

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 836

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-27-82
DATE FOR REVIEW 8-5-82
DATE DUE 8-10-82

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 8-9-82 Disapproved _____ Returned to Agency 8-10-82

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 8-10-82 Revisor approved 7/28/82 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 7.21.82 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency copies of SR. were mailed out.

✓ Affidavit of Mailing Notice or rulemaking
5.26.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
5.24.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

_____ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : THOMAS L. O'MALLEY
Temp. Commissioner of Insurance

DATE: 8/9/82

ATTN : ROBERT J. CLAYTON, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Requiring Annual Audited Financial Reports

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

TAM:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TED MARTINEZ
Attorney General - Administration

DATE: July 27, 1982

FROM : ROBERT J. CLAYTON RJC
Special Assistant Attorney General

PHONE:

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES REQUIRING ANNUAL AUDITED FINANCIAL REPORTS

Enclosed for review are rules of the Minnesota Insurance Division relating to CPA audits of insurance companies. These rules are virtually identical to temporary rules which were approved several months ago. 4 MCAR § 1.9136 was in part of the temporary rules, several statutory citations have been corrected, and in the first sentence of 4 MCAR § 1.9124 the reference to the "Commissioner of Insurance of the state of domicile" had previously been simply "the commissioner" in the temporary rules.

If you have any questions, please feel free to contact me.

aso
Enc.

In the Matter of the Proposed
Adoption of Rules Requiring Annual
Audited Financial Reports

Rules as Adopted	4 copies
Order Adopting Rules	2 copies

Order for Notice of Intent to Adopt a Rule Without a Hearing

Notice of Intent to Adopt a Rule without Public Hearing

Rule As Proposed

Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing

Mailing List Certificate

Statement of Need and Reasonableness

Certificate of Compliance

Department of Commerce

Insurance Division

Adopted Rules Requiring Annual Audited Financial Reports

Rules as Adopted

4 MCAR S 1.9120 Authority. Rules 4 MCAR SS 1.9120-1.9136 are promulgated by the Commissioner of Insurance under Minn. Stat. SS 60A.031 and 60A.13.

4 MCAR S 1.9121 Purpose and scope. The purpose of 4 MCAR SS 1.9120-1.9136 is to improve the Minnesota insurance division's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

Rules 4 MCAR SS 1.9120-1.9136 shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of the practices, procedures, financial condition, market conduct, and other aspects of the operations of insurers.

Rules 4 MCAR SS 1.9120-1.9136 apply to all insurers required under Minn. Stat. S 60A.13, subd. 3a to file a report of their annual audit, except that insurers having direct premiums written in this state of less than $100,000 in any year and having fewer than 500 policyholders in this state at the end of any year are exempt from the provisions of 4 MCAR SS 1.9120-1.9136 for that year.

Insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from the provisions of 4 MCAR SS 1.9120-1.9136 if:

A. A copy of the audited financial report, the evaluation of accounting procedures, and systems of internal control report, which are filed with the other state, are filed with the

commissioner in accordance with the filing dates specified in 4 MCAR S 1.9123 and 4 MCAR S 1.9130. Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance; and

B. A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in 4 MCAR S 1.9129.

4 MCAR S 1.9122 Definitions.

A. Terms. Unless the context requires otherwise, the terms defined in B.-G. have the meanings given them.

B. Accountant. "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

C. Audited financial report. "Audited financial report" includes those items specified in 4 MCAR S 1.9124.

D. Commissioner. "Commissioner" means the Commissioner of Insurance of the State of Minnesota.

E. Examiner. "Examiner" means an examiner of the Insurance Division of the Department of Commerce of the State of Minnesota.

F. Executive officer. "Executive officer" means any individual whose duties relate to active participation in control, supervision, and management of a person, whether incorporated or unincorporated. The term includes a chairman of the board, president, vice-president, treasurer, secretary, controller, and any other individual performing in a similar position.

G. Insurer. "Insurer" means a company required to have an annual audit by Minn. Stat. S 60A.13, subd. 3a.

4 MCAR S 1.9123 Filing and extensions for filing of annual audited financial reports. All insurers shall have an annual audit by an independent certified public accountant and shall

file an audited financial report with the commissioner on or before June 30 for the year ending December 31.

Extensions of the June 30 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

4 MCAR S 1.9124 Contents of annual audited financial report. The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in financial position, and changes in capital and surplus for the year then ended.

The annual audited financial report shall include all of the following:

A. A report of an independent certified public accountant;

B. A balance sheet reporting admitted assets, liabilities, capital, and surplus;

C. A statement of gain or loss from operations;

D. A statement of changes in financial position;

E. A statement of changes in capital and surplus;

F. Any notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

1. a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under Minn. Stat. S 60A.13, subd. 1 with a written description of the nature of these differences; and

2. a narrative explanation of all significant intercompany transactions and balances; and

G. Supplementary information which includes any additional information which the commissioner may from time to time require to be disclosed.

The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner.

The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

The amounts may be rounded to the nearest thousand dollars, and all insignificant amounts may be combined.

4 MCAR S 1.9125 Designation of independent certified public accountant. Each insurer required by 4 MCAR S 1.9123 to file an annual audited financial report must notify the commissioner in writing of the name and address of the certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement.

Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained certified public accountant not less than six months before the date when the first certification is to be filed.

The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance division of the state of domicile. The letter shall affirm that opinions on the financial statements will be expressed in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that division, unless exceptions to these practices are appropriate. The letter shall specify all exceptions believed to be appropriate. A copy of this letter shall be filed with

the commissioner.

If an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall notify the division of this event within 30 days of the date the accountant is engaged. The insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons that he does not agree. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

4 MCAR S 1.9126 Qualifications of independent certified public accountant. The commissioner shall not recognize any person or firm as an independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant.

Except as otherwise provided, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession.

The commissioner, after notice and hearing under Minn. Stat. ch. 15, may find that the accountant is not independent for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is independent

within the meaning of this rule.

4 MCAR S 1.9127 Consolidated or combined audits. Upon written application and for specified periods, the commissioner may permit an insurer to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements. In such cases, the report shall include an organization chart of the companies together with a columnar consolidating or combining worksheet.

Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet.

Amounts for each insurer subject to this rule shall be stated separately.

Noninsurance operations may be shown on the worksheet on a combined or individual basis.

Explanations of consolidating and eliminating entries shall be included on the worksheet.

A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers shall be included on the worksheet.

4 MCAR S 1.9128 Scope of examination and report of independent certified public accountant. Financial statements furnished under 4 MCAR S 1.9124 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated in the "Financial Condition Examiners Handbook," in the 'Examiners Handbook,' issued by the National Association of Insurance Commissioners (Milwaukee, Wisconsin: 1976, as amended) as the independent certified public accountant deems necessary.

4 MCAR S 1.9129 Notification of adverse financial condition. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to immediately notify in writing an executive officer and all

directors of the insurer of the final determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of Minn. Stat. S 60A.07 as of that date.

Any executive officer or director of an insurer required to file an annual audited financial report who received any notification of adverse financial condition from the accountant shall make a written report to the commissioner of the existence of the materially misstated financial condition or the failure to meet the minimum capital and surplus requirements of the commissioner within three business days of the notification.

If the accountant becomes aware of facts which might have affected this report subsequent to the date of the audited financial report filed under this rule, the accountant shall take the action prescribed by section AU561, volume 1 of the 'AICPA Professional Standards,' issued by the American Institute of Certified Public Accountants.

4 MCAR S 1.9130 Evaluation of accounting procedures and system of internal control. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a report of the evaluation performed by the accountant, in connection with the examination, of the accounting procedures of the insurer and its system of internal control.

A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the division within 60 days after the filing of the annual audited financial report.

This report on internal control shall be in the form prescribed by generally accepted auditing standards.

4 MCAR S 1.9131 Definition, availability, and maintenance of certified public accountant workpapers. Workpapers are the

records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the examination of the financial statements of an insurer. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support his opinion.

Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported upon.

In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the insurance division. These copies shall be part of the commissioner's workpapers.

4 MCAR S 1.9132 Exemptions. Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of 4 MCAR SS 1.9120-1.9136 if the commissioner finds, upon review of the application, that compliance would constitute a financial hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with Minn. Stat. ch. 15.

Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this

rule. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with Minn. Stat. ch. 15.

4 MCAR S 1.9133 Reports prepared in accordance with generally accepted accounting principles. With the commissioner's approval, an insurer may comply with this rule by filing the requisite reports which have been prepared in accordance with generally accepted accounting principles if the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to Minn. Stat. S 60A.13, subd. 1 and comparable totals on the audited financial statements, and a written description of the nature of these differences.

4 MCAR S 1.9134 Examinations. The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this rule conducted by examiners under Minn. Stat. S 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioner's Insurance Regulatory Information System, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this rule shall be compliance examinations, targeted examinations, and comprehensive examinations.

Compliance examinations will consist of a review of the accountant's workpapers defined under 4 MCAR S 1.9131 and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the insurance division. The examiners may perform alternative or additional examination procedures to

supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

Comprehensive examinations will be performed when the report of the accountant as provided for in 4 MCAR S 1.9128, the notification required by 4 MCAR S 1.9129, the results of compliance or targeted examinations, or other circumstances indicate in the judgement of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant which the examiners may have utilized to supplement their examination procedures and the procedures which were performed by the registered independent certified public accountant if included as a supplement to the examination.

4 MCAR S 1.9135 Canadian and British companies.

A. Annual audited financial report. In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

B. Conformity letter. For these insurers, the letter required in 4 MCAR S 1.9125 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under 4 MCAR S 1.9123 and shall affirm that the opinion expressed is in conformity with those requirements.

4 MCAR S 1.9136 Insurers which are not required to file their

first audit on June 30, 1982. Notwithstanding the provisions of 4 MCAR S 1.9124 A.-F., an insurer which is not required pursuant to Minn. Stat. S 60A.13, subd. 3a to file its first audit with the commissioner on June 30, 1982, may for its annual filing due on or before June 30, 1983, file:

A. A report of an independent certified public accountant;

B. A balance sheet reporting admitted assets, liabilities, capital and surplus;

C. Any notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

1. a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under Minn. Stat. S 60A.13, subd. 1 with a written description of the nature of these differences; and

2. a narrative explanation of all significant intercompany balances.

APPROVED AS TO LEGALITY

Aug 9 19 82

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 10 1982
Joan Anderson Growe
Secretary of State

8:50 AM

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules Requiring Annual Audited Financial Reports

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on May 24, 1982 and was sent by the United States mail to all persons on the list maintained by the Insurance Division pursuant to Minn. Stat. § 15.0412, subd. 4 on May 26, 1982.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, receiving no comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR §§ 1.9120 - 1.9136 are adopted this 21st day of July, 1982 pursuant to authority vested in me by Minn. Stat. § 60A.031 and § 60A.13.

Thomas L. O'Malley
Temporary Commissioner of Insurance

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules Requiring Annual Audited Financial Reports

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 5th day of May, 1982 that Notice of Intent to Amend Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Insurance Division for that purpose and be published in the State Register.

Michael D. Markman
Commissioner of Insurance

In the Matter of the Proposed Adoption of
Rules Requiring Annual Audited Financial
Reports

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 26th day of May, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing and Rules as Proposed by depositing in the State of Minnesota Central Mail System for United States Mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who requested that their names be placed on file with the Insurance Division for the purpose of receiving notice of the proposed adoption of rules.

Debbi J. Lindlief

Subscribed and sworn to before me
this 20th day of July, 1982.

Norene M Carr

NORENE M CARR
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 24, 1986

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Requiring Annual Audited Financial
Reports

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by the Insurance Division is accurate and complete as of 8:00 A.M., this 26th day of May, 1982.

Susan M Porter

Alliance of American Insurers
Attn: Fred W. [redacted]k
20 North Wacker Drive
Suite 2140
Chicago, IL 60606

Don Montgomery
Associated Builders & Contractors
6300 Walker Street, Room 109
Minneapolis, MN 55416

James C. Shipman
Executive Director
Association of Minnesota Counties
2305 Ford Parkway
St. Paul, MN 55116

Colonial Penn Group, Inc.
Government Affairs Department
5 Penn Center Plaza
Philadelphia, PA 19103

The Connecticut Indemnity Co.
1000 Asylum Avenue
Hartford, CT 06105

Nicholas T. Kakos
Comp., Insurance Benefit Fund
Federal Cartridge Corp./Admin.
Twin Cities Army Ammunition Plant
New Brighton, MN 55112

The Fire & Casualty Insurance
Company of Connecticut
1000 Asylum Avenue
Hartford, CT 06105

Murray M. McColloch
Sr. Vice Pres., Secretary & Counsel
J. C. Penney Life Insurance Co.
2020 Live Oak
Dallas, TX 75221

Jerrold T. Miller
J. T. Miller Company
1000 Currie Avenue
Minneapolis, MN 55403

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Richard D. Kothe, Manager
League Service Corporation
575 University Avenue
St. Paul, MN 55103

Compliance Services
Metropolitan Property & Liability
Insurance Company
700 Quaker Lane, P.O. Box 350
Warwick, RI 02887

Mr. Ronald R. Radtke, Manager
Compliance Services
Metropolitan Prop. & Liability Ins. Co.
700 Quaker Lane
Warwick, RI 02887

James N. Denn
Minnesota Motor Transport Assn.
1821 University Ave., Room 134N
St. Paul, MN 55104

Abe Rosenthal
Executive Vice President
Minnesota Transport Services Assn.
1821 University Avenue
St. Paul, MN 55104

National Association of Independent
Insurers
260 River Road
Des Plaines, IL 60018

William R. Anderson, Counsel
The National Assoc. of Life
Underwriters
1922 F Street, NW
Washington, D.C. 20006

Richard Bouhan, Gov't. Relations Dir.
National Assoc. of Prof. Surplus
Lines Offices
P.O. Box 1507
Roswell, GA 30077

J. Robert Hunter, FCAS
President, The National Insurance
Consumer Organization
344 Commerce Street
Alexandria, VA 22314

NIARS Corporation
Three Eighteen West Franklin
Minneapolis, MN 55404

Ohio State Life Insurance Company
Attn: Harold I. Phillian
471 E. Broad Street
Columbus, OH 43215

Bruce A. Poulsen, Counsel
Prudential Insurance Co. of America
8th Fl., P.O. Box 1143
Minneapolis, MN 55440

James M. Shamberger
Vice President-Government Relations
Reinsurance Association of America
1025 Connecticut Ave., Suite 512
Washington, D.C. 20036

Security Insurance Company
1000 Asylum Avenue
Hartford, CT 06105

Stan Bass
Snyder Larsen & Peters
2636 Portland Avenue
Minneapolis, MN 55407

Johanna E. Sterbin
Attorney at Law
115 East 90th Street
New York, NY 10028

Robert E. Swift, Vice President
Title Insurance Company of MN
400 Second Avenue South
Minneapolis, MN 55401

Trauner, King & Cohen
Attn: Kevin King
38 Old Ivy Road, N.E.
Atlanta, GA 30342

Union Fidelity Life Insurance Co.
Union Fidelity Office Park
Trevose, PA 19049
Attn: Lewis Taylor, Assoc. Counsel

Wisconsin Employers Insurance Co.
Contracts Department
P.O. Box 1100
DePere, WI 54115

Martin V. Timmins
Vice President & General Counsel
The Wisconsin Life Insurance Co.
709 North Segoe Road
Madison, WI 53705

Workers Compensation Reinsurance
Association
750 Northern Federal Building
386 North Wabasha
St. Paul, MN 55102

GENERAL LIST
TO RECEIVE NOTICE OF RULEMAKING IN COMMERCE

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Bldg.
310 So. 4th Ave.
Minneapolis, MN 55415

Kenneth Peterson
Exec. Director
Minn. Public Interest Research Group
2412 Univ. Ave. SE
Minneapolis, MN 55414

James Miller, Sr., Attorney
Minn. Public Interest Research Group
2412 Univ. Ave. S.E.
Minneapolis, MN 55414

John A. Knapp
Hessian, McKasy & Soderberg
1500 Midwest Plaza Bldg.
Minneapolis, MN 55402

Director, Developmental
Disabilities Planning Office
200 Capitol Sq. Bldg.
St. Paul, MN 55101

Fredrik M. Christiansen
Room 911 - Capitol Sq. Bldg.
St. Paul, MN 55101

Minnesota Board of Nursing
717 Delaware St. S.E.
Minneapolis, MN 55414

John T. Farmer, Exec. Director
Minn. Manufactured Housing Assn.
222 East Little Canada Rd., Suite 222
Little Canada, MN 55117

Richard C. Buske
Administrative Director
Minn. Dept. of Econ. Develop.
480 Cedar St.
St. Paul, MN 55101

Michael J. Ahern
Moss, Flaherty, Clarkson & Fletcher
2350 IDS Center
80 South Eighth St.
Minneapolis, MN 55402

Charles A. Kroeger
Exec. Director
QSS Inc.
P.O. Box 838
Faribault, MN 55021

Courey, Schwinn, Kodadek & Reece
1830 Soo Line Bldg.
Minneapolis, MN 55402

Minneapolis Tribune
425 Portland Ave.
Minneapolis, MN 55488

McArthur Co.
2400 Wycliff St.
St. Paul, MN 55114

Kathy Burek
Legis. Comm. to Review Admin. Rules
Exec. Director
Room 430 - State Office Bldg.
St. Paul, MN 55155

State Bond & Mortgage Co.
Attn: David A. Peterson
100-106 No. Minn. St.
New Ulm, MN 56073

William F. Brooks, Jr.
900 Midland Bk. Bldg.
Minneapolis, MN 55401

Thomas G. Graham
900 Midland Bank Bldg.
Minneapolis, MN 55401

Claudia Smith
Corporate Law Dept.
The St. Paul Companies, Inc.
385 Washington St.
St. Paul, MN 55101

Jean Dawson, Editor
The Minnesota Government Report
B-12, Press Room
State Capitol Bldg.

Paul J. Huber, Ltd.
1821 University Ave.
St. Paul, MN 55104

Donald E. Montgomery
Exec. Director
Minn. Chapter, Assoc. Builders & Contractors, Inc.
6300 Walker St., Suite 109
Minneapolis, MN 55416

John S. Jackson
General Counsel
Minn. Bankers Assn.
332 Baker Bldg.
Minneapolis, MN 55402

David R. Knodell, Esq.
Olson, Gunn & Seran Ltd.
315 Peavey Bldg. 730 Second Ave. So.
Minneapolis, MN 55402

Thomas M. Polt
Attorney at Law
McCarthy Bldg.
Eyota, MN 55934

Phillips Legislative Service, Inc.
459 Rice St.
St. Paul, MN 55103

Peter S. Popovich
Peterson, Popovich, Knutson & Flynn
314 Minnesota Bldg.
St. Paul, MN 55101

Prof. Robert Snyder
248 Classroom - Ofc. Bldg.
1994 Buford Ave.
University of Minnesota
St. Paul, MN 55108

C. Blaine Harstad
Harstad & Rainbow
1036 Midland Bank Bldg.
Minneapolis, MN 55401

Conrad M. Fredin
Attorney at Law
811 First National Bank Bldg.
Duluth, MN 55802

Broeker, Hartfeldt, Hedges & Grant
2850 Metro Drive
Suite 800
Minneapolis, MN 55420

Ella Gross
1001 Penn No.
Minneapolis, MN 55411

D. Grommen
4410 E. 4th
Hibbing, MN 55746

Charlotte Vick, CLE
2507 Fremont N.
Minneapolis, MN 55411

Public Interest Advocacy Clinic
Hamline University School of Law
St. Paul, MN 55104

Kristin Larson
2215 W. 21st St.
Minneapolis, MN 55405

Larry Bakken
Hamline Law School
1536 Hewitt
St. Paul, MN 55102

City of Brooklyn Center
6301 Shingle Creek Pkwy
Brooklyn Center, MN 55430

John M. Broeker
Broeker, Hartfeldt, Hedges & Grant, Attorney at Law
2850 Metro Drive, Suite 800
Minneapolis, MN 55420

Frundt, Frundt & Johnson--Attorney at Law
117 West 5th St.
Blue Earth, MN 56013

R. J. Barto, Plant Manager
Midland Glass Company, Inc.
P. O. Box 69
Shakopee, MN 55379

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce Insurance Division

Proposed Rules Requiring Annual Audited Financial Reports

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Insurance Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Insurance has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0142, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Leo Flaten
Insurance Division
500 Metro Square Building
St. Paul, MN 55101

Authority for the adoption of these rules is contained in Minn. Stat. § 60A.031 and § 60A.13. Additionally, a statement of need and reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Any person who desires to be advised of the submission of these rules to the Attorney General for approval may make this request in writing to the above named person.

Michael D. Markman
Commissioner of Insurance

Rules as Proposed (all new material)

4 MCAR § 1.9120 Authority. Rules 4 MCAR §§ 1.9120-1.9136 are promulgated by the Commissioner of Insurance under Minn. Stat. §§ 60A.031 and 60A.13.

4 MCAR § 1.9121 Purpose and scope. The purpose of 4 MCAR §§ 1.9120-1.9136 is to improve the Minnesota insurance division's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

Rules 4 MCAR §§ 1.9120-1.9136 shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of the practices, procedures, financial condition, market conduct, and other aspects of the operations of insurers.

Rules 4 MCAR §§ 1.9120-1.9136 apply to all insurers required under Minn. Stat. § 60A.13, subd. 3a to file a report of their annual audit, except that insurers having direct premiums written in this state of less than $100,000 in any year and having fewer than 500 policyholders in this state at the end of any year are exempt from the provisions of 4 MCAR §§ 1.9120-1.9136 for that year.

Insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from the provisions of 4 MCAR §§ 1.9120-1.9136 if:

A. A copy of the audited financial report, the evaluation of accounting procedures, and systems of internal control report, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in 4 MCAR § 1.9123 and 4 MCAR § 1.9130. Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance; and

B. A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in 4 MCAR § 1.9129.

4 MCAR § 1.9122 Definitions.

A. Terms. Unless the context requires otherwise, the terms defined in B.-G. have the meanings given them.

B. Accountant. "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

C. Audited financial report. "Audited financial report" includes those items specified in 4 MCAR § 1.9124.

D. Commissioner. "Commissioner" means the Commissioner of Insurance of the State of Minnesota.

E. Examiner. "Examiner" means an examiner of the Insurance Division of the Department of Commerce of the State of Minnesota.

F. Executive officer. "Executive officer" means any individual whose duties relate to active participation in control, supervision, and management of a person, whether incorporated or unincorporated. The term includes a chairman of the board, president, vice-president, treasurer, secretary, controller, and any other individual performing in a similar position.

G. Insurer. "Insurer" means a company required to have an annual audit by Minn. Stat. § 60A.13, subd. 3a.

4 MCAR § 1.9123 Filing and extensions for filing of annual audited financial reports. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 30 for the year ending December 31.

Extensions of the June 30 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

4 MCAR § 1.9124 Contents of annual audited financial report. The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in financial position, and changes in capital and surplus for the year then ended.

The annual audited financial report shall include all of the following:

A. A report of an independent certified public accountant;

B. A balance sheet reporting admitted assets, liabilities, capital, and surplus;

C. A statement of gain or loss from operations;

D. A statement of changes in financial position;

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

E. A statement of changes in capital and surplus;

F. Any notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

1. a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under Minn. Stat. § 60A.13, subd. 1 with a written description of the nature of these differences; and

2. a narrative explanation of all significant intercompany transactions and balances; and

G. Supplementary information which includes any additional information which the commissioner may from time to time require to be disclosed.

The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner.

The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

The amounts may be rounded to the nearest thousand dollars, and all insignificant amounts may be combined.

4 MCAR § 1.9125 Designation of independent certified public accountant. Each insurer required by 4 MCAR § 1.9123 to file an annual audited financial report must notify the commissioner in writing of the name and address of the certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement.

Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained certified public accountant not less than six months before the date when the first certification is to be filed.

The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance division of the state of domicile. The letter shall affirm that opinions on the financial statements will be expressed in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that division, unless exceptions to these practices are appropriate. The letter shall specify all exceptions believed to be appropriate. A copy of this letter shall be filed with the commissioner.

If an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall notify the division of this event within 30 days of the date the accountant is engaged. The insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons that he does not agree. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

4 MCAR § 1.9126 Qualifications of independent certified public accountant. The commissioner shall not recognize any person or firm as an independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant.

Except as otherwise provided, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession.

The commissioner, after notice and hearing under Minn. Stat. ch. 15, may find that the accountant is not independent for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is independent within the meaning of this rule.

4 MCAR § 1.9127 Consolidated or combined audits. Upon written application and for specified periods, the commissioner may permit an insurer to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements. In such cases, the report shall include an organization chart of the companies together with a columnar consolidating or combining worksheet.

Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet.

Amounts for each insurer subject to this rule shall be stated separately.

Noninsurance operations may be shown on the worksheet on a combined or individual basis.

Explanations of consolidating and eliminating entries shall be included on the worksheet.

A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers shall be included on the worksheet.

4 MCAR § 1.9128 Scope of examination and report of independent certified public accountant. Financial statements furnished under 4 MCAR § 1.9124 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated in the "Financial Condition Examiners Handbook," in the 'Examiners Handbook,' issued by the National Association of Insurance Commissioners (Milwaukee, Wisconsin: 1976, as amended) as the independent certified public accountant deems necessary.

4 MCAR § 1.9129 Notification of adverse financial condition. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of Minn. Stat. § 60A.07 as of that date.

Any executive officer or director of an insurer required to file an annual audited financial report who received any notification of adverse financial condition from the accountant shall make a written report to the commissioner of the existence of the materially misstated financial condition or the failure to meet the minimum capital and surplus requirements of the commissioner within three business days of the notification.

If the accountant becomes aware of facts which might have affected this report subsequent to the date of the audited financial report filed under this rule, the accountant shall take the action prescribed by section AU561, volume 1 of the 'AICPA Professional Standards,' issued by the American Institute of Certified Public Accountants.

4 MCAR § 1.9130 Evaluation of accounting procedures and system of internal control. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a report of the evaluation performed by the accountant, in connection with the examination, of the accounting procedures of the insurer and its system of internal control.

A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the division within 60 days after the filing of the annual audited financial report.

This report on internal control shall be in the form prescribed by generally accepted auditing standards.

4 MCAR § 1.9131 Definition, availability, and maintenance of certified public accountant workpapers. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the examination of the financial statements of an insurer. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support his opinion.

Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported upon.

In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the insurance division. These copies shall be part of the commissioner's workpapers.

4 MCAR § 1.9132 Exemptions. Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of 4 MCAR §§ 1.9120-1.9136 if the commissioner finds, upon review of the application, that compliance would constitute a financial hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with Minn. Stat. ch. 15.

Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on

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some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this rule. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with Minn. Stat. ch. 15.

4 MCAR § 1.9133 Reports prepared in accordance with generally accepted accounting principles. With the commissioner's approval, an insurer may comply with this rule by filing the requisite reports which have been prepared in accordance with generally accepted accounting principles if the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to Minn. Stat. § 60A.13, subd. 1 and comparable totals on the audited financial statements, and a written description of the nature of these differences.

4 MCAR § 1.9134 Examinations. The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this rule conducted by examiners under Minn. Stat. § 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioner's Insurance Regulatory Information System, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this rule shall be compliance examinations, targeted examinations, and comprehensive examinations.

Compliance examinations will consist of a review of the accountant's workpapers defined under 4 MCAR § 1.9131 and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the insurance division. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

Comprehensive examinations will be performed when the report of the accountant as provided for in 4 MCAR § 1.9128, the notification required by 4 MCAR § 1.9129, the results of compliance or targeted examinations, or other circumstances indicate in the judgement of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant which the examiners may have utilized to supplement their examination procedures and the procedures which were performed by the registered independent certified public accountant if included as a supplement to the examination.

4 MCAR § 1.9135 Canadian and British companies.

A. Annual audited financial report. In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

B. Conformity letter. For these insurers, the letter required in 4 MCAR § 1.9125 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under 4 MCAR § 1.9123 and shall affirm that the opinion expressed is in conformity with those requirements.

4 MCAR § 1.9136 Insurers which are not required to file their first audit on June 30, 1982. Notwithstanding the provisions of 4 MCAR § 1.9124 A.-F., an insurer which is not required pursuant to Minn. Stat. § 60A.13, subd. 3a to file its first audit with the commissioner on June 30, 1982, may for its annual filing due on or before June 30, 1983, file:

A. A report of an independent certified public accountant;

B. A balance sheet reporting admitted assets, liabilities, capital and surplus;

C. Any notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

1. a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under Minn. Stat. § 60A.13, subd. 1 with a written description of the nature of these differences; and

2. a narrative explanation of all significant intercompany balances.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the matter of the proposed rules requiring annual audited financial reports

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

STATEMENT OF NEED AND AUTHORITY

Minn. Stat. § 60A.13, subd. 3a requires that every insurance company doing business in Minnesota, including fraternal beneficiary associations, reciprocal exchanges, and non-profit legal service plans shall have an annual audit of the financial activities of the most recently completed fiscal year performed by an independent certified public accountant. Minn. Stat. § 60A.13, subd. 4a empowers the Commissioner of Insurance to promulgate any rules which may be necessary to administer Minn. Stat. § 60A.13, subd. 3a.

These proposed rules requiring annual audited financial reports are based on the National Association of Insurance Commissioners (N.A.I.C.) model regulation which was adopted at its 1979 regular meeting. There was substantial support from insurance industry representatives for the adoption of the model rule by the N.A.I.C.

One of the principal responsibilities of the Commissioner of Insurance is to ascertain the financial condition of all licensed insurers. The public must have assurance that all licensed insurers have the financial resources to meet all obligations resulting from the insurance policies which it has issued. The statutes require all licensed insurers to file a detailed financial statement with the Commissioner annually. To verify the accuracy of the financial statements an examination is made by personnel of the regulatory agency.

All insurers licensed to write insurance in Minnesota are examined by staff personnel of the insurance department of their states of domicile. The vast majority of the regulatory agencies make an examination on a regular basis every three years. There are a few states that make examinations only once every four or five years. Inasmuch as the report of the examination takes an average of one year after the date of examination to be printed and furnished to the regulatory agencies in which the insurer is licensed, there will be four years in which the correctness of the insurer's financial statement may be in doubt.

The proposed rules implementing the statute requiring annual audited financial reports of all licensed insurers will fill the gap for the years between examinations and give the Commissioner considerable assurance as to the reliability of the filed statutory annual statements of the insurers. The rules specify the data which must be included in the annual audited financial report and set standards to be met by the Certified Public Accountant preparing that report, in order to assure that the data received by the Commissioner is meaningful and reliable.

The proposed rules should be adopted to improve regulation and to provide the general public with increased assurance as to the accuracy of the financial records of licensed insurers and that they will be able to pay the benefits provided in the policies issued by them.

FACTS ESTABLISHING REASONABLENESS

The proposed rules are based on and with very minor variations are identical to the model rule developed by a N.A.I.C. task force with considerable input from insurance industry representatives.

The model regulation was adopted by the N.A.I.C. at its regular meeting held in December, 1979 at Los Angeles, California. The regulation has been adopted by a number of states, including Wisconsin. In some instances the regulations adopted in these states differ somewhat from the N.A.I.C. model but agree on the basic principles and requirements.

In the Matter of the Proposed Adoption
of Rules Requiring Annual Audited
Financial Reports

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Robert J. Clayton, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Robert J Clayton
Special Assistant Attorney General

Dated: July 26, 1982.