

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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

STATE OF [redacted]NESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

file

TO : JERRY ANDERSON

DATE: July 7, 1980

FROM : REYNAUD L. HARP RLH

PHONE:

SUBJECT: In re Proposed Rules Governing Self-Insurance for Workers' Compensation

In reviewing the proposed rules, I have noted three typographical errors in the text of the rules. These errors are:

1) In § 1.9288A (p. 4 of the text) the word "purpose" should read "purposes".

2) In § 1.9292 M.1.b. (p. 18 of the text) the word "director's" should read "directors'"

3) Section 1.9294 "J" (p. 28 of the text and the last subsection listed under this section) should read § 1.9294 "M".

Please note the above corrections during your review of these rules.

aso

RECEIVED
JUL 8 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)
SF-00005-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : REYNAUD L. HARP
Special Assistant
Attorney General

DATE: July 8, 1980

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

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

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
cc: Duane Harves
Susan Robertson

Our File # 606

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/17 DUE DATE 7/7

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State 7/8
b. Approved 7/7 Date Sent Back to Agency 7/8

---

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 4.8.80
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List not submitted
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 ✓ copy not submitted but see HE #2
    At least 30 days prior to hearing 3.3.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact A) June 3. 80 B) June 10. 80 - Amended
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓ A) June 3. 80 B) June 10. 80 } incorporated in Findings of Fact.
16. Report of Chief Hearing Examiner A) 6.6.80 B) 6.11.80
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 N/A

See our file #572 for temporary rule on Self-Insurance for Workmen's Comp.

TIC copy

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Rules
Governing Self-Insurance for
Workers' Compensation
INS-80-006-GB

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

The above-entited matter came on for hearing before George A. Beck at 9:30 a.m. on Tuesday, April 8, 1980, in the Hearing Room of the Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, City of St. Paul, State of Minnesota.

The following persons appeared on behalf of the Insurance Division: William Howard, Assistant Commissioner; Richard Lutenski, Assistant to the Commissioner; Dale McDonnell, Staff Attorney; Robert F. Lowe, Consulting Actuary; and Reynaud Harp, Special Assistant Attorney General.

Approximately thirty-three persons attended the hearing and signed the hearing register. The record remained open until April 23, 1980, for the receipt of additional written comments. Nine timely written comments were received during this time period. On May 23, 1980, the Hearing Examiner issued his Report.

Pursuant to Minn. Stat. §15.0412, Subd. 4 (1978) and based upon all the records and proceedings the Commissioner makes the following:

FINDINGS OF FACT

1. Findings of Fact Nos. 1-9, inclusive, in the Hearing Examiner's Report are hereby incorporated by reference and adopted by the Commissioner.

2. Findings of Fact Nos. 10-56, inclusive, in the Hearing Examiner's Report, are hereby incorporated by reference and adopted by the Commissioner to the extent that said findings establish the reasonableness of and necessity for the proposed rules.

3. Proposed Rule 4 MCAR §1.9289 B. was intended to require that any audit of payroll or losses be conducted according to

generally accepted accounting principles and auditing standards. To conform this rule with the original intent and with the Examiner's suggestion in Findings of Fact Nos. 16 and 19, the Commissioner amends §1.9289 B. to read as follows:

> Each self-insurer shall under oath, attest to the accuracy of each report submitted pursuant to subdivision A above. Upon sufficient cause, the commissioner shall require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner, ~~with the Commissioner reserving the right to prescribe a uniform accounting system~~ based on generally accepted accounting principles and generally accepted auditing standards, supported by an actuarial review and opinion of the future contingent liabilities. 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 shall 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.~~

4. To conform with the Examiner's suggestion in Finding of Fact No. 22, the Commissioner hereby amends §1.9289 by deleting section G.

5. Proposed Rule §1.9290 B. was intended to make non-compliance with lawful orders of the Commissioner as grounds for revocation of the authority to self-insure. So to conform the rules to this intent and the Examiner's suggestion in Finding of Fact No. 23, the Commissioner hereby amends §1.9290 B. to read:

> Failure to comply with any <u>lawful</u> order of the Commissioner;

6. Minn. Stat. §79.34 (as amended by Laws of Minnesota, ch. 556 §7) requires each self-insurer approved pursuant to §176.181, as a condition of its authority to self-insurer, to be a member of the W.C.R.A. and to be bound by its plan of operation. Proposed rule 4 MCAR §1.9290 F. was intended to make clear that failure of any self-insurer to abide by the plan of operation of the W.C.R.A. would be grounds for revocation of its self-insurance authority. (Section 7 of ch. 556 is attached)

7. Minn. Stat. §79.38, Subd. 3 and §79.42, (as amended by

Laws of Minnesota 1980, ch. 556, §11) states that the plan of operation of the W.C.R.A. and all subsequent amendments thereto are subject to the approval of the Commissioner. Since the Commissioner has the ultimate authority over the enactment of and subsequent changes to the plan of operation of the W.C.R.A., the question relating to improper delegation in the Examiner's Finding of Fact No. 23, is not pertinent. (Section 11 of ch. 556 is attached)

8. To clarify §1.9292 B. the Commissioner, pursuant to the suggestion of the Insurance Federation of Minnesota, the American Insurance Association and pursuant to the Examiner's Finding of Fact No. 33, hereby amends §1.9292 B. to read:

> 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; and indemnity agreement <u>providing for joint and several liability for all group members for any and all workers' compensation claims incurred by any member of the group</u> as set forth in Appendex II signed by an officer of each member; and a certified financial statement of each member.

9. The Chief Hearing Examiner approved the incorporation by reference of Classification Codes Manual for Workers' Compensation and Employer's Liability Insurance, published by the National Council of Compensation Insurance on December 31, 1934, and revised August 1, 1979. To avoid any confusion and questions relating to improper delegation of authority, the Commissioner hereby amends §1.9292 D. in accordance with the Examiner's suggestion in Finding of Fact No. 34, by inserting "issued December 31, 1934, as revised on August 1, 1979" after National Council of Compensation Insurance.

10. Any audit conducted pursuant to §1.9293 E. was intended to conform with generally accepted accounting principles and auditing standards. To conform to this intent, and to the Examiner's suggestion if Finding of Fact No. 46, the Commissioner hereby amends §1.9293 E. to read:

> 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, supported by actuarial review and opinion of the

future contingent liabilities, ~~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.

11. To avoid the questions relating to improper discretion in §1.9293 M. the Commissioner, in accordance with the Examiner's suggestion is Finding of Fact No. 50, amends §1.9293 M. to read:

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

12. Minnesota Laws, 1980, ch. 529, provided for licensing of service companies in another area of self-insurance. To clarify the license granted under these proposed rules, the Commissioner amends the rules by inserting "workers' compensation" before every reference to service company in these rules. Such reference occurs in §1.9287 I.; §1.9289 B.; §1.9291 J.; §1.9292 E.; §1.9292 F.; §1.9294 A., B., D., E., H., I., J., K., L., M.

13. To clarify §1.9294 D. and conform to the examiner's suggestion in Finding of Fact No. 55, the Commissioner hereby amends §1.9294 D. to read:

> ~~Good cause~~ Grounds for revocation of the workers' compensation service company shall be~~, but not limited to, the following factors~~:
>
> 1. ~~Improper claims handling techniques or~~ Maintenance of inadequate loss reserves.
> 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.

14. When an employers' workers' compensation liability has been guaranteed by the Federal Government the financial status of the employer is irrelevant. No matter what the financial standing maybe, that employer will be granted the authority to self-insure since it has the ability to meet all of its workers' compensation liabilities

by virtue of the federal guarantee. Thus, since the financial status of the employer becomes irrelevant there is no need for a financial statement to be filed pursuant to section §1.9291 B. To conform the rules to this intent and to the suggestion made by Federal Cartridge Corporation and the Examiner (Examiners' Finding No. 26) the Commissioner hereby amends §1.9291 by adding a section as follows:

> L. Any employer whose workers' compensation liability has been guaranteed by the Federal Government, shall not be required to file a Certified Financial Statement pursuant to Subdivision B. of this rule. Provided that on termination of any such guarantee the employers authority to self-insure shall be avoid.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS

1. That the Insurance Division gave proper notice of promulgation of the proposed rules.

2. That the Insurance Division has statutory authority to adopt the proposed rules as modified herein.

3. That the Insurance Division has demonstrated the need for and reasonableness of the proposed rules as modified by an affirmative presentation of facts.

4. That the modifications made by the Insurance Division in the proposed rules do not constitute a substantial change from the rules as originally proposed.

Based upon the foregoing Conclusions, the Commissioner makes the following:

ORDER

IT IS HEREBY ORDERED that the proposed rules governing self-insurance for workers' compensation (4MCAR & 1.9285 through §1.9294) as modified are adopted.

Dated: June 3, 1980.

MICHAEL D. MARKMAN
Commissioner of Insurance

Sec. 5. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

Subd. 6e. There is appropriated to the commissioner of insurance from the special account established in subdivision 6b, a sum sufficient to make the payments authorized in subdivision 6c.

Sec. 6. Minnesota Statutes, 1979 Supplement, Section 79.211, Subdivision 2, is amended to read:

Subd. 2. [DIVISION OF PAYROLL.] ~~The rating association or~~ An insurer shall permit an employer to divide his payroll among ~~relevant~~ the rating classifications most closely fitting the work actually performed for purposes of premium calculation when the employer's records provide adequate support for a division.

Sec. 7. Minnesota Statutes, 1979 Supplement, Section 79.34, is amended to read:

79.34 [CREATION OF REINSURANCE ASSOCIATION.]

Subdivision 1. ~~An unincorporated~~ A nonprofit association known as the workers' compensation reinsurance association is created, which may be incorporated under chapter 317 with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.42 or any amendments thereto, sections 79.34 to 79.42 shall govern. Each insurer as defined by section 79.01, subdivision 2, shall as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and shall be bound by the plan of operation of the reinsurance association. Each self-insurer approved pursuant to section 176.181 shall also, as a condition of its authority to self-insure workers' compensation liability in this state, be a member of the reinsurance association and shall be bound by its

plan of operation. The reinsurance association shall not be deemed a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of insurance with respect to the reinsurance association shall not be subject to chapter 15. The reinsurance association shall be exempt from taxation under the laws of this state and all property owned by the association shall be exempt from taxation. The reinsurance association shall not be obligated to make any payments or pay any assessments to any funds or pools established pursuant to chapters 79 or 176 or any other law.

Subd. 2. ~~(1)~~ The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of $300,000 or $100,000 retention limit, at the option of the member; ~~provided that $300,000 and $100,000.~~ In case of occupational disease causing disablement on and after October 1, 1979, each person suffering such disablement shall be considered to be involved in a separate loss occurrence. Each retention limit shall be increased, to the nearest $10,000, on ~~October 1, 1980~~ January 1, 1981 and on each ~~October~~ January 1 thereafter by the percentage increase in the statewide average weekly wage ~~for the previous calendar year as determined pursuant to clause (2)~~, as determined in accordance with section 176.011, subdivision 20. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid ~~or payable~~ by the member for workers'

compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. ~~An ultimate~~ A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the loss was incurred, except that members which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the higher retention limit in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

A member that chooses the higher retention limit shall retain the liability for all losses below the higher retention limit itself and shall not transfer the liability to any other entity or reinsure or otherwise contract for reimbursement or indemnification for losses below its retention limit, except in the following cases: (a) when the reinsurance or contract is with another member which, directly or indirectly, through one or more intermediaries, control or are controlled by or are under common control with the member; (b) when the reinsurance or contract provides for reimbursement or indemnification of a member if and only if the total of all claims which the member

pays or incurs, but which are not reimbursable or subject to indemnification by the reinsurance association for a given period of time, exceeds a dollar value or percentage of premium written or earned and stated in the reinsurance agreement or contract; (c) when the reinsurance or contract is a pooling arrangement with other insurers where liability of the member to pay claims pursuant to chapter 175 is incidental to participation in the pool and not as a result of providing workers' compensation insurance to employers on a direct basis under chapter 176; or (d) any other reinsurance or contract approved by the commissioner upon his determination that the reinsurance or contract is not inconsistent with the bases for exception provided under clauses (a), (b) and (c) above.

~~(2) For the purposes of this section statewide average weekly wage means that wage determined by the commissioner in the following manner. On or before the July 1 preceding the October 1 on which the increase is to be applicable the total wages reported to the department of economic security for the preceding 12 months ending on December 31 shall be divided by the total employment reported to that department for the same period to arrive at an average annual wage which shall be divided by 52 to determine the statewide average weekly wage.~~

Subd. 3. An insurer may withdraw from the reinsurance association only upon ceasing to ~~write~~ be authorized by license issued by the commissioner to transact workers' compensation insurance in this state and when all workers' compensation insurance policies issued by such insurer have expired; a self-insurer may withdraw from the reinsurance association only upon ceasing to be approved to self-insure workers' compensation liability in this state pursuant to section 176.181.

An insurer or self-insurer which withdraws or whose membership in the reinsurance association is terminated shall continue to be bound by the plan of operation. Upon withdrawal or termination, all unpaid premiums which have been charged to the withdrawing or terminated member shall be payable as of the effective date of the withdrawal or termination.

Subd. 4. An unsatisfied net liability to the reinsurance association of an insolvent member shall be assumed by and apportioned among the remaining members of the reinsurance association as provided in the plan of operation. The reinsurance association shall have all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for sums due the reinsurance association.

Subd. 5. When a member has been merged or consolidated into another insurer or self insurer, or another insurer, which provides insurance required by chapter 176, has reinsured a member's entire business, the member and successors in interest of the member shall remain liable for the member's obligations.

Subd. 6. ~~No insurer or self insurer may establish reserve in a financial statement filed with the commissioner of insurance in excess of its maximum liability under this section for a single claim or occurrence~~ The commissioner shall require each member to identify the portion of all losses which exceed its retention limit selected under this section in any report filed with the workers' compensation insurers rating association of Minnesota or filed with the insurance division for use in reviewing the workers' compensation schedule of rates.

Sec. 8. Minnesota Statutes, 1979 Supplement, Section

79.37 [BOARD OF DIRECTORS.] A board of directors of the reinsurance association is created and shall be responsible for the operation of the reinsurance association consistent with the plan of operation and sections 79.34 to 79.42. The board shall consist of nine directors and the commissioner of insurance who shall be an ex officio member. Four members of the board shall represent insurers, three members of the board shall represent employers, at least one, but not more than two, of whom shall represent self-insurers, and two members of the board shall represent employees. Members shall elect the insurer directors, and the commissioner shall appoint the employer and employee directors, for the terms authorized in the plan of operation. Each board member shall be entitled to one vote. Terms of the directors shall be staggered so that the terms of all the directors do not expire at the same time and so that a director does not serve a term of more than four years. The board shall select a chairman and other officers it deems appropriate.

A majority of the board shall constitute a quorum, notwithstanding any vacancies. Action may be taken by a majority vote of the directors present.

Sec. 11. Minnesota Statutes, 1979 Supplement, Section 79.38, is amended to read:

79.38 [PLAN OF OPERATION.] Subdivision 1. The plan of operation shall provide for all of the following:

(a) The establishment of necessary facilities;

(b) The management and operation of the reinsurance association;

(c) A preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance

association;

(d) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;

(e) Procedures governing the actual payment of premiums to the reinsurance association;

(f) Reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;

(g) The composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association to succeed the initial board provided in section 79.41;

(h) The investment policy of the reinsurance association; and

(i) Any other matters required by or necessary to effectively implement sections 79.34 to 79.42.

Subd. 2. If the reinsurance association is incorporated pursuant to chapter 317, the plan of operation shall be filed with and accepted by the secretary of state as the corporation's articles of incorporation and bylaws. The plan of operation shall be valid as articles of incorporation and bylaws under chapter 317, notwithstanding that one or more of the required provisions for articles and bylaws under chapter 317 is not included or requirements of form are not followed.

Subd. 3. [AMENDMENTS.] (a) [PROCEDURE WITH MEMBERS' RATIFICATION.] The plan of operation may be amended, in whole or in part, as follows: proposal of an amendment by a member of the board and adoption by a majority vote of the board at a meeting duly called for that purpose, ratification by a majority vote of the members at any annual meeting or special meeting duly called for that

purpose, and approval of the commissioner, provided that an amendment shall be deemed approved 30 days after the day following the date of ratification by the members if not sooner disapproved by written order of the commissioner.

(b) [EMERGENCY BOARD POWER TO AMEND WITH DELAYED MEMBERS' RATIFICATION.] The board shall have emergency powers to amend the plan at a meeting duly called for that purpose, without ratification by the members; provided that a meeting of members shall be scheduled to consider ratification of the amendment within 90 days.

(c) [COMMISSIONER'S POWER TO AMEND.] If the board proposes an amendment which the members decline to ratify, the commissioner is authorized, upon request of the board, to amend the plan as proposed by the board when he determines that failure to adopt the proposed amendment may seriously impair the ability of the reinsurance association to meet its financial obligations.

(d) [DELEGATION OF AUTHORITY TO RATIFY.] By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may authorize the board to exercise the power of amendment of the plan without ratification by the members. When the members have authorized the board to amend the plan without ratification by the members, the board may, by a majority vote of the directors, amend the plan, provided that notice of the meeting and of the proposed amendment shall be given to each director and officer, including the commissioner. By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may prospectively revoke the authority of the board to amend the plan without ratification by the members.

Sec. 12. Minnesota Statutes 1978, Section 176.011,

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Rules
Governing Self-Insurance for
Workers' Compensation
INS-80-006-GB

AMENDED
FINDINGS OF FACT,
AND ORDER

(B)

Pursuant to Minn. Stat. §15.0412, Subd. 4 (1978) and based upon all the records and proceedings the Commissioner makes the following:

FINDINGS OF FACT

1. The Finding of Fact and Conclusions of the Commissioner of Insurance in this matter dated June 3, 1980, are hereby incorprated herein by reference.

2. Proposed Rule 4MCAR §1.9289 B. was intended to allow the Commissioner to order an audit of an employer's payroll and losses if he had reason to doubt the accuracy of the employer's report on such losses and payroll. To conform the rule to this intent and pursuant to the Order of the Chief Hearing Examiner dated June 6, 1980, the Commissioner amends §1.9289 B. to read as follows:

> 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~~ shall require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner, ~~with the Commissioner reserving the right to prescribe a uniform accounting system~~ based on generally accepted accounting principles and generally accepted auditing standards, supported by an actuarial review and opinion of the future contingent liabilities. 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, or where the Commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of that employer. If any discrepancy is found, the Commissioner ~~may~~ shall 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.~~

3. To clarify 4MCAR §1.9287 F. and §1.9287 P. and pursuant to the suggestion of the Chief Hearing Examiner, the Commissioner hereby amends §1.9287 F. and §1.9287 P. by adding after the word "Commissioner" the words "pursuant to Minn. Stat. §79.071", in both sections.

4. Pursuant to the order of the Chief Hearing Examiner the Commissioner hereby amends §1.9289 F., §1.9290 D., §1.9292 M. 1., §1.9294 B. 4, and §1.9294 L. by deleting the words "but not limited to" from each section.

5. Proposed Rule 4MCAR §1.9292 I. was intended to allow group members to withdraw from a group after completion of three consecutive years of membership so long as the group's bylaws or plan of operation does not otherwise require a penalty to be paid. To conform this rule to the original intent and to the Chief Hearing Examiner's Order, the Commissioner hereby amends §1.9292 I. as follows:

> 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 the completion of three consecutive years of membership in the group, withdrawal from the group ~~may~~ shall be allowed without penalty, provided that ninety (90) days advance written notice is given to the board of directors of the group, and that the group's plan of operation or bylaws allow such withdrawl without a penalty. Any penalty assessed pursuant to this subdivision shall be paid to the group's self-insurer's fund.

6. Pursuant to the suggestion of the Chief Hearing Examiner §1.9292 M. is amended by adding after the word "Commissioner" the words "pursuant to 4MCAR §1.9292 A."

Based upon the forgoing Findings of Fact, the Commissioner makes the following:

ORDER

IT IS HEREBY ORDERED that the proposed rules governing self-

insurance for workers' compensation (4MCAR §1.9285 through §1.9294) as modified herein are adopted.

Dated: June 10, 1980.

MICHAEL D. MARKMAN
Commissioner of Insurance

ATTORNEY GENERAL

JERRY ANDERSON

July 7, 1980

REYNAUD L. HARP RLH

In re Proposed Rules Governing Self-Insurance for Workers' Compensation

In reviewing the proposed rules, I have noted three typographical errors in the text of the rules. These errors are:

1) In § 1.9288A (p. 4 of the text) the word "purpose" should read "purposes".

2) In § 1.9292 M.1.b. (p. 18 of the text) the word "director's" should read "directors'"

3) Section 1.9294 "J" (p. 28 of the text and the last subsection listed under this section) should read § 1.9294 "M".

Please note the above corrections during your review of these rules.

aso

AG copy

Department of Commerce
Insurance Division

Adopted Rules Governing
Self-Insurance For Workers' Compensation

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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-Insurer's 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, Classification, and Rates approved for use in Minnesota, modified by an experience rating plan approved by the Commissioner, pursuant to Minn. Stat. § 79.071. added per CHE letter. 6/6

G. "Self-Insurer's 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. "Workers' Compensation 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 workers' compensation 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. Any claim arising within the accident year upon which the fund year is based shall be included in that fund year. insert pg 12

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.

N. "Surplus" as regards the Group Self-Insurer's Fund shall mean the excess of all fund monies over the amount necessary to fulfill all obligations under the Workers' Compensation Act for all fund years that the group has been in operation.

O. "Deficit" as regards the Group Self-Insurer's Fund shall mean the excess of the amount necessary to fulfill all obligations under the Workers' Compensation Act for all fund years that the group has been in operation over all fund monies.

P. "Classification" shall mean the manual classification as determined by the Workers' Compensation Insurers Rating Association's manual of Rules, Rates and Classifications approved for use in Minnesota by the Commissioner, pursuant to Minn. Stat. § 79.071.

insert per HE P13

insert per CHE letter 6/6

4 MCAR § 1.9288 Acceptable Securities and Surety Bonds.

A. Acceptable securities and surety bonds for the purpose 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 shall require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner, based on generally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors: where the losses reported appear significantly different from similar type businesses, where major changes in the reports exist from year to year which are not solely attributable to economic factors, or where the Commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the

insert per HE P16, P19

insert per CHE + FofF P2

Amend.

losses and payroll of that employer. If any discrepancy is found, the Commissioner shall require changes in the self-insurer's or workers' compensation service company record keeping practices.

C. Each self-insurer shall report to the Commissioner any workers' compensation claim where the full, undiscounted value is estimated to exceed $50,000 within ten days of obtaining knowledge that the claim may exceed $50,000. inserted per HB 720

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 a worsening of current ratio, lessening of net worth, net loss of income, the downgrading 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.

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 lawful order of the Commissioner; insert per HE #23

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 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;

delegation? OK

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 and maintain 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 and maintain 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 that 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 identifies 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:
   a. $1,000,000 or
   b. total outstanding workers' compensation liability if certified by an actuary who is an associate member of the Casualty Actuarial Society, provided that the deposit shall be at least $100,000.
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 employer's 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 does 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 adjustments of claims, or administration of loss control or safety engineering programs, the self-insurer shall only contract with a workers' compensation service company duly licensed for those specific areas of program administration.

K. When a self-insurer is sold to, or merged with, another entity, the self-insurer shall give notice to the Commissioner within 30 days of the sale or merger. At that time the new owner shall file

a consolidated financial statement, and the Commissioner shall have the discretion to revoke the employer's authority to self-insure if the consolidated financial statement does not meet the requirements of subdivision C and D above. The burden shall be on the new owner to qualify pursuant to this rule.

L. Any employer whose workers' compensation liability has been guaranteed by the Federal Government shall not be required to file a certified financial statement pursuant to subdivision B of this rule, provided that on termination of any such guarantee the employer's authority to self-insure shall be void.

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 providing for joint and several liability for all group members for any and all workers' compensation claims incurred by any member of the group 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 have and maintain:

1. A combined net worth of all of the members of 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. 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 Employer's Liability Insurance published by the National Council of Compensation Insurance issued on December 31, 1934 as revised on August 1, 1979. When two or more employers are not in the same group classification they shall still be considered in the same industry under these rules if: inserted per HE P34

1. A majority of the employees of each employer perform similar work;
2. a majority of the employees of each employer are subjected to similar work hazards; and
3. the manual rate for the governing classification of each employer is similar.

insert per HE P36

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-insurer's 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); the group has established a fund pursuant to 4 MCAR § 1.9293; the group has contracted with a licensed workers' compensation 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 workers' compensation 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 workers' compensation service company. The service company shall have the sole authority to make claim and reserve determinations regarding injured workers of the member employers.

insert per HE P37

G. Each group self-insurer shall establish a group self-insurer's 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). 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).

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 following 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 the completion of three consecutive years of membership in the group, withdrawal from the group shall be allowed without penalty, provided that ninety (90) days advance written notice is given to the board of directors of the group, and the group's plan of operation or bylaws allow such withdrawal without a penalty. Any penalty assessed pursuant to this subdivision shall be paid to the group's self-insurer's fund.

J. Upon 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 judgement 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, pursuant to 4 MCAR § 1.9292A.

insert per CHE letter 4/6

1. These bylaws or plans of operation shall contain the following subjects:
   a. Qualifications for group self-insurer membership, including underwriting considerations.
   b. The method for selecting the board of directors, including the director's 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 non-payment of premiums 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.

l. Basis for determining distribution of any surplus to the members, or assessing the membership to make up any deficit.

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-Insurer's 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 reduced by any appropriate premium discount for each employer, has been paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the member's premium, which shall be at least the current year's modified workers' compensation insurance premium reduced by any appropriate premium discount less the initial cash 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, or an actuary who is a member of the Casualty Actuarial Society certifies that a reduction should be permitted based on the losses of the group and that a deficit has not occurred in any of the last three years. 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.

inserts per HE P42

B. There shall be no co-mingling of any assets of the group self-insurer's 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-insurer's fund shall be audited annually. Audits shall be made by certified public accountants, based on generally accepted accounting principles and generally accepted auditing standards, and supported by actuarial review and opinion of the future contingent liabilities, in order to determine the solvency of the self-insurer's 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

HE P46

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-insurer's fund or in the name of the self-insurer's fund.

G. Cash assets of the self-insurer's 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 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-insurer's 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 shall order an assessment to be levied against the members of a group self-insurer sufficient to make up any deficit. changed per PHE 50

4 MCAR § 1.9294 Qualification for Workers' Compensation Service Companies.

A. Any person or entity desiring to be licensed as a workers' compensation 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 workers' compensation 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 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 workers' compensation 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 workers' compensation 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 workers' compensation 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 workers' compensation 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 thirty (30) days after a complete application has been filed showing compliance with subdivision A through F above. However, if any applicant, an affiliated company of the applicant, or owner or officer of the applicant has committed an act or practice in connection with the administration of claims which is defined as unfair or deceptive changed per HE #5

in Minn. Stat. § 72A.20, the applicant shall be denied a license under this rule. Any applicant who is denied a license pursuant to this subdivision may within thirty (30) days after denial by the Commissioner demand a hearing pursuant to Minn. Stat. Chapter 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 workers' compensation 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 workers' compensation 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 to § 1.9294 or the Workers' Compensation Act, the service company shall be liable for the cost of the investigation.

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

K. Grounds for revocation of the workers' compensation service company license shall be:

changed per HE pp 54, 55

1. Maintenance of inadequate loss reserves.
2. Violation of any of the foregoing rules.
3. 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 workers' compensation 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 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 workers' compensation 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 Worker's 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-INSURER'S NAME	COMPANY NAME
BY: _____	BY: _____
DATE: _____	DATE: _____

APPROVED AS TO FORM AND LEGALITY

JUL 07 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry S. Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 8 1980

Joan Anderson Growe
Secretary of State

2:09 PM

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

INSURANCE DIVISION

In the Matter of the
Proposed Rules Governing
Self-Insurance for
Workers' Compensation
INS-80-006-6B

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED RULES

STATEMENT OF NEED AND AUTHORITY

Minn. Stat. § 176.181, Subd. 2(1979) requires every employer in the State of Minnesota, except state and local governmental units, to either insure payment of compensation under the Workers' Compensation Act (Minn. Stat. Ch. 176) through an authorized insurance company, or obtain an order from the Commissioner of Insurance (hereinafter "Commissioner") permitting the employer to self-insure. The above-captioned rules are newly proposed by the Commissioner for adoption as permanent rules pursuant to authority set forth in Minn. Stat. § 176.181, Subd. 2, (Supp. 1979). Temporary rules on the subject matter were promulgated by the Commissioner and adopted on January 23, 1980, and published at 4 S.R. 1256 et. seq. (February 11, 1980). In accordance with the provisions of Minn. Stat. § 15.0412, Subd. 5 (Supp. 1979), temporary rules are valid for no longer than 180 days beyond their date of enactment. Thus, it is necessary for the Commissioner to institute this administrative proceeding for adoption of the temporary rules on a permanent basis.

Prior to July 1, 1979, the Commissioner of Labor and Industry had the right to grant authority to employers to self-insure. In

the exercise of this authority, the Department of Labor and Industry utilized informal guidelines to establish standards for initial approval and continued designation of self-insurers. Pursuant to Laws of Minn., Special Session Ch. 3(1979), this authority was transfered to the Commissioner of Insurance (codified as Minn. Stat. § 176.181, Subd. 2),as of July 1, 1979.

Besides allowing employers to obtain approval from the Commissioner to self-insure, Minn. Stat. § 176.181, Subd. 2, provides that two or more employers may pool their liabilities and obtain approval from the Commissioner for the purpose of qualifying as group self-insurers. Further, Minn. Stat. § 176.181, Subd. 2, provides that the Commissioner shall license those entities that will administer or service self-insurance plans for employers.

As will be more fully shown herein, these proposed rules are intended to more precisely delineate the terms, conditions, and requirements of employers desiring to self-insure, either individually, or as a member of a group, and for those entities who will be administering and servicing self-insurance programs. The proposed rules are also intended to implement and make effective the provisions of Minn. Stat. § 176.181, Subd. 2, in accordance with legislative intent.

In order to establish standards to guide the Commissioner, Minn. Stat. § 176.181, Subd. 2, authorizes the Commissioner to

permit employers to self-insure their workers' compensation liability only upon a showing by the employer or group of employers that they retain the financial ability to pay compensation. The Insurance Division believes that the standards governing the solvency and operation of the insurance companies writing workers' compensation insurance should be the yardstick against which the ability of self-insurers to pay compensation claims should be measured. Therefore, insofar as possible and appropriate, the standards established for insurers will be the basis for the standards set forth in these proposed rules. To the extent possible, self-insurers should be self-policing with the proposed rules used to define the safe conditions under which they are to operate, and to specify certain accountability procedures to provide the Commissioner assurance that the conditions are being met.

As more fully indicated below, the proposed rules reasonably address the above-stated needs.

HISTORY

On August 13, 1979, the Commissioner published Notice of Intent to Solicit Outside Information at 4 S.R. 148 for his consideration in the promulgation of regulations under Minn. Stat. § 176.181, Subd. 2. In response to the solicitation, an advisory committee was created for the purpose of assisting the Insurance Division staff in developing a comprehensive draft of proposed regulations for recommendation to the Commissioner. This advisory committee was made up of employers desiring to form group-self-insurers, entities who presently service self-insurance programs for employers, and other interested parties.

The advisory committee met on October 15, October 19, and October 31, 1979. After the Commissioner had evaluated the proposals and ideas of this Committee, along with comments received from other interested parties, the Commissioner published proposed temporary rules at 4 S.R. 953 (December 10, 1979) and at 4 S.R. 1040 (ERATA December 24, 1979). The Commissioner modified the proposed temporary rules based on comments received from interested parties who submitted comments during the requisite 20 day comment period. The modified temporary rules were adopted by the Commissioner on January 23, 1980 and approved by the Attorney General's Office on January 24, 1980. The adopted temporary rules were filed with the Secretary of State on January 25, 1980 and published at 4 S.R. 1256 (February 11, 1980).

FACTS ESTABLISHING REASONABLESS

In most respects, the proposed rules are identical in substance to those adopted on a temporary basis. As more specifically set forth herein, the proposed rules reasonably address the requirements of Minn. Stat. §176.181, Subd. 2, and constitute a reasonable attempt to further delineate and give effect to the terms, conditions, and requirements for self-insuring workers' compensation liability.

4 MCAR § 1.9285 and § 1.9286

Proposed rule 4 MCAR § 1.9285 and § 1.9286 sets forth the authority, scope and purpose of the proposed rules. The provisions of these sections are intended to provide affected persons with a concise statement of the general scope and applicability of the proposed rules.

4 MCAR § 1.9287

4 MCAR § 1.9287 defines certain terms used in the proposed rules. Promulgation of these definitions are deemed by the Commissioner to be reasonable and necessary to enable persons affected by Minn. Stat. § 176.181, Subd. 2 and these proposed rules to comprehend the full meaning and effect thereof.

The definitions in Subdivisions A. and C. of this proposed rule define the accounting concepts used in the proposed rules. A certified financial statement or aduit signifies that a certified public accountant has expressed an opinion utilizing generally accepted accounting principles and generally accepted auditing standards consistently applied concerning the financial affairs of an entity. The current ratio of a company is generally considered by the accounting profession to mean the ratio of current assets to current liabilities, as listed in the company's financial statement. The definitions in Subdivision A. and C. conforms to the commonly accepted meanings for the terms in the accounting profession.

Definitions in Subdivisions F., G., I., L., N., and O. of this proposed rule define terms necessary to clarify the meaning of the requirements. Where the definitions are material to a full understanding of the proposed rules, they will be more fully discussed in the context of the substantive provisions of the proposed rule in which they occur.

The definitions in Subdivisions E. and M. of this proposed rule define certain terms used in these proposed rules which relate to parent corporations assuming the workers' compensation liability of subsidiary or affiliate corporations. These definitions are taken from the Insurance Holding Company Act, Minn. Stat. Ch. 60 D, which establishes the standards which govern transactions between insurance companies and their affiliates. Where material to a full understanding of the proposed rules, these terms will be more fully discussed below in the context of the substantive provisions of these proposed rules in which they occur.

The definitions in Subdivisions B., D., H., J., and K., of this proposed rule set forth definitions which are intended to serve as shorthand references to the phrases which they define. These definitions are offered in the interest of conciseness and clarity in the text of the proposed rules.

4 MCAR § 1.9288

Proposed rule 4 MCAR § 1.9288 addresses the need for acceptable securities and surety bonds that must be deposited by a self-insurer, either an individual employer or group self-insurer, pursuant to proposed rule 4 MCAR § 1.9291 G. and § 1.9292 H., respectively. Subdivision A of proposed rule 4 MCAR § 1.9288 specifies the types of securities and surety bonds that will be accepted by the Commissioner as security against potential default. Insurance companies have a similar security deposit requirement for the protection of their policyholders pursuant to Minn. Stat. § 60A.10.

The provisions of paragraphs 1., 2., 3., 4., and 6., of subdivision A. lists the type of securities that the Commissioner will accept. Securities provide a reasonable source from which benefits can be paid to injured workers in the event the employer is no longer able to make such payments. The Commissioner believes that this list provides the prospective self-insurer a wide range of safe securities from which to choose. These securities were so listed because there is virtually no way that there will be a default when and if the State attempts to redeem these securities, since the Federal or State governments will back up all of these securities. Further, this list of acceptable securities corresponds to the definition of securities for the purpose of insurance company deposit requirement pursuant to Minn. Stat. § 60A.10.

Surety bonds, as described in paragraph A. 5., of proposed rule 4 MCAR § 1.9288 also provides the State with this near absolute

assurance of reliability. Since this paragraph requires that the corporate surety by authorized to transact business in the State of Minnesota, any claim arising from any such bond will be paid even if the corporate surety is financially unable to pay by virtue of the Minnesota Insurance Guaranty Association, Minn. Stat. Ch. 60 C.

Subdivision B. of proposed rule 4 MCAR § 1.9288 does not attempt to restate the provisions of Minn. Stat. § 176.181, Subd. 2(1) relating to security deposits. Rather, this subdivision is intended to clarify the rights and power of the Commissioner and the State Treasurer relating to the securities and/or surety bonds required to be deposited pursuant to these proposed rules. This subdivision requires securities to be deposited with the State Treasurer which is required by this statute, but also requires surety bonds to be filed with the Commissioner so that he will be apprised of his rights under the surety bond. The remaining provisions of this subdivision clarify the legal rights of the Commissioner relating to the securities and surety bonds on deposit.

Subdivision C. of proposed rule 4 MCAR § 1.9288 is meant to further the purpose of the previous subdivision so as to make clear the purpose of depositing securities with the State Treasurer and to assure that the State Treasurer may redeem the securities pursuant to Minn. Stat. § 176.181, Subd. 2(1). The requirement of language specifying the assignment of these securities will clarify the purpose for which the securities will be utilized and prevent these securities from being attached by a creditor of the employer in cases

involving bankruptcy or reorganization proceedings.

Subdivision D. of this proposed rule permits the self-insurer to retain any interest that may accrue on any security so deposited with the State Treasurer except when the self-insurer is in default in payment of any amount due under Minn. Stat. Ch. 79 or Ch. 176. Upon any such default the interest accruing on the securities becomes an asset of the self-insurer which may be attached by law for the payment of a debt.

Subdivision E. of proposed rule 4 MCAR § 1.9288 provides a uniform surety bond form to be used by all corporate sureties desiring to issue surety bonds to self-insurer pursuant to 4 MCAR §§ 1.9291 G. or 1.9292 H. This bond form has been used for a number of years by the Department of Labor and Industry for all corporate sureties issuing surety bonds to self-insurers for the purposes of payment of workers' compensation benefits, up to a specified amount, when and if a self-insured employer defaulted in payment of benefits.

This standard bond form, as specified in Appendix I to these proposed rules, delineates in a clear and concise manner when the corporate surety will be obligated to pay workers' compensation benefits on behalf of the self-insured. Further, the bond form provides for 60 days written notice to be given to the Commissioner prior to any cancellation of the surety bond by the corporate surety. This notice is needed so that the Commissioner may inform the self-insurer that a new surety bond or other acceptable securities in the

required amount must be deposited by the cancellation date of the original surety. The notice will also provide the Commissioner enough time to revoke the self-insurer's authority to self-insure if another surety bond or acceptable securities are not filed or deposited.

Subdivision F. of proposed rule 4 MCAR § 1.9288 is needed to further the purpose of the deposit requirement of proposed rules 4 MCAR §§ 1.9291 G. and 1.9292 H. Since this deposit requirement is intended to provide security against a potential default on the part of the self-insured the securities must remain on deposit until such time as the Commissioner is assured that the self-insurer will no longer be liable to pay benefits pursuant to the Workers' Compensation Act. After the Statute of Limitation has expired, the Commissioner will be more fully apprised of the liability of the self-insurer so as to be able to make a determination as to whether the securities on deposit should be released.

Subdivision G. of proposed rule 4 MCAR § 1.9288 clarifies the responsibility and powers of the respective state agencies involved in this rule. Since the Commissioner will be regulating the self-insurer, only he will be in a position to determine that a security deposit is no longer needed by a self-insurer. For this reason no deposit held by the State Treasurer under this rule should be released unless ordered by the Commissioner.

Subdivision H. of proposed rule 4 MCAR § 1.9288 facilitates the need of the self-insurer to control its own financial structure while still complying with the deposit requirement of these proposed rules. The self-insurer must be free to change corporate sureties or change the type of securities on deposit so long as the amount of the new surety or market value of the new securities exceed the requirements of 4 MCAR §§ 1.9291 G. or 1.9292 H. This subdivision is meant to clarify that right of the self-insurer.

4 MCAR § 1.9289

Proposed rule 4 MCAR § 1.9289 delineates the specific filing requirements for each self-insurer. These filings are need to provide the Commissioner with the assurance that the conditions specified in these proposed rules are being met by the self-insurer. The filing of loss reports and annual financial data will be sufficient to meet this need to review the self-insurer's ability to meet its obligations under the Workers' Compensation Act.

Subdivision A. of this proposed rule requires annual reporting of workers' compensation losses of the self-insurer. This information is needed for a number of reasons. First, this data will determine the amount that must be maintained on deposit pursuant to 4 MCAR §§ 1.9291 G. or 1.9292 H. in order for that particular self-insurer to remain self-insured. Secondly, the losses of the self-insurer must be reported to aide the Commissioner in determining on an

on-going basis whether or not the self-insurer has maintained sufficient assets, net worth and liquidity to promptly and completely meet all of its obligations under the Workers' Compensation Act pursuant to 4 MCAR §§ 1.9291 D. and 1.9292 C.2 The loss experience of the self-insurer is an important factor in making such a determination. For instance, if a self-insurer has had very high losses in the past few years, the financial standing necessary to retain its authority to self-insure would have to be stronger than a similar self-insurer with low losses. The April 1 filing deadline provides the self-insurer ample time after the close of the previous calendar year to compile the data required by this subdivision.

Subdivision B. of proposed rule 4 MCAR § 1.9289 delineates a mechanism to assure the completeness and accuracy of the data required to be filed pursuant to Subdivision A. of this proposed rule. First, this subdivision requires that the self-insurer attest, under oath, to the accuracy of each report filed. The subdivision further provides that upon a sufficient cause, the Commissioner may require an independent audit of the self-insurer's payroll and losses. An audit by an individual or firm not directly employed by the self-insurer may be needed to get an independent evaluation of the self-insurer's records free from any direct pressure which may exist if an employee of the self-insured was to conduct the audit. The penalty provision of this subdivision is meant to provide a reasonable penalty short of revocation of the self-insurance authority for those self-insurers who do not initiate recordkeeping procedures to assure the accuracy of payroll and

workers' compensation losses. A maximum penalty of $50,000 is reasonable to the extent that all self-insurers must be very sound financially. In most circumstances, a fine of less than this amount would be a reasonable fine considering the seriousness of the violation. Further, since the company, who self-insures, does so in order to save substantial sums of money in comparison to purchasing insurance, a fine of $50,000 is far less costly than a revocation of its authority to self-insure, and in those instances, a lesser and more appropriate sanction than revocation of its authority to self-insure should be available to the Commissioner to enforce compliance with this proposed rule. Also, such a sanction should, for the same reason, be available against service companies. In many instances, it will be the service company, not the self-insurer, who will be maintaining these loss records. If the service company fails to initiate procedures to assure the accuracy of the records after an appropriate recommendation of an independent auditor, it should similarly be subject to the same penalty or penalties.

Subdivision C. of proposed rule 4 MCAR § 1.9289 merely requires self-insurers to make the same report to the Commissioner as the Minn. Stat. § 79.171 presently requires of insurance companies when a claim is estimated to exceed $50,000.

Subdivision D. of proposed rule 4 MCAR § 1.9289 is meant to provide the Commissioner with the necessary financial information on an annual basis to determine the self-insurer's continued compliance with 4 MCAR § 1.9291 C. and D. The Form 10K Report, if prepared by the self-insurer, provides a convenient report which the self-insurer

may file to satisfy the requirement of this rule. Otherwise, a certified financial statement, after an appropriate audit by the certified public accountant, is needed. An audit is needed so as to provide some assurance to the Commissioner that the assets listed in its financial statement are actually there so as to meet the self-insurers' obligation to pay workers' compensation benefits, pursuant to Minn. Stat. Ch. 176, and that the financial condition of the self-insurer is accurately reflected in the financial statements.

Subdivision E. of proposed rule 4 MCAR § 1.9289 is meant to provide the same financial information for group self-insurers as Subdivision D. provides for individual self-insurers. This data is necessary for the Commissioner to determine whether the group self-insurer has maintained the standards set forth in 4 MCAR § 1.9292 C. The summary statement of the group needs to be based on each individual member's certified financial statement for the same reason that individual employer self-insurers must file certified financial statements.

Subdivision F. of proposed rule 4 MCAR § 1.9289 is meant to delineate those instances where the financial condition of the self-insurer is deteriorating, and where interim reports may be needed to assure that the self-insurer maintains a sufficient financial ability to promptly and completely meet its obligations under the Workers' Compensation Act. Further, the filing of the 8K Report is done for the convenience of such employers who must file such a report with the Securities and Exchange Commission when the company

is involved in a legal action which could have a material effect on its financial condition.

Subdivision G. of proposed rule 4 MCAR § 1.9289 is needed to provide an enforcement mechanism for the Commissioner to ensure prompt compliance with the filing requirements of this rule. It is forseeable that revocation of the self-insured authority to self-insure may be highly inappropriate for the failure to comply with the filing deadline of this rule, but yet, in such circumstances, the self-insurer should be penalized in some fashion. To meet this need the Commissioner believes that subjecting self-insurers to the same penalty as would be imposed on insurance companies, pursuant to Minn. Stat. 72A.061 is reasonable.

4 MCAR § 1.9290

Proposed rule 4 MCAR § 1.9290 attempts to clarify and concisely delineate the grounds upon which the Commissioner will exercise his authority, pursuant to Minn. Stat. § 176.181, Subd. 2(1) to revoke an employer's authority to self-insure. It is important for the self-insurer to know the factors upon which the Commissioner will revoke its authority since the statute provides that the Commissioner may revoke a self-insurer's authority with ten days prior notice, and upon the effective date of such an order by the Commissioner, the employer shall immediately insure his workers' compensation liability with an insurance carrier.

Subdivision A. of proposed rule 4 MCAR § 1.9290 provides that

the failure of the self-insurer to comply with any of the rules governing self-insurance for workers' compensation, 4 MCAR §§ 1.9285 through 1.9293 would constitute grounds for revocation of the self-insurer's authority to self-insure. Since any employer who desires to become self-insured must meet the requirements of these proposed rules in order to become self-insured, it is reasonable that as a condition of maintaining that authority, the employer, or group of employers, comply with all of these proposed rules as a condition of continuing to be self-insured. The rules require on-going duties for self-insurers, such as the annual filing of loss and financial data. Failure to provide this information or otherwise fulfill their duties pursuant to these rules should constitute grounds for revocation of the self-insurer's authority to self-insure.

Subdivision B. of proposed rule 4 MCAR § 1.9290 is needed so that lawful orders of the Commissioner will be followed, and absent compliance, the self-insurer's authority may be revoked.

Subdivision C. of the proposed rule 4 MCAR § 1.9290 is intended to further delineate the responsibilities of an employer, or group of employers, who are self-insured. All self-insured's have the responsibility to provide benefits to its employees pursuant to Minn. Stat. Ch. 176, as a condition of the Commissioner's grant of authority to self-insure. To further ensure that the provisions of that law are followed, noncompliance may be penalized by the revocation of the employer's right to self-insure.

Subdivision D. of proposed rule 4 MCAR § 1.9290 is a necessary clarification that the self-insurer's failure to maintain a financial condition necessary to pay workers' compensation benefits as required by law, may be grounds for revocation of the self-insurer's authority to self-insure.

Subdivision E. of proposed rule 4 MCAR § 1.9290 is intended to require each self-insurer to pay claims in a fair, equitable, and non-discriminatory manner, as is presently required for all insurance companies. Minn. Stat. § 72A.20 provides an extensive definition of what practices will be considered by the Commissioner as unfair or deceptive. The Commissioner believes it is reasonable to require such fair and non-deceptive conduct on the part of self-insurers, and the failure to so act will be considered grounds for revocation of its authority to self-insure.

Subdivision F. of proposed rule 4 MCAR § 1.9290 is intended to further enforce compliance with the plan of operation of the Workers' Compensation Reinsurance Association (herein after referred to as the "WCRA"). Minn. Stat. § 79 requires all insurance carriers authorized to issue workers' compensation insurance in this state, along with all employers who are self-insured for its workers' compensation liability to be members of the WCRA. The WCRA has adopted a plan of operation to efficiently operate the reinsurance mechanism as the legislature had intended. It is essential for the efficient operation of the WCRA that all of its members, including

self-insurers, abide by its plan of operation. Thus, to further encourage such compliance, non-compliance will be considered grounds for revocation of the self-insurer's authority to self-insure.

4 MCAR § 1.9291

Proposed rule 4 MCAR § 1.9291 clarifies and concisely delineates the conditions upon which the Commissioner will grant an employer the authority to self-insure its workers' compensation liability. Subdivision A. of this proposed rule merely provides the procedure under which an employer may seek to have the Commissioner grant it such authority. This subdivision gives the Commissioner a reasonable length of time to review a complete application by a self-insurer in order to make his determination. Further, it is conceivable that under certain circumstances when it is difficult to determine whether the employer qualifies under this rule, additional time may be needed to make this determination, In such instances, such time should be made available after notice of this extension is given to applicant.

Under the system formerly used by the Department of Labor and Industry, employers received exemptions from insuring its workers' compensation liability for one year periods only. That system required the self-insurer to annually request a renewal of its authority. The proposed rule does not require annual renewal. The Commissioner believes that this is a reasonable approach in that the self-insurer must file annual loss reports and financial data which will be reviewed in order to determine whether the self-insurer is

still able to pay workers' compensation benefits. If an adverse determination is made, Minn. Stat. § 176.181, Subd. 2(1) permits the Commissioner to revoke the self-insurer's authority with ten days notice. Further, self-insurance is a major investment for employers which they should be able to plan for a number of years. A continuous license would permit companies to meet this need.

Subdivision B. of proposed rule 4 MCAR § 1.9291 is necessary in order for the Commissioner to adequately determine the financial stability and capability of the employer to meet all of the obligations imposed of it by the Workers' Compensation Act in the event it is granted the authority to self-insure. Certified financial statements, as defined by proposed rule 4 MCAR § 1.9287 A., are needed in order to provide some verification as to the existence and value of the assets of the employer. When certified financial statements certify the existence and value of assets for a period ending more than six months prior to the submission of the application to self-insure it is reasonable to require some additional assurance as to the existence and value of the assets described in that financial statement. To further this need, this subdivision requires an affidavit signed by a company officer under oath stating that there has been no material lessening of the net worth nor other financial changes in its financial condition since the end of the period for which the certified financial statement covers. In the event that such an affidavit could not be signed because of changes in the financial condition of the company it would be reasonable to require

a more current certified financial statement be filed with the Commissioner.

Subdivision C. of proposed rule 4 MCAR § 1.9291 is intended to delineate what the certified financial statement filed pursuant to Subdivision B. of this rule must show in order for the Commissioner to grant the employer the authority to self-insure. The net worth of the employer is important in order to determine its ability to pay workers' compensation losses as they come due. The net worth of a company signifies that portion of the assets of the company which is not subject to any other obligations of that company and which may be used to pay benefits due under the Workers' Compensation Act.

An important factor in making a determination on the applicant's ability to self-insure is the utilization of any reinsurance or excess insurance. When an employer has reinsurance or excess insurance available, its ultimate liability for claims arising under the Workers' Compensation Act is reduced. Since all self-insurers must be members of the WCRA, they will all have some reinsurance available to them. Presently, the WCRA is set up so that members must select a retention limit of $100,000 or $300,000. The retention limit is the limit beyond which the self-insurer pays claims, but the claims will be reimbursed by the WCRA. Thus, if a self-insurer selects the higher retention limit, it is reasonable to require that employer to have a greater net worth than a self-insurer who selects the lower

retention limit since the higher limit will subject the self-insurer to greater liability. An insurer pursuant to Minn. Stat. § 60A.09 must also retain net worth which has a reasonable relationship to the ultimate exposure on any one risk. Further, it is reasonable to set the requirement that the net worth of a company as ten times their selected retention limit, since that currently is the standard which insurance companies must meet. Minn. Stat. § 60A.09, Subd. 1 states that no company shall insure or reinsure in a single risk a larger sum than one-tenth of its net assets.

This subdivision further requires that the net worth of an applicant can not be less than one-third of its current annual modified premium. This benchmark is similar to the premium to surplus ratio standard which is presently applied to insurance companies doing business in this state. The generally accepted standards of safety used by insurance Commissioners is that an insurance company should maintain a premium to surplus ratio of 3 to 1. In other words, an insurance company that writes premiums in excess of three times its surplus could be considered to be in an unsafe position and will be requested to either increase its surplus or decrease its premiums. This premium to surplus ratio of 3 to 1 is used in the National Association of Insurance Commissioner's Insurance Regulatory Information System, which is designed to identify insurers with potential financial difficulties. For the same reason that it is unsafe for insurance companies to have surplus less than 1/3 its premiums, it would also be unsafe for self-insurers. The net worth of the self-insurer corresponds to surplus of the insurance company and the premium written by the self-insured would be equivalent to its current estimated modified premium.

As explained above, the net worth is an important factor in determining the retention an employer may carry while meeting its obligations under the Workers' Compensation Act. For this reason, it is reasonable to allow for modification of the requirement for a specified net worth if the applicant can demonstrate that a lower requirement should be applied to them because the employer has purchased reinsurance or excess insurance, in addition to that purchased through the WCRA, so as to reduce its liability for any one claim and/or limit its total liabilities for any one year. There is also a corresponding reduction in the net worth requirement for insurers when a portion of a claim has been reinsured.

Subdivision D. of proposed rule 4 MCAR § 1.9291 is intended to further delineate the financial requirement for self-insurers. This subdivision is necessary in order to allow the Commissioner to examine all of the different financial characteristics as a whole so as to determine whether the self-insurer will be able to promptly and completely meet all of its obligations under the Workers' Compensation Act in the event it is granted the authority to self-insure. The factors listed in this subdivision are all important indicators as to the viability of the particular applicant. The self-insurer's current ratio is important since it is an indicator of the assets which are currently availalbe to meet the present expenses of operating a self-insurance program. The long-term and short-term debt to equity ratios are another indicator of the overall financial condition of the company. The financial characteristics of the industry which the

employer is involved in should be examined since there may be a need for a better financial picture if the characteristics of a certain industry are viotile or otherwise indicate a different perspective. Recent changes in ownership or management may be an important indicator since these changes sometimes indicate an unstable financial outlook for the company. As stated above, both a company's net worth and the amount of excess insurance purchased are important factors in determining the ability of the employer to meet its obligations under the Workers' Compensation Act. Also, the company's workers' compensation experience for the last four years can be a very important factor since the data strongly indicates the possible future exposure of that employer. Finally, the employer should be able to submit, and the Commissioner review, any other financial data that is material to whether the employer should be self-insured.

Subdivision E. of proposed rule 4 MCAR § 1.9291 is intended to allow a company to self-insure so long as an affiliated company, as defined by proposed rule 4 MCAR § 1.9287 E., guarantees the payment of the applicant's workers' compensation liability. This provision provides the Commissioner with the same assurances as to financial viability of the guarantor, since that company must file a certified financial statement with the Commissioner and that statement must meet the requirements of Subdivisions C. and D. of this rule.

The subdivision requires that the guarantor have an affiliated

relationship with the applicant company. The purpose of that requirement is to provide some assurance that the guarantor has some additional stake or interest in the applicant company, so that the guarantee will not be quickly withdrawn creating significant problems for the self-insurer. But in the event that the guarantee is withdrawn, or the guarantor no longer is an affiliated company it is reasonable to revoke the self-insurer's authority to self-insure unless it can demonstrate on its own that it can meet the financial standards established by Subdivisions C. and D. of this rule, and agrees to abide by all of the provisions of these rules and the provisions of the Workers' Compensation Act.

Subdivision F. of proposed rule 4 MCAR § 1.9291 is intended to clearly delineate the responsibility of any employer who becomes self-insured, and to require the applicant to formally agree to meet those responsibilities. Under the Workers' Compensation Act all employees who are injured on the job have the right to collect workers' compensation benefits from their employer. In turn, it is the employer's responsibility to pay these benefits. He may do so by purchasing insurance from an insurance carrier , but if the employer chooses not to purchase insurance he must receive the authority to self-insure. The essence of self-insuring is the agreement by the employer to pay benefits to his employees under the Workers' Compensation Act. This subdivision clarifies this duty of the employer.

Subdivision G. of proposed rule 4 MCAR § 1.9291 sets forth the

deposit than an employer must make in order to become self-insured. This requirement is meant to provide additional assurance that workers' compensation losses will be paid to injured workers of the self-insured. Minn. Stat. § 176.181, Subd. 2(1) clearly permits the Commissioner to require an employer to furnish security that he considers sufficient to insure the payment of all claims that may arise under the Workers' Compensation Act.

The deposit requirement for an individual self-insurer will be reviewed annually by the Commissioner in order to determine the sufficiency of that deposit. The level of the deposit is geared toward the self-insurer's outstanding workers' compensation liability on the theory that since the deposit requirement is intended to insure payment of claims, a self-insurer's outstanding workers' compensation liability may be the most that the self-insurer will be obligated to pay out at any one time. Further, the setting of a maximum deposit is deemed reasonable to the extent there are other safeguards providhd by these rules and by law so as to insure the payment of claims to injured employees of self-insured employers. This rule is further intended to encourage self-insurers to recognize the extent of its outstanding workers' compensation liability by having that liability certified by a certified public accountant or a casualty actuary. A self-insurer who obtains such a certification is rewarded by this rule to the extent that its deposit will be limited to its outstanding workers' compensation liability.

Without any such certification, it seems reasonable to require the self-insurer to deposit $1,000,000 in securities or in a surety bond.

Since employers who have been self-insured for less than two years may not have yet developed a significant outstanding liability, but may have already incurred claims which have not yet been reported, or if the claims have been reported the value of the claim may not yet be fully recognized. Thus, it is reasonable to subject these self-insurers to a different standard as to the level of their deposit. For these employers, they must deposit 70% of their current modified premium, so long as that amount is greater than their outstanding workers' compensation liability. This figure is arrived at because the insurance carriers of this state presently estimate that 30% of an employer's premium is needed to pay for the expenses of the carrier and the remaining 70% is needed to cover the losses of the insured. So that this 70% figure could be roughly considered the amount which may be paid for that employer in workers' compensation benefits.

This subdivision further provides for a minimum deposit of $100,000. It is reasonable to require at least this amount to be deposited to provide some assurance that payments will be made by the self-insurer, even if its outstanding liability is less than this amount.

Subdivision H. of proposed rule 4 MCAR § 1.9291 is intended to eliminate the need of a self-insurer who has had its liabilities guaranteed by an affiliated employer to make a deposit so long as the affiliated company makes a deposit pursuant to this rule, and its outstanding workers' compensation liability includes that of the affiliated employer. In such a case, a deposit is not really needed by the self-insurer, since it will be covered by the deposit made by the affiliated company.

Subdivision I. of proposed rule 4 MCAR § 1.9291 is intended to clarify and reinforce the responsibility of the self-insurer under these rules and the Workers' Compensation Act.

Subdivision J. of proposed rule 4 MCAR § 1.9291 is intended to further delineate the requirements of an employer who desires to become self-insured insofar as the administration of workers' compensation claims are concerned. Further, this subdivision is a reasonable attempt to assure the compliance with Subdivision I. of this rule. This provision meets this need by requiring that the self-insurer state the qualifications of those employees who will be administering its self-insurance program. If they contract with an outside entity to provide these services, they must contract with a service company licensed pursuant to proposed rule 4 MCAR § 1.9294. As more fully discussed below, proposed rule 4 MCAR § 1.9294 provides safeguards as to the ability of those entities to provide the necessary services to self-insurers.

Subdivision H. of proposed rule 4 MCAR § 1.9291 is intended to eliminate the need of a self-insurer who has had its liabilities guaranteed by an affiliated employer to make a deposit so long as the affiliated company makes a deposit pursuant to this rule, and its outstanding workers' compensation liability includes that of the affiliated employer. In such a case, a deposit is not really needed by the self-insurer, since it will be covered by the deposit made by the affiliated company.

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Subdivision K. of proposed rule 4 MCAR § 1.9291 is intended to provide the Commissioner with the opportunity to examine the financial viability of a self-insurer when it is sold to, or merged with, another company. The other company may be in such a condition that when included with the financial picture of the self-insurer the ability of the self-insurer to meet its obligations under the Workers' Compensation Act may be endangered. In this event, it is reasonable to require that the self-insurer file a consolidated financial statement so that the Commissioner may determine whether the requirements of Subdivision C. and D. of this rule are met.

4 MCAR § 1.9292

Proposed rule 4 MCAR § 1.9292 is intended to delineate and clarify the requirements for group self-insurers. Minn. Stat. § 176.181, Subd. 2(1) permits two or more employers in the same industry to enter into agreements to pool their liabilities under the Workers' Compensation Act for the purpose of qualifying as group self-insurers. This proposed rule, along with proposed rule 4 MCAR § 1.9293, fully set forth the conditions upon which a group of employers may so qualify as a group.

Subdivision A. of proposed rule 4 MCAR § 1.9292 is intended to set out the initial procedural requirements for employers desiring to qualify as a group. This subdivision permits a proposed group to submit its plan of operation or bylaws under which the group shall

operate for review by the Commissioner. As more fully explained below, the bylaws or plan of operation must conform to the minimum standards listed in this proposed rule and in proposed rule 4 MCAR § 1.9293. This subdivision further gives the Commissioner a reasonable period of time to review the proposed bylaws or plan of operation of the group for compliance with these rules, along with allowing the Commissioner to suspend this time limit if the legality of a certain provision is called into question and is referred to the Attorney General for his opinion.

Subdivision B. of proposed rule 4 MCAR § 1.9292 is intended to delineate the information which must be filed with the Commissioner before the group's application will be approved. This subdivision, along with Subdivision A. of this proposed rule, anticipates a two-step process in approving group application. First, certain employers desiring to form a group may set up a plan of operation for the group, and receive approval for that basic plan from the Commissioner, pursuant to Subdivision A. of this proposed rule. After receiving that approval, the employers may then solicit membership in their group and submit the names of the employers in the group, along with an indemnity agreement and certified financial statements, when they have met the minimum standards. The Commissioner at this time would review the employers as to financial stability, and as to whether they are engaged in the same industry as required by law. Although these provisions allow for a two-step process, the group may submit the names of the members of the group, along with their financial statements at the time of their submission of their bylaws or plan of operation

The name of each employer who will be a member of the group is needed so that the Commissioner will be able to exempt those employers from self-insuring if the group qualifies under these rules. The Department of Labor and Industry is then notified of this exemption. This subdivision further requires that each employer sign an indemnity agreement as set forth in Appendix II of these proposed rules. An indemnity agreement is needed so as to assure that all members of the group are jointly and severally liable for all workers' compensation claims and related expenses incurred by any of the members of the group during any fund year of which they are a member. The statute permits employers to pool their liabilities and the essence of any such pooling arrangement is the joint and several liability of the parties. If the liability was not joint and several, but, rather was transferred to the group, the group would become the insurer, and the concept of self-insurance would be lost.

Certified financial statements, as defined by proposed rule 4 MCAR § 1.92987A., are also needed for a proper review of the group by the Commissioner. By law, the Commissioner must make the determination that the employer, or group of employers, have the financial ability to pay compensation as required by the Workers' Compensation Act. Certified financial statements of the proposed members are thus needed so as to permit the Commissioner to make this determination. In order for the Commissioner to grant the authority to self-insure to the group, he needs some verification as to the existence and value

of the claimed assets of the employers who will make up the group. Requiring that the financial statements be certified, as defined by proposed rule 4 MCAR § 1.92987A., reasonably provides such verification. Further, certified financial statements are the minimum required by the Securities and Exchange Commission for the protection of the stockholders and other potential investors. Injured workers have this same right to know and be protected as do stockholders.

Subdivision C. of proposed rule 4 MCAR § 1.9292 delineates what the financial statements must demonstrate in order for the group to become qualified. These requirements are identical to those financial requirements for individual self-insurers listed in proposed rule 4 MCAR § 1.9291C. and D. The reasonableness and need of part 1. and 2. of Subdivision C. of this rule is fully explained above in the explanation of proposed rule 4 MCAR § 1.9291 C. and D.

Subdivision D. of proposed rule 4 MCAR § 1.9292 is intended to clarify the meaning of the requirement that only employers in the same industry may qualify as a group self-insurer. The National Council on Compensation Insurance has established manual classification in groups which have generally similar or related characteristics. The Commissioner believes that it is reasonable to state that if two or more employers are in the same group, as defined in this publication, then the employers are deemed to be in the same industry.

Subdivision E. of proposed rule 4 MCAR § 1.9292 is intended to clearly list all of the conditions which must be met before the Commissioner grants the group the authority to self-insure. Where material to a full understanding to the proposed rules, these conditions are more fully discussed in the context of the substantive provisions of these proposed rules in which they occur. Further, this subdivision provides the Commissioner with a reasonable time within he must review the application and either deny or grant the group the authority to self-insure.

Subdivision F. of proposed rule 4 MCAR § 1.9292 is intended to clarify the statutory provision that only licensed entities may service or administer group self-insurance programs. Proposed rule 4 MCAR § 1.9294 more fully explains the requirements to become a licensed service company. It is reasonable to require the group self-insurer to contract with licensed service companies, since the statute requires entities who provide such a service to groups must be licensed to do so by the Commissioner. To insure that claims are handled in a fair and equitable manner, and also to avoid any conflict of interest, it is reasonable to require that the service company have sole authority over the handling of claims, since it is the service company, and not individual employers who will have the experience and expertise in handling workers' compensation claims.

Subdivision G. of proposed rule 4 MCAR § 1.9292 is intended to

effectuate the requirements of Minn. Stat. § 176.181, Subd. 2(2)(c)(iii), that the rules may establish standards and guidelines to assure the adequacy of the financing and administration of group self-insurance plans. As more fully explained below, proposed rule 4 MCAR § 1.9293 provides a reasonable attempt to assure the adequacy of the funding for group self-insurers.

Subdivision H. of proposed rule 4 MCAR § 1.9292 is intended to provide some assurance that claims will be paid by the group. Minn. Stat. § 176.181, Subd. 2(1) permits the Commissioner to require self-insurers to furnish some type of security as he considers sufficient to insure the payment of all claims under the Workers' Compensation Act. The amount required to be deposited by the group pursuant to ths subdivision is a reasonable attempt to have securites equal to the group's outstanding liability on deposit in the event that the group is unable to pay the claims. Since a new group self-insurer will have little or no outstanding liability, it is reasonable to require them to deposit a percentage of the premium they would have paid to insurance carriers to cover their losses in those first years. The 70% figure is arrived at since this is generally the portion of one's premium that is paid out for losses, the other 30% is meant to cover the expenses of the insurance carrier.

After a group self-insurer has been self-insured for over two years, they have then established some outstanding liability and it is reasonable to limit their deposit requirement at that time to

the amount of outstanding workers' compensation liability. Further, it is reasonable to place a maximum amount that a group self-insurer needs on deposit; since there are a number of other safeguards available to insure payment of claims and the amount of liability is limited to some extent by the Workers' Compensation Reinsurance Association.

Subdivision I. of proposed rule 4 MCAR § 1.9292 is intended to promote the stability of self-insurance plans for group self-insurers. Minn. Stat. § 176.181, Subd. 2(2)(c)(iv) provides that the Commissioner may establish standards, including, but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans. The requirement of one year membership is needed to eliminate the chance that some employers may drop-out of the group after a very short time, which may adversely affect the financial stability of the group. To further encourage stability, a member is required to pay a penalty to the group if it voluntarily terminates before it has been a member for three years. No penalty should be required if the employer is forced out of the group, either by the other members of the group, or pursuant to these rules, they are no longer engaged in the same industry as the rest of the group, or that they simply have dissolved their business. Further, it is reasonable that if a company is sold or merged, the new company should not be forced to be a member of the group, and should be free to withdraw from the group without penalty, at the time of the sale or merger.

Subdivision J. of proposed rule 4 MCAR § 1.9292 is needed to effectuate the requirements of Subdivision C. of this rule. The Commissioner needs to know when a member is expelled or has withdrawn, along with the effect that will have on the financial condition of the group, since the requirements of Subdivision C. of this rule need to be maintained throughout the period in which the group has the authority to self-insure.

Subdivision K. of proposed rule 4 MCAR § 1.9292 is intended to effectuate compliance with the provisions of Subdivision B. of this rule on a continuing basis. There is the need for the Commissioner to have the assurance that all new members of any group agree to be jointly and severally liable by executing an indemnity agreement before they are able to pool their liability for workers' compensation losses as a member of a group self-insurer.

Subdivision L. of proposed rule 4 MCAR § 1.9292 is intended to prevent an employer from shifting from one group to another when they have outstanding debts payable to their former group. This provision is needed to attempt to achieve some stability and continuity among, and to promote the solvency of group self-insurers.

Subdivision M. of proposed rule 4 MCAR § 1.9292 delineates the operational requirements for each group self-insurer. This provision is intended to clearly specify what the group can and cannot do, and how certain procedures are to be handled in their plan of operation or bylaws. Part 1. of this subdivision sets forth items which must

be discussed in the plan of operation or bylaws of the group self-insurer. These items are needed to insure the efficient and equitable administration of the affairs of the group. Where material to a full understanding of the proposed rules, these items are more fully discussed in the context of the substantive provisions of these proposed rules in which they occur.

The provisions of Subdivision M.2. of this proposed rule are intended to assure that the board of directors of the group self-insurer will periodically review the operation of the group by requiring the board to at least examine these items on an annual basis.

Subdivision N. of proposed rule 4 MCAR § 1.9292 recognizes the need of the Commissioner to verify the accuracy of all reports submitted pursuant to these rules. There is the need that the records of the group remain within the State of Minnesota so that they may be readily available to the staff of the Insurance Division. The Commissioner recognizes that certain records may need to be transferred to a certified public accountant or held by the contracting service company. This rule anticipates this need of group self-insurers and sets out a reasonable procedure to handle such contingencies.

Subdivision O. of proposed rule 4 MCAR § 1.9292 is intended to clarify the obligations and duty of every employer in this state

under the Workers' Compensation Act. If an employer fails to maintain membership in a group self-insurer, they will be considered uninsured subject to the penalties of Minn. Stat. § 176.181 and § 176.183, unless the employer otherwise procures insurance from an insurance carrier.

Subdivision P. of proposed rule 4 MCAR § 1.9292 is meant to clarify the group's status in relation to the WCRA and to the Minnesota Department of Labor and Industry. A group self-insurer will be assessed as one body by the WCRA and Department of Labor and Industry and not individually.

Subdivision Q. of proposed rule 4 MCAR § 1.9292 is intended to further effectuate the requirement set forth in this rule that all employers who are members of a group self-insurer will be jointly and severally liable for workers' compensation losses of the member employers. Both the corporate form of organization and the business trust form under Chapter 318 attempt to limit the liability of their members. To allow groups to form these types of entities would circumvent the requirements of this rule.

4 MCAR § 1.9293

Proposed rule 4 MCAR § 1.9293 sets forth the standards for self-insurer's funds that must be established by group self-insurers pursuant to proposed rule 4 MCAR § 1.9292 G. Subdivision A. of this proposed rule is intended to assure the adequacy of the financing for

the fund by requiring the payment of a premium by the individual employers to the group's fund. In order for the group to adequately meet the immediate expenses and claims of the group, it is reasonable to require at least 20% of the members' premium to be paid prior to the commencement of coverage for the group. Further, at least in the first year, it is reasonable to require the employer to pay into the fund the same amount he would have paid if he was insured. At the present time, this is the only method available to determine the expected workers' compensation exposure of the individual employer, and the amount of money expected to be paid to cover his expected losses.

Payments made by the members to the group should remain at their manual premium level unless the group self-insurer can show that there are bonafide savings in the group for expenses as compared to the expense cost for insurance carriers. Further, a reduction should be permitted in that premium level if claims incurred by the group justify such a reduction and the group has not had a deficit in the recent past. It is reasonable to require that a qualified individual in the field of actuarial science who is experienced in determining losses in the workers' compensation field, certify that a reduction in premium is justified on the basis of loss savings. To further encourage adequate financing for the funds, this subdivision requires that the group initiate proceedings to force the payment of premiums when a member is more than fifteen days delinquent in any payment.

Subdivision B. of proposed rule 4 MCAR § 1.9293 is intended to protect and safeguard the integrity of the assets in the fund by prohibiting any co-mingling of assets of the fund with any assets of any member employer or other accounts of the group unrelated to payment of workers' compensation benefits.

Subdivision C. of proposed rule 4 MCAR § 1.9293 sets forth the requirement that the group self-insurer must appoint a fiscal agent or administrator to administer the financial affairs of the company, and further requiring that such fiscal agent or administrator furnish a fidelity bond. This requirement is needed to properly safeguard the assets in the fund.

Subdivision D. of proposed rule 4 MCAR § 1.9293 allows the group self-insurer to set up a revolving fund for the use of the service company for payment of compensation benefits when due. To reasonably safeguard the assets in this revolving fund, the service company must furnish a fidelity bond to protect the fund against the misappropriation or misuse of any of the monies in the revolving fund. There is no need to require such a fidelity bond of the service company so long as the fidelity bond of the fiscal agent or administrator covers all monies in any revolving fund.

Subdivision E. of proposed rule 4 MCAR § 1.9293 is intended to protect the integrity of the self-insurers fund by requiring annual audits by certified public accountants. Further, there may be a need

for the Commissioner to require special audits at other times. The adequacy of monetary reserves or the financial stability of the fund could be in question and a special audit could be the only means of determining the true financial condition of the group.

Subdivision F. of proposed rule 4 MCAR § 1.9293 is intended to further safeguard the integrity of the self-insurers fund by prohibiting use of any monies in the fund for any purpose unrelated to workers' compensation and prohibiting anyone from borrowing from the fund.

Subdivision G. of proposed rule 4 MCAR § 1.9293 delineates the types of investments that will be allowed for monies in the self-insurers fund. This subdivision attempts to list a number of safe investments to provide the group with a number of reasonable investment alternatives for the monies in their fund. Investment in stocks and indebtedness are prohibited because of the potentially unstable nature of these types of investments. Further, investment in real estate is prohibited because of difficulty in liquidating if the need should arise to pay benefits.

Subdivision H. of proposed rule 4 MCAR § 1.9293 is intended to facilitate the need of groups to pay benefits by being able to redeem securities in sufficient time and at sufficient amounts in order to pay benefits when due.

Subdivision I. of proposed rule 4 MCAR § 1.9293 is intended to provide the Commissioner with a schedule of investments made by the

fund and the amount of investment income earned so as to allow the Commissioner to examine the stability and adequacy of the self-insurers fund.

Subdivision J. of proposed rule 4 MCAR § 1.9293 specifies the amount which the group self-insurer may refund to its members in the form of surplus in any given year. There is a definite need to place a limit on refundable surplus so that the integrity of the self-insurers fund may be maintained by insuring that there always remains in the fund a sufficient amount to pay for existing liabilities of the group. As a starting point, it is reasonable that the self-insurers fund always have sufficient assets to meet all of its outstanding workers' compensation liability. If a fund does not have a sufficient amount to fulfill all of its obligations under the Workers' Compensation Act, a surplus as defined by proposed rule 4 MCAR § 1.9287 N. does not exist.

However, further safeguards are needed. In the field of workers' compensation insurance, it is very difficult to accurately predict the amount of outstanding liability for any given year. There are a number of reasons for this, including the possibility of a large number of incurred but not reported claims, reported claims whose ultimate liability may not be known for a number of years, and cases where a claim may have been closed and fully paid off only to re-open a number of years later. For these reasons, it is reasonable to require the group self-insurer to maintain in their

fund assets in excess of the amount necessary to meet their outstanding workers' compensation liability. The Commissioner believes that permitting 50% of that amount in excess of 125% of the amount necessary to fulfill their obligations under the Workers' Compensation Act may be refunded is a reasonable attempt to meet this above-stated need. The requirement of this subdivision that any refund cannot be paid until 18 months after the end of any fiscal year is needed since it usually takes at least this amount of time after the end of policy year to begin to accurately determine the liability for that year.

Subdivision K. of proposed rule 4 MCAR § 1.9293 requires that the Commissioner be given notice of any refund in order for him or her to determine the adequacy of the reserves in the self-insurer's fund. To further meet this need, the notice must be accompanied by statement of a certified public accountant that the standards established in Subdivision J. of this proposed rule have been complied with.

Subdivision L. of proposed rule 4 MCAR § 1.9293 is intended to insure the financial stability of the self-insurer's fund by requiring that any deficit, as defined in proposed rule 4 MCAR § 1.9287 O., be paid up immediately, either from any surplus from another year which had not been refunded, or by assessing the members of the group.

Subdivision M. of proposed rule 4 MCAR § 1.9293 is intended to insure compliance with Subdivision L. of this proposed rule by

permitting the Commissioner to order an assessment to be levied against the membership to make up any deficit of the group.

4 MCAR § 1.9294.

Proposed rule 4 MCAR § 1.9294 delineates and clarifies the requirements and standards for entities that provide services in the design, establishment or administration of self-insurance plans. Minn. Stat. § 176.181, Subd. 2(a) requires all such entities to be licensed by the Commissioner, and this rule specifies the qualifications to obtain, and to retain such a license. Subdivision A. of this rule sets forth the basic groundwork for making an application for servicing a self-insurance program. The applicant must apply to the Commissioner and designate which areas of administration they wish to be licensed in pursuant to the statute, and the license shall so reflect the areas of administration that the service company shall be authorized to perform.

Subdivision B. of proposed rule 4 MCAR § 1.9294 delineates the information that must be filed with the Commissioner in order for the entity to obtain a service company license pursuant to this rule. This information is needed so that the Commissioner may properly fulfill his statutory duty to only grant a license when he is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered.

Subdivision C. of proposed rule 4 MCAR § 1.9294 is an attempt

to assure the statutory requirement that self-insurance plans are administered in a capable fashion by requiring that the service company hire or contract with sufficient competent individuals to provide those services that they intend to provide.

Subdivision D. of proposed rule 4 MCAR § 1.9294 sets forth requirements for service companies who adjust claims, so that they are handled in a fair and capable fashion and are able to process claims and pay benefits in a prompt, fair, and equitable manner, pursuant to Minn. Stat. § 176.181, Subd. 2(2)(b). In this regard it is reasonable to require service companies who adjust claims to have supervisory personnel who have at least three years' experience in adjusting workers' compensation claims, and at least one adjuster located in the State of Minnesota who has obtained a public adjuster's license pursuant to Minn. Stat. Chpt. 72 B. By having at least one adjuster that holds a license under Minn. Stat. 72 B., the Commissioner provides some assurance that the service company will have at least one qualified, well-trained adjuster, who is qualified to deal with the public in the interest of a fair resolution of worker's compensation claims, pursuant to the intent of Minn. Stat. Ch. 72 B.

Subdivision E. of proposed rule 4 MCAR § 1.9294 is intended to require each service company to have an employee who is located in this state and who has the authority to act on behalf of the service company so as to ease the supervision and regulation of the service company by the Commissioner. Further, this requirement would reasonably assist the self-insurer and the service company in coor-

dinating and administering self-insurance plans within this state.

Subdivision F. of proposed rule 4 MCAR § 1.9294 recognizes the need for accounting expertise in the proper administration of self-insurance plans and requires service companies to provide such expertise so long as the self-insurer does not provide it.

Subdivision G. of proposed rule 4 MCAR § 1.9294 is intended to deny a license pursuant to this rule to any entity who has committed an unfair or deceptive act or practice, as defined in Minn. Stat. § 72B.20. Minn. Stat. § 176.181, Subd. 2(2)(b) requires that self-insurance plans be administered so that claims are processed and benefits paid in a prompt, fair and equitable manner. To meet this need, it is reasonable to prohibit a license to those entities who have not administered claims in a fair and equitable manner in their previous servicing or administering employee benefit plans.

Subdivision H. of proposed rule 4 MCAR § 1.9294 facilitates the need and duty of the Commissioner to properly supervise and examine the affairs of licensed service companies pursuant to Minn. Stat. § 176.181, Subd. 2(2)(b).

Subdivision I. of proposed rule 4 MCAR § 1.9294 is intended to clarify the right of the Commissioner to revoke the license of a service company and that such procedure is subject to the contested case procedures of Minn. Stat. Ch. 15.

Subdivision K. of proposed rule 4 MCAR § 1.9294 sets forth some of the major factors upon which a service company's license may properly be revoke. As stated above, the Commissioner has the duty to attempt to assure that self-insurance plans are administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner. Any entity who committs any of the acts listed in provisions one through four of this subdivision fails to meet this statutory standard

Subdivision L. of proposed rule 4 MCAR § 1.9294 is meant to recognize the fact that in most instances it will be the responsibility of the service company to file the reports required by these rules and by law. This subdivision further clarifies this responsibility of the service company to attempt to assure that these reports are timely filed.

Subdivision M. of proposed rule 4 MCAR § 1.9294 is intended to assist the Commissioner in enforcing the servicing requirements of proposed rule 4 MCAR §§ 1.9291 and 1.9292 by requiring service companies to report the termination of any service contract to the Commissioner. The Commissioner may then insure that the self-insurer meets the requirements of these rules by either contracting with a different service company, or by employing competent individuals in their company to administer their self-insurance program if they are an individual self-insurer.

CONCLUSION

For the reasons stated above, the Commissioner believes that each of the proposed rules are needed to effectively and properly regulate employers who self-insure their workers' compensation liability and for those entities who service those self-insurance programs. The Commissioner further believes that the proposed rules, 4 MCAR §§ 1.9285 through 1.9294, reasonably effectuate the purpose and intent of Minn. Stat. § 176.181, Subd. 2.

DATE: March _____, 1980

William R. Howard

Assistant Commissioner of Insurance

ATTORNEY GENERAL -INSURANCE

THOMAS L. O'MALLEY
Assistant Commissioner of Insurance

Nov. 29, 1979

WILLIAM R. HOWARD and
ROBERT J. CLAYTON
Special Assistant Attorneys General

9412

VACATION, HOLIDAY, AND SICK LEAVE

Your office recently received an inquiry from a Minnesota workers' compensation insurance policyholder regarding Minn. Laws 1979, Ex. Sess. ch. 3 § 12, subd. 1, codified as Minn. Stat. § 79.211, subd. 1 (1979 Supp.) which provides as follows:

> "The rating association or an insurer shall not include wages paid for vacation, holiday, or sick leave in the determination of workers' compensation insurance premiums."

Pursuant to Minn. Laws 1979, Ex. Sess. ch. 3 § 71, section 12 was effective on June 8, 1979, the day following final enactment.

You have asked whether the Division's interpretation that Minn. Stat. § 79.211, subd. 1 (1978) applies only to policies issued or renewed after the effective date of the next order adjusting workers' compensation insurance rates is a permissible reading of this section.

In our view, the proposed interpretation is not only a permissible interpretation of the statutory language, it is the best interpretation.

It is helpful as a background to review the rates currently in effect and the factors upon which these rates were based. The present workers' compensation schedule of rates was approved by order of the Commissioner of Insurance ("Commissioner") on March 13, 1978. It was based upon a filing made by the Minnesota Compensation Rating Bureau [now the Workers' Compensation Insurance Rating Association of Minnesota (hereinafter referred to as "the Association")], which had proposed a revision in the workers' compensation insurance rates. The rate filing and resultant order of the Commissioner establishing the workers' compensation insurance rates involved three separate figures. The first figure computed is the total premium needed to provide all workers' compensation insurers as a group an adequate dollar amount of premium considering their losses and expenses. The second figure is the wage base representing the total amount of wages paid upon which workers' compensation insurance premium is properly payable. The third figure is the rate, set by the Commissioner's order, which when multiplied by the base equals the premium. Thus the rate order in effect at the time Minn. Laws 1979, Ex. Sess. ch. 3 ("the Act") was enacted and which is currently in effect set a rate which would result in an appropriate total premium when multiplied by the wage base, determined

according to the provisions of the workers' compensation rating manual ("manual"). The wage base used in setting the rate to result in an appropriate premium included payroll for holiday, vacation, and sick pay. In April, 1979, the Association proposed a new schedule of rates which used a wage base that also included payroll for vacation, holiday, and sick pay. This filing was returned to the Association by the Commissioner because it did not comply with several new requirements of the Act.

The Act was a major revision of the workers' compensation laws of Minnesota, both as to benefits and as to the procedures to be used by the Commissioner in setting workers' compensation insurance rates. Minn. Stat. § 79.071, subd. 3 (1979 Supp.) now requires that all rate hearings be held pursuant to the contested case procedures set forth in Minn. Stat. §§ 15.0411 to 15.052. Minn. Stat. §§ 79.072 - 79.073 (1979 Supp.) further provide for a rehearing and judicial review of the Commissioner's order. Moreover, beyond changing the procedure by which the schedule of rates may be modified, Minn. Stat. § 79.076, subd. 1 (1979 Supp.) provides:

> "Following the adoption of a revised schedule of rates pursuant to Section 79.071 or 79.072, the revised rates shall apply to new and renewal policies issued after the effective date of the Commissioner's order."

This Section thus requires that all Commissioner's orders affecting rates be prospective since they may only affect policies issued or renewed after the effective date of the order.

Similarly, Minn. Stat. § 79.76, subd. 2 (1979) provides that the manual may only be amended by a contested case proceeding. The manual currently in effect, which was also in effect at the time of the last rate order, provides that wages for vacation, holiday, and sick pay are to be included in the wage base. This section validates the continued use of the present manual until amended by stating that the manual in effect at the time of the effective date of the Act is deemed to have met the applicable requirements of the Administrative Procedures Act. Finally, while not specifically prohibited, a retroactive amendment of the manual appears contrary to legislative intent since it would lead to precisely the same result as a retroactive rate charge, which is specifically prohibited.

Because the last rate order which was issued in March, 1978, was calculated using a wage base which included wages for holiday, sick leave, and vacation pay in determining premiums, it seems logical to conclude that the Legislature in drafting Minn. Stat. § 79.11, subd. 1, intended that the statutory exclusion of wages paid for vacation, holiday, and sick leave not be implemented until after the effective date of the first rate order subsequent to the effective date of the section. The filing that the Association has recently made which is now set on for hearing proposes a schedule of rates based upon a wage base consistent with the statute. The exclusion of wages paid for vacation, holiday, and sick leave from the determination of premiums due prior

to the effective date of an order in the proceeding involving the current filing would constitute an amendment to the manual and have the same effect as an amendment reducing the present rates. This would be inconsistent with the requirements that changes in the manual and rates may not be made except pursuant to an order of the Commissioner following a contested case proceeding, and that rate orders may not be retroactive.

This interpretation is supported by the canons of statutory construction. Minn. Stat. § 645.21 (1978) provides that no law shall be construed to be retroactive unless clearly and manifestly so intended by the Legislature. There is no clear and manifest indication that Minn. Stat. § 79.211, subd. 1, was intended by the Legislature to retroactively effect the last rate order setting a schedule of rates based on the inclusion of wages paid for vacation, holiday, and sick leave in the determination of workers' compensation insurance premiums. Moreoever, Minn. Stat. § 79.076, subd. 1, by stating that no order of the Commissioner shall have any retroactive effect clearly manifests a legislative determination against retroactivity in setting workers' compensation premiums.

In summary, I feel that the interpretation you have proposed is the proper interpretation of the statute. If you had not received a rate filing from the Association, I would suggest that you take steps to institute a contested case proceeding to implement the new language. However, since a rate filing has in fact been received from the Association, which will implement the new language, the changes will be timely made.

The purpose of this memo is to advise you relative to your responsibilities under the Act. It does not purport to, nor can it, make a binding legal interpretation of the language in question, which can ultimately only be made by the Courts. Thus, it does not preclude an insured from instituting an action against his insurer or the Association.

aso

CODES	CLASSIFICATION	1973 RATE	1974 RATE	1975 RATE	1976 RATE	1977 RATE	1978 RATE	PROPOSED
5191	Office Appliances N.O.C. Installed	.95	.98	1.02	1.07	1.47	1.57	2.39
5192	Vending Machine Installation Service or Repair	1.97	2.28	2.51	2.48	3.05	3.25	4.53
9519	Electrical Household Appliances Installation, Service, Repair	1.77	1.97	2.17	2.32	2.62	2.79	3.48
9521	House furnishings N.O.C.	2.15	2.51	2.85	3.16	4.35	4.62	7.67
7222	Truckmen - Oil Field Equipment	5.59	6.98	7.68	8.06	10.86	11.50	15.55
7230	Parcel Delivery	1.99	2.09	2.57	2.70	3.43	3.64	5.63
7380	Chauffeurs and Helpers N.O.C.	3.83	4.39	5.16	5.66	6.63	7.01	8.20
8039	Department Stores	.54	.62	.78	.88	1.13	1.20	1.99
8044	Furniture Stores, Including Chauffeurs	1.55	1.85	2.22	2.36	2.44	2.60	3.91
8291	Cold Storage Warehouses	4.35	5.01	6.22	5.85	6.77	7.17	10.23
8292	Storage - General Merchandise N.O.C.	3.45	3.76	4.00	3.92	4.96	5.25	7.48
8710	Field Bonded Warehousing-all employees	2.16	2.57	2.94	2.86	3.20	3.37	5.12
6217	Grading Land N.O.C. (Truck Drivers and Sanitary Land Fill)	6.06	6.18	5.82	5.18	7.33	7.74	11.97
7590	Garbage work	4.43	5.22	5.80	5.47	5.64	5.99	7.60
8293	Furniture Storage (They include our Household Goods, movers, in this classification)	6.73	7.98	10.18	9.52	12.64	13.39	18.73
7219	Truckmen - N.O.C.	5.59	6.98	7.68	8.06	10.86	11.50	15.55
8018	Store Risks - Wholesale or Combined Wholesale & Retail, N.O.C. (incl. packaging of household goods)	1.90	2.37	2.63	2.44	2.93	3.11	5.19
8391	Automobile Repair Shop & Parts Dept. Employees and Drivers	2.88	3.37	3.32	3.72	4.35	4.59	6.30

WORKERS' COMPENSATION INSURERS RATING ASSOCIATION OF MINNESOTA

510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402
(612) 338-4500

J. P. HILDEBRANDT
President

RECEIVED
MAY 28 1980
MINNESOTA TRANSPORT SERVICES ASSOCIATION

May 27, 1980

ALL ASSOCIATION MEMBERS

Circular Letter No. 919

Vacation Holiday and Sick Leave

The 1979 Special Session of the Legislature amended Chapter 79 of the Minnesota Statutes to include the following:

> "The rating association or an insurer shall not include wages paid for vacation, holiday or sick leave on determination of workers' compensation insurance premiums."

This amendment became effective on June 8, 1979, the day following enactment. After a review of the rate order currently in effect and a review of Minnesota law, the Insurance Division has concluded that this amendment regarding the exclusion of holiday, vacation and sick pay will not apply until the next Commissioner's rate order has become effective. When the new rates are published, a new manual rule will be incorporated into the Minnesota Special Rules to explain the proper treatment of vacation, holiday and sick leave pay.

The above interpretation recognizes the fact that, in the past, rates have been predicated on a wage base which included vacation, holiday and sick leave pay. If part of the wage base is to be removed, as the law indicates, adjustment in rates would be necessary. By law, any rate change is subject to a hearing under the Administrative Procedures Act, and until such rate change occurs, the wage base cannot be reduced. The pending rate revision includes factors which take into consideration the implementation of the amendment relating to vacation, holiday and sick leave, but until this rate revision is approved, vacation, holiday and sick leave pay should be included in the premium computation for all policy subject to current rates.

Very truly yours,

J. P. HILDEBRANDT

President

JPH/ko

SENTRY INSURANCE

RECEIVED
MAY 20 1980
MINNESOTA TRANSPORT
SERVICES ASSOCIATION

May 15, 1980

Chicago Avenue Transfer Inc.
335 East 78th Street
Minneapolis, Minnesota 55401

Dear Mr. Elliott:

WORKERS' COMPENSATION POLICY 75-01069-019 AND
75-01069-010

In our May 8, 1980 letter to you, we promised you a written reply to a request for information in regard to division of payroll by job classification and whether or not holiday pay, vacation pay and sick pay is subject to the Workers' Compensation premium.

We have contacted the Minnesota Workers' Compensation Insurers Rating Association and have been informed that all trucking risks have been reinspected by the Association and had been told that the payroll breakdown by classification would not apply to their type of risk.

It is our understanding that Mr. Abe Rosenthal has represented the truckers through his Association and had been instrumental in having the Legislature enact this provision in the new Minnesota Workers' Compensation Law. However, the payroll breakdown by classification was not meant for this type of business described as trucking, moving and storage business. Mr. Rosenthal felt that by enacting this provision in a law that he could change the classification procedure. The Association did not agree with this interpretation and they have been sustained by the Department of Insurance.

As far as the holiday pay, vacation pay and sick pay there is a provision in the law for this exclusion. However, we have an opinion from the Attorney General of Minnesota which states that until the rates can reflect this exclusion, that the exclusion will not apply.



At the present time, there are hearings for an adjustment in rates for the State of Minnesota and Workers' Compensation Insurance. The filing made included provisions for the exclusion of holiday pay, vacation pay and sick pay. Until the new rates are approved, this provision in the law for the exclusion will not apply and the Department of Insurance has agreed to abide by the Attorney General's opinion.

If you have any further questions or if we can be of any other help, please let us know.

Yours very truly,

Dale D. Newby

Dale D. Newby, Underwriting Department

SENTRY INSURANCE A MUTUAL COMPANY

jmc

MINNESOTA TRANSPORT SERVICES ASSOCIATION

1821 UNIVERSITY AVENUE ST. PAUL, MINNESOTA 55104 TELEPHONE (AREA 612) 646-4075

Serving Minnesota's Local Cartage — Household Goods Moving — Short Haul Trucking — Public Warehouses and Related Industries ...

ABE ROSENTHAL
Executive Vice President
General Manager

STATEMENT

OF

ABE ROSENTHAL

EXECUTIVE VICE PRESIDENT

MINNESOTA TRANSPORT SERVICES ASSOCIATION

BEFORE

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

DIVISION OF INSURANCE

HEARING REGARDING ADOPTION OF

RULES GOVERNING SELF-INSURANCE FOR WORKER'S COMPENSATION

ST. PAUL, MINNESOTA

APRIL 8, 1980

MINNESOTA TRANSPORT SERVICES ASSOCIATION (MTSA) IS A TRANSPORTATION INDUSTRY TRADE ASSOCIATION CONSISTING OF "FOR HIRE" TRUCKING, PUBLIC WAREHOUSE AND ALLIED INDUSTRY ASSOCIATED FIRMS.

MTSA HAS WORKED FOR NEARLY FOUR YEARS TO OBTAIN FOR ITS MEMBERS THE PRIVILEGE OF SELF-INSURING THEIR WORKER'S COMPENSATION OBLIGATIONS. WE HAVE SPOKEN NUMEROUS TIMES TO THE COMMISSIONER AND HIS STAFF CONCERNING THE TEMPORARY RULES GOVERNING SELF-INSURANCE FOR WORKER'S COMPENSATION AS ADOPTED AND WE HAVE COMPLAINED THAT THEY EFFECTIVELY PREVENT OUR MEMBERS AND OTHER SMALL BUSINESSES FROM SELF-INSURING. WE BELIEVE THESE PROPOSED RULES ARE THE COUP DE GRACE TO THE HOPES OF OUR SMALL BUSINESS COMMUNITY FOR GROUP SELF-INSURANCE PROGRAMS.

IT IS THE PURPOSE OF THIS STATEMENT TO DOCUMENT THE OBJECTIONS OF MTSA ON BEHALF OF THE EMPLOYER MEMBERS OF MINNESOTA TRANSPORT SERVICES ASSOCIATION (MTSA) AND TO CREATE AN ADEQUATE RECORD FOR REVIEW.

WE OBJECT TO THESE RULES, NOT MERELY BECAUSE THEY WILL MAKE IT DIFFICULT TO ESTABLISH GROUP SELF-INSURED PLANS, BUT BECAUSE THEY WILL EFFECTIVELY PREVENT GROUP SELF-INSURED PLANS FROM BEING FORMED AND IN EFFECT, VETO THE EXPRESS ACT OF THE LEGISLATURE.

ON OCTOBER 10, 1979, WE FILED A PETITION FOR GROUP SELF-INSURANCE OF WORKER'S COMPENSATION ON BEHALF OF MTSA. TO THIS DATE, THE COMMISSIONER HAS FAILED TO ACT ON THAT PETITION PURSUANT TO LAW.

IN A LETTER TO THE COMMISSIONER DATED OCTOBER 29, 1979, WE DOCUMENTED THE

MTSA COMPLAINTS CONCERNING THE PROPOSED TEMPORARY RULES.

IN A LETTER TO THE COMMISSIONER DATED NOVEMBER 29, 1979, WE DOCUMENTED THE MTSA COMPLAINTS CONCERNING THE PROPOSED TEMPORARY RULES.

ON DECEMBER 10, 1979, NOTWITHSTANDING OUR COMPLAINTS AND PROTESTS, THE COMMISSIONER PUBLISHED PROPOSED TEMPORARY RULES AND LATER ADOPTED THEM SUBSTANTIALLY UNCHANGED.

THE TEMPORARY RULES ADOPTED EARLIER THIS YEAR CONTAINED SUBSTANTIALLY ALL OF THE FEATURES OF THE EARLY PROPOSED RULES WHICH ARE DISCRIMATORY BETWEEN INDIVIDUAL AND GROUP SELF-INSURERS, AS WELL AS, GROUP SELF-INSURERS AND INSURANCE COMPANIES. THE ADOPTION OF THESE RULES CREATED AN UNEQUAL APPLICATION OF THE LAW IN CONTRAVENTION TO OUR STATE CONSTITUTION AND RIGHTS OF SMALL EMPLOYERS.

IN ADDITION, THE AFORESAID RULES ESTABLISH UNDULY EXPENSIVE AND UNNECESSARY REQUIREMENTS ON GROUP SELF-INSURERS WHICH EFFECTIVELY PRECLUDE THE FORMATION OF GROUP SELF-INSURED PROGRAMS FOR SMALL BUSINESSES. THE SAME IS TRUE OF THE PROPOSED RULES WHICH ARE THE SUBJECT OF THIS RULES HEARING.

THE FOLLOWING IS A RESUME OF THE OBJECTIONS OF MTSA TO THESE PROPOSED RULES:

1. THE PURPOSE AND SCOPE OF THE RULES REFER TO AUTHORIZATION OF QUALIFIED ENTITIES TO ENGAGE IN SUCH "BUSINESS". MTSA MEMBERS ARE NOT SEEKING TO ENGAGE IN THE "BUSINESS", BUT RATHER SEEKING TO SATISFY STATE LAW REQUIREMENTS NECESSARY TO PROVIDE ALTERNATIVE METHODS OF COVERAGE.

WE BELIEVE THAT THIS CHOICE OF WORDS REFLECT AN OVERALL ATTEMPT OF THE WRITER (OF THE RULES) TO INTERJECT "BUSINESS" CONCEPTS OF THE INSURANCE INDUSTRY. IT IS CLEAR FROM THE STATUTORY LANGUAGE THAT SELF-INSURED APPROACHES TO COVERAGE WERE TO BE TREATED DIFFERENTLY FROM THE "BUSINESS" OF INSURANCE. YET DESPITE THE FACT THAT THE AUTHORIZATION TO SELF-INSURE IS CONTAINED IN SECTION 176.181 NOT UNDER CHAPTER 79 THE WORKER'S COMPENSATION INSURANCE CHAPTER. THE INTENT TO PROVIDE A COMPETITIVE, LOW COST OPTION TO INSURANCE IS BEING SUBVERTED BY THESE RULES. THE CURRENT TEMPORARY RULES HAVE KEPT ALL SMALL BUSINESSES FROM SELF-INSURING. WE PREDICTED THAT THE RULES WOULD KEEP ALL SMALL BUSINESSES FROM SELF-INSURING THEIR WORKER'S COMPENSATION OBLIGATIONS. TO THIS DATE NONE HAVE BEEN APPROVED.

2. THE RULES REQUIRE CPA CERTIFIED FINANCIAL STATEMENTS. THIS REQUIREMENT ALONE CREATES A SUBSTANTIAL COST INCREASE FOR PARTICIPANTS OF THREE TO FOUR TIMES THE USUAL AUDIT FEE FOR A SMALL BUSINESS, AN ACTUAL DOLLAR COSTS DIFFERENCE FROM $3,000 TO AT LEAST $6,000 PER YEAR; A FACTOR WHICH BY ITSELF, ELIMINATED THE FINANCIAL FEASIBILITY OF SELF-INSURANCE. WHY IS THIS REQUIRED WHEN THERE IS BONDING, SURETIES AND OTHER FINANCIAL PROTECTION. WHY NOT A REVIEW BY A CPA OR AN AUDIT BY A PUBLIC ACCOUNTANT WHICH IS ACCEPTABLE TO FINANCIAL INSTITUTIONS, BUT NOT THE COMMISSIONER OF INSURANCE?

WHY TREAT ALL INDUSTRIES THE SAME? THE TRUCKING INDUSTRY IS DIFFERENT THAN A PLASTIC MANUFACTURER. ONE MAINTAINS EXTENSIVE INVENTORIES, THE OTHER DOES NOT. CERTIFIED AUDIT MAKES SENSE IF YOU MUST CONFIRM THE VALUE OF INVENTORIES.

3. DISCRIMINATION IN OPERATING COSTS BETWEEN INDIVIDUAL AND GROUP SELF-INSURERS IS BUILT INTO THESE RULES IN A MANNER TO ASSURE CONTINUED COMPETITIVE ADVANTAGES BY PAY-AS-YOU-GO LOSS PROGRAMS AUTHORIZED SOLELY FOR INDIVIDUAL SELF-INSURERS WHO ARE "BIG BUSINESS". THIS APPROACH DOES NOT REQUIRE THE UP FRONT PREMIUM PAYMENT, THE ESTABLISHMENT OF RESERVES AND SURPLUSES AND RESTRICTED INVESTMENT RULES FOR THESE RESERVES AND SURPLUSES BY SELF-INSURED BIG BUSINESSES.

SMALL BUSINESS UNDER 4 MCAR§1.9293 IS REQUIRED TO PAY UP FRONT PREMIUMS BASED ON A YEAR'S WORKER'S COMPENSATION INSURANCE PREMIUM, NOTWITHSTANDING PASSAGE OF S.F. 1 (EX. SESSION LAWS OF 1979 CHAPTER 3) PROVISIONS FOR PREMIUM PAYMENTS ON THE BASIS OF DIVISION OF PAYROLL AND EXCLUDING WAGES PAID FOR VACATIONS, HOLIDAYS AND SICK LEAVE.

4. THE RULES (4 MCAR§ 1.9292 PARA. 1) IMPOSE INITIAL THREE YEAR PARTICIPATION REQUIREMENTS ON SMALL BUSINESS GROUPS, BUT NOT ON BIG BUSINESS. PENALTIES ARE IMPOSED ON SMALL EMPLOYERS WHO FIND IT NECESSARY TO WITHDRAW EARLY. THIS IS ALSO NON-COMPETITIVE WITH THE INSURANCE INDUSTRY WHO PERMIT OR REQUIRE ONE YEAR POLICIES FOR SMALL BUSINESSES. A SMALL BUSINESS CANNOT WITHDRAW, WITHOUT PENALTY.

THE PROVISIONS OF THE RULE APPLYING PENALTY TO EARLY WITHDRAWAL AFTER THE FIRST YEAR IS NOT NECESSARY IF THE PREMIUM REQUIREMENTS ARE STRUCTURED PROPERLY. IT CAN ONLY BE A DETERENT TO GETTING SMALL BUSINESS GROUPS STARTED, SINCE THE NORM FOR MANY YEARS IMPLEMENTED BY THE INSURANCE INDUSTRY FOR SMALL BUSINESS IS A ONE YEAR POLICY.

5. THE RULES (4 MCAR § 1.9292 PARA. D) IMPOSES THE INSURANCE INDUSTRY CLASSIFICATION MANUAL, DESIGNED FOR PROFITABILITY, NOT GROUP SELF-INSURANCE, TO DEFINE THE "SAME INDUSTRY" CLAUSE OF THE LAW. A TOTALLY UNREASONABLE, DISCRIMINATORY AND COMPLICATED APPROACH TO DETERMINING WHO IS IN THE SAME GROUP. THE STATUTE IS CLEAR ENOUGH AND IF FURTHER DEFINITION IS NECESSARY, THE ADOPTION OF A "COMMON INTEREST" RULE, SUCH AS FLORIDA HAS, SHOULD BE SUFFICIENT. THE LANGUAGE IN THE RULE IS ESPECIALLY DESIGNED TO PROVIDE "A THRESHOLD" OF AUTOMATIC APPROVAL, WHILE RESTRICTING TO THE COMMISSIONER AUTHORITY TO PLAY FAVORITES. A GOOD EXAMPLE IS OUR INDUSTRY WHICH HAS TRUCKMEN AND WAREHOUSEMEN WHO COULD NOT MEET THE THRESHOLD RULE OF THE "MANUAL", BUT ACCORDING TO STAFF WOULD UPON APPLICATION BE PERMITTED TO JOIN TOGETHER UNDER THIS "SAME INDUSTRY" RULE. THE THRESHOLD APPROACH IS PRESENT THROUGHOUT THESE RULES AND THEY DISCOURAGE PARTICIPATION BECAUSE OF SUBSTANTIAL COSTS TO APPLY IN WHAT APPEARS TO BE ALMOST SURE REJECTION

BIG BUSINESS, INDIVIDUAL SELF-INSURERS MAY COVER THEIR AFFILIATES INTO THEIR PLAN WITHOUT THE COST, RESTRICTIONS AND BURDENS OF THIS AFFINITY RULE, NOR THE PAYMENT OF THE PREMIUM, THE RESERVING PRACTICES, THE ENCUMBERING OF SURPLUSES, OR SEPARATE ADMINISTRATION OF THESE SEGMENTS OF INDUSTRY.

6. GROUP SMALL BUSINESS SELF-INSURERS UNDER 4 MCAR § 1.9293 PARAGRAPH A, ARE REQUIRED TO PAY PREMIUMS BASED ON THE CURRENT YEAR'S INSURANCE PREMIUM.

A RULE THAT IS NOT APPLICABLE TO BIG BUSINESS NOR TO SELF-INSURED IN-

DIVIDUAL EMPLOYERS. IT EFFECTIVELY INSULATES THE INSURANCE CARRIER FROM COMPETITION FROM GROUP SELF-INSURERS.

THIS RULE DOES NOT EVEN CONTEMPLATE THE SAVINGS PERMITTED AND AUTHORIZED BY LAW UNDER CHAPTER 3 EXTRA SESSION LAWS OF 1979 WHICH INCLUDED DIVISION OF PAYROLL BETWEEN RELEVENT CLASSIFICATIONS, ELIMINATED PREMIUM PAYMENTS ON PAYROLL FOR VACATIONS, HOLIDAYS AND SICK LEAVE.

ALL SAVINGS GROUPS COULD OBTAIN (21% TO 28% OF PREMIUM) BY THE EMPLOYMENT OF A SERVICE COMPANY TO ADMINISTER THIS PLAN IS ELIMINATED AND THESE DOLLARS ARE BUILT INTO ENCUMBERED SURPLUSES BY ANOTHER RULE.

THIS RULE BUILDS IN SO MANY CONFLICTS THAT IT ACTUALLY INCREASES PREMIUM OBLIGATIONS WHICH PENALIZE THE SAFE EMPLOYER AND DEFEATS THE PRIMARY IF NOT THE SOLE PURPOSE OF SELF-INSURING.

7. 4 MCAR § 1.9293 PARAGRAPH J PROHIBITS DISBURSEMENT OF GROUP SELF-INSURED FUND SURPLUS MONIES FOR A PERIOD OF NOT LESS THAN 18 MONTHS FOLLOWING THE CLOSE OF THE FUND YEAR. FURTHERMORE, IT PROHIBITS THE DISBURSEMENT OF MORE THAN 50% OF THE SURPLUS MONIES IN THE EXCESS OF 125% OF THE AMOUNT NECESSARY TO MEET ALL OBLIGATIONS UNDER THE LAW. THIS PENALIZES THE SAFE EMPLOYER, IT BREEDS EXCESSIVE SURPLUSES AND IT ENCUMBERS THE GROUP WITH AN ABSURD FINANCIAL MANAGEMENT RESPONSIBILITY NOT REQUIRED OF INDIVIDUAL SELF-INSURERS OF INSURANCE CARRIERS. SEE MTSA EXHIBIT NO. 1 WHICH INDICATES THAT SURPLUSES WILL BE HELD FOR A PERIOD OF OVER 18 YEARS.

8. 4 MCAR § 1.9292 PARAGRAPH D IMPOSES THE EXTREMELY COMPLICATED, CONFUSING AND CONFLICTING INSURANCE INDUSTRY CLASSIFICATION CODES MANUAL (WHICH WAS DESIGNED FOR PROFITABILITY OF THE INSURANCE INDUSTRY) UPON GROUP INSURERS TO DETERMINE GROUP AFFINITY. THIS EFFECTIVELY PREVENTS ALLIED INDUSTRIES WHO ARE NOT CORPORATELY RELATED FROM JOINING THE SELF-INSURED GROUP WHOSE INDUSTRY THEY ARE DEEPLY INVOLVED, COMMITTED AND A PART OF, WHILE PERMITTING CONGLOMERATES THE PRIVILEGE OF INSURING AS AN INDIVIDUAL SELF-INSURER IRRESPECTIVE OF THE INSURANCE MANUAL.

9. THE RULES (4 MCAR § 1.9294 PARAGRAPH D) REQUIRE USE OF LICENSED SERVICE COMPANIES WHO EMPLOY A CLAIM ADJUSTER WHO IS LICENSED ALSO AS A CLAIM ADJUSTER BUT NOT OF INDIVIDUAL BIG BUSINESS SELF-INSURERS NOR ARE THE ADJUSTERS WHO WORK FOR THE INSURANCE INDUSTRY REQUIRED TO BE LICENSED AS ADJUSTERS

AN OBJECTIVE REVIEW BY OUR EXPERTS CLEARLY INDICATES THAT THESE RULES WILL EFFECTIVELY ASSURE THAT GROUP SELF-INSURANCE FOR SMALL EMPLOYERS WILL REMAIN MERELY A PROMISE AND NOT A FACT. THEREFORE, ON BEHALF OF THE OFFICERS AND MEMBERS OF THIS ASSOCIATION, WE PROTEST THE ADOPTION OF THESE RULES BECAUSE THEY ARE ARBITRARY, UNREASONABLE, DISCRIMINATORY AND EXCEED THE EXPLICIT AND IMPLICIT STATUTORY AUTHORITY OF THE COMMISSIONER. THEY WILL PREVENT THE ESTABLISHMENT OF SMALL BUSINESS GROUP SELF-INSURED WORKER'S COMPENSATION PROGRAMS IN MINNESOTA IN DEROGATION AND CONTRAVENTION OF THE EXPRESS DIRECTION OF THE STATE LEGISLATURE IN MINNESOTA STATUTES SPECIAL SESSION CHAPTER 3 (S.F. NO. 1).

THANK YOU.

DIVIDEND PAYMENTS
GROUP SELF INSURERS

Year	Loss Payment	Cumulative Loss Payment	Outstanding Liability	Dividend	Cumulative Dividend
1	24	24	76	0	0
2	16	40	60	7.50	7.50
3	12	52	48	5.25	12.75
4	8	60	40	3.63	16.38
5	8	68	32	2.81	19.19
6	5	73	27	2.03	21.22
7	5	78	22	1.64	22.86
8	4	82	18	1.32	24.18
9	4	86	14	1.16	25.34
10	3	89	11	.95	26.29
11	2	91	9	.73	27.02
12	2	93	7	.62	27.64
13	2	95	5	.55	28.19
14	1	96	4	.41	28.60
15	1	97	3	.32	28.92
16	1	98	2	.29	29.21
17	1	99	1	.27	29.48
18	1	100	0	.52	30.00

Assumptions:

Initial Assessment	$150
Total Losses	$100
Expenses	$ 20
Surplus	$ 30

Payout schedule is based on actual Minnesota for the first ten years.

Source: Michael Markman, Commissioner
Insurance Division, State of Minnesota

LET'S END DISCRIMINATORY WORKER'S COMPENSATION COVERAGE COSTS

BY

ABE ROSENTHAL

EXECUTIVE VICE PRESIDENT

MINNESOTA TRANSPORT SERVICES ASSOCIATION

ON BEHALF OF

MINNESOTA TRANSPORT SERVICES ASSOCIATION

AND

INDEPENDENT TRUCKERS ASSOCIATION OF MINNESOTA

APRIL 4, 1979

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE —

MY NAME IS ABE ROSENTHAL, I AM THE EXECUTIVE VICE PRESIDENT OF MINNESOTA TRANSPORT SERVICES ASSOCIATION, (MTSA) A SMALL BUSINESS TRUCKING AND PUBLIC WAREHOUSE TRADE ASSOCIATION, CONSISTING OF LOCAL AND SHORT HAUL, HOUSEHOLD GOODS MOVING, HEAVY HAULING, MACHINERY MOVING, RIGGING AND ERECTING AND SPECIAL PROTECTIVE SERVICE TRUCKING AND PUBLIC WAREHOUSE FIRMS. OUR MEMBERSHIP EXTENDS THROUGHOUT THE STATE, AND INCLUDES MEMBERS IN ST. LOUIS, BELTRAMI, KANDIYOHI, FAIRBAULT, WINONA COUNTIES, AS WELL AS, THE METRO COUNTIES.

IN ADDITION, I ALSO REPRESENT BY SPECIAL AGREEMENT THE INDEPENDENT TRUCKERS ASSOCIATION OF MINNESOTA (ITA). AN ORGANIZATION THAT GREW OUT OF THE NATIONAL TRUCKING SHUTDOWN OF 1973-1974 DURING THE OIL EMBARGO. INDEPENDENT TRUCKERS ARE USUALLY ONE OR TWO TRUCK OWNER-OPERATORS, MEN AND WOMEN WHO CONTRACT THEIR SERVICES AND THEIR TRUCKS TO COMMON CARRIERS, AS WELL AS, TO SHIPPERS OF EXEMPT AGRICULTURAL PRODUCTS. IT IS ESTIMATED BY ITA THAT THERE ARE APPROXIMATELY 4,000 INDEPENDENT TRUCKERS THROUGHOUT MINNESOTA. INDEPENDENT TRUCKERS ARE EASILY RECOGNIZED BY THEIR PRACTICE OF PARKING THEIR TRUCKS AT THEIR RESIDENCES, OR IN MANY CASES, FARMS.

WE ARE MOST APPRECIATIVE OF THE WORK OF THE STUDY COMMISSION IN ITS EFFORT TO COPE WITH THE QUESTION OF HIGH RATES AND WHERE DOES THE DOLLARS GO, OR AS WE PREFER TO RAISE THE QUESTION AS, WHO IS THE MAIN BENEFICIARY OF THE MINNESOTA WORKE COMPENSATION PROGRAM. WE THINK THE EVIDENCE IS IN AND IT IS THE WORKER'S COMPENSATION INSURANCE CARTEL. CERTAINLY WE WILL ADMIT THAT WORKERS AND THEIR FAMILIES BENEFIT FROM IT. WHAT I AM SAYING IS THAT IT SHOULD NOT TAKE OVER TWO DOLLARS ($2) IN PREMIUM TO DELIVER ONE DOLLAR ($1) IN BENEFITS EACH YEAR AND THAT IS EXCLUSIVE OF THE INVESTMENT INCOME DOLLARS. THE MOST DAMAGING EVIDENCE OF THIS FACT MAY BE OBSERVED IN COMMISSION EXHIBIT IX ON PAGE 191 OF THE REPORT. THIS EXHIBIT COMES FROM THE INSURANCE INDUSTRY ANNUAL REPORTS ON MINNESOTA BUSINESS. FOR EXAMPLE, WITH AN EARNED PREMIUM OF $254.3 MILLION, ONLY $113.8

MILLION, WAS ACTUALLY PAID OUT IN 1977 AND $107.6 MILLION WAS INVESTED FOR POSSIBLE FUTURE CLAIM PAYOUTS, INVESTMENT AND MOST ASSUREDLY PROFITS FOR THE INDIVIDUAL MEMBERS OF THE CARTEL. AS IF THAT WASN'T BAD ENOUGH THE CARTEL IS TOOLING UP RIGHT NOW TO REQUEST ANOTHER RATE INCREASE.

WE WERE SHOCKED BY THE LETTER OF THE MINNESOTA COMPENSATION RATING BUREAU WHICH INDICATES THAT IF THE STUDY COMMISSION BILL PASSES IN ITS PRESENT FORM THERE PROBABLY WOULD BE A SLIGHT INCREASE, NOT DECREASE, IN WORKER'S COMPENSATION PREMIUM RATES IN 1979.

WITH THIS AS A BACKGROUND, THE MTSA AND ITA POSITION BECOMES EVEN MORE IMPORTANT TO THE FUTURE OF MINNESOTA'S SMALL BUSINESS COMMUNITY.

THE WORKER'S COMPENSATION BILL OF 1979 MUST CONTAIN SUBSTANTIAL RATE RELIEF OR AT LEAST IT MUST PROVIDE SMALL BUSINESS WITH SOME OPTIONS TO EFFECT RATE RELIEF TO ELIMINATE THE CURRENT DISCRIMINATORY COVERAGE COST PROBLEM.

THE COMMISSION WAS WISE IN DIRECTING AND THE COMMISSIONER OF INSURANCE IN PROMISING TO IMPLEMENT CERTAIN REFORMS WITHOUT SPECIFIC LEGISLATIVE DIRECTION THROUGH THIS BILL. WE LOOK FORWARD TO TIMELY IMPLEMENTATION OF STUDY COMMISSION RECOMMENDATIONS NUMBERS 45, 48, 50, 51, 52, 53, 54, 55, AND 56 (SEE APPENDIX 1).

WE ALSO FULLY ENDORSE AND SUPPORT STUDY COMMISSION RECOMMENDATIONS NUMBERS 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 46 and 47 (SEE APPENDIX 2).

OUR POSITION FOR AT LEAST OVER FOUR (4) YEARS HAS REMAINED THE SAME AND IS CONFIRMED BY THE STUDY, RATE REDUCTIONS ARE POSSIBLE ONLY THROUGH INSURANCE REFORM, TO CREATE ADDITIONAL METHODS OF COVERAGE AND OPTIONS FOR SMALL BUSINESS AND REGULATORY REFORM OF THE STATE INSURANCE LAWS.

THE STUDY COMMISSION REPORT ALLUDED TO DISCRIMINATORY CLASSES AND RATES FOR TRUCKING AND RECOMMENDED THAT THE LEGISLATURE ENACT A FORMAL PROCEDURE FOR APPEAL TO THE COMMISSIONER OF INSURANCE. SECTION 4 OF THE BILL PROVIDES THE MEANS FOR REDRESS OF THIS PROBLEM AND WE SUPPORT SECTION 4 AS WRITTEN - WE OPPOSE ANY CHANGE IN IT SINCE WE FEEL THAT A CONTESTED CASE UNDER CHAPTER 15 PROVIDES ONLY THE MINIMAL DISCOVERY TOOLS NECESSARY TO MAKE A CASE.

STILL ARE UNANSWERED BY THE COMMISSION MAJORITY REPORT. HOWEVER, A MINORITY PROPOSED ELIMINATION A VERY TROUBLING PROBLEM, THE APPLICATION OF PREMIUMS TO WAGES PAID FOR THE FRINGE BENEFITS OF VACATIONS, HOLIDAYS AND SICK LEAVE. FRINGE BENEFITS SHOULD NOT BE INCLUDED IN THE CALCULATION OF PREMIUMS. THESE BENEFITS ARE PAID MAINLY BY UNION TRUCKING FIRMS FOR NON-RISK, NON-WORK HOURS, DAYS AND WEEKS. THE IMPACT OF IMPOSING PREMIUMS UPON THESE FRINGE BENEFITS IS TO MAKE UNION FIRMS LESS COMPETITIVE IN THEIR COMPETITION WITH NON-UNION TRUCK LINES. CURRENT PREMIUM RULES SHOULD BE ESTABLISHED ON THE BASIS OF RISK AND FAIRNESS BETWEEN COMPETITORS. (SEE EXHIBIT NO. 1)

OUR INDEPENDENT TRUCKERS OBJECT TO THE NCCI RULES WHICH REQUIRE PREMIUMS BASED NOT ON WAGES, BUT ON ONE-THIRD OF GROSS RECEIPTS. THAT MEANS THEY ARE REQUIRED TO PAY UP TO $4000/YEAR FOR A POLICY COVERING WORKER'S COMPENSATION COVERAGE FOR REVENUES SUBSTANTIALLY EARNED ON THE BASIS OF THEIR INVESTMENT IN THEIR TRUCKING EQUIPMENT AND THE CURRENT HIGH COST OF OPERATIONS. THEY TOO FEEL THAT PREMIUMS SHOULD BE ESTABLISHED ON THE BASIS OF RISK AND FAIRNESS BETWEEN COMPETITORS. IF WAGES ARE TO BE USED, THEY MUST BE COMPUTED FAIRLY.

HOWEVER, THE GREATEST INEQUITY IS BETWEEN THE GIANTS OF TRUCKING AND THE SMALL BUSINESS AND INDEPENDENT TRUCKER. TRUCKING IS A CASH FLOW BUSINESS AND WHATEVER DRAINS THE CASH FLOW AFFECTS THE VERY SURVIVAL OF THE BUSINESS. THE RECORDS OF THE DEPARTMENT OF LABOR AND INDUSTRY PROVIDES AMPLE EVIDENCE THAT THE WORKER'S COMPENSATION COSTS CASH FLOW OUTLAY FOR TRUCKING SELF INSURERS (WHO ARE MY MEMBERS' COMPETITORS) AVERAGE LESS THAN ONE DOLLAR ($1.00)/$100 WAGES, WHILE MY MEMBERS (SMALL BUSINESS TRUCKERS), HAVE TO PAY PREMIUMS AT $11.50/$100 TO $13.39/$100 OF WAGES (SEE EXHIBITS 2, 3, 4, AND 5).

ALSO TO AGGRAVATE THE PROBLEM, STATE LAW IMPOSES A PREMIUM TAX OF 2% ON EACH WORKER'S COMPENSATION POLICY, BUT NOT ON SELF INSURERS.

ON AUGUST 1, 1979, SMALL EMPLOYERS MAY LAWFULLY BE ABLE TO JOIN TOGETHER AND POOL THEIR RISKS TO SELF INSURE. HOWEVER, CURRENT REINSURANCE AND EXCESS

INSURANCE SUPPLIERS MAKE IT UNAVAILABLE TO SMALL EMPLOYERS AND A STATE REINSURANCE FUND IS THE ONLY ANSWER. WE SUPPORT COMMISSION RECOMMENDATION NO. 47 AS THE ONLY METHOD AVAILABLE TO ASSURE A REASONABLE OPPORTUNITY FOR SMALL BUSINESS TO JOIN TOGETHER AND SELF INSURE.

THE MAIN THESIS OF OUR POSITION IS THAT GOVERNMENT ACTION IN REQUIRING WORKER'S COMPENSATION COVERAGE AND CREATING AN INSURANCE CARTEL SHOULD NOT BE PERMITTED TO DESTROY AND CREATE A NON-COMPETITIVE RELATIONSHIP BETWEEN BIG AND SMALL BUSINESS, PARTICULARLY IN TRUCKING.

CURRENT METHODS AND DISCRIMINATORY PRACTICES OF SATISFYING STATE LAWS RELATING TO COVERAGE FOR JOB RELATED INJURIES AND DISEASE GREW OUT OF AND RESULTED FROM A 1921 STATE LAW THAT CREATED THE MINNESOTA COMPENSATION RATING BUREAU. THAT ACT AND A MAJOR CHANGE IN FEDERAL ANTI-TRUST LAWS IN 1944 ARE, IN OUR OPINION, THE MAJOR REASONS WE ARE SUBJECTED TO DISCRIMINATORY TREATMENT IN OBTAINING COVERAGE.

IN 1944, THE U.S. SUPREME COURT DECLARED THAT THE INSURANCE BUSINESS WAS SUBJECT TO THE NATION'S ANTI-TRUST LAWS. THE INSURANCE INDUSTRY RESPONDED IMMEDIATELY WITH A MASSIVE LOBBYING EFFORT AND IN JUST 60 DAYS (DURING WORLD WAR II) THE U.S. CONGRESS PASSED THE MCCARRON-FERGUSON ACT EXEMPTING THE RATE FIXING ACTIVITIES OF THE NATIONAL INSURANCE CARTEL FROM THE ANTI-TRUST ACT IF THE STATES REGULATE THEIR RATE FIXING ACTIVITY. THIS ALLOWS FIFTY (50) STATES TO PRODUCE DIFFERENT RATES REGARDLESS OF EACH STATE'S INSURANCE AGENCY'S COMPETANCY TO REGULATE RATEMAKING. LARGE EMPLOYERS HAVE THE ABILITY TO ACT TO CONTROL EXCESSIVE WORKER'S COMPENSATION COSTS, EITHER BY SELF INSURING OR BY FORCING THE INSURANCE CARRIERS TO PUT THEIR COMPANY UNDER A LOW COST PLAN. THE ACT OF CONGRESS SEVERELY LIMITS WHAT OUR MINNESOTA LEGISLATURE CAN DO TO ELIMINATE DISCRIMINATION AND RESTORE BALANCE IN THE WORKER'S COMPENSATION COST SITUATION.

OUR STUDY OF THIS SITUATION LEADS OUR MEMBERSHIP TO BELIEVE THAT THERE IS

ONLY TWO OPTIONS FOR THE LEGISLATURE TO EFFECT A REASONABLE LEVEL OF EQUITY IN COVERAGE COSTS AND ELIMINATE THE CURRENT DISCRIMINATORY COST SITUATION. THE OPTIONS ARE:

1. REPEAL STATE INSURANCE RATE REGULATION AND FORCE THE FEDERAL GOVERNMENT TO REGULATE RATE FIXING: AN OPTION WE CAN'T RECOMMEND BECAUSE WE HAVE NO ASSURANCE THAT THE FEDERAL GOVERNMENT WILL ACT.

OR

2. AS WE RECOMMEND TO THE LEGISLATURE, THAT IT SHOULD PASS A WORKER'S COMPENSATION COVERAGE BILL THAT PROVIDES AT LEAST FOUR (4) PARTS INCLUDING THE FOLLOWING:

PART A: STRICT UTILITY TYPE RATEMAKING ACT. THIS REQUIRES AT LEAST:

a. STRIPPING THE MINNESOTA COMPENSATION RATING BUREAU OF ITS GOVERNMENT POWERS;

b. PROHIBITING THE NATIONAL CARTEL FROM INVOLVING ITSELF IN MINNESOTA RATEMAKING, CLASSIFICATION, EXPERIENCE, MERIT AND INSURANCE PLAN DEVELOPMENT, AND THE PUBLICATION OF THE INSURANCE MANUAL.

c. ADEQUATE FUNDING FOR THE INSURANCE DIVISION INCLUDING ACTURIAL, LEGAL, STATISTICAL, FINANCIAL, AND ECONOMIC PROFESSIONAL STAFF (UNDER CAREER CIVIL SERVICE PROTECTION).

d. REQUIRE EACH INSURANCE CARRIER TO REPORT DIRECTLY AND BE ACCOUNTABLE TO THE COMMISSIONER OF INSURANCE. THAT INCLUDES FULL REPORTING OF EACH CARRIER'S PREMIUM, LOSS, INVESTMENT INCOME, RESERVES, AND ACTUAL BREAKOUT OF ADMINISTRATIVE EXPENSES AND PROFIT.

e. MEMORALIZE THE CONGRESS TO REPEAL THE ANTI-TRUST IMMUNITY OF THE INSURANCE INDUSTRY OR ESTABLISH

STRICT REGULATORY STANDARDS FOR ITS RATE FIXING

ACTIVITIES AND STATE REGULATORY CONTROLS AND STAFFING.

PART B: ADEQUATE PROVISION FOR SMALL BUSINESSES TO JOIN TOGETHER AND SELF INSURE. THAT MEANS REASONABLE OPPORTUNITY TO PURCHASE REINSURANCE (ALSO REFERRED TO AS EXCESS INSURANCE).

WITHOUT A STATE PLAN OF REINSURANCE, THE SELF INSURED PROVISIONS OF LAW PASSED LAST YEAR TO BECOME EFFECTIVE NEXT AUGUST (1979) WILL BE A MEANINGLESS EXERCISE.

PART C: A STATE COMPETITIVE FUND SIMILAR TO THAT IN EFFECT IN COLORADO. I PREDICT THAT AN EXCLUSIVE STATE FUND WILL BECOME NECESSARY IF WE DON'T ACT THIS SESSION TO CREATE A COMPETITIVE FUND. (SEE MINORITY RECOMMENDATION NO. 1) WE BELIEVE IN GIVING THE PRIVATE SECTOR OF INSURANCE ANOTHER CHANCE. THAT IS WHY WE ARE NOT ADVOCATING (AT THIS TIME) AN EXCLUSIVE STATE FUND FOR MINNESOTA. WE BELIEVE, THE TROOPS BACK HOME ARE RESTLESS. FIRM, RESOLUTE ACTION BY THIS LEGISLATURE IS NOW NECESSARY TO ESTABLISH AND PROVIDE AN ALTERNATIVE TO THE NEARLY 10,000 MINNESOTA EMPLOYERS IN THE INSURANCE INDUSTRY'S OWN EXCLUSIVE STATE FUND WHICH IT (THE INSURANCE INDUSTRY) REFERS TO AS THE "POOL", (SEE STUDY COMMISSION REPORT PAGES 159-160).

PART D: REPEAL THE WORKER'S COMPENSATION INSURANCE PREMIUM TAX OF 2%.

THEREFORE, WE SUPPORT AMENDMENT TO THE WORKER'S COMPENSATION STUDY COMMISSION BILL H.F. 946-S.F.917 AS FOLLOWS:

1. CREATE A COMPETITIVE STATE FUND (SEE MINORITY RECOMMENDATION NO. 1).
2. TO TRANSFER ALL GOVERNMENTAL POWERS RELATING TO CREATION OF CLASSIFICATIONS FROM THE INSURANCE INDUSTRY TO THE STATE INSURANCE DIVISION (SEE MINORITY RECOMMENDATION NO. 10).

3. TO PROHIBIT THE CURRENT ACTIVITIES OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE (NCCI) IN MINNESOTA WHICH IS ACTUALLY DOING THE MAJOR RATEMAKING, CLASSIFICATION, MERIT PLAN AND INSURANCE PLAN DEVELOPMENT. THE NCCI SHOULD ALSO BE PROHIBITED FROM PROMULGATING AND PUBLISHING THE WORKER'S COMPENSATION INSURANCE MANUAL (SEE MINORITY RECOMMENDATION NO. 11).

4. THE LEGISLATURE SHOULD MEMORIALIZE THE CONGRESS TO REPEAL THE MCCARRON FERGUSON ACT AND PLACE NCCI UNDER THE FEDERAL ANTI-TRUST LAWS (SEE MINORITY RECOMMENDATION NO. 13).

5. TO PROHIBIT THE ASSESSMENT OF WORKER'S COMPENSATION PREMIUMS ON WAGES PAID TO EMPLOYEES FOR VACATIONS, HOLIDAYS AND SICK LEAVE, SINCE THESE WAGES ARE FOR NON-WORK, NON-RISK, NON-EXPOSURE HOURS, DAYS AND WEEKS (SEE MINORITY RECOMMENDATION NO. 16).

6. CREATE A STATUTORY LIMIT (OF FROM 15 TO 22%) ON EXPENSES IMPOSED IN MANUAL RATES FOR SMALL BUSINESS, WHICH CURRENTLY IS TOO HIGH (30.85%, EXCEPT FOR THOSE EMPLOYERS IN THE "POOL", IT IS 35.85%) (SEE MINORITY RECOMMENDATION NO. 14).

7. ELIMINATE THE 2% PREMIUM TAX ON WORKER'S COMPENSATION INSURANCE AND STATUTORILY MANDATE PREMIUM REDUCTION OF THAT AMOUNT.

8. REQUIRE THE INSURANCE COMMISSIONER TO PROMULGATE AN APPROPRIATE AND REALISTIC WAGE FORMULA FOR INDEPENDENT CONTRACTORS WHO ENGAGE IN TRUCKING.

IN CONCLUSION, PLEASE REMEMBER OUR CHANCES FOR RELIEF FROM THE DISCRIMINATORY PRACTICES OF THE INSURANCE CARRIERS AND THE INEQUITABLE COMPETITIVE SITUATION WE FIND OURSELVES IN IS IN THIS BILL. THE LAST MAJOR REVIEW OCCURRED IN 1953 OR TWENTY-SIX (26) YEARS AGO BY THE LEGISLATURE (P. 275).

THEREFORE, AMENDMENT TO THIS BILL TO PROVIDE THE RELIEF WE ARE REQUESTING SHOULD BE DONE THIS SESSION. WE CAN'T AFFORD TO WAIT ANOTHER TWENTY-SIX (26) YEARS. WE BELIEVE THAT THE LEGISLATURE FOR THE NEXT 4 TO 6 YEARS WILL BE LOATH

TO ACT AFTER THIS BILL BECOMES LAW.

AGAIN, OUR SINCERE APPRECIATION TO THE LEGISLATURE FOR CREATING THE COMMISSION AND TO THE MEMBERS OF THE COMMISSION FOR THEIR SERVICE TO OUR STATE.

MTSA AND ITA ALSO SUPPORT THE FOLLOWING RECOMMENDATIONS:

APPENDIX 1

45 - DIVISION OF PAYROLL;

48 - LIMITING EXPENSE LOADING OF RISK POOL POLICIES TO THE SAME LOADING AS NON-RISK POOL, EXCEPT FOR ACTUAL ADJUSTMENT EXPENSES;

50 - THE ESTABLISHMENT OF MAXIMUM WAGE BASE;

51 - EXPANDING EXPERIENCE RATING TO NON-COVERED EMPLOYERS;

52 - REQUIRING USE OF LIFE EXPECTANCY TABLES;

53, 54, & 55 - REPORTING OF LOSSES;

56 - PLUGGING INVESTMENT INCOME INTO THE RATEMAKING PROCEEDINGS.

COMMISSION LEGISLATIVE PROPOSALS

APPENDIX 2

29 - REOPENED CASE FUND;

30 - REGISTRATION OF PRE-EXISTING CONDITIONS SUBSEQUENT TO INJURY;

31 - RETAINING SPECIAL FUND INVESTMENT INCOME IN THE SPECIAL FUND;

32 - PLACING ON-THE-JOB INJURIES INTO THE SPECIAL FUND;

33 - HANDLING DISPUTES BETWEEN INSURERS ON INJURIES AND CLAIMS AFFECTING THE SPECIAL FUND AND PAYMENT OF BENEFITS TO WORKERS DURING RESOLUTION OF THE DISPUTE;

37 - REMOVAL OF CEILINGS ON THE PAY OF THE ACTUARY;

38 - PROVIDING ADEQUATE STAFFING FOR INSURANCE DIVISION;

39 - CHANGING NAME OF THE BUREAU;

40 - LAWSUITS BETWEEN CO-WORKERS;

41 - REQUIRING NOTICES TO EMPLOYERS ON CLAIMS;

42 - PROHIBITING RETRO-ACTIVE RATE INCREASES;

43 & 44 - PROCEDURE TO ADJUST RATES ON BENEFIT INCREASE DUE TO LEGISLATIVE ACTION;

46 - CREATING A FORMAL PROCESS TO APPEAL A CLASSIFICATION;

47 - CREATING A STATE REINSURANCE FUND - THE MOST IMPORTANT PART OF THE BILL FOR SMALL BUSINESS.

5. Remuneration shall include:

a. Commissions
b. Bonuses
c. Extra wages for all overtime work.
d. Wages for holidays, vacations, or sickness periods.
e. Payments by the employer of contributions required by law to statutory insurance or statutory pension plans such as the Federal Social Security Act, which otherwise would be paid by the employee.
f. Payments to employees made on any basis other than that of time actually engaged in work, including but not limited to piece work, incentive plans or profit sharing arrangements.
g. Payments or allowances to employees for hand or power tools furnished by employees.

6. The entire remuneration shall be used as the basis of premium, except as provided below.

a. Remuneration, other than as provided in 5. e. above, shall not include contributions made by the employer to a group insurance or pension plan.
b. Remuneration shall not include special reward for individual invention or discovery.
c. If the employer's books and records are maintained so as to show separately, by employee and in summary by class of work, ★
(a) the extra remuneration earned for overtime in excess of the remuneration which would have been earned for such overtime had the regular rate of pay applied,

or

(b) the total remuneration for overtime for those hours worked at increased rates of pay,

the remuneration upon which the premium for the policy is based shall exclude, respectively,

(i) all of the remuneration in (a) above.

or

(ii) one-third of the remuneration shown in (b) or, where double time is paid for overtime and the remuneration therefore is shown separately, one-half of the remuneration at double time.

For the purpose of this rule "Overtime" shall mean those hours worked for which there is an increase in the rate of pay.

(1) for work in any day or in any week in excess of the number of hours normally worked, but in any event for hours worked in excess of eight hours in any day or forty hours in any week, or

RECEIVED
MAY 26 1967
WORKMEN'S COMPENSATION INSURANCE RATING BUREAU

No standard provisions Workmen's Compensation and Employers' Liability Policy shall be written at these rates to cover any obligation for voluntary compensation or medical or surgical aid in excess of that provided by the statutory provisions. In connection with the coverage of operations which under the policy are written upon a voluntary compensation basis, Coverage B (Employers' Liability) shall be subject to the same standard limits and increased premium charges as provided for employers' liability policies in this Section.

If a policy provides for voluntary compensation coverage for a group of employees, premium charges for such coverage of the group shall be made in accordance with the limits and rates as stated above provided separate records of payroll are maintained and reported for such employees. If a proper segregation of payroll cannot be obtained the limitation and provision as respects voluntary compensation coverage shall be applied to all payroll on the risk.

VI. BASIS OF PREMIUM.

1. The basis of premium, except as otherwise provided in this Manual, is the entire remuneration, whether paid in money or a substitute for money, for services rendered by an employee.

2. In the case of employments where board or lodging constitute ★ part of an employee's earnings, the values of such items disclosed in the insured's records shall be included with the actual wages as remuneration, subject to the following minimum amounts:

For Board—$1.50 per day for each employee
For Lodging—$3.00 per week for each employee

The foregoing value of board shall be pro-rated when board furnished consists of less than three meals a day.

3. In the case of employments where gratuities such as "tips" con- ★ stitute part of an employee's earnings, such gratuities shall be included with the actual wages as remuneration. The actual amount of such gratuities shall be included where the employer has maintained a verifiable record of the amount of gratuities so received. If no such record has been maintained, the amount of $10.00 per week shall be included. Whenever an employee works less than a full week, the amount of $2.00 per day shall be included and a part of a day shall be considered a full day.

4. Whenever employees are recompensed in whole or in part by the value of rent or housing, or by store certificates, merchandise, credits, or any other substitute for money, such form of payment shall be considered as remuneration.

(c) Stevedoring and tallymen or checking clerks connected therewith, whether done by assured's employees or by contractors.

(d) Sawmill Operations. Sawmill operations are defined as the sawing of logs into lumber by the use of circular carriage or band carriage saws, including operations incidental thereto.

Standard Exceptions. The following operations referred to as Standard Exceptions are subject to division of payroll in connection with all other classifications regardless of directional phrases beginning with "all employees" or "all operations" except those which specifically provide for the inclusion of certain Standard Exceptions. The Standard Exceptions are:

(a) **Clerical Office Employees** are defined as those employees whose duties are confined to keeping the books or records of the assured, or conducting correspondence, or who are engaged solely in office work where such books or records are kept or where such correspondence is conducted, having no other duty of any nature in or about the employer's premises. If any clerical office employee is exposed to any operative hazard of the business, his entire payroll shall be assigned to the highest rated classification of work to which he is exposed.

The classification shall be applied only to persons as herein described who are employed exclusively in separate buildings or on separate floors of buildings or in departments on such floors which are separated from all other work places of the employer by structural partitions and within which no work is performed other than clerical office duties as defined in this paragraph.

(b) **Draughtsmen** are defined as those employees whose duties are limited to office work only and who are engaged strictly as draughtsmen in such a manner that they are not exposed to the operative hazard of the business. If any draughtsman is exposed to any operative hazard of the business, his entire payroll shall be assigned to the highest rated classification of work to which he is exposed.

(c) **Salesmen, Collectors or Messengers—Outside** are defined as those employees engaged principally in any such duties away from the premises of the employer. It does not apply to any such employee whose duties include the delivery of any merchandise handled, treated or sold. Such Employees whose duties include delivery, even though they may also collect or solicit, shall be rated;

★ (i) as Drivers if they use motor vehicles, bicycles or horse-drawn vehicles,

(ii) under the governing classification if they use public means of transportation or walk.

The statement of payroll shall include the entire payroll of all outside salesmen, collectors or messengers including those whose duties take them outside the home state of the insured.

(d) **Drivers, Chauffeurs and their Helpers** are defined as those employees whose principal duties are performed upon or in connection with vehicles in such capacity, and shall also include incidental garage employees, stablemen or employees using bicycles in the service of the employer.

If vehicles, including drivers, chauffeurs and helpers, are employed under contract and if the owner of such vehicles has not insured his compensation obligation and furnished evidence of such insurance, the actual payroll of the drivers, chauffeurs and helpers shall be included in the payroll of the insured employer at the proper rate for the operations in which they are engaged. If such payroll cannot be obtained, one-third (1/3) of the total amount paid for the hire of such vehicles under contract shall be considered as the payroll of the drivers, chauffeurs and helpers. If the owner of the vehicle is also a driver and entitled to workers' compensation benefits, one-third (1/3) of the contract price for vehicle shall be included in the payroll of the insured employer. ★ Independent Truckers.

VIII. CLASSIFICATION PHRASEOLOGY.

Notes appearing in connection with classifications in this Manual define the scope or availability of the classifications. Such notes shall be considered as part of the classification phraseology but need not be shown in the policy.

The following paragraphs further define or explain the classifications:

1. "N. O. C." This expression is an abbreviation of the words "not otherwise classified". No classification so qualified shall be applied in any case where any other manual classification more accurately describes the enterprise or where the language of any manual classification so qualified prescribes other treatment.

2. "N. P. D." This expression is an abbreviation of the words "no payroll division". A classification so restricted may be used for division of payroll only in accordance with the following provisions:

(a) A classification which carries an N.P.D. restriction applying only to specific classifications shall not be used for division of payroll in connection with any of the classifications specified in the restriction unless the operation described by the restricted classification constitutes a separate and distinct enterprise having no connection with the operations covered by any of the classifications specified in the restriction.

(b) A Classification which carries an unqualified N.P.D. restriction shall not be used for division of payroll in connection with any other manual classification (other than the Standard Exceptions or General Exclusions) unless the operation described by the restricted classification constitutes a separate and distinct enterprise having no connection with the operations covered by any other classification applicable to the risk.

MTSA EXHIBIT NO. 2

MINNESOTA SELF INSURERS WC BENEFIT STATISTICS-1976
TRUCKING FIRMS

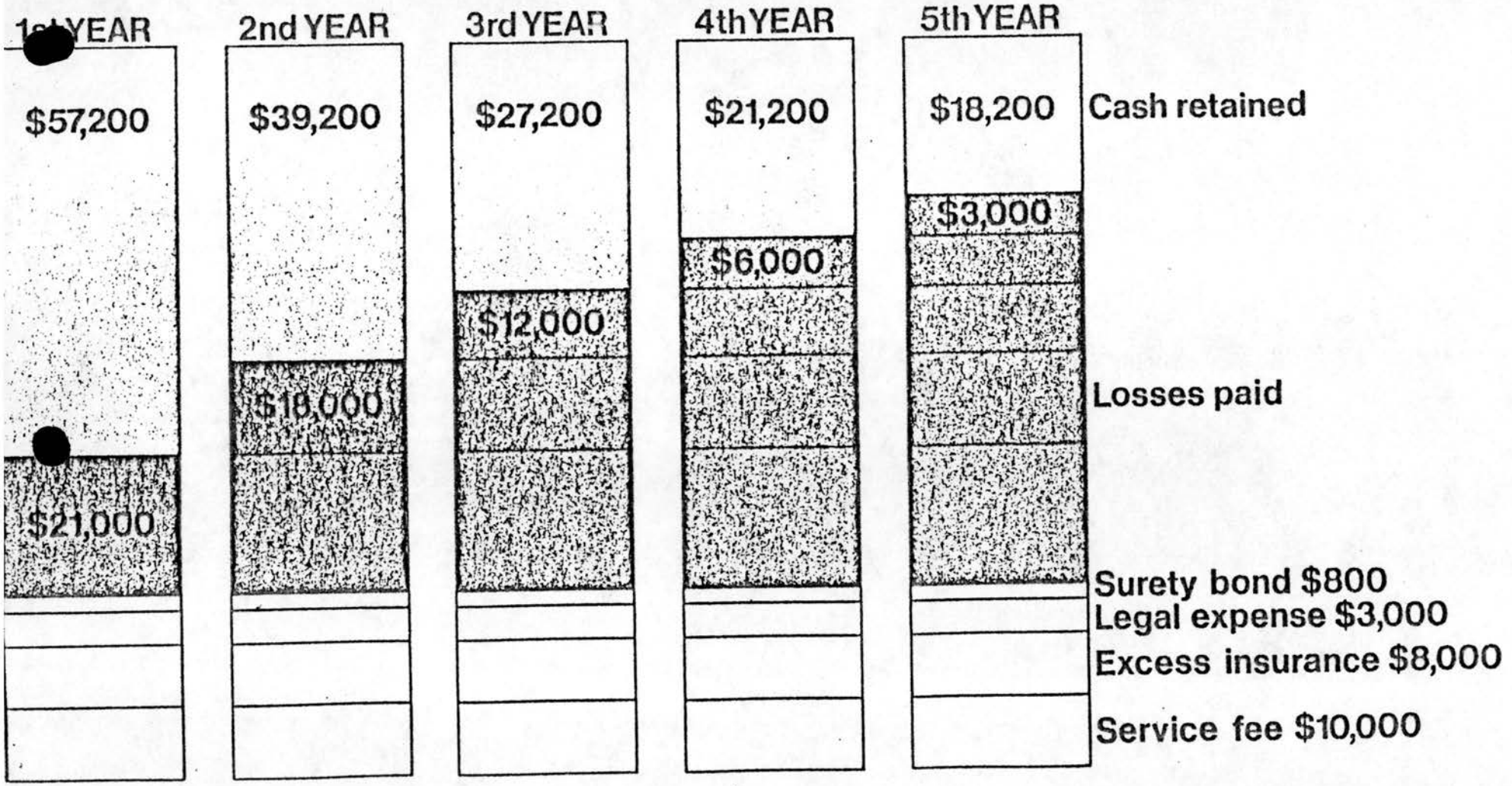
COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Admiral-Merchants Motor Freight	9	24	33	18,106.14	10,165.00	7,497.50	35,768.64	0	3,078.04	3,385,044	
BN Transport, Inc.	1	1	2	270.00	2,920.00	296.50	3,486.50	0	45.90	429,247	
Consolidated Freightways Corp.	20	70	90	24,717.22	15,989.65	14,321.27	55,028.14	0	4,201.93		
Murphy Motor Freight Lines	35	76	111	71,585.37	12,612.00	25,343.79	109,541.16	0	12,169.51	11,490,995	
Spector Freight System											
Werner Continental, Inc.	15	68	83	17,075.94	0	11,059.50	28,135.44	0	2,906.32		
Yellow Freight System, Inc.	13	34	47	36,215.49	0	21,984.17	58,199.66	0	6,156.63	2,996,149	

TRUCK DRIVERS CLASSIFICATION FOR INDUSTRY CLASS

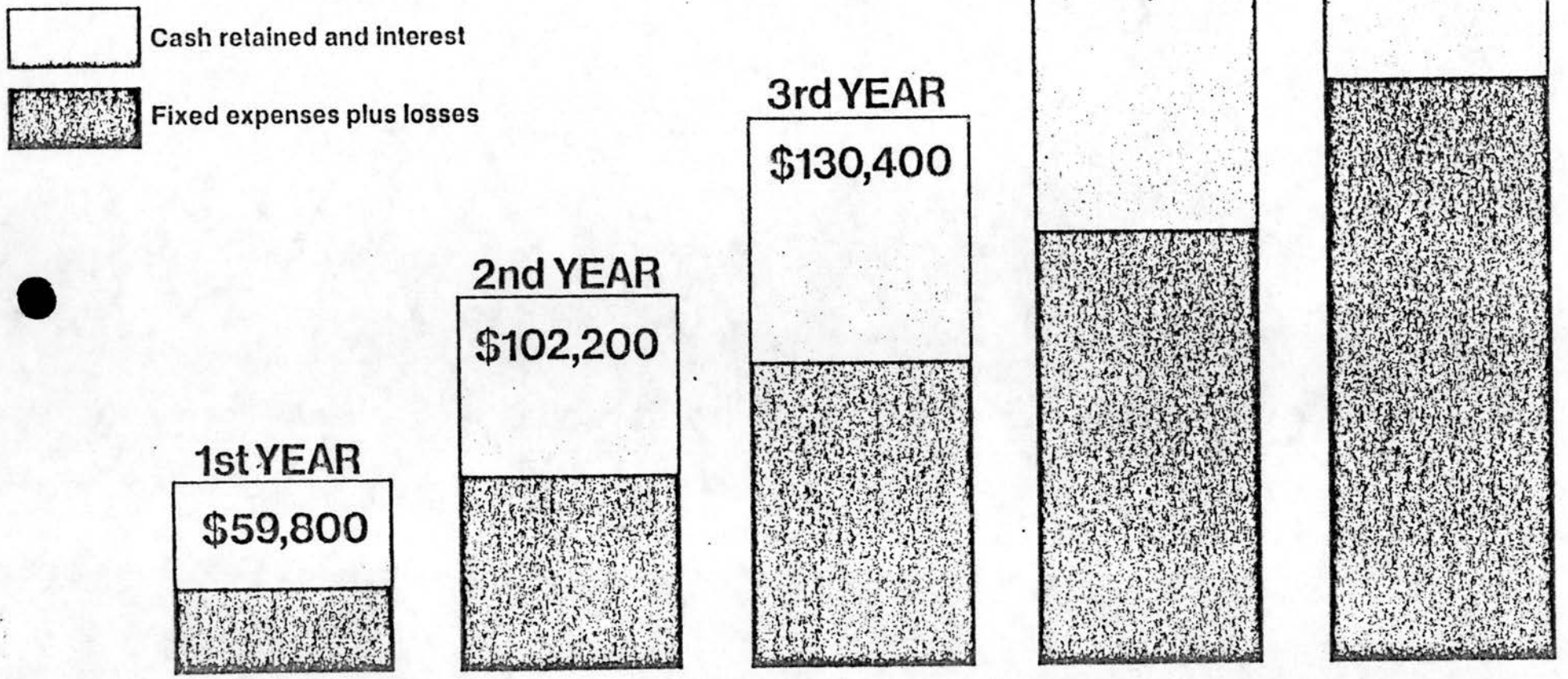
DES		CURRENT RATES
91	Office Appliances N.O.C. Installed	1.57
92	Vending Machine Installation Service or Repair	3.25
19	Electrical Household Appliances Installation, Service, Repair	2.79
21	House Furnishings N.O.C.	4.62
22	Truckmen - Oil Field Equipment	11.50
30	Parcel Delivery	3.64
80	Chauffeurs and Helpers N.O.C.	7.01
39	Department Stores	1.20
44	Furniture Stores, Including Chauffeurs	2.60
91	Cold Storage Warehouses	7.17
92	Storage-General Merchandise N.O.C.	5.25
710	Field Bonded Warehousing-All Employees	3.37
293	Storage Warehouse Furniture (They include our Household Goods, movers in this classification)	13.39
146	Furniture or Fixture Installation N.O.C.	4.63
219	Truckmen - N.O.C.	11.50

CODES		CURRENT RATES
0005	Nurseryman, Including - Incidental Landscape, Gardening, Drivers	4.96
0008	Vegetable Farms, Including - Drivers Gardening-Market or Truck, Including Drivers	4.96
0034	Poultry or Egg Producers - Including Drivers	8.85
0035	Florists - Cultivating or Gardening Including Drivers	4.36
0113	Fish Hatcheries - Including Drivers	8.85
2003	Bakery & Drivers, Salesmen and Route Supervisors	4.55
2121	Brewery & Drivers	4.28
2157	Beverage Mfg.N.O.C.& Route Supervisors and Drivers	4.95
5146	Furniture or Fixture Installation NOC	4.63
7390	Beer & Ale Dealers, Whs.& Drivers	7.03
7540	Electric Light or Power Co-op. - REA Project Only (All Employees & Salesmen, Drivers & Managers)	6.20
8052	Poultry Dealers & Drivers	8.92
8116	Farm Machinery Dealers, All Operations Including Demonstration Salesmen & Drivers	4.86
6217	Grading Land N.O.C.(Truck Drivers and Sanitary Land Fill)	7.74
7590	Garbage Work	5.99

f your Workmen's Compensation premium s $100,000 per year, you can save as a self-insurer:



If your annual Workmen's Compensation premium is $100,000, as a self-insurer, you can anticipate this accumulation of cash retained, including 6% interest:



INS-80-006-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Rules Governing Self-Insurance for Workers' Compensation.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:30 a.m. on Tuesday, April 8, 1980, in the Hearing Room of the Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411 to 15.017 and 15.052 to determine whether the proposed rules should be adopted. A copy of this Report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included: William Howard, Assistant Commissioner; Richard Lutenski, Assistant to the Commissioner; Dale McDonnell, Staff Attorney; Robert F. Lowe, Consulting Actuary; and Reynaud Harp, Special Assistant Attorney General.

Thirty-three persons signed the hearing register. Eleven public witnesses spoke at the hearing. The Insurance Division submitted 32 written exhibits and nine timely written comments were received from members of the public. No transcript of the hearing was prepared, except for the testimony of Russell Pisek.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Commissioner of Insurance shall, if he proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Commissioner will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On February 7, 1980, the Insurance Division filed the following documents with the Chief Hearing Examiner:

(a) The Order for Hearing.
(b) The proposed Notice of Hearing.
(c) The proposed rules.
(d) A Statement of the number of persons expected to attend and length of hearing.

2. On March 3, 1980, the Notice of Hearing in the proposed rules were published at 4 State Register 1411.

3. On March 6, 1980, the Notice of Hearing was mailed by the Insurance Division to all persons and associations who had registered their names with the Secretary of State to receive such notice, as well as to a supplementary Insurance Division mailing list.

4. On March 14, 1980, the Insurance Division filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Affidavit of Receipt of the Secretary of State's list.
(c) An Affidavit of Mailing of the Notice of Hearing.
(d) The Certificate of the Secretary of State.
(e) A Statement of the Agency Personnel to appear at the hearing.
(f) The Statement of Need and Reasonableness.
(g) The materials received pursuant to a Notice of Intent to Solicit Outside Information, which was published in the State Register on on August 13, 1979, at 4 State Register 148.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through April 28, 1980, for the receipt of written comments and statements.

6. The Insurance Division published temporary rules governing self-insurance for workers' compensation on February 11, 1980, at 4 State Register 1256.

7. The Insurance Division submitted a petition to incorporate certain materials by reference to the Chief Hearing Examiner, and by an Order dated March 5, 1980, the Chief Hearing Examiner approved incorporation by reference of the Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance, revised August 1, 1979, and published by the National Council of Compensation Insurance.

8. The Division cites as statutory authority for the promulgation of the proposed rules Minn. Stat. § 176.181, subd. 2 (1979 Supp.) which reads as follows:

> Subd. 2. Compulsory insurance; self-insurers. (1) Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of insurance exempting the employer from insuring his liability for compensation and permitting him to self-insure the liability. The terms, conditions and requirements governing self-insurance shall be established by the commissioner pursuant to chapter 15. The commissioner shall also adopt, pursuant to clause (2)(c), rules permitting two or more employers in the same industry to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers. With the approval of

the commissioner of insurance, any employer may exclude medical, chiropractic and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure the other portion of his operations which may be determined by the commissioner of insurance to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the commissioner of insurance, showing his financial ability to pay the compensation, whereupon by written order the commissioner of insurance may make an exemption as he deems proper. The commissioner of insurance may require further statements of financial ability of the employer to pay compensation. Upon ten days written notice the commissioner of insurance may revoke his order granting an exemption, in which event the employer shall immediately insure his liability. As a condition for the granting of an exemption the commissioner of insurance may require the employer to furnish security the commissioner considers sufficient to insure payment of all claims under this chapter. If the required security is in the form of currency or negotiable bonds, the commissioner of insurance shall deposit it with the state treasurer. In the event of any default upon the part of a self-insurer to abide by any final order or decision of the commissioner of labor and industry directing and awarding payment of compensation and benefits to any employee or the dependents of any deceased employee, then upon at least ten days notice to the self-insurer, the commissioner of insurance may by written order to the state treasurer require him to sell the pledged and assigned securities or a part thereof necessary to pay the full amount of any such claim or award with interest thereon. This authority to sell may be exercised from time to time to satisfy any order or award of the commissioner of labor and industry or any judgment obtained thereon. When securities are sold the money obtained shall be deposited in the state treasury to the credit of the commissioner of insurance and awards made against any such self-insurer by the commissioner of insurance shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commissioner of insurance and approved by the commissioner of finance out of the proceeds of the sale of securities. Where the security is in the form of a surety bond or personal guaranty the commissioner of insurance, at any time, upon at least ten days notice and opportunity to be heard, may require the surety to pay the amount of the award, the payments to be enforced in like manner as the award may be enforced.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed to do so by the commissioner of insurance. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of insurance is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of insurance may issue a license subject to restrictions or limitations, including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two year period.

(b) To assure that group 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, entities licensed to engage in such business are subject to supervision and examination by the commissioner of insurance.

(c) To carry out the purposes of this subdivision, the commissioner of insurance may promulgate administrative rules, including emergency rules, pursuant to sections 15.0411 to 15.052. These rules may:

(i) establish reporting requirements for administrators of group self-insurance plans;

(ii) establish standards and guidelines to assure the adequacy of the financing and administration of group self-insurance plans;

(iii) establish bonding requirements or other provisions assuring the financial integrity of entities administering group self-insurance plans;

(iv) establish standards, including but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans;

(v) establish standards or guidelines governing the formation, operation, administration and dissolution of self-insurance plans; and

(vi) establish other reasonable requirements to further the purposes of this subdivision.

9. The Division submitted at the hearing an Errata Sheet which contains several essentially typographical corrections to the proposed rules. One change at 4 MCAR § 1.9291 G.2. changed the dollar figure of $100,000,000 to $1,000,000. (See, Exhibit H)

4 MCAR § 1.9287 - Definitions

10. Mr. Lowe, the Division's consulting actuary, suggested that the definition of "modified premium" at Section 1.9287 F. should be expanded to define a "discounted modified premium" in order to recognize the premium discount which will be allowed. (Ex. J, p. 2) The Associated Builders and Contractors, Inc. (ABC) also stated that the premium discount had to be taken into account and suggested addition of the language "and reduced by an appropriate premium discount" to this definition. (Ex. 2, p. 1) The problem has apparently been resolved by the Division adding the language suggested by ABC to Section 1.9293 A. (Ex. K, p. 3)

11. Section 1.9287 I. defines "Service Company". The Insurance Federation of Minnesota (IFM) suggested that the following language be added to the end of this definition:

. . . subject to the disapproval by the Commissioner of the qualifications of the employees who administer a self-insurance program under 4 MCAR § 1.9291 J.

The IFM suggests that this additional language will allow the Commissioner to regulate the quality of services provided by individual self-insurers the same as is done for group self-insurers. (Ex. 6, p. 3) The definition is needed and reasonable as proposed. The Commissioner may consider the additional language.

12. Section 1.9287 L. defines "Fund year". Mr. Lowe recommended that the definition of "fund year" be expanded so as to also refer to the body of claims arising out of accidents occurring during the fund year. (Ex. J, p.

1) At the hearing, the Division proposed that the following sentence be added to the definition:

> Any claim arising within the accident year upon which the fund year is based shall be included in that fund year. (Ex. K, p. 1)

The Division stated that the definition as originally proposed was unclear as to whether it covers all claims arising during a particular year or claims that are reported in that year. The Division believes that the proposed additional language will more accurately reflect the claims expense for a particular year. The proposed definition, together with the additional language, is needed and reasonable.

13. The Division also proposed an additional definition which would be added as Section 1.9287 P., and which would read as follows:

> P. "Classification" shall mean the manual classification as determined by the workers' compensation insurers rating association's manual of rules, rates and classifications approved for use in Minnesota by the commissioner.

The Division states that this term is used in Section 1.9289 A., which requires each self-insurer to annually report its losses in payroll by classification. The Division states that those parties having input into the proposed rules understood that classification would mean what the proposed definition says it would mean, but that it should be spelled out in the definition section to make this clear. (Ex. N, p. 16) The Minnesota Transport Services Association (MTSA) objected to the addition of this amendment on the grounds that it was a substantial change and stated that the "full implications of this new rule are to impose a complex confusing manual used by the insurance industry operating for profit into the self-insurance rules." (Ex. 9, p. 1) Since the terms "classification" is used in the rules as originally proposed, the addition of a definition cannot be said to go to a new subject matter or to make a change not raised by the original notice of hearing. The record does not disclose any other possible alternative classification system than that cited by the definition. The addition of the definition is needed and reasonable and would not appear to be a substantial change.

4 MCAR § 1.9288 - Acceptable Securities and Surety Bonds

14. Section 1.9288 F. provides that all deposits and surety bonds shall remain in custody for the period of time dictated by the Statute of Limitations in the Workers' Compensation Act. The IFM suggested an amendment of this section so that it would reads as follows:

> F. All deposits and surety bonds shall remain in the custody of the state treasurer or the commissioner, as the case may be, for a period of time sufficient to pay all claims relating to events occurring during the period of self-insurance, including claims that have been incurred but not reported.
>
> In the event a self-insured employer or group has become insured and believes its deposit or surety bonds exceed the amounts required by this rule, the self-insured may petition the Commissioner to reduce the amount of deposit or surety bond required. This proceeding shall be governed by the rules for contested cases, and the burden shall be on the self-insured to establish

by competent expert testimony and other relevant evidence the lesser amount that should be left on deposit.

The IFM suggested that the proposed standard of the applicable Statute of Limitations is insufficient because of the varying time standards and the numerous judicially created exceptions. Its proposal is a more general requirement which specifies a length of time sufficient to pay all claims relating to events occurring during the period of self-insurance. (Ex. 6, pp. 6-8) The subsection is needed and reasonable as proposed. The Commissioner may consider the IFM proposal.

4 MCAR § 1.9289 - Filing of Reports

15. Section 1.9289 A. requires incurred losses and current estimated outstanding liability to be submitted on forms available from the Commissioner. The IFM requested that the forms be included with the proposed rules, and suggested that Minn. Stat. § 15.0412, subd. 3, which requires each agency to adopt rules setting forth the nature and requirements of all formal and informal procedures which affect the rights of or procedures available to the public, requires that the forms be included. (Ex, 6, p. 9) The Division stated at the hearing that the forms would only graphically depict what was stated in the proposed rules. (See also, Ex. N, pp. 18-19) The statute cited by the IFM would not necessarily require the promulgation of forms where, as in this case, the forms will merely follow the rules and will not therefore create any new requirements themselves. The Minnesota Association of Commerce and Industry (MACI) observed that many companies do not keep the information requested on a calendar year basis and requested that the Department consider the option of reporting on the first day of the fourth month following the end of the company's fiscal year. Although the subsection is needed and reasonable as proposed, the Division may consider the comments made.

16. Section 1.9289 B. allows the Commissioner to require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the Commissioner. At the hearing, the Division offered an amendment of this subsection. The amendment would add the following language to the end of the second sentence:

> . . . with the commissioner reserving the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards, supported by an actuarial review and opinion of the future contingent liabilities. (Ex. K, p. 2)

The rule, as originally proposed, also provided for a fine of up to $50,000 or revocation of authority to self-insure for failure to make changes in record keeping practices as required by the Commissioner. MACI stated that a $50,000 fine or revocation seemed overly punitive for a record-keeping violation. (Ex. 8) It does not appear that the Division has authority to impose a civil fine since that authority is not explicitly granted in the enabling legislation. The Division argues that it has authority to create a civil fine in the rules since it believes that a fine would be a lesser sanction than revocation which is permitted by the statute. (Ex. G-1, pp. 12-13; Ex. N, p. 15) Although the Commissioner is given a good deal of authority by the statute, he

is given no specific authority to impose a civil fine, which is often a controversial regulatory tool.

17. The IFM suggested new language which would result in the subsection reading as follows:

> B. Each self-insurer shall under oath, attest to the accuracy of each report submitted pursuant to subdivision A. above. As a part of the commissioner's supervision and examination powers under Minn. Stat. § 176.181, subdivision 2(2)(b), the commissioner may require the self-insured to submit a certified audit of payroll and claims records conducted by an independent auditor approved by the commissioner. If such an audit reveals discrepancies in payroll, claims or liability information, including, but not limited to, (1) significant differences from similar type businesses or (2) major changes in the reports from year to year which are not solely attributable to economic factors, 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 a service company. (Ex. 6, pp. 9-10)

The changes suggested by IFM delete what they believe is limiting language in favor of a citation to the Commissioner's statutory general examination power. Other proposed changes are designed to clarify the Commissioner's authority upon finding a discrepancy.

18. Two comments were directed toward the Division's proposed amendment. The MTSA and ABC objected to this amendment as a substantial change from the rules as originally proposed. (Ex. 9) ABC also commented that any uniform accounting system prescribed by the Commissioner must be in the rules. (Ex. 7, p. 1) In regard to the requirement for an actuarial review and opinion of future contingent liabilities contained in the proposed additional language, the Division stated that this is necessary to a proper audit. (Ex. N, p. 16) Mr. Lowe explained that both actuaries and accountants are necessary to evaluate the solvency of a fund dependent upon contingent events such as a self-insurance fund. (Ex. L, p. 1)

19. The meaning of the language "with the commissioner reserving the right to prescribe a uniform accounting system" is unclear. If this language is designed to allow the Commissioner to develop a unique accounting system, then ABC's comment is well taken. Such a system would have to be contained within the rules or at least incorporated by reference. If the language is intended to simply require that the audit be conducted according to generally accepted accounting principles and auditing standards, then the language should be reworded to state this. The addition of the requirement of an actuarial review would not appear to be a substantial change since it merely imposes an additional requirement based upon the same intent which cannot be classified as major substantive change. MACI stated that the Commissioner should only be able to order changes in record keeping only after the opportunity for a hearing. (Ex. 8) The subsection as amended has been shown to be needed and reasonable. The Division may consider the suggestions made by the IFM.

20. Section 1.9289 C. requires that claims estimated to exceed $50,000 be reported to the Commissioner within 10 days of obtaining knowledge of the

claim. At the hearing, the Division suggested that the phrase "where the full, undiscounted value is" be inserted into this subsection after the words "workers' compensation claim" in order to provide a consistent definition of which claim sizes are to be reported. (Ex. K, p. 2; Ex. J, p. 2; Ex. N, p. 16) MACI commented that it is not always possible to know when a claim will exceed $50,000 and that it cannot be evaluated and reported in a 10-day period. They suggested that this be amended to 30 days. (Ex. 8) The Division stated that the 10-day requirement is the same required of insurance companies. (Ex. G-1, p. 13; Ex. 6, p. 11) The subsection, as amended, is needed and reasonable.

21. Section 1.9289 F. sets out additional financial information that may be required by the Commissioner. The IFM suggested that the subsection be amended to read as follows:

> F. In addition to the financial statements required by subdivision D. and E. above, as a part of the commissioner's authority to supervise and examine self-insurers under Minn. Stat. § 176.181, subd. 2(2)(b), the commissioner may require other financial information, including but not limited to interim financial statements or 10Q reports required by the Securities and Exchange Commission. 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. (Ex. 6, pp. 11-12)

The amendment is suggested based on IFM's belief that it is not necessary to specify under what conditions the Commissioner may require additional information. The subsection is needed and reasonable as proposed.

22. Section 1.9289 G. purports to incorporate into these rules the $25 per day penalty which applies to insurance companies failing to file its annual statement pursuant to Minn. Stat. § 72A.06. Although the Commissioner has justified such a fine as being needed and reasonable as was the case with the fine suggested in subsection B., (Ex. G-1, p. 15; Ex. N, p. 15; Ex. 6, pp. 12-13) there would not appear to be any statutory authority which would allow the importation of the insurance company civil fines into these rules.

4 MCAR § 1.9290 - Revocation of Self-Insurance Authority

23. This section sets out six grounds which would permit revocation of the authority to self-insure. MACI commented that it seems overly broad to face revocation for only minor or technical infractions. (Ex. 8) The Division should consider amendment of subection B. to indicate that it applies to lawful orders of the Commissioner issued to pursuant to the governing statute and these rules. Subdivision F. raises the question of whether or not the Commissioner may delegate to the WCRA the authority to enact and subsequently change a document which would constitute grounds for revocation under these rules. Such a delegation is generally prohibited. Wallace v. Commissioner, 184 N.W.2d 588, 591-2 (Minn. 1971); Davis, Administrative Law Treatise, Ch. 3 and § 3:12 (2d Ed. 1978). Although this rule has been shown to be needed and reasonable, the attempted delegation would appear to be improper.

4 MCAR § 1.9291 - Requirements for Individual Self-Insurers

24. Section 1.9291 A. sets out the application procedure for individual self-insurers. The IFM again commented that the forms should be promulgated together with the rules. (Ex. 6, p. 14) The discussion at Finding of Fact No. 15 should apply here also. At the hearing, Murphy Motor Freight Lines, Inc. commented that the Commissioner's authority to revoke his order upon only 10 days' written notice provided insufficient time for obtaining insurance. That requirement is contained in the statute, however, and not in the proposed rules. The subsection is needed and reasonable.

25. Section 1.9291 B. requires a certified financial statement to accompany each application for self-insurance. The MTSA stated that certified financial statements would mean a cost increase for prospective self-insurers of three to four times the usual audit fee and may eliminate the financial feasibility of self-insurance. They suggested that a review by a CPA or an audit by a public accountant should be acceptable. The Mork, Cumpston C.P.A. firm suggests that a financial statement with an auditor's report on a review would suffice. The review would be substantially less than an audit but would require a review of the internal controls and underlying data accompanying the records. (Ex. 9, Attached Letter of December 4, 1979)

26. The IFM commented that a certified financial statement is a vital part of the fulfullment of the Commissioner's duty of supervision and examination and would permit a minimization of increased government staff and disruption of the regulated employers. (Ex. 6, pp. 1-2) The Division stated that certified financial statements are needed to provide some verification as to the existence and value of the assets of the employer and to permit the Commissioner to adequately determine the financial stability and capability of the employer to meet all of the obligations imposed upon it. (Ex. G-1, p. 19) A review does not provide a reasonable basis for expressing an opinion regarding the financial statements taken as a whole. (Ex. N, pp. 8-9) Federal Cartridge Corporation, which is a federal arsenal, questioned how the financial statement requirement would apply to it since the United States Army is its guarantor. The Division indicated that the financial statement requirement would likely be waived where the United States Government is a guarantor. Absent a waiver provision in these rules, the Division should, however, consider putting this exemption into the rule. The subsection, as a whole, has been shown to be needed and reasonable. However, the Division should carefully consider the effect of the rule upon small businesses before adopting a final rule.

27. Section 1.9291 D. sets out requirements that the Commissioner shall consider in reviewing assets, net worth and liquidity. Mr. Lowe recommended two additions to the items to be considered; namely, the "condition of loss reserve estimates on an aggregate basis" and "the risk characteristics of the particular industry and the relative safety record of the particular employer within that industry". (Ex. J, pp. 2-3) The subsection is needed and reasonable as proposed.

28. Section 1.9291 G. sets out the deposit requirements in regard to acceptable securities. The IFM suggested that the two-year time period in regard to how long an employer has been self-insured be increased to five years

each time it appears in this subsection. They believe that this change is appropriate because the outstanding workers' compensation liability after two years of self-insurance is probably not an accurate reflection of total liability. (Ex. 6, pp. 18-19) The Division stated that the two-year point will sort out those employers who may not have yet developed a significant outstanding liability, but may have incurred claims which have not yet been reported or the value of which may not yet be fully recognized. (Ex. G-1, p. 26) Mr. Lowe recommended the deletion of Section 1.9291 G.4.c. since he believes it might make it possible for an employer to mask a serious underfunding and thereby endanger the solvency of the self-insurance fund. (Ex. J, p. 3) The subsection is needed and reasonable as proposed. The Division may consider the comments made.

29. Section 1.9291 J. allows individual self-insurers to designate which of its own employees will administer its self-insurance program. The IFM stated that the Commissioner should have some control over the quality of people administering self-insurance programs and suggested that the language "subject to the disapproval of the commissioner" be added onto the first sentence of the subsection. (Ex. 6, pp. 19-20) There was also testimony at the hearing concerning the disparity between the servicing requirements for individual self-insurers and group self-insurers. The Division believes this is required by Minn. Stat. § 176.181, subd. 2(2)(a), which requires the use of service companies by group self-insurers. There is no like requirement in the statute for individual self-insurers. (Ex. N, p. 14) Another comment suggested that the rule should require the individual self-insurer to prepare a detailed loss prevention program as a part of its administration. (Ex. 1) Although the subsection is needed and reasonable as proposed, the Division may consider the comments.

4 MCAR § 1.9292 - Requirements for Group Self-Insurers

30. Section 1.9292 A. requires the application for group self-insurers to be on the Commissioner's forms. The IFM again requested inclusion of the forms with the rules. (Ex. 6, pp. 20-21) The same Finding as previously made (No. 15) would apply here.

31. Section 1.9292 B. requires, among other things, that an indemnity agreement and a certified financial statement be submitted for each member of the group. ABC suggested that the requirement for a certified financial statement of each member be replaced by the language "and a consolidated financial statement of the group of self-insurers prepared from their individual certified financial statements". (Ex. 2, pp. 1-2; Ex. 7, p. 1) ABC suggests that the requirement for individual financial statements imposes an added expense and will discourage many firms from becoming a self-insurance fund member since providing a financial statement can be an invasion of privacy especially for a closely held corporation. In addition, many firms perform their own financial analysis and do not have a certified financial statement. They suggested that since the primary concern is the integrity of the fund itself and since fund members are required to sign joint and several indemnity agreements, the aggregate financial strength of the fund is the issue not that of

individual members. The MTSA also spoke against a requirement of a financial statement for individual self-insurers at the hearing.

32. The Division stated that individual certified financial statements are needed in order to allow the Commissioner to verify the existence and value of the claimed assets of the employers who will make up the group. (Ex. G-1, pp. 30-31) The Division believes that the Commissioner must be assured of the financial integrity of each member company in order to protect both the employees and the other employer members of the group. They suggest that one of the most important parts of a CPA audit is its confirmation of the existence and valuation of assets listed in the financial statement. (Ex. N, pp. 8-9) The Division has established the need for and reasonableness of a certified financial statement. ABC's suggested language would, apparently in contradiction to its argument, require individual certified financial statements from individual members at least to prepare a consolidated financial statement if not to be submitted to the Commissioner. In regard to the privacy problem, the Division has sought and obtained from the Commissioner of Administration a temporary classification of "non-public data" for financial information relating to a non-public company which is submitted to the Commissioner of Insurance under this rule. (Ex. I)

33. The IFM and the American Insurance Association (AIA) have both suggested, on another point, that the contents of the indemnity agreement be defined in the rule, and they suggest the addition of the following language after the words "indemnity agreement":

> . . . providing for joint and several liability for all group members for any and all claims incurred by any member of the group. (Ex. 4, p. 2; Ex. 6, p. 21)

Although the indeminity agreement in Appendix 2 is incorporated into the rules, they suggest that a substantive requirement should be clearly spelled out in the rule itself. The Division may consider this suggestion. This subsection is needed and reasonable as proposed.

34. Section 1.9292 D. defines when two or more employers shall be deemed to be engaged in the same industry as being when all the employers have the same group classification in the Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance. ABC suggested that the subsection be amended to read as follows:

> 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 are included under the same schedule of group classifications as defined in the Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance published by the National Council of Compensation Insurance. If two or more employers are not included in the same schedule of group classifications, they can still qualify as a group self-insurer under the rules as long as they can satisfy the commissioner by other criteria that they are all in the same industry.

ABC suggests that the rule as proposed will result in overly narrow groups and will discourage employers from joining the groups since the spread of risk will be too small. (Ex. 2, pp. 2-3) ABC pointed out that in every industry, different group classifications exist such as secretarial along with trade

people. (Ex. 7, p. 1) The MTSA also objected to the proposed rule and stated that the adoption of a "common interest" rule such as used in the State of Florida is sufficient. The MTSA believes that this proposed rule would prevent allied industries in different classifications from joining together although they may have a great deal in common with each other. (Ex. 3, pp. 5, 7) They point out the trucking industry firms include employees under numerous classes including truck driver, warehouseman, mechanic, salesman, secretary/clerk, and retailer. The question of whether or not this is an impermissible delegation of authority to the National Council of Compensation Insurance was also raised. (Ex. 9, p. 2) In order to avoid such a delegation problem, the Division should include the revision date of the publication in question within the proposed rule so as to make it clear that the rule would not apply to any subsequent revision.

35. The AIA strongly supported the rule as originally proposed. They suggested that employers in the same group classifications would know in a general way the financial condition of their fellow group members and their reputation for safety standards. (Ex. 4, p. 3) The Alliance of American Insurers (AAI) strongly urged the adoption of the rule as proposed. (Ex. 5, pp. 3-4) The IFM stated that it is important that the groups have a certain commonality of interest and understanding of their industry's activities, problems and safety requirements so that they can work together in the areas of financial management and risk control. The IFM believes this is accomplished in the rule as proposed. (Ex. 6, pp. 22-23)

36. The Division agreed in its post-hearing comments that more flexibility is necessary in the proposed rule and suggested that the following language be added to the subsection as proposed:

> When two or more employers are not in the same group classification, they shall still be considered in the same industry under these rules if:
>
> 1. A majority of the employees of each employer perform similar work;
>
> 2. A majority of the employees of each employer are subjected to a similar work hazards; and
>
> 3. The manual rate for the governing classification of each employer is similar. (Ex. N, pp. 9-10)

The Division's amendment avoids placing too much discretion in the Commissioner which would result from ABC's suggestion. The Division stated that the "common interest" rule cannot be employed in the rules since the Minnesota statutory language requiring employers to be "in the same industry" is more narrow that the Florida statutory language which merely requires that "two or more employers may pool their liabilities". So amended, the proposed rule has been shown to be needed and reasonable.

37. Section 1.9292 F. requires group self-insurers to contract with a service company. Based upon the suggestion of Mr. Lowe (Ex. J, p. 3), the Division proposed at the hearing that the words "and reserve" be inserted before the word "determinations" in the proposed rule. (Ex. K, p. 2) The change is needed since setting and maintaining reserves more properly reflects

the realities of administering a self-insurance program. (Ex. N, p. 17) The subsection as amended is needed and reasonable.

38. Section 1.9292 H. provides that the group-self-insurers shall deposit securities or bonds in an amount not greater than $500,000. The AIA supported increasing the maximum deposit to $1,000,000 which they see as the least amount which could be considered an adequate safeguard. They state that the money stands as the only buffer between an injured worker being adequately compensated or having to face the uncertainties of the future as a general creditor in the event of insolvency. The AIA stated that this would also force the groups to be made up either of a large number of small employers or two or more employers of a fairly substantial size. (Ex. 4, p. 4) The $1,000,000 deposit level was also supported by the AAI. (Ex. 5, p. 2) The IFM made the same suggestion, and stated that it was necessary in view of the relative instability of the employers that would probably be forming self-insured groups. The IFM also suggested modifying the phrase "outstanding workers' compensation liability" in the last sentence by adding the language "including incurred but not reported losses" after the quoted phrase. They suggested that this is a recognized statistical technique used as a forecast of claims that have already occurred but which are yet to be reported. (Ex. 6, p. 25) The ABC stated that a $1,000,000 deposit requirement would be unnecessary and discriminatory against smaller businesses. (Ex. 7, p. 1) Mr. Lowe recommended that the $500,000 limit on the deposit requirement be applicable only at the outset of each new self-insured group. (Ex. J, p. 4)

39. The Insurance Division replied that it is not correct that if a self-insurer become insolvent, an injured employee would have to wait along with other general creditors in order for his benefits to be paid. The special compensation fund administered by the Department of Labor and Industry would provide immediate coverage to employees of self-insurers who became insolvent. The Division states that other safeguards provided in these rules including joint and several liability, strict financial disclosure, and creation of a group self-insurers fund with restrictions on its asset distribution make the $500,000 maximum deposit a reasonable provision. (Ex. N, p. 11) The proposed subsection has been shown to be needed and reasonable.

40. Section 1.9292 I. provides that an employer must belong to a group for at least one year and assesses a penalty where the employer leaves the group during the second or third year of membership. The Division stated that the requirement of one-year membership is needed to eliminate the chance that some employers may drop out of the group after a very short time which may adversely affect the financial stability of the group. The penalty provision is intended to encourage three-year membership. (Ex. G-1, p. 34) The MTSA stated that the penalty was unnecessary if premium requirements were properly structured and would discourage participation since one-year insurance policies are available. (Ex. 3, p. 4) The AIA supported a flat three-year membership requirement which they believe is necessary to promote the solvency of the group and to avoid transitory experimentation. They also stated that it takes time for safety programs to develop and a high turnover would impede

efforts to assure a safe workplace. (Ex. 4, p. 5) The AAI supported a five-year membership requirement in order to provide stability to the group and to provide impetus to an employer to carefully consider joining a particular group and investigate other potential members in regard to their financial stability. (Ex. 5, p. 2) The IFM supported the rule as proposed and stated that the one-year term coincides with most insurance contracts and would seem to provide enough time to allow the group cohesion and cooperative action while not making the minimum term too great a deterrent. (Ex. 6, pp. 26-27)

41. The Division replied that after evaluating the views of all the parties, it believes that the requirements in the rule adequately protect the public without being unreasonably burdensome on group self-insurers. (Ex. N, pp. 11-12) The rule is needed and reasonable as proposed.

4 MCAR § 1.9293 - Group Self-Insurers Fund

42. Section 1.9293 A. requires each group self-insurer to submit cash premiums equal to not less than 20% of the current year's modified workers' compensation insurance premium for each employer to be paid into a common claims fund when the group is effective. The remaining balance of the premium is to be paid to the group "in a reasonable manner over the remainder of the year". The Division stated that it is reasonable to require at least 20% of the premium to be paid prior to the commencement of coverage in order for the group to adequately meet the immediate expenses and claims. (Ex. G-1, p. 38) At the hearing, the Division suggested that the phrase "reduced by any appropriate premium discount" be inserted after the phrase "current year's modified workers' compensation insurance premium" at both spots where that phrase appears in this rule subsection. (Ex. K, p. 3; Ex. J, p. 4) The Division stated that since it was the intent to have members of group self-insurers pay an amount similar to an insurance premium, the suggested additional language will do so by taking into account premium discounts. (Ex. N, p. 17) The MTSA stated that having to pay premiums "up front" is discriminatory since individual self-insurers are not required to do this. (Ex. 3, pp. 4-5)

43. The AIA stated that the phrase "a reasonable manner" was too vague and should be replaced by "equal installments at least quarterly" to assure that an adequate flow of monies into the fund would be maintained to meet obligations as they become due. (Ex. 4, p. 6) The AAI supported this suggestion. (Ex. 5, pp. 2-3) The IFM also agreed that this change was necessary and also supported adding the word "administrative" to modify the word "expenses" in the next to the last sentence so as to make it clear that expenses do not include loss expenses. (Ex. 6, p. 31-32)

44. In reply to the MTSA, the Division stated that differences in the rules as to the requirements between individual self-insurers and group self-insurers are required by statute and reasonable since individual self-insurers are single entities with generally large economic resources, while group self-insurers are typically multiple independent entities with different managements and relatively limited financial resources. The Division stated that a group of employers cannot effectively operate a fund on a pay-as-you-go basis since this would necessitate numerous assessments and possible delays to the

detriment of the injured employee. This same difficulty would not exist for an individual employer self-insurer. The rule as proposed and as amended is needed and reasonable. The Division may consider the suggestions made by the insurance industry.

45. Section 1.9293 D. sets out several requirements for the group fund. The IFM suggested that the following language be added to the end of the first sentence:

> . . . and shall not be used to meet the requirements for the deposit of acceptable securities under 4 MCAR §§ 1.9285 through 1.9299 or any other purpose not authorized thereunder.

This addition is suggested to clarify the requirement implicit in the provision for the fund remaining in the control of the group. (Ex. 6, pp. 32-33) The subsection is needed and reasonable as proposed.

46. Section 1.9293 E. requires annual audits of the group self-insurers' fund. Based upon Mr. Lowe's suggestion (Ex. J, p. 4), the Division proposed at the hearing that the phrase "supported by actuarial review and opinion of the future contigent liabilities," be inserted in the second sentence after the phrase "generally accepted auditing standards,". This additional language is similar to that discussed in Findings of Fact Nos. 18 and 19. It is proposed for the same reason; namely, that both an actuarial and an accounting review is necessary to a proper audit of the solvency of a self-insurance operation. Both the ABC (Ex. 7, p. 1) and the MTSA (Ex. 9, pp. 1-2) suggested that the addition of this language was a substantial change and objected to the reference to a uniform accounting system to operate outside of these rules. The discussion at Findings of Fact Nos. 18 and 19 would apply in this regard also. The IFM suggested that the phrase "supervised and examined the funds and to" be inserted in the second sentence after the phrase "reserving the right to". The purpose of this amendment is to clarify that the accounting system specified does not replace or remove the Commissioner's statutory authority to supervise and examine the self-insured groups. (Ex. 6, pp. 33-34) The AAI also supported the inclusion of the type of language suggested by the IFM and stated their support for a uniform accounting system. (Ex. 5, p. 3) The comments in regard to the uniform accounting system at Findings of Fact Nos. 18 and 19 should apply here also. The subsection as amended is needed and reasonable.

47. Section 1.9293 J. sets out the method for refund of surplus monies. The MTSA suggested that the subsection would breed excessive surpluses and encumber the group with absurd financial management responsibilities not required of individual self-insurers. (Ex. 3, p. 6) The IFM and the AIA strongly supported the requirement that the fund maintain 125% of the amount necessary to fulfill all obligations under the law for a fund year as a minimum needed protection for solvency. They stated that distribution of some surplus monies 18 months after the fund year may not adequately provide for reopened cases, and suggested that this time period be extended. (Ex. 4, p. 6; Ex. 6, pp. 36-37) Mr. Lowe suggested that the rule should make it clear that surpluses should be distributed to members only after actuarily adequate reserves have been established for all years. (Ex. J, p. 4)

48. The Division noted that it is difficult to predict with any degree of certainty what surplus is necessary, but that the criteria suggested will ensure the continuing availability of funds to meet the outstanding future liability of the group to injured employees. (Ex. N, pp. 13-14) The Division also noted that there is a need to place a limit on refundable surplus in order to maintain the integrity of the fund and ensure that it has sufficient assets to pay for existing liabilities. The restrictions on the distribution of surplus are necessary because of the difficulty of accurately predicting outstanding liability for any given year. (Ex. G-1, pp. 41-42; see also, Ex. L, p. 2) The subsection is needed and reasonable as proposed.

49. Section 1.9293 L. requires deficits in any fund year to be paid up immediately either from surplus of another fund year, or by assessment of the membership. The IFM, the AAI and the AIA all felt that this subsection was not sufficient to assure financial stability. They suggested deletion of the language permitting deficits to be made up from surpluses from another fund year because a series of such borrowings could easily threaten the financial stability of the group. (Ex. 6, pp. 36-37; Ex. 4, p. 7) The AAI also suggested that the Commissioner should have authority to order an assessment. (Ex. 5, p. 3) The Division replied that under Section 1.9293 J., the group self-insurer must retain a portion of its surplus so as to more adequately meet its future obligations. One of the purposes of this surplus is to provide funds necessary to meet future deficits so it is reasonable to permit group self-insurers to use the surplus in that manner. The Division notes that no insurance company segregates its funds by policy year so as to restrict the surplus from any one year. (Ex. N, p. 14) The subsection is needed and reasonable as proposed.

50. Section 1.9293 M. allows the Commissioner to order an assessment against group members when a deficit has not been paid up. The IFM and the AIA both suggested that the word "may" be replaced by the word "shall" so as to avoid the element of discretion. (Ex. 4, p. 7; Ex. 6, p. 37) It would appear that the use of the word "may" would unnecessarily place a great deal of discretion in the Commissioner. The rule should either be amended as proposed by the insurance industry or some criteria should be added to guide the Commissioner in making his decision when to order an assessment, and when not to, if he finds that a deficit has not been paid up.

4 MCAR § 1.9294 - Qualification for Service Companies

51. This rule as a whole was supported by St. Paul Risk Services, Inc., a service company and by the IFM, although the IFM did note, again, that the forms referenced in Section 1.9294 A. should be included with the proposed rules. (Ex. 6, p. 37)

52. Section 1.9294 D. sets out personnel requirements where the service company intends to provide claims adjusting. The MTSA commented that the requirement of a licensed claim adjustor in this subsection is not applied to individual self-insurers or the insurance industry. The Division stated that this requirement provides some assurance that the service company will have at least one qualified well-trained adjuster who can deal with the public in the

interest of a fair resolution of workers' compensation claims as intended by Minn. Stat. Ch. 72B. (Ex. G-1, p. 44) The Division also previously noted the statutory difference between individual and group self-insurers in regard to the requirements that can be imposed under these rules (Finding of Fact No. 29). The subsection is needed and reasonable as proposed.

53. Section 1.9294 G. deals with the granting or denial of applications by service companies. In its post-hearing comments, the Division suggested that this subsection be amended to read as follows:

> 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, if any applicant, an affiliated company of the applicant, or owner or officer of the applicant has committed an act or practice in connection with the administration of claims which is defined as unfair or deceptive in Minn. Stat. § 72A.20, the applicant 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 in any such hearing to prove that the applicant has committed such a practice. (Ex. N, Attachment 2)

The Division states that the change made is a clarifying one in that it attempts to assure that individuals who have committed any unfair trade practices in the past are denied a service company license even though the past practices may have related to another entity under their control. (Ex. N, p. 18) The subsection as originally proposed and as proposed to be amended is needed and reasonable.

54. Section 1.9294 K. sets out factors providing good cause for revocation of a license. At the hearing, the Division suggested that the phrase "or maintenance of inadequate loss reserves." be added to K.1. in this subsection. (Ex. K, p. 4) This addition was suggested by Mr. Lowe. (Ex. J, p. 5) The MTSA suggested that this addition was a substantial change which imposes severe and expensive new responsibilities on service companies. (Ex. N, p. 2) In response, the Division stated that the proper reserving for losses is the key to the concept of self-insuring. If a service company does not properly state these liabilities, serious problems may result for the self-insurer. The Division, therefore, believes that the Commissioner must have the authority to revoke the service company's license for maintaining inadequate loss reserves just as the Commissioner may revoke an insurance company's license for maintaining inadequate reserves. The Division suggests that the subject matter of maintaining loss reserves is not far removed from the handling of claims. The additional language would not appear to be a substantial change within the meaning of 9 MCAR § 2.111 since it does not go to a new subject matter or make a major substantive change or result in a fundamentally different rule.

55. The subsection has been shown to be needed and reasonable; however, the following problems should be noted: Because this provision is an enforcement provision, the use of the words "good cause" are confusing. The rule might be rewritten to require revocation upon the violation of the listed grounds. Similarly, the use of the word "material" without definition may lead to enforcement problems. Additionally, it is not difficult to imagine

that there may be some dispute as to what is an "improper" claims handling technique. This suggested grounds for revocation of a license should be further defined since it is unduly vague to be used as a grounds for revocation. The use of the word "factors" is less precise than the use of the word "grounds". Finally, the use of the words "but not limited to" implies that the Commissioner may revoke upon grounds not listed in this rule. All of the grounds for revocation must be listed or must be referenced in a fashion which would limit the discretion of the Commissioner to revoke a license for arbitrary reasons.

56. General support for the proposed rules was expressed by Northern States Power Company and the U.S. Steel Corporation.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Insurance Division gave proper notice of the promulgation of the proposed rules.

2. That except as noted at Finding of Fact No. 16, the Insurance Division has statutory authority to adopt the proposed rules.

3. That except as noted at Findings of Fact Nos. 19, 22, 23, 50 and 55, the Division has fulfilled all relevant substantive and procedural requirements of law or rule.

4. That the Division has demonstrated the need for and reasonableness of its proposed rules by an affirmative presentation of facts.

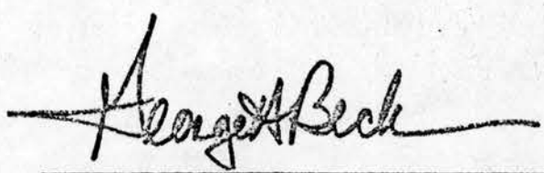
5. That a finding of need or reasonableness of a particular rule or rule subsection by the Hearing Examiner does not preclude the Division from further modification of the language based upon its examination of the public comment, provided that no substantial change is made from the rule as originally proposed and provided that the rule finally adopted is based upon facts appearing in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules be adopted with the modifications suggested in this Report.

Dated: May 23, 1980.



GEORGE A. BECK
State Hearing Examiner

MINNESOTA TRANSPORT SERVICES ASSOCIATION

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ABE ROSENTHAL
Executive Vice President
General Manager

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April 25, 1980

Mr. George Beck
Hearing Examiner
Office of State Hearing Examiner
1745 University Avenue
St. Paul, Minnesota 55104

In Re: Matter of the Proposed Rules Governing Self-Insurance for Workers' Compensation INS-80-006-6B

Dear Mr. Beck:

The writer testified before the April 8, 1980 rules making hearing conducted by your office relative to the proposal of the Commissioner of Insurance to adopt rules governing self-insurance for workers' compensation. It was apparent on April 8th that due to an exhibit presented by the Division of Insurance (Division Exhibit K identified as "clarifying changes") and the information and testimony also presented at the April 8th hearing that the writer would, and the writer declared at that time the need to file a supplemental statement within the twenty (20) days provided by the Hearing Examiner for additional statements. The letter constitutes MTSA's supplemental statement.

SUBSTANTIAL AND MATERIAL RULES CHANGES ARE CONTAINED IN DIVISION EXHIBIT K

MTSA objects to the amendments to 4MCAR§1.9287 Paragraph P since it is a new, substantial and material change in the proposed rules as originally published and is therefore in violation of Chapter 15, Administrative Practices Act. The full implications of this new rule are to impose a complex and confusing manual used by the insurance industry operating for profit into the self-insurance rules.

MTSA objects to the amendments to 4MCAR§1.9289 Paragraph B and 4MCAR§1.9293 Paragraph E of the originally published proposed rules because they consist of substantial and material rule changes after publication and therefore are in violation of Chapter 15, Administrative Practices Act.

The amendments impose new regulatory requirements which have substantial costs to the participants to a self-insured group since these changes do not clarify the proposed rules, but rather impose the new requirement that certain audits

be "supported by actuarial review and opinion of the future contingent liabilities" (See pages 2 and 4 of Division Exhibit K). Contingent liabilities may be an acronym for incurred but not reported losses and a substantial portion of the insurance industries reserve practices.

Additionally the amendments on page 2 also propose to reserve to the commissioner "the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards". These new and substantial increased regulatory requirements are material and substantial changes in the rules now proposed after publication of the proposed rules and are therefore in violation of Chapter 15, Administrative Practices Act.

Additionally the amendments to 4MCAR§1.9294 Paragraph I provide that service company licensees shall be subject to a new license revocation requirement under Clause 1. Good cause for revocation of licenses is expanded to include " ... maintenance of inadequate loss reserves". This is a new and material change in the published rules and it imposes severe and expensive new responsibilities on service companies not heretofore published. It is therefore in violation of Chapter 15, Administrative Practices Act.

4MCAR§1.9293 Paragraph E is objected to because it proposes to authorize the "reserving the right to prescribe a uniform accounting system based on generally accepted accounting principles and generally accepted auditing standards", to be used by group self-insurers or service companies. (emphasis supplied) MTSA believes that the proposed rule which requires certified audits are unduly expensive and onerous, but it provides also the financial information the commissio er claims he needs. To provide the commissioner with powers that may be applied on a selective basis would be to encourage selective enforcement and unequal application of the law. Obviously an arbitrary and unreasonable regulatory approach, possibly unconstitutional, if applied selectively.

4MCAR§1.9292 Paragraph D is objected to because it refers to and adopts by reference the Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance (Manual) published by the National Council of Compensation Insurance (NCCI) in a looseleaf form originally issued on December 31, 1934, and supplemented and amended numerous times thereafter.

This manual obviously can be modified unilaterally by the NCCI from time to time without notice or input of the public and/or the Commissioner of Insurance. The primary purpose of the manual is to serve the national profit making interests of the national insurance industry; it cannot be seriously be claimed that it serves to define the legislatures "same industry" (affinity) rule requirement as contained in Special Session Chapter 3L.1979. It is also in direct conflict with the concept of division of payroll afforded all employers under the statute. Trucking industry firms include but are not limited to employees under the numerous classes, including truck driver, warehouseman, mechanic, salesman, secretary/clerk, and retailer. The document just can't intelligently and reasonably be made applicable to the self-insured workers' compensation regulatory activity of the Commissioner of Insurance and must be stricken from the rules because of conflict with Paragraph A (and also Special Session Chapter 3L.1979).

The proposed rule also conflicts with the American concept of fair play because it attempts to legitamize a conflict of interest. It gives the insurance industry the unregulated ability to restrict and restrain the establishment of self-insurance in Minnesota. Self-insurance has the potential of becoming the sole potential competitor of the insurance industry for workers' compensation coverage.

During the hearing, the question of MTSA's petition of October 10, 1979, was discussed and the writer stated he would include in this statement copies of MTSA's previous statements on self-insured rules and MTSA petition which is still pending. MTSA still contends, and a review of the "delegation of authority" filed pursuant to §15.06, subd. 6, with the Secretary of State, proves that Assistant Commissioner of Insurance Thomas L. O'Malley has never had and to this day does not have the authority to approve or deny any applicant for workers' compensation self-insured authority. Therefore, Mr. O'Malley's letter to the writer and referred to at the hearing on April 8, 1980, has no standing under the statute and cannot be used as a basis for the Commissioner's failure to act on the MTSA petition.

In conclusion, this letter is supplemental to and a part of the writer's prepared and extemporanious testimony on behalf of the members of Minnesota Transport Services Association.

MTSA calls attention to the fact that no self-insured group has been approved by the Commissioner since August 1, 1979, the effective date for group self-insurance.

MTSA reiterates its opposition to the proposed rules and proposed amendments identified in the MTSA statement, testimony and letters as being substantially in contravention to the self-insurance provisions of Special Session Chapter 3 L.1979, in contravention both to the letter and the spirit of the Act. These aforesaid rules will effectively prevent the establishment of small business group self-insured workers' compensation programs and in effect veto the express direction of the state legislature.

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal

Abe Rosenthal
Executive Vice President and General Manager

AR/ch

cc: Governor Al Quie
Attorney General Warren Spannaus

Encl: MTSA letter to Michael Markman of October 10, 1979
MTSA letter to Michael Markman of October 29, 1979
MTSA letter to Michael Markman of November 29, 1979
Mork, Cumpston & Co. letter to Michael Markman of December 4, 1979
MTSA letter to Michael Markman of December 26, 1979

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EXAMINERS

October 10, 1979

Mr. Michael Markman, Commissioner
Division of Insurance
Department of Commerce
Metro Square Building
7th Street and Robert Street
St. Paul, Minnesota 55101

Subject: Petition for permission to form a group self-insurance program

Dear Commissioner Markman:

I am submitting the petition of Minnesota Transport Services Association to you and requesting approval of our proposal to create a group self-insurance program.

We request your timely action on our petition so that we may act to provide the benefits of group self-insurance to our small business members on November 1, 1979.

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal

Abe Rosenthal
Executive Vice President and
General Manager

AR/ch

Enclosure

cc: Al Quie, Governor
Warren Spannaus, Attorney General
Senator Steve Keefe
Representative Wayne Simoneau
Employee Benefit Administration Co.

COPY

The Board of Directors of Minnesota Transport Services Association in a duly convened meeting on September 18, 1979 in St. Paul, Minnesota, hereby resolves:

That Abe Rosenthal, the Executive Vice President, of the Minnesota Transport Services Association be and is hereby authorized, directed and empowered to execute a Certificate of Registration for the Minnesota Transport Services Association Trust ("Trust") with the Commissioner of Insurance for the purpose of exempting those members of the Association which are eligible and elect to participate in the Trust from insuring their liability for compensation and permitting them to self-insure such liability as a qualified group self-insurer under the terms, conditions and requirements governing self-insurance as established by the Commissioner pursuant to law.

Be It Further Resolved, that Abe Rosenthal and Employee Benefit Administration Co., a Minnesota Corporation, be and they hereby are authorized directed and empowered to take such action and do such things as may be necessary and appropriate to expedite the formation of an Insurance Trust to use as a vehicle for the establishment of a Self-Insured Retention and Excess Worker's Compensation Program.

Board of Directors of Minnesota
Transport Services Association

By: S/ Dean VanEaton
President

Date: September 18, 1979

By: S/ Darrell Lindman
Secretary

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

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EXAMINERS

IN THE MATTER OF

Petition relating to
Worker's Compensation
Group Self-insurance Program

PETITION REQUESTING PERMISSION TO ESTABLISH WORKER'S COMPENSATION GROUP SELF-INSURANCE PROGRAM

TO: THE HONORABLE MICHAEL MARKMAN, COMMISSIONER OF INSURANCE

Your petitioner herein, Minnesota Transport Services Association, a non-profit corporation, (hereinafter referred to as MTSA), of 1821 University Avenue, Saint Paul, Minnesota, does hereby respectfully petition for permission to establish a Worker's Compensation Group Self-insurance Program pursuant to Minn. Statutes Section 176.181, as amended by Laws of 1979 Special Session, Chapter 3, on behalf of its members, consisting of local cartage carriers, household goods movers and warehousemen, short haul motor common carriers, public warehousemen, and allied industries.

The MTSA hereby applies for permission to establish a Group Self-insurance Program for its members as authorized by Minnesota statutes. For the purposes of establishing a self-insurance program MTSA proposes the following:

1. Operation of the Program:

The Program will be carried out through the formation by the Association of an Insurance Trust governed by a board of trustees comprised of Association members. The board of trustees shall adopt rules for the operation of the Program which will include, but not necessarily be limited to the following.

2. Appointment of Administrator:

Employee Benefit Administration Co., (E.B.A.), a Minnesota Corporation with offices at 6950 Wayzata Blvd., Suite 430....Minneapolis, MN.... 55426, will be employed to provide the administration of the Program. E.B.A. presently administers a similar program for the Minnesota School Boards Association and has been appointed administrator for the League of Minnesota Cities. The services provided by the administrator will include

a) Billing collection and accounting for premiums from participants.

b) Safety engineering and loss control program.

c) Intake, investigation and payment of claims.

d) Assistance in the determination of reserves.

e) Legal assistance to the Trust and its participants

f) Compliance with all laws and regulations of the State of Minnesota as they relate to the licensing and activities of group program administrators.

g) Furnish a fidelity bond in the amount of $250,000 to safeguard the claims paying funds in its possession.

h) Provide the Minnesota Workers' Compensation Reinsurance Association with the net, discounted standard premium data on which charges to the Trust will be based.

3. Entry and Withdrawal of Participants:

All members of the Association, who have maintained a satisfactory loss and safety record as determined by the board of trustees, will be eligible for membership in the Program. Participation in the Program shall be for a minimum term of one year. The board of trustees reserves the right to terminate the participation, at any time, of any member who it determines is not operating his business in a safe manner or in the best interests of the Program.

4. Premiums:

The administrator will bill to and collect from each participating member an annual deposit premium computed in accordance with current manual rates, experience modification factors, and premium volume discounts allowed by regulations. An additional advance discount of 6% shall be given each participant from the deposit premium as computed above. The board of trustees reserves the right to terminate upon ten days written notice, the participation of any member who becomes thirty days delinquent in payments due to the Program.

5. Security:

The Trust will provide a self-insurance surety bond to the State of Minnesota in the amount of its total reserves for open cases plus its self-insured retention for the current year. Certification by the fiscal agent as described in Item #6 of an amount on deposit equivalent to the bond requirement shall be acceptable in lieu of a bond.

6. Depository for Trust Funds:

The Trust Department of the Northwestern National Bank of Minneapolis shall be fiscal agent for the deposit and investment of trust funds.

It shall receive all income of the Trust and make all necessary disbursements. Disbursements by the fiscal agent shall be only for those purposes related to the self-insurance Program. No disbursements will be made for distribution to participants until the fiscal agent has certified to the trustees, and to the State of Minnesota, if necessary, that funds remaining on deposit are sufficient to cover reserves, discounted at no more than 50% of prime, for outstanding claims and future operating expenses as deemed to be necessary by the administrator. All earnings on investments made by the fiscal agent shall become a part of the general operating funds of the Trust.

7. Distributions of Surplus to Participants:

Distributions of surplus to participants will be based upon a formula which will reflect the individual participants size, loss experience, and cooperation with the loss control program of the Trust. Distributions will be made by credit memo to be used only as an offset to the participant's deposit premium for the following year. No distribution will be made until the certification required in Part 6 above has been received.

8. Excess Insurance:

The trustees shall purchase specific excess insurance from the Minnesota Workers' Compensation Reinsurance Association at a level to be determined when the cost of such reinsurance is known. The trustees may purchase aggregate excess insurance if and when it is available on the commercial market.

9. Dissolution of the Group:

Should the group determine to withdraw from its self-insurance Program, the trustees will distribute to participants a sum no greater than that which would leave 150% of reserves for open cases on deposit for the payment of claims and make satisfactory arrangements for the continued servicing and payment of said open cases.

10. Effective Date:

The effective date of this Group Self-insurance Program shall be November 1, 1979, or when participants sufficient to generate a $300,000 annual premium input have contracted to enter into the program, whichever date is later.

11. MTSA Corporate Resolution:

A copy of the MTSA corporate resolution is hereby attached and made a part of this petition.

Minnesota Transport Services Association

Dated: October 10, 1979

Abe Rosenthal

Abe Rosenthal, Executive Vice President

MINNESOTA TRANSPORT SERVICES ASSOCIATION

1821 UNIVERSITY AVENUE SAINT PAUL, MINNESOTA 55104 TELEPHONE (AREA 612) 646-4075

Serving Minnesota's Local Cartage – Household Goods Moving – Short Haul Trucking and Related Industries...

ABE ROSENTHAL
Executive Vice President
General Manager

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EXAMINERS

October 29, 1979

Mr. Michael Markman, Commissioner
Division of Insurance
Department of Commerce
Metro Square Building
St. Paul, Minnesota 55101

Subject: Proposed Emergency Rules
Self-Insuring Workers' Compensation
Liability

Dear Commissioner Markman:

This is to confirm my complaints to you concerning "Exposure Drafts" of proposed emergency workers' compensation self-insured rules.

The proposed rules are the product of certain members of your staff who are handicapped by lack of knowledge of self-insured concepts and program as well as, those persons whose credibility is certainly in question because they lobbied to defeat workers' compensation legislation authorizing employers to join together to pool their risk. These rules effectively veto any opportunity for small businesses to establish a self-insured program by constructing unreasonable financial and operational obstacles to the establishment of group self-insurance of workers' compensation.

I have had these proposed rules reviewed by several consultants including the administrator of a Florida self-insured program and they confirm my opinion of these rules.

In addition to the obvious dilatory tactics of your staff, we object to the following provisions of the proposed rules:

1. INS 292 Paragraph C, 2b which requires a current ratio of at least 1¼ to 1 after intercompany balances of each member of the group have been eliminated. A ratio of 1 to 1 is appropriate under State of Florida rules. Also I would like to cite Corporate Balance Sheet Scoreboard: 1979 (Business Week, October 15, 1979) which provides current ratios of 870 of the nation's largest businesses. For example: current 1-1 ratios in transportation — Airlines: Eastern Airlines, Braniff International, United Airlines and Western Airlines; average trucking ratios for six leading truck lines are 1.1 to 1; Utilities, e.g., Northern States Power 0.9 to 1 and Western Union 0.9 to 1 and for railroads, i.e., Burlington Northern 1.3 to 1 and for fourteen rail-

roads an average of 1.2 to 1.

2. INS 292 Paragraph C, 2a which requires a "net worth of not less than ten (10) times the retention selected with the WCRA (Workers' Compensation Reinsurance Association). In no event shall the net worth be less than three (3) times the current annual modified premium". Our consultants and experts declare that "two" times the retention with WCRA and two times net worth of the current annual modified premium is adequate to safeguard the fund and meet obligations.

3. INS 292 Paragraph E requires five (5) year participation and one hundred and eighty (180) day advance written notice of intent to withdraw. Neither rule is required in Florida nor are they necessary for the purchase of insurance coverage. The insurance industry requires a stiff penalty for untimely withdrawl under its one year policy. We suggest adoption of appropriate annual earned premiums under the group plan for one year coverage with a cancellation penalty for early withdrawal. This rule conflicts with, and in terms of rationale, conflicts with Paragraph I which requires cancellation of a participant's coverage upon thirty (30) day notice that the participant was delinquent as a participant in a prior group affiliation. There is no discretionary authority to the fund administrator. Obviously, the staff fails to recognize the protection afforded by the up front premium payment, the other possible financial considerations, nor the due process requirements of our legal system.

4. INS 292 Paragraph A, 1 unduly restricts participation in any group plan to the insurance industry classification manual which is designed for profitability. This manual currently is under heavy criticism as not being fair nor equitable governing employers. Florida has a common interest rule and groups in effect develop their own classifications. An approach we advocate for the State of Minnesota. This rule literally destroys trade association capability to sponsor self-insured programs, since most associations have officers and members who are allied service or suppliers to the industry. This proposed rule is designed only to serve the interests of the insurance industry by limiting the ability of trade associations to offer the self-insured option to allied businesses.

5. INS 287 defines "Modified Premium" to mean the total premium as defined and modified by the "experience rating plan". A plan designed by the insurance industry to create profit and not to meet solvency requirements. In Florida the groups can develop their own plans and get them approved by the insurance commissions. We advocate the same approach for the State of Minnesota.

6. INS 292 requires a ninety (90) day filing date prior to the effective date. This is an unacceptable administrative rule which is designed only to delay implementation of a program, already subject to unreasonable delay. Please remember we are in the end of October and the effective date was August 1, 1979 and the program is yet to be implemented. We believe ten (10) days is more than adequate because delays create or continue competitive

advantage for currently approved self-insurers.

7. INS 287 Paragraphs A and D; INS 291 Paragraphs B1; C2; require employment of and reports by Certified Public Accountants (CPA). This rule increases operating costs. We do not believe we should be required by these rules to increase our costs and to cancel our retainers and/or discharge public accountants we employ who may not be CPA's. The issue is the adequacy of financial reports and audits to assure compliances, not academic standards or professional standards. The rules already contain a provision which authorizes backup authority for the commissioner so he may require independent audit by an independent auditor acceptable to him.

8. INS 292 Paragraph J requires deposit of acceptable securities equal to forty (40) percent of the modified premium for each year up to two (2) times their modified premium. In Florida the rule is to declare a specific amount of security required to self-insure which in effect recognizes the value of the other safeguards, such as the indemnity agreement making the employers jointly and severally liable for all claims.

9. INS 292 Paragraph H requires the filing of new participants in the group with the Commissioner. A procedure not required of the insurance industry and unduly burdensome in paper work. All that is necessary is for the participant to file his report with the Department of Labor and Industry, just as is the practice when changing insurance coverage.

10. INS 292 Paragraph I is arbitrary, capricious and unreasonable in that it "blackballs" for the life of a company, the ability of any employer to participate in a group when said employer is adjudged in default to a group he previously was affiliated with. There is no provision to expiate this error of management and escape from the lifetime "blackball" even if after court judgment the employer complies immediately and pays the claim. Furthermore, there is no provision for the second group accepting such employers and requiring 100% advance prepayment of premiums for credit risks, just like the practice of the insurance industry.

11. INS 292 Paragraph N, 2g requires creation of an experience rating program which includes "surcharging" members. We believe that instead of this kind of penalty the group should and can effectively withhold dividends, refunds or discounts. We believe groups in other states with successful track records don't use these kind of "penalties", no matter what they are called to obtain adequate adherence to the safety program. Expulsion from the group is the key to success in Florida to achieving adherence to the safety program.

12. INS 293 Paragraph G. We object to the provisions of the paragraph G which limits to fifty (50%) percent any surplus monies in excess of one hundred twenty-five (125%) percent of the amount necessary to fulfill all fund year obligations that may be declared refundable, refunded no earlier than eighteen (18) months after the end of a fund year and only once a year.

This is totally unreasonable and destructive of the whole purpose

of group self-insured programs. Florida in order to protect the assets of the fund and to meet its obligations merely authorizes distribution of surplus monies in excess of the amount necessary to fulfill all obligations for the fund year, but in no event earlier than twelve (12) months after the end of the fund year. This is accomplished by setting reserves or incurred losses in a professional and reasonable manner.

13. INS 293 Paragraph H, after January 1, 1983 imposes additional expenses on a group by requiring the hiring of another CPA with actuary training to determine reserves. This duplicates the administrative costs of the group who are already having their own state licensed service firm make those determinations. The rules are redundant because of other bureaucratic requirements that require these services by the licensed service firms.

The above thirteen objections are merely indicative of the total problem with these rules. There are numerous other unreasonable rules that are calculated to assure the inability of groups engaging in self-insurance since no prudent business (after review of these rules) would believe they could be lived with and still obtain a cost effective delivery system. Therefore we protest these proposals and respectfully suggest amendments that reflect the legislative intent to encourage group self-insured programs to achieve the financial savings they promise for small employers, not a cleverly designed set of rules that effectively defeats the plan.

No group of small employers can comply with the above rules and have a viable group program according to our consultants and that is precisely what we believe certain members of your staff and their insurance industry advisors intended.

Your immediate action on our complaint is clearly indicated to remove these unreasonable, arbitrary and capricious requirements.

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal
Executive Vice President

AR/ch

cc: Governor Al Quie

Encl.

MINNESOTA TRANSPORT SERVICES ASSOCIATION

1821 UNIVERSITY AVENUE SAINT PAUL, MINNESOTA 55104 TELEPHONE (AREA 612) 646-4075

Serving Minnesota's Local Cartage – Household Goods Moving – Short Haul Trucking and Related Industries...

ABE ROSENTHAL
Executive Vice President
General Manager

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November 29, 1979

Mr. Michael Markman, Commissioner
Division of Insurance
Department of Commerce
Metro Square Building
St. Paul, Minnesota 55101

Subject: Proposed Emergency Rules
Self-Insuring Workers' Compensation
Liability

Dear Commissioner Markman:

This is to confirm my complaints to you concerning the Proposed Temporary Rules Governing Self-Insurance for Workers' Compensation as contained in the copy I received from you on November 28, 1979.

The proposed rules are discriminatory as between individual and group self-insurers and establish extraordinarily unreasonable, unnecessary and arbitrary administrative, financial and economic burdens whose only purpose can be, not to insure solvency, but to provide economic insulation to the insurance industry. Administrative and fiscal management rules including certified financial audits are imposed upon group self-insurers but not upon the insurance industry, obviously the cost involved by these rules will effectively assure that the insurance industry's demand for nearly 40% of every premium dollar for administrative expense to appear to be reasonable and competitive. If that is not the case, why then should such requirements be foisted on group self-insurers and not on the insurance industry.

Our group has reviewed the rules you are now intending to impose upon group self-insurers and conclude that they will effectively veto the actions of the state legislature and the recommendations of the Workers' Compensation Study Commission which were designed and motivated to provide groups of small employers the opportunity to achieve financial savings through the vehicle of group self-insurance of Workers' Compensation liabilities. The following briefly outlines the major criticism and justification for this protest:

1. Discrimination in operating costs between individual and group self-insurers is structured by these rules in a manner to assure continued competitive advantage by pay-as-you-go loss programs being solely authorized for individual self-insurers. This approach does not require the periodic payment of premiums, reserving practices or the encumbering of assets.

2. The rules impose initial three year participation requirements, imposing penalties for early withdrawal, but only on the group self-insured. This is also non-competitive with the insurance industry who permit or require one year policies for small businesses. A small business cannot withdraw, without penalty, even if the withdrawal is to quit business and retire, merge with another business or sell to a new owner.

3. Individual self-insurers may merge their affiliates into their individual plan without the cost, restrictions and burdens of the affinity rule, payment of premium, the reserving practices or the encumbering of surpluses.

4. Group self-insurers under Sec. 1.9293 Paragraph A, are required to pay premiums based on the last preceding year's insurance premium irrespective of whether or not their exposure has been reduced due to the recession, loss of business or the employment of fewer workers. This rule is not applicable to the insurance industry or the individual self-insurer. This rule does not even contemplate the savings permitted by the employment of a service company who offer their services to administer these plans at 10% which is the proposal we have pending currently before you. The conflicts in the rule are designed to provide advantage to the insurance carrier who gives a discount under the manual, while effectively prohibiting such front-end discounts to group self-insurers.

5. Sec. 1.9293 Paragraph J prohibits disbursement of group self-insured fund surplus monies for a period of not less than 18 months following the close of the fund year. Furthermore, it prohibits the disbursement of more than 50% of the surplus monies in the excess of 125% of the amount necessary to meet all obligations under the law. This penalizes the safe employer, it breeds excessive surpluses and it encumbers the group with an absurd financial management responsibility not required of individual self-insurers or insurance carriers.

6. Sec. 1.9293 Paragraph K requires the employment of a casualty actuary after January 1, 1983 to determine loss reserves after the first dividend or surplus could have been dispersed, a rule not required of individual self-insurers.

7. The rules impose the extremely complicated, confusing and conflicting insurance industry manual concerning rates, experience plans and classifications which were designed for profitability of the insurance industry, upon group insurers to determine group affinity and premium obligations but not on individual self-insurers. This effectively prevents allied industries who are not corporately related from joining the self-insured group whose industry they are deeply involved, committed and a part of, while permitting conglomerates the privilege of insuring as an individual self-insurer irrespective of the insurance manua

8. The rules impose upon the Commissioner the responsibility of

approving the admission of each new member to a group insured plan and imposes a thirty day waiting period for approval. This rule supercedes the group board of directors who have already determined that the new member-employer is acceptable for membership. a rule not imposed upon the insurance industry.

The November 28, 1979 copy of the proposed temporary rules have not to any great degree improved the rules for group self-insurers and an objective review by our experts clearly indicates that they will effectively assure that group self-insurance for small employers will remain merely a promise and not a fact. Therefore, on behalf of the officers and members of this Association, we protest the adoption of these rules on a temporary basis under the emergency powers of the Commissioner because they are arbitrary, unreasonable, discriminatory and exceed the explicit and implicit statutory authority of the Commissioner. They will prevent the establishment of small business group self-insured Workers' Compensation programs in Minnesota in derogation and contravention of the express direction of the state legislature in Minnesota Statutes Special Session Chapter 3 (S.F. No. 1).

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal

Abe Rosenthal
Executive Vice President

AR/mj

cc: Governor Al Quie
Attorney General Warren Spannaus
Senator Steve Keefe (Senate Author File No. 1)
Representative Wayne Simoneau (House Author File No. 1)
MTSA Board of Directors

MORK, CUMPSTON & CO.

Certified Public Accountants
Park Square Court
400 Sibley Street
Saint Paul, Minnesota 55101
(612)222-3737

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December 4, 1979

Mr. Michael Markman, Commissioner
Division of Insurance
Department of Commerce
Metro Square Building
Saint Paul, MN 55101

Subject: Proposed Emergency Rules
Self-Insuring Workers' Compensation Liability

Dear Commissioner Markman:

Upon reviewing the proposed temporary rules governing the Self-Insurance for Workers' Compensation, the requirements under numeral 4 MCAR #1.9291, B indicate that the application shall be accompanied by a certified financial statement. This is in reference to a individual who wishes to self-insure his claims. I would like to offer as testimony, to this issue that the Commissioner consider the concept of receiving a financial statement, accompanied by the auditors' report on a Review. A review is substantially less in scope than an audit, however, the internal controls of the company, underlying data accompanying the records must be reviewed and the financial statements must be reviewed by the independent Certified Public Accountant for determination in that due the financial statements make sense. I am enclosing for the Commissioner's review, the AICPA document on Compilation & Review. This pamphlet provides a capsule of the requirements for the rules regarding issuing, auditors' reports. The comment, however, must be made in that if there is a self-insurer, meeting the requirements for self-insurance, that company would probably be certified in most cases.

Paragrah D of the proposal takes into account the long-term and short-term debt to equity ratios. In the transportation industry, it is generally regarded that this is a highly leveraged industry and the gross margins are somewhat depended upon the revenues exceeding its break-even point. The fixed cost of this industry is very high and the debt to equity ratio in most cases will be greater than almost any other industry.

Where the company has its own financial statement certified by a Certified Public Accountant, and the Commissioner reviews this financial statement it would seem that this financial statement than would be made public. Because of the highly competitiveness in the transportation industry, if this information was published the competitors would be given an edge that is not given in any other type of industry.

The transportation industry normally consists of closely-held companies and large publically-held companies. The schedules that are required under the Commissioners proposal could be detrimental to the small business. In addition, the cost of a certified audit is a consideration in determining whether or not the company should be considering switching to a self-insurance method. We ask that you consider the above in your final decision.

In response to number 4 MCAR #1.9293 Group Self-Insurers' funds part of the proposal, #E indicates that the accounts and records of the Group Self-Insurers' fund shall be audited annually or at any other time as maybe necessary to determine the financial stability of the fund or the adequacy of its monetary reserves. The Commissioner is requiring that the group self-insurer be audited at the Commissioner's request. This is a proposal that could be used to the groups disadvantage, when a Commissioner feels that the group may have some questionable practice and could be requiring that group to be certified, in effect, on a monthly or less basis. It would seem that paragraph could be revised to reflect the Commissioners intent, I believe, which is to require a certified audit when there is a question regarding the practices or the premium volume of the group. It is vague as to why the Commissioner would require at "any other time" the certified audit and the reason that the Commissioner is looking for the certified audit. Additionally, the requirements under #1.9292 indicate that a certified financial statement for each member be submitted with the initial application. I believe that this is an undue requirement of the group request, as it again places an undue burden closely-held companies that for a number of reasons, do not need certified financial statements. These companies are of the type that have very limited debt, have had successful operations over the years, have minimal requirements for financing because its operations are established, its borrowing compacity is not required to be certified and it may have an element with its bank or lending institution that goes beyond the certified financial statement opinion audit.

Again, under this requirement the financial statements of the group would then become public information. This again would give the competitive edge to those companies who might be in a position to have copies of these financial statements made available to them for analyzing the competition in a way so as to minimize the competition. Many of these closely-held companies deal with several large companies which represent a majority of their revenues. Under the disclosure requirements of the AICPA, single or large customers which represent large percentages of revenues and therefore, net profits, must be disclosed in the financial statements. It is a simple matter therefore, for companies who would have these financial statements in their possession, to find the competitor's customers and to in effect cut the competition and place those companies out of business. I believe that this is a "real world" application, and that the Commissioner should consider the above in its final draft of its position for self-insurers'. Again, I refer you to the AICPA pamphlet on Compilation & Review.

In addition, I am sending to you the Statement on Standards for Accounting and Review Services. This is known as SARS #1, as published by the American Insitute of Certified Public Accountants in December, 1978. This statement is effective for all Compilations and Reviews of financial statements for periods ending on or after July 1, 1979. The statement is a pronouncement that all CPA'S must follow and gives definitive examples on review procedures and on compilation procedures. The accounting profession must follow this financial pronouncement or indicate in its accountants' report why it is not following the SARS #1 format.

The November 28, 1979 copy of the proposed temporary rules appear to neglect the small business man and put him at a disadvantage for the competitive market place that he operates in. The requirements for self-insurance that the Commissioner is proposing, will put undue costs on the corporations that could reduce their net losses or improve their net profits which would reflect in higher taxes to the State of Minnesota, and the costs that are being requested for these rules make the self-insurance a dream rather than a reality. Please review the above remarks in the light of the concept that a small business operates in a very tight and competitive market and where the information that is requested to become a self-insurer, thereby reducing its costs and increasing its net profit, gives the market place a higher competitive edge then would have been required otherwise, only provides for the detriment to that corporation or business. I do not believe that this was the intent of the Legislature of Minnesota when they passed the program this past year.

I am responding to the proposed temporary rules as a result of a review of the rules in light of our clients needs. A major portion of our practice is derived from the transportation industry and we have been with and are a member of the Minnesota Transport Services Association and I would like to incorporate by reference, Mr. Abe Rosenthal's letter of November 29, 1979 as a part of this letter as we believe that the proposed rules are unfair to the transportation industry.

Very truly yours,

Mork, Cumpston & Co.

DS Mork/dmh
Enclosure
xc: Governor Al Quie
Attorney General Warren Spannaus
Senator Steve Keeve (Senate Author File No.1)
Representative Wayne Simoneau (House Author File No.1)
Abe Rosenthal, Minnesota Transport Services Association

MINNESOTA TRANSPORT SERVICES ASSOCIATION

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Serving Minnesota's Local Cartage – Household Goods Moving – Short Haul Trucking and Related Industries...

ABE ROSENTHAL
Executive Vice President
General Manager

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December 26, 1979

Mr. Michael Markman, Commissioner
Division of Insurance
Department of Commerce
Fifth Floor, Metro Square Building
St. Paul, Minnesota 55101

Attention: Dale L. McDonnell
Berton W. Heaton

Subject: Proposed Temporary Rules Governing Self-Insurance for Worker's Compensation 4 S.R.953-961, Published December 10, 1979

Dear Commissioner Markman:

The writer has communicated numerous times to the Commissioner and his staff concerning the proposed temporary rules governing self-insurance for Worker's Compensation as contained in 4 S.R.953-961 and published December 10, 1979.

It is the purpose of this letter to document the objections of the writer on behalf of the employer members of Minnesota Transport Services Association (MTSA) and to create an adequate record for review.

WE OBJECT TO THESE RULES, NOT MERELY BECAUSE THEY WILL MAKE IT DIFFICULT TO ESTABLISH GROUP SELF-INSURED PLANS, BUT BECAUSE THEY WILL EFFECTIVELY PREVENT GROUP SELF-INSURED PLANS FROM BEING FORMED AND IN EFFECT, VETO THE EXPRESS ACT OF THE LEGISLATURE.

On October 10, 1979, the writer filed a petition for group self-insuring of worker's compensation on behalf of MTSA (a copy enclosed). To this date, the Commissioner has failed to act on that petition pursuant to law.

In a letter to the Commissioner dated October 29, 1979, the writer documented the MTSA complaints concerning the proposed temporary rules (a copy enclosed).

In a letter to the Commissioner dated November 29, 1979, the writer documented the MTSA complaints concerning the proposed temporary rules (a copy enclosed).

On December 10, 1979, notwithstanding the writer's complaints and protests, the Commissioner published proposed temporary rules governing self-insurance for

Worker's Compensation which contained substantially all of the features of the early proposed rules which are discrimatory between individual and group self-insurers, as well as, group self-insurers and insurance companies. The adoption of these rules creates an unequal application of the law in contravention to our state Constitution and rights of small employers.

In addition, the aforesaid rules establish unduly expensive and unnecessary requirements on group self-insurers which effectively preclude the formation of group self-insured programs for small businesses.

The following is a brief resume of the objections of MTSA:

1. The rules require audited financial statements reflecting the unqualified opinion of a CPA. This requirement alone creates a cost increase for participants of from three to four times the usual audit fee for a small business, which results in an actual dollar costs difference from $3,000 to at least $6,000 per year; a factor which by itself, eliminated the financial feasibility of self-insurance.

In the opinion of MTSA, the financial reporting requirement could be as well met by submission of a "review" by a CPA as described in the attached letter dated December 4, 1979 by Mork, Cumpston & Co., Certified Public Accountants.

2. Discrimination in operating costs between individual and group self-insurers is built into these rules in a manner to assure continued competitive advantage by pay-as-you-go loss programs authorized solely for individual self-insurers who are "big business". This approach does not require the up front premium payment, the establishment of reserves and surpluses and restricted investment rules for these reserves and surpluses by self-insured big businesses.

Small business under 4 MCAR§ 1.9293 is required to pay up front premiums based on the immediately preceding year's worker's compensation insurance premium, notwithstanding passage of S.F. 1 (Ex. Session Laws of 1979 Chapter 3) provisions for premium payments on the basis of division of payroll and excluding wages paid for vacations, holidays and sick leave, nor for improved experience modification which should reduce last year's premium liability.

3. The rules (4 MCAR § 1.9292 Para. I) impose initial three year participation requirements on small business groups, but not on big business. Penalties are imposed on small employers who find it necessary to withdraw early. This is also non-competitive with the insurance industry who permit or require one year policies for small businesses. A small business cannot withdraw, without penalty, even if the withdrawal is to quit business and retire, merge with another business or sell to a new owner.

The provisions of the rule applying penalty to early withdrawal after the first year is not necessary if the premium requirements are structured properly. It can only be a deterent to getting small business groups started, since the norm for many years implemented by the insurance industry for small business is a one year policy.

4. The rules (4 MCAR § 1.9292 Para. D) imposes the insurance industry rate manual, designed for profitability, not group self-insurance, to define the "same industry" clause of S.F.1. A totally unreasonable, and discriminatory and complicated approach to determining who is in the same group. The statute is clear enough and if further definition is necessary, the adoption of a "common interest" rule, such as Florida has, should be sufficient.

Big business, individual self-insurers may cover their affiliates into their plan without the cost, restrictions and burdens of this affinity rule, nor the payment of the premium, the reserving practices, the encumbering of surpluses, or separate administration of these segments of industry.

5. Group small business self-insurers under 4 MCAR § 1.9293 Paragraph A, are required to pay premiums based on the last preceding year's insurance premium irrespective of whether or not their exposure has been reduced due to the recession, loss of business or the employment of fewer workers.

A RULE THAT IS NOT APPLICABLE TO BIG BUSINESS NOR TO THE INSURANCE CARRIER. IT EFFECTIVELY INSULATES THE INSURANCE CARRIER FROM COMPETITION FROM GROUP SELF-INSURERS.

This rule does not even contemplate the savings permitted and authorized by passage of Chapter 3 Extra Session Laws of 1979 which included division of payroll between relevent classifications, eliminated premium payments on payroll for vacations, holidays and sick leave. It also negates the usual benefits of improved experience over the immediately preceeding year since it uses the words "cash premiums" and "premium", in reference to the payments into group self-insurer's fund.

All savings groups could obtain (21% to 28% of premium) by the employment of a service company to administer this plan is eliminated and these dollars are built into encumbered surpluses by another rule.

This rule builds in so many conflicts that it actually increases premium obligations which penalize the safe employer and defeats the primary if not the sole purpose of self-insuring.

6. 4 MCAR § 1.9293 Paragraph J prohibits disbursement of group self-insured fund surplus monies for a period of not less than 18 months following the close of the fund year. Furthermore, it prohibits the disbursement of more than 50% of the surplus monies in the excess of 125% of the amount necessary to meet all obligations under the law. This penalizes the safe employer, it breeds excessive surpluses and it encumbers the group with an absurd financial management responsibility not required of individual self-insurers or insurance carriers.

7. 4 MCAR § 1.9293 Paragraph K requires the employment of a casualty actuary after January 1, 1983 to determine loss reserves after the first dividend or surplus could have been dispersed, a rule not required of individual self-insurers.

8. 4 MCAR § 1.9292 Paragraph D imposes the extremely complicated, confusing, and

conflicting insurance industry manual concerning rates, experience plans and classifications which were designed for profitability of the insurance industry, upon group insurers to determine group affinity and premium obligations but not on individual self-insurers. This effectively prevents allied industries who are not corporately related from joining the self-insured group whose industry they are deeply involved, committed and a part of, while permitting conglomerates the privilege of insuring as an individual self-insurer irrespective of the insurance manual.

9. The rules (4 MCAR § 1.9292 Paragraph K) impose upon the Commissioner the responsibility of approving the admission of each new employer into a group insured plan and imposes a thirty day waiting period for approval. This rule supersedes the group board of directors who have already determined that the new member-employer is acceptable for membership. A rule not imposed upon the insurance industry, who basically regulate themselves as to who they accept and what class they put them into.

10. The rules (4 MCAR § 1.9294 Paragraph D) require use of licensed service companies who employ a claim adjuster who is licensed also as a claim adjuster but not of individual big business self-insurers.

An objective review by our experts clearly indicates that these rules will effectively assure that group self-insurance for small employers will remain merely a promise and not a fact. Therefore, on behalf of the officers and members of this Association, we protest the adoption of these rules on a temporary basis under the emergency powers of the Commissioner because they are arbitrary, unreasonable, discriminatory and exceed the explicit and implicit statutory authority of the Commissioner. They will prevent the establishment of small business group self-insured Worker's Compensation programs in Minnesota in derogation and contravention of the express direction of the state legislature in Minnesota Statutes Special Session Chapter 3 (S.F. No. 1).

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal
Executive Vice President

Enclosures

METCALF-MAYFLOWER

ALLEN METCALF MOVING & STORAGE CO., INC. / 1255 E. HIGHWAY #36 / ST. PAUL, MN 55109 / (612) 484-0211
777 N.E. HARDING STREET / MINNEAPOLIS, MINNESOTA 55413 / (612) 341-2300

TESTIMONY OF: Pamela Ramadei

COMPANY: Allen Metcalf Moving & Storage Co., Inc.

TITLE: Accounting Manager and Corporate Secretary

BEFORE: State Worker's Compensation Rate Hearings
St. Paul, Minnesota

DATE: March 31, 1980

I am Pamela Ramadei and am employed by Allen Metcalf Moving and Storage Company, Inc. as the Accounting Manager and Corporate Secretary. This company is a family owned business with its general offices at 1255 East Highway 36, St. Paul and a branch office in Rochester, Minnesota. We employ approximately 50 people consisting of about 15 drivers, 6 sales personnel, 20 administrative, operational and maintenance personnel. We operate approximately 30 trucks.

My purpose for being here today to present my testimony is twofold. One, I feel it is my responsibility as a citizen to participate in the rate making process established under the law particularly in an instance where I feel correction is in order and two, to present my companies circumstances in relation to Workmen's Compensation.

I would like to describe the circumstances around our two branch locations; one being in St. Paul where we have a contract with the Teamsters Union thereby the amount of vacation, holiday pay, and wages are determined by the union contract and our Rochester branch where we are not under contract and we simply pay our employees a fair wage for the job they are performing, as well as normal vacation and holiday benefits. In January of 1977, I, as well as many other companies presented a testimony to this same hearing process and at that time one of the things we were looking for was a change in the Workmen's Compensation

ruling that premium not be paid on wages paid as vacation, holiday and sick leave when there is no occupational exposure at all. Last June 8, 1979, legislation was passed allowing us to exclude vacation, holiday pay and sick leave from those wages on which Workmen's Compensation premium was to be paid. This as well as division of payroll was allowed by this law. When I heard the law was enacted, I immediately contacted the Minnesota Compensation Rating Bureau in order to have an inspector come to our company to best facilitate division of payroll. Our request for division of payroll was denied. I then contacted the Minnesota Rating Bureau to find out why this was denied and to submit a protest. We were granted a meeting with several gentlemen at the Bureau and upon discussing our situation and the recent legislation, we were told that no one really knew what the June 8, 1979 law had actually allowed for. My company's position is still that the law does state that vacation, holiday pay and sick leave be excluded from wages on which premium was paid and that division of payroll be allowed. As I understand it, the reason that this has not happened is simply that the Rating Bureau claims they do not have the proper manual in order to facilitate this. I am requesting my insurer take care of this and if not done in a timely manner, to file a complaint with the Insurance Commissioner and ask assistance of him. The proposed rule pending before this hearing to establish a manual rule to permit a 10% reduction of wages to allow for such items as vacation, holiday and sick pay is improper because it permits indiscriminate application regardless of whether

the employer actually pays these benefits at all or has a liberal vacation, holiday and sick pay policy. In our Rochester location you can easily see that the only non-discriminating way in which to adjust for vacation pay is to leave the law as it is stated in order to avoid unionized companies from subsidizing non-union companies... in many instances, subsidizing our competition. Normally one would not even raise the question, however, in fairness I believe it is necessary to present the facts; one being that the percentage of our total payroll paid for vacation, holiday and sick pay is approximately 5.8% of total payroll. I ask that the proposed rule be stricken so that the actual wages for vacation, holiday, and sick leave will be the only wages deducted prior to the establishment of premiums for our firm as well as others.

I have attached an exhibit to my testimony showing detail on premiums, claims and rates of pay for our company over the past six years. My reason for showing this exhibit is to acquaint you with the circumstances surrounding Workmen's Compensation with our company and I must state that as I look at the situation of Workmen's Compensation, it seems to me that since the premium for Workmen's Compensation is based on payroll dollars there is a built in factor of increase for premiums. As costs in our society increase, so do salaries. Thereby I cannot reconcile in my mind why Workmen's Compensation rates need to tripple in six years when on top of that the rate of pay in our company has increased by 45%.

In conclusion I would like to ask you who are in the position to decide the outcome of these hearings to very carefully consider the consequenses to smaller businesses as many of us are experiencing difficulty in continuing to operate a moving and storage business and show any percent of profit at all.

Thank you for your consideration of my company's position and for the opportunity to present this testimony.

Allen Metcalf Moving & Storage Co., Inc.
Worker's Compensation Six Year Summary

Year	Code #8293 Rate	Experience Modification	Net Premium Paid	Number of Claims	Dollar Amount of Claims	Number of Employees involved in Claim	Claim Loss Ratio	Seniority Pay
1974	$6.73	100%	11,925.00	11	586.00	11	4.9%	$6.39
1975	$7.98	72%	18,904.00	7	123.00	7	0.6%	$6.80
1976	$10.18	81%	22,477.00	10	38,944.63	10	173.2%	$7.40
1977	$9.52	82%	39,193.00	8	2,123.00	8	5.4%	$8.00
1978	$12.30	88%	33,534.00	2	2,247.00	2	6.7%	$8.60
1979	$13.39	88%	48,144.00	2	5,589.08	2	11.5%	$9.25
Six Year Totals		--	74,177.00	40	49,612.71	40	--	45% Increase over 6 years
Six Year Averages		85%	29,029.50	7	8,268.79	7	28.4%	

Bloomington Cartage & Delivery

P. O. BOX 20209 • BLOOMINGTON, MINN. 55420 • TELEPHONE: 452-1660

MY NAME IS ART MULVIHILL. I AM THE OWNER OF BLOOMINGTON CARTAGE. MY OFFICE AND SHOP ADDRESS IS 8100 PILLSBURY AVE. SOUTH, BLOOMINGTON, MINNESOTA. WE EMPLOY FOUr DRIVERS/MECHANICS IN OUR OPERATION. WE ARE A LOCAL CARTAGE CARRIER AND HOLD OURSELVES OUT TO PROVIDE DELIVERY SERVICES TO THE SHIPPING PUBLIC. OVERALL, COUNTING MY WIFE AND MYSELF, WE DO OFFICE WORK, REPAIR OUR TRUCKS AND DELIVER FREIGHT. WE HAVE LCC PERMIT AS REQUIRED BY LAW AND ARE REGULATED BY ThE MINNESOTA PUBLIC SERVICE COMMISSION. WE ARE COMPETING WITH LOCAL TRUCKING FIRMS THAT PAY LESS HOURLY WaGES AND FRINGE BENIFITS AND AS A RESULT WE ARE CONTINUOuSLY LOSING CUSTOMERS TO NON-UNION FIRMS. SUCH AS THE FollowING:

ROYAL STAR	FRANKS TRANSFER	BEST WAY
FREIGHT MASTERS	CONSOLIDATED	INDUSTRIAL EXPRESS
ACTION MESSENGER	AL JOHNSON TRKING	BOB MARTIN TRK
KELLY TRANSFER	CROWN CARTAGE	MATTS
SUBURBAN TRANSFER	NORTHERN MESSENGER	DoC'S TRANSFER
A B C TRANSFER	VANT	

JUST TO NAME A FEW.

I AM PAYING OVER $1.00 PER HOUR FOR WORKeRS COMP. I BELIEVE THE RATE LEVEL INCREASE ANd ADJUSTMENTS THAT WILL COME OUT OF THIS HEARING WILL BE UNJUST TO us BECAUSE YOUR RULES REQUIRE THAT WE PAY MORE PER HOUR OF EXPOSURE AT WORK THAN OUR COMPETITORS. YET IN THE EVENT OF INJURY, THE INJURED - BOTH UNiON AND NON-UNION WILL RECEIVE THE SAME MEDICAL AND WEEKLY INDEMITY BENEFITs. OUR WEEKLY LABOR WAGe BASE RATE IS $426.80 aND IT WILL INCREASE 8% ON APRIL 1st, MAKING THE BASE PAY $460.95. I FEEL THEREFORE OUR PREMIUM PAYMENTS ARE SUBSIDIZING OUR LOW PAYING EMPLOYER COMPETITION. I PROTEST AND OBJECT TO THE INsURANCE COMPANIES CLAIMING AND COLLECTING TOO LARGE A SHARE OF THE PREMIUM DOLLAR FOR THEIR

OPERATING ADMINISTRATIVE EXPENSES. SELF INSURED EMPLOYER GROUPS IN FLORIDA CAN OPERATE BETWEEN 20 AND 25% AND THEY DO SO BY HIRING SERVICE COMPANIES (MANY OF WHoM ARE AFFILATES OF INSuRANCE COMPANIES SUCH AS LYNn INC).

RECENTLY, I WAS IN THE STATE OF NEVADA AND HAD THE PLEASURE OF LISTENING TO A NEVADA STaTE INDUSTRIAL COMMISSION COMMISSIONER. THEY HAVE A STATE WORKERS COMP. INSURAnCE FUND, THEIR TRUCK DRIVERS IN NEVADA DO THE SAME CLASSIPIED WORk AS MY EMPLOYEES ARE AND THEIR WORKMAN COMP RATES ARE BETwEEN $6 AND $7 PER $100.00, WHILE I AM REQUIRED TO PAY $11.50 per $100.00 AND THEY ARe REQUESTInG A 40% RATE INCREASE FOR OUR CLASS. WE DO NOT HAVE A SAFETY PROGRAMS OR SAFETY ENGINEERING SERVICES PROVIDED AND ADMINISTRED BY OUR INSURANCE COMPANIES EVEN THOUGH THEY CLAIM IT IS PROVIDED AND THey INCLUDE IT IN OUR WORKERS COMP. PREMIUMS. THe INSURANCE COMPANIES WE KNOW SPEND LARGE AMOUNTS ON LOBBYING, ADVERTISING AND USE VERY EXPENsIVE LAW FIRMS. IN ADDITION TO THE COMPETITION THAT WE HAVE FrOM THE NON-UNION COMPANIES WHO PAY LESS WAGES, WE ALSO OBJECT TO THE DISCRIMINATIoN IN RATES ADMINISTEred by tHE INSURANCE COMMPANIES THRU tHE VARIOUS PLANS WHICH GIVE RATE REDUCTION AND DISCOUNTS TO CREATE LOWER RATES FOR BIGGeR FIRM WHO ARE ALSO OUR COMPETITION AND THAT DISCRIMINATION IS BASED ON SiZE OF PAYROLL. SUCH AS HYMAN, FREIGHWAYS, UNITEd VAN BUS, WINTZ TRANSPORTATION CO., DART TRANSFER AND ETC., ADmIRAL MERCHANTS AND OTHER LARGE FIRMS CAN SAVE LARGE SUMS BY SELF INSURING. I OBJECT TO THIS RATE INCREASe BECAUSE I DON'T BELIEVE THERE IS ADEQUATE REASON FOR A RATE INCREASE. IT IS STRICKLY GOUGING OUR SEGMENT OF THE TRUCKINg INDUSTRY, THE SMALL TRUCKER.

I WANT TO PROTEST THE RESTRICTIONs PLACED ON THE TESTIMONY OF ROBERT LOWE,

Bloomington Cartage & Delivery

P. O. BOX 20209 • BLOOMINGTON, MINN. 55420 • TELEPHONE: 452-1660

IMPOSED DURING THE RATE HEARINGS. HE WASN'T GIVEN ALL THE DATA HE NEEDED AND DIDN'T HAVE ENOUGH TIME TO GET THE STUDY HE WAS DOING DONE. THE HEARInG SHOULD HAVE BEEN RECESSED TO GIVE HIM MORE TIME TO GET IT DONE. I PROTEST THIS WHOLE RATE HEARING ON RATES FOR WHICH NO PROPER FOUNDATION FOR THE DATA HAS BEEN PRESENTED. THE WHOLE HEARING BECOMES A FaRCE TO THE PEOPLE OF MINNESOTA. I REQUEst thaT THE INSURANCE COMMISSIONER REFUSE ANY INCREASES UNTIL ALL MINNESOTA DaTA IS PROVIDED FOR LOSSE, RESERVES, INVESTMENTS AND EXPENSES AND THEN THe INSURANCE INDUSTRY SHOULD HAVE A NEW HEARING ON THE PROVEN FACTS AND DATA.

I OBJECT TO THE PROPOSED RULE ON VACATIONS, HOLIDAYS, AND SICK LEAVE AS BEING FURTHER DISCRIMINATION AND VIOLATION OF THE NEW LAW. IT COMPOUNDS THE WRONGS DONE US FOR YEARS By GIVING ALL EMPLOYERS 10% off, REGARDLESS IF THEY ACTUALLY PAY 10% FOR VACATIONS, HOLIDAYS AND SICK LEAVE. I ACTUALLY PAY 9.8% AND I CAN PROVE IT. NO ONE SHOULD DEDUCT ANYTHING UNLESS IT IS ACCURATE, OTHERWISE, YOU ARE SHIFTING THE BURDEN TO THOSE OF US WHO PAY THESE BENEFITS, REQUIRING US TO SUBSIDIZE OUR LOW PAYiNG COMPETITION EVEN FURTHER. I OBJECT TO THIS PROPOSeD RULE.

Company Name

W. C. CODE 7219 — Truckmen not otherwise classified - (freight truckers)

	1974	1975	1976	1977	1978	1979
1. YEAR						
2. NUMBER OF EMPLOYEES:		2	2	3	4	4
3. AVERAGE WEEKLY WAGE:		284 40	310 40	340 00	375 20	407 20
4. PAYROLL AMOUNT:		30,444	38,728	52,415	60,367	52,000
5. PREMIUM PAID:		23,38	3,101	3,768	4,231	5,204
6. CLAIMS:		none	378 00	108 00	none	42 00
7. NO. OF EMPLOYEES:		none	one	one	none	one
8. DOLLAR AMT. OF CLAIMS:		none	378 00	108 00	none	42 00
9. LOSS RATIO (5+6=loss ratio)		0	12	3	0	1

TESTIMONY

OF

LARRY DELONG

BEFORE

THE STATE WORKERS COMPENSATION RATE HEARINGS

MARCH 31, 1980

ST. PAUL, MINNESOTA

MY NAME IS LARRY DELONG, I AM VICE PRESIDENT AND CONTROLLER OF BELTMANN NORTH AMERICAN COMPANY, 3400 SPRING STREET NORTHEAST, MINNEAPOLIS, MINNESOTA, 55413. OUR COMPANY PROVIDES MOVING AND STORAGE SERVICE TO THE PUBLIC. WE HANDLE HOUSEHOLD GOODS MOVES, TRANSPORTATION OF NEW PRODUCTS, AND COMPUTER HARDWARE, OFFICE RELOCATIONS AND RELATED SERVICES IN MINNESOTA, IOWA, ILLINOIS, AND WISCONSIN. IN MINNESOTA, WE EMPLOY AN AVERAGE OF FIFTEEN DRIVERS, TWENTY HELPERS AND PACKERS, FOUR WAREHOUSEMEN, TEN SALES PEOPLE, EIGHTEEN OFFICE PEOPLE, AND SEVERAL INDEPENDENT CONTRACTORS (OWNER/OPERATORS). WE OPERATE THIRTY-TWO TRUCKS AND TRACTORS PLUS TWENTY-EIGHT TRAILERS.

OUR TRANSPORTATION RATES AND CHARGES ARE REGULATED BY THE MINNESOTA PUBLIC SERVICE COMMISSION (P.S.C.) AND THE INTERSTATE COMMERCE COMMISSION (I.C.C.). BEFORE WE CAN GET A RATE ADJUSTMENT, THEY REQUIRE US TO PRODUCE ACTUAL EXPERIENCE AND EVIDENCE FOR ANY INCREASES IN RATES OR CHARGES. THEIR RULES ARE STRICTLY CONSTRUED TO PREVENT MISLEADING DATA AND CONCLUSIONS. THEY DO NOT PERMIT THE INCLUSION OF OWNER OR EXECUTIVE SALARIES AS A COST FACTOR. WE BELIEVE THAT THE INSURANCE COMPANIES SHOULD NOT BE ALLOWED TO DO THIS.

OUR FIRM MUST COMPETE WITH FIRMS THAT PAY LOW WAGES AND LITTLE, IF ANY, FRINGE BENEFITS; SUCH AS VACATIONS, HOLIDAYS, AND SICK LEAVE. AS A RESULT WE HAVE LOST BUSINESS TO NON-UNION COMPANIES IN THE TWIN CITIES, SUCH AS, JIM'S TRANSFER, CEDAR VAN LINES, COPELAND CARTAGE, ETC. THIS IS BECAUSE OF THEIR LOWER LABOR COSTS. LOWER WAGES TRANSLATE INTO LOWER INSURANCE PREMIUMS SINCE PREMIUMS ARE BASED ON TOTAL RENUMERATION (WAGE DOLLARS). FRINGE BENEFITS OF VACATIONS, HOLIDAYS AND SICK LEAVE REPRESENT ABOUT 11 % OF OUR LABOR COSTS.

THE PROPOSED RULE PROVIDING A FLAT 10% ALLOWANCE WITH NO VERIFICATION FOR PAYMENT OF ACTUAL WAGES PAID FOR VACATIONS, HOLIDAYS, AND SICK LEAVE TIME IS EXTREMELY DISCRIMINATORY AND DESTRUCTIVE OF UNION FIRMS. IT GIVES OUR NON-UNION COMPETITION EQUAL BENEFIT OF THE NEW LAW AND THE RATE REQUEST OF 11.1% THEN IMPOSES A PENALTY ON US. THIS RULE GIVES AN UNFAIR ADVANTAGE TO LOW PAYING COMPANIES IN FURTHER REDUCING THEIR WORKERS COMPENSATION INSURANCE PREMIUMS, WHILE WE END UP SUBSIDIZING THEM THROUGH HIGHER PREMIUMS. WE WANT THE RULE THAT WENT INTO EFFECT JUNE 8, 1979 TO ACTUALLY REQUIRE PROOF OF ACTUAL PAYMENT AND BE RECOGNIZED AS EFFECTIVE ON THAT DATE. WE OPPOSE THE 10% RULE AND IT SHOULD BE DELETED. NO FLAT RATE SHOULD BE ALLOWED FOR VACATIONS, HOLIDAYS AND SICK LEAVE.

THE RATE ADJUSTMENT, IN FACT, ALL WORKER COMPENSATION INSURANCE RATES, SHOULD BE LIMITED TO THE PORTION OF PAYROLL PER PERSON BASED ON THE BENEFIT EXPOSURE CORRELATION. SUCH AS, $336/WEEK IS THE CUT OFF FOR INDEMNITY BENEFITS. WE PAY A HIGHER WEEKLY AND ANNUAL WAGE TO OUR EMPLOYEES. YET, IN THE EVENT OF INJURY, BOTH OUR EMPLOYEES AND OUR COMPETITORS WILL RECEIVE THE SAME

40x52x4.55=$9,464

BENEFITS - BOTH MEDICAL AND WEEKLY INDEMNITY. THESE WORKERS ARE PERFORMING EXACTLY THE SAME WORK IN THE SAME MARKET AND HAVE THE SAME EXPOSURE. YET, THE INSURANCE DIVISION AND COMMISSIONER REQUIRES US TO PAY MORE PREMIUM DOLLARS, AN AVERAGE OF $ 4.55 PER PERSON /WEEK. WE ARE FORCED TO SUBSIDIZE OUR COMPETITION. WE ARE IN EFFECT PAYING THEM TO TAKE OUR BUSINESS AWAY FROM US!

DIVISION OF PAYROLL LEGISLATION PROVIDED FOR US TO BREAKOUT OUR PAYROLL INTO SEVERAL CLASSES SINCE JUNE 8, 1979. HOWEVER, WHEN WE ATTEMPTED TO OBTAIN DIVISION OF PAYROLLS THE INSURANCE COMPANIES REFUSED TO HONOR OUR REQUEST UNLESS THE CHANGE DIVISION WAS PUT IN THEIR MANUAL AND APPROVED BY THE WORKERS COMPENSATION INSURERS RATING ASSOCIATION. SUBSEQUENTLY THE RATING ASSOCIATION ALSO REFUSED TO HONOR OUR REQUEST AND GAVE NO REASON OR BASIS FOR THEIR REFUSAL.

WE PROTEST THE RATING ASSOCIATION REQUEST FOR INCLUSION OF EXPLOSIVES CLASS IN THE TRUCKMEN, N.O.C. CLASS 7219. THERE IS NO EVIDENCE THAT IT IS NECESSARY OR JUSTIFIED.

WE OBJECT TO THE REQUEST TO INCREASE ADMINISTRATIVE EXPENSE AND UNDERWRITING PROFIT FROM 30.85 to 37.8%. THERE IS CLEAR CUT EVIDENCE THAT STATE EXCLUSIVE AND COMPETITIVE FUNDS OPERATE EFFICIENTLY AT SIGNIFICANTLY LESS THAN THIS RATE - AT LEAST 1/3 OF THIS RATE. COMPETITIVE STATE FUNDS ARE DELIVERING GOOD WORKERS COMPENSATION SERVICE WITH BENEFITS CONSISTENT WITH STATE LAW. THE SELF INSURED GROUPS IN FLORIDA AVERAGE ADMINISTRATIVE EXPENSE OF 22%, ACCORDING TO A RECENT STATE REPORT.

WE BELIEVE CURRENT RATE PRACTICES ARE CONDUCIVE TO WASTEFUL, EXTRAVAGANT PRACTICES BY THE INSURANCE COMPANIES SINCE THEY ACTUALLY BENEFIT FROM THEM BY GETTING INCREASED G & A PROFIT AND ADMINISTRATIVE DOLLARS. THEY MAY ENGAGE EXPENSIVE LAW FIRMS, LOBBYISTS, ADVERTISE, BUILD NEW BUILDINGS AND OBTAIN HIGH SALARIED EXECUTIVES WITHOUT ANY REGULATORY CONTROL OR FEAR OF REDUCED PROFITS. EVEN THOUGH THEY CLAIM SAFETY SERVICES, THEY MAY ELIMINATE SAFETY REVIEWS AND ENGINEERING, REDUCE SERVICES, AND PAY ANY CLAIM PRESENTED WITHOUT VERIFICATION WITH IMPUNITY. DURING THE LAST FEW YEARS, NO INSURANCE COMPANY SAFETY ENGINEER HAS EVER INSPECTED OR REVIEWED OUR WORKING CONDITIONS, FACILITIES, PRACTICES OR PRESENTED ANY RECOMMENDATIONS TO REDUCE CLAIM EXPERIENCE.

RATE FOR OUR OPERATIONS IN MINNESOTA IS $13.39/$100, IN WISCONSIN $5.06/$100, IOWA $6.27/$100, AND ILLINOIS IS $7.40/$100 OF PAYROLL. THE MINNESOTA RATE IS ALREADY MORE THAN DOUBLE THE AVERAGE OF THESE OTHER THREE. IF THE REQUESTED 40% INCREASE IN CLASS 8293 IS ALLOWED, THE MINNESOTA RATE WILL BE TRIPLE THE AVERAGE OF WISCONSIN, IOWA, AND ILLINOIS. OUR PRESENT HOURLY RATE IS $9.53. THE PRESENT W/C RATE OF $13.39 DEVELOPS A COST OF $1.28 PER HOUR. THE REQUESTED INCREASE OF 40% INCREASES THAT PREMIUM TO $1.80 PER HOUR! THAT'S AN OUTRAGEOUS FIGURE. I AM ENCLOSING A FEW EXHIBITS WHICH CONFIRM THAT WE ARE ALREADY OVERPAYING IN MINNESOTA.

WE OBJECT TO THE FAILURE OF THE INSURERS TO INCLUDE MINNESOTA PROFITS FROM INVESTMENTS OF RESERVES DOLLARS (OUR MONEY) AND DEMAND THAT THIS BE FULLY CONSIDERED IN THE RATE MAKING PROCESS, AND ESPECIALLY IN LIGHT OF TODAY'S INVESTMENT MARKET! WE ARE CHARGED THE TOTAL ESTIMATED COST OF A CLAIM WHEN

IT IS INCURRED, YET THE INSURANCE COMPANY MAY PAY ALL OR A PART OF THE MONEY OUT OVER A PERIOD OF MANY YEARS, MANY TIMES UP TO 30 OR 40 YEARS. IN THE MEANTIME, THEY KEEP THE INVESTMENT EARNINGS, WHILE ALLEGING LOSSES BASED ON THE CONCEPT OF INCURRED LOSSES, INCLUDING THE HYPOTHETICAL "INCURRED BUT NOT REPORTED" (IBNR) CONCEPT.

WE ALSO PROTEST THIS RATE HEARING AS BEING IMPROPER SINCE IT IS BASED ON DATA FOR WHICH NO FOUNDATION OR EVIDENCE HAS EVER BEEN PRESENTED AUTHENTICATING ACCURACY OR COMPLETENESS. THE INSURERS HAVE NOT COMPLIED WITH THE MINIMUM FILING REQUIREMENTS WHICH INCLUDE MINNESOTA INVESTMENT INCOME AND IBNR RESERVES. THAT MAKES THE WHOLE HEARING A CHARADE AND AN AFFRONT TO THE HEARING PROCESS, THE EMPLOYERS AND TAX PAYERS OF MINNESOTA. THESE COSTS INCLUDING THE WC RATES ARE ULTIMATELY PASSED ON TO THE CONSUMER WHEN HE PAYS FOR THE GOODS AND SERVICES.

WE RESPECTFULLY REQUEST THAT THE INSURANCE COMMISSIONER REFUSE THIS RATE INCREASE REQUEST BASED ON THE ABOVE, AND ORDER THE INSURANCE INDUSTRY TO GET THE TRUE FACTS AND DATA AND REFILE ITS APPLICATION IN ORDER TO PROVIDE COMPLETE DISCLOSURE AS REQUIRED BY LAW (WITH ADEQUATE FOUNDATION FOR ALL DATA). IT IS ONLY THEN THAT THE COMMISSIONER MAY TAKE ACTION ON THEIR REQUEST, THAT IS AFTER ALL PARTIES HAVE HAD OPPORTUNITY TO BE HEARD ON THE NEW DATA IN A NEW HEARING PROPERLY CALLED FOR THE NEW FILING ON THIS RATE REQUEST.

THANK YOU.

Company Name

W. C. CODE 8293 — Warehousemen - (usually household goods truckmen)

	1974	1975	1976	1977	1978	1979
1. YEAR						
2. NUMBER OF EMPLOYEES:		27	32	36	37	40
3. AVERAGE WEEKLY WAGE:		272.00	296.00	312.00	344.00	370.00
4. PAYROLL AMOUNT:		483,912.	576,575.	669,014.	808,458	955,084.
5. PREMIUM PAID:		7,680.00	24,143.00	15,761.00	*34,843.	*48,597.
6. CLAIMS:		6	7	9	12	11
7. NO. OF EMPLOYEES:		6	7	9	12	7
8. DOLLAR AMT. OF CLAIMS:		*98,214.	*27,336.	*2,062.	*6,355.	*12,206.
9. LOSS RATIO (5÷6=loss ratio)		1278	113	13	18	25

* 62,541 was set up as reserve and not paid out during 1975. *34,609 was actually paid out over a three year period. NOTE: All of these charges are on one claim.

HOUSEHOLD GOODS MOVING INCREASE IN BASE LABOR and W.C. INSURANCE RATES PAID

YEAR	HOURLY BASE LABOR RATE	HOURLY DOLLAR INCREASE	YEAR PERCENT INCREASE	ACCUMULATED PERCENTAGE INCREASE
1970	$4.39			
1971	4.90	$ .51	11.62 %	11.62 %
1972	5.55	.65	13.27	26.42
1973	5.98	.43	7.75	36.21
1974	6.39	.41	6.86	45.56
1975	6.80	.41	6.42	54.90
1976	7.40	.60	8.82	68.56
1977	8.00	.60	8.11	82.23
1978	8.60	.60	7.50	95.90
1979	9.25	.65	7.56	110.71
1980 *	10.15	.90	9.73	131.21
	Total Increase (10 Years)	$ 5.76		

WORKERS COMPENSATION INCREASES IN CLASS 8293

YEAR	CLASS 8293 RATE	DOLLAR RATE INCREASE	YEAR PERCENT INCREASE	ACCUMULATIVE PERCENT INCREASE W. C.	*** ACCUMULATIVE COMBINATION PERCENT INCREASE
1970	$ 4.32				
1971	4.92	$ .60	13.89 %	13.89 %	27.12 %
1972	5.16	.24	4.88	19.44	50.99
1973	6.73	1.57	30.43	55.78	112.19
1974	7.98	1.25	18.57	84.72	168.88
1975	10.18	2.20	27.57	135.65	265.00
1976	9.52	-.66	-6.48	120.37	271.46
1977	12.64	3.12	32.77	192.59	433.19
1978	13.39	.75	5.93	209.95	507.19
1979	13.39	.00	.00	209.95	553.08
1980 **	18.73	5.34	39.88	333.56	902.42

Total Increase (10 Years) $14.41

* Effective May 1, 1980.

** Proposed rate increase.

*** Percent increase of the combined base labor increase plus the increase in workers compensation insurance since 1970.

DATA SHEET

NUMBER OF EMPLOYEES EACH YEAR 1975	1976	1977	ALL CATEGORIES OF WORKERS - JOB TITLES		W.C. CODE	PAYROLL YEARS 1975	1976	1977	PREMIUM PAID 1975	1976	1977	CLAIMS 1975	1976	1977	NUMBER OF EMPLOYEES 1975	1976	1977	DOLLAR AMOUNT
Example: 38	30	26	Truckmen	NOC	7219	$200,000	$470,000	$510,000	$2000	$2820	$3500	—	—	—	—	—	—	$ —
2	2	2	WAREHOUSE		8293	175,315	218,896	233,956	2764	8563	5359	—	—	—	—	—	—	—
8	10	11	SALES		8742	215,279	196,249	227,067	3379	7869	5201	—	—	—	—	—	—	—
7	8	9	OFFICE		8810	93,318	161,430	195,898	1537	6711	4571	—	—	—	—	—	—	—
10	12	14	TRUCKMEN		7219	—	—	12,093.	—	—	630	6	7	9	6	7	9	35,177

DIVIDENDS RECEIVED

For 1975 $_____

1976 $_____

1977 $_____

NET PREMIUM

For 1975 $ 7,680

1976 $ 23,143

1977 $ 15,761.

REMARKS

Date JANUARY 21, 1980

Name of firm BELTMANN NORTH Ame

Prepared by _____

Telephone 612/331-9070

WORKERS' COMPENSATION EXPERIENCE EXHIBIT

CALENDAR YEAR DATA

TOTALS - ALL COMPANIES

Calendar Year	Direct Premium Written $	PREMIUM EARNED Standard Basis $	PREMIUM EARNED Net Basis $	Losses Paid Indemnity $	Losses Paid Medical $	Losses Outstanding Indemnity $	Losses Outstanding Medical $
1969	71,206,423	76,493,163	69,706,029	20,694,904	13,845,214	5,399,316	2,737,157
1970	78,924,003	85,603,088	77,145,653	23,633,087	15,447,128	6,425,573	2,303,850
1971	87,005,423	93,472,994	83,805,848	25,517,955	16,375,284	8,510,970	4,280,364
1972	104,536,641	109,632,546	99,749,269	29,997,027	18,109,936	14,848,611	4,944,694
1973	116,075,920	125,505,678	110,868,665	32,368,963	19,826,683	15,618,878	4,942,020
1974	144,671,097	151,986,398	138,091,624	40,105,598	23,149,480	15,724,516	5,063,461
1975	168,294,163	178,781,635	162,615,905	46,365,055	26,053,015	21,210,761	6,437,353
1976	213,422,305	217,834,816	204,063,697	60,056,739	30,734,427	49,106,907	12,542,921
1977	266,578,167	275,030,911	254,395,320	77,137,786	36,771,146	79,283,639	22,427,383
1978	378,348,999	384,019,419	352,255,183	102,476,652	43,845,105	141,089,081	34,049,680

Calendar Year	LOSSES INCURRED Indemnity	LOSSES INCURRED Medical	LOSSES INCURRED Total Losses	LOSS RATIO Standard Basis	LOSS RATIO Net Basis	Dividend Paid
1969	26,094,220	16,582,371	42,676,591	55.79%	61.23	NA
1970	30,059,460	17,750,978	47,810,438	55.85%	61.98	NA
1971	34,028,925	20,655,648	54,684,573	58.50%	65.25	6,642,855
1972	44,845,630	23,054,630	67,900,260	61.93%	68.07	8,151,048
1973	48,450,787	24,305,757	72,756,544	57.97%	65.63	10,049,540
1974	55,830,114	28,212,941	84,043,055	55.296%	60.86	12,159,910
1975	67,575,816	32,490,368	100,066,184	55.971%	61.54	13,110,762
1976	109,163,646	43,277,348	152,440,994	69.980%	74.71	14,587,983
1977	156,371,425	59,198,529	215,569,954	78.38%	84.74	16,003,986
1978	243,565,733	77,894,785	321,460,518	83.709	91.257	15,926,001

Source: Minnesota Insurance Division

TESTIMONY

OF

DUANE D TAYLOR

BEFORE

THE STATE WORKERS COMPENSATIION RATE HEARINGS

MARCH 31, 1980

ST PAUL MINNESOTA

MY NAME IS DUANE D TAYLOR . I AM THE OWNER AND PRESIDENT OF BARRY CARTAGE CO., WITH OUR TERMINAL AND OFFICES IN ST PAUL. WE OPERATE UNDER OPERATING AUTHORITY ISSUED AS A LOCAL CARTAGE CARRIER AND CONTRACT CARRIER IN BOTH INTRASTATE AND INTERSTATE TRANSPORTATION OF PROPERTY.

WE CURRENTLY EMPLOY THIRTY TRUCK DRIVERS, THIRTEEN DOCKMAN, FOUR MECHANICS AND TWELVE MANAGERIAL AND OFFICE EMPLOYEES. WE HAVE BEEN IN THE TRUCKING BUSINESS SINCE 1958.

IN OUR GARAGE WE PROVIDE MAINTENANCE AND REPAIRS SERVICES FOR OUR OWN FLEET AND FIVE OTHER TRUCKING COMPANIES. WE ARE IN DIRECT COMPETITION WITH HUNDREDS OF TRUCKING COMPANIES, INCLUDING SEVERAL LOCATED DOWN THE STREET. OUR OPERATING AUTHORITY REQUIRES US TO COMPLY WITH INTERSTATE COMMERCE COMMISSION AND THE PUBLIC SERVICE COMMISSION RATE REGULATIONS, INCLUDING RULES GOVERNING ANY RATE INCREASES. WE ARE FAMILIAR WITH THE SCRUTINY THAT IS REQUIRED TO PROTECT THE PUBLIC FROM BEING GOUGED OR RIPPED OFF.

WE COMPETE WITH NUMEROUS NON-UNION FIRMS THAT PAY SIGNIFICANTLY LOWER HOURLY RATES OF PAY FOR WAGES AND FRINGE BENEFITS. FOR EACH EMPLOYEE ENGAGED IN TRUCKDRIVING AND WAREHOUSE WORK WE PAY 232 HOURS FOR VACATION, HOLIDAYS, AND SICK LEAVE ANNUALLY THAT REPRESENTS 11.2% OF TOTAL WAGES. HOWEVER, OUR NON-UNION LOW WAGE COMPETITORS PAY UP TO THE SAME HOURLY RATES, BUT DON'T PAY THE SAME AMOUNT FOR VACATIONS, HOLIDAYS, AND SICK LEAVE. IN ADDITION WE ALSO PAY FOR FUNERAL LEAVE

AND JURY DUTY WHICH OUR NON-UNION COMPETETIONS DOESN;T PAY. I SPEAK OF COMPETITION SUCH AS: BESTWAY TRANSFER, ACTION MESSENGER, CROWN CRATAGE, ROYAL STAR DELIVER, CONSOLIDATED CARTAGE, DELORIES TRANSFER, FRANK'S TRANSFER, MERCURY DISPATCH, VAN TRANSFER, JIM'S TRANSFER, AREA TRANSFER, MAT'S INC., LOVELETT TRANSFER, KELLY TRANSFER, AL JOHNSON TRANSFER AND NORTHERN MESSENGER, PLUS MANY MANY MORE THAT DON'T PAY THIS AMOUNT OF FRINGE BENEFITS. THEREFORE I FEEL THE RULES OF THE MANUAL AND THE INSURERES DISCRIMINATE AGAINST OUR UNION FIRM THE 1979 LEGISLATORS PASSED A LAW EFFECTIVE JUNE 8TH 1979 TO REQUIRE THE INSURANCE COMPANIES TO EXCLUDE ALL VACATIONS SICK LEAVE, AND ALL HOLIDAY PAY FROM THEIR RATES. AS OF THIS DATE WE HAVE NOT RECEIVED ANY ACKNOWLEDGEMENT FROM THE INSURERS THAT THEY ARE RECOGNIZING A NEW LAW.

I ASK THIS COMMISSION TO ORDER COMPLIANCE WITH THIS LAW EFFECTIVE JUNE 8TH 1979, BY ALL INSURERS. WE FEEL THAT THE RATE ADJUSTMENT THAT COMES OUT OF THIS HEARING WILL BE UNFAIR TO OUR FIRM BECAUSE WE PAY MORE PER HOUR, PER WEEK, AND ANNUALLY TO OUR EMPLOYEES THAN OUR LOW PAYING NON-UNION COMPETETORS. BOTH OUR EMPLOYEES WILL RECEIVE THE SAME BENFITS IN THE EVENT OF INJURY, YET OUR COMPETETIORS WILL PAY A WEEKLY AVERAGE WAGE OF $333.00 AND WE PAY A WEEKLY WAGE OF $426.00 AND AFTER APRIL 1, 1980, THIS WILL BE $459.20 PER WEEK. THE EXPOSURE FOR THE INSURERS ARE THE SAME, SINCE BOTH EMPLOYEES ARE ENGAGED IN DOING THE EXACT SAME TYPE OF WORK AND WE ARE REQUIRED TO PAY $120.00 PER WEEK, PER EMPLOYEE MORE. ANY RATE INCRESE APPROVED AS A RESULT OF THIS HEARING WILL GREATLY AGGRAVATE THE INEQUITY SINCE IT WILL BE APPLIED TO OUR TOTAL WAGES.

I OBJECT TO THE PROPOSED MANUAL RULE THAT IF ADOPTED WILL ALLOW A FLAT RATE FOR VACATIONS, HOLIDAYS AND SICK LEAVE REGARDLESS OF WHETHER OR NOT AN EMPLOYER PAYS THESE BENEFITS TO ALL HIS EMPLOYEES OR IF HE PAYS ONLY VACATION, SICK LEAVE, OR HOLIDAY PAY. ANY DEDUCTIONS FOR VACATIONS, HOLIDAYS AND SICK LEAVE SHOULD BE BASED ON ACTUAL PROVEN PAYMENTS OF ACTUAL PAY. I FEEL THAT PREMIUMS SHOULD BE ESTABLISHED ON THE BASIS OF RISK, AS WELL AS, FAIRNESS AND EQUITY BETWEEN COMPETITORS.

JUSTICE, EQUITY, AND FAIR PLAY, DEMAND THAT THE NEW RATES BE APPLIED ON THE BASIS OF DIVISION OF PAYROLL BY JOBS. THIS BECOMES A BIG COST FACTOR IN OUR COMPANY SINCE ONE OF OUR ACCOUNTS IS A RETAILER THAT IS 65% OF OUR TOTAL VOLUME OF BUSINESS. THAT FIRM HAS A SUBSIDIARY THAT EMPLOY DRIVERS AND WAREHOUSE WORKERS UNDER A CLASSIFICIATION CODE NO. 8039 (DEPARTMENT STORE) WITH A CURRENT RATE OF $1.20 PER HUNDRED AND A WAREHOUSE CODE NO 8292 (STORAGE-GENERAL MDSE N.O.C.) WITH A CURRENT RATE OF $5.25 PER HUNDRED. I AM FORCED TO CODE NO. 7219 (TRUCKMAN, N.O.C.) AT THE CURRENT RATE OF $11.50 PER HUNDRED. I HAVE ASKED FOR DIVISIONS OF PAYROLL WHICH WAS AUTHORIZED BY OUR LEGISLATORS EFFECTIVE JUNE 8TH 1979. HOWEVER, DESPITE OUR TIRELESS AND AGRESSIVE EFFORTS, WE HAVE NOT BEEN ABLE TO OBTAIN THIS. THE CHANGE TO DIVISION OF PAYROLL BECAUSE REPORTEDLY IS DENIED US BECAUSE OUR INSURANCE COMPANY CLAIMS THAT UNLESS DIVISION OF PAYROLL IS STATED IN THEIR MANUAL AND APPROVED BY THE WALKER COMPENSATION INSURERS RATING ASSN. THEY ARE NOT PERMITTED TO GIVE THAT TO US. WE OBJECT TO THE CURRENT DELIVERY SYSTEM THAT CREATES AND PERPETUATES DISCRIMINATION IN COST BASED NOT ON LOSS EXPERIENCES, BUT BASED SOLELY ON SIZE OF THE EMPLOYER.

BECAUSE WE ARE A SMALL FIRM, EMPLOYING FEW EMPLOYEES, THERE IS RATE DISCRIMINATIONS IN OUR CLASS. WE ARE FORCED TO PAY AN ADMINISTRATIVE COST HIGHER THAN OUR BIG COMPETITORS SOLDELY BASED ON SIZE OF PAYROLL. TRUCKING COMPANIES IN OUR INDUSTRIES SUCH AS HYMAN FREIGHTWAYS, WIZTZ TRANSPORTATION, UNITED VAN BUS DELIVERY, AMERICAN FREIGHT SYSTEMS, AND MANY OTHERS PAY 30-50% LESS THAN US, SINCE THEY ARE BIG ENOUGH TO OBTAIN SPECIAL RATE DECUCTIONS BASED ON LOWER ADMININTRATIVE COSTS PER HUNDRED AND DIFFERENT RATE PLANS WHICH ALMOST BECOMES A COST-PLUS PLAN. IT IS THIS KIND OF RATE DISCRIMNATION THAT GIVES THEM A SUBSTANCIAL COMPETITIVE ADVANTAGE OVER US. SOME SELF-INSURED CAN OBTAIN LOWER OPERATIONAL COSTS BY GOING TO A PAY AS YOU GO BASIS, WITHOUT RESERVING. THEY PAY ON A CASH FLOW BASIS. WHILE THE RATING ASSOCIATIONS REQUIRES A LARGE RATE INCREASE, IT HAS BUILT IN ALSO ADMININISTRATIVE EXPENSES AND PROFIT, PLUS ANOTHER INCREASE IN THE CURRENT ADMINISTRATIONS CARGE OF 30.85% OF THE PREMIUM DOLLAR. THEY WANT TO INCREASE THIS TO 37.8% AN EXTREMELY EXORBITANT FIGURE. I PROTEST THIS REQUEST SINCE THEY HAVE NOT DOCUMENTED ACTUAL DOLLARS SPENT TO DELIVER WORKERS COMPENSATION

BENEFITS. MY FIRM HAS RECEIVED LITTLE SAFTEY SERVICE THATY THEY CLAIM AS A COST FACTOR IN ALL THEIR SPEECHES. IN THELAST NINE YEARS WE HAVE HAD ONLY THREE VISITS FROM OUR INSURERS SAFETY MAN. THE INSURERS DOES NOT BREAK OUT ANY ACTUAL DOLLAR EXPENSES SO THAT A DETERMINATION CAN BE MADE TO LEARN IF THEY ARE ACCURATE AND APPROPRIATE EXPENSES.

I BELIEVE THAT UTILITY TYPE RATE MAKING CONCEPT SHOULD BE USED AND THAT WOULD EXCLUDE EXECUTIVE AND OWNERS WAGES AND BENEFITS, INAPPROPRIATE ADVERTISING, GOVERNMENTAL AFFAIRS, (LOBBYING) AND OTHER INAPPROPRIATE AND UNREASONABLE EXPENSES. THE PRESENT SYSTEM OF RUBBER-STAMPING THEIR "CLAIMED EXPENSES" FOR ADMINISTRATIVE ACTIVITIES IS PATENTIALLY CAPABLE OF GREATER ABUSE AND IT SHOULD NOT BE TOLERATED.

I KNOW THAT SIXTEEN SELF-INSURED BUSINESS GROUPS IN FLORIDA AVERAGE ADMINISTRATIVE EXPENSE AT LAST REPORT WAS 22%, AND THEY USED THE SERVICE COMPANIES, MANY WHO ARE SUBSIDIARIES OF INSURERS. STATE EXLUSIVE AND COMPETITIVE FUNDS OPERATE AT ABOUT A AVERAGE OF 10% AND VERY EFFECTIVELY IN THE DELIVERY OF WORKERS COMPENSATIONS BENEFITS. I BELIEVE YOU SHOULD TAKE A THOROUGH LOOK INTO WHERE THIS 30.85% EXPENSE FACTOR IS GOING AND ESTABLISH A LIST OF APPROVED EXPENSE AND RULES GOVERNING THEM. I SUGGEST THEY REDUCE THEIR EXPENSES AND BECOME COMPETITIVE IN THE ADMINISTRATIVE AREA WITH STATE FUNDS AND GROUP SELF-INSURERS.

WE OPPOSE THEIR RESERVING PRACTICE BECAUSE THEY ARE EXTREMBLY SUBJECTIVE INDIVIDUAL COMPANY APPROACH AND THEY ARE USED TO LOAD LOSS FIGURES AND THEIR LOSS RATIOS. THIS GREATLY AFFECTS OUR TOTAL LOSS RATIO AND THEREBY INCREASES THEIR PROJECTED RATE INCREASE REQUEST OVERALL AND IN OUR CLASS. THIS APPROACH ADVERSELY AFFECTS MY ABILITY TO MEET THEIR RATES AND CONTINUE IN BUSINESS.

WE OBJECT TO THE FAILURE OF THE INSURERS TO INCLUDE INVESTMENT INCOME FROM MINNESOTA RESERVE DOLLARS AND DEMAND THAT IT BE FULLY CONSIDERED IN THE RATE MAKING PROCESS. RESERVE DOLLARS ACCORDING TO TESTIMONY DURY THIS HEARING WILL BE PAID OUT OVER PERIODS UP TO FORTY (40) YEARS AND WHILE PART OF THESE DOLLARS ARE PAID OUT EACH YEAR GREATER AMOUNTS ARE ADDED. INVESTMENTS INCOME TODAY SHOULD BE UP TO 15% AND THAT SHOULD BE USED TO REDUCE OUR PREMIUM AND LOSS RATIO. INVESTMENT INCOME ON RESERVES SHOULD APPLY AS IF PAID AS PREMIUM AND CREDITED TO OUR ACCOUNT SINCE THEY LOAD THEIR PREMIUM RATE WITH A 2½% PROFIT AND CONTINENCY

FACTOR. IN STATE FUNDS, AND IN GROUP SELF-INSURED PLANS, THAT IS WHAT IS DONE. OHIO IS ABLE TO REDUCE PREMIUM 28% IN 1978 BY USING INVESTMENT INCOME AS IF IT WERE PREMIUM INCOME ACCORDING TO A REPORT I READ SOME TIME BACK.

WE PROTECT THE FAILURE OF THE RATING ASSOCIATION TO PRODUCE MINNESOTATA DATE ON INCURED BUT NOT REPORTED LOSSES. THIS REPRESENTS A SUBJECTIVE INCREASE IN REVENUE AND SINCE IT IS A HYPOTHETICAL FIGURE IT COULD BE USED TO INCREASE OUR LOSS RATIO, OUR LOSS REVENUES AND THE INSURERS PROFITS FROM INVESTMENT INCOME.

I ALSO BELIEVE A RATE INCREASE WILL CAUSE MORE EMPLOYERS TO REDUCE THEIR NUMBER OF EMPLOYEES THEY USE AND GO TO INDEPENDENT CONTRACTORS WHO DO NOT HAVE TO BE INSURED. THIS COULD VERY WELL REDUSE, RATHER THAN INCREASE THE AMOUNT OF PREMIUM PAID TO INSURERS THEY HAVE REACHED AND SURPASSED THE SATUATION POINT. I BELIEVE IT IS TIME TO DEMAND EFFICIENCY AND THE ESTABLISHMENT OF A STRICT SET OF APPROVED AND AUTHORIZED COSTS. AN ORDER SHOULD BE ISSUED TO LIMIT ADMINISTRATIVE EXPENSE AND TO TREAT INVESTMENT INCOME AS IF IT WERE PREMIUM.

WE SHOULD RECEIVE CREDIT FOR AN OVERPAYMENT OF SUPPLEMENTORY BENEFIT ASSESSMENT FROM JANUARY 1, 1979 TO DATE. THE COMMISSIONER OF LABOR AND INDUSTRY REDUCED THE ASSESSMENT ON JANUARY 1, 1979 FROM 13$ TO 8% AND ON JANUARY 1, 1980 FROM 8% TO 6%. YET WE HAVE BEEN REQUIRED TO PAY 13% DURING THIS ENTIRE PERIOD. A WINDFALL TO THE INSURERES, WE REQUEST CREDIT FOR THE OVERPAYMENT AND INCLUDING AN ADDITIONAL INTEREST CHARGE.

THIS IS MUCH THAT SHOULD BE DONE TO RE-ESTABLISH CREDITABILITY IN THE RATEMAKING OF WORKERS COMPENSATION INCUSRANCE AND WE REQUEST THAT IT START NOW!

THANK YOU

My name is Joseph Biernat, I am the Business Manager of M. W. Ettinger Transfer and Leasing Corp. We are a local cartage company employing 53 people, 29 of whom are truck drivers.

I am here to propose an affirmative approach, which is in effect an opposition to the proposed rate increase and certain manual class changes the Rating Association has proposed for the worker's compensation insurance.

First, regarding the manual rules change proposed by the Rating Association to implement the new law passed by the Legislature last summer, which will allow an automatic 10% deduction for vacation, holiday and sick leave pay from the wages paid each employee and which are used to determine workers compensation insurance premiums. This provision will allow those employers who do not pay union benefits an unfair and discriminatory economic advantage, since they are not providing all these fringe benefits, nor are they doing it to the extent of 10%. Consequently, by giving an automatic 10% allowance, you would be further reducing their wage costs and giving them an unfair advantage by using as little as 90% of their wages for the wage base while using 100% of our wages for our wage base, since we pay approximately 11.3% of our wages for these fringe benefits, that means the law our group lobbied for, to limit the wage base to actual exposure hours (risk hours) will be distorted to negate the language of the law in derogation of all rational approaches to applying the premium to wages paid for risk hours.

We object to this rule and ask that it be stricken.

Because injured workers are paid medical payments and lost wages are compensated at a rate up to 2/3rds of their weekly income with a current ceiling of $226.00, almost all workers in our industry receive substantially the same

benefits. However, workers compensation premiums are assessed against us based on 11.5% of the wages of our employees. Therefore, employers who pay union scale, of $459.20 /week effective 4.1.80, are going to be paying a premium of $52.81 per week, per person, and our competition, like Royal Star, Frank's Transfer, Vant Transfer and others who pay less than union scale pay as little as $39.60 per week per person and yet our workers compensation policies will provide all drivers with the same benefits.

We believe that this is unfairly discriminatory and request that any rate increase should be capped so as to not unfairly distribute the proposed 35% rate increase on our class.

The proposed increase in the administrative expense and profit factor, currently 30.85% of premium, to 37.8% of premium is unrealistic and improper and must be defeated. Most other industries are able to operate at significantly lower administrative and profit percentages. Our Company operates at an administrative and profit level of approximately 23.5%.

A recent report from Florida, which reported on group self insured compensation funds, shows that through the use of service bureaus (many of whom are affiliates of the insurance industry) they are able to operate effectively at an expense level of only 22%. There are sixteen (16) state funds, about four (4) are exclusive state funds, they are able to deliver workers compensation coverage at costs less than 12%. We recommend that the Examiner review their practices and cut the administrative expense factor to an appropriate level.

By authorizing this increase, we are effectively taking away any incentive to become efficient, reduce costs and operate efficiently for the benefit of the insureds.

I would further like to protest this rate increase because I do not believe the insurance industry has demonstrated sufficient evidence showing this increase to be necessary. In particular, the insurance industry has failed to provide documented evidence that its reserve practices are based on any standards of conduct or are governed by anything other than the whim of the adjuster studying the claim. Additionally, this rate increase is partially based on national averages, when Minnesota law clearly states that they must use Minnesota data only.

Additionally, I would like to suggest the exclusion of certain expense items from the rate making process as they have been excluded from rate making proceedings of other public utility type industries, trucking for example. Specifically, the Rating Association should deduct the costs of advertising, lobbying and officer shareholder earnings from the total expenses before determining the rates necessary for profitable operation.

Along the smae line, I suggest that the capital costs, buildings, equipment etc., that are included in the rate request be limited to those costs which are directly related to the handling of Minnesota's worker's compensation insurance.

We are distressed over what appears to be a lack of professionalism on the part of the State Insurance Division on its preparation for these hearings.

As a result of their inept and inadequate preparation, certain testimony of Mr. Robert F. Lowe, their consulting actuary, which dealt with the rate-making process, data and evaluated reserves and certain reserve practices, which could significantly effect the outcome of these hearings was not allowed to be introduced in full.

Actuarial staff funding, which the Legislature has provided was not used effectively, nor according to the order of the hearing Examiner who struck some of the testimony, properly.

In conclusion, I respectfully request that the rate increase be rejected, that the Rating Association be ordered to refile it's rate request with full disclosure, as required by law, and with foundation for all data, and evidence demonstrating the accuracy of the information on which this rate increase request is based.

TESTIMONY

OF

DOUGLAS B. BESTER

THE STATE WORKERS COMPENSATION RATE HEARING

MARCH 31, 1980

MY NAME IS DOUGLAS B. BESTER. I AM PRESIDENT OF BESTER BROS. TRANSFER AND STORAGE COMPANY. MY COMPANY IS LOCATED AT 818 NORTH CONCORD STREET IN SOUTH ST. PAUL, MINNESOTA.

BESTER BROS. IS A SMALL BUSINESS AND A MINNESOTA GRANDFATHER CARRIER OPERATING UNDER IRREGULAR ROUTE COMMON CARRIER PERMIT NUMBER 32409. MY FIRM TRANSPORTS AND STORES HOUSEHOLD GOODS AND OTHER COMMODITIES, AND IS AN AGENT FOR THE FERNSTROM MOVING SYSTEM.

BESTER BROS. EMPLOYS 3 OFFICE AND SALES PERSONNEL AND 7 DRIVERS. DURING THE PEAK MOVING SEASON FROM MAY THRU SEPTEMBER WE EMPLOY AN AVERAGE OF 12 DRIVERS AND HELPERS.

BESTER BROS. TRANSFER WAS FOUNDED IN 1917 BY MY GRANDFATHER, CHARLES BESTER AND HAS BEEN OWNED AND OPERATED SUCCESSIVELY BY MY FATHER, NORBERT BESTER, MY UNCLES ELMER AND KARL BESTER AND MYSELF.

FOR THE PAST FIVE (5) YEAR MY FIRMS PAYROLL AND WORKERS COMPENSATION COSTS HAVE BEEN AS FOLLOWS:

YEAR	RATE	PAYROLL	WORKERS COMP. INS. PREMIUM
1974-5	5.59%	$64,920	$3,388.00
1975-6	6.98%	$88,821	$5,909.00
1976-7	7.68%	$83,899	$5,371.00
1977-8	8.06%	$100,899	$8,734.00
1978-9	11.5%	$127,956	$12,333.00
			$35,735.00

THERE HAVE BEEN SOME DIVIDENDS RETURNED BY OUR INSURANCE CARRIER, THESE TOTALED APPROXIMATELY - $3,000.00.

FOR THE PAST FIVE (5) YEARS WORKERS COMPENSATION INJURY CLAIMS PAID BY OUR INSURANCE CARRIER HAVE BEEN AS FOLLOWS:

YEAR	CLAIMS PAID	WORKERS COMP. INS. PREMIUM
1974-5	NONE	$3,388.00
1975-6	$2,265.00	$5,909.00
1976-7	$ 605.00	$5,371.00
1977-8	NONE	$8,734.00
1978-9	$ 500.00	$12,333.00
1979 - FEB./80 - NO CLAIMS THUS FAR		
TOTAL.....	$3,370.00	..... $35,735.00

DURING THE PERIOD 1974 TO 1979 MY FIRM EXPERIENCED A REAL WORKERS COMPENSATION INSURANCE RATE INCREASE OF 298%.

THIS WAS CAUSED BY THE FOLLOWING:

a) WAGE INCREASE $6.39 TO $9.25 PER HOUR

b) RATE INCREASE 5.59 TO 11.5% PER HOUR

c) THE 298% FIGURE IS COMPUTED AS FOLLOWS:

1974 WAGE RATE - $6.39 PER HR. - 1974 W/C RATE - 5.59 =

$.357 PER HR.

1979 WAGE RATE - $9.25 PER HR. - 1979 W/C RATE - 11.5 =

$1.064 PER HR.

$1.064 ÷ $.357 - 298%

THE INSURANCE INDUSTRY NOW IS ASKING FOR A FURTHER RATE INCREASE. THE INSURANCE INDUSTRY CURRENTLY USES APPROXIMATELY 30.85% OF THEIR WORKERS COMPENSATION PREMIUMS TO MANAGE AND ADMINISTER THE FUND. THE INSURANCE INDUSTRY WANTS THIS RAISED TO 37.8% WITH THE ADDED COSTS PASSED ON IN THE FORM OF A RATE INCREASE.

THE WORKERS COMPENSATION INSURANCE MANAGEMENT AND ADMINISTRATION COSTS INCLUDE SUCH ITEMS:

ACQUISITION COSTS	WRITING OF POLICIES
GENERAL OFFICE ADMINISTRATION	UNDERWRITING PROFIT
CLAIMS SERVICES	ADVERTISING

DO OUR WORKERS COMPENSATION PREMIUMS ALSO PROVIDE MONIES FOR THE INSURANCE INDUSTRY'S GOVERNMENTAL AFFAIRS AND LOBYING EFFORT; FOR CHIEF EXECUTIVES SALARIES; FOR INSURANCE INDUSTRY ACTIVITIES OUTSIDE OF MINNESOTA? ARE OUR PREMIUM DOLLARS IN FACT SUBSIDIZING THEIR ACTIVITIES IN OTHER STATES?

WHY MUST OUR PREMIUM DOLLARS PAY FOR ADVERTISING SINCE WORKERS COMPENSATION COVERAGE IS MANDATED BY LAW? IF THIS IS THE CASE, I URGE THAT ACTION BE TAKEN TO PREVENT THESE SITUATIONS.

THE PROPOSED RATE INCREASE PROVIDES NO INCENTIVE FOR INCREASING EFFICIENCY. IN FACT IT PUTS A PREMIUM ON INEFFICIENCY.

I WOULD LOVE TO OPERATE MY OWN COMPANY ON A FACTOR OF 37.8% FOR MANAGEMENT AND ADMINISTRATIVE COSTS.

THERE ARE CURRENTLY 16 STATE FUNDS THAT CHARGE MUCH LESS FOR MANAGING THEIR WORKERS COMPENSATION PROGRAMS AND YET MAINTAIN LARGE SURPLUSES. OHIO CHARGES 8%, NEVADA 11.8%, COLORADO 11.3%. THE AVERAGE (MEAN) MANAGEMENT COSTS FOR THESE FUNDS IS APPROXIMATELY 10.37%.

THERE ARE SEVERAL SELF INSURANCE GROUPS OPERATING IN FLORIDA. THEY AVERAGE 22% FOR MANAGEMENT AND ADMINISTRATIVE COSTS AT LAST REPORT. IF PROGRAMS IN OTHER STATES CAN OPERATE MORE EFFICIENTLY, WHY CAN'T MINNESOTA'S WORKERS COMPENSATION PROGRAM?

RATHER THAN HAVING A RATE INCREASE IN MINNESOTA, THE WORKERS COMPENSATION RATES SHOULD BE DECREASED.

THIS IS THE CASE NOT ONLY BECAUSE THE MANAGEMENT AND ADMINISTRATIVE FEES ARE EXCESSIVE, BUT BECAUSE THE INSURANCE INDUSTRY HAS ACCUMULATED HUGE RESERVES UNDER THE WORKERS COMPENSATION PROGRAM.

THIS GIVES THEM A TREMENDOUS OPPORTUNITY FOR INVESTMENT INCOME. MORE WEIGHT SHOULD BE GIVEN TO INVESTMENT INCOME WHEN

DECIDING ON RATE MATTERS. IN FACT, INVESTMENT INCOME SHOULD BE RETURNED EITHER IN THE FORM OF RATE REDUCTIONS, PREMIUM REDUCTION OR AS REFUNDS.

THE INSURANCE COMPANIES HAVE REACHED THE SATURATION POINT FOR WORKERS COMPENSATION RATE INCREASES. THEY ARE FORCING MY INDUSTRY INTO ALTERNATE METHODS OF INSURANCE.

TESTIMONY

OF

JOSEPH I. LANGER

BEFORE

THE MINNESOTA WORKERS COMPENSATION RATE INCREASE HEARING

MARCH 31, 1980

ST. PAUL, MINNESOTA

GOOD MORNING. MY NAME IS JOSEPH I. LANGER AND I AM PRESIDENT OF BARRETT MOVING AND STORAGE COMPANY A MINNESOTA CORPORATION. WE OPERATE TERMINALS IN MINNEAPOLIS, MILWAUKEE AND CHICAGO. WE HAVE BEEN IN BUSINESS SINCE 1870 AND I HAVE BEEN WITH BARRETT FOR 32 YEARS. WE OPERATE IN ALL 48 STATES, CANADA AND MEXICO. WE OPERATE 125 PIECES OF EQUIPMENT AND EMPLOY FROM 150 to 225 PEOPLE. WE ALSO HAVE ABOUT 25 INDEPENDENT OWNER OPERATORS.

I HAVE BEEN HANDLING OUR WORKMEN'S COMPENSATION INSURANCE PROGRAM ON A CORPORATE LEVEL SINCE 1952, AND DURING THAT TIME I HAVE WATCHED THE PROBLEM IN MINNESOTA GROW COMPLETELY OUT OF PROPORTION TO WHAT HAS HAPPENED IN ANY OTHER STATE. I BEGAN TO WONDER WHY THIS WAS OCCURRING. IN MY DISCUSSIONS WITH PEOPLE AT WHAT USED TO BE CALLED THE RATING BUREAU, THEY ALLUDED TO ALL PROBLEMS BEING CAUSED BY THE PEOPLE ON THE HILL. ALTHOUGH MINNESOTA BENEFITS ARE EXTREMELY LIBERAL THEY ARE NOT THAT MUCH DIFFERENT THAN THE OTHER STATES WHERE WE DO BUSINESS.

FURTHER STUDY PRODUCED SOME INTERESTING FINDINGS.

1. IT APPEARS MANY CARRIERS IN MINNESOTA HAVE HUGE RESERVES WITH VERY LITTLE ACCOUNTABILITY AS FAR AS INVESTMENT INCOME

IS CONCERNED. THESE RESERVES ARE HELD FOR UP TO 30 - 40 YEARS.

2. THE CARRIERS FEEL THEY NEED 37.8% ADMINISTRATIVE COST WHEN EFFECTIVE STATE FUNDS LIKE NEVADA CAN OPERATE ON 11%, WHILE CHARGING EXTREMELY LOW COMPETITIVE RATES. OPERATING ON 11% THEY HAVE LARGE RESIDUALS AND IN FACT BUILT A TREMENDOUS REHAB CENTER OUT OF EXCESS PREMIUM AND STILL HAVE A LARGE RESERVE. FLORIDA SELF INSURED GROUPS AVERAGE A COST OF 22%. WE OBJECT TO THE USE OF NATIONAL EXPENSE LOADING FACTORS. WE ALSO OBJECT TO HIGH CHARGES, ACQUISITIONS, ADVERTIZING, EXECUTIVE SALARIES, NEW BUILDINGS, ETC.

3. ILLINOIS WITH SIMILAR BENEFITS HAS A MANUAL RATE EFFECTING OUR INDUSTRY OF $7.40 AS COMPARED TO OUR PRESENT $13.39. WISCONSIN HAS A RATE OF $5.06.

4. THE PRESENT METHOD OF ACCOUNTABILITY IN MINNESOTA BY THE CARRIERS ENCOURAGES INEFFICIENCY. THE ENTIRE INCENTIVE IS TO BUILD HUGE RESERVES AT RECEIVED INVESTMENT INCOME OF WHAT I REASONABLELY EXPECT TO BE APPROXIMATELY 15%. IS THIS WHY THE RESERVES HAVE DOUBLED? IN A MEETING WITH ONE OF THE CARRIERS LAST WEEK AN EMPLOYEE OF THAT CARRIER ADMITTED HE FELT THE RESERVE POLICY WAS UNWARRANTED AND WRONG.

5. MOST CARRIERS ARE NOT MAKING ANY EFFORT TO REDUCE CLAIM OR CHECK ON INDIVIDUAL RESERVES BECAUSE IT DEFEATS THE FLOW

THROUGH METHOD THEY DEARLY LOVE.

6. WE CAN AND HAVE OBTAINED ACCIDENT INSURANCE TO COVER OUR OWNER OPERATORS FOR $600.00 PER YEAR. IN MINNESOTA OUR W.C. COST WOULD BE $3 - 4,000.00.

I ASKED THE MINNESOTA WORKERS COMPENSATION RATING ASSOCIATION TO DIVIDE OUR PAYROLL AS PER THE NEW LAWS. AFTER AN CURSORY INSPECTION, THEY REFUSED TO CHANGE OUR RATES. THEY SAID THEY KNEW THE LAW HAD BEEN CHANGED BUT THEIR MANUALS WERE NOT. THEREFORE THEY CLAIMED, THEY COULD DO NOTHING ABOUT ACCORDING US DIVISION OF PAYROLL. IS THIS ANY SIGN OF A WELL RUN INDUSTRY? NO!!!!!

WE ARE OPPOSED TO THE PROPOSAL TO BUILD IN 11.1% TO PAY FOR THE HOLIDAY, VACATION AND SICK LEAVE EXCLUSION. THIS IS DEFINITELY DISCRIMINATORY.

WE FEEL THE SUPPLEMENTARY BENEFIT ASSESSMENT OVERCHARGE THAT HAS BEEN COLLECTED SINCE 1979 WHEN THE COMMISSIONER OF LABOR AND INDUSTRY REDUCED THE ASSESSMENT FROM 13% TO 8% AND JANUARY 1, 1980 WHEN REDUCED IT TO 6%, MUST BE ACCOUNTED FOR AND EITHER RETURNED OR CREDITED TO OUR ACCOUNT, PLUS INTEREST AT PREVAILING RATES DURING TIME IN QUESTION.

WE FEEL THAT RATES SHOULD NOT BE INCREASED WHILE THIS CARRIER ADMITTEDLY PAID LARGE DIVIDENDS, SOME MAY BE PAID TO EMPLOYERS IN OTHER STATES, EVEN THOUGH EARNED IN MINNESOTA.

WE ARE ALSO OPPOSED TO ANY TESTIMONY ON RATE OF RETURN. THE STATUTE PROVIDES ONLY FOR THE COMMISSIONER TO CONSIDER INVESTMENT INCOME, AND WHETHER RATES ARE ADEQUATE, NON DISCRIMINATORY AND NOT EXCESSIVE.

REFER TO EXHIBIT A

LAST WE ARE MINESOTA PEOPLE, WE LIKE LIVING AND WORKING HERE, BUT THIS IS NOT A MANDATORY SITUATION. WE ARE ALSO A WISCONSIN AUTHORIZED AND LICENSED CARRIER. WE CANNOT REMAIN COMPETITIVE WITH OUR NORTH DAKATO AND WISCONSIN COMPETITORS WHO COME INTO MINNESOTA UNLESS SOME ACTION ON DIVISION OF INSURANCE AND A REAL SEMBLANCE OF REASON PREVAILS IN THE W.C. MARKET PLACE. WE HOPE YOU WILL NOT FORCE US TO MOVE TO WISCONSIN. THERE HAS BEEN ENOUGH OUTWARD MIGRATION OF INDUSTRY IN THE LAST 10 YEARS. THE RESULTS OF THIS HEARING COULD WELL DETERMINE THE FUTURE OF THE TRANSPORTATION INDUSTRY IN MINNESOTA.

Barrett Moving and Storage Co.

Company Name

Exhibit A

W. C. CODE 8293 Warehousemen - (usually household goods truckmen)

. YEAR	1974	1975	1976	1977	1978	1979
. NUMBER OF EMPLOYEES:	35	33	38	36	48	69
. AVERAGE WEEKLY WAGE:	275.00	300.00	335.00	370.00	390.00	430.00
. PAYROLL AMOUNT:	234,500	225,600	390,000	545,704	661,887	884,777
. PREMIUM PAID:	22,771	4655-	27,903	85,719	70,897	103,571
. CLAIMS:	10	8	11	29	22	16
. NO. OF EMPLOYEES:	10	8	11	29	22	16
. DOLLAR AMT. OF CLAIMS:	22,718	1158	5093	40390	56,800	46,772
. LOSS RATIO (5÷6=loss ratio)	100	25	18	47	80	45

EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN

NAME BARRETT MOVING AND STORAGE — W.C POLICY NO. — P.L. POLICY NO.

ADDRESS — PERIOD — TO

PREMIUM AND LOSS EXHIBIT B

R	PREMIUM	DIVIDEND	NET	LOSSES No.	LOSSES AMT	RATIO %	PAYROLL WAGES	RATE	EXP. MOD.
2	3204	481	2723		191	6	87000	2.85	1.25
3	2910	437	2473		7430	291	93700	3.13	.97
4	2183	327	1856		840	38	88000	2.59	.92
5	2890	434	2456		25	1	95700	2.68	1.10
6	4536	680	3856		697	15	115800	2.93	1.16
7	5412	812	4600		279	5	120100	3.26	1.25
8	3402	510	2892		182	5	88800	3.58	.86
9	5462	819	4643	9	1860	34	150300	3.90	.87
0	5499	825	4674	7	1067	19	153700	3.88	.82
1	4814	722	4092	16	10775	269	158700	3.93	.75
2	6698	1005	5693	7	559	8	167800	4.32	.84
3	7981	1197	6784	3	152	2	189000	4.92	.84
4	11863	1778	10075	10	13380	113	234500	5.16	.91
5	11096	1110	9986	8	1158	10	225600	6.73	.72
6									
7									

RETROSPECTIVE RESULTS

	1ST ADJ	2ND ADJ	3RD ADJ	NET
69		99		
70				
71	4754	7236		11990
72		47		
73				
74	14378			

(612) 335-9411

505 EAST GRANT STREET DAVID agency MINNEAPOLIS, MN 55404

DEPENDABLE INSURANCE PROTECTION

March 26, 1980

Barrett Moving & Storage Co
MR JOE LANGER
7100 Washington Av S
Eden Prairie MN 55344

Dear Joe

The workers' compensation retro plan for the period, 7-1-78 to 7-1-79, develops a return premium of $42,234.

Because you may wish to distribute the return premium amongst the 3 locations, here are 3 likely possibilities:

1. Total standard premium in ratio to location standard premium.

	Location S/P	Stand/Prem	%	% of Return
Minn.	103,571	129,262	.80	33,787.20
Ill.	13,598	129,262	.11	4,645.74
Wisc.	12,093	129,262	.09	3,801.06

2. Total audited payroll in ratio to location payroll.

	Total Payroll	Location Payroll	% of Return	Return
Minn.	2,016.520	1,226,726	61	25,762.74
Ill.	2,016.520	326,255	16	6,757.44
Wisc.	2,016.520	463,521	23	9,713.82

3. Loss ratio: location premium to location losses.

	Total Loss Ratio	Premium	Losses	Loss Ratio %	% Share of Return	Return
Minn	36%	103,571	25,650	.25	.69	29,141.46
Ill.	36%	13,598	1,585	.11	.31	13,092.54
Wisc.	36%	12,093	19,537	--	--	--

Congratulations, Joe, and please call me if I can help further on this.

With kindest regards

George Kracum

GEORGE KRACUM

hb

MINNESOTA TRANSPORT SERVICES ASSOCIATION

1821 UNIVERSITY AVENUE ST. PAUL, MINNESOTA 55104 TELEPHONE (AREA 612) 646-4075

Serving Minnesota's Local Cartage — Household Goods Moving — Short Haul Trucking — Public Warehouses and Related Industries ...

ABE ROSENTHAL
Executive Vice President
General Manager

June 25, 1980

RECEIVED
JUN 26 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Warren Spannaus
Attorney General
State of Minnesota
State Capitol
Saint Paul, Minnesota 55155

Subject: Protest and request for review of Proposed Rules Governing Self-Insurance for Workers' Compensation
INS-80-006-GB

Dear Mr. Spannaus:

Minnesota Transport Services Association (MTSA) is a transportation industry trade association consisting of "for hire" trucking, public warehouse and allied industry associated firms.

MTSA has worked for nearly four years to obtain for its members the privilege of self-insuring their worker's compensation obligations. We have spoken numerous times to the commissioner and his staff concerning the temporary rules governing self-insurance for worker's compensation as adopted and we have complained that they effectively prevent our members and other small businesses from self-insuring. We believe the above proposed rules are the coup de grace to the hopes of our small business community for group self-insurance programs.

It is the purpose of this statement to document the objections of MTSA on behalf of the employer members of Minnesota Transport Services Association (MTSA) and to create an adequate record for review.

We object to these rules, not merely because they will make it difficult to establish group self-insured plans, but because they will effectively prevent group self-insured plans from being formed and in effect, veto the express act of the legislature.

Notwithstanding the complaints of MTSA, the commissioner adopted temporary rules early this year. The temporary rules contained substantially all of the features of these proposed rules which are discriminatory between individual and group self-insurers, as well as, group self-insurers and insurance companies. The adoption of these rules created an unequal application of the law in contravention to our state constitution and rights of small employers.

Discrimination in operating costs between individual and group self-insurers is built into these rules in a manner to assure continued competitive advantages by pay-as-you-go programs authorized solely for individual self-insurers who are "big business". This approach does not require the up front premium payment, the establishment of reserves and surpluses and restricted investment rules for these reserves and surpluses by self-insured big businesses, who may have greater financial problems than a group of small businesses (e.g., Chrysler Corporation).

In addition, the rules establish unduly expensive and unnecessary requirements on group self-insurers which effectively preclude the formation of group self-insured programs for small businesses. It effectively insulates the insurance industry from competition from group self-insurers. The same as was true of the temporary rules which were previously adopted.

The legislature in Chapter 3 Extra Session, Laws of 1979 attempted to respond to a need to develop innovative delivery systems for worker's compensation. The commissioner has drafted rules that create a new form of insurance company, similar to a reciprocal insurance company.

We object to the following provisions because they are arbitrary, capricious, unreasonably restrictive, expensive, burdensome and inconsistent with the purposes of the legislation to provide another way, a competing way, for small business to meet state requirements for worker's compensation coverage.

4 MCAR § 1.9286 Purpose and scope alleged to "allow the commissioner to authorize qualified entities to engage in such business" (my emphasis) when in fact all that is to be established is an alternative payment system for worker's compensation claims, not the establishment of another insurance "business". This "business" concept permeates the entire rules in such a manner to deliberately eliminate all competitive purposes for the establishment of group self-insuring.

It is clear from the statutory language that self-insured approaches to coverage were to be treated differently from the "business" of insurance. Yet despite the fact that the authorization to self-insure is contained in Section 176.181 not under Chapter 79 (the worker's compensation insurance chapter) the intent to provide a competitive, low cost option to insurance is being subverted by these rules. The current temporary rules have kept all small businesses from self-insuring. We predict that these rules would keep all small businesses from self-insuring their worker's compensation obligations. Since August 1, 1979, the effective date of this law, no group small business funds have been approved.

4 MCAR § 1.9287 Para. A is arbitrary, capricious and unreasonable in that it precludes any public accountant from providing a "certified audit" or "certified Financial Statement" irrespective of individual skills or integrity. It is the CPA's full employment welfare act that fails to bear on the kind of report needed, rather emphasizes use of CPA's.

This requirement alone creates a substantial cost increase for participants of three to four times the usual audit fee for a small business, an actual dollar costs difference from $3,000 to at least $6,000 per year; a factor which by itself, eliminates the financial feasibility of self-insurance. Why is this required when there is bonding, sureties and other financial protection. Why not a review by a CPA or an audit by a public accountant which is acceptable to financial institutions, but not the commissioner of insurance?

Why treat all industries the same? The trucking industry is different than a plastic manufacturer. One maintains extensive inventories, the other does not. Certified audit makes sense if you must confirm the value of inventories.

4 MCAR § 1.9287 Para. F which incorporates the worker's compensation insurance manual into the group self-insured program is designed to prevent any innovation that could create competitive advantage for this program over insurance and is arbitrary, unreasonable, and capricious in that it precludes any other reasonable funding program for the monetary fund.

4 MCAR § 1.9287 Para. L adds new, substantial and material changes in language after publication which is illegal and violative of the rulemaking procedures. This language change makes a substantial and material change in the rules after publication covering claim handling, greatly limiting claims procedures by adopting worker's compensation insurance industry procedures and philosophy exclusively for this program.

4 MCAR § 1.9287 Para. P adds new, substantial and material changes in language after publication which is illegal and violative of rulemaking procedures. It is also illegal in that it adopts a complex, confusing, profit oriented classification system not needed for this program. It is also inconsistent with § 176.181 Subd. 2 which provides for "same industry" and does not contemplate the "job" concept built into the insurance manual. This rule will limit the program to insurance industry classification and grouping procedures, when the legislature ordered and authorized an innovative approach to the delivery of worker's compensation on a "total" industry approach. Florida uses the "common interest" approach to determine what is meant by the words "same industry". There is no need for this rule since the data is not to be collected for ratemaking on a classification basis that insurance rates are supposed to be based upon.

4 MCAR § 1.9289 Para. B and C is illegal in that it adds new, substantial and material changes after publication violating rulemaking procedures. It incorporates an insurance industry concept that may greatly increase the scope of reserving and hence cost of the program with no evidence of need for this kind of delivery system. This is a further attempt to marry this new delivery system to insurance.

4 MCAR § 1.9289 Para. E is arbitrary, capricious and unreasonable requirement for annual certified financial statements of each employer when the cost of such financial reports by CPA's preclude the financial gain probably possible

under this innovative program. There is no need for this requirement since adequate securities or funds are on file with the state to cover all obligations of these funds.

A more reasonable approach would be to require current (not older than 3 years) "financial reports" and sworn statements that there has not been any major deterioration in the participants financial condition since the report was prepared.

4 MCAR § 1.9292 Para. D adds new, substantial and material changes in the language after publication which is illegal and violative of the rulemaking procedures. This language implements a job orientation to the "same industry" clause of statute and is illegal. People in the "same industry" currently do not necessarily meet these requirements and shall be precluded from joining together to self-insure. Our trucking industry is an example of this since our members employ executives and other managerial workers, salespeople, clerks, bookkeepers, mechanics, warehousemen, dock workers, truck drivers, guards, packers, janitors in each firm, but not necessarily in any particular quantity. Some trucking firms have less truck drivers (preferring to engage in sales oriented services, with the actual truck driving being done or provided by another firm) than any other kind of employees and would be deemed to be precluded from this "same industry" rule, if adopted. In addition, this rule destroys any attempt of trucking industry suppliers and vendors from being part of a trucking industry worker's compensation delivery system under this statute.

This effectively prevents allied, common interest businesses who are not corporately related from joining the self-insured group whose industry they are deeply involved, committed and a part of, while permitting conglomerates the privilege of insuring as an individual self-insurer irrespective of the insurance manual. The statute is clear enough and if further definition is necessary, the adoption of a "common interest" rule, such as Florida has, should be sufficient.

4 MCAR § 1.9292 Para. F adds new, substantial and material changes in the language after publication which is illegal and violative of the rulemaking procedures. This language transfers duties and responsibilities from the group and actuary and hence increases costs of operations covering reserve determinations and conflicts with the requirements for actuarial reports and determinations.

4 MCAR § 1.9292 Para.H is arbitrary, capricious and unreasonable in that it requires excessive funding or security deposits. Usually insurers are required to provide one/third to two/thirds of the total funds or securities necessary to meet all obligations of a one year period.

4 MCAR § 1.9292 Para. I is arbitrary, capricious and unreasonable in that it imposes a three year mandatory participation rule and imposes substantial penalties upon any employer who voluntarily terminates his participation in the group during the second or third year. It destroys the purposes of the legislative action, which is to create an innovative approach, which has never been tried in Minnesota before. No small employer will be willing to commit to a three (3) year plan while he may be able to purchase an insurance firm's policy for one or two year period and have the flexibility a one year to two year policy gives him. There is no need for this rule if the funding is properly established on a one year basis. This is also non-competitive with the insurance industry who permit or require one year

policies for small businesses. A small business cannot withdraw, without penalty. It can only be a deterent to getting small business groups started, since the norm for many years implemented by the insurance industry for small business is a one year policy.

4 MCAR § 1.9293 Para. A is arbitrary, capricious and unreasonable in that it requires retention of premium for periods of three years even if experience on losses would warrant refunded premiums because the group has an extremely good accident record and program. It is designed to prevent this program from becoming competitive to insurance. It increases costs unduly and creates possible tax problems for the group.

4 MCAR § 1.9293 Para. E is arbitrary, capricious and unreasonable in that it imposes a rule that requires audits exclusively by "Certified Public Accountants" (my emphasis) and does not accept the audits of public accountants who may be just as qualified, honest, and credible to audit these funds as a Certified Public Accountant would be. The issue should be proper audits, not what level of professional achievement a person desires and achieves. The paragraph also adds new, substantial and material changes in the language after publication which is illegal and violative of the rulemaking procedures. This language incorporates an insurance industry concept of establishing "incurred but not reported" reserves. A concept that may greatly increase the scope of reserving and hence cost of the program with no evidence of need for this kind of delivery system. This is a further attempt to marry this new delivery system to insurance.

4 MCAR § 1.9293 Para. N is arbitrary, capricious and unreasonable in that it imposes excessive surplus requirements and prohibits disbursement of group self-insured fund surplus monies for a period of not less than 18 months following the close of the fund year. Furthermore, it prohibits the disbursement of more than 50% of the surplus monies in the excess of 125% of the amount necessary to meet all obligations under the law. This penalizes the safe employer, it breeds excessive surpluses and it encumbers the group with an absurd financial management responsibility not required of individual self-insurers or insurance carriers. See MTSA Exhibit No. 1 which indicates that surpluses will be held for a period of over 18 years.

An objective review by our experts clearly indicates that these rules will effectively assure that group self-insurance for small employers will remain merely a promise and not a fact. Therefore, on behalf of the officers and members of this association, we protest the adoption of these rules because they are arbitrary, unreasonable, discriminatory and exceed the explicit and implicit statutory authority of the commissioner. They will prevent the establishment of small business group self-insured worker's compensation programs in Minnesota in derogation and contravention of the express direction of the state legislature in Minnesota Special Session 1979 Chapter 3.

Very truly yours,

MINNESOTA TRANSPORT SERVICES ASSOCIATION

Abe Rosenthal

Abe Rosenthal
Executive Vice President

MTSA Exhibit No. 1

DIVIDEND PAYMENTS
GROUP SELF INSURERS

Year	Loss Payment	Cumulative Loss Payment	Outstanding Liability	Dividend	Cumulative Dividend
1	24	24	76	0	0
2	16	40	60	7.50	7.50
3	12	52	48	5.25	12.75
4	8	60	40	3.63	16.38
5	8	68	32	2.81	19.19
6	5	73	27	2.03	21.22
7	5	78	22	1.64	22.86
8	4	82	18	1.32	24.18
9	4	86	14	1.16	25.34
10	3	89	11	.95	26.29
11	2	91	9	.73	27.02
12	2	93	7	.62	27.64
13	2	95	5	.55	28.19
14	1	96	4	.41	28.60
15	1	97	3	.32	28.92
16	1	98	2	.29	29.21
17	1	99	1	.27	29.48
18	1	100	0	.52	30.00

Assumptions:

Initial Assessment	$150
Total Losses	$100
Expenses	$ 20
Surplus	$ 30

Payout schedule is based on actual Minnesota for the first ten years.

Source: Michael Markman, Commissioner
Insurance Division, State of Minnesota

12/20/79

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

IN THE MATTER OF THE PROPOSED) RULES GOVERNING SELF-INSURANCE) FOR WORKERS' COMPENSATION)	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Special Assistant Attorney General Reynaud L. Harp, do declare that I have reviewed the proposed rules governing self-insurance for workers' compensation and all related documents and that, based on said review and upon my personal familiarity with the applicable procedures, the Manual of Rulemaking Procedures has been complied with.

Dated: June 17, 1980.

Reynaud L. Harp

REYNAUD L. HARP
Special Assistant
Attorney General

AG copy.

Department of Commerce
Insurance Division

Proposed Rules Governing
Self-Insurance For Workers' Compensation

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Rules as Proposed.

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.

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.

N. "Surplus" as regards the Group Self-Insurer's Fund shall mean the excess of all fund monies over the amount necessary to fulfill all obligations under the Workers' Compensation Act for all fund years that the group has been in operation.

O. "Deficit" as regards the Group Self-Insurer's Fund shall mean the excess of the amount necessary to fulfill all obligations under the Workers' Compensation Act for all fund years that the group has been in operation over all fund monies.

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 Commis-

sioner 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.~~

deleted per HEPT 9/6

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.

deleted per CHE 6/6 (2)

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~~.

deleted per HE ¶ 22

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.

deleted per CHE 6/6 (2)

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 and maintain 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 and maintain 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 that 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 of 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 identifies in its financial statement its outstanding workers' compensation liability the greater of:
   a. $100,000 of
   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:
   a. ~~$100,000,000~~., or
   b. total outstanding workers' compensation liability if certified by an actuary who is an associate member of the Casualty Actuarial Society, provided that the deposit shall be at least $100,000.
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.

K. When a self-insurer is sold to, or merged with, another entity, the self-insurer shall give notice to the Commissioner within 30 days of the sale or merger. At that time the new owner shall file a consolidated financial statement, and the Commissioner shall have the discretion to revoke the employer's authority to self-insure if the consolidated financial statement does not meet the requirements of subdivision C and D above. The burden shall be on the new owner to qualify pursuant to this rule.

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 have and maintain:

1. A 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. 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 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. Any penalty assessed pursuant to this subdivision shall be paid to the group's self-insurers' fund.

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:

deleted per CHE 6/6 (2)

   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 non-payment of premiums 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.

l. Basis for determining distribution of any surplus to the members, or assessing the membership to make up any deficit.

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 the current year's modified workers' compensation insurance premium less the initial cash 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, or an actuary who is a member of the casualty actuarial society certifies that a reduction should be permitted based on the losses of the group and that a deficit has not occurred in any of the last three years.

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.

deleted per PHE 50

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.

deleted per CHE 6/6 (2)

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.

deletions per HE ¶¶ 54, 55

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.

deleted per CHE 6/6 (2)

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 liabili[illegible] of the Surety is limited[illegible] 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:_____

INS-80-006-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Rules Governing Self-Insurance for Workers' Compensation.

ORDER OF THE CHIEF HEARING EXAMINER

(A)

WHEREAS, the above-entitled matter was heard before State Hearing Examiner George A. Beck on April 8, 1980, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, following which the Hearing Examiner issued his Report on May 23, 1980, pursuant to the provisions of Minn. Stat. § 15.052, subd. 3; and

WHEREAS, on June 3, 1980, pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110, the Insurance Division submitted the rules to the Chief Hearing Examiner for his review, which review includes the issues of substantial changes in the rules and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Chief Hearing Examiner, having completed the aforementioned rule review, finds that the changes in the rules as submitted, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed; and

WHEREAS, the Chief Hearing Examiner finds that the Insurance Division has complied with the provisions of Minn. Stat. § 15.0412, subd. 4, with the following exceptions, all of which render the rule illegal and thus, necessitate a finding that the Division has failed to comply with the provisions of Minn. Stat. § 15.0412, subd. 4, by failing to make affirmative presentation of facts establishing the reasonableness of the specific provisions:

(1) 4 MCAR § 1.9289 B. In listing the standards for determining "sufficient cause", the following language is found: "The basis for sufficient cause shall include, but is not limited to, the following factors:" (Emphasis added). The use of the phrase "but is not limited to" implies that the Commissioner will be mandating additional requirements upon reasons not listed in this rule. All of the standards for determining "sufficient cause" must be listed or must be referenced in a fashion which would limit the discretion of the Commissioner to impose the additional requirements.

complied with

(2) For the same reasons as discussed in (1) above, the following rules must be changed accordingly: 4 MCAR § 1.9289 F.; 9290 D.; 9292 M.1.; 9294 B.4. and 9294 L.

all complied with

(3) 4 MCAR § 1.9292 I. In the second to the last sentence in this rule, the provision allows a "group" to withdraw from membership, without penalty, after giving 90 days' advance written notice. However, as written, withdrawal "may" be allowed. The use of the word "may" renders the rule illegal and unreasonable. As the criteria for allowing withdrawal are clearly established in the rule, the word "may" must be changed to "shall".

complied with page 17.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.111, the Insurance Division shall either withdraw those rules discussed above, amend them to remove the illegality, or reconvene the rule hearing. In the event the rules are amended, the Insurance Division shall resubmit the rules to the Chief Hearing Examiner pursuant to Rule 9 MCAR § 2.110 for review, to determine whether the changes would constitute substantial changes under the criteria found in Rule 9 MCAR § 2.111.

Dated this 6th day of June, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

IN THE MATTER OF THE PROPOSED)
RULES GOVERNING SELF-INSURANCE)
FOR WORKERS' COMPENSATION.)

ORDER OF THE
CHIEF HEARING EXAMINER

(B)

WHEREAS, pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110, the Insurance Division submitted these rules to the Chief Hearing Examiner for his review on June 3, 1980, following which, pursuant to the provisions of Rule 9 MCAR § 2.110, the Chief Hearing Examiner issued his Order dated June 6, 1980, requiring certain changes to be made in the rules; and

WHEREAS, on June 11, 1980, the Insurance Division, having considered the aforementioned Order of the Chief Hearing Examiner, resubmitted the rules and Amended Findings of Fact and Order of Commissioner Michael D. Markman, dated June 10, 1980; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Insurance Division has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Insurance Division has the responsibility of submitting the complete hearing record and the rules as adopted by the Division to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 11th day
of June, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

June 6, 1980

RECEIVED
JUN 9 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Dale L. McDonnell
Staff Attorney
Insurance Division
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, Minnesota - 55101

RE: Proposed Rules Governing Self-Insurance for Workers Compensation
HE Docket No. INS-80-006-GB

Dear Mr. McDonnell:

Enclosed herewith please find the original and one copy of the Order of the Chief Hearing Examiner following review pursuant to 9 MCAR § 2.110.

Pursuant to the provisions of Rule 9 MCAR § 2.111, a copy of this letter and order have been submitted to the Special Assistant Attorney General responsible for review of rules.

I do wish to point out that several other items in the rule were noted by me during the review which I believe you may want to cover prior to final submission for adoption. I will attempt to detail these items for you with some suggestions. These suggestions are aimed at assisting you in adopting rules with a bit more clarity.

In three instances, the rules would seem, upon first reading, to imply that certain items must receive prior approval of the Commissioner without any standards or criteria listed by which the Commissioner will approve or disapprove the items. On closer review of the statutes, I found specific language in the statute requiring these approvals. To clarify the rules, I make the following suggestions:

(1) In 9287 F., after the word "Commissioner", add the words "pursuant to Minn. Stat. § 79.071.

complied

LAWSON
100% COTTON FIBER

June 6, 1980

(2) In 9287 P., after the word "Commissioner", add the words "pursuant to Minn. Stat. § 79.071." complied

(3) In 9292 M., after the words "Commissioner", add the words "pursuant to 4 MCAR § 1.9292 A. complied

As you are aware, the rules contain other instances wherein discretionary language is used, but which have not been discussed in the Chief Hearing Examiner's Order. In two instances, the Commissioner has discretion to extend the deadline by which the Commissioner must review certain applications but the deadline is extendable only for an additional 30 days. As the language is directory only, and since any change in the rule would probably only result in the initial time frame being changed from 30 days to 60 days, I do not believe the use of the discretionary word "may" renders a rule illegal in this instance. In other instances, where discretionary language is used, standards and/or criteria were enumerated by which the discretion will be exercised which appears to be sufficient for a reviewing body to make a decision on the arbitrariness of any discretionary decision. While the Chief Hearing Examiner has not discussed these items in the Order, you should be aware that these items are still subject to final review by the Attorney General, who may have a different opinion.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH/eag
CC:1 - Joanne Hinderaker ✓
Special Assistant Attorney General
CC:2 - George A. Beck
Hearing Examiner

EXHIBIT NO. IV C
File No. INS-80-[illegible]6-GB
SN Date 4-8-80

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency in preparing proposed rules, may seek information or opinion from sources outside the agency. Notice of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notice of meetings, and matters of public interest.

Department of Commerce Insurance Division

Notice of Intent to Solicit Outside Information on Proposed Rules Governing Workers' Compensation Self-Insurance for Employers, Group Employers, and Third-Party Administrators

Notice is hereby given that the Department of Commerce, Insurance Division, is considering the promulgation of proposed temporary rules governing Workers' Compensation self-insurance, Workers' Compensation group self-insurance, and Workers' Compensation group self-insurance third-party administrators, pursuant to requirements set forth in Minn. Stat. § 176.181, subd. 2 (1978) as amended by chapter 3, section 50, Special Session 1979. In order to adequately determine the nature and utility of such rules, the Commerce Department, Insurance Division, hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to Mr. Berton W. Heaton, Insurance Analyst, Insurance Division, Department of Commerce, Fifth Floor, Metro Square Building, Saint Paul, Minnesota 55101. Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-8592, or in person at the above-referenced address.

The proposed temporary rules, if adopted, would require employers who desire to be self-insured or group self-insured for Workers' Compensation liability imposed by chapter 176 to meet certain requirements. In addition, third-party group self-insured administrators would have to meet certain requirements before they could be licensed. Under present law, all employers except the state and its municipal subdivisions, must be insured or self-insured. By act of the Legislature in Special Session, chapter 3 (1979), the jurisdiction over licensure of self-insureds was transferred from the Department of Labor and Industry to the Insurance Division of the Department of Commerce.

Therefore, pursuant to the requirements of this legislation, the Insurance Division is seeking information and comment prior to its promulgation of temporary rules. These rules will specify the criteria to be considered by the Insurance Division in requests for Workers' Compensation licensure of self-insured employers, employers forming group self-insurance plans, and third-party self-insured administrators.

Department of Health Emergency Medical Services Section

Notice of Filing of Application and Notice of Public Hearing

Notice is hereby given that on June 20, 1979, North Memorial Medical Center filed application with George R. Pettersen, M.D., Commissioner of Health, for a license to operate a land emergency ambulance service with a base of operation in both the Community of Long Lake and the Community of Minnetonka, Minnesota. This notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: "The Commissioner may grant or deny the license 30 days after notice of the filing has been fully published. If the Commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The Commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the Commissioner may grant or deny the requested license based on the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo. Any objections to this service, pursuant to Minn. Statutes Section 144.802 (Supp. 1977) may be made in writing to George R. Pettersen, M.D., within the time period outlined by statute."

Notice is hereby further given that the Commissioner of Health has determined that a contested case hearing shall be held to determine whether the public convenience and necessity require the above-referenced proposed ambulance service. This proceeding has been initiated pursuant to and in satisfaction of the requirements of Minn. Stat. § 144.802 and

Exhibit No. 4-2
File No. INS-80-008-GB
Date 4-8-80

RECEIVED
MAR 14 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Rules of the Minnesota Department of Commerce, Insurance Division, Relating to Self-Insurance for Workers' Compensation pursuant to Minn. Stat. §176.181, Subd. 2.

Evangeline F. Carter, being first duly sworn, deposes and says:

That on the sixth day of March, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail, at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State and interested parties on the attached Insurance Division list.

Evangeline F. Carter

Subscribed and sworn to before me this 6th day of March, 1980.

Norene M Carr

NORENE M. CARR
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
Febuary 25, 1981

STATE OF MINNESOTA

COUNTY OF RAMSEY

Div. Exhibit No. F-3
File No. INS-80-006-6B
SW Date 4-8-80

CERTIFICATE

In the Matter of the Hearing by the Insurance Division of the Department of Commerce on the Proposed Rules Relating To Self-Insurance For Workers' Compensation.

I hereby certify that the attached 337 labels 5 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:00 o'clock P.m., this 4th day of March, 1980, have requested pursuant to M.S. Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on the subject captioned above.

Secretary of State

Joan Anderson Growe

By: Donna M. Scott

Exhibit No. E-1
File No. INS-80-006-GB
Date 4-8-80

RECEIVED
FEB 7 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE MICHAEL D. MARKMAN
COMMISSIONER OF INSURANCE

In the Matter of the Proposed Rules of the Minnesota Department of Commerce, Insurance Division, Relating to Self-Insurance for Workers' Compensation, Minn. Stat. § 176.181, Subd. 2

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the hearing room at 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota, on April 8, 1980, commencing at 9:30 a.m., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

MICHAEL D. MARKMAN
Commissioner of Insurance

Dated: February 7, 1980.

Exhibit No. E-2
File No. INS-80-006-GR
CW Date 4-8-80

RECEIVED
FEB 7 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE MICHAEL D. MARKMAN
COMMISSIONER OF INSURANCE

In the Matter of the Proposed Rules of the Minnesota Department of Commerce, Insurance Division, Relating to Self-Insurance for Workers' Compensation pursuant to Minn. Stat. § 176.181, Subd. 2.

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held in the hearing room at 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota, on April 8, 1980, at 9:30 a.m. and continuing until all representatives of associations or interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above, by submitting either oral or written statements. In addition, written materials may be submitted by mail to State Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-8108, the Hearing Examiner appointed to hear this matter, either before the hearing or within five (5) working days after the close of the hearing. The Hearing Examiner may at the hearing order a longer period of time for comments which may not exceed twenty (20) days. The rule hearing procedure is governed by Minn. Stat. § 15.0411 - 15.0417 and 15.052, and by 9 MCAR §§ 2.101 - 2.112.

If you have any questions about the procedure, call or write the hearing examiner.

The proposed rules, if adopted, would establish the terms, conditions and requirements governing self-insurance for workers' compensation. The Workers' Compensation Act (Minn. Stat. Ch. 176) requires all employers in this state to insure payment of workers' compensation benefits to its employees with some insurance carrier or obtain a written order from the Commissioner of Insurance (hereinafter "Commissioner") exempting the employer from insuring its liability and authorizing the employer to self-insure. The proposed rules set forth the standards under which the Commissioner will grant such authority to an employer and what standards the employer must maintain in order to retain the authority to self-insure. These standards include specific financial standards which an employer must maintain, along with specific requirements for servicing its self-insurance program and annual filings which must be made. Further, the employer must place on deposit either securities or surety bonds to assure the payment of benefits.

The proposed rules further set forth the terms, conditions and requirements for group self-insurers. Minn. Stat. § 176.181, Subd. 2 permits two or more employers in the same industry to pool their workers' compensation liabilities. The proposed rules provide standards both financial and procedural which group self-insurers must follow. The proposed rules further

require each group self-insurer to create a fund from which benefits will be paid. The proposed rules set forth the manner in which these funds shall be controlled and operated, including the amount to be paid by its members and any possible disbursement of surplus from the fund.

Finally, the proposed rules set forth standards under which entities servicing self-insurance programs for individual employers or for group self-insurers will be licensed. The proposed rules require that any entity that services a self-insurance program must be licensed and specifies the requirements to obtain and to maintain such a license.

These rules are proposed pursuant to the authority vested in the Commissioner by the provisions of Minn. Stat. § 176.181, Subd. 2.

Temporary rules relating to the subject matter of these proposed rules were promulgated and published in the State Register, Volume 4, Number 32, and were effective January 24, 1980.

One free copy of the proposed rules in their entirety may be obtained by writing to Dale L. McDonnell, Insurance Division, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies of the rules will be available at the hearing.

Notice is hereby given that adoption of these rules will not result in the expenditure of any public monies by local public bodies.

Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and reasonableness may be obtained from the Office of Hearing Examiner at a minimal charge.

Minn. Stat. §§10A.01 - 10A.34 requires each lobbyist to register with the Ethical Practices Board within five (5) days after commencing lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others

to communicate with public officials. A lobbyist is defined in Minn. Stat. §10A.01, subd. 11 as any individual

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone number (612) 296-5615.

Dated: February 7, 1980

MICHAEL D. MARKMAN
Commissioner of Insurance

DIV Exhibit No. 2
File No. INS-80-006-GB
DW Date 4-8-80

INS-80-006-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF COMMERCE - INSURANCE DIVISION

IN THE MATTER OF PROPOSED RULES OF THE MINNESOTA DEPARTMENT OF COMMERCE, INSURANCE DIVISION, RELATING TO SELF-INSURANCE FOR WORKERS' COMPENSATION PURSUANT TO MINN. STAT. § 176.181, SUBD. 2.)	ORDER OF THE CHIEF HEARING EXAMINER

#17

WHEREAS, on February 27, 1980, the Minnesota Department of Commerce, Insurance Division (hereinafter "Division") submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of a certain document in rules to be proposed; and

WHEREAS, pursuant to Minnesota Statutes 1978, § 15.0412, subd. 4, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed Classification Codes Manual for Workers' Compensation and Employers' Liability Insurance, issued December 31, 1934; revised August 1, 1979; published by the National Council of Compensation Insurance and has found it to be in excess of 3,000 words and has determined that it would exceed five pages of publication in the State Register; and

WHEREAS, the Division has indicated that the document is available for viewing and copying at the Division and that copies may be obtained through the National Council of Compensation Insurance, One Penn Plaza, New York, New York, and the Chief Hearing Examiner thus finds that the document is thereby conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED, that the Division shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced document.

Dated this 5th day
of March, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner