

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of Proposed  
Permanent Rules Relating  
to Deputy Registrars,  
Minn. Rules Chapter 7406

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

Administrative Law Judge Beverly Jones Heydinger conducted a hearing on these rules beginning at 9 a.m. on April 21, 2004, at North Central Life Tower Conference Center Training Room, 445 Minnesota Street, Saint Paul. The hearing continued until everyone present had an opportunity to state his or her views on the proposed rules.

The hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act.<sup>[1]</sup> The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency made after the proposed rules were initially published do not result in them being substantially different from what the agency originally proposed. The rulemaking process also includes a hearing, when a sufficient number of persons request one. The hearing is intended to allow the agency and the administrative law judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

Larry Ollila, Title and Registration Manager; Donna Berger, Audits and Deputy Liaison; Jane Ann Nelson, Rules Coordinator; and Vicki Albu, Administration Supervisor, Driver and Vehicle Services Division, Minnesota Department of Public Safety ("Department" or "Agency"), 445 Minnesota Street, St. Paul, 55101, appeared for the Department. Approximately 20 members of the public attended the hearing and signed the hearing register.

After the hearing ended, the record remained open for five working days, until April 28, 2004, to allow interested persons and the Agency an opportunity to submit written comments.<sup>[2]</sup> During this initial comment period the Administrative Law Judge received 8 written comments. Following the initial comment period, the record remained open for an additional five business days to allow interested persons and the Agency the opportunity to file a written response to the comments submitted. The deadline for responses to the comments was May 5, 2004. The Department submitted the only rebuttal comments. The hearing record closed for all purposes on May 5, 2004.

**NOTICE**

The Department must make this Report available for review for at least five working days before the Agency takes any further action to adopt final rules or to modify or withdraw the proposed rules. During that time, this Report must be made available to interested persons upon request.

If the Department makes any changes to the rules as proposed, whether or not those changes have been approved or recommended by this Administrative Law Judge, it must resubmit the rules to the Chief Administrative Law Judge for a review of those changes.

After adopting the final version of the rules, the Agency should inform this Office. This Office will request certified copies of the rules from the Revisor and will file the rules with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Procedural Requirements

1. On October 29, 2001, the Department published a Request for Comments on Planned Amendments to Permanent Rules Relating to Deputy Registrars, Minnesota Rules, Chapter 7406 at 26 *State Register* 585.<sup>[3]</sup> The Department mailed the Request for Comments to: driver's license agents, deputy registrars, state examination and application site staff, and customer service staff<sup>[4]</sup>; those persons and associations on the Agency's rulemaking mailing list<sup>[5]</sup>; the mailing list titled Minnesota Trucking Association Roster<sup>[6]</sup> (motor carriers who use deputy registrars); certain legislators<sup>[7]</sup>; county sheriffs<sup>[8]</sup>; and the Minnesota Chiefs of Police Association.<sup>[9]</sup>

2. On July 1, 2002, the Department published a second Request for Comments to inform the public of additional Possible Amendments to Permanent Rules Relating to Deputy Registrars, Minnesota Rules, Chapter 7406, at 27 *State Register* 34.<sup>[10]</sup> The second Request for Comments was mailed to all deputy registrars.<sup>[11]</sup>

3. On February 23, 2004, the proposed Dual Notice was approved by Administrative Law Judge Beverly Jones Heydinger.<sup>[12]</sup>

4. On March 8, 2004, the Department published its Dual Notice of Intent to Adopt Permanent Rules Relating to Deputy Registrars at 28 *State Register* 1074.<sup>[13]</sup> On March 4, 2004, the Department mailed the Notice and a copy of the proposed rules to all persons and associations who had registered their names with the agency for the purpose of receiving such notice.<sup>[14]</sup> In addition, on March 4-8, 2004, the Department sent the Dual Notice to: all driver's license agents, deputy registrars and driver's license examination sites<sup>[15]</sup>; the Minnesota Chiefs of Police Association<sup>[16]</sup>; and County Sheriffs.<sup>[17]</sup>

5. On the day of the hearing, the Agency placed the following documents into the record:

- a. Exhibits 1-88 as described in Exhibit 28a;
- b. Department Response to Comment Regarding 7406.0300 Proposing Deputy Registrar Office Location;<sup>[18]</sup>

During the post-hearing comment and rebuttal period, the following documents were submitted and marked as exhibits for the record:

- c. Post-hearing Comment Letter from Donny Vosen, Deputy Registrar #7;<sup>[19]</sup>

- d. Post-hearing Comment Letter from Jeff Orth, President, Minnesota Deputy Registrars' Association;<sup>[20]</sup>
- e. Post-hearing Comment Letter from Gary Poser, Anoka County Elections & License Bureau Supervisor;<sup>[21]</sup>
- f. Post-hearing Comment Letter from Mark Lundgren, Carver County Auditor;<sup>[22]</sup>
- g. Post-hearing Comment Letter from Jessica L. Adamietz, Deputy Registrar #110;<sup>[23]</sup>
- h. Post-hearing Comment Letter from Luci R. Botzek, Minnesota Association of County Officers;<sup>[24]</sup>
- i. Post-hearing Comment Letter from Mark Oswald, Hennepin County Service Center Division Manager;<sup>[25]</sup>
- j. Post-hearing Comments from Department (dated April 28, 2004);<sup>[26]</sup>
- k. Rebuttal Comments from Department (dated May 5, 2004).<sup>[27]</sup>

6. The Administrative Law Judge finds that the Department has met all of the procedural requirements under the applicable statutes and rules.

### **Background and Nature of the Proposed Rules**

7. Deputy registrars are agents of the Department who title and register vehicles and collect the motor vehicle sales and registration tax on behalf of the commissioner of public safety. The state's 171 deputy registrars conduct vehicle transactions for the Department in city, county and private offices across the state.

8. The deputy registrar rules provide standards for the appointment of a deputy registrar, establishment and ongoing operation of the deputy registrar office, reporting and depositing requirements, and enforcement mechanisms for violations.

9. The proposed amendments concern changes in three main areas: appointments, bonding, and filing and documentation of transactions. The Department seeks to amend the appointment provisions to clarify that the commissioner has discretion in appointing deputy registrars, and to streamline the appointment process. The proposed change to the bond rule bases private deputy registrar bonds on receipts taken in by the office over a two-day period. Amendments to the filing and documentation rules clarify current Department practice and provide the Department with authority to conduct regular audits.

10. The proposed amendments are the product of discussions in an advisory committee composed of deputy registrars from different areas of the state, both members and non-members of the Minnesota Deputy Registrar Association, county officials, and Department staff.

### **Statutory Authority**

11. Minnesota Statutes, section 168.33, subdivision 1, provides that the commission of public safety "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 imposed by this chapter." The powers granted to the commissioner include the appointment and discontinuance for cause of deputy registrars, regulation of the location of registration and motor vehicle tax collection agents, and overseeing the record keeping and reporting of all reports and receipts required to be filed by the deputy registrars.

12. Minnesota Statutes, section 168.33, subdivision 9 gives the commissioner the authority to “adopt rules for administering and enforcing this section.”

13. Minnesota Statutes, section 299A.01, subdivision 7 provides that the rules adopted under the authority of Minnesota Statutes 1996, section 299A.01, subdivision 6, paragraph (a) remain in effect on and after July 1, 1997 until further amended or repealed. The current rules cite to section 299A.01 as the statutory authority for the rules.

14. The Administrative Law Judge finds that the Department has the statutory authority to adopt the proposed rules.

### **Rulemaking Legal Standards**

15. Under Minnesota law,<sup>[28]</sup> one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may rely on interpretation of a statute or stated policy preferences.<sup>[29]</sup>

16. The Department prepared a Statement of Need and Reasonableness (SONAR) in support of its proposed rules. At the hearing, the Department primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by Agency staff at the public hearing, by proposed changes presented at the hearing, and by the Department’s written post-hearing comments and submissions.

17. A rule is reasonable if it has a rational basis and is not arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.<sup>[30]</sup> Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.<sup>[31]</sup> A rule is generally found to be reasonable if it is rationally related to the end sought by the governing statute.<sup>[32]</sup>

18. The Minnesota Supreme Court has further defined an agency’s burden in adopting rules by requiring it to “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”<sup>[33]</sup> An agency is entitled to make choices between possible approaches so long as the choice made is rational. Generally, it is not the proper role of the administrative law judge to determine which policy alternative presents the “best” approach because this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.<sup>[34]</sup>

19. In addition to need and reasonableness, the administrative law judge must assess whether: the rule adoption procedure was complied with; the rule grants undue discretion; an agency has statutory authority to adopt the rule; the rule is unconstitutional or illegal; the rule constitutes an undue delegation of authority to another entity; or the proposed language is not a rule.<sup>[35]</sup>

20. Minnesota law allows an agency to withdraw a proposed rule, or a portion of a rule, at any time prior to filing it with the Secretary of State,<sup>[36]</sup> “unless the withdrawal of a rule or a portion of the rule makes the remaining rules substantially different.”<sup>[37]</sup>

21. The standards to determine whether changes create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if “the differences are within the scope of the matter announced . . . in the notice of hearing and are in character with the issues raised in that notice,” the differences “are a logical outgrowth of the contents of the . . . notice of hearing, and the comments submitted in response to the notice,” and the notice of hearing “provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.”

22. In determining whether modifications are substantially different, the administrative law judge is to consider whether “persons who will be affected by the rule should have understood that the rulemaking proceeding . . . could affect their interests,” whether the “subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the . . . notice of hearing,” and whether “the effects of the rule differ from the effects of the proposed rule contained in the . . . notice of hearing.”

### **Additional Notice Requirements**

23. Minnesota Statutes section 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

24. Those people identified by the Department as primarily affected by the proposed rules are deputy registrars; the Minnesota Deputy Registrar Association; and city and county governments that serve as the office for deputy registrars.<sup>[38]</sup> The Department notified the people in these groups, and other interested parties, to inform them of the rulemaking and seek their input.<sup>[39]</sup>

25. The Administrative Law Judge finds that the Department fulfilled its additional notice requirement.

### **Statutory Requirements for the SONAR**

#### ***Cost and Alternative Assessments in the SONAR:***

26. Minnesota Statutes, Section 14.131 requires an agency adopting rules to include in its SONAR:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses or individuals;
- (6) the probable costs or consequences of not adopting the proposed rule, including costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses or individuals; and
- (7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

27. The Department provided the following list of affected and interested parties: motor vehicle deputy registrars; Minnesota Deputy Registrar Association (MDRA); city and county governments that serve as the office for deputy registrars; League of Minnesota Cities; Association of Minnesota Counties; law enforcement; customers and the general public.<sup>[40]</sup> The greatest cost of the rules will be borne by private deputy registrars who may need to increase the amount of their bond. The Department states that existing deputy registrars and customers will benefit from the proposed appointment amendments and from the changes relating to transaction reporting and the deposit of taxes.

28. The Department may incur new costs as a result of the proposed biennial audit authority, but expects that, over time, the audit authority will result in a cost savings due to better recordkeeping and training. There is no expected impact on other state agencies or the State's general fund.

29. The Department is not aware of less costly or less intrusive methods for achieving the purpose of these rules.

30. The Department considered several alternative methods for achieving the same goals as the proposed amendments, in the following areas: Appointments – The Department considered outlining a set of requirements for deputy registrar appointments that, if met, would automatically result in an appointment. The Department believes that this option would result in greater costs to the Department without an increase in benefits to customers or an increase in revenue to the state; Bond – The Department did not find an alternative that insured against the state's financial risk as well as the proposed bond requirement; and Audits – The Department considered requiring all deputy registrars to pay for an independent audit, but the Department decided that it could provide an adequate auditing process at a reasonable cost.

31. The cost of compliance with the rules will be borne by those private deputy registrars who must increase the size of their bond to adequately reflect the financial risk assumed by the Department. Other costs, relating to changes in filing and documentation requirements, will be minimal.

32. The Department identifies the costs of not adopting the rule as less efficient appointments and location of deputy registrar offices and more financial risk to the state. In addition, without the new rules, the Department would have to maintain two systems for

processing transactions from deputy registrars, resulting in greater cost to the state and longer registration and title turnaround times for customers.<sup>[41]</sup>

33. There is no conflict between the proposed rule and federal regulations.<sup>[42]</sup>

#### *Performance-Based Regulation:*

34. Minnesota Statutes, Section 14.131, requires that an agency include in its SONAR a description of how it “considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.” Section 14.002 states, in relevant part, that “whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.”

35. The Department believes that the proposed rules are performance-based because they provide deputy registrars with the flexibility to implement the business practices that work best for them and their customers, while ensuring the safety of state funds.<sup>[43]</sup>

36. The Administrative Law Judge concludes that the Department has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

#### **Scope of this Report**

37. This Report is limited to discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined, and it will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that each and every suggestion, including those made prior to the hearing, has been carefully read and considered. Moreover, because some sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary.

38. The Administrative Law Judge finds that the Department has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of all rule provisions not specifically discussed in this Report. The changes proposed by the Department after the publication of the rules in the State Register do not result in rules that are substantially different from the proposed rules. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

#### **Analysis of Proposed Rules by Subpart**

39. Of the 54 valid requests for hearing received by the Department, the great majority submitted identical comments.<sup>[44]</sup> With the exception of two additional topics that are discussed later in the analysis, these comments concern the portions of the proposed rule that were the most controversial. Therefore, the analysis begins with those comments and the Department’s response to each of them. The Department was very responsive to the commenters by making several of the changes as requested. Those issues on which the Department and the commenters are now in agreement are not discussed below.

7406.0360, Subpart 6(C)

40. The proposed amendment to this subpart is: “C. A change may be without prior approval of the commissioner is cause for discontinuance of an appointment if this change violates this chapter or Minnesota Statutes, section 168.33.”

41. Commenters stated that the new language should continue to incorporate the stricken term “may be” rather than the proposed “is” cause for discontinuance. They prefer to retain the existing permissive language. As an extreme example, should a deputy fail to notify that his/her office is moving a computer or fax, the proposed language would require discontinuance of the deputy’s appointment.

42. The Department explained in the SONAR that the proposed change clarifies that if a deputy registrar fails to maintain the office and follow the procedures required by the statutes and rules, the appointment is subject to discontinuance. The level of discipline will depend on the facts.

43. This change was discussed in the rule advisory committee. Changing the rule to inform regulated parties that discipline is a certain result of not following statutes and rules is more reasonable than indicating that there “may be” some consequences. The resulting change is needed and reasonable and does not make the rule substantially different than originally proposed.

7406.0450, Subpart 3a, item D

44. The proposed subpart reads: “D. Any funds collected on a working day in excess of the total motor vehicle taxes and fees listed on the report, minus filing fees and imprest cash, must be deposited as motor vehicle registration tax.”

45. Commenters requested that the subpart be amended to read “Any motor vehicle funds” to recognize the fact that deputy registrars also collect funds for other state agencies, and that some excess funds might not be attributable to motor vehicle taxes or fees.

46. The Department responded that the existing rules<sup>[45]</sup> limit the co-mingling of funds collected by a deputy registrar,<sup>[46]</sup> and that if there are funds in the co-mingled cash receptacle in excess of the amount that should be there, the Department has no way of knowing whether a customer was overcharged or a transaction was not reported. The Department argues that its ability to closely monitor and control opportunities for fraud and misrepresentation concerning funds owed to the state is jeopardized if deputy registrars do not report all excess funds.<sup>[47]</sup> If a deputy registrar documents that a refund of a reported payment of excess funds should be made, the proposed rules require the commissioner to refund or credit the office for the reported excess.<sup>[48]</sup>

47. The Department’s stance that excess monies collected and presumably owing to the state should be reported and deposited in some fashion is supported by the public interest. With the assurance to the regulated parties that any excess funds will be refunded upon documented need, the Department’s position that the only monies a deputy registrar may retain are the deputy’s service filing fees equal to the number and type of transactions completed is necessary and reasonable.

7406.0450, Subparts 3 and 5

48. The Department proposes to amend Subpart 3 to provide: “Before the end of each working day, each deputy registrar shall deposit an amount equal to the total of all motor vehicle taxes and fees collected the previous working day . . .” Subpart 5 provides for the warning notice and late payment charges to which deputy registrars are subject if they fail to comply with Subpart 3.

49. The commenters argue that because there are several problems with using the Internet for reporting that are outside the control of the deputy registrars, “it would be appropriate to incorporate language that would exempt a deputy when such problems occur and are duly communicated to the department.” The concern is that because of some factor outside the deputy registrar’s control, the appointment could be in jeopardy or the deputy registrar could be subjected to financial penalty.

50. The Department declines to incorporate the language suggested because the existing rules already allow for a review of penalties, and state that a penalty shall not be affirmed unless “the late deposit was the result of foreseeable circumstances within the control of the deputy registrar.”

51. The existing language is a reasonable response to the concerns of the commenters that deputy registrars could be penalized for a late deposit that occurred due to circumstances that were out of their control.

#### 7406.0450, Subparts 5 and 6

52. The Department originally proposed to amend subpart 5 by adding the following sentence concerning the warning notice: “The notice must be in either written or electronic format.” This subpart was later amended to require that the warning notice be sent by certified mail, and the sentence quoted above was deleted. However, subpart 6 still makes reference to “the electronic notice in subpart 5.” This reference should be changed to reflect the amendments to subpart 5. Adopting such a change is needed and reasonable and would not result in rules that are substantially different than originally proposed.

#### 7406.0300 Proposing Deputy Registrar Office Location. 7406.0310 Office Location Considerations.

53. The rules concerning location of deputy registrar offices are proposed for amendment in several significant ways.<sup>[49]</sup> The changes were strongly opposed by Mark Lundgren, auditor and deputy registrar for Carver County, in comments submitted before<sup>[50]</sup> and after<sup>[51]</sup> the hearing, and in testimony at the hearing. The Administrative Law Judge appreciates the ongoing dialogue that took place between Mr. Lundgren, other commenters and the Department on this issue.<sup>[52]</sup>

54. Under proposed rule part 7406.0310, the Department may reject a new office location even if it meets the location and transaction count requirements in proposed part 7406.0300, after consideration of the factors in proposed part 7406.0310. This is a change from the existing rules under which a proposed office location was automatically approved if it met the location and transaction requirements contained in 7406.0300. The Department found the existing requirements resulted in automatic approval of offices that were not necessarily in the best interest of the state, existing deputy registrar offices, and the public.

55. Whenever a new deputy registrar location is added to those already existing, there is a cost to the state to supply, audit, monitor, support and train the additional deputy registrar. These costs are not balanced by an increase in revenue because the number of transactions statewide remains the same, regardless of the number of offices that are open. For these reasons, the Department argues it is in the best interest of the Department and the public to limit, and carefully examine any, increase in the number of offices.

56. If the commissioner disapproves a proposed office location for one of the factors contained in proposed part 7406.0310, subp. 1, the individual proposing the location may appeal the disapproval to the Office of Administrative Hearings for a contested case hearing under Minn. Stat. Chap. 14.

57. Mr. Lundgren strongly objected to the changes in the location and transactional limits for new offices contained in proposed part 7406.0300. He particularly cited to the following changes: 1. Subp. 1a, item A, which the Department proposed to change as follows: "The proposed office location must not be located within a five-mile ten-mile radius of an existing office; 2. Subp. 1a, item D: The commissioner shall not consider a proposed office location ~~may not be established~~ if the use of a percentage of transactions processed by an existing office to establish a proposed office would reduce the number of transactions to less than: (1) ~~35,000~~ 70,000 for an existing office located in an area under subpart 1; and 3. F. The commissioner shall not consider a proposed office location ~~may not be considered~~ if the proposed office location is within a ten-mile ~~20-mile~~ radius of the an existing office that was established within the last two years."

58. Mr. Lundgren objected to all of the changes on the basis that they "will severely limit growing metropolitan counties such as Carver, virtually making it impossible to expand our facilities. . . . We have one full service License Center run by Carver County in Chaska. We are servicing close to 200 people on a daily basis and at times have people standing outside the doors. We cannot expand our facility, as to do so would be fiscally irresponsible."<sup>[53]</sup> Anoka County,<sup>[54]</sup> and the Minnesota Association of County Officers,<sup>[55]</sup> cited similar concerns with the proposed language.

59. The Department responded to Mr. Lundgren's concerns about expansion of the existing facility in Chaska to meet customer needs by stating that existing offices are not limited under the current rules to expanding their square footage at their present location.<sup>[56]</sup> Minn. R. part 7406.0330 allows an existing office to move to a different location.<sup>[57]</sup> In addition, part 7406.0330, subp. 2 allows a deputy registrar to apply for a variance if such a move would not meet the requirements of part 7406.0300.

60. Mr. Lundgren also expressed the concern that the "proposed language change is slanted toward the large existing metropolitan counties,"<sup>[58]</sup> citing to an example of an office that Hennepin County had recently obtained permission to open in Eden Prairie.<sup>[59]</sup> The Department responded to Mr. Lundgren's concerns about the unfairness of the proposed changes to growing counties in its post-hearing comments.<sup>[60]</sup> The Department explained that both the existing and the proposed rules correlate the concentration of deputy registrar offices with the current or projected population density of a county. Thus, if the population in Carver County continues to grow, expansion at the existing site or move to a new location in Chanhassen would be possible options to meet the increased demand.

61. In its post-hearing comments, the Minnesota Deputy Registrars' Association<sup>[61]</sup> and the Service Center Division Manager for Hennepin County<sup>[62]</sup> supported the Department's

proposed language concerning office location. MDRA stated that it had reached its position “after conducting internal discussions specific to this matter with both public and private deputy office input.”<sup>[63]</sup>

62. The Department has argued throughout this rulemaking process that it has an obligation to ensure that the state’s motor vehicle title and registration service is available throughout the state in a manner that is convenient to customers. The Department’s proposed rule changes are a reasonable way to meet that obligation.

63. The Department’s proposed changes to the rules concerning the location of deputy registrar offices are needed and reasonable.

7406.0370 Certificate of Appointment of Deputy Registrar.  
7406.0380 Bond.

64. Throughout the rules, deputy registrars are referred to using their full title, with the exception of at least two places where the rules simply refer to a “deputy.” The Department may want to make a technical correction to the rules to replace “deputy” with “deputy registrar” wherever the word “deputy” alone appears. This change is needed and reasonable to maintain consistency throughout the rules and would not result in rules that are substantially different from those originally proposed.

7406.0450 Reporting and Depositing Practices.

65. In her post-hearing comments, Jessica Adamietz stated that she believed that the Department had not shown the need for the proposed changes in Subpart 5a concerning late payment charges. She pointed out that a Department exhibit stated that “The Department issues only a few late payment charges annually.”<sup>[64]</sup> She concluded from that statement that there was no need for the proposed changes.

66. In the SONAR, the Department justifies these changes by pointing out that the effect of the current rules is that deputy registrars may develop a pattern of late deposits every other month, yet never be subject to a late payment charge.<sup>[65]</sup> The Department states that it is necessary to extend the period when a late payment charge may be imposed so deputy registrars are not allowed to develop a pattern of late deposits which results in a loss of interest income to the state. Late payment charges encourage compliance with the reporting and depositing requirements to which deputy registrars are subject.

67. The Department has shown the need for extending the period in which a deputy registrar may be subject to a late payment charge. It is reasonable to expect deputy registrars to comply with the depositing requirements; if they don’t they receive a warning and for subsequent violations within a particular period following, they are subject to late payment charges. There is no reason why the state should absorb lost revenue due to late deposits. It is needed and reasonable to ensure that revenue is timely deposited with the state.

7406.2700 Indemnification

68. The indemnification portion of the rules is new and was originally proposed as follows: “The deputy registrar and any agency or employee of the deputy registrar shall hold the commissioner harmless from any and all claims or causes of action against the deputy registrar

or any employee or agent of the registrar, including all attorney fees incurred, arising from performance or actions in accordance with this chapter, or Minnesota Statutes, section 168.33.”

69. The commenters pointed out that it was not reasonable for deputy registrars to be liable if the deputy registrar was acting upon orders from the Department, and suggested the inclusion of the following language at the end of the proposed section in order to deal with such a situation: “unless the performance or action is directly related to a documented directive from the commissioner or an employee or agent of the registrar, excluding an appointed deputy registrar.”

70. The Department responded that the term “directive” was vague and could be subject to many different interpretations, and did not accept the proposed change submitted by commenters prior to the hearing.<sup>[66]</sup>

71. At the hearing, the lobbyist for the Deputy Registrars’ Association acknowledged the need for the indemnity provision but stated that the provision contained no consideration for the situation in which a deputy registrar was acting on specific advice from the Department. In written comments following the hearing, two commenters asked the Department to revise the provision to address situations in which the deputy registrar had contacted the Department for advice in completing a transaction and had followed the advice given.<sup>[67]</sup>

72. The Department responded that most policies and procedures used by deputy registrars are found in law or rule. However, the Department acknowledged that there are situations in which the Department issues advice to a deputy registrar. Therefore, the Department proposed to modify the provision as follows: “actions in accordance with this chapter, Minnesota Statutes, or written instructions from the commissioner.<sup>[68]</sup> The Administrative Law Judge finds that the Department’s proposed change is a reasonable response to the concerns raised by the commenters.

73. The Department states the indemnification provision is necessary “to make it clear that the deputy registrar is responsible for the actions of the deputy’s office. It is necessary for the deputy registrar to take financial responsibility for losses to the public or state resulting from improper action of the deputy and the deputy’s employees.”<sup>[69]</sup> The Department does not indicate any intent to be held harmless when a deputy registrar acts in accordance with applicable laws, rules and instructions from the commissioner.

74. The way the indemnification provision is currently worded is not a reasonable means for achieving the end sought by the Department. As currently written, the indemnification provision would hold the Department harmless only when the deputy registrar and any agency or employee of the deputy registrar, acted in accordance with laws, rules and written commissioner instructions. The Department would not be held harmless from any actions that were not in accordance with laws, rules and written instructions from the commissioner. That result is the opposite of the Department’s stated intent and is therefore not needed or reasonable.

75. In order to correct this defect, the Department should amend the indemnification provision to read: “The deputy registrar and any agency or employee of the deputy registrar shall hold the commissioner harmless from any and all claims or causes of action against the deputy registrar or any employee or agent of the registrar, including all attorney fees incurred, arising from performance or actions not in accordance with this chapter, Minnesota Statutes, or

written instructions from the commissioner.” This change is needed and reasonable and does not make the rules substantially different than those originally proposed.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Department of Public Safety gave proper notice in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).
4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4; and 14.50 (iii), except as noted at Finding of Fact No. 74.
5. The amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. §§ 14.05, subd. 2 and 14.15, subd. 3.
6. The Administrative Law Judge has suggested action to correct the defect cited in Conclusion No. 4 as noted in Finding of Fact No. 74.
7. Due to Conclusion No. 4, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3 or 4.
8. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.
9. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the proposed rules be adopted, except where specifically otherwise noted above.

Dated this 3rd day of June 2004.

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

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Reported: Tape Recorded, Three Tapes,  
No Transcript Prepared.

### NOTICE

The Department must wait at least five working days before taking any final action on the rules. During that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minnesota Rules, part 1400.2100, and Minnesota Statutes, section 14.15, subdivisions 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Commissioner of actions that will correct the defects. If the Department elects to make any changes to the rule, it must resubmit the rule to the Chief Administrative Law Judge for a review of those changes before adopting the rule.

However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Department may either follow the Chief Administrative Law Judge's suggested actions to cure the defects or, if the Department does not elect to follow the suggested actions, it must submit the proposed rule to the Legislative Coordinating Commission, and the House of Representatives and Senate Policy Committees with primary jurisdiction over state governmental operations for the advice of the Commission and Committees.

When the rule is filed with the Secretary of State, the Department must give notice of the day of filing to all persons who requested that they be informed of the filing.

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<sup>[1]</sup> Minn. Stat. §§ 14.131 through 14.20.

<sup>[2]</sup> Minn. Stat. § 14.15, subd. 1.

<sup>[3]</sup> Ex. 3.

<sup>[4]</sup> Ex. 4.

<sup>[5]</sup> Exs. 2 and 9.

<sup>[6]</sup> Ex. 9.

<sup>[7]</sup> Ex. 8.

<sup>[8]</sup> Ex. 9.

<sup>[9]</sup> Ex. 5.

<sup>[10]</sup> Ex. 12

<sup>[11]</sup> Ex. 11.

<sup>[12]</sup> Ex. 16.

<sup>[13]</sup> Ex. 20.

<sup>[14]</sup> Exs. 21 and 26.

<sup>[15]</sup> Exs. 22 and 26.

<sup>[16]</sup> Exs. 23 and 26.

- [17] Exs. 24 and 26.
- [18] Ex. 89.
- [19] Ex. 90.
- [20] Ex. 91.
- [21] Ex. 92.
- [22] Ex. 93.
- [23] Ex. 94.
- [24] Ex. 95.
- [25] Ex. 96.
- [26] Ex. 97.
- [27] Ex. 98.
- [28] Minn. Stat. § 14.14, subd. 2; Minn. R. part 1400.2100.
- [29] *Mammenga v. Comm’r of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).
- [30] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).
- [31] *Greenhill v. Bailey*, 519 F.2d 5, 19 (8<sup>th</sup> Cir. 1975).
- [32] *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem’l Home v. Minnesota Dep’t of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).
- [33] *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.
- [34] *Federal Sec. Adm’r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).
- [35] Minn. R. part 1400.2100.
- [36] Minn. Stat. § 14.05, subd. 3.
- [37] Minn. R. part 1400.2240, subp. 8.
- [38] Ex. 13 at 5.
- [39] Exs. 2-11, 13 and 22-26.
- [40] Ex. 13 at 5.
- [41] Ex. 13 at 7.
- [42] *Id.*
- [43] Ex. 13 at 8.
- [44] See generally exs. 31-84.
- [45] See Minn. R. 7406.0500, Subp. 6.
- [46] See Ex. 27, at 8.
- [47] Ex. 27 at 8.
- [48] Proposed Rule part 7406.0450, Subp. 3b.
- [49] See Ex. 13 at 9-14.
- [50] Ex. 79.
- [51] Ex. 93.
- [52] For Department responses to concerns raised about this issue, see, e.g., exs. 27, 89, 97, and 98.
- [53] Ex. 49.
- [54] Ex. 92.
- [55] Ex. 95.
- [56] Ex. 89.
- [57] *Id.*
- [58] Ex. 79.
- [59] The proposed Eden Prairie location was approved under the existing rules, and the Department explained the reasoning for the approval in Ex. 89.
- [60] Ex. 97.
- [61] Ex. 91.
- [62] Ex. 96.
- [63] Ex. 91, at 2.
- [64] Ex. 29.
- [65] Ex. 13 at 30.
- [66] Instead the Department proposed another change to the section that was not responsive to the commenters’ concerns: it proposed to delete the reference to “section 168.33” of state law.
- [67] Exs. 90 and 91.
- [68] Ex. 97 at 1.
- [69] Ex. 13 at 37.