

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1066

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-30-84
DATE FOR REVIEW 9-08-84
DATE DUE 9-13-84

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

Approved Sept 13 84 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 8/31/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.5.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 1.30.84 - contains Sm. Biz statement + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency no small biz statement.

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

✓ Mailing list Certificate

✓ Publication in State Register
4.30.84 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

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 : MICHAEL A. HATCH
Commissioner of Commerce

DATE: September 13, 1984

ATTN: JOHN L. KIRWIN
Special Assistant Attorney General

FROM : MARTHA J. CASSERLY M.J.C.
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Governing Regulation of Self-Insurers Under the Minnesota No-fault Automobile Insurance Act

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.

MJC:cb

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Commerce

Adopted Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

Rules as Adopted

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

Subp. 3. **Certified financial statement.** "Certified financial statement" means a statement of the operating results and financial position of an applicant, authorized self-insurer, or parent company. A statement includes a balance sheet, income statement, statement of changes in financial position, or the equivalent in the case of nonprofit organizations and political subdivisions, and associated notes. A statement must include the professional opinion of an independent certified public accountant. A parent company's certified financial statement must be a consolidated statement combining the operating results and financial position of the parent company and its subsidiaries.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. **Licensed vendor of risk management services.** "Licensed vendor of risk management services" means

an entity authorized under Minnesota Statutes, section 60A.23, subdivision 8, to contract with self-insurers for the purpose of administering self-insurance programs.

Subp. 6. **No-fault act.** "No-fault act" means the automobile insurance system defined in Minnesota Statutes, sections 65B.41 to 65B.71.

Subp. 7. **Parent company.** "Parent company" means a company or organization that directly, or indirectly through one or more intermediaries, controls an applicant or authorized self-insurer, and that is not also controlled by another company or organization.

Subp. 8. **Political subdivision.** "Political subdivision" means a statutory or home rule charter city or county, the state of Minnesota, or any instrumentality of a statutory or home rule charter city or county or the state of Minnesota.

Subp. 9. **Subsidiary.** "Subsidiary" means a company or organization that is directly, or indirectly through one or more intermediaries, controlled by a parent company.

2770.6300 APPLICATION REQUIREMENT.

No person or entity may self-insure for no-fault act liabilities without the commissioner's authorization. The commissioner may only grant self-insurance authority to applicants that have followed the application procedures and that meet the authorization standards described in parts 2770.6100 to 2770.7400.

2770.6400 APPLICATION PROCEDURES.

Subpart 1. **Application forms.** An application for self-insurance authority must be made on forms prescribed and made available by the commissioner.

Subp. 2. **Financial statements.** Certified financial statements for an applicant's most recently ended fiscal year and for each of the three prior years must be included with an application. If an applicant is a subsidiary, then an application must also include certified financial statements for the parent company's most recently ended fiscal year and for

each of the prior three years.

Subp. 3. **Application fee.** A $500 application fee must be included with each application.

Subp. 4. **Assumption of liability agreement.** The parent company of an applicant must agree to assume the applicant's liabilities under the no-fault act if the applicant alone fails to satisfy part 2770.6500, subpart 2, item B, subitems 1 to 5. This agreement must be in a form prescribed by the commissioner. If required, a completed assumption of liability agreement form must be provided before an application can be considered complete.

Subp. 5. **Resolution of governing body.** If an applicant is a political subdivision, then a certified copy of a resolution from its governing body authorizing the political subdivision to seek self-insurance authority must be included with an application.

Subp. 6. **Commissioner's action.** The commissioner shall grant or deny authorization to self-insure within 60 days of receiving all application materials.

2770.6500 AUTHORIZATION STANDARDS.

Subpart 1. **Political subdivisions.** The commissioner shall grant self-insurance authority to an applicant that is a political subdivision if it satisfies these conditions:

A. at least 25 motor vehicles are registered in its name; and

B. it has, or has contracted with a licensed vendor of risk management services to provide, the administrative resources needed to:

(1) process, review, and pay claims;

(2) evaluate the medical and rehabilitation needs of automobile accident victims; and

(3) estimate current and future loss liabilities.

Subp. 2. **All other applicants.** The commissioner shall grant self-insurance authority to an applicant that is not a political subdivision if the following conditions are satisfied:

A. the applicant satisfies subpart 1, item B;

B. either the applicant alone or the parent company alone:

(1) satisfies subpart 1, item A;

(2) has existed for at least five years;

(3) has a current net worth, or the equivalent, of at least $5,000,000;

(4) had positive net income, or the equivalent, during the last five-year period and in at least three of those years; and

(5) had positive net funds flow during the last five-year period and in at least three of those years;

C. neither the applicant nor its parent company, if one exists, has sought protection under the United States Bankruptcy Code during the last three years; and

D. the funds flow, debt structure, profitability, and overall financial integrity of the applicant and its parent company, if one exists, demonstrate a continuing ability of the applicant to satisfy any financial obligations that have been and might be incurred under the no-fault act.

2770.6600 COMMISSIONER'S DECISION.

Subpart 1. **Approval.** The commissioner shall authorize an applicant to self-insure by issuing a self-insurance certificate to the applicant. The certificate must include the dates when self-insurance authority begins and ends.

Subp. 2. **Denial.** The commissioner may deny self-insurance authority by informing the applicant by mail of the decision.

? grounds for denial

2770.6700 RENEWAL.

Authorization to self-insure ends 150 days after the end of a self-insurer's fiscal year. Authorization may be renewed for one year if a self-insurer informs the commissioner no later than 120 days after the end of its fiscal year that it wishes to continue to self-insure. The commissioner shall issue a new certificate of authority to each self-insurer whose self-insurance authority is renewed.

2770.6800 SECURITY REQUIREMENT.

Subpart 1. **Surety bond required.** An authorized self-insurer shall maintain a surety bond written by a corporate surety authorized to do business in Minnesota. The bond must be filed with the commissioner and name the "Commissioner of Commerce - State of Minnesota" as its obligee.

Subp. 2. **Bond form.** The surety bond must be executed on forms prescribed and made available by the commissioner, or on other forms not materially different from the forms prescribed by the commissioner. The commissioner shall refuse to accept surety bonds executed on forms that are not consistent with the requirements of this part or the purpose of parts 2770.6100 to 2770.7400.

Subp. 3. **Condition, cancellation.** The condition of the surety bond must be the execution of the self-insurer's legal obligations as a self-insurer. The bond cannot be canceled unless 30 days' notice is provided by the surety to the commissioner. After cancellation, the bond must remain in force for those liabilities incurred by the self-insurer from the time the bond first became effective until its cancellation, regardless of when compensation was or may be claimed, awarded, or paid.

Subp. 4. **Penalty sum.** The bond must provide a penalty sum of $100,000 or 125 percent of the self-insurer's total outstanding liabilities, whichever is greater. The penalty sum must be consistent with the latest report of outstanding loss liabilities as required in part 2770.6900.

Subp. 5. **Use of bond by commissioner.** In the event the commissioner determines that the self-insurer has violated the condition of the bond, the commissioner may draw upon the penalty sum to pay any unpaid claim obligations incurred by the self-insurer and to recover any costs or expenses incurred by the Department of Commerce that are directly attributed to administering the self-insurer's claims.

2770.6900 REPORTING REQUIREMENTS.

Subpart 1. **Financial statements.** Authorized self-insurers shall provide these items to the commissioner no later than 120

days after the end of each fiscal year:

A. a certified financial statement for the self-insurer's most recently ended fiscal year, and a copy of the self-insurer's most recent form 10K filed with the Securities and Exchange Commission, if applicable;

B. a certified financial statement for the parent company's most recently ended fiscal year, if applicable, and a copy of the parent company's most recent form 10K filed with the Securities and Exchange Commission, if applicable; and

C. any quarterly financial statements for the applicant and the parent company, if applicable, issued since the end of the latest fiscal year for which a certified financial statement has been provided to the commissioner.

Subp. 2. **Status report.** Authorized self-insurers shall provide to the commissioner, on forms prescribed and made available by the commissioner, information needed to maintain accurate records of the self-insurers' address, relevant personnel, scope of self-insurance under the no-fault act, and other administrative matters. The status report shall be provided at the same time as the self-insurer notifies the commissioner of its intention to seek renewal of self-insurance authority, as required in part 2770.6700.

Subp. 3. **Loss liabilities report.** Authorized self-insurers shall provide, by March 1 of every year, a report of paid and outstanding loss liabilities incurred under the no-fault act evaluated as of December 31 of the prior year. The loss liabilities report must be on forms prescribed and made available by the commissioner.

2770.7000 QUARTERLY FINANCIAL STATEMENTS.

If the commissioner determines that a deterioration in the funds flow, net worth, debt structure, profitability, or general financial integrity of the self-insurer or its parent company, if a parent company exists, adversely affects the self-insurer's ability to satisfy its financial obligations under the no-fault act, then the commissioner shall require an authorized self-insurer to submit quarterly financial statements for the

self-insurer and its parent company.

2770.7100 ASSIGNED CLAIMS PLAN, UNFAIR PRACTICES.

Self-insurers authorized under this chapter are reparation obligors under Minnesota Statutes, section 65B.43, subdivision 9, and shall participate in the assigned claims plan in Minnesota Statutes, section 65B.63. Self-insurers authorized under this chapter are also subject to Minnesota Statutes, sections 72A.17 to 72A.32, regulating trade and claim service practices.

2770.7200 TERMINATION OF SELF-INSURANCE STATUS.

An authorized self-insurer shall inform the commissioner at least 30 days after becoming insured. Self-insurance authority terminates immediately upon becoming insured.

2770.7300 REVOCATION OF SELF-INSURANCE AUTHORITY.

The commissioner shall revoke a self-insurer's authorization to self-insure:

A. if the commissioner determines that a self-insurer:

(1) does not satisfy applicable authorization standards in part 2770.6500;

(2) is not complying with a lawful order of the commissioner;

(3) is not complying with Minnesota Statutes, chapter 65B;

(4) has not complied with parts 2770.6700 to 2770.7100; or

(5) is not complying, or has not complied with any other statutory requirement; and

B. if the commissioner determines that the self-insurer has failed, or is unable, to remedy circumstances that will, in the future, prevent the self-insurer from complying with standards or requirements of this chapter.

2770.7400 WAIVER OF STANDARDS.

Subpart 1. **Standards.** The commissioner shall waive the standards in part 2770.6500, and shall not revoke self-insurance

authority under part 2770.7300, item A, if:

A. an entity authorized to self-insure at the time this chapter becomes effective does not satisfy the standards in 2770.6500;

B. the entity has been an authorized self-insurer for at least two years prior to this chapter becoming effective;

C. the commissioner determines that the entity, while self-insured, has executed its responsibilities and obligations as a self-insurer; and

D. the entity follows the procedures contained in subpart 2 for requesting a waiver of standards.

Subp. 2. **Procedures.** A self-insurer must request a waiver of standards under this part by applying, in writing, to the commissioner no later than 30 days after this chapter becomes effective. The commissioner shall either grant or deny a waiver of standards under this part no later than 30 days after receiving a request.

Subp. 3. **Duration.** A waiver of standards granted under this part shall be granted to a self-insurer only once and shall be effective for no more than three years. If the commissioner determines that a self-insurer for which a waiver of standards was previously granted no longer satisfies the conditions contained in subpart 1, then the commisisoner shall revoke the waiver of standards.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 14 1984
Joan Anderson Growe
Secretary of State
1:31 PM

APPROVED AS TO FORM AND LEGALITY
September 13 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J. Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

AR0491

Agency: Department of Commerce

Division:

Agency Contact: Deb Lindlief

Minnesota Rules: Parts 2770.6100 to 2770.7400

Title: Adopted Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: August 31, 1984

Stripped Proposed
SF-00006-02

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

State of Minnesota

MAY 07 1984

Department of Commerce

TO : David Corum
Department of Commerce

DATE: 5-2-84

FROM : Corrine Staeheli
Rules Supervisor

PHONE: 297-2955

SUBJECT: Proposed Rules, stripped copy

Enclosed is a stripped copy of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

Please use this copy to indicate any modifications you wish to make. Our office would be happy to input the changes on our computer, and turn out copies for you to submit for final approval to our office and the Attorney General.

If your proposed rules are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval.

Your rules were published on April 30, 1984, at 8 SR 2331, pages 2331 through 2334.

CRS/kh
Enclosure
ARO 491

Rules as Proposed (all new material)

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

Subp. 3. **Certified financial statement.** "Certified financial statement" means a statement of the operating results and financial position of an applicant, authorized self-insurer, or parent company. A statement includes a balance sheet, income statement, statement of changes in financial position, or the equivalent in the case of nonprofit organizations and political subdivisions, and associated notes. A statement must include the professional opinion of an independent certified public accountant. A parent company's certified financial statement must be a consolidated statement combining the operating results and financial position of the parent company and its subsidiaries.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. **Licensed vendor of risk management services.** "Licensed vendor of risk management services" means an entity authorized under Minnesota Statutes, section 60A.23, subdivision 8, to contract with self-insurers for the purpose of administering self-insurance programs.

Subp. 6. **No-fault act.** "No-fault act" means the automobile insurance system defined in Minnesota Statutes,

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sections 65B.41 to 65B.71.

Subp. 7. **Parent company.** "Parent company" means a company or organization that directly, or indirectly through one or more intermediaries, controls an applicant or authorized self-insurer, and that is not also controlled by another company or organization.

Subp. 8. **Political subdivision.** "Political subdivision" means a statutory or home rule charter city or county, the state of Minnesota, or any instrumentality of a statutory or home rule charter city or county or the state of Minnesota.

Subp. 9. **Subsidiary.** "Subsidiary" means a company or organization that is directly, or indirectly through one or more intermediaries, controlled by a parent company.

2770.6300 APPLICATION REQUIREMENT.

No person or entity may self-insure for no-fault act liabilities without the commissioner's authorization. The commissioner may only grant self-insurance authority to applicants that have followed the application procedures and that meet the authorization standards described in parts 2770.6100 to 2770.7400.

2770.6400 APPLICATION PROCEDURES.

Subpart 1. **Application forms.** An application for self-insurance authority must be made on forms prescribed and made available by the commissioner.

Subp. 2. **Financial statements.** Certified financial statements for an applicant's most recently ended fiscal year and for each of the three prior years must be included with an application. If an applicant is a subsidiary, then an application must also include certified financial statements for the parent company's most recently ended fiscal year and for each of the prior three years.

Subp. 3. **Application fee.** A $500 application fee must be included with each application.

Subp. 4. **Assumption of liability agreement.** The parent company of an applicant must agree to assume the applicant's

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liabilities under the no-fault act if the applicant alone fails to satisfy part 2770.6500, subpart 2, item B, subitems 1 to 5. This agreement must be in a form prescribed by the commissioner. If required, a completed assumption of liability agreement form must be provided before an application can be considered complete.

Subp. 5. **Resolution of governing body.** If an applicant is a political subdivision, then a certified copy of a resolution from its governing body authorizing the political subdivision to seek self-insurance authority must be included with an application.

Subp. 6. **Commissioner's action.** The commissioner shall grant or deny authorization to self-insure within 60 days of receiving all application materials.

2770.6500 AUTHORIZATION STANDARDS.

Subpart 1. **Political subdivisions.** The commissioner shall grant self-insurance authority to an applicant that is a political subdivision if it satisfies these conditions:

A. at least 25 motor vehicles are registered in its name; and

B. it has, or has contracted with a licensed vendor of risk management services to provide, the administrative resources needed to:

(1) process, review, and pay claims;

(2) evaluate the medical and rehabilitation needs of automobile accident victims; and

(3) estimate current and future loss liabilities.

Subp. 2. **All other applicants.** The commissioner shall grant self-insurance authority to an applicant that is not a political subdivision if the following conditions are satisfied:

A. the applicant satisfies subpart 1, item B;

B. either the applicant alone or the parent company alone:

(1) satisfies subpart 1, item A;

(2) has existed for at least five years;

(3) has a current net worth, or the equivalent,

of at least $5,000,000;

(4) had positive net income, or the equivalent, during the last five-year period and in at least three of those years; and

(5) had positive net funds flow during the last five-year period and in at least three of those years;

C. neither the applicant nor its parent company, if one exists, has sought protection under the United States Bankruptcy Code during the last three years; and

D. the funds flow, debt structure, profitability, and overall financial integrity of the applicant and its parent company, if one exists, demonstrate a continuing ability of the applicant to satisfy any financial obligations that have been and might be incurred under the no-fault act.

2770.6600 COMMISSIONER'S DECISION.

Subpart 1. **Approval.** The commissioner shall authorize an applicant to self-insure by issuing a self-insurance certificate to the applicant. The certificate must include the dates when self-insurance authority begins and ends.

Subp. 2. **Denial.** The commissioner may deny self-insurance authority by informing the applicant by mail of the decision.

2770.6700 RENEWAL.

Authorization to self-insure ends 150 days after the end of a self-insurer's fiscal year. Authorization may be renewed for one year if a self-insurer informs the commissioner no later than 120 days after the end of its fiscal year that it wishes to continue to self-insure. The commissioner shall issue a new certificate of authority to each self-insurer whose self-insurance authority is renewed.

2770.6800 SECURITY REQUIREMENT.

Subpart 1. **Surety bond required.** An authorized self-insurer shall maintain a surety bond written by a corporate surety authorized to do business in Minnesota. The bond must be filed with the commissioner and name the "Commissioner of Commerce - State of Minnesota" as its obligee.

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Subp. 2. **Bond form.** The surety bond must be executed on forms prescribed and made available by the commissioner, or on other forms not materially different from the forms prescribed by the commissioner. The commissioner shall refuse to accept surety bonds executed on forms that are not consistent with the requirements of this part or the purpose of parts 2770.6100 to 2770.7400.

Subp. 3. **Condition, cancellation.** The condition of the surety bond must be the execution of the self-insurer's legal obligations as a self-insurer. The bond cannot be canceled unless 30 days' notice is provided by the surety to the commissioner. After cancellation, the bond must remain in force for those liabilities incurred by the self-insurer from the time the bond first became effective until its cancellation, regardless of when compensation was or may be claimed, awarded, or paid.

Subp. 4. **Penalty sum.** The bond must provide a penalty sum of $100,000 or 125 percent of the self-insurer's total outstanding liabilities, whichever is greater. The penalty sum must be consistent with the latest report of outstanding loss liabilities as required in part 2770.6900.

Subp. 5. **Use of bond by commissioner.** In the event the commissioner determines that the self-insurer has violated the condition of the bond, the commissioner may draw upon the penalty sum to pay any unpaid claim obligations incurred by the self-insurer and to recover any costs or expenses incurred by the Department of Commerce that are directly attributed to administering the self-insurer's claims.

2770.6900 REPORTING REQUIREMENTS.

Subpart 1. Financial statements. Authorized self-insurers shall provide these items to the commissioner no later than 120 days after the end of each fiscal year:

A. a certified financial statement for the self-insurer's most recently ended fiscal year, and a copy of the self-insurer's most recent form 10K filed with the Securities and Exchange Commission, if applicable;

APPROVED BY THE REVISOR OF STATUTES

B. a certified financial statement for the parent company's most recently ended fiscal year, if applicable, and a copy of the parent company's most recent form 10K filed with the Securities and Exchange Commission, if applicable; and

C. any quarterly financial statements for the applicant and the parent company, if applicable, issued since the end of the latest fiscal year for which a certified financial statement has been provided to the commissioner.

Subp. 2. **Status report.** Authorized self-insurers shall provide to the commissioner, on forms prescribed and made available by the commissioner, information needed to maintain accurate records of the self-insurers' address, relevant personnel, scope of self-insurance under the no-fault act, and other administrative matters. The status report shall be provided at the same time as the self-insurer notifies the commissioner of its intention to seek renewal of self-insurance authority, as required in part 2770.6700.

Subp. 3. **Loss liabilities report.** Authorized self-insurers shall provide, by March 1 of every year, a report of paid and outstanding loss liabilities incurred under the no-fault act evaluated as of December 31 of the prior year. The loss liabilities report must be on forms prescribed and made available by the commissioner.

2770.7000 QUARTERLY FINANCIAL STATEMENTS.

If the commissioner determines that a deterioration in the funds flow, net worth, debt structure, profitability, or general financial integrity of the self-insurer or its parent company, if a parent company exists, adversely affects the self-insurer's ability to satisfy its financial obligations under the no-fault act, then the commissioner shall require an authorized self-insurer to submit quarterly financial statements for the self-insurer and its parent company.

2770.7100 ASSIGNED CLAIMS PLAN, UNFAIR PRACTICES.

Self-insurers authorized under this chapter are reparation obligors under Minnesota Statutes, section 65B.43, subdivision

9, and shall participate in the assigned claims plan in Minnesota Statutes, section 65B.63.. Self-insurers authorized under this chapter are also subject to Minnesota Statutes, sections 72A.17 to 72A.32, regulating trade and claim service practices.

2770.7200 TERMINATION OF SELF-INSURANCE STATUS.

An authorized self-insurer shall inform the commissioner at least 30 days after becoming insured. Self-insurance authority terminates immediately upon becoming insured.

2770.7300 REVOCATION OF SELF-INSURANCE AUTHORITY.

The commissioner shall revoke a self-insurer's authorization to self-insure:

A. if the commissioner determines that a self-insurer:

(1) does not satisfy applicable authorization standards in part 2770.6500;

(2) is not complying with a lawful order of the commissioner;

(3) is not complying with Minnesota Statutes, chapter 65B;

(4) has not complied with parts 2770.6700 to 2770.7100; or

(5) is not complying, or has not complied with any other statutory requirement; and

B. if the commissioner determines that the self-insurer has failed, or is unable, to remedy circumstances that will, in the future, prevent the self-insurer from complying with standards or requirements of this chapter.

2770.7400 WAIVER OF STANDARDS.

Subpart 1. **Standards.** The commissioner shall waive the standards in part 2770.6500, and shall not revoke self-insurance authority under part 2770.7300, item A, if:

A. an entity authorized to self-insure at the time this chapter becomes effective does not satisfy the standards in 2770.6500;

B. the entity has been an authorized self-insurer for

at least two years prior to this chapter becoming effective;

C. the commissioner determines that the entity, while self-insured, has executed its responsibilities and obligations as a self-insurer; and

D. the entity follows the procedures contained in subpart 2 for requesting a waiver of standards.

Subp. 2. **Procedures.** A self-insurer must request a waiver of standards under this part by applying, in writing, to the commissioner no later than 30 days after this chapter becomes effective. The commissioner shall either grant or deny a waiver of standards under this part no later than 30 days after receiving a request.

Subp. 3. **Duration.** A waiver of standards granted under this part shall be granted to a self-insurer only once and shall be effective for no more than three years. If the commissioner determines that a self-insurer for which a waiver of standards was previously granted no longer satisfies the conditions contained in subpart 1, then the commisisoner shall revoke the waiver of standards.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD491

Agency: Department of Commerce

Division:

Agency Contact: Deb Lindlief

Minnesota Rules: Parts 2770.6100 to 2770.7400

Title: Proposed Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948

Date: April 13, 1984

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Governing Regulation of Self-Insurers
Under the Minnesota No-fault Automobile
Insurance Act

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 April 30, 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. Section 14.14, subd. 1a, on April 26, 1984.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven (7) 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 Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act are adopted this 5th day of May, 1984 pursuant to authority vested in me by Minn. Stat. Section 65B.48.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Self-Insurance under the No-Fault Act

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 16th day of April, 1984 that Notice of Intent to Adopt 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

In the Matter of the Proposed Adoption of
Rules Relating to Self-Insurance under the
No-Fault Act

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 April, 1984, 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 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 rules is attached.

Debbi J. Lindlief

Subscribed and sworn to before me this
26th day of April, 1984.

Nancy I. Lisik

NANCY I. LISIK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 22, 1984

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Self-Insurance under the
No-Fault Act

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 rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

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 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 David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 65B.48. 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.

Upon adoption of the final 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.

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

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

Subp. 3. **Certified financial statement.** "Certified financial statement" means a statement of the operating results and financial position of an applicant, authorized self-insurer, or parent company. A statement includes a balance sheet, income statement, statement of changes in financial position, or the equivalent in the case of nonprofit organizations and political subdivisions, and associated notes. A statement must include the professional opinion of an independent certified public accountant. A parent company's certified financial statement must be a consolidated statement combining the operating results and financial position of the parent company and its subsidiaries.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. **Licensed vendor of risk management services.** "Licensed vendor of risk management services" means an entity authorized under Minnesota Statutes, section 60A.23, subdivision 8, to contract with self-insurers for the purpose of administering self-insurance programs.

Subp. 6. **No-fault act.** "No-fault act" means the automobile insurance system defined in Minnesota Statutes,

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sections 65B.41 to 65B.71.

Subp. 7. **Parent company.** "Parent company" means a company or organization that directly, or indirectly through one or more intermediaries, controls an applicant or authorized self-insurer, and that is not also controlled by another company or organization.

Subp. 8. **Political subdivision.** "Political subdivision" means a statutory or home rule charter city or county, the state of Minnesota, or any instrumentality of a statutory or home rule charter city or county or the state of Minnesota.

Subp. 9. **Subsidiary.** "Subsidiary" means a company or organization that is directly, or indirectly through one or more intermediaries, controlled by a parent company.

2770.6300 APPLICATION REQUIREMENT.

No person or entity may self-insure for no-fault act liabilities without the commissioner's authorization. The commissioner may only grant self-insurance authority to applicants that have followed the application procedures and that meet the authorization standards described in parts 2770.6100 to 2770.7400.

2770.6400 APPLICATION PROCEDURES.

Subpart 1. **Application forms.** An application for self-insurance authority must be made on forms prescribed and made available by the commissioner.

Subp. 2. **Financial statements.** Certified financial statements for an applicant's most recently ended fiscal year and for each of the three prior years must be included with an application. If an applicant is a subsidiary, then an application must also include certified financial statements for the parent company's most recently ended fiscal year and for each of the prior three years.

Subp. 3. **Application fee.** A $500 application fee must be included with each application.

Subp. 4. **Assumption of liability agreement.** The parent company of an applicant must agree to assume the applicant's

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liabilities under the no-fault act if the applicant alone fails to satisfy part 2770.6500, subpart 2, item B, subitems 1 to 5. This agreement must be in a form prescribed by the commissioner. If required, a completed assumption of liability agreement form must be provided before an application can be considered complete.

Subp. 5. **Resolution of governing body.** If an applicant is a political subdivision, then a certified copy of a resolution from its governing body authorizing the political subdivision to seek self-insurance authority must be included with an application.

Subp. 6. **Commissioner's action.** The commissioner shall grant or deny authorization to self-insure within 60 days of receiving all application materials.

2770.6500 AUTHORIZATION STANDARDS.

Subpart 1. **Political subdivisions.** The commissioner shall grant self-insurance authority to an applicant that is a political subdivision if it satisfies these conditions:

A. at least 25 motor vehicles are registered in its name; and

B. it has, or has contracted with a licensed vendor of risk management services to provide, the administrative resources needed to:

(1) process, review, and pay claims;

(2) evaluate the medical and rehabilitation needs of automobile accident victims; and

(3) estimate current and future loss liabilities.

Subp. 2. **All other applicants.** The commissioner shall grant self-insurance authority to an applicant that is not a political subdivision if the following conditions are satisfied:

A. the applicant satisfies subpart 1, item B;

B. either the applicant alone or the parent company alone:

(1) satisfies subpart 1, item A;

(2) has existed for at least five years;

(3) has a current net worth, or the equivalent,

of at least $5,000,000;

(4) had positive net income, or the equivalent, during the last five-year period and in at least three of those years; and

(5) had positive net funds flow during the last five-year period and in at least three of those years;

C. neither the applicant nor its parent company, if one exists, has sought protection under the United States Bankruptcy Code during the last three years; and

D. the funds flow, debt structure, profitability, and overall financial integrity of the applicant and its parent company, if one exists, demonstrate a continuing ability of the applicant to satisfy any financial obligations that have been and might be incurred under the no-fault act.

2770.6600 COMMISSIONER'S DECISION.

Subpart 1. **Approval.** The commissioner shall authorize an applicant to self-insure by issuing a self-insurance certificate to the applicant. The certificate must include the dates when self-insurance authority begins and ends.

Subp. 2. **Denial.** The commissioner may deny self-insurance authority by informing the applicant by mail of the decision.

2770.6700 RENEWAL.

Authorization to self-insure ends 150 days after the end of a self-insurer's fiscal year. Authorization may be renewed for one year if a self-insurer informs the commissioner no later than 120 days after the end of its fiscal year that it wishes to continue to self-insure. The commissioner shall issue a new certificate of authority to each self-insurer whose self-insurance authority is renewed.

2770.6800 SECURITY REQUIREMENT.

Subpart 1. **Surety bond required.** An authorized self-insurer shall maintain a surety bond written by a corporate surety authorized to do business in Minnesota. The bond must be filed with the commissioner and name the "Commissioner of Commerce - State of Minnesota" as its obligee.

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Subp. 2. **Bond form.** The surety bond must be executed on forms prescribed and made available by the commissioner, or on other forms not materially different from the forms prescribed by the commissioner. The commissioner shall refuse to accept surety bonds executed on forms that are not consistent with the requirements of this part or the purpose of parts 2770.6100 to 2770.7400.

Subp. 3. **Condition, cancellation.** The condition of the surety bond must be the execution of the self-insurer's legal obligations as a self-insurer. The bond cannot be canceled unless 30 days' notice is provided by the surety to the commissioner. After cancellation, the bond must remain in force for those liabilities incurred by the self-insurer from the time the bond first became effective until its cancellation, regardless of when compensation was or may be claimed, awarded, or paid.

Subp. 4. **Penalty sum.** The bond must provide a penalty sum of $100,000 or 125 percent of the self-insurer's total outstanding liabilities, whichever is greater. The penalty sum must be consistent with the latest report of outstanding loss liabilities as required in part 2770.6900.

Subp. 5. **Use of bond by commissioner.** In the event the commissioner determines that the self-insurer has violated the condition of the bond, the commissioner may draw upon the penalty sum to pay any unpaid claim obligations incurred by the self-insurer and to recover any costs or expenses incurred by the Department of Commerce that are directly attributed to administering the self-insurer's claims.

2770.6900 REPORTING REQUIREMENTS.

Subpart 1. **Financial statements.** Authorized self-insurers shall provide these items to the commissioner no later than 120 days after the end of each fiscal year:

A. a certified financial statement for the self-insurer's most recently ended fiscal year, and a copy of the self-insurer's most recent form 10K filed with the Securities and Exchange Commission, if applicable;

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B. a certified financial statement for the parent company's most recently ended fiscal year, if applicable, and a copy of the parent company's most recent form 10K filed with the Securities and Exchange Commission, if applicable; and

C. any quarterly financial statements for the applicant and the parent company, if applicable, issued since the end of the latest fiscal year for which a certified financial statement has been provided to the commissioner.

Subp. 2. **Status report.** Authorized self-insurers shall provide to the commissioner, on forms prescribed and made available by the commissioner, information needed to maintain accurate records of the self-insurers' address, relevant personnel, scope of self-insurance under the no-fault act, and other administrative matters. The status report shall be provided at the same time as the self-insurer notifies the commissioner of its intention to seek renewal of self-insurance authority, as required in part 2770.6700.

Subp. 3. **Loss liabilities report.** Authorized self-insurers shall provide, by March 1 of every year, a report of paid and outstanding loss liabilities incurred under the no-fault act evaluated as of December 31 of the prior year. The loss liabilities report must be on forms prescribed and made available by the commissioner.

2770.7000 QUARTERLY FINANCIAL STATEMENTS.

If the commissioner determines that a deterioration in the funds flow, net worth, debt structure, profitability, or general financial integrity of the self-insurer or its parent company, if a parent company exists, adversely affects the self-insurer's ability to satisfy its financial obligations under the no-fault act, then the commissioner shall require an authorized self-insurer to submit quarterly financial statements for the self-insurer and its parent company.

2770.7100 ASSIGNED CLAIMS PLAN, UNFAIR PRACTICES.

Self-insurers authorized under this chapter are reparation obligors under Minnesota Statutes, section 65B.43, subdivision

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9, and shall participate in the assigned claims plan in Minnesota Statutes, section 65B.63. Self-insurers authorized under this chapter are also subject to Minnesota Statutes, sections 72A.17 to 72A.32, regulating trade and claim service practices.

2770.7200 TERMINATION OF SELF-INSURANCE STATUS.

An authorized self-insurer shall inform the commissioner at least 30 days after becoming insured. Self-insurance authority terminates immediately upon becoming insured.

2770.7300 REVOCATION OF SELF-INSURANCE AUTHORITY.

The commissioner shall revoke a self-insurer's authorization to self-insure:

A. if the commissioner determines that a self-insurer:

(1) does not satisfy applicable authorization standards in part 2770.6500;

(2) is not complying with a lawful order of the commissioner;

(3) is not complying with Minnesota Statutes, chapter 65B;

(4) has not complied with parts 2770.6700 to 2770.7100; or

(5) is not complying, or has not complied with any other statutory requirement; and

B. if the commissioner determines that the self-insurer has failed, or is unable, to remedy circumstances that will, in the future, prevent the self-insurer from complying with standards or requirements of this chapter.

2770.7400 WAIVER OF STANDARDS.

Subpart 1. Standards. The commissioner shall waive the standards in part 2770.6500, and shall not revoke self-insurance authority under part 2770.7300, item A, if:

A. an entity authorized to self-insure at the time this chapter becomes effective does not satisfy the standards in 2770.6500;

B. the entity has been an authorized self-insurer for

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at least two years prior to this chapter becoming effective;

C. the commissioner determines that the entity, while self-insured, has executed its responsibilities and obligations as a self-insurer; and

D. the entity follows the procedures contained in subpart 2 for requesting a waiver of standards.

Subp. 2. **Procedures.** A self-insurer must request a waiver of standards under this part by applying, in writing, to the commissioner no later than 30 days after this chapter becomes effective. The commissioner shall either grant or deny a waiver of standards under this part no later than 30 days after receiving a request.

Subp. 3. **Duration.** A waiver of standards granted under this part shall be granted to a self-insurer only once and shall be effective for no more than three years. If the commissioner determines that a self-insurer for which a waiver of standards was previously granted no longer satisfies the conditions contained in subpart 1, then the commisisoner shall revoke the waiver of standards.

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As a result of the hearing process, the proposed rule may be modified. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Commerce 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 Department of Commerce anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Pursuant to Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Commerce may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing records have been submitted (or resubmitted) to the Attorney General by the Department of Commerce. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Department of Commerce (in the case of the agency's submission or resubmission to the Attorney General).

One free copy of this Notice and the proposed rules may be obtained by contacting Debbi J. Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance by Groups of Political Subdivisions, Including the Impact of the Rules on Small Businesses

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 by groups of political subdivisions. Promulgation of these rules is authorized by Minnesota Statutes, sections 471.617, subd. 2 and 471.982, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

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: John Klein, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3238.

All statements of information and comment shall be accepted until February 29, 1984. 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

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance Under the No-Fault Act, Including the Impact of the Rules on Small Businesses

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 under the no-fault act. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.48.

Opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

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: David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

All statements of information and comment shall be accepted until February 29, 1984. 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 Energy and Economic Development Energy Finance Division

Procedures for Distribution of State Cost-Share Maxi-Audit and Cost-Share Maxi-Audit Revision Grant Funds

Purpose:

These procedures establish the method by which Minnesota public school districts may obtain financial assistance for conducting new maxi-audits on unaudited buildings and for revising existing maxi-audits. This program is funded by a $500,000 appropriation pursuant to Laws of Minnesota, 1983, Chapter 323, Section 5, Subdivision 4.

I. Definitions:

A. Scope: For the purposes of this program the following terms have the meaning given them.

B. Authorized Cost-Share Maxi-Auditor: "Authorized Cost-Share Maxi-Auditor" means a person who:

1. Is a professional electrical or mechanical engineer or architect registered in the State of Minnesota.

2. Has attended an information/training session conducted by the Department.

3. Has agreed to abide by all requirements and procedures of the cost-share maxi-audit program when conducting cost-share maxi-audits or cost-share maxi-audit revisions which will be paid by funds from the cost-share maxi-audit program.

4. Has agreed to correct all deficiencies in a cost-share maxi-audit report as requested by the Department in writing after its review. These changes must be made within 30 days, or the Department may remove the maxi-auditor from the authorized list.

5. Has signed and submitted to the Department the "Cost-Share Maxi-Auditor Authorization Agreement."

C. Building: "Building" means any separate, enclosed, heated structure owned and operated by the district.

D. Cost-Share: "Cost-share" means a partial payment by the State of Minnesota for the costs incurred in conducting a cost-share maxi-audit or cost-share maxi-audit revision.

E. Cost-Share Maxi-Audit: "Cost-Share Maxi-Audit" means a detailed engineering analysis of a building structure (envelope) and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems to identify and quantify the economic and engineering feasibility of energy conservation measures. It is performed in accordance with the Cost-Share Maxi-Audit Requirements and Procedures, January 1984.

F. Cost-Share Maxi-Audit Report: "Cost-Share Maxi-Audit Report" means the written document prepared as the result of an authorized cost-share maxi-auditor's analysis of the building. The cost-share maxi-audit or cost-share maxi-audit revision report will be prepared according to Cost-Share Requirements and Procedures, January 1984.

G. Cost-Share Maxi-Audit Revision: "Cost-Share Maxi-Audit Revision" means a cost-share maxi-audit on a building that has an existing maxi-audit. The requirements and procedures that apply to a cost-share maxi-audit will apply to a cost-share maxi-audit revision.

H. Department: "Department" means the Minnesota Department of Energy and Economic Development. The Department is responsible for administering the cost-share maxi-audit program.

I. District: "District" means a Minnesota public school district.

II. Eligibility:

A. General: All districts are eligible for a state grant for a cost-share maxi-audit/cost-share maxi-audit revision on existing district owned buildings.

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Self-Insurance under the No-Fault Act, including the Impact of the Rules on Small Businesses

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 under the no-fault act. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.48.

Opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

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: David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

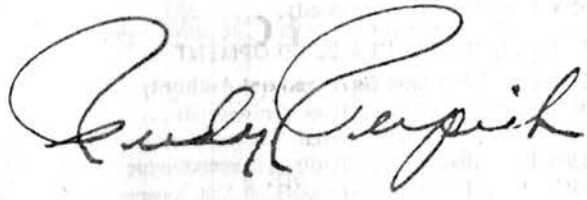
All statements of information and comment shall be accepted until February 29, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

EXECUTIVE ORDERS

Pursuant to Minnesota Statutes 1982, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 10th day of April, 1984.



PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Administration
Cable Communications Board

Proposed Rules 4 MCAR §§ 4.260-4.263 Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing in Accordance with the Procedures for Noncontroversial Rules set out in Minnesota Statutes §§ 14.21-14.28

Notice is hereby given that the Minnesota Cable Communications Board supplements the Notice of Proposed Rulemaking of the above contained rules published in the *State Register* on Monday, February 6, 1984 on pages 1807 to 1809 to assure compliance with Minnesota Statutes § 14.115 (Supp. 1983), the Small Business Considerations in Rulemaking.

Accordingly, affected parties are advised herewith that the proposed rules may have an impact on some small businesses in Minnesota that operate multiple dwelling complexes or furnish cable communication or similar services. These businesses would be required to use the procedures set forth in the rule to determine the conditions for access by alternative providers of television programming or cable communications services and the reimbursement to be provided for such access.

Owners and operators of small businesses described above should familiarize themselves with the procedures set forth in the rule. More detailed information concerning the nature of the rule and its possible impact on small businesses is contained in the agency's statement of Need and Reasonableness.

Additionally, the aforementioned Proposed Notice is amended to change the due date. Comments are due no later than 4:30 p.m., May 30, 1984.

W. D. Donaldson
Executive Director

Department of Commerce

Proposed Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

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 rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

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 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 David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 65B.48. 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.

Upon adoption of the final 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.

A copy of the proposed rules is attached to this notice.

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. Applicant. "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

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.

Subp. 3. Certified financial statement. "Certified financial statement" means a statement of the operating results and financial position of an applicant, authorized self-insurer, or parent company. A statement includes a balance sheet, income statement, statement of changes in financial position, or the equivalent in the case of nonprofit organizations and political subivisions, and associated notes. A statement must include the professional opinion of an independent certified public accountant. A parent company's certified financial statement must be a consolidated statement combining the operating results and financial position of the parent company and its subsidiaries.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. Licensed vendor of risk management services. "Licensed vendor of risk management services" means an entity authorized under Minnesota Statutes, section 60A.23, subdivision 8, to contract with self-insurers for the purpose of administering self-insurance programs.

Subp. 6. No-fault act. "No-fault act" means the automobile insurance system defined in Minnesota Statutes, sections 65B.41 to 65B.71.

Subp. 7. Parent company. "Parent company" means a company or organization that directly, or indirectly through one or more intermediaries, controls an applicant or authorized self-insurer, and that is not also controlled by another company or organization.

Subp. 8. Political subdivision. "Political subdivision" means a statutory or home rule charter city or county, the state of Minnesota, or any instrumentality of a statutory or home rule charter city or county or the state of Minnesota.

Subp. 9. Subsidiary. "Subsidiary" means a company or organization that is directly, or indirectly through one or more intermediaries, controlled by a parent company.

2770.6300 APPLICATION REQUIREMENT.

No person or entity may self-insure for no-fault act liabilities without the commissioner's authorization. The commissioner may only grant self-insurance authority to applicants that have followed the application procedures and that meet the authorization standards described in parts 2770.6100 to 2770.7400.

2770.6400 APPLICATION PROCEDURES.

Subpart 1. Application forms. An application for self-insurance authority must be made on forms prescribed and made available by the commissioner.

Subp. 2. Financial statements. Certified financial statements for an applicant's most recently ended fiscal year and for each of the three prior years must be included with an application. If an applicant is a subsidiary, then an application must also include certified financial statements for the parent company's most recently ended fiscal year and for each of the prior three years.

Subp. 3. Application fee. A $500 application fee must be included with each application.

Subp. 4. Assumption of liability agreement. The parent company of an applicant must agree to assume the applicant's liabilities under the no-fault act if the applicant alone fails to satisfy part 2770.6500, subpart 2, item B, subitems 1 to 5. This agreement must be in a form prescribed by the commissioner. If required, a completed assumption of liability agreement form must be provided before an application can be considered complete.

Subp. 5. Resolution of governing body. If an applicant is a political subdivision, then a certified copy of a resolution from its governing body authorizing the political subdivision to seek self-insurance authority must be included with an application.

Subp. 6. Commissioner's action. The commissioner shall grant or deny authorization to self-insure within 60 days of receiving all application materials.

2770.6500 AUTHORIZATION STANDARDS.

Subpart 1. Political subdivision. The commissioner shall grant self-insurance authority to an applicant that is a political subdivision if it satisfies these conditions:

A. at least 25 motor vehicles are registered in its name; and

B. it has, or has contracted with a licensed vendor of risk management services to provide, the administrative resources needed to:

(1) process, review, and pay claims;

(2) evaluate the medical and rehabilitation needs of automobile accident victims; and

(3) estimate current and future loss liabilities.

Subp. 2. All other applicants. The commissioner shall grant self-insurance authority to an applicant that is not a political subdivision if the following conditions are satisfied:

A. the applicant satisfies subpart 1, item B;

B. either the applicant alone or the parent company alone:

(1) satisfies subpart 1, item A;

(2) has existed for at least five years;

(3) has a current net worth, or the equivalent, of at least $5,000,000;

(4) had positive net income, or the equivalent, during the last five-year period and in at least three of those years; and

(5) had positive net funds flow during the last five-year period and in at least three of those years;

C. neither the applicant nor its parent company, if one exists, has sought protection under the United States Bankruptcy Code during the last three years; and

D. the funds flow, debt structure, profitability, and overall financial integrity of the applicant and its parent company, if one exists, demonstrate a continuing ability of the applicant to satisfy any financial obligations that have been and might be incurred under the no-fault act.

2770.6600 COMMISSIONER'S DECISION.

Subpart 1. Approval. The commissioner shall authorize an applicant to self-insure by issuing a self-insurance certificate to the applicant. The certificate must include the dates when self-insurance authority begins and ends.

Subp. 2. Denial. The commissioner may deny self-insurance authority by informing the applicant by mail of the decision.

2770.6700 RENEWAL.

Authorization to self-insure ends 150 days after the end of self-insurer's fiscal year. Authorization may be renewed for one year if a self-insurer informs the commissioner no later than 120 days after the end of its fiscal year that it wishes to continue to self-insure. The commissioner shall issue a new certificate of authority to each self-insurer whose self-insurance authority is renewed.

2770.6800 SECURITY REQUIREMENT.

Subpart 1. Surety bond required. An authorized self-insurer shall maintain a surety bond written by a corporate surety authorized to do business in Minnesota. The bond must be filed with the commissioner and name the "Commissioner of Commerce—State of Minnesota" as its obligee.

Subp. 2. Bond form. The surety bond must be executed on forms prescribed and made available by the commissioner, or on other forms not materially different from the forms prescribed by the commissioner. The commissioner shall refuse to accept surety bonds executed on forms that are not consistent with the requirements of this part or the purpose of parts 2770.6100 to 2770.7400.

Subp. 3. Condition, cancellation. The condition of the surety bond must be the execution of the self-insurer's legal obligations as a self-insurer. The bond cannot be canceled unless 30 days' notice is provided by the surety to the commissioner. After cancellation, the bond must remain in force for those liabilities incurred by the self-insurer from the time the bond first became effective until its cancellation, regardless of when compensation was or may be claimed, awarded, or paid.

Subp. 4. Penalty sum. The bond must provide a penalty sum of $100,000 or 125 percent of the self-insurer's total outstanding liabilities, whichever is greater. The penalty sum must be consistent with the latest report of outstanding loss liabilities as required in part 2770.6900.

Subp. 5. Use of bond by commissioner. In the event the commissioner determines that the self-insurer has violated the condition of the bond, the commissioner may draw upon the penalty sum to pay any unpaid claim obligations incurred by the self-insurer and to recover any costs or expenses incurred by the Department of Commerce that are directly attributed to administering the self-insurer's claims.

2770.6900 REPORTING REQUIREMENTS.

Subpart 1. Financial statements. Authorized self-insurers shall provide these items to the commissioner no later than 120 days after the end of each fiscal year:

A. a certified financial statement for the self-insurer's most recently ended fiscal year, and a copy of the self-insurer's most recent form 10K filed with the Securities and Exchange Commission, if applicable;

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.

B. a certified financial statement for the parent company's most recently ended fiscal year, if applicable, and a copy of the parent company's most recent form 10K filed with the Securities and Exchange Commission, if applicable; and

C. any quarterly financial statements for the applicant and the parent company, if applicable, issued since the end of the latest fiscal year for which a certified financial statement has been provided to the commissioner.

Subp. 2. Status report. Authorized self-insurers shall provide to the commissioner, on forms prescribed and made available by the commissioner, information needed to maintain accurate records of the self-insurers' address, relevant personnel, scope of self-insurance under the no-fault act, and other administrative matters. The status report shall be provided at the same time as the self-insurer notifies the commissioner of its intention to seek renewal of self-insurance authority, as required in part 2770.6700.

Subp. 3. Loss liabilities report. Authorized self-insurers shall provide, by March 1 of every year, a report of paid and outstanding loss liabilities incurred under the no-fault act evaluated as of December 31 of the prior year. The loss liabilities report must be on forms prescribed and made available by the commissioner.

2770.7000 QUARTERLY FINANCIAL STATEMENTS.

If the commissioner determines that a deterioration in the funds flow, net worth, debt structure, profitability, or general financial integrity of the self-insurer or its parent company, if a parent company exists, adversely affects the self-insurer's ability to satisfy its financial obligations under the no-fault act, then the commissioner shall require an authorized self-insurer to submit quarterly financial statements for the self-insurer and its parent company.

2770.7100 ASSIGNED CLAIMS PLAN, UNFAIR PRACTICES.

Self-insurers authorized under this chapter are reparation obligors under Minnesota Statutes, section 65B.43, subdivision 9, and shall participate in the assigned claims plan in Minnesota Statutes, section 65B.63. Self-insurers authorized under this chapter are also subject to Minnesota Statutes, sections 72A.17 to 72A.32, regulating trade and claim service practices.

2770.7200 TERMINATION OF SELF-INSURANCE STATUS.

An authorized self-insurer shall inform the commissioner at least 30 days after becoming insured. Self-insurance authority terminates immediately upon becoming insured.

2770.7300 REVOCATION OF SELF-INSURANCE AUTHORITY.

The commissioner shall revoke a self-insurer's authorization to self-insure:

A. if the commissioner determines that a self-insurer:

(1) does not satisfy applicable authorization standards in part 2770.6500;

(2) is not complying with a lawful order of the commissioner;

(3) is not complying with Minnesota Statutes, chapter 65B;

(4) has not complied with parts 2770.6700 to 2770.7100; or

(5) is not complying, or has not complied with any other statutory requirement; and

B. if the commissioner determines that the self-insurer has failed, or is unable, to remedy circumstances that will, in the future, prevent the self-insurer from complying with standards or requirements of this chapter.

2770.7400 WAIVER OF STANDARDS.

Subpart 1. Standards. The commissioner shall waive the standards in part 2770.6500, and shall not revoke self-insurance authority under part 2770.7300, item A, if:

A. an entity authorized to self-insure at the time this chapter becomes effective does not satisfy the standards in 2770.6500;

B. the entity has been an authorized self-insurer for at least two years prior to this chapter becoming effective;

C. the commissioner determines that the entity, while self-insured, has executed its responsibilities and obligations as a self-insurer; and

D. the entity follows the procedures contained in subpart 2 for requesting a waiver of standards.

Subp. 2. Procedures. A self-insurer must request a waiver of standards under this part by applying, in writing, to the commissioner no later than 30 days after this chapter becomes effective. The commissioner shall either grant or deny a waiver of standards under this part no later than 30 days after receiving a request.

Subp. 3. Duration. A waiver of standards granted under this part shall be granted to a self-insurer only once and shall be effective for no more than three years. If the commissioner determines that a self-insurer for which a waiver of standards was previously granted no longer satisfies the conditions contained in subpart 1, then the commissioner shall revoke the waiver of standards.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Governing Regulation of Self-insurers Under the Minnesota No-fault Automobile Insurance Act, Minnesota Rules, parts 2700.6100 to 2700.7400

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes § 65B.48, Subdivision 3a, authorizes the Commissioner of Commerce to adopt rules necessary to the effective implementation of Minnesota Statutes § 65B.48, Subdivision 3. Minnesota Statutes § 65B.48, Subdivision 3, allows for self-insurance under the No-fault Automobile Insurance Act where the applicant for self-insurance authority or the self-insurer demonstrates a continuing undertaking to pay tort liabilities and basic economic loss benefits under the No-fault Act, and where the applicant or self-insurer has the administrative and financial capabilities to

satisfy those obligations. Minnesota Statutes § 65B.48, Subdivision 3a, authorizes the Commissioner to adopt rules establishing: (1) reporting requirements, (2) standards regarding financial and administrative capabilities, (3) financial security requirements, and (4) other reasonable requirements to promote effective self-insurance.

FACTS ESTABLISHING NEED AND REASONABLENESS

The proposed rules are necessary to the fair and effective regulation of self-insurance under the No-fault Act, and reasonably address that need.

Part 2770.6100 Purpose.

This part of the rule is necessary to establish the overall purpose of these rules. It is consistent with the statutory authority for the rules as cited above.

Part 2770.6200 Definitions.

Certain terms affect the intent and scope of the rules, and it is necessary to define those terms. Those definitions which have more substantive effect are described more fully. According to subpart 3, certified financial statements include balance sheets, income statements, and statements of changes in financial position. These three statements together provide a comprehensive overview of an entity's financial condition. Each is routinely prepared for organizations with significant financial interests. Requiring that all statements be certified by a certified public accountant ensures that generally accepted accounting practices and procedures are used in their preparation, thus promoting equity and fairness in the regulation of self-insurers and potential self-insurers. The requirement that a parent company's financial statements encompass the positions and conditions of all subsidiaries is duscussed below.

Subparts 7 and 9 identify a parent company-subsidiary relationship as being the relationship between the subsidiary and the ultimate parent in the corporate structure of which the subsidiary is a part. The importance and reasonableness of this assumption are discussed below.

Part 2770.6300 Application requirement.

Part 2770.6300 allows only those persons or entities that have been approved by the Commissioner, that have followed the established application procedures, and that satisfy the established authorization standards, to self-insure. It is necessary to state these procedural requirements in order to minimize unauthorized self-insurance due to misunderstanding or intent.

Part 2770.6400 Application procedures.

Subpart 1 requires that all applications for self-insurance authority be made on forms provided by the Commissioner. This requirement is necessary to ensure equity in the evaluation of all applicants, and to promote efficiency in the application process.

Subpart 2 requires certified financial statements for the applicant's four most recently ended fiscal years. The requirement that the financial statements be certified is based on the fact that financial statements issued for public/investor consumption are most relevant to the regulatory task of monitoring financial condition. Uncertified statements, such as management reports, may omit important facts regarding financial condition. Four years' statements (indicating five years' financial results) are necessary to

assess the applicant's recent financial history, and allow regulatory personnel to identify possibly important financial trends and cycles. Financial statements of parent companies are requested because of the financial interdependence that sometimes exists between parents and subsidiaries. Parent company behavior may quickly and substantially affect the financial condition of a subsidiary. Financial strength of a subsidiary may be illusory if a parent company is in poor financial health. It is necessary, therefore, that the financial condition of a parent company be monitored along with the subsidiary's financial condition.

Subpart 3 requires a $500 application fee, as required by Minnesota Statutes § 65B.48, Subdivision 3.

The potential financial interdependence of a subsidiary and its parent company has already been mentioned as justification for monitoring the financial health of the parent company. Financial interdependence is also the basis for authorizing a subsidiary to self-insure even though the subsidiary fails to satisfy all of the financial standards for self-insurance authorization (see below). The reasoning here is that there is no good reason why a subsidiary failing to meet the financial standards in part 2770.6500 should be prevented from self-insuring if the subsidiary's parent company meets those standards and if the subsidiary can access the resources of the parent company. Subpart 4 requires, in such situations, that the

parent company agree to assume the subsidiary's liabilities under the No-fault Act. The assumption of liability agreement is necessary to ensure access to the parent company's financial resources.

The intent of Subpart 5 is to ensure that the governing body of a political subdivision has authorized self-insurance. The potential and widespread public consequences of an ill-considered decision to self-insure makes the requirement both reasonable and necessary.

60 days is a reasonable length of time for considering and acting on an application to self-insure. According to Subpart 6, the 60-day period begins running once all application materials have been received. Providing the deadline will ensure prompt action on applications.

Part 2770.6500 Authorization standards.

Subpart 1 establishes the standards that a political subdivision must meet in order to become and remain self-insured. Subpart 2 establishes standards for all other applicants and self-insureds.

No financial standards are established for political subdivisions because of their unique revenue-raising abilities. The 25-vehicle requirement is based on the assumption that an entity with fewer than 25 vehicles (political subdivision or otherwise) is unlikely to incur losses or claims often enough to maintain an efficient and effective claims management system. Minnesota Statutes § 65B.48, Subdivision 3, requires potential self-insurers to provide evidence of their ability to promptly administer claims. Subpart 1 is consistent with that requirement.

Subpart 2 establishes additional requirements for non-governmental entities. The financial requirements are designed to create a presumption that a self-insurer will be able to pay tort liabilities and economic benefits under the No-fault Act. To create this presumption it was determined that an entity would have to demonstrate stability (five years existence, positive net income), solvency (positive net funds flow, not recently in bankruptcy), and capacity ($5,000,000 net worth). Considering the speed with which financial fortunes can change and the potential tort liabilities and No-fault Act obligations to which a self-insured is exposed, it was determined that the financial standards were minimal and necessary to create the presumption required to authorize self-insurance.

Part 2770.6600 Commissioner's decision.

Subparts 1 and 2 are necessary to establish the means by which approval or denial will be effected.

Part 2770.6700 Renewal.

To issue open-ended self-insurance authority would unnecessarily increase the risk that a self-insurer's deteriorating financial condition might go undetected, thus jeopardizing the interests of automobile accident victims. The renewal requirement is a reasonable measure intended to minimize the possibility of such an event occurring. The renewal requirement is also intended to minimize the problems that occur when self-insurers decide to purchase insurance without informing the Department of Commerce of the fact. The provision that ends self-insurance authority 150 days after the end of the self-insurer's fiscal year is necessary to enable the Commissioner to consider the self-insurer's most current financial statements at the time of renewal. (Under Part 2770.6900, Subp. 1, financial statements must be submitted within 120 days after the close of a fiscal year.)

Part 2770.6800 Security requirement.

This part requires all self-insurers to maintain a surety bond of $100,000, or 125% of its outstanding liabilities, whichever is greater, for the use of the Commissioner when it is determined that the self-insurer is not fulfilling its legal obligations. This requirement is necessary to ensure that accident victims will not be denied rightful benefits due to a self-insurer's inability or unwillingness to comply with the No-fault Act. The requirement is applied to political subdivisions as well as private entities. Political subdivisions are not immune to financial or managerial difficulties. It was concluded, therefore, that these entities should be subject to the surety bond requirement.

Subpart 2 requires that the surety bond be executed on forms provided or approved by the Commissioner. This is reasonable and necessary to prevent the use of forms that may not provide the financial guarantee authorized by Minnesota Statutes § 65B.48, Subdivision 3, Clause 3 and required by this part.

Subpart 3 states the condition of the bond and provides that it must remain in force after cancellation for all liabilities incurred during the bond's effective dates. This provision is necessary order to ensure that some financial guarantee exists for all liabilities incurred while self-insured until those liabilities are extinguished.

Subpart 4 establishes the surety bond's penalty sum. It is necessary that the penalty sum at least be equal to the self-insurer's outstanding liabilities. The $100,000 requirement will apply to self-insurers until such time as they are able to determine their experience while self-insured. The potential that a small number of claims could represent $100,000 in liabilities reflects the reasonableness of the requirement. The additional 25% is required to ensure the availability of funds needed to manage a self-insurer's claims, should that become necessary.

Subpart 5 authorizes the Commissioner to use a bond in order to execute the self-insurer's obligations under the No-fault Act and to recover the costs of administering a self-insurer's claims. This provision is necessary to ensure the realization of the No-fault Act's fundamental objectives, which is to provide compensation to automobile accident victims.

Part 2770.6900 Reporting requirements.

Subpart 1 requires all self-insurer's to file financial reports necessary to the monitoring of their financial condition. The requirements are reasonable in that they attempt to ensure that the most recent information available is provided, and because they do not require the generation of any unique financial statements or reports not already available.

Subpart 2 requires self-insurers to update relevant information regarding their self-insurance program. This is necessary to ensure that the Department of Commerce is informed of important changes in a self-insurer's status. It is reasonable in that the information requested will be easily obtained, and because the timing of the report is intended to coincide with the self-insurer's renewal notification.

Subpart 3 requires self-insurers to annually report all paid and outstanding loss liabilities. This information is necessary to monitor compliance with the No-fault Act. It is reasonable in that the information requested will be easily obtained - assuming that the self-insurer's program is efficiently and effectively managed.

Part 2770.7000 Quarterly financial statements.

This part authorizes the Commissioner to require supplemental financial reports where there is cause for concern regarding a self-insurer's financial condition, but where termination of self-insurance authority does not seem warranted. This is a reasonable alternative to termination of authority in those situations where it will adequately protect the interests of actual and potential accident victims.

Part 2770.7100 Assigned claims plan, unfair practices.

This part affirms self-insurers' status as reparation obligors and their responsibility to participate in the assigned claims plan. It also requires self-insurers to comply with any relevant provisions of the Minnesota Unfair Trade Practices Act. These provisions assure that self-insurers assume responsibilities and provide protection equal to that assumed or provided by No-fault insurers.

Part 2770.7200 Termination of self-insurance status.

This part requires self-insurers to inform the Commissioner after becoming insured. This is reasonable and necessary to ensure effective and efficient regulation of self-insurers. This part also states that self-insurance authority is terminated immediately upon becoming insured. This is necessary to prevent entities from claiming dual status or arbitrarily entering, leaving, and then reentering self-insurance status.

Part 2770.7300 Revocation of self-insurance authority.

This part authorizes the Commissioner to revoke self-insurance authority where the self-insurer (a) does not satisfy the standards established by the rules, (b) is not complying with a lawful order of the Commissioner, (c) is not complying with the No-fault Act, (d) is not complying with the rules, or (e) is not complying with any other statutory requirement, and if the Commissioner determines that the self-insurer is unable or unwilling to remedy the situation. This authority is necessary to implement the objectives of Minnesota Statutes § 65B.48, Subdivision 3 and 3a.

Part 2770.7400 Waiver of standards.

Subpart 1 authorizes the Commissioner to waive the financial standards provision of the rules under certain limited circumstances. Waiver is limited to those entities self-insured at the time the rules are adopted, and is limited to a period of three years. This provision is necessary to prevent undesirable and possibly severe dislocation to any current self-insurers that may not satisfy the standards. It is estimated that no more than two current self-insurers would be affected by this provision. This provision is reasonable in that it can only be applied to self-insurers that have demonstrated on-going compliance with the No-fault Act. The

provision allows a more orderly and reasoned transition to insured status.

Subpart 2 describes procedures that must be followed to obtain a waiver of standards. These procedures are necessary to reduce the likelihood of misunderstanding and to prevent arbitrary use of the waiver provision. The statement of standards and procedures set forth in subparts 1 and 2 are required by Minnesota Statutes § 14.05, subd. 4. Subpart 3 notes that a self-insurer can only receive a waiver of standards once. This provision is necessary to address the possibility that a self-insurer moving in and out of compliance will seek a waiver each time it is out of compliance. The three-year limitation will allow sufficient time to change to insured status, but will obtain the objective of having all self-insurers meet the standards of the rule.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subidivsion 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on

small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

The Department does not believe the proposed rule will have an effect on small businesses as defined in the statute. The Department is not aware of any business currently self-insured and which has attempted to become self-insured which is a small business. The requirements of Minnesota Statutes § 65B.48, subd. 3, for financial condition and administration by self-insurers make it unlikely that self-insurance would be practical for a small business. On January 30, 1984, the Department published in the State Register a Notice of Intent to Solicit Outside Opinion concerning these rules and, in that notice, specifically solicited comments concerning how the rules may affect small businesses. No comments were received concerning small business considerations.

Despite this determination that small businesses would not likely be affected, the Department did consider whether the provisions of the rule might be modified to accomodate the interests of small businesses.

Most businesses included in the definition of small business found at Minnesota Statutes § 14.115, Subdivision 1, would not meet the authorization standards in part 2770.6500 of the rules. It seems unlikely that a business just small enough to be a "small business" would also have a net worth of $5,000,000 or more. The question, then, is whether a relaxation of the standard should be incorporated into the rules so that more small businesses would be able to self-insure. This question was considered during the development of the proposed rules. The conclusion, however, was that relaxation of the standard would be inconsistent with the statutory objectives upon which the rules are based. An objective of Minnesota Statutes § 65B.48, Subdivision 3, is to ensure that self-insurers are able to pay any claims they may incur. Insofar as the minimum net worth requirement is a necessary and reasonable means to attain that objective, then relaxation of the standard would be inappropriate.

A small business authorized to self-insure would be affected by the rule's reporting requirements. Consideration was given to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on small businesses. It was concluded, however, that the data sought in the required reports is necessary to the attainment of the statutory objectives upon which the rules are based.

Each of the methods described at Minnesota Statutes § 14.115, subdivision 2 (a) - (e) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be the minimum requirements necessary to achieve the legislative purposes.

Michael A. Hatch

Commissioner of Commerce

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Self-Insurance under the
No-Fault Act

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 26th day of April, 1984.

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In the Matter of the Proposed Adoption of Rules Governing Regulation of Self-Insurers Under the Minnesota No-fault Automobile Insurance Act

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, John L. Kirwin, 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.

John L. Kirwin
Special Assistant Attorney General

Dated: August 28, 1984.

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT COMMERCE

TO: No-fault self-insurance file

DATE: 7/24/84

FROM: David L. Corum

PHONE: 297-3301

SUBJECT: Affidavit of mailing notice of submission

The Department of Commerce received no requests from outside parties requesting notification of submission of the proposed rules governing regulation of self-insurers under the Minnesota No-fault Automobile Insurance Act to the Attorney General of the State of Minnesota. Therefore, an affidavit of mailing notice of submission is not necessary.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT COMMERCE

Office Memorandum

TO : Judith Wehrwein
Office of the Attorney General - Administration

DATE: 8/29/84

FROM : David Corum

PHONE: 7-3301

SUBJECT: Proposed rules governing self-insurance under the Minnesota No-fault Automobile Insurance Act

The attached materials are submitted for review in anticipation of final adoption of the above stated rules. Please contact me if you have any questions regarding the materials.