


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #578
Jerry

Permanent Rule_____

Temporary Rule___X___

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 1-11-80 DUE DATE 1-18-80

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved_____Date Sent Back to Agency 1-18-80

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1. Rules as Adopted_____

2. Rules as Proposed_____

3. Certificate of Board's
Authorizing Resolution, where applicable_____

4. Order for Hearing_____

5. Notice of Hearing_____
Sufficiency_____

6. Secretary of State's List_____(one copy only)

7. Certificate of Acquisition of
Secretary of State's List_____

8. Secretary of State's Certification of Delivery
of Secretary of State's List to Agency_____

9. Affidavit of Mailing_____
At least 30 days prior to hearing_____

10. Publication in State Register_____
At least 30 days prior to hearing_____

11. Statement of Need and Evidence_____

12. Hearing Examiner's Report_____

13. Agency's Findings of Fact_____

14. Certificate of Board's Resolution
Adopting Rules, where applicable_____

15. Order Adopting_____

16. Report of Chief Hearing Examiner_____

17. Order Approving Incorporation by Reference,
where applicable_____

18. Certificate of Compliance with Rulemaking Procedures_____

19. Copy of Notice of Intent to Solicit Outside Opinion,
where applicable_____

20. Petition by Public, where applicable_____

AG Copy
copy from our File #572
— please return

Department of Commerce
Insurance Division

Adopted Temporary Rules Governing
Self-Insurance For Workers' Compensation

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Adopted Temporary Rules

4 MCAR § 1.9285 Authority.

4 MCAR § 1.9285-1.9294 are promulgated under the authority of Minn. Stat. § 176.181, Subd. 2 (Laws of 1979, Spec. Ses. Ch. 3 § 50).

4 MCAR § 1.9286 Purpose and scope.

These rules are designed to assure that the self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner; and to allow the Commissioner to authorize qualified

entities to engage in such business in a manner which is fair, equitable and consistent with the Workers' Compensation Act.

4 MCAR § 1.9287 Definitions.

A. "Certified Audit" or "Certified Financial Statement" means an audit or financial statement upon which an independent Certified Public Accountant expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles and generally accepted auditing standards consistently applied.

B. "Commissioner" means the Commissioner of Insurance.

C. "Current Ratio" means the ratio of current assets to current liabilities in the most recent financial statement.

D. "Fund" means Self-Insurers Fund.

E. "Affiliated Company" means any company that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the applicant company.

F. "Modified Premium" shall mean the total manual premium as defined in the Workers' Compensation Insurers Rating Association's manual of Rules, Classifications, and Rates approved for use in Minnesota, modified by an experience rating plan approved by the Commissioner, and reduced by the appropriate premium discount.

G. "Self-Insurers Fund" means any monetary fund or account created by a group self-insurer to pay workers' compensation claims due under the Workers' Compensation Act.

H. "Self-Insurer" means both individual and group self-insurers unless the context clearly indicates a more restrictive definition.

I. "Service Company" shall mean an entity which has obtained a license from the Commissioner pursuant to 4 MCAR § 1.9294 to contract with self-insurers for the purpose of providing services necessary to plan and maintain an approved self-insurance program. An employer that has been granted the authority to self-insure pursuant to 4 MCAR § 1.9291 and administers its own self-insurance program shall be deemed a duly licensed service company for the purposes of servicing a self-insurance program of any affiliated company.

J. "Workers' Compensation Reinsurance Association" shall mean that Association created by Laws of 1979, Spec. Ses. Ch. 3, § 17 through 25 (hereinafter referred to as the "WCRA").

K. "Workers' Compensation Act" shall mean Minn. Stat. Ch. 176.

L. "Fund year" for group self-insurers shall mean that period of time which the group self-insurer shall designate for the purposes of collecting premiums from its members and for determining any deficit or surplus; such period of time shall correspond with the fiscal year of the group.

M. "Control", including the terms "controlling", "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting

securities of any other person.

4 MCAR § 1.9288 Acceptable securities and surety bonds.

A. Acceptable securities and surety bonds for the purposes of 4 MCAR § 1.9291G and 1.9292H shall be:

1. U.S. Government bonds;
2. Any bonds or securities which are issued by the State of Minnesota and which are secured by the full faith and credit of this State;
3. Certificates of deposit issued by a bank in the State of Minnesota, which has deposits insured by the Federal Deposit Insurance Corporation;
4. Savings certificates issued by any savings and loan association in the State of Minnesota which has deposits insured by the Federal Savings and Loan Insurance Corporation;
5. Surety bonds issued by a corporate surety authorized by the Commissioner to transact such business in the State of Minnesota;
6. Any guarantee from the United States government whereby the payment of the workers' compensation liability of a self-insurer is guaranteed.

B. All securities shall be deposited with the State Treasurer and surety bonds shall be filed with the Commissioner. The Commissioner and the State Treasurer shall be authorized to sell and/or collect, in the case of default of the employer or fund, such amount thereof as shall yield sufficient funds to pay compensation due arising pursuant to the Workers' Compensation Act.

C. Securities must bear the following assignment which shall be signed by an officer, partner, or owner: Assigned to the State of Minnesota for the benefit of injured employees of the self-insured employer under the Minnesota Workers' Compensation Act.

D. Interest accruing on any negotiable securities so deposited shall be collected and transmitted to the depositor, provided that the depositor is not in default in payment of compensation, premiums due the WCRA, or any assessments levied by the Department of Labor and Industry under Minn. Stat. § 176.131.

E. All surety bonds shall conform to the bond form set forth in Appendix I.

F. All deposits and surety bonds shall remain in the custody of the State Treasurer or the Commissioner for a period of time as the applicable Statute of Limitations provided in the Workers' Compensation Act dictates.

G. No securities on deposit with the State Treasurer shall be released without an order from the Commissioner.

H. Any securities deposited with the State Treasurer or surety bonds held by the Commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond exceeds the amount of deposit required.

4 MCAR § 1.9289 Filing of reports.

A. Incurred losses, paid and unpaid, specifying both indemnity and medical losses by classification, and payroll by classification, and current estimated outstanding liability for workers' compensation shall be reported to the Commissioner by each self-insurer on forms available from the

Commissioner. Such information shall be reported on a calendar year basis and must be filed by April 1 of the following year, beginning April 1, 1981.

B. Each self-insurer shall under oath, attest to the accuracy of each report submitted pursuant to subdivision A above. Upon sufficient cause, the Commissioner may require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner. The basis for sufficient cause shall include, but is not limited to, the following factors: where the losses reported appear significantly different from similar type businesses or where major changes in the reports exist from year to year which are not solely attributable to economic factors. If any discrepancy is found, the Commissioner may require changes in the self-insurer's or service company's record keeping practices. Failure to make the necessary changes shall subject the self-insurer or service company to a fine of up to $50,000 or revocation of the self-insurer's authority to self-insure, and the service company's license to act as a service company.

C. Each self-insurer shall report to the Commissioner any workers' compensation claim estimated to exceed $50,000 within ten days of obtaining knowledge that the claim may exceed $50,000.

D. Each individual self-insurer shall, within four months after the end of its fiscal year, annually file with the Commissioner its latest 10K Report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K Report, it shall file an annual certified financial statement, together with such other financial information as the Commissioner may require to substantiate data in the financial statement.

E. Each group self-insurer shall, within four months after the end of the fiscal year for that group, annually file a statement showing the combined net worth of its members based upon each individual member's annual certified financial statement, together with such other financial information the Commissioner may require to substantiate data in the group's summary statement.

F. In addition to the financial statements required by subdivisions D and E above, interim financial statements, or 10Q Reports required by the Securities and Exchange Commission may be required by the Commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including but not limited to a worsening of current ratio, lessening of net worth, net loss of income, the down grading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer which files an 8K Report with the Securities and Exchange Commission shall also file a copy of the report with the Commissioner within thirty (30) days of the filing with the Securities and Exchange Commission.

G. Any self-insurer that fails to file any report required by these rules within the time prescribed shall be subject to the same penalty as insurance companies for failure to file required reports pursuant to Minn. Stat. § 72A.061.

4 MCAR § 1.9290 Revocation of self-insurance authority.

The following shall constitute grounds for revocation of the authority to self-insure:

A. Failure to comply with 4 MCAR § 1.9285-1.9293;

B. Failure to comply with any order of the Commissioner;

C. Failure to comply with any provision of the Workers' Compensation Act.

D. A deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses, including, but not limited to, a worsening of the current ratio, a lessening of net worth, a net loss of income, or the failure of the self-insurer to meet the net worth standards of 4 MCAR § 1.9291C or 1.9292C.

E. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20.

F. Failure to abide by the Plan of Operation of the WCRA.

4 MCAR § 1.9291 Requirements for individual self-insurers.

A. Each employer desiring to self-insure individually shall apply to the Commissioner on forms available from the Commissioner. The Commissioner shall grant or deny the application within thirty (30) days after a complete application is filed. Such time limit may be extended for another thirty (30) days upon fifteen (15) days prior notice to the applicant. Any grant of authority to self-insure shall continue in effect until revoked by order of the Commissioner or until such time as the employer becomes insured.

B. Each application for self-insurance shall be accompanied by a certified financial statement. Certified financial statements for a period ending more than six (6) months prior to the date of the application must be accompanied by an affidavit signed by a company officer under oath stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period.

C. Each individual self-insurer shall have a net worth at least equal to the greater of ten (10) times the retention limit selected with the WCRA or one third (1/3) the amount of the self-insurer's current annual modified premium. The requirements of this subdivision

shall be modified if the self-insurer can demonstrate through a reinsurance program, other than coverage provided by the WCRA, that it can pay expected losses without endangering the financial stability of the company.

D. Each individual self-insurer shall have sufficient assets, net worth and liquidity to promptly and completely meet all of its obligations that may arise under the Workers' Compensation Act. In determining whether a self-insurer meets this requirement the Commissioner shall consider: the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the company; any excess insurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than excess insurance from the WCRA; any other financial data submitted to the Commissioner by the company; and the company's workers' compensation experience for the last four (4) years.

E. Where an employer seeking to self-insure fails to meet the financial requirements set forth in subdivisions C and D above, the Commissioner shall grant authority to self-insure provided than an affiliated company, whose financial statement is filed with the Commissioner and meets the requirements set forth in subdivisions C and D above, provides a written guarantee adopted by resolution of its board of directors that it will pay all workers' compensation claims incurred by its affiliate, and that it will not terminate the guarantee under any circumstances without first giving the Commissioner and its affiliate thirty (30) days written notice. If said guarantee is withdrawn or if the guarantor ceases being an affiliate, the affiliate shall give written notice to the Commissioner and the self-insured and the self-insured's authority to self-insure shall automatically terminate

upon expiration of the thirty (30) day notice period.

F. Each individual self-insurer shall agree to fully discharge by cash payment or other form of benefit approved by the Department of Labor and Industry, all amounts required to be paid by the provisions of the Workers' Compensation Act.

G. Each individual self-insurer shall be required to deposit acceptable securities or surety bonds in an amount equal in value to:

1. For an employer who has been self-insured for at least two (2) years and specifically identify in its financial statement its outstanding workers' compensation liability the greater of:
   a. $100,000 or
   b. total outstanding workers' compensation liability not to exceed $500,000.
2. For an employer who has been self-insured for at least two (2) years and does not specify in its financial statement its outstanding workers' compensation liability, either $1,000,000 or outstanding workers' compensation liability if a certified Public Accountant or an actuary who is an associate member of the Casualty Actuarial Society certifies that the outstanding liabilities of the employer are less than $1,000,000.
3. For an employer who has been self-insured less than two (2) years and has specifically identified in its financial statement its outstanding workers' compensation liability the greater of:
   a. $100,000 or
   b. 70% of the employers' estimated current modified premium, or

c. outstanding workers compensation liability, not to exceed $500,000.

4. For an employer who has been self-insured for less than two (2) years and do not specify in its financial statement its outstanding workers' compensation liability the greater of:

a. $100,000

b. 70% of the employers' estimated current modified premium, or

c. outstanding workers' compensation liability, not to exceed $1,000,000.

H. No deposit shall be required of a self-insurer that has had its workers' compensation liability guaranteed pursuant to subdivision E above, provided that the affiliated company is required to make a deposit and the self-insurer's outstanding workers' compensation liability are included in the determination of the affiliate's deposit.

I. Each individual self-insurer shall administer insurance claims in a fair and equitable manner.

J. Each individual self-insurer shall designate those employees who will administer its self-insurance program, and shall specify their qualifications to engage in the administration of the self-insurance program. If a self-insurer contracts with another entity for the administration of its program, including adjustment of claims, or administration of loss control or safety enginnering programs, the self-insurer shall only contract with a service company duly licensed for those specific areas of program administration.

4 MCAR § 1.9292 Requirements for group self-insurers.

A. Two or more employers in the same industry may apply to the Commissioner for the authority to self-insure as a group on forms available from the Commissioner. This initial application shall be accompanied by a copy of the bylaws or plan of operation adopted by the group. Such bylaws or plan of operation shall conform to the conditions prescribed by 4 MCAR § 1.9292 and 1.9293. The Commissioner shall approve or disapprove the bylaws within thirty (30) days unless a question as to the legality of a specific bylaw or plan provision has been referred to the Attorney General's office. The Commissioner shall make a determination as to the application within fifteen (15) days after receipt of the requested response from the Attorney General's office.

B. After the initial application along with the bylaws or plan of operation have been approved by the Commissioner or at the time of the initial application the group shall then submit: the names of employers that will be members of the group; an indemnity agreement as set forth in Appendix II signed by an officer of each member; and a certified financial statement of each member.

C. A group proposing to self-insure shall demonstrate that:

1. The combined net worth of all of the members is at least equal to the greater of ten (10) times the retention selected with the WCRA or one-third (1/3) of the current annual modified premium of the members. The requirements of this subdivision shall be modified if the self-insurer can demonstrate that through excess insurance, other than coverage provided by the WCRA, that it can pay expected losses.

2. The proposed group shall have sufficient assets, net worth, and liquidity to promptly and completely meet all obligations of its members under the Workers' Compensation Act. In determining whether a group is in sound financial condition, consideration shall be given to: the combined net worth of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; the particular industry that the member companies are engaged in; any excess insurance other than reinsurance with the WCRA, purchased by the group from an insurer licensed in Minnesota or from an authorized surplus line carrier; other financial data requested by the Commissioner or submitted by the group; and the combined workers' compensation experience of the group for the last four (4) years.

D. Two or more employers shall be deemed to be engaged in the same industry under Minn. Stat. § 176.181, Subd. 2(1) if the Commissioner finds that all of the employers have the same group classification as defined in the Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance published by the National Council of Compensation Insurance.

E. The Commissioner shall grant or deny the group's application to self-insure within thirty (30) days after a complete application has been filed, provided that such time may be extended for an additional thirty (30) days upon fifteen (15) days prior notice to the applicant. Upon a determination that: the financial ability of the self-insurers group is sufficient to fulfill all joint and several obligations of the member companies which may arise under the Workers' Compensation Act; the gross annual premium of the group members is at least three hundred thousand dollars ($300,000.00); the group has established a fund pursuant to 4 MCAR § 1.9293; the group has contracted with a licensed service company to administer its program; the required securities or surety bond shall be on

deposit prior to the effective date of coverage for any member; and all of the member companies are engaged in the same industry; the Commissioner shall grant approval for self-insurance. Such approval shall be effective until revoked by order of the Commissioner or until the employer members of the group become insured.

F. Each group self-insurer shall contract with a service company licensed pursuant to 4 MCAR § 1.9294 to administer its program or employ such personnel that will qualify the group as a licensed service company. The service company shall have the sole authority to make claim determinations regarding injured workers of the member employers.

G. Each group self-insurer shall establish a group self-insurers fund pursuant to 4 MCAR § 1.9293, which shall be administered by the board of directors of the group.

H. Prior to the providing of coverage to any member company, a group self-insurer shall deposit acceptable securities or surety bonds in an amount equal to 70% of the members current modified premium plus the amount payable to the service company under the service contract; provided that, the deposit required shall not be greater than five hundred thousand dollars ($500,000.00). After the group self-insurer has been in existence for two (2) years the deposit shall be an amount equal to the outstanding workers' compensation liability of the group subject to a maximum of five hundred thousand dollars ($500,000.00).

I. An employer must belong to the group for at least one year. If a member voluntarily terminates its membership in a group during the second or third year of membership, the group self-insurer shall assess the terminating member at least the following penalties: 25% of the premium due from that member for that year if termination occurs within the second year of membership and 15% of the premium due from that member for that year if termination occurs within the third year. No penalty shall be required if an employer's withdrawal is due to merger, dissolution, sale of the company or change in the type of business so that it is no longer engaged in the same industry as the rest of the employers of the group. Following completion of three consecutive years of membership in the group,withdrawal from the group may be allowed without penalty provided ninety (90) days advance written notice is given to the board of directors of the group.

J. Upon the receipt of any notice of a member to withdraw or a decision by the board of directors to expel a member, the group self-insurer shall give immediate notice to the Commissioner and then as soon as practicable re-evaluate its net worth and financial condition. If the consolidated net worth or financial condition of the group, excluding the terminating or expelled member, fails to meet the requirements specified in subdivision C above, the group shall so notify the Commissioner within fifteen (15) days and advise the Commissioner of its plan for bringing the group into compliance with subdivision C above.

K. The group self-insurer shall file with the Commissioner the name of all employer members accepted into the group. The group shall not accept any liability for a new member until a signed indemnity agreement in the form set forth in Appendix II has been completed by that new member and filed with the Commissioner.

L. Each group self-insurer shall be prohibited from accepting as a member any employer that owes an outstanding debt to a previous group self-insurer. A judgment obtained under the laws of Minnesota shall be required as proof of such debt. If a group has such an employer member, upon receipt of the required proof, the fund administrator shall issue thirty (30) days notice of cancellation to the member.

M. The directors of each group self-insurer shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the group. All bylaws or plans of operation or amendments thereto, shall be subject to prior approval by the Commissioner.

1. These bylaws or plans of operation shall contain, but not be limited to, the following subjects:
   a. Qualifications for group self-insurer membership, including underwriting considerations.
   b. The method for selecting the board of directors, including the directors terms of office.
   c. The procedure for amending the bylaws or plan of operation.
   d. Investment of all assets of the fund.

e. Frequency and extent of loss control or safety engineering services provided to members.

f. A schedule for payment and collection of premiums.

g. Expulsion procedures, including expulsion for nonpayment of premium and expulsion for excessive losses.

h. Delineation of authority granted to the administrator.

i. Delineation of authority granted to the service company.

j. Basis for determining premium contributions by members including any experience rating program.

k. Procedures for resolving disputes between members of the group, which shall not include submitting them to the Commissioner.

2. The directors shall review at least annually the following items for the purpose of determining whether these areas of concern are being adequately provided for:

a. Service company performance.

b. Loss control and safety engineering.

c. Investment policies.

d. Collection of delinquent debts.

e. Expulsion procedures.

f. Initial member review.

g. Administrator performance.

h. Claims handling and claims reporting.

3. All group self-insurers shall file copies of its current bylaws or plan of operation with the Commissioner. Any changes in the bylaws or plan of operation shall be filed with the Commissioner no later than thirty (30) days prior to their taking effect. The Commissioner reserves the right to order the group self-insurers to rescind or revoke any bylaw or plan of operation if it is in violation of 4 MCAR § 1.9285 to 1.9294 or any law.

N. All group self-insurers shall maintain at a location within the State of Minnesota such records as are necessary to verify the accuracy and completeness of all reports submitted to the Commissioner pursuant to 4 MCAR § 1.9285 to 1.9294. However, the group self-insurers shall be authorized to transfer its financial records to the offices of the certified public accountant for the group self-insurers upon the written permission of the Commissioner. In addition, if the group self-insurer has contracted with a service company for claims handling, then the claims files and related records may be located at the offices of the service company. The location of these records shall be designated with the application for self-insurance authority and thereafter shall be provided to the Commissioner through written notice of any change in its location within thirty (30) days of any such change.

O. Failure of any employer to maintain membership in any group while not otherwise procuring insurance for its workers' compensation liability may subject the employer to the penalties

provided in Minn. Stat. § 176.181 and 176.183.

P. The group self-insurer shall be considered a single entity for the purposes of membership in the WCRA and for the purposes of any assessment levied upon self-insurers pursuant to the Workers' Compensation Act.

Q. The group self-insurer shall not incorporate or form a business trust pursuant to Minn. Stat. Chapter 318.

4 MCAR § 1.9293 Group self-insurers' fund.

A. Each group self-insurer shall, not less than ten (10) days prior to the proposed effective date of the group, submit evidence that cash premiums equal to not less than twenty percent (20%) of the current year's modified workers' compensation insurance premium for each employer, has been paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the members' premium, which shall be at least eighty percent (80%) of the current year's modified workers' compensation insurance premium, shall be paid to the group in a reasonable manner over the remainder of the year. Payments in subsequent years shall be made according to the schedule in the manual of Rules, Classifications and Rates approved for use in Minnesota provided that a reduction in the manual premium shall be allowed if based on bonafide savings in the expenses of the group.

Each group self-insurer shall initiate proceedings against a member when that member becomes more than fifteen (15) days delinquent in any payment of premium to the fund.

B. There shall be no co-mingling of any assets of the group self-insurers' fund with the assets of any individual member employer, or with any other account of the group unrelated to payment of workers' compensation liability incurred by the group.

C. The group self-insurer shall designate a fiscal agent and/or administrator to administer the financial affairs of the fund. Such fiscal agent or administrator shall furnish a fidelity bond with the self-insurer as obligee, in an amount sufficient to protect the fund against the misappropriation or misuse of any monies or securities. Such fiscal agent or administrator shall not be an owner, officer, or employee of the service company or any affiliate of the service company.

D. All funds shall remain in the control of the group self-insurer or its authorized administrator. One or more revolving funds for payment of compensation benefits due may be established for the use of the authorized service company. The service company shall furnish a fidelity bond covering its employees, with the self-insurer as obligee, in an amount sufficient to protect all monies placed in such revolving fund. Should the fidelity bond of the fiscal agent and/or administrator also cover the monies in the revolving fund, the service company shall not be required to furnish a fidelity bond.

E. The accounts and records of the group self-insurers' fund shall be audited annually. Audits shall be made by Certified Public Accountants with the Commissioner reserving the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards to be used by the group self-insurers or service companies, and the type of audits to be made, in order to determine the solvency of the self-insurers fund. All audits required by this rule shall be filed with the Commissioner ninety (90) days after the close of the fiscal year for the group self-insurer. The Commissioner may require a special audit to be made at other times if the financial stability of the fund or the adequacy of its monetary reserves is in question.

F. No director, fiscal agent or administrator of a group self-insurer shall utilize any of the monies collected as premiums for any purpose unrelated to workers' compensation insurance. No director, fiscal agent or administrator shall borrow any money from the self-insurers fund or in the name of the self-insurers fund.

G. Cash assets of the self-insurers fund may be invested as provided in M.S. § 60A.11 for a casualty insurance company provided that investment in common stock, real estate, or indebtedness from any member company is prohibited. In addition, investment in the following is allowed:

1. Savings accounts or certificates of deposit in a duly chartered commercial bank located within the State of Minnesota and insured through the Federal Deposit Insurance Corporation.
2. Share accounts or savings certificates in a duly chartered savings and loan association located within the State of Minnesota and insured through the Federal Savings and Loan Insurance Corporation.
3. Direct obligations of the United States Treasury, such as notes, bonds, or bills.
4. Any bond or security issued by the State of Minnesota and backed by the full faith and credit of the State.
5. Any credit union where the employees of the self-insurer are members, provided that such credit union is located in Minnesota, licensed by the State of Minnesota, and insured through the Federal Deposit Insurance Corporation.

H. Any securities purchased by the group self-insurers' fund shall be in such denominations, and with dates of maturity to insure that securities may be redeemable at sufficient time and in sufficient amounts to meet the fund's current and long-term liabilities.

I. The self-insurer shall report annually, as part of its financial statement, a schedule showing the disposition of all investment income earned during the immediately proceeding year.

J. Fifty percent (50%) of any surplus monies for a fund year in excess of 125 percent (125%) of the amount necessary to fulfill all obligations under the Workers' Compensation Act for that fund year may be declared refundable to a member at any time. If the amount calculated to be refundable is less than $500, then 100 percent (100%) of any surplus monies in excess of 125 percent (125%) may be declared refundable. Date of payment shall be no earlier than eighteen (18) months following the end of such fund year, provided that no more than one (1) refund may be made in any twelve (12) month period. When all claims arising out of any one fund year have been fully paid, all surplus monies from that year may be declared refundable.

K. The group self-insurer shall give notice to the Commissioner of any refund. Said notice shall be accompanied by a statement from the self-insurer's certified public accountant certifying that the proposed refund is in compliance with subdivision J above.

L. In the event of a deficit in any fund year, such deficit shall be paid up immediately, either from surplus from a fund year other than the current fund year, or by assessment of the membership. The Commissioner shall be notified within ten days of any transfer of surplus funds.

M. If the Commissioner finds that any deficit has not been paid up, he may order an assessment to be levied against the members of a group self-insurer sufficient to make up any deficit.

4 MCAR § 1.9294 Qualification for Service Companies

A. Any person or entity desiring to be licensed as a service company shall apply to the Commissioner on forms available from the Commissioner. The license shall designate areas of administrative services which the service company shall be authorized to perform. Any license granted shall be effective for a period of two (2) years unless revoked by order of the Commissioner.

B. In support of the application, a service company shall submit:

1. Summary information concerning its organization and staff.
2. Detailed resumes of all employees, or employees of any subcontractor, with administrative or professional capacity. Such resumes shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.
3. A description of the administrative services intended to be provided.
4. The identity of the owners of the service company, including but not limited to, all members of a partnership and all officers of a corporation.

C. The application shall be accompanied by a certification that the applicant has employed or has contracted with competent individuals to provide those services intended to be provided to self-insurers.

D. If the service company intends to provide claims adjusting, the service company or its subcontractor shall have supervisory personnel who possess at least three (3) years experience adjusting workers' compensation claims. Further, the service company or subcontractor shall have at least one adjuster who holds a license under Minn. Stat. Chapter 72B and shall be situated within the State of Minnesota.

E. The service company shall have within the State of Minnesota an employee who is able to act as a resident agent, authorized to act in all matters concerning the service company.

F. The service company shall have employed or retained experienced accountants when necessary to the providing of the administrative services to a self-insurer, when the prospective self-insurer does not provide such expertise.

G. The Commissioner shall grant or deny the license within 30 days after a complete application has been filed showing compliance with subdivisions A through F above. However, any entity who the Commissioner has reason to believe has committed an act or practice which is defined as unfair or deceptive in Minn. Stat. § 72A.20 shall be denied a license under this rule. Any applicant who is denied a license pursuant to this subdivision may within 30 days after denial by the Commissioner demand a hearing pursuant to Minn. Stat. Ch. 15. The Commissioner shall have the burden of proof at any such hearing to prove that the applicant has committed such a practice.

H. Any records of a service company relating to any of the services offered or provided to any self-insurer shall be open to inspection by the Commissioner during normal business hours.

I. Each service company may be investigated by the Commissioner upon reasonable belief that the service company is not in compliance with 4 MCAR § 1.9285 to 1.9294 or is improperly administering workers' compensation claims pursuant to the Workers' Compensation Act. If the Commissioner determines that the service company is not in compliance with 4 MCAR § 1.9285 ot 1.9294 or the Workers' Compensation Act, the service company shall be liable for the cost of the investigation.

J. Revocation of any service company license shall be pursuant to the contested case procedure in Minn. Stat. Chapter 15.

K. Good cause for revocation of the license of the service company shall be, but not limited to, the following factors:

1. Improper claims handling techniques.
2. Material violation of any of the foregoing rules.
3. Material violation of any provision of the Workers' Compensation Act.
4. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20.

L. Each service company shall be expected to file, or attempt to ensure that the self-insurers it services file, all required reports relating to those services which they provide by the dates established by statute or by these rules. Such reports shall include, but are not limited to, the following: loss information reports required by 4 MCAR § 1.9289, reports required by the WCRA, and any report required by the Minnesota Department of Labor and Industry.

M. Each service company shall report to the Commissioner the termination of any service contract entered into with a self-insurer within ten (10) days of such termination.

4 MCAR §§ 1.9295 - 1.9299 Reserved for future use.

Appendix I

BONDING COMPANY NAME

Bond No.

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS: That we, (entity to be bonded), of (location), (hereinafter called the "Principals"), as Principals, and (bonding company name), a (name of state) corporation, of (location) (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the Commissioner of Insurance of the STATE OF MINNESOTA for the use and benefit of the employees of the Principals and to pay workers' compensation obligations of the Principals in the sum of (dollar amount), for the payment of which well and truly to be made, the Principals bind themselves, their successors and assigns, and the Surety binds itself and its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in accordance with the provisions of Section 176.181 of the Minnesota Statutes, the Principals have by written order of the Commissioner of Insurance of the State of Minnesota been exempted from insuring its liability for compensation according to the provisions of the Minnesota Workers' Compensation Act and have been permitted by said order to self-insure all liability hereafter arising under the Workers' Compensation Act, including their liability for medical expenses.

NOW, THEREFORE, the condition of this obligation is such that if the said Principals shall, according to the terms, provisions and limitations of the Minnesota Workers' Compensation Act, pay all of their liabilities and obligations under said act, including all benefits as provided by said act, then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however, to the following terms and conditions:

1. The liability of the Surety is limited to the payment of all legal liabilities and obligations, including payment of compensation and medical benefits, provided by the Workers' Compensation Act of Minnesota which are payable by said Principals for or on account of personal injuries or occupational diseases sustained during or attributable to the entire period that the Principals are authorized to self-insure in the State of Minnesota, subject to cancellation, as hereinafter provided. In no event shall the total liability of the Surety exceed the amount herein stated, to-wit, the sum of (dollar amount).

2. In the event of any default on the part of the Principals to abide by any award, order or decision of the Workers' Compensation Division of Minnesota directing and awarding payment of such legal liabilities, obligations, or benefits to or on behalf of any employee or the dependents of any deceased employee, the Commissioner of Insurance may, upon ten days notice to the Surety and opportunity to be heard, require the Surety to pay the amount of the same, to be enforced in like manner as an award may be enforced against said Principals.

3. Service on the Surety shall be deemed to be service on the Principals.

4. This bond shall continue in force from year to year unless cancelled as herein provided, but regardless of the number of years this bond remains in force or the number of annual premiums paid or payable the total liability of the Surety hereunder shall not exceed the sum of (dollar amount).

5. This bond may be cancelled at any time by the Surety by giving sixty (60) days notice in writing to the Commissioner of Insurance of the State of Minnesota at its offices in the City of St. Paul, Minnesota, and upon expiration of said sixty (60) days the liability of the Surety

hereunder shall cease, except as to liability incurred hereunder prior to the expiration of said sixty (60) days, as set out in paragraph 1.

6. This bond shall become effective at (time of day) (month, day, year).

IN TESTIMONY WHEREOF, said Principals and said Surety have caused this instrument to be signed by their respective duly authorized officers and their corporate seals to be hereunto affixed this (day, month, year).

Signed, sealed and delivered in the presence of:

Corporation Name

By: _____

_____

Bonding Company Name

_____

By _____

_____

Appendix II

INDEMNITY AGREEMENT

1. Whereas, (name of company) has agreed to be and has been accepted as a member of (name of Group Self-Insurer).

2. Whereas, (name of company) has agreed to be bound by all of the provisions of the Minnesota Workers' Compensation Act and all Rules and Regulations promulgated thereunder.

3. Whereas, that (name of company) has agreed to be bound by the bylaws or plan of operation and all amendments thereto of (name of Group Self-Insurer).

4. Whereas, that (name of company) has agreed to be jointly and severally liable for all claims and expenses of all the members of (name of Group Self-Insurer) arising in any fund year in which (name of company) is a member of the group. Provided that if (name of company) is not a member for the full year it shall be only liable for a pro rata share of that liability.

IN WITNESS WHEREOF, the (name of company) and (name of group self-insurer) have caused this indemnity agreement to be executed by its authorized officers:

| GROUP SELF-INSURERS NAME | COMPANY NAME |
|---|---|
| By:_____ | By:_____ |
| DATE: _____ | DATE:_____ |

APPROVED AS TO FORM AND LEGALITY

JAN 24 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : MICHAEL D. MARKMAN
Commissioner of Insurance
Department of Commerce

DATE: January 24, 1980

Attn: DALE L. McDONNELL

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing Self-Insurance For Workers' Compensation

The above-captioned temporary rules have been approved by this office.

While the statute does not require it, this office recommends that the Order Adopting and the attached copy of the adopted rules be filed with the Secretary of State.

If you have any questions, do not hesitate to contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Commerce - Insurance

# Office Memorandum

TO : Jerry S. Anderson
Special Asst. Attorney General

DATE: Jan. 23, 1980

FROM : Dale L. McDonnell
Staff Attorney

PHONE: 6-8591

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing Self-Insurance for Workers' Compensation

Pursuant to Minn. Stat. §§ 15.0412, Subd. 5, the above captioned temporary rules are hereby re-submitted for your review as to form and legality.

In accordance with your memo of January 18, 1980, the following changes were made in the rules that were submitted on January 11, 1980:

1. Section 1.9289 D & E - The other information required has been qualified by specifying that it will be data necessary to substantiate data in the financial statement or group's summary statement.

2. Section 1.9291 C & E - The word "shall" was inserted for "may"; and excess insurance was inserted in place of reinsurance.

3. Section 1.9291 G, parts 1 through 4 - The phrases were made internally consistent by making all references singular; also a comma was added between the words "liability" and "either" in part 2.

4. Section 1.9292 C - In part 1 the word "shall" was substituted for "may", and a comma was placed after excess insurance. In part 2, commas were placed before and after "net worth" and after the words "excess Insurance"; reinsurance was inserted in the phrase "other than with the WCRA"; and the phrase "to the Commissioner" was deleted.

5. Section 1.9292 D - The discretionary phrase that was referred to in your memo was completely deleted.

6. Section 1.9292 E - The word "shall" was substituted for "may".

7. Section 1.9292 H - The words "for the" were deleted and the word "current" was inserted to clarify the section.

8. Section 1.9292 I - The typographical errors referred to in your memo were corrected.

9. Section 1.9293 A - The discretionary language was changed by inserting "shall" for "may" and deleting the last part of the phrase.

10. Section 1.9293 E - The typographical error was corrected.

11. Section 1.9294 A, part 4 - "offices" was changed to "officers".

12. Section 1.9294 G was deleted.

13. Section 1.9294 N - Was changed to G and the language was changed to specify standards as suggested in your memo.

Besides the changes that you suggested in your memo, Subd. 12 of 72A.20 was deleted from Sections 1.9290 E and 1.9294 K. 4.

If you have any questions please feel free to call me.

DLM:smp

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : MICHAEL D. MARKMAN
Commissioner of Insurance
Department of Commerce

DATE: January 18, 1980

Attn: DALE L. McDONNELL

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules Governing Self-Insurance For Workers' Compensation

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reasons:

1. The agency's use of the word "may" in numerous sections of the rules, which are specifically discussed below, makes the rules improper. Use of the word "may" in many of these cases permits the agency to consider unstated criteria in its decision making, as well as to deny a license to an applicant who has met all of the stated criteria. Minn. Stat. § 15.0412, Subd. 3, requires the agency to establish by rule "every agency statement of general applicability and future affect." The use of the word "may" would permit the agency to add qualifications or criteria in an ad hoc fashion. Such qualifications and criteria are "agency statement(s) of general applicability and future affect" and must be established by rule. While this office understands the need for agency flexibility and discretion, such flexibility and discretion are achieved by careful, complete selection of criteria that are not impermissibly vague but that are sufficiently broad to permit agency flexibility. The agency cannot hedge against its fallibility in listing all qualifications or criteria by use of the word "may." To permit this would violate the requirements of Minn. Stat. § 15.0412, Subd. 3. It would also permit discrimination against an applicant who met all stated criteria, as the agency could rely on the word "may" in rejecting the application. Predictability and nondiscriminatory application of the rules must be achieved and made available to all applicants who meet the stated criteria. Thus, the word "shall" must be used. The following is a list of the improper rules:

A. Section 1.9289 D., E. Each of these rules appears to give the Commissioner unbridled discretaion in requiring additional financial information. To the extent possible, the types of financial information and the instances or purposes for which such information would be required should be stated.

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B. Section 1.9291 C. and E. are disapproved for the reasons discussed above. Agency action must be certain when evidence satisfying criteria established by the rule is submitted, and therefore the word "sahll" must be used in place of the word "may."

C. Section 1.9292 C. 1., D., and E., are disapproved for the reasons discussed above. In each case, agency action must be certain when the criteria set forth in the role is established. The word "shall" must be substituted for the word "may."

D. Section 1.9293 A. is disapproved for the reasons discussed above.

2. An amendment to Section 1.9291 D. concerning reinsurance and excess insurance, was not made in the adopted rule. Although the following is not a fatal defect, in each of parts 1 through 4 of Section 1.9291 G. the word "its," which is singular, should be made plural so that it agrees with "employers" and "their." Additionally, the clarity of Section G. 2. would be enhanced by adding a comma between the words "liability" and "either."

3. Section 1.9292 C. 1. and 2. contain a number of typographical errors that are apparent upon comparing the adopted rule with the amendments. Thus, in Section C. 1. a comma should be placed after the words "excess insurance." In Section C. 2., commas should be placed before and after the words "net worth." For clarity a comma should be placed after the words "any excess insurance," the word "reinsurance" should be inserted in the phrase "other than with the WCRA," and a comma should be placed after WCRA. Additionally, the phrase "to the Commissioner" should be struck.

4. In Section 1.9292 H. the words "for the," which appear after "members modified premium," should be struck and an apostrophe should be placed after "members." As the amended section presently reads, a group self-insurer must deposit an amount equal to 70% of the members' modified premium but does not state what premium it is that is to be considered. Apparently, the premium that is to be considered is the premium for the present year. This should be stated in the rule.

5. Section 1.9292 I. has two typographical errors in the third sentence. The word "engaged" should be inserted between the words "longer" and "in," and the word "employees" should be "employers."

6. The heading at 4 MCAR § 1.9293 is missing an apostrophe after "self-insurers." Section 1.9293 E. contains a typographical error in the second sentence: "self-insurers group" should read "group self-insurers."

7. Section 1.9294 B. 4. contains a typographical error: "offices" should be "officers."

8. Section 1.9294 G. is impermissibly vague. It gives potential applicants no idea whatever of what standards will be applied.

9. Section 1.9294 N. is impermissible vague. This section establishes no standards by which an applicant can determine whether any of the applicants actions will be considered unfair, inequitable, or a breach of fiduciary duty. In other word, this section does not provide applicants with notice of the standards by which their conduct will be judged.

Upon consideration of the issues raised in this memorandum, and any subsequent action taken by the Department on these rules, this file may be resubmitted to this office with three (3) copies of the rules as amended and a new Order Adopting said rules. Please contact me if you have any questions regarding this memorandum.

JSA/lh
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Commerce - Insurance

# Office Memorandum

TO : Senate Employment Committee

DATE: Dec. 11, 1979

FROM : Michael D. Markman
Commissioner of Insurance

PHONE: 6-6907

SUBJECT: Answers to Questions on Workers' Compensation

A - Questions Concerning Compliance with Minnesota Statute Section 79.171

1. The Rating Association provided the information that was required by clauses a through d of Section 79.171 in its current rate request. The information which was required on incurred but not reported losses and on the income on invested reserves of members was national data and was not given for Minnesota business only.

   I believe that the information provided the minimum requirements of the law. The information is not available on a state by state basis without artificial allocations since the companies do not develop these numbers on a state by state basis. Any allocation to a state would be an artificial allocation which may or may not be meaningful in the rate making process. The hearing should provide evidence on this matter, and if the evidence provided in the hearing indicates that Minnesota data are more appropriate in these categories, the rate order will require that Minnesota-only data be furnished in the future. In addition, the information which would be necessary to make allocations of these data to Minnesota are subject to discovery, and any party to the case may request this information of the Association.

2. My decision to grant a rate hearing on the workers' compensation rates on the basis of the filing made by the Association was made because I believe that the information does meet the minimum requirements of the law. The Rating Association clearly stated that the materials were not prepared with the present intention of the legislature in mind; however, the information does in my opinion meet the minimum requirement of the statute. Any editorial comments that the Rating Association may make with respect to the uses to which its data may be put is of little or no consequence in making the determination of whether or not the hearing may be held.

3. I believe that the appropriate manner in which the information should be considered is a matter on which testimony needs to be taken in the hearings. I don't feel that I can comment on it at this time without showing prejudice in the matter. If, as a result of the hearing, the information provided is shown to be inadequate or not in its most useful form, then the Association will be ordered to provide the information in an improved form in all future rate filings.

4. The Rating Association has claimed that no consistent definition of incurred but not reported reserves exists nor is their any standard formula for calculating such reserves. The incurred but not reported (IBNR) reserves are a statistic artifact which result from the determination of a gross reserve for all workers' compensation claims or any other line of business that an insurance company may write. The statistical formulae are developed over time to match the reporting experience of individual companies.

   The method that companies use to establish their reserves has traditionally been a method which is of the company's own choosing. Certainly a law or regulation could be developed which would establish a uniform method for determining reported loss reserves, both for known cases and for incurred but not reported cases; however, I do not believe that such a uniform standard would be desirable because there is no clear evidence about which of several alternative methods is preferable. The different kinds of business that different companies write indicate different practices. The size of the company's writing as well as the type of risks that a company may write dictate reserving practices and patterns. These often differ from company to company.

   Incurred but not reported reserves are a forecast of claims having already occurred but which are yet to be reported. I do not believe that requiring every company to make this forecast in the same manner would necessarily result in any more accurate forecast of additional claims that would be reported and would, therefore, not aid in the determination of workers' compensation insurance rates. However, if evidence is received, in the hearing or elsewhere, that would indicate that a standard formula would be more appropriate for workers' compensation rates, then such a formula could and should be implemented.

5. I believe that the rate hearing will provide substantial information as to what additional information may be necessary to more properly determine the needed rate changes in workers' compensation insurance. As the new rating law requires, this information will be ordered as a result of the hearing and until that information is provided in the filing, no new hearing will be held.

B - Questions Concerning the Workers' Compensation Reinsurance Association (WCRA)

1. The current premium that is being charged to members of the WCRA for the fourth quarter 1979 is 6.4% of the annual standard earned premium for companies at the $100,000 retention and 1.65% of the annual standard earned premium for companies at the $300,000 retention level. The premiums for 1980 were set at 7.8% for the $100,000 retention and 2.1% for the $300,000 retention.

2. The reason for the reduction in rates from the fourth quarter 1979 to the 1980 rate was a result of a new method of loss forecasting that was developed by WCRA's actuarial consultant. Since members had to choose their retention limit prior to October 1, the date the WCRA began accepting risk for catastrophic losses, the implementation of this new method in time to set the original rate was impossible. In addition, the rate for 1980 assumes a 3.5% after tax return on the invested assets of the Association.

3. The method of determining the premium to be charged members of the WCRA will clearly become more sophisticated as time goes on. Whether or not the current method is the most appropriate method or whether it is the most accurate method will only be determined in coming years. However, the WCRA Association believes that the current method is the best method available at this time. The method is new and significantly different from traditional methods and provides a sound basis for developing premiums.

4. The WCRA received oral bids from four competitors for its management contract. The four bidders included the General Reinsurance Corporation, a reinsurance company, and three insurance brokers - Alexander and Alexander, Marsh McLennan, and Frank B. Hall. The charges which were proposed by the competitive bidders ranged from about $200,000 per year to about $600,000. These are approximate charges as I recall them. If specific numbers are requested by the Committee, I will request them from the WCRA.

   The Board selected General Reinsurance Corporation (GRC) after a long deliberation, even though the GRC quote was the highest. A majority of the Board apparently felt that the GRC provided the strongest expertise in the management of a reinsurance company, which is what the WCRA is. The insurer members of the Board also believed that in contracting with a professional reinsurance company, the WCRA would receive more acceptance and support from its insurance company members. Certain other members of the Board believed that the WCRA had an obligation to contract with a Minnesota firm if the Minnesota firm showed the capabilities to perform the services required. I personally felt that GRC had substantially more experience in all of the areas which the WCRA is likely to need the assistance of its servicing carrier and that this experience would be most beneficial to the WCRA in its formative years. This was especially true in claims and rehabilitation services. Certainly the brokers were capable of providing services to the WCRA, and the WCRA could have functioned quite well with one of the brokers as a servicer. Alexander and Alexander provided the strongest presentation of the brokers; however, GRC's background and expertise as the largest reinsurance company in the U.S. was the key factor in my vote.

   The overall fee charged by the different competitors was not a particularly important consideration in the Association's road. The charges were in all cases only a minor portion of the total losses and would not substantially impact on the cost of workers' compensation in Minnesota. The most important consideration was which potential servicer would provide the best quality of service and provide the most assistance to the WCRA.

5. The reaction from members of the WCRA and other affected parties to the organizational plan of the Association has generally been positive. Certainly, many individuals have made suggestions on improvement and these suggestions are being acted on as time allows. Most members of the Association are taking a wait and see attitude toward the Association as it develops; however, I think that the overall reaction has been about as I had expected, given the general opposition of major insurance carriers to such a program.

C - Questions Concerning Group and Individual Self Insurance and Proposed Temporary Rules Governing Self Insurance

1. The transition from the Department of Labor and Industry to the Division of Insurance for the administration of self insurance programs, has generally gone smoothly. The Labor and Industry people have provided substantial assistance to the Insurance Division staff in educating the Division staff in the process of approval of the self insurance programs. We have not as yet approved any new self insurers in Minnesota, since we are developing administrative rules to govern the approval of self insurers. While this process has not gone as quickly as I would have hoped, it has proceeded to the point where temporary rules have been published for comment and we expect the rules to be established on a temporary basis in early January.

2. Current self insurers have generally been supportive of the proposed rules. The earlier drafts of the rules contained certain problems that the self insurers pointed out, especially in financial requirements. These problems have been partially corrected. The reporting requirements that the rules will contain have not been specifically drafted at this time, and certainly the ability to make the reporting requirements not burdensome while providing information which we need to effectively administer the program will be important. I have not had any adverse comments from would-be group self insurers and would-be self insurer administrators. They have indicated certain problems with the rules which include:

    a) the requirement for joint and several liability of members
    b) a penalty for withdrawal from a self insuring group prior to three years in the program
    c) a requirement for actuarial certification of the reserves of the self insuring group
    d) limitations on the withdrawal of surplus money from the self insuring fund

3. Current self insurers were required by the Department of Labor and Industry to recertify annually as a self insurer. The current rules would require the current self insurers to meet the new requirements when their annual certification expires during 1980. A new approval would then be continuous until either cancelled by the Commissioner for reasons of financial or administrative problems of the self insurer or when cancelled by the self insurer.

    The financial requirements contained in this proposal will make self insurance substantially easier for a smaller firm, either on an individual basis or jointly than would have been allowed by the Department of Labor and Industry. This is true because of the availability of reinsurance at a relatively low level from the Reinsurance Association. In addition, the requirement to provide some kind of security deposit for losses under the proposed rules is substantially less burdensome than the latest requirements of the Department of Labor and Industry.

4. The differences in the requirements for an individual self insurer and for a self insurer on a joint or group basis are differences which result from the kind of administration necessary for a joint program. The overall financial requirements of minimum size and solvency of the individual or the group will not be any different. The deposit required will be smaller for the group self insurer than for an individual self insurer that does not clearly indicate its liability for workers' compensation on its balance sheet. The administration of group self insurance plans will be substantially different from the administration of an individual self insurance plan because the individual self insurer is working only with its own employees and the group self insurance plan must work with the employees of the different firms. In addition, there are premium and accounting considerations that must be made on a group basis that are of no consequence to an individual self insurer.

   The kinds of circumstances which would make self insurance more advantageous for small employers than commercial insurance would be circumstances where the employers believe that by grouping together and applying effective safety programs and other management programs, that the self insurance plan can be administered less expensively than an insurance company. The reasons for these savings could include a savings in the expenses as well as savings in acquisition costs and loss costs. In addition, the insurance company assumes a certain risk in the providing of workers' compensation insurance. The small employer, or any employer for that matter, assumes this risk when the business self insures. An employer wishing to assume this risk should assume that he or she will also receive a certain amount of monetary return for assuming the risk. This monetary return is the profit for the insurance company. If the employer assumes that the monetary return is inadequate for the risk, then the employer should insure. If the employer assumes that the risk is worth while, then the employer may be better off to self insure. If the workers' compensation rating plan as approved by the Commissioner is an appropriate plan based on statutory standards and based on the conditions existing in the marketplace, then the use of investment income earned on funds invested for loss reserves will make very little difference to the self insurer on a group basis.

5. The primary difference between a reciprocal insurance company and group self insurance is that a reciprocal insurance company must put up capital and surplus money prior to assuming risks. The group self insurer need not put up any capital prior to the assuming of risk. The risks which capital is designed to absorb will be absorbed by the individual businesses making up the group self insurer. The advantages of using a reciprocal insurance company would be:

   1) the reciprocal insurance company could provide a substantially wider range of services including the insurance of the members' other lines of business

   2) a reciprocal insurance company can issue non-participating policies and insulate its members from any adverse losses resulting from the insurance operation. The primary impediment to the formation of the reciprocal insurance company workers' compensation line is an initial $1.5 million surplus contribution by the members of the reciprocal company. In addition, a reciprocal would have to pay the 2% premium tax.

I do not see any advantage to removing any statutory or regulatory constraints in the formation of reciprocal insurance companies as an option to provide workers' compensation insurance. The ability to self insure on a group basis allows any small employer an option to self insure which is generally free of regulatory constraints. The removal of such constraints would not apply only to workers' compensation. Therefore, reciprocal insurance companies would have a competitive advantage over mutual and stock insurers and provide substantially more risk of insolvency. Since the mutual and stock insurers participate in the Guaranty Fund, they would be forced to pay for these insolvencies.

6. I do not see any statutory change that would be necessary in the area of self insurance for the 1980 session. Our first year of experience in 1980 may well indicate some desirable changes which can be considered in the 1981 - 82 session of the legislature.

communications system, nor the officers, directors, or employees of the cable communications system shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program. The foregoing provision does not affect the liability of those responsible for the origination or production of any obscene program.

B. A program is obscene when, to the average person applying contemporary community standards, the program taken as a whole appeals to the prurient interest; the program depicts or describes, in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions, or lewd exhibition of the genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

**~~4 MCAR § 4.192~~ 4 MCAR § 4.231 Defamation.**

A. Defamatory matter is anything which exposes a person or a group, corporation, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation and any other matter which renders an individual issuing defamatory matter subject to liability for damages within the laws of the State of Minnesota.

B. Except as hereinafter provided, whoever has knowledge of the defamatory character of the matter and communicates the defamatory matter to a third person without the consent of the person defamed violates this rule; provided that neither the cable communications system whose facilities are used to transmit a program produced by a person other than a cable communications system, nor the officers, directors or employees of the cable communications system shall be liable for any penalty or damages arising from any defamatory material presented thereon when the cable communications system or its employees does not originate or produce the program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any defamatory material presented thereon unless the entity itself originates or produces the program containing the defamatory material. The foregoing provision does not affect the liability of those responsible for the origination or production of any defamatory material presented in a program.

C. The following shall not constitute a violation of 4 MCAR § ~~4.192~~ 4.231.

1. The defamatory matter is true and is communicated with good motives and for justifiable ends; or

2. The communication is absolutely privileged; or

3. The communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

4. The communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

5. The communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with intent to further such interest or duty.

**4 MCAR §§ ~~4.193-4.200~~ 4.232-4.239 Reserved for future use.**

# Department of Commerce Insurance Division

## Proposed Temporary Rules Governing Self-Insurance for Workers' Compensation

### Request for Public Comment

Notice is hereby given that the Insurance Division of the Department of Commerce has proposed the following temporary rules governing self-insurance for workers' compensation. These temporary rules are promulgated pursuant to Minn. Stat. § 176.181, subd. 2 (Laws of 1979, Spec. Ses. ch. 3, § 50).

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register by writing to Berton W. Heaton or Dale L. McDonnell, Insurance Division, Department of Commerce, 5th Floor, Metro Square Building, St. Paul, Minnesota, 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rules. Publication is hereby ordered.

**[Continued on next page.]**

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## Temporary Rules As Proposed

**4 MCAR § 1.9285 Authority.** 4 MCAR § 1.9285-1.9293 are promulgated under the authority of Minn. Stat. § 176.181. subd. 2 (Laws of 1979. Spec. Ses. Ch. 3. § 50).

**4 MCAR § 1.9286 Purpose and scope.** These rules are designed to assure that the self-insurance plans are financially solvent. administered in a fair and capable fashion. and able to process claims and pay benefits in a prompt. fair and equitable manner: and to allow the Commissioner to authorize qualified entities to engage in such business in a manner which is fair. equitable and consistent with the legislative intent of the Workers' Compensation Act.

**4 MCAR § 1.9287 Definitions.**

A. "Certified Audit" or "Certified Financial Statement" means an audit or financial statement upon which an independent Certified Public Accountant expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles and generally accepted auditing standards consistently applied.

B. "Commissioner" means the Commissioner of Insurance.

C. "Current ratio" means the ratio of current assets to current liabilities in the most recent financial statement.

D. "Fund" means self-insurers fund.

E. "Affiliated company" means any company that directly. or indirectly through one or more intermediates. controls. is controlled by. or is under common control with. the applicant company.

F. "Modified premium" shall mean the total manual premium as defined in the Workers' Compensation Insurers Rating Association's manual of Rules. Classifications. and Rates approved for use in Minnesota. modified by an experience rating plan approved by the Commissioner. and reduced by the appropriate premium discount.

G. "Self-insurers fund" means any monetary fund or account created by a group self-insurer to pay workers' compensation claims due under the Workers' Compensation Act.

H. "Self-insurer" means both individual and group self-insurers unless the context clearly indicates a more restrictive definition.

I. "Service company" shall mean an entity which has obtained a license from the Commissioner pursuant to 4 MCAR § 1.9294 to contract with self-insurers for the purpose of providing services necessary to plan and maintain an approved self-insurance program.

J. "Workers' Compensation Reinsurance Association" shall mean that Association created by Laws of 1979. Spec. Ses. Ch. 3. §§ 17 to 25 (hereinafter referred to as the "WCRA").

K. "Workers' Compensation Act" shall mean Minn. Stat. ch. 176.

**4 MCAR § 1.9288 Acceptable securities and surety bonds.**

A. Acceptable securities and surety bonds for the purposes of 4 MCAR § 1.9291 G. and 1.929 H. shall be:

1. U. S. Government bonds;

2. Any bonds or securities which are issued by the State of Minnesota and which are secured by the full faith and credit of this State;

3. Certificates of deposit issued by a bank in the State of Minnesota. which is protected by the Federal Deposit Insurance Corporation;

4. Savings certificates issued by any savings and loan association in the State of Minnesota which is protected by the Federal Savings and Loan Insurance Corporation;

5. Surety bonds issued by a corporate surety authorized by the Commissioner to transact such business in the State of Minnesota;

6. Any guarantee from the United States government whereby the payment of the workers' compensation liability of a self-insurer is guaranteed.

B. All securities shall be deposited with the State Treasurer and surety bonds shall be filed with the Commissioner. The Commissioner and the State Treasurer shall be authorized to sell and/or collect. in the case of default of the employer or fund. such amount thereof as shall yield sufficient funds to pay compensation due arising pursuant to the Workers' Compensation Act.

C. Securities must bear the following assignment which shall be signed by an officer. partner. or owner: Assigned to the State of Minnesota for the benefit of injured employees of the self-insured employer under the Minnesota Workers' Compensation Act.

D. Interest accruing on any negotiable securities so deposited shall be collected and transmitted to the depositor, provided that the depositor is not in default in payment of compensation, premiums due the WCRA, or any assessments levied by the Department of Labor and Industry under Minn. Stat. § 176.131.

E. All surety bonds shall conform to the bond form set forth in Appendix I.

F. All deposits shall remain in the custody of the State Treasurer or the Commissioner for a period of time as the applicable Statute of Limitations provided in the Workers' Compensation Act dictates.

G. No securities on deposit with the State Treasurer shall be released without an order from the Commissioner.

H. Any securities deposited with the State Treasurer or surety bonds held by the Commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond exceeds the amount of deposit required.

### 4 MCAR § 1.9289 Filing of reports.

A. Incurred losses, paid and unpaid, by classification and payroll, and current estimated outstanding liability for workers' compensation shall be reported to the Commissioner by each self-insurer on forms available from the Commissioner. Such information shall be reported on a calendar year basis and must be filed by April 1 of the following year, beginning April 1, 1981.

B. Each self-insurer shall under oath, attest to the accuracy of each report submitted pursuant to subdivision A above. Where the Commissioner has reason to doubt the accuracy of such reports he may require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner. Reasons for such an audit include, but are not limited to, the following factors: where the losses reported appear significantly different from similar type businesses or where major changes in the reports exist from year to year which are not solely attributable to economic factors. If any discrepency is found, the Commissioner may require changes in the self-insurer's or service's company's record keeping practices. If the self-insurer or service company does not comply with such order, the Commissioner may fine the self-insurer or service company to up $50.000 or revoke the self-insurer's authority to self-insure, and the service company's license to act as a service company.

C. Each self-insurer shall report to the Commissioner any workers' compensation claim estimated to exceed $50.000 within ten days of obtaining knowledge that the claim may exceed $50.000.

D. Each individual self-insurer shall, within four months after the end of its fiscal year, file with the Commissioner its latest 10K Report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K Report, it shall file an annual certified financial statement, together with such other financial information as the Commissioner may require.

E. Each group self-insurer shall, within four months after the end of the fiscal year for that group, file a statement showing the combined net worth of its members based upon each individual member's annual certified financial statement.

F. In addition to the financial statements required by subdivisions D. and E. above, interim financial statements, or 10Q Reports required by the Securities and Exchange Commission may be required by the Commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including but not limited to a worsening of current ratio, lessening of net worth, net loss of income, the down grading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer which files an 8K Report with the Securities and Exchange Commission shall also file a copy of the report with the Commissioner within thirty (30) days.

G. Any self-insurer that fails to file any report required by these rules within the time prescribed shall be subject to the same penalty as insurance companies for failure to file required reports pursuant to Minn. Stat. § 72A.061.

### 4 MCAR § 1.9290 Revocation of self-insurance authority.

The following shall constitute grounds for revocation of the authority to self-insure:

A. Failure to comply with 4 MCAR §§ 1.9285-1.9293;

B. Failure to comply with any order of the Commissioner;

C. Failure to comply with any provision of the Workers' Compensation Act.

D. A deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses, including, but not limited to, a worsening of the current ratio, a lessening of net worth, a net loss of income, or the failure of the self-insurer to meet the net worth standards of 4 MCAR § 1.9291 C. or 1.9292 C.

E. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20, subd. 12.

F. Failure to abide by the Plan of Operation of the WCRA.

### 4 MCAR § 1.9291 Requirements for individual self-insurers.

A. Each employer desiring to self-insure individually shall apply to the Commissioner on forms available from the Commissioner. The Commissioner shall have thirty (30) days after receipt of a complete application is filed to either grant or deny the application. Such time limit may be extended for another thirty (30) days upon fifteen (15) days prior notice to the applicant. Any grant of authority to self-insure shall continue in effect until revoked by order of the Commissioner or until such time as the employer becomes insured.

B. Each application for self-insurance shall be accompanied by a certified financial statement. Certified financial statements for a

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period ending more than six (6) months prior to the date of the application must be accompanied by an affidavit signed by a company officer under oath stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period.

C. Each individual self-insurer shall have a net worth of not less than ten (10) times the retention limit selected with the WCRA. In no event shall the net worth be less than one third (1/3) the amount of the self-insurer's current annual modified premium. Provided that the requirements of this subdivision may be modified if the self-insurer can demonstrate through a reinsurance program, other than coverage provided by the WCRA, that it can pay expected losses without endangering the financial stability of the company.

D. Each individual self-insurer shall be in sound financial condition. In determining whether a self-insurer meets this requirement the Commissioner shall consider: the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the company; any reinsurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than reinsurance from the WCRA; and any other financial data submitted to the Commissioner by the company.

E. Where an employer seeking to self-insure fails to meet the financial requirements set forth in subdivisions C. and D. above, the Commissioner may grant authority to self-insure provided that an affiliated company, whose financial statement is filed with the Commissioner and meets the requirements set forth in subdivisions C. and D. above and provides a written guarantee adopted by resolution of its board of directors that it will pay all workers' compensation claims incurred by its affiliate. If said guarantee is withdrawn or if the guarantor ceases being an affiliate, the self-insurer shall give written notice to the Commissioner and its authority to self-insure shall automatically terminate twenty-one (21) days following withdrawal of the guarantee or termination of affiliate status.

F. Each individual self-insurer shall agree to fully discharge by cash payment or other form of benefit approved by the Department of Labor and Industry, all amounts required to be paid by the provisions of the Workers' Compensation Act.

G. Each individual self-insurer shall be required to deposit acceptable securities or surety bonds in an amount equal in value to:

1. Seventy percent (70%) of the employer's modified premium, up to a maximum of one million dollars ($1,000,000.00); or

2. The employer's outstanding workers' compensation liability up to a maximum of one million dollars ($1,000,000.00) if the employer has been self-insured for at least two (2) years. Provided that if the self-insurer provides in its financial statement a specific line item setting forth its outstanding workers' compensation liability then the maximum deposit required shall be five hundred thousand dollars ($500,000.00).

H. No deposit shall be required of a self-insurer than has had its workers' compensation liability guaranteed pursuant to subdivision E. above, provided that the affiliated company is required to make a deposit and the self-insurer's outstanding workers' compensation liabilities are included in the determination of the affiliate's deposit.

I. Each individual self-insurer shall not have a record administering insurance claims in an unfair or inequitable manner.

J. Each individual self-insurer shall designate those employees who will administer its self-insurance program, and shall specify their professional qualifications. If a self-insurer contracts with another entity for the administration of its program, including adjustment of claims, or administration of loss control or safety engineering programs, the self-insurer shall contract with only a service company duly licensed for those specific areas of program administration.

### 4 MCAR § 1.9292 Requirements for group self-insurers.

A. Two or more employers in the same industry may apply to the Commissioner for the authority to self-insure as a group on forms available from the Commissioner. This initial application shall be accompanied by a copy of the bylaws or plan or operation adopted by the group. Such bylaws or plan of operation shall conform to the conditions prescribed by 4 MCAR §§ 1.9292 and 1.9293. The Commissioner shall within thirty (30) days approve or disapprove the bylaws unless a question as to the legality of a specific bylaw provision has been referred to the Attorney General's office.

B. After the initial application along with the bylaws or plan of operation have been approved by the Commissioner or at the time of the initial application the group shall then submit: the names of the employers that will be members of the group; an indemnity agreement as set forth in Appendix II signed by an officer of each member; and a certified financial statement of each member.

C. The indemnity agreements and financial statements shall be accompanied by a statement showing that:

1. The combined net worth of all of the members is not less than ten (10) times the retention selected with the WCRA and not less than one-third (1/3) of the current annual modified premium of the members. Provided that the requirements of this subdivision may be modified if the self-insurer can demonstrate that through a reinsurance program, other than coverage provided by the WCRA, that it can pay expected losses without endangering the financial stability of the group.

2. That the group is in sound financial condition. In determining whether a group is in sound financial condition consideration shall be given to: the combined net worth of the member companies; the consolidated current ratios of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; the particular industry that the member companies are engaged in; any reinsurance other than with the WCRA purchased by the group from an insurer licensed to do business in Minnesota or from an authorized surplus line carrier; and any other financial data submitted by the group to the Commissioner.

D. In determining whether two or more employers are engaged in the same industry the Commissioner shall consider the following factors:

1. The similarity of the applicable governing industry clas-

sification for each employer as determined pursuant to the manual of Rules, Classifications and Rates approved for use in Minnesota.

2. The similarity or resemblence of the work or tasks performed by a majority of employees of each employer.

3. The similarity of manual premium rate of each employer as evidenced by a relatively small variation of the manual rates for the governing classifications of each employer as defined in the manual of Rules, Classifications and Rates approved for use in Minnesota.

E. The Commissioner shall have thirty (30) days to review the financial statements of the group members and grant or deny their application to self-insure provided that such time may be extended for an additional thirty (30) days upon fifteen (15) days prior notice to the applicant. Upon a determination that: the financial ability of the self-insurers group is sufficient to fulfill all joint and several obligations of the member companies which may arise under the Workers' Compensation Act; the gross annual premium of the group members is at least three hundred thousand dollars ($300.000.00); the required securities or surety bond shall be on deposit prior to the effective date of coverage for any member; and all of the member companies are engaged in the same industry; the Commissioner may grant approval for self-insurance. Such approval shall be effective until revoked by order of the Commissioner or until the employer members of the group become insured.

F. Each group self-insurer shall contract with a service company licensed pursuant to 4 MCAR § 1.9294 to administer its program. The service company shall have the sole authority to make claim determinations regarding injured workers of the member employers.

G. Each group self-insurer shall establish a group self-insurers fund pursuant to 4 MCAR § 1.9293, which shall be administered by the board of directors of the group.

H. Prior to the providing of coverage to any member company, a group self-insurer shall deposit acceptable securities or surety bonds in an amount equal to 70% of the members modified premium for the previous year plus the amount payable to the service company under the service contract; provided that, the deposit required shall not be greater than five hundred thousand dollars ($500.000.00). After the group self-insurer has been in existence for two (2) years the deposit shall be an amount equal to the outstanding workers' compensation liability of the group subject to a maximum of five hundred thousand dollars ($500.000.00).

I. If a member voluntarily terminates its membership in a group prior to completion of the third consecutive year, the group self-insurer shall assess the terminating member at least the following penalties: 25% of its premium if termination occurs within the first year of membership; 15% of its premium if termination occurs within the second year; and 5% of its premium if termination occurs within the third year. Following completion of three consecutive years of membership in the group, withdrawal from the group may be allowed without penalty upon ninety (90) days advance written notice given to the board of directors of the group.

J. Upon the receipt of any notice of a member to withdraw or a decision by the board of directors to expel a member, the group self-insurer shall give notice to the Commissioner and then immediately reevaluate its net worth and financial condition. If the consolidated net worth or financial condition of the group, excluding the terminating or expelled member, fails to meet the requirements specified in subdivision C above, the group shall so notify the Commissioner within fifteen (15) days and advise the Commissioner of its plan for bringing the group into compliance with subdivision C above.

K. The group self-insurer shall file with the Commissioner the name of all employer members accepted into the group. The group shall not accept any liability for a new member until a signed indemnity agreement in the form set forth in Appendix II has been completed by that new member and filed with the Commissioner; and the Commissioner has determined that the new member is in the same industry as the rest of the members of the group and that the admission of the new member will not adversely affect the financial stability of the group. The Commissioner shall have thirty (30) days after notice is given to make the determination whether to allow a new member into a group.

L. Each group self-insurer shall be prohibited from accepting as a member any employer that owes an outstanding debt to a previous group self-insurer. A judgment obtained under the laws of Minnesota shall be required as proof of such debt. If a group has such an employer member, upon receipt of the required proof the fund administrator shall issue thirty (30) days notice of cancellation to the member.

M. The directors of each group self-insurer shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the group. All bylaws or plans of operations or amendments thereto, shall be subject to prior approval by the Commissioner.

1. These bylaws or plans of operation shall contain, but not be limited to, the following subjects:

a. Qualifications for group self-insurer membership, including underwriting considerations.

b. The method for selecting the board of directors, including the directors terms of office.

c. The procedure for amending the bylaws or plan of operation.

d. Investment of all assets of the fund.

e. Frequency and extent of loss control or safety engineering services provided to members.

f. A schedule for payment and collection of premiums.

g. Expulsion procedures, including expulsion for nonpayment of premium and expulsion for excessive losses.

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h. Delineation of authority granted to the administrator.

i. Delineation of authority granted to the service company.

j. Basis for determining premium contributions by members including any experience rating program.

k. Procedures for resolving disputes between members of the group, which shall not include submitting them to the Commissioner.

2. The directors shall review at least annually the following items for the purpose of determining whether these areas of concern are being adequately provided for:

a. Service company performance.

b. Loss control and safety engineering.

c. Investment policies.

d. Collection of delinquent debts.

e. Expulsion procedures.

f. Initial member review.

g. Administrator performance.

h. Claims handling and claims reporting.

3. All group self-insurers shall file copies of its current bylaws or plan of operation with the Commissioner. Any changes in the bylaws or plan of operation shall be filed with the Commissioner no later than thirty (30) days prior to their taking effect. The Commissioner reserves the right to order the group self-insurers to rescind or revoke any bylaw or plan or operation if it is in violation of 4 MCAR § 1.9283 to 1.9294 or any law.

N. All group self-insurers shall maintain at a location within the State of Minnesota such records as are necessary to verify the accuracy and completeness of all reports submitted to the Commissioner pursuant to 4 MCAR §§ 1.9283 to 1.9294. However, the group self-insurers shall be authorized to transfer its financial records to the offices of the certified public accountant for the group self-insurers upon the written permission of the Commissioner. In addition, if the group self-insurer has contracted with a service company for claims handling, then the claims files and related records may be located at the offices of the service company. The location of these records shall be designated with the application for self-insurance authority and thereafter shall be provided to the Commissioner through written notice of any change in its location within thirty (30) days of any such change.

O. Failure of any employer to maintain membership in any group while not otherwise procuring insurance for its workers' compensation liability may subject the employer to the penalties provided in Minn. Stat. § 176.181 and 176.183.

**4 MCAR § 1.9293 Group self-insurers' fund.**

A. Each group self-insurer shall, not less than ten (10) days prior to the proposed effective date of the group, submit evidence that cash premiums equal to not less than twenty percent (20%) of the immediately preceding year's workers' compensation insurance premium for each employer, has been paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the members' premium shall be paid to the group in a reasonable manner over the remainder of the year. Payments in subsequent years shall be made according to the same schedule. Each group self-insurer shall initiate proceedings against a member when that member becomes more than fifteen (15) days delinquent in any payment of premium to the fund.

B. There shall be no co-mingling of any assets of the group self-insurers' fund with the assets of any individual member employer, or with any other account of the group unrelated to payment of workers' compensation liability incurred by the group.

C. The group self-insurer shall designate a fiscal agent and/or administrator to administer the financial affairs of the fund. Such fiscal agent or administrator shall furnish a fidelity bond with the self-insurer as obligee, in an amount sufficient to protect the fund against the misappropriation or misuse of any monies or securities. Such fiscal agent or administrator shall not be an owner, officer, or employee of the service company or any affiliate of the service company.

D. All funds shall remain in the control of the group self-insurer or its authorized administrator. Provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service company. The service company shall furnish a fidelity bond covering its employees, with the self-insurer as obligee, in an amount sufficient to protect all monies placed in such revolving fund. Provided that, should the fidelity bond of the fiscal agent and/or administrator also cover the monies in the revolving fund, the service company shall not be required to furnish a fidelity bond.

E. The accounts and records of the group self-insurers' fund shall be audited annually or at any other time as may be necessary to determine the financial stability of the fund or the adequacy of its monetary reserves. Audits shall be made by Certified Public Accountants with the Commissioner reserving the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards to be used by the self-insurers group or service companies, and the type of audits to be made, in order to determine the solvency of the self-insurers fund. All audits required by this rule shall be filed with the commissioner.

F. No director, or fiscal agent or administrator of a group self-insurer shall utilize any of the monies collected as premium for any purpose unrelated to workers' compensation insurance. No director, fiscal agent or administrator shall borrow any money from the self-insurers fund or in the name of the self-insurers fund.

G. Cash assets of the self-insurers fund may be invested as provided in Minn. Stat. § 60A.11 for a casualty insurance company provided that investment in common stock, real estate, or indebtedness from any member company is prohibited. In addition, investment in the following is allowed:

1. Savings accounts or certificates of deposit in a duly chartered commercial bank located within the State of Minnesota and insured through the Federal Deposit Insurance Corporation.

2. Share accounts or savings certificates in a duly char-

tered savings and loan association located within the State of Minnesota and insured through the Federal Savings and Loan Insurance Corporation.

3. Direct obligations of the United States Treasury, such as notes, bonds, or bills.

4. Any bond or security issued by the State of Minnesota and backed by the full faith and credit of the State.

5. Any credit union where the employees of the self-insurer are members, provided that such credit union is located in Minnesota, licensed by the State of Minnesota, and insured through the Federal Deposit Insurance Corporation.

H. Any securities purchased by the group self-insurers' fund shall be in such denominations, and with dates of maturity to insure that securities may be redeemable at sufficient time and in sufficient amounts to meet the fund's current and long-term liabilities.

I. The self-insurer shall report annually, as part of its financial statement, a schedule showing the disposition of all investment income earned during the immediately preceding year.

J. Fifty percent (50%) of any surplus monies for a fund year in excess of 125 percent (125%) of the amount necessary to fulfill all obligations under the Workers' Compensation Act for that fund year may be declared refundable to a member at any time. Date of payment shall be no earlier than eighteen (18) months following the close of such fund year, provided that no more than one (1) refund may be made in any twelve (12) month period. A fund year shall be considered open as long as one or more workers compensation claim from that fund year remains unsettled.

K. The group self-insurer shall give notice to the Commissioner of any refund. Said notice shall be accompanied by a statement from the self-insurer's certified public accountant certifying that the proposed refund is in compliance with subdivision on J above. After January 1, 1983, the loss reserves shall have been determined by an agent of the certified public accountant firm who has passed parts six and seven of the examination for casualty actuary developed by the Casualty Actuaries Society. If compliance with this date cannot be accomplished, then upon application by any group self-insurer the period may be extended by order of the Commissioner to January 1, 1985.

L. In the event of a deficit in any fund year, such deficit shall be paid up immediately, either from surplus from a fund year other than the current fund year, or by assessment of the membership. The Commissioner shall be notified prior to any transfer of surplus funds.

M. If the Commissioner finds that any deficit has not been paid up, he may order an assessment to be levied against the members of a group self-insurer sufficient to make up any deficit.

**4 MCAR § 1.9294 Qualification for service companies.**

A. Any person or entity desiring to be licensed as a service company shall apply to the Commissioner on forms available from the Commissioner. The license shall designate areas of administrative services which the service company shall be authorized to perform. Any license granted shall be effective for a period of two (2) years unless revoked by order of the Commissioner.

B. In support of application, a service company shall submit:

1. Summary information concerning its organization and staff.

2. Detailed resumes of all employees, or employees of any subcontractor, with administrative or professional capacity. Such resumes shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.

3. A description of the administrative services intended to be provided.

C. The application shall be accompanied by a certification that the applicant has employed or has contracted with competent individuals to provide those services intended to be provided to self-insurers.

D. If the service company intends to provide claims adjusting, the service company or its subcontractor shall have supervisory personnel who possess at least three (3) years experience adjusting workers' compensation claims. Further, the service company or subcontractor shall have at least one adjuster who holds a license under Minn. Stat. Ch. 72B and shall be situated within the State of Minnesota.

E. The service company shall have within the State of Minnesota an employee who is able to act as a resident agent, authorized to act in all matters concerning the service company.

F. The service company shall have employed or retained experienced accountants when necessary to the providing of the administrative services to a self-insurer, when the prospective self-insurer does not provide such expertise.

G. The owners of the service company, including all members of a partnership and all officers of a corporation, shall be of good moral character with a reputation for honesty and fair dealing.

H. Any records of a service company relating to any of the services offered or provided to any self-insurer shall be open to inspection by the Commissioner during normal business hours.

I. Each service company may be investigated by the Commissioner upon reasonable belief that the service company is not in compliance with 4 MCAR §§ 1.9283 to 1.9294 or is improperly administering workers' compensation claims pursuant to the Workers' Compensation Act. If the Commissioner determines that the service company is not in compliance with 4 MCAR §§ 1.9283 to 1.9294 or the Workers' Compensation Act the service company shall be liable for the cost of the investigation.

J. Revocation of any service company license shall be pursuant to the contested case procedure in Minn. Stat. ch. 15.

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K. The following may be considered good cause for revocation of the license of the service company:

1. Improper claims handling techniques.

2. Material violation of any of the foregoing rules.

3. Material violation of any provision of the Workers' Compensation Act.

4. Committing an unfair or deceptive act or practice as defined in Minn. Stat. § 72A.20, subd. 12.

L. Each service company shall be expected to file, or attempt to ensure that the self-insurers it services file, all required reports relating to those services which they provide by the dates established by statute or by these rules. Such reports shall include, but are not limited to the following: loss information reports required by 4 MCAR § 1.9289, reports required by the WCRA, and any report required by the Minnesota Department of Labor and Industry.

M. Each service company shall report to the Commissioner the termination of any service contract entered into with a self-insurer within ten (10) days of such termination.

N. Any entity which has been found to have processed claims in an unfair or inequitable manner, or in breach of its fiduciary duty in the servicing of workers' compensation or any other employee benefit program, shall be denied a license under this rule.

**4 MCAR §§ 1.9295-1.9299 Reserved for future use.**

## Appendix I

BONDING COMPANY NAME
Bond No.
SURETY BOND

KNOW ALL MEN BY THESE PRESENTS: That we, (entity to be bonded), of (location), (hereinafter called the "Principals"), as Principals, and (bonding company name), a (name of state) corporation, of (location) (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the Commissioner of Insurance of the STATE OF MINNESOTA for the use and benefit of the employees of the Principals and to pay workers' compensation obligations of the Principals in the sum of (dollar amount), for the payment of which well and truly to be made, the Principals bind themselves, their successors and assigns, and the Surety binds itself and its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in accordance with the provisions of Section 176.181 of the Minnesota Statutes, the Principals have by written order of the Commissioner of Insurance of the State of Minnesota been exempted from insuring its liability for compensation according to the provisions of the Minnesota Workers' Compensation Act and have been permitted by said order to self-insure all liability hereafter arising under the Workers' Compensation Act, including their liability for medical expenses.

NOW, THEREFORE, the condition of this obligation is such that if the said Principals shall, according to the terms, provisions and limitations of the Minnesota Workers' Compensation Act, pay all of their liabilities and obligations under said act, including all benefits as provided by said act, then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however, to the following terms and conditions:

1. The liability of the Surety is limited to the payment of all legal liabilities and obligations, including payment of compensation and medical benefits, provided the Workers' Compensation Act of Minnesota which are payable by said Principals for or on account of personal injuries or occupational diseases sustained during or attributable to the entire period that the Principals are authorized to self-insure in the State of Minnesota, subject to cancellation, as hereinafter provided. In no event shall the total liability of the Surety exceed the amount herein stated, to-wit, the sum of (dollar amount).

2. In the event of any default on the part of the Principals to abide by any award, order or decision of the Workers' Compensation Division of Minnesota directing and awarding payment of such legal liabilities, obligations, or benefits to or on behalf of any employee or the dependents of any deceased employee, the Commissioner of Insurance may, upon ten days notice to the Surety and opportunity to be heard, require the Surety to pay the amount of the same, to be enforced in like manner as an award may be enforced against said Principals.

3. Service on the Surety shall be deemed to be service on the Principals.

4. This bond shall continue in force from year to year unless cancelled as herein provided, but regardless of the number of years this bond remains in force or the number of annual premiums paid or payable the total liability of the Surety hereunder shall not exceed the sum of (dollar amount).

5. This bond may be cancelled at any time by the Surety by giving sixty (60) days notice in writing to the Commissioner of Insurance of the State of Minnesota at its offices in the City of St. Paul, Minnesota, and upon expiration of said sixty (60) days the liability of the Surety hereunder shall cease, except as to liability incurred hereunder prior to the expiration of said sixty (60) days, as set out in paragraph 1.

6. This bond shall become effective at (time of day) (month, day, year).

IN TESTIMONY WHEREOF, said Principals and said Surety have caused this instrument to be signed by their respective duly authorized officers and their corporate seals to be hereunto affixed this (day, month, year).

Signed, sealed and delivered in the presence of:

_____

_____

_____

_____

Corporation Name

By: _____

Bonding Company Name

By: _____

## Appendix II

INDEMNITY AGREEMENT

1. Whereas, (name of company) has agreed to be and has been accepted as a member of (name of Group Self-Insurer).

2. Whereas, (name of company) has agreed to be bound by all of the provisions of the Minnesota Workers' Compensation Act and all Rules and Regulations promulgated thereunder.

3. Whereas, that (name of company) has agreed to be bound by the bylaws or plan of operation and all amendments thereto of (name of Group Self-Insurer).

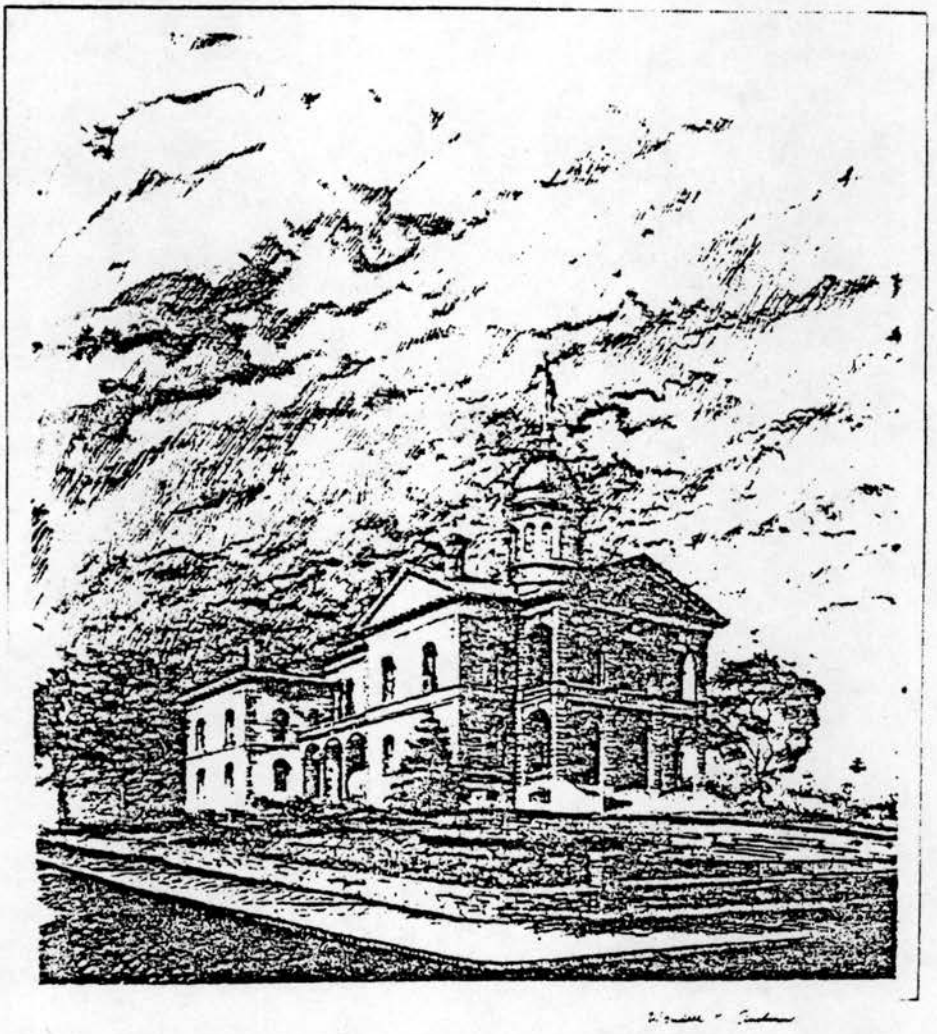
4. Whereas, that (name of company) has agreed to be jointly and severally liable for all claims and expenses of all the members of (name of Group Self-Insurer) arising in any fund year in which (name of company) is a member of the group. Provided that if (name of company) is not a member for the full year it shall be only liable for a pro rata share of that liability.

IN WITNESS WHEREOF, the (name of company) and (name of group self-insurer) have caused this indemnity agreement to be executed by its authorized officers:

GROUP SELF-INSURERS NAME COMPANY NAME

By: _____ By: _____

DATE: _____ DATE: _____



**WASHINGTON COUNTY COURTHOUSE as it appeared in 1867 was drawn by former Governor Wendell R. Anderson in 1976. The original drawing belongs to the Minnesota Historical Society's art collection. (Courtesy MHS)**

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE-Insurance Division **Office Memorandum**

TO : Joanne Hinderaker
Special Assistant Attorney General

DATE: January 11, 1980

FROM : Dale L. McDonnell
Staff Attorney

PHONE: 296-8591

SUBJECT: Temporary Rules Governing Self-Insurance for Workers' Compensation

Pursuant to Minn. Stat. § 15.0412, subd. 5, the above captioned temporary rules are hereby submitted for your review as to form and legality. Please find enclosed in the attached file:

1. Public comments on the proposed temporary rules.
2. Temporary rules as proposed.
3. Amendments to the proposed temporary rules.
4. Order adopting the temporary rules.
5. Temporary rules as adopted.

DLM:lk
enc.

RECEIVED
JAN 11 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER