

CHAPTER 7406
DEPARTMENT OF PUBLIC SAFETY
MOTOR VEHICLE DEPUTY REGISTRARS

<p>7406.0100 DEFINITIONS. 7406.0200 PURPOSE AND SCOPE. 7406.0300 PROPOSING DEPUTY REGISTRAR OFFICE LOCATION. 7406.0310 OFFICE LOCATION CONSIDERATIONS. 7406.0330 MOVE OF EXISTING OFFICE LOCATION. 7406.0350 COUNTY OFFICIAL AS DEPUTY REGISTRAR; PROCEDURE. 7406.0355 CITY OFFICIAL AS DEPUTY REGISTRAR. 7406.0360 DEPUTY REGISTRAR APPOINTMENT BY COMMISSIONER. 7406.0370 CERTIFICATE OF APPOINTMENT OF DEPUTY REGISTRAR. 7406.0380 BOND. 7406.0400 DEPUTY REGISTRAR OFFICE REQUIREMENTS. 7406.0450 REPORTING AND DEPOSITING PRACTICES. 7406.0475 AUDIT. 7406.0500 GENERAL OPERATING RULES FOR DEPUTY REGISTRARS. 7406.0700 EXCEPTION TO VOLUME AND DISTANCE REQUIREMENTS. DISCONTINUANCE OF APPOINTMENT 7406.0800 ACTIONS FOR FAILURE TO COMPLY WITH LAWS OR RULES. 7406.0900 IMMEDIATE SUSPENSION OF APPOINTMENT.</p>	<p>7406.1000 DEPUTY APPOINTMENT SUSPENSION, REVOCATION. PROCEDURES FOR SUSPENSION AND REVOCATION HEARINGS 7406.1100 DEFINITIONS. 7406.1150 TIME. 7406.1200 HEARING; SERVICE OF NOTICE. 7406.1300 HEARINGS BEFORE HEARING EXAMINER. 7406.1400 NOTICE OF AND ORDER FOR HEARING; CONTENT. 7406.1500 NOTICE OF APPEARANCE. 7406.1600 RIGHT TO COUNSEL. 7406.1700 CONSENT ORDER, SETTLEMENT, OR STIPULATION. 7406.1800 CONTINUANCES. 7406.1900 DEFAULT. 7406.2000 RIGHTS AND RESPONSIBILITIES OF PARTIES. 7406.2100 WITNESSES AND TESTIMONY. 7406.2200 BURDEN OF PROOF. 7406.2300 HEARING RECORD. 7406.2400 HEARING EXAMINER'S CONDUCT. 7406.2500 HEARING EXAMINER'S DECISION. 7406.2600 APPEAL OF HEARING EXAMINER'S DECISION. 7406.2700 INDEMNIFICATION.</p>
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7406.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. [Repealed, 20 SR 2784]

Subp. 3. [Repealed, 20 SR 2784]

Subp. 4. [Repealed, 20 SR 2784]

Subp. 5. [Renumbered, subp. 18]

Subp. 6. [Renumbered, subp. 19]

Subp. 7. **Approved office location.** "Approved office location" means a location in a municipality that has been approved by the commissioner as meeting the requirements of part 7406.0300 but for which a deputy registrar appointment has not been made.

Subp. 8. **Certificate of appointment.** "Certificate of appointment" means the documents appointing the deputy registrar.

Subp. 8a. **City.** "City" means a statutory or home rule charter city.

Subp. 9. **Collected or collection.** "Collected" or "collection" means the:

A. receipt of the payment of motor vehicle registration fees and taxes paid by the customer;

B. receipt by the deputy registrar from the customer of the completed motor vehicle and other application documents for the transaction; and

C. issuance of the required inventory for the transaction to the customer by the deputy registrar.

Subp. 9a. **Commissioner.** "Commissioner" means the commissioner of public safety.

Subp. 10. **Corporation.** "Corporation" means a corporation governed by Minnesota Statutes, chapter 302A.

Subp. 11. **County auditor.** “County auditor” means 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, section 375A.04, the principal county officer or county office that performs the majority of the functions formerly performed by the position of county auditor.

Subp. 12. **Conviction of crime or crimes.** “Conviction of crime” or “conviction of crimes” means convictions of felonies, gross misdemeanors, and misdemeanors reasonably related to the function of a deputy registrar.

Subp. 13. **Deputy registrar.** “Deputy registrar” means an individual, government clerk or official, or corporation appointed by the commissioner.

Subp. 14. **Discontinuance or discontinued.** “Discontinuance” or “discontinued” means the immediate suspension, suspension, or revocation of a deputy registrar appointment.

Subp. 15. **Existing office.** “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 commissioner, as specified in the certificate of appointment.

Subp. 16. **Incomplete motor vehicle transaction.** “Incomplete motor vehicle transaction” means a motor vehicle transaction that has not been collected by the deputy registrar.

Subp. 17. **Inventory.** “Inventory” means license plates, temporary registration permits, month sticker, and motor vehicle registration validation and weight stickers, including, but not limited to: passenger class validation sticker, gross vehicle weight validation sticker, fee validation sticker, and weight designation sticker.

Subp. 18. **Metropolitan county.** “Metropolitan county” has the meaning given it in Minnesota Statutes, section 473.121, subdivision 4.

Subp. 19. **Municipality.** “Municipality” includes a statutory city, home rule charter city, town, or township.

Subp. 20. [Repealed, 29 SR 97]

Subp. 21. **Office.** “Office” means an existing office unless otherwise specified.

Subp. 22. **Person.** “Person” means an individual, corporation, or governmental organization.

Subp. 23. **Proposed office location.** “Proposed office location” means a location that has been submitted to the commissioner for consideration as a deputy registrar office under parts 7406.0300 and 7406.0310, or a move under part 7406.0330.

Subp. 24. **Qualified newspaper.** “Qualified newspaper” means a newspaper that meets the requirements of Minnesota Statutes, chapter 331A.

Subp. 25. **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 following sources:

- A. written information from an identified person;
- B. facts or statements by the applicant or deputy registrar;
- C. court documents, state records, and police records; or
- D. facts of which the commissioner or the commissioner’s employees have personal knowledge.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *13 SR 1733; 20 SR 2784; 29 SR 97*

7406.0200 PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of this chapter is to carry out the mandate of the legislature as set forth in Minnesota Statutes, section 168.33 with respect to the appointment and regulation of motor vehicle deputy registrars.

Subp. 2. **Scope.** The scope of this chapter is intended to be confined within the framework of and to be consistent with Minnesota Statutes, chapters 168 and 168A.

Statutory Authority: *MS s 14.06; 168.33*

7406.0300 PROPOSING DEPUTY REGISTRAR OFFICE LOCATION.

Subpart 1. **Metropolitan county.** The conditions listed in this subpart must be met before a proposed deputy registrar office location may be considered in a metropolitan county.

A. The proposed office location must not be located within a ten-mile radius of an existing office.

B. The estimated number of transactions that a proposed office processes annually must be at least 35,000. The commissioner shall estimate the number of transactions as 30 percent of the transactions processed within the preceding calendar year by existing offices located within a radius of the proposed office location of over ten miles and less than 19 miles.

C. The commissioner shall not consider the proposed office location if the use of the percentage of transactions processed by an existing office to establish a proposed office would reduce the number of transactions to less than:

- (1) 70,000 for an existing office located in a metropolitan county;
- (2) 40,000 for an existing office located in an area under subpart 1a; or
- (3) 4,000 for an existing office located in an area under subpart 2.

D. If a percentage of transactions processed by an existing office was used to establish a new office, that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

E. The commissioner shall not consider a proposed office location if the proposed office location is within a 20-mile radius of an existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

Subp. 1a. **Municipalities with over 50,000 population.** The conditions listed in this subpart must be met before the commissioner considers a proposed office location in a municipality with a population exceeding 50,000, not including municipalities in a metropolitan county.

A. The proposed office location must not be located within a ten-mile radius of an existing office.

B. A maximum of two offices may exist in any municipality with a population exceeding 50,000.

C. The estimated number of transactions that a proposed office location processes annually must be at least 40,000. The commissioner shall estimate the number of transactions as the largest number computed in subitem (1), (2), or (3):

- (1) 30 percent of the transactions processed within the preceding calendar year by existing offices located within a radius of the proposed office location of over five miles but less than 6-1/2 miles;
- (2) 20 percent of the transactions processed within the preceding calendar year by existing offices located within a radius of the proposed office location of at least 6-1/2 miles but less than eight miles; or
- (3) ten percent of the transactions processed within the preceding calendar year by existing offices located within a radius of the proposed office location of at least eight miles but less than 9-1/2 miles.

D. The commissioner shall not consider a proposed office location 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) 70,000 for an existing office located in an area under subpart 1;

(2) 40,000 for an existing office located in an area under this subpart; or

(3) 4,000 for an existing office located in an area under subpart 2.

E. If a percentage of transactions processed by an existing office was used to establish a new office, that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

F. The commissioner shall not consider a proposed office location if the proposed office location is within a 20-mile radius of an existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

Subp. 2. **Other areas.** In all other municipalities not included in subpart 1 or 1a, the conditions listed in items A to E must be met before a proposed office location is considered.

A. The proposed office location must not be located within a 15-mile radius of an existing office, except that:

(1) in municipalities having a population of 25,000 to 50,000, a maximum of two offices may exist, and the proposed office must not be located within a three-mile radius of an existing office in that municipality; and

(2) the proposed office location must not be located in a municipality of less than 25,000 population if there is an existing office in that municipality.

B. The estimated number of transactions a proposed office location processes annually must be at least 4,000. The number of transactions must be estimated as follows:

(1) 20 percent of the transactions processed within the preceding year by existing offices located within a 20-mile radius of the proposed office location; or

(2) if there is no existing office located within a 20-mile radius of the proposed office location, 110 percent of the population of the municipalities that are closer to the proposed office location than to other existing offices.

C. The commissioner shall not consider a proposed office location if the use of the percentage of transactions processed by an existing office, to establish a proposed office, would reduce the number of transactions to less than:

(1) 70,000 for an existing office located in an area under subpart 1;

(2) 40,000 for an existing office located in an area under subpart 1a; or

(3) 4,000 for an existing office located in an area under this subpart.

D. If a percentage of transactions processed by an existing office was used to establish a new office, that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

E. The commissioner shall not consider a proposed office location if the proposed office location is within a 30-mile radius of an existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *13 SR 1733; 20 SR 2784; 29 SR 97*

7406.0310 OFFICE LOCATION CONSIDERATIONS.

Subpart 1. **Factors considered.** Before appointing a deputy registrar, the commissioner must approve a proposed location for a deputy registrar office. In addition to the information and conditions specified in part 7406.0300, the commissioner shall consider the factors described in this part when considering a proposed office location:

A. the accessibility of the office location to the public;

B. the cost to the state to audit, monitor, and train the deputy registrar and staff at the office; and

C. whether the office location will best serve the public convenience.

Subp. 2. **Disapproval of proposed office location.** If a request for an office location is not approved, the commissioner shall notify the individual proposing the office location in writing and provide a statement of the reason for the disapproval. The statement must notify the individual that, within 30 days from the day the notice was mailed, the individual may appeal the disapproval to the Office of Administrative Hearings for a contested case hearing under Minnesota Statutes, chapter 14, if a factor in subpart 1 was cited for disapproval and disapproval was not due to a failure to meet the distance or transaction requirements for office location.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *29 SR 97*

7406.0330 MOVE OF EXISTING OFFICE LOCATION.

Subpart 1. **In general.** A deputy registrar appointment is for the operation of an existing office in a specific location approved by the commissioner and specified in the certificate of appointment. A move of an existing office must be considered under parts 7406.0300 and 7406.0310, be within the same county, and be approved by the commissioner before the move may occur.

Subp. 2. **Variance.** A deputy registrar may apply to the commissioner for a variance from the requirements of subpart 1, except that no existing office is allowed to move to a different county. A deputy registrar may apply for a variance by submitting a written request, on a form prescribed by the commissioner, to the commissioner. The commissioner shall consider the following factors when reviewing the deputy registrar's request for a variance:

A. each rule part from which the waiver is requested and why the proposed office location does not meet requirements of the rule part;

B. the reasons for the request to move from the existing office location;

C. the distance of the proposed office location from the deputy registrar's existing office;

D. whether the proposed office location would service the same community or neighborhood and is in close proximity to the original location;

E. whether the proposed office location is in another county;

F. comments, opposition, and support from other existing offices of the proposed office location;

G. building considerations of the proposed office location, including, but not limited to:

(1) parking space;

(2) compliance with part 7406.0400; and

(3) whether the existing office is a publicly or privately operated office;

H. destruction or other loss of the existing office building, including loss of building lease;

I. the number of previous moves of the existing office and the reasons for the moves;

J. whether the proposed move is a result of or in connection with any misfeasance or malfeasance on the part of the deputy registrar; and

K. other information requested by the registrar or supplied by the deputy registrar.

Subp. 3. **Commissioner's decision.** The commissioner shall review the deputy registrar's request for a variance and grant or deny it within 60 days after its receipt or within 60 days after the date of the commissioner's request for additional information, whichever is later. The commissioner shall give the deputy registrar written justification for a decision to deny the variance. Failure to submit the required information under

this subpart, within 30 days of the commissioner's request for information, is cause to deny a deputy registrar's request for a variance.

Subp. 4. **Right to review of commissioner's decision.** A deputy registrar may contest the denial of a variance of the commissioner by requesting a hearing. The deputy registrar shall submit, within 15 days of the receipt of the commissioner's decision, a request for a hearing. The request for a hearing must set forth in detail the reasons why the deputy registrar contends the decision of the commissioner should be reversed. The hearing must follow the hearing procedures in parts 7406.1100 to 7406.2500.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.0350 COUNTY OFFICIAL AS DEPUTY REGISTRAR; PROCEDURE.

Subpart 1. **In general.** When a proposed office location is approved by the commissioner, the commissioner shall begin the process of appointing a deputy registrar for the approved office location. The commissioner shall refer the request for an appointment to the county auditor in the same county as the approved office location.

Subp. 2. **County action.**

A. The county auditor, with the approval of the county board, may designate a clerk or equivalent officer within the county to be appointed by the commissioner as a deputy registrar for the approved office location.

B. If the county auditor does not accept the appointment, the county board may designate the director of the county licensing bureau established under Minnesota Statutes, section 373.33, as the deputy registrar or, if the licensing bureau director is already a deputy registrar, make the licensing bureau director responsible for the administration of the new office location.

C. Regardless of whether the county auditor or licensing bureau director has been previously appointed a deputy registrar, the county board may decline to designate a deputy registrar for the approved office location.

Subp. 3. **Notice to commissioner required.** The county auditor shall notify the commissioner, in writing, of the option chosen under subpart 2 regarding the designation of a deputy registrar for the approved office location. The notice of the county board's decision must be received by the commissioner within 60 days of the referral to the county auditor by the commissioner.

Subp. 4. **Failure to notify commissioner; consequences.** If the county auditor fails to notify the commissioner within 60 days, the commissioner shall implement the appointment of a deputy registrar for the approved office location under parts 7406.0355 and 7406.0360.

Subp. 5. [Repealed, 29 SR 97]

Subp. 6. **Change in county auditor appointment.** A county auditor appointed as a deputy registrar shall notify the commissioner, in writing, within ten days of vacating the county auditor office. If the county auditor position is vacated upon the death of a county auditor, a county official authorized by the county board must notify the commissioner within ten days of that vacancy.

Subp. 7. **Transfer of county appointments.**

A. The commissioner shall transfer a deputy registrar appointment of a county official to the successor county official if the position of the county official is taken or assumed by another individual and the county board verifies to the commissioner that the proposed successor deputy registrar meets the qualifications for a deputy registrar as specified in this chapter and Minnesota Statutes, section 168.33.

B. A successor deputy registrar must not be appointed without certification of the appointment by the commissioner.

C. A deputy registrar appointment in a county is transferred to the commissioner if:

(1) the county official's appointment as a deputy registrar in that county is discontinued by the commissioner under parts 7406.0800 to 7406.1000; or

(2) the county board notifies the commissioner that a successor official will not be designated upon the retirement, resignation, death, or discontinuance of the county official designated as the deputy registrar.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.0355 CITY OFFICIAL AS DEPUTY REGISTRAR.

Subpart 1. **In general.** If the county board declines to designate a deputy registrar for appointment to administer the approved office location under part 7405.0350, subpart 2, or the county auditor fails to provide timely notice to the commissioner under part 7406.0350, subpart 3, the commissioner shall extend the next consideration for appointment of a deputy registrar at an approved office location to the city where the approved office location is located.

Subp. 2. **City designation.** If the commissioner offers a deputy registrar appointment for an approved office location to a city, the city's governing authority shall, within 60 days of the date of the offer:

A. designate a clerk or official of the city to be appointed by the commissioner and verify to the commissioner that the individual meets the requirements for a deputy registrar in this chapter and Minnesota Statutes, section 168.33; or

B. decline the offer and notify the commissioner.

Subp. 3. **Transfer of city appointment.** The commissioner shall transfer the appointment of a city clerk or city official as a deputy registrar to another clerk or official of the city if the city's governing authority notifies the commissioner that the position has been assumed by another individual and verifies to the commissioner that the proposed successor deputy registrar meets the qualifications for a deputy registrar as specified in this chapter and Minnesota Statutes, section 168.33.

A. If the appointment of the city clerk or city official had been previously made by the county auditor, the commissioner shall assume the responsibility for the appointment.

B. A successor deputy registrar must not be appointed without certification from the commissioner.

C. A deputy registrar appointment for a city reverts to the commissioner if:

(1) the governing authority of the city decides to discontinue or relinquish the appointment; or

(2) the commissioner discontinues the appointment.

Subp. 4. **Failure to notify commissioner.** If the city's governing authority declines the appointment or fails to notify the commissioner within 60 days, the commissioner shall implement the appointment of a deputy registrar for the approved location under part 7406.0360.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *29 SR 97*

7406.0360 DEPUTY REGISTRAR APPOINTMENT BY COMMISSIONER.

Subpart 1. **In general.** A deputy registrar appointment can only be made for an approved office location that qualifies under part 7406.0300.

A. Only the commissioner has the authority to make a deputy registrar appointment.

B. The commissioner shall appoint a deputy registrar for a county or city when the government entity accepts an offer for appointment of a deputy registrar and

verifies to the commissioner that the individual to be appointed meets the qualifications for a deputy registrar specified in this chapter and Minnesota Statutes, section 168.33.

C. When the county board and the city both decline to have a deputy registrar appointed, and the commissioner believes the appointment is in the public interest, the commissioner shall proceed to appoint a deputy registrar at an approved office location as specified in this part.

Subp. 2. Publication of vacancy. When (1) an office location is approved by the commissioner, (2) the county board and city both decline the appointment of a clerk or official as a deputy registrar, and (3) the commissioner still approves the office location and wants to appoint a deputy registrar, then the commissioner, as the appointing authority, shall publish notice of the deputy registrar vacancy for the approved office location.

A. The notice must be published for two successive weeks in a qualified newspaper in the county where the approved office is located.

B. The notice must be published within 30 days after both the county and city decline the appointment of a deputy registrar.

C. The notice must contain at least the following information:

- (1) the geographic location of the approved office location;
- (2) information on how to obtain an application for the appointment; and
- (3) the deadline for submitting the application to the commissioner.

Subp. 3. Restriction on processing proposed office locations. Once a request for approval of a proposed office location has been submitted to the commissioner for consideration, no other requests for approval of a proposed office location may be made for that proposed office location or a location within a 15-mile radius of that proposed office location until:

A. the commissioner either approves the proposed office location or all appeals associated with a disapproval have been resolved; and

B. the appointment process for the approved office location under this chapter is completed.

Subp. 4. Application for appointment. An application for a deputy registrar appointment must be submitted to the commissioner on a form provided or approved by the commissioner and must contain the following information:

A. the full name, address, states of residency for the last five years, date of birth, and telephone number of the applicant, who must be age 18 or older, and each person named on the application;

B. whether the applicant is an individual, public entity, or a corporation and, if a corporation:

- (1) a listing of each director, officer, and five percent shareholder;
- (2) the nature of the corporate business operations for the past five years;
- (3) a listing of all trade or business names used by the corporation; and
- (4) a copy of the Articles of Incorporation filed with the Secretary of

State;

C. whether a person named on the application has or had any other license with a federal, state, or municipal government agency, the current status of that license, and an explanation of any cancellation, revocation, suspension, or other disciplinary proceeding in connection with the license;

D. whether a 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;

E. the name, address, date of birth, and telephone number of the person who will be responsible for the day-to-day operation of the proposed office location, if known;

F. the address of the proposed office location;

G. a floor plan of the proposed office, including the area and dimensions of the space allocated for the processing area, public service area, and storage area;

H. information regarding work experience and training as specified on the application;

I. a history of deputy registrar appointments of each person, public entity, and corporation named on the application, including each prior deputy registrar appointment applied for or granted and the dates of the application or appointment, and, if applicable, the date and reasons why a deputy registrar appointment application was denied or an appointment was suspended, revoked, or canceled;

J. a certified copy of the criminal history of each person named on the application and, if the person is a nonresident or has resided in Minnesota for less than five years, a certified copy of a criminal records check of the national criminal records repository including the criminal justice data communications network; and

K. the signature of each person named on the application, verifying that the information on the application is true. The signatures must be notarized.

Subp. 5. Criminal history check. The commissioner may conduct a criminal history check at any time while a person is serving as a deputy registrar.

Subp. 6. Change in deputy registrar conditions. A deputy registrar shall report changes or anticipated changes of the information in subpart 4 to the commissioner.

A. The changes must be reported in a format prescribed by the commissioner, within ten days of the date the change is to occur or within ten days of the date the deputy registrar learns that the changes will occur, whichever occurs first.

B. Changes are subject to approval by the commissioner.

C. A change without prior approval of the commissioner is cause for discontinuance of an appointment if the change violates this chapter or Minnesota Statutes, section 168.33.

Subp. 7. Reasons to deny deputy registrar appointment. The registrar shall deny a deputy registrar application or appointment for any of the reasons listed in items A to H:

A. The application or an item filed with the application does not meet the requirements of subpart 4.

B. A person named on the application was or is an owner, partner, officer, director, or five-percent shareholder of an office whose deputy registrar appointment is currently discontinued or who is involved in an investigation or proceeding that could result in discontinuance of an appointment.

C. A person named on the application has been convicted of a felony.

D. A person named on the application has been convicted of any crime of the following types:

- (1) affecting a public officer or employee;
- (2) of theft or a related crime;
- (3) of forgery or a related crime; or
- (4) that directly relates to the position of a deputy registrar.

Convictions include convictions of a crime in another jurisdiction that, if committed in Minnesota, would be a violation of a Minnesota statute.

E. The applicant's proposed office location does not meet the requirements under part 7406.0300 or 7406.0400.

F. The commissioner of revenue notifies the commissioner, or the commissioner has sufficient cause to believe, that a person named on the application owes the state delinquent taxes, penalties, or interest.

G. A 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.

H. An application for appointment is filed that is incomplete or that contains a statement that is false, misleading, fraudulent, or otherwise constitutes a misrepresentation.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.0370 CERTIFICATE OF APPOINTMENT OF DEPUTY REGISTRAR.

Subpart 1. **In general.** An appointment must be based upon information contained in the application, interviews, an inspection of the proposed office location for compliance with this chapter, and other relevant information or documentation.

Subp. 2. **Certificate of appointment.** In connection with the appointment as a deputy registrar, the individual, public official, or corporate officer shall execute a certificate of appointment with the commissioner.

A. The certificate must specify the individual, public official, or corporate officer appointed as deputy registrar, the location of the approved office, and other information relating to the responsibility of the deputy registrar appointment.

B. The certificate of appointment must be signed by the appropriate person as follows:

(1) when an individual is appointed, by the individual appointed;

(2) when a government entity designates a public official, by the public official designated by the government entity; and

(3) when a corporation is appointed, by an officer of the corporation.

C. When the designation of a deputy registrar is transferred by a county or city to another officer or clerk, a new certificate of appointment must be completed by the commissioner.

D. The commissioner shall withdraw an offer of appointment if the appointed deputy registrar fails to provide an operational office that meets the requirements of this chapter within 12 months of the date of initial appointment by the commissioner.

Subp. 3. **County appointment of private party.**

A. If a county auditor has appointed, previous to the adoption of this subpart, a deputy registrar who is a private party, the county auditor shall maintain responsibility for the operation and administration of that deputy registrar.

B. If a deputy appointed by a county auditor dies or discontinues service, or if the county auditor or board discontinues the appointment, the appointment of the deputy registrar reverts to the commissioner.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.0380 BOND.

If a deputy registrar appointed under this chapter is not an official or clerk of a county or city, the deputy registrar must provide a continuous surety bond to the state to cover the motor vehicle taxes and fees collected on behalf of the commissioner.

A. The bond must be conditioned upon the faithful discharge of duties as a deputy registrar.

B. If a deputy registrar is also a driver's license agent, a separate bond must be maintained by the deputy registrar in addition to the bond required to be held to cover the state taxes and fees collected as a driver's license agent.

C. If the deputy registrar is also an agent for the Minnesota Department of Natural Resources, the deputy registrar's bond with the commissioner must specify that it only covers motor vehicle transactions under Minnesota Statutes, chapters 168, 168A, 168C, and 297B.

D. Beginning July 1, 2004, the bond for all motor vehicle transactions of the Department of Public Safety:

MINNESOTA RULES 2005

121

MOTOR VEHICLE DEPUTY REGISTRARS 7406.0400

(1) for an initial deputy registrar appointment must be either \$10,000 or the projected amount of motor vehicle taxes and fees estimated to be collected in a two-day period based on the transaction estimates under part 7406.0300, whichever amount is greater; or

(2) for an existing office must be either \$10,000 or an amount sufficient to cover two days of average daily receipts of motor vehicle taxes and fees collected during the previous state fiscal year, whichever amount is greater.

E. The bond must be rounded up to the nearest \$5,000 increment.

F. For an initial appointment, the bond must be adjusted after the first 24 months of office operation and must be based on the two-day average amount of motor vehicle taxes and fees collected during the previous year of operation.

G. All bonds must be adjusted every five years, starting with the date of initial issuance for an existing office, or starting with the date after the 24th month adjustment for a new office. The five-year adjustment must reflect the two-day average daily amount of motor vehicle taxes and fees during the previous two calendar years.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *29 SR 97*

7406.0400 DEPUTY REGISTRAR OFFICE REQUIREMENTS.

Subpart 1. **In general.** Any proposed, approved, or existing office location must comply with subparts 2 to 7. Existing offices that are not in compliance with subparts 4 and 7 on July 1, 1996, may be granted a variance by the commissioner under subpart 1a.

Subp. 1a. **Variance.** An existing deputy registrar may apply to the commissioner for a variance from complying with subparts 4 and 7 if compliance would be a substantial hardship for the deputy registrar. A deputy registrar may apply for a variance by submitting a written request, on a form prescribed by the commissioner, to the commissioner within six months of July 1, 1996. The commissioner shall consider the following factors when reviewing the deputy registrar's request for a variance:

A. the subpart from which the variance is requested and why the office does not meet the requirements of the subpart;

B. the options available to the deputy registrar to bring the office into compliance with the subparts;

C. the financial cost for meeting the options listed in item B, estimated with reasonable efforts; and

D. other information requested by the commissioner or supplied by the deputy registrar.

A variance granted under this subpart expires upon the death or retirement of an individual appointed as a deputy registrar, the dissolution of a corporate deputy registrar, or the revocation or resignation of any deputy registrar appointment.

If the deputy registrar office moves, any variances granted with respect to the office space requirements of subparts 4 and 7 expire.

The commissioner's decision and the right to review of the commissioner's decision must follow the procedures in part 7406.0330, subparts 3 and 4.

Subp. 2. **Processing areas for complete and incomplete motor vehicle transactions.** A deputy registrar:

A. must have an office that contains:

(1) a separate and distinct area used exclusively for processing and storing completed motor vehicle applications; and

(2) a separate and distinct area for processing and storing incomplete motor vehicle transactions if the office takes in work that is not collected on the day it was received in the office, in which case the office must meet the requirements of part 7406.0450, subpart 2a;

B. may not use the processing areas for living space or for transacting any other business, except that deputy registrars authorized by the commissioner may process drivers' licenses, Department of Natural Resources transactions, and additional transactions as specified under Minnesota Statutes, section 373.33;

C. shall install a counter or divider within the processing areas to separate the public from the processing areas of the office; and

D. shall provide to the commissioner a floor plan of the office, including the specific areas and dimensions of the space allocated for the processing areas, public service area, and storage area, if not previously provided with an application for appointment under part 7406.0360, subpart 4.

Subp. 3. Inventory security. Inventory must be maintained in a secured area that is not accessible to the public either during or after business hours.

Subp. 4. Size of office area. The size of the office area includes the processing areas, the public service area, and the inventory storage area of the office. The size of the office area must contain a minimum of 300 square feet.

If the deputy registrar office space is adjacent to another nonconflicting business, the other business may not encroach upon the office space of the deputy registrar office. The deputy registrar office space must be separate and distinct from the other business.

Subp. 5. Accessibility. The office must be accessible to the disabled in compliance with state and federal laws and regulations.

Subp. 6. Identification. An indoor or outdoor sign must be prominently displayed to identify the office.

Subp. 7. Conflicting business interests. A deputy registrar may not own or be a partner, officer, or five-percent shareholder in a financial institution, motor vehicle dealership, or automobile insurance business.

A deputy registrar office may not be located in the same office space with a financial institution, a motor vehicle dealership, or an automobile insurance office. A deputy registrar office that is located adjacent to a conflicting business must be separated from the conflicting business by floor-to-ceiling walls. The deputy registrar must have an entrance that is separate from the conflicting business and must have a door that can be shut and locked to close off the entire entrance.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.0450 REPORTING AND DEPOSITING PRACTICES.

Subpart 1. Definition. For purposes of this part, the words "next working day" mean the 24-hour period following the daily close of the office's records.

A. A working day does not include Saturdays, Sundays, or legal holidays listed in Minnesota Statutes, section 645.44, subdivision 5; nonbanking days of approved state depositories; holidays authorized under Minnesota Statutes, section 373.052, subdivision 1, for county officers or employees; or days that an office is not open for business, upon approval from the commissioner.

B. At the time of appointment, written notification must be made by the deputy registrar to the commissioner of the days that the office will be open and the time of the daily close of the office records.

C. The time of the daily close of office records may not be changed without prior written notification to the commissioner at least 15 days before the effective date of the change.

Subp. 2. Reporting registrations, fees, and taxes. A report of the motor vehicle fees and taxes collected and the motor vehicle transactions collected for the department each working day must be transmitted by the deputy registrar to the commissioner according to the procedures specified in this part and in an electronic format or

MINNESOTA RULES 2005

123

MOTOR VEHICLE DEPUTY REGISTRARS 7406.0450

other alternative means prescribed or approved by the commissioner. The report must include:

- A. the names of the parties of the collected transactions, excluding the names of parties applying solely for renewal;
- B. the type of transaction;
- C. the listing of motor vehicle fees and taxes collected for the department on that day;
- D. the completed motor vehicle documents and required information for the transactions as specified by the commissioner; and
- E. a financial statement listing the total amount of motor vehicle fees and taxes collected, deposited, and reported under subparts 3 and 3a.

(1) The financial statement must provide the office location identification number, report number, report date, and the total amount of the deposit for that report.

(2) All transactions, motor vehicle fees, and taxes collected in an office must be included on the report for the day the transaction, motor vehicle fees, and taxes were collected in the office.

(3) A minimum of one report must be completed for all transactions, motor vehicle fees, and taxes collected during each working day.

(4) More than one report may be submitted for a working day with prior approval from the commissioner.

(5) If an office does not collect any transactions, motor vehicle fees, or taxes on a working day the office is scheduled to be open, a report must still be filed with the commissioner indicating that no transactions, motor vehicle fees, or taxes were collected for that day.

(6) The report must be transmitted or delivered to the commissioner before the end of the next working day following the receipt of the documents, motor vehicle fees, and taxes by electronic transfer or other alternative means approved by the commissioner.

(7) Supporting documents for transactions listed on the report must be delivered either by United States mail, by a package delivery service, by hand delivery, or by other means approved by the commissioner.

Subp. 2a. Processing and reporting incomplete motor vehicle transactions. The processing and reporting requirements specified in this subpart must be met if an incomplete transaction is received by a deputy registrar.

A. The incomplete transaction must not be listed on the daily report for the office until all motor vehicle fees and taxes are collected for the transaction.

B. State inventory must not be released to the customer until all motor vehicle fees and taxes are collected for the transaction.

C. State fees and taxes must not be deposited or reported before the time of collection for the transaction.

D. Incomplete transactions for which motor vehicle fees and taxes cannot be collected the same working day that the transactions were received must be dated with the date that the transactions were received by the deputy registrar and placed in the incomplete processing area required under part 7406.0400, subpart 2, item B.

E. In the case of motor vehicle transactions, state fees and taxes, the deputy registrar shall collect all motor vehicle fees and taxes for the transaction or return the incomplete transaction to the customer within two working days following receipt of the transaction.

F. In the case of an incomplete transaction that is accepted, the deputy registrar shall inform the customer that the transaction will not be considered accepted and stamped paid until the transaction is completed and all motor vehicle fees and taxes are collected.

G. A deputy registrar must notify the commissioner if the deputy registrar's office intends to receive incomplete motor vehicle transactions and submit to the commissioner 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 commissioner within ten days of the change.

Subp. 3. **Depositing motor vehicle fees and taxes.** Before the end of each working day, each deputy registrar shall deposit an amount equal to the total of all motor vehicle fees and taxes collected the previous working day according to the requirements in subpart 3a. The amount listed for the total of all motor vehicle fees and taxes collected must cover any shortages for any motor vehicle transactions collected and stamped as paid.

Subp. 3a. **Reporting deposits to commissioner.** On the date the deposit of motor vehicle fees and taxes are due, the deputy registrar shall ensure that a financial statement of the deposits made are reported to the commissioner according to the procedures and in a format specified in this part.

A. All deposits must be made in a depository that meets the requirements in this subpart.

B. The depository must be authorized by the deputy registrar to allow the state to electronically withdraw funds from the deputy registrar's account in an amount equal to the motor vehicle taxes and fees reported to the state.

C. Any depository used for the deposit of taxes or fees due and owing the state must either:

(1) be a state-designated depository; or

(2) meet the depository and collateral requirements in Minnesota Statutes, section 9.031.

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.

Subp. 3b. **Reconciling reported excess.** If a deputy registrar documents the need for a refund of a reported payment of excess funds, the commissioner shall refund or credit the reported excess funds if the submitted documentation substantiates the reported excess.

Subp. 4. **Maintaining records.** At the deputy registrar's office, the deputy registrar must keep complete records for deposits made to approved state depositories and the daily reports prepared under subpart 2 for motor vehicle registrations and motor vehicle fees and taxes collected.

A. The records must be maintained for three years.

B. Once the records and the corresponding motor vehicle documents are received by the deputy registrar, the records, documents, and information contained on the records and documents become the property of the state of Minnesota and are subject to the terms of the Data Practices Act under Minnesota Statutes, chapter 13. The records, documents, and information contained on the records and documents may not be released by the deputy registrar without prior approval from the commissioner, except when authorized by statute for law enforcement personnel and by court order.

Subp. 4a. **Destroying private or confidential data.** Storage or destruction of any document with private or confidential information must be done in such a way that the information is irretrievable and cannot be revealed to anyone not entitled to see it.

Subp. 5. **Warning notice.** On discovering a violation of subpart 3 or 3a, the commissioner must send a warning notice, by certified mail, to the deputy registrar warning of the violation.

The warning notice must identify the violation and tell the deputy registrar that if the deputy registrar violates subpart 3 or 3a again within 180 days of the date on the notice, a late payment charge will be imposed.

MINNESOTA RULES 2005

125

MOTOR VEHICLE DEPUTY REGISTRARS 7406.0450

Subp. 5a. **Late payment charge; calculation.** For each subsequent violation of subpart 3 or 3a after a warning notice has been issued, the commissioner shall impose a late payment charge of \$30 or an amount computed by the following formula, whichever is greater.

A. The number of calendar days for which payment is late begins on the date on the late payment charge notice. The late payment notice must be issued by certified mail and contain the information specified in subpart 6.

B. Calendar days late x delinquent amount x daily rate = Late payment charge where:

(1) calendar days late = actual number of calendar days each deposit or report is delinquent;

(2) delinquent amount = actual amount each deposit or report is delinquent; and

(3) daily rate = interest on all state funds without authority to be invested separately, as determined by the Minnesota Department of Finance, for the month the deposit or report was due, divided by 365 days.

C. In determining the number of calendar days a deposit or report is late, weekends and holidays must be included only if the deposit or report is determined to be already at least two calendar days late.

D. The commissioner shall continue to impose the late payment charges until the deputy registrar is no longer in violation of this part.

Subp. 6. **Notice of late payment charge.** The late payment charge notice must identify the violations of Minnesota Statutes, section 168.33, and subpart 3 or 3a for which the late payment charge is imposed.

The notice must also tell the deputy registrar when the late payment charge is due, how the late payment charge must be paid, and how to obtain a review of the late payment charge.

Subp. 7. **Unpaid late payment charges.** If a late payment charge remains unpaid for 30 days from the date the commissioner mailed the notice of late payment charge and if no review is requested, the commissioner shall make a claim for payment against the deputy registrar's performance bond, or in the case of a public official serving as a deputy registrar, the commissioner shall demand payment from the county treasurer.

Subp. 8. **Administrative review.** When the commissioner notifies a deputy registrar that a late payment charge has been imposed:

A. The deputy registrar may ask the commissioner to review the late payment charge. The deputy registrar may request a review by submitting a statement, together with written materials showing that the deputy registrar processed the motor vehicle registrations in compliance with Minnesota Statutes, section 168.33, subdivision 2, and this chapter. The request for review must be submitted within ten days from the date the notice of late payment charge was issued. The commissioner shall review the materials and notify the deputy registrar within ten days of receipt of the request for review, whether the late payment charge will be affirmed or rescinded. A deputy registrar may withhold the late payment charge during the review period but must pay the late payment charge to the state depository account by the end of the working day following notice that the late payment charge is affirmed.

B. The commissioner shall affirm the late payment charge only if the charge was calculated correctly and the late deposit was the result of foreseeable circumstances within the control of the deputy registrar.

Subp. 9. **Discontinuance.** A deputy registrar who fails to comply with the late payment charge notice may be subject to discontinuance of the deputy registrar's appointment under parts 7406.0800 to 7406.1000.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *13 SR 2091; 20 SR 2784; L 2003 c 112 art 2 s 50; 29 SR 97*

7406.0475 AUDIT.

Subpart 1. **Biennial audit.** At the request of the commissioner, a deputy registrar shall make available for audit all motor vehicle fee and tax records for all transactions occurring during the state's biennial fiscal cycle for each office location of a deputy registrar. If the commissioner has reasonable cause to believe another audit is necessary in addition to the biennial audit, the commissioner may order that another audit be conducted at cost to the deputy registrar to address areas of the deputy registrar's biennial audit in which the commissioner was not able to determine compliance.

Subp. 2. **Scope of audit.** The audit must cover the motor vehicle transaction fees and taxes collected by the deputy registrar for the previous two years. The audit report must include:

- A. the auditor's opinion as described in subpart 3;
- B. a report on internal controls as described in subpart 4;
- C. a verification of imprest cash as required by subpart 5;
- D. any material weaknesses as described in subpart 6;
- E. a response to the auditor's report by the deputy registrar; and
- F. other information as noted by the auditor.

Subp. 3. **Auditor's opinion; compliance and corrective action; administrative sanctions.** The auditor's opinion must describe areas of compliance, noncompliance, and corrective action and show a timetable for corrective action. Failure to undertake corrective action or to meet timelines is cause for subsequent administrative action, including suspension or revocation.

Subp. 4. **Internal controls.** The internal controls are the internal procedures of the deputy registrar designed to ensure compliance with the reporting and depositing requirements of this chapter. The audit of internal controls must assess whether:

- A. transactions have been properly recorded and accounted for;
- B. reliable state reports have been prepared; and
- C. control measures are in place that assure that accountability over all motor vehicle fees and taxes is maintained by the deputy registrar.

Subp. 5. **Verify imprest cash.** The audit must include a verification of the proper use of imprest cash as specified in part 7406.0500, subpart 7, and report any discrepancies.

Subp. 6. **Material weaknesses.** The audit report must state whether any material weaknesses were detected. Material weaknesses include:

- A. inadequate safeguarding of state inventory, fees and taxes, or other state assets;
- B. repeated overages or shortages;
- C. delinquent fees, taxes, or reports due to the state;
- D. failure to maintain proper reports and records;
- E. material underreporting or overreporting of transactions or motor vehicle fees or taxes;
- F. failure to report the loss of inventory, motor vehicle fees, or taxes; and
- G. inattention to or lack of correction to previously reported material weaknesses.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *29 SR 97*

7406.0500 GENERAL OPERATING RULES FOR DEPUTY REGISTRARS.

Subpart 1. **Management of office.** In managing the office, a deputy registrar:

- A. shall not delegate to another person the authority or responsibility of operating the office; and

B. shall designate one contact person for the office. The deputy registrar shall provide written notification to the commissioner of the name of the contact person and of a change in the contact person within ten days of the change. The contact person must be a person who actively participates in the processing of transactions and who is in the office on a full-time basis. The contact person shall act as a liaison between the commissioner and the deputy registrar office to discuss and address problems or questions that may arise on a daily basis.

Subp. 2. **Hours.** Deputy registrar offices must be open for business at least 40 hours during each week. However, legal holidays listed in Minnesota Statutes, section 645.44, subdivision 5, and holidays authorized under Minnesota Statutes, section 373.052, subdivision 1, for county offices are included in the 40-hour calculation.

Each deputy registrar shall provide the commissioner with an accurate written schedule of the hours the office is open for business. A written request for a change in office hours must be made to the commissioner at least ten days before the change in hours. The commissioner must approve changes in business hours before the hours become effective.

Subp. 2a. **Closure of office; variance procedure.** An office must be open for at least 40 hours each week unless the commissioner grants a variance to allow an office to be closed for a specified period of time. To request a variance for closure of an office for two days or more, the deputy registrar shall submit a written request on a form prescribed by the commissioner. Under the variance procedure, the commissioner shall consider the following factors before allowing an office to close:

- A. reason the closure is requested;
 - B. length of time the closure is requested;
 - C. day of the month and time of the year that the closure is requested;
 - D. number of transactions that an office processes on an annual basis and number of transactions that are processed at the requested time of closure, if known;
 - E. ability to keep the office open with current, additional, or temporary staff;
- and
- F. number of variances granted that year.

The commissioner shall review the information submitted with the variance request and grant or deny the variance within two business days after receipt of the request.

If a variance is granted for closure of an office, the deputy registrar must provide notice to the public at the deputy registrar office of the dates and times of the office closure. If the office is to be closed for four days or less, the deputy registrar must post notice in a conspicuous place inside and outside the office for up to two consecutive weeks before closure. If the office is to be closed for five or more days, the notice must be posted at the office and also published in a qualified newspaper or on a radio station in the county or city in which the office is located. The notice must be published at least two weeks before the closing for two consecutive weeks, or a shorter time as approved by the commissioner.

The notice of closure must contain the dates and times that the office will be closed and the location and address of the nearest office where alternative service can be obtained.

Subp. 2b. **Emergency and short-term closure of office.** For requests of an office closure that is for one day or that is due to an emergency situation, the deputy registrar must notify the commissioner by telephone or other means at the earliest opportunity to request a variance from the 40-hour work week. The commissioner must follow the criteria in subpart 2a when deciding to grant or deny the variance. If a variance is granted for closure of an office, the deputy registrar must provide notice to the public, as soon as practicable, at the deputy registrar office of the dates and times of the office closure. If the closure of an office is for more than one day, the deputy registrar must follow the variance procedures set forth in subpart 2a.

Subp. 3. [Repealed, 29 SR 97]

Subp. 4. [Repealed, 20 SR 2784]

Subp. 5. **Filing fees.** Filing fees are governed by the following requirements:

A. A deputy registrar shall charge and receive the full filing fee specified by law. Rebates are prohibited.

B. No filing fee may be charged for a document returned for a refund, correction of an error made by the department or a deputy registrar, permanent surrender of a certificate of title, or license plate for a motor vehicle.

C. A deputy registrar may not charge a customer for long-distance telephone calls, unless:

(1) 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;

(2) the long-distance telephone call was made at the request of the customer; and

(3) 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.

Subp. 6. **Cash register.** A separate cash register or cash receptacle must be maintained for deputy registrar funds. No other funds from other businesses may be kept with deputy registrar funds, except:

A. funds from driver's license, Department of Natural Resources, or county license bureau transactions, concerning which the deputy registrar must be able to determine at all times which funds are attributable to motor vehicle transactions and which funds are attributable to driver's license, Department of Natural Resources, or county license bureau transactions; or

B. funds from other sources, other than those listed in item A, when the deputy registrar's fee receipt system is able to differentiate funds from various sources and the deputy registrar has received written approval from the commissioner to use such a system.

Subp. 7. **Imprest cash.** A deputy registrar shall maintain a verifiable and identical amount of start-up funds in the cash register or cash receptacle on a daily basis. The deputy registrar shall inform the commissioner, in writing, of the amount of money that will be used during the day for start-up funds. The amount of the start-up funds must not be changed without prior written notification to the commissioner.

Subp. 8. **Inventory to remain in office.** Unsold inventory that is assigned to a deputy registrar by the commissioner must remain in the office, except in the following authorized circumstances:

A. return of inventory to the commissioner;

B. destruction or removal of inventory that is obsolete; or

C. other removal or transfer of inventory that is authorized by the commissioner such as approval to reassign inventory to another office or approval to remove inventory through other means such as through newly established technology.

Subp. 9. **Mail order transaction.** A deputy registrar may mail out inventory to customers upon meeting the conditions in items A to E.

A. The deputy registrar shall provide written notification to the commissioner that the office will provide mail service to customers. Once written notification is provided to the commissioner, the deputy registrar must accept and process all mail transactions that are ready for issuance of inventory. Incomplete motor vehicle transactions that are received by mail must follow the procedures in part 7406.0450, subpart 2a.

B. The deputy registrar shall maintain a record of the inventory that was mailed and the name and address where the inventory was mailed. The record may be

MINNESOTA RULES 2005

129

MOTOR VEHICLE DEPUTY REGISTRARS 7406.0500

maintained on the daily summary report under part 7406.0450, subpart 2, or other report maintained separately by the deputy registrar.

C. The inventory must be mailed under uniform mailing standards as provided by the commissioner.

D. The deputy registrar must pay the replacement cost of inventory if the inventory is lost in the mail or the customer did not otherwise receive the inventory.

E. The deputy registrar shall mail the inventory by at least first class United States mail, unless a request is made by the customer for other special delivery services. The deputy registrar shall incur the cost of mailing the inventory, unless the customer requests a special delivery of the inventory. If the customer requests a special delivery of the inventory, the deputy registrar may allow the customer to incur the cost of those special delivery charges.

If a deputy registrar does not make a written request to provide mail service to customers, the mail orders received by a deputy registrar, including the filing fee, must be forwarded to the commissioner for processing and mailing.

Subp. 10. Registration stickers unaccounted for. Registration stickers assigned to an office, except for the month sticker, must be accounted for by issuance and money collected, by affidavit of missing initial inventory, or by submitting the defective registration sticker to the commissioner.

If a registration sticker is unaccounted for, the deputy registrar is responsible for payment of the registration tax loss or replacement cost for each registration sticker unaccounted for. The amount of registration tax that a deputy registrar must pay is either the full, average, or minimum registration tax as determined under items A and B.

A. A deputy registrar must pay the full registration tax for the registration sticker if the commissioner has sufficient cause to believe that the full amount of the registration tax was paid for by the customer.

B. A deputy registrar will have to pay the average or minimum registration tax or replacement cost of the registration sticker after consideration of the following factors by the commissioner:

- (1) timely notification to the commissioner, and to the law enforcement agency if applicable, regarding the registration stickers unaccounted for;
- (2) the investigation and follow-up measures taken by the deputy registrar regarding the registration stickers unaccounted for;
- (3) the action taken by the deputy registrar to recover the registration stickers and the number of registration stickers that were recovered;
- (4) the security measures that were in place to protect the registration stickers;
- (5) the value of the registration stickers;
- (6) the circumstances under which the registration stickers became unaccounted for; and
- (7) the results of any audit conducted by the commissioner.

The commissioner shall notify a deputy registrar of the amount of the full, average, or minimum average tax at the end of each fiscal year. If the full registration tax is required to be paid by the deputy registrar, a late deposit charge calculated under part 7406.0450 must also be paid by the deputy registrar.

Subp. 11. Other inventory or state-issued property unaccounted for. Inventory, other than registration stickers under subpart 10, 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 commissioner.

If inventory or other state-issued property is unaccounted for, other than stickers, the deputy registrar is responsible for the replacement cost of the inventory or state property.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *13 SR 1733; 17 SR 1279; 20 SR 2784; 29 SR 97*

7406.0600 [Repealed, 20 SR 2784]

7406.0700 EXCEPTION TO VOLUME AND DISTANCE REQUIREMENTS.

A new deputy registrar may be appointed upon the death, resignation, revocation, or retirement of an existing deputy registrar whose office does not comply with the requirements for distance or number of applications for registration processed in part 7406.0300 if the provisions in this part are met.

A. The new deputy registrar must locate the office in the same city.

B. The office location must meet the office requirements under part 7406.0400 and must have all equipment necessary to process and report transactions and collect and report state taxes and fees.

C. If the commissioner approves the exception, the commissioner shall use the appointment process specified in parts 7406.0350 to 7406.0360.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *13 SR 1733; 20 SR 2784; 29 SR 97*

DISCONTINUANCE OF APPOINTMENT

7406.0800 ACTIONS FOR FAILURE TO COMPLY WITH LAWS OR RULES.

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.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.0900 IMMEDIATE SUSPENSION OF APPOINTMENT.

Subpart 1. **Grounds.** The commissioner may immediately suspend a deputy registrar appointment if the commissioner has sufficient cause to believe that an immediate suspension is necessary to ensure the security of the monies of the state, the public, or the operation of the deputy registrar office. In making the determination to immediately suspend, the commissioner shall consider:

A. whether grounds exist for the revocation of an appointment;

B. whether the deputy registrar's failure to comply with an applicable law or rule has placed in imminent danger the monies of the state, the public, or the operation of the deputy registrar office; and

C. whether the risk of harm to the monies of the state, the public, or the operation of the deputy registrar office, outweighs the harm to the deputy registrar of discontinuing the operation of the office during the pendency of a hearing.

Subp. 2. **Immediate suspension hearing.** When the commissioner has grounds for immediate suspension under this part, a contested case hearing must be held within 20 days after the service of the order of immediate suspension and notice of and order for hearing. A contested case hearing for immediate suspension must be conducted in accordance with Minnesota Statutes, chapter 14.

Subp. 3. **Suspension period and effect.** When a deputy registrar appointment is suspended under subpart 1, the deputy registrar shall immediately cease operation of the office and surrender all inventory, fees and taxes, and other state-issued property. The deputy registrar appointment must be suspended until the effective date of the

commissioner's decision affirming, modifying, or vacating the order of immediate suspension.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.1000 DEPUTY APPOINTMENT SUSPENSION, REVOCATION.

Subpart 1. Conviction in another jurisdiction. For purposes of this part, "conviction" includes a conviction of a crime in another jurisdiction that, if committed in Minnesota, would be a violation of a Minnesota statute.

Subp. 2. Grounds for suspension or revocation. The violations specified in this subpart are grounds for revocation or suspension of a deputy registrar appointment:

A. conviction of a felony;

B. conviction of any crime:

(1) affecting a public officer or employee;

(2) of theft or related crime;

(3) of forgery or related crime; or

(4) that directly relates to the position of deputy registrar;

C. violation or failure to comply with any provision of this chapter; Minnesota Statutes, chapter 168; or an order issued by the commissioner;

D. *forging of documents or providing false or fraudulent information to the commissioner or the public;*

E. misappropriation, conversion, or illegal withholding of state fees and taxes required to be deposited or reported in accordance with this chapter or Minnesota Statutes, chapter 84, 86B, 168, 168A, 168D, 297B, or 296A;

F. failure or refusal to provide the commissioner access to the office, documents, persons served, or employees;

G. immediate suspension of an appointment under part 7406.0900;

H. grounds for denial of an appointment under part 7406.0360, subpart 7; or

I. loss of an appointment as a driver's license agent under chapter 7404 or Minnesota Statutes, section 171.061.

Subp. 3. Criteria for discontinuance action. In deciding what discontinuance action to take under subpart 2, the commissioner shall consider the following factors:

A. the laws or rules that have been violated;

B. the nature and severity of the violation and the conduct;

C. relevant facts, conditions, and circumstances concerning the violation and the operation of the office;

D. any aggravating or mitigating factors related to the violation;

E. the frequency of the violator's failure to comply with laws or rules related to a deputy registrar office;

F. the likelihood that the violations will occur again;

G. the degree of the violator's cooperation during the course of the investigation surrounding the violation; and

H. harm to the public because of the violation.

Subp. 4. Suspension and revocation hearing. When the commissioner has grounds for revocation or suspension under this part, the commissioner shall conduct a hearing before revoking or suspending a deputy registrar appointment under the procedures in parts 7406.1100 to 7406.2600.

Subp. 5. Effect of revocation. 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. When a deputy registrar appointment is revoked, the deputy registrar shall immediately surrender all inventory, fees and taxes, and other state-issued property.

Subp. 6. **Effect of suspension.** When a deputy registrar appointment is suspended under subpart 1, the deputy registrar shall surrender all fees and taxes. The commissioner shall consider the factors in subpart 3 when determining the length, terms, and conditions of the suspension.

Subp. 7. **Issuance of correction order.** The commissioner may issue a correction order for a violation of rule or law rather than a suspension under subpart 1, after consideration of the factors in subpart 3.

A. The correction order must state:

- (1) the specific law or rule violated;
- (2) the conditions that constitute a violation of law or rule;
- (3) the requirements to correct the violation;
- (4) the consequences of the correction order;
- (5) the time allowed to correct each violation, if applicable; and
- (6) how to obtain a review of the correction order.

B. If the deputy registrar believes that the contents of the commissioner's correction order are in error, the deputy registrar may ask the commissioner to reconsider the parts of the correction order that are alleged to be in error. The request for reconsideration must be in writing and received by the commissioner within ten days of the date of the correction order. The written request for reconsideration must:

- (1) specify the parts of the correction order that are alleged to be in error;
- (2) explain why the parts of the order are in error; and
- (3) include documentation to support the allegation of error.

A request for reconsideration does not stay any provision or requirement of the correction order. The commissioner shall respond to requests for reconsideration made under this subpart within 15 working days after receipt of the request for reconsideration.

C. A deputy registrar who fails to comply with a correction order may be subject to suspension or revocation of appointment under this part.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: *20 SR 2784; 29 SR 97*

PROCEDURES FOR SUSPENSION AND REVOCATION HEARINGS

7406.1100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7406.1100 to 7406.2600 have the meanings given them in this part.

Subp. 2. **Party.** "Party" means each person named as a party by the commissioner in the notice of and order for hearing. Party includes the commissioner and the commissioner's employees and agents, but does not include the hearing examiner.

Subp. 3. **Person.** "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 4. **Service or serve.** "Service" or "serve" means personal service or service by first class United States mail or a licensed overnight express mail service, postage prepaid and addressed to the party's last known address. An affidavit of service must be made by the person making the service. Personal service may be accomplished either by delivering a document to the person or by leaving a document at the person's home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address of the person to be served.

Postage must be prepaid. Mail to a person other than a state agency must be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.1150 TIME.

Subpart 1. **Computation.** In computing any period of time prescribed by parts 7406.1100 to 7406.2600, the day of the last act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed must be included, unless it is a Saturday, Sunday, or a legal holiday.

Subp. 2. **Extra time; service by mail.** Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon the party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days must be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days must be added to the prescribed period.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.1200 HEARING; SERVICE OF NOTICE.

The commissioner shall serve a notice of and order for hearing on the deputy registrar to commence the proceedings. The notice of and order for hearing must be served not less than 30 days before a revocation or suspension hearing under part 7406.1000. The notice of and order for hearing must be served not less than 20 days before an immediate suspension hearing under part 7406.0900; provided, however, that a shorter time may be allowed when it can be shown to the hearing examiner that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.1300 HEARINGS BEFORE HEARING EXAMINER.

Revocation and suspension hearings under part 7406.1000 must be conducted by a hearing examiner appointed by the commissioner.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.1400 NOTICE OF AND ORDER FOR HEARING; CONTENT.

The notice of and order for hearing must contain at least the following:

A. a caption that includes the proposed action and the name of the deputy registrar;

B. the time, date, and place for the hearing;

C. the name, address, and telephone number of the hearing examiner;

D. a citation to the commissioner's rule and statutory authority to hold the hearing and take the action proposed;

E. a statement of the allegations or issues to be determined, together with a citation to the relevant statutes or rules allegedly violated or that control the outcome of the case;

F. a statement that the commissioner'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;

G. 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;

H. a citation to the procedural rules of the commissioner in parts 7406.1100 to 7406.2600 and notification of how copies may be obtained;

I. a brief description of the procedure to be followed at the hearing;

J. a statement advising the parties to bring to the hearing all documents, records, and witnesses needed to support their position;

K. a statement advising the parties of the name of the commissioner's staff member or attorney general's staff member to contact to discuss informal disposition;

L. 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;

M. 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 explaining the possible results of the allegations being taken as true or the issues proved;

N. 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; and

O. in the case of immediate suspension, a statement that the parties must cease operation of the deputy registrar office immediately and surrender all inventory, fees and taxes, and other state-issued property.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.1500 NOTICE OF APPEARANCE.

Each party intending to appear at the hearing shall file with the hearing examiner and serve upon all other known parties a notice of appearance advising the hearing examiner of the party's intent to appear and shall indicate the title of the case, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The notice of appearance must be filed and served within 20 days of the date of service of the notice of and order for hearing; except that when the hearing date is 20 days or less from the commencement of the hearing, the notice of appearance is not necessary. The failure to file and serve a notice may, in the discretion of the hearing examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. A notice of appearance form must be included with the notice of and order for hearing for use by the party served.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.1600 RIGHT TO COUNSEL.

Parties may be represented throughout the proceedings in a hearing by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.1700 CONSENT ORDER, SETTLEMENT, OR STIPULATION.

Informal disposition may be made of a hearing or any issue in the hearing by stipulation, agreed settlement, or consent order at any point in the proceedings.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.1800 CONTINUANCES.

Requests for a continuance of a hearing must be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing must be made in writing to the hearing examiner and must be served upon all parties of record. In determining whether good cause exists, due regard must be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five business days of the hearing must be denied unless the reason for the request could not have been earlier ascertained.

“Good cause” includes: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleading requiring postponement; and agreement for a continuance by all parties, provided that it is shown that more time is clearly necessary to complete discovery or other mandatory preparation of the case and the parties and the hearing examiner have agreed to a new hearing date; or, the parties are engaged in serious settlement negotiations or have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

“Good cause” does not include: intentional delay; unavailability of counsel or other representative due to engagement in another judicial or administrative proceeding, unless all other members of the attorney’s or representative’s firm familiar with the case are similarly engaged, or the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness’ testimony can be taken by deposition; and failure of the attorney or representative to properly utilize the notice period to prepare for the hearing.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.1900 DEFAULT.

The commissioner or the hearing examiner may dispose of a revocation or suspension adverse to a party that defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear at a hearing without the prior consent of the hearing examiner.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.2000 RIGHTS AND RESPONSIBILITIES OF PARTIES.

Parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses. A party must have all evidence that the party wishes to present at the hearing, both oral and written, available on the date for hearing.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.2100 WITNESSES AND TESTIMONY.

A party may be a witness and may present witnesses on the party’s behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the hearing examiner’s own motion, the hearing examiner shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.2200 BURDEN OF PROOF.

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 has the burden of proving the existence of the defense by a preponderance of the evidence.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.2300 HEARING RECORD.

The hearing examiner shall maintain the official record in each deputy registrar hearing until issuance of the hearing examiner's final report.

The record in a deputy registrar hearing must contain all evidence offered or considered; all documents, memoranda, or data submitted by any party in connection with the case; the audiomagnetic recording of the hearing; the transcript of the hearing, if one was prepared; and the hearing examiner's findings of fact, conclusions, and recommendations.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.2400 HEARING EXAMINER'S CONDUCT.

The hearing examiner shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, including the commissioner, concerning any pending case, except upon notice and opportunity for all parties to participate. The hearing examiner may respond to questions relating solely to procedures for the hearing without violating this part.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

7406.2500 HEARING EXAMINER'S DECISION.

No factual information or evidence that is not a part of the record may be considered by the hearing examiner in the determination of a deputy registrar hearing.

The decision and order rendered by the hearing examiner in a hearing must be in writing, must be based on the record, and must include the hearing examiner's findings of fact and conclusions on all material issues. A copy of the decision and order must be served upon each party or the party's representative.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784*

7406.2600 APPEAL OF HEARING EXAMINER'S DECISION.

A person may appeal the hearing examiner's decision and order issued under part 7406.2500 and request a contested case hearing. The contested case hearing must be conducted according to Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings. The request for a contested case hearing must be submitted in writing to the commissioner within 15 days of the date of the hearing examiner's report. The request for a contested case hearing must set out in detail the reasons why the deputy registrar contends the decision of the hearing examiner should be reversed or modified.

If a contested case is requested, the commissioner shall send a copy of the order to all interested parties. The order must fix the time and place for the hearing. The hearing examiner's order must be stayed pending a final determination after the contested case hearing.

Statutory Authority: *MS s 14.06; 299A.01*

History: *20 SR 2784; 29 SR 97*

MINNESOTA RULES 2005

137

MOTOR VEHICLE DEPUTY REGISTRARS 7406.2700

7406.2700 INDEMNIFICATION.

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 commissioner, including all attorney fees incurred, arising from performance or actions not in accordance with this chapter, Minnesota Statutes, or written instruction from the commissioner.

Statutory Authority: *MS s 14.06; 168.33; 299A.01*

History: 29 SR 97