time to prepare for the hearing. This time frame is the same as found in the OAH rules, part 1400.5600, subpart 3. The 20 day time period for immediate suspension is reasonable because a shorter period is appropriate given the seriousness of the matter.

7406.1300 Hearing before hearing examiner Internal hearings shall be conducted by a hearing examiner appointed by the registrar. This is reasonable because it still allows for neutrality because the registrar will not appoint a staff person who is involved in the case. Another safeguard procedure is that the deputy registrar has a right to appeal the decision of the hearing examiner under part 7406.2600 and have the case heard by an administrative law judge in the Office of Administrative Hearings.

7406.1400 Notice of and order for hearing; content. This part sets out the requirements for the contents of the notice of hearing. This part mirrors part 1400.5600, subpart 2, under the OAH rules. Changes in wording were made to conform to deputy registrar hearings.

Item A. Item A requires that the notice contain a caption which includes the proposed action and the name of the deputy registrar. Putting this information in the caption sets forth who the parties are in the matter.

Item B. Item B requires that the notice contain the time, date and place for the hearing. This item is similar to item A of the OAH requirement for the notice, except that we do not refer to a prehearing conference or to the judge setting the time, date, and place for the hearing.

Item C. Item C requires the name, address and telephone number of the hearing examiner. This item is similar to item B of the OAH requirements for the notice.

Item D. Item D requires that the notice contain a citation to the registrar's rule and/or statutory authority to hold the hearing and take the action proposed. This item is similar to item C of the OAH requirements for the notice.

Item E. Item E requires that the notice contain a statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated or which control the outcome of the case. This item is similar to item D of the OAH requirements for the notice.

Item F. Item F requires a statement that the registrar's proposed action may affect other deputy registrar appointments in which the deputy registrar or an owner, officer, director, or five percent shareholder of the deputy registrar is involved. This item was not taken from the OAH requirements of the notice. This item was included because a revocation may have a serious effect on other deputy registrar appointments held by the persons involved with this deputy registrar.

Item G. Item G requires notification of the right of the parties to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. This item is similar to item E of the OAH requirements for the notice.

Item H. Item H requires a citation to the procedural rules of the registrar in parts 7406.1100 to 7406.2600 and notification of how copies can be obtained.

Item I. Item I requires a brief description of the procedure to be followed at the hearing. This item is similar to item G of the OAH requirements for the notice.

Item J. Item J requires a statement advising the parties to bring to the hearing all documents, records, and witnesses needed to support their position. This item is similar to item H of the OAH requirements of the notice.

Item K. Item K requires a statement advising the parties of the name of the registrar's staff member or attorney general's staff to contact to discuss informal disposition. This item is similar to item J of the OAH requirements for the notice.

Item L. Item L requires a statement advising the parties that a notice of appearance must be filed with the hearing examiner within 20 days of the date of service of the notice of and order for hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of and order for hearing. This item is similar to item K of the OAH requirements of the requirements for notice.

Item M. Item M requires a statement advising existing parties that failure to appear at the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved. This item is similar to item L of the OAH requirement for the notice.

Item N. Item N requires a statement advising the parties that if not public data is admitted into evidence it may become public unless a party objects and asks for relief under Minnesota Statutes, section 14.60, subdivision 2. This item is similar to item M of the OAH requirements for the notice.

Item O. Item O states that in the case of immediate suspension the notice must state that the parties must discontinue operation of the deputy registrar office immediately and surrender all inventory, fees and taxes and other state issued property. This is an additional notice requirement that is specific to the operation of a deputy registrar office and was added to inform the deputy registrar that this would be an immediate result of the order being served.

7406.1500 Notice of appearance. This requirement is similar to the OAH requirement part 1400.5700. A notice of appearance informs both sides who will be making an appearance on behalf of the party and more importantly, if they plan to appear at the hearing. The part lists exceptions as to when the document is not required.

7406.1600 Right to counsel. This part permits parties to be represented at the hearing by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. This similar to part 1400.5800 of the OAH rules.

7406.1700 Consent order, settlement, or stipulation. This part states that informal disposition may be made of a hearing or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. This is similar to part 1400.5900 of the OAH rules.

7406.1800 Continuances. This part set forth the requirements for requesting and granting a continuance of the hearing date. This part is similar to part 1400.7500 of the OAH rules.

7406.1900 Default. This part states what a default is and the consequences of a default. This part is similar to OAH rules, part 1400.6000.

7406.2000 Rights and responsibilities of parties. This part states that the parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues and to cross-examine witnesses. In addition, the party shall have all evidence that the party wishes to present at the hearing, both oral written, available on the date for hearing. This part is similar to part 1400.7100 of the OAH rules.

7406.2100 Witnesses and testimony. This part provides information regarding being a witness at the hearing or presenting a witnesses testimony at the hearing. This is similar to part 1400.7200 of the OAH rules.

7406.2200 Burden of proof. This part provides that the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence. This is the same as part 1400.7300, subpart 5 of the OAH rules.

7406.2300 Hearing record. This part states that the hearing examiner will maintain the official record until the hearing examiner's report is issued. The part also states what the record consists of. This part is similar to part 1400.7400, subpart 1, of the OAH rules.

7406.2400 Hearing examiner's conduct. This part sets forth the conduct that hearing examiners must maintain during the hearing. This is similar to part 1400.7700 of the OAH rules.

7406.2500 Hearing examiner's decision. This part states that no factual information or evidence which is not a part of the record shall be considered by the hearing examiner in the determination of a deputy registrar hearing. Once written, a copy of the report shall be served upon each party. This part is similar to part 1400.8100 of the OAH rules.

7406.2600 **Appeal of hearing examiner's decision.** This provision allows for a person to appeal the hearing examiner's decision by requesting a contested case hearing. The contested case hearing will be conducted in accordance with the procedures set forth in chapter and the rules of the Office of Administrative Hearings. If after the agency hearing the party feels that they want their case heard by an administrative law judge, this provision provides that opportunity.

The procedures for requesting a contested case require that a written request be made to the registrar within 15 days of the date of the hearing examiner's report. Fifteen days is reasonable, because it gives the party a chance to review the hearing examiner's report and make a decision about whether to proceed to a contested case hearing. Fifteen days is also reasonable for the registrar, because, the registrar has an interest in resolving the matter in an expedient manner. It is in the best interests of the registrar to have the matter decided and settled as quickly as possible, especially since the hearing examiner's order will be stayed pending a final determination of the contested case hearing.

If a contested case is requested, the registrar will send out a hearing notice to all interested parties, advising them of the time, place, and procedures of the contested case hearing as required by chapter 14 and the rules of the Office of Administrative Hearings.

CONCLUSION

Based on the foregoing, the department's proposed rule amendments are both necessary and reasonable.

4 December 1995
Date

Michael S. Jordan, Commissioner
Department of Public Safety.