

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1012

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2-24-84
DATE FOR REVIEW 3-5-84
DATE DUE 3-9-84

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

Approved 3-9-84 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 2/24/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 2.24.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR, 9.12.83

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency "small biz" statement contain error in date

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

✓ Mailing list Certificate

✓ Publication in State Register
1.23.84 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 no changes

LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains "small biz" statement - same as in Notice

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-00006-03

STATE OF MINNESOTA

DEPARTMENT Commerce

Office Memorandum

TO: Judith Wehrwein
Legal Assistant

DATE: February 24, 1984

FROM: Deb Lindlief

PHONE: 297-4288

SUBJECT: Amendments to Rules Governing Workers' Compensation Competitive Rating

Attached are copies of the contents of the above referenced rule file for your approval.

If there are any questions or problems, please feel free to contact me.

Thank you.

att.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH
Commissioner of Commerce
Attn: PEGGY L. BUNCH
Special Assistant Attorney General

DATE: 3/9/84

FROM: LARRY D. STARNS LDS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: Amendments to Rules Governing Workers' Compensation
Competitive Rating

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.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS:sa

AG copy

Department of Commerce

Adopted Amendments to Rules Relating to Workers' Compensation Competitive Rating

Rules as Adopted

4 MCAR S 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR SS 1.9140-1.9147, the terms defined in this rule have the meanings given them.

B. [Unchanged.]

C. Commissioner. "Commissioner" means the commissioner of commerce.

D.-K. [Unchanged.]

L. Rating plan. "Rating plan" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 15.

4 MCAR S 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The rating association shall submit an application to be licensed as a data service organization by July 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. [Unchanged.]

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a.-d. [Unchanged.]

e. a plan for the collection of any other data not prohibited in d. and a description of these data;

f.-j. [Unchanged.]

B. [Unchanged.]

C. Amendments to application.

1. A data service organization which has applied for a license must notify the commissioner of every change in the plan

of operation on which its application was based. Any amendment to a document filed under this paragraph is effective 30 days after filing unless disapproved by the commissioner.

2. A data service organization must file with the commissioner every proposed change in the uniform classification system, the uniform statistical plan, or associated manual rules. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

D. Granting of license.

1.-2. [Unchanged.]

4 MCAR S 1.9143 Ratemaking report.

A. [Unchanged.]

B. Contents of ratemaking report.

1. [Unchanged.]

2. The ratemaking report shall be disseminated to all members of the data service organization. In addition, the data service organization and the commissioner shall each make a copy of the ratemaking report available for public inspection during normal working hours.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1984, insurers may also develop and use rates based upon any reasonable factors which are not inconsistent with Minnesota Statutes, sections 79.50 to 79.63.

2.-5. [Unchanged.]

D. Review by commissioner.

1. If the commissioner finds upon review that the ratemaking report is not as prescribed, then the commissioner shall issue an order specifying in which respects it fails to meet the requirements of Minnesota Statutes, section 79.61 and 4 MCAR S 1.9143, and stating a reasonable period within which the

defects shall be corrected.

2. The data service organization shall be given a hearing to review the commissioner's order upon a written request made within 30 days after the order.

4 MCAR S 1.9144 Uniform data base.

A. Uniform classification and statistical plan.

1. The commissioner shall approve a uniform classification system, a uniform statistical plan, and manual rules related to the classification system and the statistical plan. Every workers' compensation insurer must report its data in accordance with the approved uniform plans and rules.

2. No insurer shall agree with any other insurer or with any data service organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

B. Amendments to the uniform classification or statistical plans. Any data service organization may file with the commissioner a petition to change the uniform classification system or the uniform statistical plan. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

C. Insurer variations. An insurer may develop variations of the uniform classification system upon which a rate may be made. A variation must be filed with the commissioner 30 days prior to its use. The commissioner shall disapprove variations if the insurer fails to demonstrate that the data produced by the variation can be reported consistent with the uniform statistical plan and classification system.

4 MCAR S 1.9145 Monitoring competition.

A. Information and analysis. In determining whether a competitive market exists, the commissioner shall monitor the

degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems, and other sources, or cause or participate in the development of new relevant information and analytical systems. The commissioner shall require insurers to provide additional data or reports as necessary to develop new information systems.

B. Criteria. In determining whether a reasonable amount of competition exists, the commissioner shall consider the criteria listed in 1.-6.

1. Premium and loss experience which includes, but is not limited to, consideration of movement in premium and losses over time, changes in premium relative to losses, and comparisons with other states.

2. Ease of entry which includes, but is not limited to, consideration of barriers to entry and the number of firms entering and exiting from the market.

3. Market share which includes, but is not limited to, consideration of the number, size, and dispersion of firms writing workers' compensation insurance.

4. Class rates which include, but are not limited to, consideration of comparison of changes in rates with changes in costs, variation in rates, and frequency of rate changes.

5. Residual market which includes, but is not limited to, change in size, percent of total market, and composition of the residual market.

6. Any other reasonable criteria if they are enumerated in the commissioner's eventual determination.

4 MCAR S 1.9146 Commissioner review of rate filings.

A. Rating criteria. In determining whether rates and rating plans comply with Minnesota Statutes, section 79.55 and 4 MCAR S 1.9143 C., the commissioner shall consider the criteria in 1.-3.

1. Loss experience and other rate factors. Past and prospective loss and expense experience within and outside of Minnesota, catastrophe hazards and contingencies, events or trends within and outside of the state, loadings for leveling

premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and any other relevant factors if they are enumerated in the commissioner's eventual determination.

2. Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

3. Profits. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

B. Experience rating plans. An insurer may use the experience rating plan developed by the data service organization of which it is a member. An insurer may also develop and use its own experience rating plan. Any experience rating plan is subject to the conditions in 1.-3.

1. If a claim is settled between a normal valuation date and the next rating effective date and if the settlement results in an aggravated inequity, then the experience modification factor must be revised if requested by either the insurer or the insured. An aggravated inequity includes, but is not limited to, the following situations:

a. the expected loss for the insured is less than $50,000 and the primary value of the claim has changed by more than $2,500; or

b. the expected loss for the insured is greater than $50,000 and either the primary value of the loss has changed by more than five percent of the expected loss or the total value of the claim has changed by more than $50,000.

2. Each insurer or the data service organization to which it belongs must annually provide the following loss information to each insured eligible for experience rating:

a. the insured's experience modification factor;

b. the payrolls and incurred losses used to calculate

the experience modification factor; and

c. whom to contact if the insured desires more information.

3. The forms for providing this information may be developed by either the insurer or by the data service organization to which the insurer belongs. The forms must be filed as part of the experience rating plan.

C. Schedule rating plans. The maximum credit and maximum debit which can be developed by schedule rating shall be determined by the commissioner and shall be no more than 25 percent of manual premium, after application of any experience modification.

D. Failure to comply.

1. If the commissioner finds upon review of the insurer's rate filing that the rates or rating plans do not comply with the requirements of Minnesota Statutes, sections 79.55 to 79.61 and 4 MCAR SS 1.9140-1.9147, or that the filing lacks the necessary information to determine whether the rates comply with the cited statutes and rules, then the commissioner shall notify the insurer in what respects the rates or rating plans fail to comply and specify a reasonable period within which the defects shall be corrected.

2. If the insurer fails to correct the specified defects within the time period specified, the insurer is in violation of Minnesota Statutes, section 79.56 and subject to a fine as provided in subdivision 3.

4 MCAR S 1.9147 Policy forms.

Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans.

APPROVED AS TO LEGALITY March 9, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 12 1984
Joan Anderson Growe
Secretary of State

12:30 P.M. PS

Rules as Proposed

4 MCAR S 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR SS 1.9140-~~1.9143~~ 1.9147, the terms defined in this rule have the meanings given them.

B. [Unchanged.]

C. Commissioner. "Commissioner" means the commissioner of ~~insurance~~ commerce.

D.-K. [Unchanged.]

L. Rating plan. "Rating plan" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 15.

4 MCAR S 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The rating association shall submit an application to be licensed as a data service organization by July 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. [Unchanged.]

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a.-d. [Unchanged.]

e. a plan for the collection of any other data not prohibited in ~~c.~~ d. and a description of these data;

f.-j. [Unchanged.]

B. [Unchanged.]

C. Amendments to application.

1. A data service organization which has applied for a license must notify the commissioner of every change in the plan of operation on which its application was based. Any amendment to a document filed under this paragraph is effective 30 days after filing unless disapproved by the commissioner.

2. A data service organization must file with the commissioner every proposed change in the uniform classification

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

system, the uniform statistical plan, or associated manual rules. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

D. Granting of license.

1.-2. [Unchanged.]

4 MCAR S 1.9143 Ratemaking report.

A. [Unchanged.]

B. Contents of ratemaking report.

1. [Unchanged.]

2. The ratemaking report shall be disseminated to all members of the data service organization. In addition, the data service organization and the commissioner shall each make a copy of the ratemaking report available for public inspection during normal working hours.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1984, insurers may also develop and use rates based upon any reasonable factors which are not inconsistent with Minnesota Statutes, sections 79.50 to 79.63.

2.-5. [Unchanged.]

D. Review by commissioner.

1. If the commissioner finds upon review that the ratemaking report is not as prescribed, then the commissioner shall issue an order specifying in which respects it fails to meet the requirements of Minnesota Statutes, section 79.61 and 4 MCAR S 1.9143, and stating a reasonable period within which the defects shall be corrected.

2. The data service organization shall be given a hearing to review the commissioner's order upon a written request made within 30 days after the order.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Rules as Proposed (all new material)

4 MCAR S 1.9144 Uniform data base.

A. Uniform classification and statistical plan.

1. The commissioner shall approve a uniform classification system, a uniform statistical plan, and manual rules related to the classification system and the statistical plan. Every workers' compensation insurer must report its data in accordance with the approved uniform plans and rules.

2. No insurer shall agree with any other insurer or with any data service organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

B. Amendments to the uniform classification or statistical plans. Any data service organization may file with the commissioner a petition to change the uniform classification system or the uniform statistical plan. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

C. Insurer variations. An insurer may develop variations of the uniform classification system upon which a rate may be made. A variation must be filed with the commissioner 30 days prior to its use. The commissioner shall disapprove variations if the insurer fails to demonstrate that the data produced by the variation can be reported consistent with the uniform statistical plan and classification system.

4 MCAR S 1.9145 Monitoring competition.

A. Information and analysis. In determining whether a competitive market exists, the commissioner shall monitor the degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems, and other sources, or cause or participate

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

in the development of new relevant information and analytical systems. The commissioner shall require insurers to provide additional data or reports as necessary to develop new information systems.

B. Criteria. In determining whether a reasonable amount of competition exists, the commissioner shall consider the criteria listed in 1.-6.

1. Premium and loss experience which includes, but is not limited to, consideration of movement in premium and losses over time, changes in premium relative to losses, and comparisons with other states.

2. Ease of entry which includes, but is not limited to, consideration of barriers to entry and the number of firms entering and exiting from the market.

3. Market share which includes, but is not limited to, consideration of the number, size, and dispersion of firms writing workers' compensation insurance.

4. Class rates which include, but are not limited to, consideration of comparison of changes in rates with changes in costs, variation in rates, and frequency of rate changes.

5. Residual market which includes, but is not limited to, change in size, percent of total market, and composition of the residual market.

6. Any other reasonable criteria if they are enumerated in the commissioner's eventual determination.

4 MCAR S 1.9146 Commissioner review of rate filings.

A. Rating criteria. In determining whether rates and rating plans comply with Minnesota Statutes, section 79.55 and 4 MCAR S 1.9143 C., the commissioner shall consider the criteria in 1.-3.

1. Loss experience and other rate factors. Past and prospective loss and expense experience within and outside of Minnesota, catastrophe hazards and contingencies, events or trends within and outside of the state, loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and any other relevant factors if they are

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

enumerated in the commissioner's eventual determination.

2. Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

3. Profits. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

B. Experience rating plans. An insurer may use the experience rating plan developed by the data service organization of which it is a member. An insurer may also develop and use its own experience rating plan. Any experience rating plan is subject to the conditions in 1.-3.

1. If a claim is settled between a normal valuation date and the next rating effective date and if the settlement results in an aggravated inequity, then the experience modification factor must be revised if requested by either the insurer or the insured. An aggravated inequity includes, but is not limited to, the following situations:

a. the expected loss for the insured is less than $50,000 and the primary value of the claim has changed by more than $2,500; or

b. the expected loss for the insured is greater than $50,000 and either the primary value of the loss has changed by more than five percent of the expected loss or the total value of the claim has changed by more than $50,000.

2. Each insurer or the data service organization to which it belongs must annually provide the following loss information to each insured eligible for experience rating:

a. the insured's experience modification factor;

b. the payrolls and incurred losses used to calculate the experience modification factor; and

c. whom to contact if the insured desires more information.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

3. The forms for providing this information may be developed by either the insurer or by the data service organization to which the insurer belongs. The forms must be filed as part of the experience rating plan.

C. Schedule rating plans. The maximum credit and maximum debit which can be developed by schedule rating shall be determined by the commissioner and shall be no more than 25 percent of manual premium, after application of any experience modification.

D. Failure to comply.

1. If the commissioner finds upon review of the insurer's rate filing that the rates or rating plans do not comply with the requirements of Minnesota Statutes, sections 79.55 to 79.61 and 4 MCAR SS 1.9140-1.9147, or that the filing lacks the necessary information to determine whether the rates comply with the cited statutes and rules, then the commissioner shall notify the insurer in what respects the rates or rating plans fail to comply and specify a reasonable period within which the defects shall be corrected.

2. If the insurer fails to correct the specified defects within the time period specified, the insurer is in violation of Minnesota Statutes, section 79.56 and subject to a fine as provided in subdivision 3.

4 MCAR S 1.9147 Policy forms.

Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD453

Agency: Department of Commerce

Division:

Agency Contact: Deb Lindlief

Rule Numbers: 4 MCAR SS 1.9140; 1.9141; 1.9143-1.9147

Title: Proposed Rules Governing Workers' Compensation Competitive Rating

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Deputy Revisor
Phone: 296-0955
Date: December 29, 1983

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating

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 January 23, 1984 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. § 14.14, subd. 1, on January 19, 1984.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the 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 §§ 1.9140 - 1.9147 are adopted this 24th day of February, 1984 pursuant to authority vested in me by Minn. Stat. §§ 79.55 to 79.61.

Michael A. Hatch
Commissioner of Commerce

a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration permits the use of this product for post harvest desiccation of Kentucky bluegrass seed fields to facilitate burning.

The application and other data required under Minnesota Statutes, sections 18A.22, subdivision 2(a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN No. MN83-83-0012) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
St. Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, chapter 14, for the purpose of revoking, amending, or upholding this registration.

August 26, 1983

Jim Nichols, Commissioner

Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Open Competition for Workers' Compensation Rates, 4 MCAR §§ 1.9140-1.9143

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate amendments to rules governing open competition for workers' compensation rates. Promulgation of these rules is authorized by Minnesota Statutes, section 79.51.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Judith Hale, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3976.

Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Self-Insurance Plan Administrators

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance plan administrators. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.23, subd. 8.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-4017.

All statements of information and comment shall be accepted until October 1, 1983. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 6th day of January, 1984 that Notice of Intent to Adopt Amendments to Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled amendments to rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these amendments 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 Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Judith Hale, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these amendments to rules is contained in Minnesota Statutes, sections 79.55 to 79.61. 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 amendments to rules has been prepared and is available upon request.

Upon adoption of the final amendments to rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

The effect of open competition on small employers and on small insurance companies has been considered by the Commerce Department in the promulgation of the original rules. (See Statement of Need and Reasonableness and Testimony of Nancy R. Myers in the Rules Hearing in the Matter of the Adoption of Rules Governing Workers' Compensation Insurance Rates, January 1, 1986). These amendments to the rules do effect small insurance companies. They may not directly effect small employers in general. Various provisions in the rules, such as the requirement for a uniform data base, will help ensure that small insurance companies have the ability to compete effectively in the new regulatory environment. The nature of the impact of the rules upon small insurance companies is addressed in the Agency's Statement of Need and Reasonableness.

A copy of the proposed amendments to rules is attached to this Notice.

Copies of this Notice and the proposed amendments to rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

In the Matter of the Proposed Adoption of
Amendments to Rules Relating to Workers'
Compensation Competitive Rating

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 19th day of January, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Amendments to Rules Without Public Hearing 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 have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed amendments to rules is attached.

Debbi J. Lindlief

Subscribed and sworn to before me this
19th day of January, 1984.

Elizabeth D. Moran

ELIZABETH D. MORAN
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Mar. 23, 1989

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Amendments to Rules Relating to Workers'
Compensation Competitive Rating

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 19th day of January, 1984.

Debbie J. Lindsey

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

Norman E. Nelson, Govt. Affairs Dept.
Crum & Forster Corporation
305 Madison Avenue
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Union Fidelity Life Insurance Co.
Union Fidelity Office Park
Trevose, PA 19049
Attn: Edward G. Farmer, Jr., V.P.
Mr. Farmer:

Jerome Scheibl, Vice President
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Wausau, WI 55401
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Workers Comp. Reinsurance Assoc.
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Sir:

Alliance of American Insurers
1501 Woodfield Road, Suite 400 West
Schaumburg, Illinois 60195-4980
312·490·8500

November 21, 1983

State of Minnesota

NOV 23 1983

Department of Commerce

Ms. Nancy R. Myers
Casualty Actuary
MINNESOTA DEPARTMENT OF INSURANCE
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Nancy:

Per our telephone conversation on Wednesday, November 16, 1983, I am writing to you asking to be put on your mailing list for the new rating rules.

My mailing address is:

Barbara A. Campbell
Legislative Analyst
Workers Compensation Department
1501 Woodfield Road--Suite 400 West
Schaumburg, Illinois 60195-4980

Thank you, I look forward to hearing from you.

Sincerely,

Barbara A. Campbell
Legislative Analyst
Workers Compensation Department

BAC:ibh

infected herd or quarantined feedlot. The district veterinarian shall also notify the clerk of the township board of the affected township in writing.

L. Exhibition of swine.

1. Swine may be exhibited at fairs, livestock exhibitions, or consignment sales if they are in compliance with a. or b.

a. All swine exhibited or sold, except at exhibitions described in b., must be accompanied by a health certificate showing:

(1) a negative pseudorabies test within 30 days prior to the start of the exhibition or origination from a qualified pseudorabies negative herd or a pseudorabies controlled vaccinated herd: and

(2) a statement that the swine did not originate from a herd that has had pseudorabies during the previous 12 months.

b. Health certificates are not required for swine exhibited:

(1) at a terminal show or slaughter class where swine are exhibited under the following conditions:

(a) where exhibited swine are sent directly to slaughter after the exhibition:

(b) where no other species are housed in the same show barn at the same time: and

(c) where swine are unloaded at a separate chute from other species: or

(2) at an untested terminal swine show held at the end of the exhibition after other species have gone home.

2. No swine from a quarantined herd may be exhibited at any type of exhibition.

3. Swine returning to the exhibitor's home herd or to a purchaser's herd from exhibitions or consignment sales must be isolated and retested negative for pseudorabies not less than 30 nor more than 60 days after return from the exhibit.

4. Rule LSB 40 contains other swine exhibition requirements.

5. Out-of-state swine, when exhibited in Minnesota, must meet Minnesota's importation requirements and the exhibition requirements of this rule.

M. Transportation of pseudorabies infected or exposed animals.

1. All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

(a) contain a shipping permit or owners notice of shipment when quarantined livestock are being transported: and

(b) be cleaned and disinfected pursuant to 2. before being used for transportation of other livestock.

2. A vehicle must be cleaned by thorough removal of all litter, manure, and refuse, and disinfected by the use on all floors, interior walls, and the vehicle chassis of a disinfectant approved by the United States Department of Agriculture.

Provision must be made for the disposition of all manure, litter, and refuse removed from vehicles into an area where other livestock cannot come in contact with it.

Repealer: Rule 3 MCAR § 2.024 is repealed.

Department of Commerce

Proposed Adoption of Amendments to Rules Relating to Workers' Compensation Competitive Rating

Notice of Intent to Adopt Amendments to Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled amendments to rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

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.

Persons interested in these amendments shall have 30 days to submit comments. The proposed amendments to 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 Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Judith Hale, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these amendments to rules is contained in Minnesota Statutes, sections 79.55 to 79.61. 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 amendments to rules has been prepared and is available upon request.

Upon adoption of the final amendments to rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

The effect of open competition on small employers and on small insurance companies has been considered by the Commerce Department in the promulgation of the original rules. (See Statement of Need and Reasonableness and testimony of Nancy R. Myers in the Rules Hearing in the Matter of the Adoption of Rules Relating to Workers' Compensation Competitive Rating, January 1, 1986). These amendments to the rules do affect small insurance companies. They may not directly affect small employers in general. Various provisions in the rules, such as the requirement for a uniform data base, will help ensure that small insurance companies have the ability to compete effectively in the new regulatory environment. The nature of the impact of the rules upon small insurance companies is addressed in the Agency Statement of Need and Reasonableness.

A copy of the proposed amendments to rules is attached to this Notice.

Copies of this Notice and the proposed amendments to rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

4 MCAR § 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR §§ 1.9140~~-1.9143~~ 1.9147, the terms defined in this rule have the meanings given them.

B. [Unchanged.]

C. Commissioner. "Commissioner" means the commissioner of ~~insurance~~ commerce.

D.-K. [Unchanged.]

L. Rating plan. "Rating plan" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 15.

4 MCAR § 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The rating association shall submit an application to be licensed as a data service organization by July 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. [Unchanged.]

2. a plan for data collection and analysis, and other activities of the data service organization, including:

   a.-d. [Unchanged.]

   e. a plan for the collection of any other data not prohibited in ~~c.~~ d. and a description of these data;

   f.-j. [Unchanged.]

B. [Unchanged.]

C. Amendments to application.

1. A data service organization which has applied for a license must notify the commissioner of every change in the plan of operation on which its application was based. Any amendment to a document filed under this paragraph is effective 30 days after filing unless disapproved by the commissioner.

2. A data service organization must file with the commissioner every proposed change in the uniform classification system, the uniform statistical plan, or associated manual rules. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

D. Granting of license.

1.-2. [Unchanged.]

4 MCAR § 1.9143 Ratemaking report.

A. [Unchanged.]

B. Contents of ratemaking report.

1. [Unchanged.]

2. The ratemaking report shall be disseminated to all members of the data service organization. In addition, the data service organization and the commissioner shall each make a copy of the ratemaking report available for public inspection during normal working hours.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1984, insurers may also develop and use rates based upon any reasonable factors which are not inconsistent with Minnesota Statutes, sections 79.50 to 79.63.

2.-5. [Unchanged.]

D. Review by commissioner.

1. If the commissioner finds upon review that the ratemaking report is not as prescribed, then the commissioner shall issue an order specifying in which respects it fails to meet the requirements of Minnesota Statutes, section 79.61 and 4 MCAR § 1.9143, and stating a reasonable period within which the defects shall be corrected.

2. The data service organization shall be given a hearing to review the commissioner's order upon a written request made within 30 days after the order.

4 MCAR § 1.9144 Uniform data base.

A. Uniform classification and statistical plan.

1. The commissioner shall approve a uniform classification system, a uniform statistical plan, and manual rules related to the classification system and the statistical plan. Every workers' compensation insurer must report its data in accordance with the approved uniform plans and rules.

2. No insurer shall agree with any other insurer or with any data service organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

B. Amendments to the uniform classification or statistical plans. Any data service organization may file with the commissioner a petition to change the uniform classification system or the uniform statistical plan. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

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C. Insurer variations. An insurer may develop variations of the uniform classification system upon which a rate may be made. A variation must be filed with the commissioner 30 days prior to its use. The commissioner shall disapprove variations if the insurer fails to demonstrate that the data produced by the variation can be reported consistent with the uniform statistical plan and classification system.

4 MCAR § 1.9145 Monitoring competition.

A. Information and analysis. In determining whether a competitive market exists, the commissioner shall monitor the degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems, and other sources, or cause or participate in the development of new relevant information and analytical systems. The commissioner shall require insurers to provide additional data or reports as necessary to develop new information systems.

B. Criteria. In determining whether a reasonable amount of competition exists, the commissioner shall consider the criteria listed in 1.-6.

1. Premium and loss experience which includes, but is not limited to, consideration of movement in premium and losses over time, changes in premium relative to losses, and comparisons with other states.

2. Ease of entry which includes, but is not limited to, consideration of barriers to entry and the number of firms entering and exiting from the market.

3. Market share which includes, but is not limited to, consideration of the number, size, and dispersion of firms writing workers' compensation insurance.

4. Class rates which include, but are not limited to, consideration of comparison of changes in rates with changes in costs, variation in rates, and frequency of rate changes.

5. Residual market which includes, but is not limited to, change in size, percent of total market, and composition of the residual market.

6. Any other reasonable criteria if they are enumerated in the commissioner's eventual determination.

4 MCAR § 1.9146 Commissioner review of rate filings.

A. Rating criteria. In determining whether rates and rating plans comply with Minnesota Statutes, section 79.55 and 4 MCAR § 1.9143 C., the commissioner shall consider the criteria in 1.-3.

1. Loss experience and other rate factors. Past and prospective loss and expense experience within and outside of Minnesota, catastrophe hazards and contingencies, events or trends within and outside of the state, loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and any other relevant factors if they are enumerated in the commissioner's eventual determination.

2. Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

3. Profits. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

B. Experience rating plans. An insurer may use the experience rating plan developed by the data service organization of which it is a member. An insurer may also develop and use its own experience rating plan. Any experience rating plan is subject to the conditions in 1.-3.

1. If a claim is settled between a normal valuation date and the next rating effective date and if the settlement results in an aggravated inequity, then the experience modification factor must be revised if requested by either the insurer or the insured. An aggravated inequity includes, but is not limited to, the following situations:

a. the expected loss for the insured is less than $50,000 and the primary value of the claim has changed by more than $2,500; or

b. the expected loss for the insured is greater than $50,000 and either the primary value of the loss has changed by more than five percent of the expected loss or the total value of the claim has changed by more than $50,000.

2. Each insurer or the data service organization to which it belongs must annually provide the following loss information to each insured eligible for experience rating:

a. the insured's experience modification factor;

b. the payrolls and incurred losses used to calculate the experience modification factor; and

c. whom to contact if the insured desires more information.

3. The forms for providing this information may be developed by either the insurer or by the data service organization to which the insurer belongs. The forms must be filed as part of the experience rating plan.

C. Schedule rating plans. The maximum credit and maximum debit which can be developed by schedule rating shall be determined by the commissioner and shall be no more than 25 percent of manual premium, after application of any experience modification.

D. Failure to comply.

1. If the commissioner finds upon review of the insurer's rate filing that the rates or rating plans do not comply with the requirements of Minnesota Statutes, sections 79.55 to 79.61 and 4 MCAR §§ 1.9140-1.9147, or that the filing lacks the necessary information to determine whether the rates comply with the cited statutes and rules, then the commissioner shall notify the insurer in what respects the rates or rating plans fail to comply and specify a reasonable period within which the defects shall be corrected.

2. If the insurer fails to correct the specified defects within the time period specified, the insurer is in violation of Minnesota Statutes, section 79.56 and subject to a fine as provided in subdivision 3.

4 MCAR § 1.9147 Policy forms.

Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans.

State Board of Education
(State Board for Vocational Education)
Department of Education
Vocational-Technical Division

Proposed Adoption of Rules Governing Post-Secondary Vocational Instructional Personnel Licensure—Robotics Technician 5 MCAR § 1.0790 C

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Capitol Square Building, Conference Room A and B, first floor, on February 23, 1984, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the Board's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard C. Luis, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7610, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Board anticipates presenting at the hearing justifying both the need for and the

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Adoption of the Proposed Amendments to Rules Relating to Workers' Compensation Insurance Rates

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statute § 79.51 requires the commissioner to issue rules implementing the provisions of Chapter 79. Rules 4 MCAR § 1.9140 - § 1.9143 were adopted in June, 1983, in fulfillment of this requirement. The current rules were originally written to facilitate the introduction of open competition during the transition period from July 1, 1983, to December 31, 1985. They were adopted following a hearing before Hearing Examiner Jon Lunde in January, 1982. The 1983 legislature accelerated the date of full competitive rating to January 1, 1984, eliminating the transition period. Prior to adoption, those sections of the rules governing the transition period were removed and various minor changes necessary to comply with the new law were made.

The proposed revisions and additions to the current rules are necessary to complete the requirements of Minnesota law. Included is a section on monitoring competition which responds to a mandate of the 1983 legislature. The proposed rules also cover recommendations made by Hearing Examiner Lunde in his report dated February 11, 1983.

Amendments to the Current Rules

4 MCAR § 1.9140 Definitions.

A. Applicability.

Subdivision A is amended to reflect the addition of rules 4 MCAR §§ 1.9144 - 1.9147.

C. Commissioner.

Subdivision C is amended to change the meaning of the word "commissioner" from the commissioner of insurance to the commissioner of commerce as required by Laws of Minnesota for 1983, ch. 289, Section 114.

L. Rating plan.

Subdivision L, which defines the term "Rating Plan" needs to be added since the term is referenced elsewhere in the rules and must be defined the same as in the statute.

4 MCAR § 1.9141 Licensing of data service organizations.

A. Application information.

Subdivision A.2.e is amended to correct a typographical error in the rules as adopted in June, 1983.

C. Amendments to application.

Subdivision C has been added to provide a procedure for amending original data service organization (DSO) applications and for amending manual rules. Minn. Stat. section 79.62 requires DSO's to be licensed by the commissioner. The license application is required to include manual rules related to the statistical plan and the classification system. The license remains in effect until the licensee withdraws from business or until the license is suspended or revoked. Prior to the effective date of Minn. Stat. section 79.62, the Rating Association was required to annually renew its license. This process provided a yearly opportunity for updating or amending the application and related manuals. Since the new law does not require annual application, some procedure is needed to amend the original application or associated manuals. Subdivision C requires the DSO to file any amendments to the application with the commissioner. Amendments are deemed effective in 30 days unless disapproved by the commissioner. DSO's must also file any proposed change in the statistical plan, classification system or manual rules with the commissioner. These changes must also be approved by the commissioner, who also establishes the effective date of the change. To ensure uniformity, all workers' compensation insurers must use the statistical changes in reporting data to the DSO of which they are a member.

D. Granting of license.

Subdivision C has been amended to become Subdivision D to allow for the addition of the new Subdivision C, above.

4 MCAR § 1.9143 Ratemaking report.

B. Contents of ratemaking report.

Subdivision B.2 is amended to include a requirement that both the commissioner and the DSO shall make a copy of the ratemaking report available for inspection during normal working hours. This amendment is needed to ensure that the public has reasonable access to the contents of the ratemaking report.

C. Use of ratemaking report.

Subdivision C.1 is amended to clarify that insurers may develop their own workers' compensation rates as long as they are consistent with the cited statutes.

D. Review by commissioner.

Subdivision D is needed to delineate a process to resolve disputes between the commissioner and the DSO with respect to the ratemaking report. Minn. Stat. section 79.61 requires the DSO to prepare and distribute a report on ratemaking in a form prescribed by the commissioner. But there is no process defined for

resolving any disagreements that may arise between the commissioner and the DSO as to the form of that report. Therefore, subdivision D authorizes the commissioner to issue an order specifying in what respects the report is deficient or fails to comply with Minnesota law. The DSO may ask for a hearing within 30 days after receiving the order.

New Rules

4 MCAR § 1.9144 Uniform data base.

A rule is needed to ensure adherence to a uniform classification and statistical plan. It is especially important in workers' compensation rate regulation to maintain sound statistical collection and reporting procedures. A sound workers' compensation data base is generally viewed as a necessary component in helping to achieve the objectives of the workers' compensation system, ie. the proper and equitable allocation of the cost of work-related injuries to the industry giving rise to them. This section is designed to maintain the appropriate data collection and reporting procedures required by the system. The rule contains three subdivisions designed to address the issue of maintaining a useful workers' compensation data base.

The perceived adequacy of the data base is also very important to both small employers and insurers. Uncertainty about the credibility of the data could lead to increased prices and more conservative underwriting, especially for the smaller or more risky employers. Lack of confidence in the data base could also result in the concentration of the market among those insurers with a large enough book of business to have confidence in their own data.

A. Uniform classification and statistical plan.

Subdivision A requires the commissioner to approve a uniform classification system, unit statistical plan and manual rules. Every workers' compensation insurer is required to report its workers' compensation experience consistent with the uniform statistical plan approved by the commissioner.

B. Amendments to the uniform classification or statistical plans.

Subdivision B allows any data service organization to file a petition with the commissioner to change the uniform classification system or statistical plan. Changes must be approved by the commissioner who will also set an effective date. This subdivision further requires that any change ordered by the commissioner must be used by all workers' compensation insurers when reporting data to the DSO.

C. Insurer variations.

Subdivision C permits insurers to develop variations of the uniform classification plan. Such variations are, however, subject to the commissioner's prior review in that they must be filed 30 days prior to its use. The subdivision specifically requires that variations shall be disapproved if the insurer fails to demonstrate that the data produced under such a plan cannot be reported consistent with the requirements of the uniform statistical plan and classification system. The burden is upon the individual insurer to show that, if it intends to use variations of the uniform classification plan, that such variations will not compromise the established data reporting procedures.

4 MCAR § 1.9145 Monitoring competition.

1983 amendments to Minn. Stat. § 79.51 require the commissioner to adopt rules governing the monitoring of competition. This rule is needed to provide a framework for monitoring the marketplace under competitive rating. Rather than approve a single schedule of rates, the responsibility of the insurance regulator under open competition is to monitor the efficiency of competition as a regulator of rates. Although it is difficult to specify a specific monitoring system, certain indicators can be used to make a judgement about the competitive market. The rule also responds to the recommendations of Jon Lunde, Hearing Examiner, in his report dated February 11, 1983.

Monitoring of competition is necessary to satisfy the public and the legislative concern that price competition is an effective method of rate regulation. The information gathered should help the regulator detect market weaknesses, initiate corrective action, identify noncompetitive markets, and remedy abuses. Competition should also be monitored to determine if there is an appropriate degree of competition. The commissioner may, as a result, recommend the expansion or contraction of the scope of competitive rating.

A. Information and anlysis.

Subdivision A directs the commissioner to monitor competition in the state in order to determine whether a competitive market exists. The rule authorizes the commissioner to utilize existing information or to participate in the development of new data systems if necessary. Insurers are required to provide the additional data needed to develop such information systems.

B. Criteria.

Subdivision B lists criteria which the commissioner shall consider when determining whether a reasonable amount of competition exists. The criteria listed are not meant to be exhaustive and the commissioner may use any reasonable criteria as long as they are clearly included in the commissioner's findings.

Subdivision B.1 requires the commissioner to compare changes in premium and loss costs. Improved experience (lower loss costs) without some rate reduction lessens the likelihood of finding that competition exits. If, on the other hand, underlying experience is worsening, then rate increases are expected and such increases would not be attributed to a lack of competition. If loss ratios were very poor over an extended period of time, then the commissioner must consider the effects of competition on the solvency of carriers.

Subdivision B.2 requires consideration of ease of entry into the market. Legal and economic barriers to entry and capitol and surplus requirements for licensing need to be reviewed. One would expect increased entries into the market following a period of high profitability and increased exits following low profitability.

Subdivision B.3 requires consideration of market share including the number, size, and dispersion of firms. If conditions of the insurance market are to conform to the assumptions underlying the competitive model, then there must be enough firms so that no one firm can independently influence the price. The

more concentration, the greater the implication that a few firms have the power to fix prices. A significant change in the relative market positions without undue concentration is one of the most unambiguous indicators of competition.

Subdivision B.4 requires the commissioner to consider changes in class rates, variation in rates and frequency of rate changes. Considerable rate variation suggests absence of price fixing. Frequent price changes would be anticipated in a competitive market when underlying costs are in a state of flux. Rate changes reflect the insurer's willingness and/or ability to change prices in response to competitive pressures or changes in underlying conditions.

Subdivision B.5 requires the commissioner to consider changes in the residual market. Change in the size of the residual market as a percent of the total market is an important measure of the effectiveness of competition. An increase in the size of the residual market is an indicator of availability or affordability problems. An increased concentration of small employers in the residual market may indicate that competition exists for the large risks only.

Subdivision B.6 authorizes the commissioner to use any other reasonable criteria as long as they are enumerated in his final determination. This authority is needed because it is difficult to specify a precise monitoring system and the listed criteria may not produce results which are "conclusive". The commissioner needs to be free to employ additional relevant tests of market structure and performance and to develop additional or alternative criteria.

4 MCAR § 1.9146 Commissioner Review of Rate Filings.

When the rules were originally written, a transition period between prior approval rates and open competition was part of the law. Since ratemaking under open competition was not expected until January 1, 1986, the original rules dealt with rates during the transitional period. At that time, the Commerce Department expected to draft rules for ratemaking under open competition based on the experience during the transition period. With the changes in the law, it is necessary to draft such rules now.

A. Rating Criteria.

Although the commissioner will not be determining rates under open competition, he/she still has the responsibility of ensuring that the premiums are neither inadequate nor unfairly discriminatory. If a competitive market fails to exist, then the commissioner must also ensure that premiums are not excessive. In reviewing rate filings, the commissioner should consider losses, expenses, and profits. Loss experience must be evaluated with respect to any factors which could make the experience atypical or which could have an effect on future losses. Expenses should reflect the actual expenses of the individual insurer. Profits must include a consideration of investment income.

B. Experience Rating Plans.

Under open competition, an insurer may use its own experience rating plan or one developed by the data service organization of which it is a member. However, any experience rating plan must meet certain criteria. First, the experience modification factor (the mod) must reflect any major changes in the evaluation of a claim which is settled before the policy becomes effective. In order to calculate a new mod, losses are evaluated and reported to the data service

organization approximately 6 months before a new policy becomes effective. Some losses may settle during the ensuing 6 months. In the past, a few insurers have refused to adjust the premium when a loss was settled during this time and the final cost was much smaller than the carried reserve. Under open competition, with the increasing freedom for insurers and insureds, it is unlikely that this situation would occur. Nevertheless, the rules require that the mod be changed when the value of the loss changes dramatically. The conditions in the rules define situations where the mod would change by more than 5 percentage points (eg., from .95 to .90). These technical statements in the rules reflect the loss limitation features which are part of the experience rating plan.

A second requirement for experience rating plans involves notification of the insured. The Commerce Department believes that this information will encourage employers to be aware of and concerned about their loss experience.

C. Schedule Rating Plans.

A schedule rating plan is a method for adjusting premium on an individual risk basis. This type of plan considers changes in the working environment which are not reflected in the loss experience. Credits and debits are determined based on such criteria as the condition of the premises, medical facilities and safety devices. Most insurance companies writing in Minnesota have filed schedule rating plans. Carriers feel they need the abiliity to price below average rate level. This is one indication that the market is competitive.

Although schedule rating plans are a competitive tool, there are potential problems with them. Such plans could be used in a discriminatory manner. Insureds might not be treated the same. Since there is an aspect of judgement in these plans, the size of the discount or the surcharge could be determined only by the competitive need. The Commerce Department has been particularly concerned with the possible effect on smaller employers. In theory, it would be possible for an insurer to set its rates at a level only intended for smaller employers, while larger employers would be given the benefit of schedule credits. When schedule credits and debits could be 50% or more of the premium, the filed rate level has little meaning. Because of these concerns, the rules limit the maximum effect of schedule rating plans to 25% of the premium determined by the manual rate and the experience modification factor. The commissioner retains the authority to set the maximum effect even lower, if necessary.

It is possible that smaller insurance companies could be at somewhat of a disadvantage with this rule. Large insurers frequently license two or more companies in one state and have different rate levels in each company. Thus, they can retain all the flexibility they desire, even with a schedule credit limitation. A small insurer, with only one company, would not have the same options. However, limiting the schedule credits and debits does not really change the flexibility difference between larger and smaller insurers. This already exists. Even if the effect of this rule were more significant for smaller insurance companies, the Commerce Department believes the limitation is important enough for smaller employers to merit its implementation.

D. Failure to Comply.

Hearing Examiner Lunde critized the original rules for their failure to "establish procedures for assessing penalties under Minn. Stat. § 79.56, subd. 3". This section addresses that problem. With the "use and file" law, rates and rating plans will be used before they are actually filed with the Department of Commerce. With this legal system, it is reasonable to allow insurers to continue to use rates for a brief period during which time defects can be corrected. It is the intent of the Department of Commerce to encourage competition. However, filings with erroneous information or rates which could be inadequate or discriminatory must be corrected.

4 MCAR § 1.9147 Policy forms.

This rule is needed to clarify responsibility for writing policy forms to be utilized by workers' compensation insurers. Insurers are required to use policy forms written by a data service organization unless the insurer's rating plan requires a policy provision or endorsement for which the data service organization has no useable form. In this case, the insurer may file its own policy form.

Effects on Small Businesses.

The potential impact of 4 MCAR §§ 1.9140 - 1.9143 on small employers and insurers was addressed at the time those rules were adopted (see the Statement of Need and Reasonableness and testimony of Nancy R. Myers). The amendments to those rules and the addition of 4 MCAR §§ 1.9144 - 1.9147 are not expected to have any additional impact on those small businesses. In fact, many of the provisions of the new rules are designed to further protect small insurers or employers from any negative impacts of competitive rating. (See especially 4 MCAR § 1.9144 Uniform data base, 4 MCAR § 1.9145 Monitoring competition, and 4 MCAR § 1.9146 Commissioner review of rate filings.)

In the Matter of the Proposed Adoption
Amendments to Rules Relating to Workers'
Compensation Competitive Rating

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Peggy L. Bunch, 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.

Peggy L. Bunch

Special Assistant Attorney General
PEGGY L. BUNCH

Dated: February 23, 1984.