

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1170

6/21 Gomsrud to send 2nd Aff. of Mailing

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-20-85
DATE FOR REVIEW 6-29-85
DATE DUE 7-3-85

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

Approved 7-1-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 7-2-85 Revisor approved 6.24.85 disapproved _____

___✓___ Rule as Adopted

_____ Rule as Proposed

___✓___ Order Adopting 6.14.85 Date

___✓___ Notice of Intent to Solicit Outside Opinion in SR 1.7.85.

___✓___ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

___✓___ Notice of rulemaking minor deviation from 14.22. - no "encouragement"
? Sufficiency and no small biz statement

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

___✓___ Mailing list Certificates 1.25.85
2.7.85

___✓___ Publication in State Register
1.28.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption
2.11.85 Amends 1.28 notice to include small biz statement.

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 includes statement of favorable impact on small biz

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

___✓___ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : 6/25/85

TO : Judith Wehrwein

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Franchise Rules

Enclosed are copies of the following materials regarding the above captioned rules (only those items with a circled number are enclosed):

1. Notice of Intent to Solicit Outside Opinion (2000.0400 subpart 1 B)
2. Written material received as a result of Notice to Solicit Outside Opinion (2000.0400 subpart 1 B)
3. Mailing List Certificate (2000.0400 subpart 1 E)
4. Statement of Need & Reasonableness (2000.0400 subpart 1 G)
5. Order for Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 1 C)
6. Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 2)
7. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 3)
8. Copy of Notice of Intent to Adopt Rule Without Public Hearing and rules as published in the State Register (2000.0400 subpart 4)
9. Written Comments on Rule (2000.0400 subpart 1 I)
10. Findings of Fact (if applicable) (2000.0400 subpart 1 F)
11. Affidavit of Mailing Notice of Submission to Attorney General (2000.0400 subpart 1 K); or

12. Affidavit that no request for Notice of Submission to Attorney General were received

13. Original and three copies of Rule as adopted (2000.0400 subpart 5)

14. Two copies of the Order Adopting Rule (2000.0400 subpart 6)

15. Certificate of Compliance With Rulemaking Procedure (2000.0400 subpart 1 J).

(16) Affidavit of Mailing re Small Business Consideration

(19) Mailing List Certificate re. Small Business Consideration

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : 6/14/85

TO : Charles Wikelius
Special Assistant Attorney General

RECEIVED
JUN 20 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Rules Relating to Unfair Practices in Franchise Agreements

Enclosed are copies of the following materials regarding the above captioned rules (only those items with a circled number are enclosed):

(1) Notice of Intent to Solicit Outside Opinion (2000.0400 subpart 1 B)

~~2.~~ Written material received as a result of Notice to Solicit Outside Opinion (2000.0400 subpart 1 B) NONE RECEIVED

(3) Mailing List Certificate (2000.0400 subpart 1 E)

(4) Statement of Need & Reasonableness (2000.0400 subpart 1 G)

(5) Order for Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 1 C)

(6) Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 2)

(7) Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 3)

(8) Copy of Rule as Proposed (2000.0400 subpart 4)

(9) Written Comments on Rule (2000.0400 subpart 1 I)

~~10.~~ Findings of Fact (if applicable) (2000.0400 subpart 1 F)

~~11.~~ Affidavit of Mailing Notice of Submission to Attorney General (2000.0400 subpart 1 K); or

(12) Affidavit that no request for Notice of Submission to Attorney General were received

13. Original and three copies of Rule as adopted (2000.0400 subpart 5)

14. Two copies of the Order Adopting Rule (2000.0400 subpart 6)

15. Certificate of Compliance With Rulemaking Procedure (2000.0400 subpart 1 J).

16. Order for Notice Concerning the Impact on Small Businesses

17. Notice Concerning the Impact on Small Businesses

18. Affidavit of Mailing Notice Concerning the Impact on Small Businesses

19. Mailing List Certificate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Department of Commerce

DATE: 7-1-85

ATTN: GREGORY P. HUWE
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Unfair Practices in Franchise Agreements.

The above-referenced rule has been approved as to its legality by the Attorney General on July 1, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG copy

Department of Commerce

Adopted Rule Relating to Unfair Practices in Franchise Agreements

Rule as Adopted

2860.5400 UNFAIR PRACTICES.

The provisions of part 2860.4400 shall not apply. All motor vehicle fuel franchise agreements shall conform to the following provisions. A violation of any of these provisions shall be considered "unfair and inequitable."

A. to J. [Unchanged.]

K. No supplier shall require a dealer to waive any of the dealer's rights under Minnesota Statutes, chapter 80C and the rules adopted under it or United States Code, title 15, sections 2801 to 2806 (1978). Any such waiver is void.

L. No supplier shall include in its franchise agreements a release of any claims that the dealer may have against the supplier. Any such release is void.

M. No supplier shall require or encourage its dealer to violate or conspire to violate any law of the state of Minnesota.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL - 2 1985 9:51 A.M.
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY

July 1 19 85

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed

2860.5400 UNFAIR PRACTICES.

The provisions of part 2860.4400 shall not apply. All motor vehicle fuel franchise agreements shall conform to the following provisions. A violation of any of these provisions shall be considered "unfair and inequitable."

A. to J. [Unchanged.]

K. No supplier shall require a dealer to waive any of the dealer's rights under Minnesota Statutes, chapter 80C and the rules adopted under it or United States Code, title 15, sections 2801 to 2806 (1978). Any such waiver is void.

L. No supplier shall include in its franchise agreements a release of any claims that the dealer may have against the supplier. Any such release is void.

M. No supplier shall require or encourage its dealer to violate or conspire to violate any law of the state of Minnesota.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD699

Agency: Department of Commerce

Division:

Agency Contact: Dick Gomsrud 296-5689

Minnesota Rules: Part 2860.5400

Title: Proposed Rule Relating to Unfair Practices in Franchise Agreements

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

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

APPROVED AS TO FORM AND LEGALITY

_____ 19 ____

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Unfair Practices in Franchise Agreements

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 28, 1985 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minnesota Statutes Section 14.14, subd. 1a, on January 25, 1985.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) 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 Rules Relating to Unfair Practices in Franchise Agreements, as modified by the Findings of Fact and Conclusions, are adopted this 14th day of June 1985 pursuant to authority vested in me by Minnesota Statutes Section 45.023 and 80C.18.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Franchises 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 Franchises Promulgation of these rules is authorized by Minnesota Statutes, sections 45.023 and 80C.18.

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, sections 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: Elizabeth Moran, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-2284.

All statements of information and comment shall be accepted until February 7, 1985. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Unfair Practices in Franchise Agreements	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 11th day of January, 1985 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 Unfair Practices in Franchise
Agreements

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Rose T. Weiner , being first duly sworn, deposes and says:

That on the 25th day of January, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules without a 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 prepared with first-class 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.

Rose T. Weiner
ROSE T. WEINER

Subscribed and sworn to before me this
4th day of February, 1985.

Notary Public

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

FIRST CLASS MAIL

NOTICE NOTICE

RULES RULES NOTICE

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Unfair Practices in Franchise Agreements

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, § 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. 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 twenty-five (25) 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, § 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Elizabeth Moran, Staff Attorney, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, §§ 45.023 and 80C.18. 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 Richard Gomsrud, General Counsel 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 Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2860.5400 UNFAIR PRACTICES.

The provisions of part 2860.4400 shall not apply. All motor vehicle fuel franchise agreements shall conform to the following provisions. A violation of any of these provisions shall be considered "unfair and inequitable."

A. to J. [Unchanged.]

K. No supplier shall require a dealer to waive any of the dealer's rights under Minnesota Statutes, chapter 80C and the rules adopted under it or United States Code, title 15, sections 2801 to 2806 (1978). Any such waiver is void.

L. No supplier shall include in its franchise agreements a release of any claims that the dealer may have against the supplier. Any such release is void.

M. No supplier shall require or encourage its dealer to violate or conspire to violate any law of the state of Minnesota.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

In the Matter of the Proposed Adoption of
Rules Relating to Unfair Practices in Franchise
Agreements

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Rose T. Weiner , being first duly sworn, deposes and says:

That on the 7th day of February, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice concerning the Impact on Small Business of the Previously Published Rules Relating to Unfair Practices in Franchise Agreements by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class 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.

Rose T. Weiner
ROSE T. WEINER

Subscribed and sworn to before me this
17th day of June, 1985.

Nancy I. Link
Notary Public

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Unfair Practices in Franchise Agreements

Notice concerning the Impact on Small Businesses of the Previously Published Proposed Rules Relating to Unfair Practices in Franchise Agreements

The Department of Commerce recently published rules relating to Unfair Practices in Franchise Agreements in the State Register on January 28, 1985 (9SR 1649). The rules in question have been determined to have an impact on small businesses. The impact of the rules is discussed in the Statement of Need and Reasonableness. As previously noted in the Notice of Intent to Adopt Rules without a hearing, said Statement of Need and Reasonableness is available upon request. The comment period pertaining to said rules would have expired on February 28, 1985. This Notification hereby extends that comment period an additional 30 days from the date of this notification.

Copies of this Notice and Statement of Need and Reasonableness are available and may be obtained by contacting Richard G. Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 Telephone (612) 296-6589.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Unfair Practices in Franchise Agreements

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1a, 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 25th day of January, 1985.

Rose T. Weiner

ROSE T. WEINER

Michael Bernardino, Mgr.
Dean Witter Reynolds, Inc.
5 World T[redacted] Center
New York, NY 10048

Mr. Robert J. Demichelis
American Council of Life Insurance
[redacted]50 K Street NW
Washington, DC 20006

Gerald G. Dederick, Esq.
6800 France Ave. S., #750
Edina, MN 55435

Fred McGarvey
American Insurance Association
230 W. Monroe
Chicago, IL 60606

Director
Developmental Disabilities Office
201 Capitol Square Building
St. Paul, MN 55101

Daniel D. Foth
Associated Builders & Contractors
6300 Walker Street, Room 109
Minneapolis, MN 55416

David L. Boehnen
Dorsey & Whitney
1st Bank Place East
Minneapolis, MN 55402

Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
555 Park Street, Suite 300
St. Paul, MN 55103

Nicholas T. Kakos
Federal Cartridge Corporation
Twin Cities Army Ammunition Plant
New Brighton, MN 55112

R. G. Lanham, Dir. of Research
Carleton Financial Computations
P.O. Box 570
South Bend, IN 46624

Richard Russell, Esq.
Finley, Kumble, Wagner, et al
425 Park Ave.
New York, NY 10022

John F. Sheski, Counsel
Central Life Assurance Company
P.O. Box 5620
Madison, WI 53705

Fireman's Fund Emp. Ins. Co.
Contracts Department
P.O. Box 1100
Green Bay, WI 54305

Glen Tullman
Certified Collateral Corporation
640 N. LaSalle, Suite 640
Chicago, IL 60610

Conrad M. Fredin
811 Norwest Center
Duluth, MN 55802

M. D. Monette, V. P. & Counsel
Colonial Penn Group, Inc.
5 Penn Center Plaza
Philadelphia, PA 19181

George H. Frisch
1781 Saunders
St. Paul, MN 55116

Timothy L. Tucker
Consumer Credit Insurance Assoc.
307 N. Michigan Ave.
Chicago, IL 60601

Michael D. Johnson
Frundt, Frundt & Johnson
117 W. 5th Street
Blue Earth, MN 56013

Coury, Schwinn, Kodadek & McRoberts
1380 Soo Line Bldg.
Minneapolis, MN 55402

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

Norman E. Nelson, Govt. Affairs Dept.
Crum & Forster Corporation
305 Madison Avenue
Morristown, NJ 07960

John A. Knapp, Esq.
Hessian, McKasy & Soderberg, P. A.
1500 Midwest Plaza Building
Minneapolis, MN 55402

Gerard P. Davey
Attorney at Law
One Newport Pl., Suite 900
Newport Beach, CA 92660

. PRACTICES IN FRANCHISE AGREEMENTS MAILED
UNFAIR PRACTICES IN FRANCHISE AGREEMENTS
NOTICE TOADOPT RULES AND RULES MAILED 1-25-85 rw

Norbert A. McCrady
Independent Bankers of Minn.
7850 Metro Pkway., Suite 213
Bloomington, MN 55420

Investment Company Institute
1775 K Street NW
Washington, DC 20006

J. David Wise
Investors Diversified Serv., Inc.
IDS Tower
Minneapolis, MN 55402

Stan Jacobson
Research Dept., State of MN
Room 17, State Capitol
St. Paul, MN 55155

Kathleen P. Burek
Exec. Dir., LCRAR
Rm. 510, State Office Building
St. Paul, MN 55155

Susan J. Ladwig
900 Midland Bank Building
Minneapolis, MN 55401

Richard H. Smith, Dir.
Dept. of Land Registration
P.O. Box 569
Bentonville, AR 72712

Vincent A. Pellerito, President
Land Registrations, Inc.
4603 N. 16th St., Suite 2
Phoenix, AZ 85016

League Service Corporation
575 University Avenue
St. Paul, MN 55103

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Lindquist & Vennum
4200 IDS Center
Minneapolis, MN 55402

Mary Beth Brody
MacIntosh & Commers
430 Marquette
Minneapolis, MN 55402

Jean M. Reynolds, Treasurer
Mairs and Power, Inc.
W-2062 First National Bank Bldg.
St. Paul, MN 55101

9604 13th Ave. S.
Bloomington, MN 55420

Katie McLenighan
299 E. State Office Bldg.
St. Paul, MN 55155

Mr. Ronald R. Radtke, Mgr., Comp. Svcs.
Metropolitan Prop. & Liability Ins. Co.
700 Quaker Lane
Warwick, RI 02887

D. F. Hennen, Plant Manager
Midland Glass Company, Inc.
P.O. Box 69
Shakopee, MN 55379

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

John S. Jackson, Gen. Counsel
Minnesota Bankers Association
332 Baker Building
Minneapolis, MN 55402

Gene Johannes
Minnesota Chiropractic Assoc.
2353 Rice St., Suite 125
St. Paul, MN 55113

Minn. Consumer Finance Confer.
810 Norwest Center
St. Paul, MN 55101

Jean Dawson
Minn. Government Report
B-12 Press Room, State Capitol
St. Paul, MN 55155

Minnesota League of Credit Unions
575 University Ave.
St. Paul, MN 55103

Joan M. Archer
Minn. Mfg. Housing Assoc.
222 E. Little Canada Rd., S222
St. Paul, MN 55117

Ms. Lois Wattman DeWitt
Minnesota Medical Association
2221 University Ave. SE, #400
Minneapolis, MN 55414

Charles A. Kroeger
QSS, Inc.
P.O. Box 8
Faribault, MN 55021

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

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

Minn. Petroleum Council
1025 Northern Federal Bldg.
St. Paul, MN 55102

John P. Flaten
Rider, Bennett, Egan & Arundel
2500 First Bank Pl. W.
Minneapolis, MN 55402

John Van Doorn
Minn. Retail Merchants Assoc.
180 Metro Square Bldg.
St. Paul, MN 55101

Richard B. Allyn
Robins, Zelle, Larson & Kaplan
33 S. Fifth St.
Minneapolis, MN 55402

Minn. School of Real Est. Inc.
140 W. 98th St.
Oxboro Plaza Bldg.
Bloomington, MN 55420

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Robins, Zelle, Larson & Kaplan
33 S. Fifth St.
Minneapolis, MN 55402

Maureen Adrian, Exec. Asst.
Minn. State Builders Assoc.
666 Transfer Rd.
St. Paul, MN 55114

W. J. Hay
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385 Washington Street
St. Paul, MN 55102

Abe Rosenthal, Exec. Vice Pres.
Minn. Transport Services Assn.
1821 University Ave.
St. Paul, MN 55104

Gerald Engeleiter
Government Affairs Officer
St. Paul Fire & Marine Ins. Co.
385 Washington Street
Minneapolis, MN 55102

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Minneapolis, MN 55402

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New York, NY 10271

John F. Stone
Moss & Barnett
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Minneapolis, MN 55402

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Chicago, IL 60611

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Three Eighteen West Franklin
Minneapolis, MN 55404

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

Mark A. Welshons, Secretary
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P.O. Box 20
Minneapolis, MN 55440

Archibald Spencer
4040 IDS Center
Minneapolis, MN 55402

John B. Crosby, V.P. & Gen. Couns.
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2600 River Road
Des Plaines, IL 60018

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1112 Plymouth Bldg.
Minneapolis, MN 55402

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Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Building
Minneapolis, MN 55415

Joseph T. Justice, Counsel
Alexander Howden Group U.S. Inc.
P.O. Box 19539
Atlanta, GA 30325

Alliance of American Insurers
Attn: Debra G. Wozniak
1501 Woodfield Rd., Suite 400 West
Schaumberg, IL 60195

Willys P. Jones
Allison-Williams Co.
2300 IDS Center
Minneapolis, MN 55402

[redacted]

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

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

Leslie Urban, President
National Service Corporation
831 Livestock Exchange Building
P. O. Box 7608
Omaha, NE 68107

Lee T. Peterson
Nelson, Nelson, Kufus & Assoc.
665 N. Snelling Ave.
St. Paul, MN 55104

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

Orion Group, Inc.
Law Division
9 Farm Springs Dr.
Farmington, CT 06032

Howard McDowell, I-5
Pennsylvania Life Insurance Company
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STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Unfair Practices in Franchise Agreements

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, Sec. 14.14, subd. 1a, 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 7th day of February 1985.

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ROSE T. WEINER

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Department of Commerce

Proposed Rule Relating to Unfair Practices in Franchise Agreements

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, § 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. 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 twenty-five (25) 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, § 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Elizabeth Moran, Staff Attorney, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, §§ 45.023 and 80C.18. 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 Richard Gomsrud, General Counsel 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 Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2860.5400 UNFAIR PRACTICES.

The provisions of part 2860.4400 shall not apply. All motor vehicle fuel franchise agreements shall conform to the following provisions. A violation of any of these provisions shall be considered "unfair and inequitable."

A. to J. [Unchanged.]

K. No supplier shall require a dealer to waive any of the dealer's rights under Minnesota Statutes, chapter 80C and the rules adopted under it or United States Code, title 15, sections 2801 to 2806 (1978). Any such waiver is void.

L. No supplier shall include in its franchise agreements a release of any claims that the dealer may have against the supplier. Any such release is void.

M. No supplier shall require or encourage its dealer to violate or conspire to violate any law of the state of Minnesota.

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.

Department of Commerce

Proposed Rules Relating to Unfair Practices in Franchise Agreements (Notice Extension)

Notice Concerning the Impact on Small Businesses of the Previously Published Proposed Rules Relating to Unfair Practices in Franchise Agreements

The Department of Commerce recently published rules relating to Unfair Practices in Franchise Agreements in the *State Register* on January 28, 1985 (9 SR 1679). The rules in question have been determined to have an impact on small businesses. The impact of the rules is discussed in the Statement of Need and Reasonableness. As previously noted in the Notice of Intent to Adopt Rules without a hearing, said Statement of Need and Reasonableness is available upon request. The comment period pertaining to said rules would have expired on February 28, 1985. This notification hereby extends that comment period an additional 30 days from the date of this notification.

Copies of this notice and Statement of Need and Reasonableness are available and may be obtained by contacting Richard G. Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 Telephone (612) 296-6589.

Michael A. Hatch
Commissioner of Commerce

Higher Education Coordinating Board

Proposed Emergency Rules Relating to Supplemental Loans to Post-Secondary Students

Request for Public Comment

Notice is hereby given that the Minnesota Higher Education Coordinating Board has proposed the following temporary rule for the Student Educational Loan Fund pursuant to Minnesota Laws 1983, Chapter 258, Section 59. All interested persons are hereby afforded the opportunity to submit written comments on the proposed temporary rule for 25 days immediately following publication of this material in the *State Register* by writing to:

Dick Leighninger
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Authority for the adoption of this rule is contained in Laws 1983, Chapter 258, Section 49, and Minnesota Statutes § 136A.111. The proposed temporary rule may be revised on the basis of the comments received. Any written material received will become part of the record in the final adoption of the temporary rule. This temporary rule will be effective for not more than 180 days upon approval by the Attorney General.

A copy of the proposed temporary rule is attached to this notice.

David A. Longanecker
Executive Director

Emergency Rules as Proposed (all new material)

STUDENT EDUCATIONAL LOAN FUND (SELF)
MINNESOTA HIGHER EDUCATION COORDINATING BOARD (MHECB)
SUPPLEMENTAL AND ADDITIONAL LOANS

4850.0010 [Emergency] PURPOSE.

The purpose of parts 4850.0010 to 4850.0018 is to augment Minnesota Statutes, sections 136A.14 to 136A.141, and 136A.15 to

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.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rule amendments for the purpose of prohibiting certain practices by motor vehicle fuel franchise suppliers.

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minn. Stat. Section 80C.18, subd. 1 gives the Commissioner of Commerce ("Commissioner") authority to "promulgate rules and regulations to carry out the provisions of Sections 80C.01 to 80C.22..." The Commissioner is also empowered pursuant to Minn. Stat. Section 45.023 to "adopt...rules...whenever necessary or proper in discharging the Commissioner's official responsibilities." Further, Minn. Stat. Section 80C.18, subd. 1 provides "the Commissioner may define by rule false, fraudulent or deceptive practices in the offer and sale of franchises."

The Commissioner finds the proposed amendment necessary and appopriate in the public interest for the protection of investors in motor vehicle fuel franchises and consistent with the purposes fairly intended by the policy and provisions of Sections 80C.01 to 80C.22. The Commissioner further finds that the proposed amendment will have the effect of protecting certain small businesses from onerous and unfair franchise agreement terms, will provide redress for such franchisees, and will have a favorable regulatory impact on small businesses in accordance with Minn. Stat. Section 14.115.

History

On January 7, 1985, the Commissioner publised notice of intent to solicit outside information at 9 SR 1576 for his consideration in the promulgation of rules and amendments under Minn. Stat. Ch. 80C. After a review of comments solicited the Commissioner published the proposed rules in the State Register on January 28, 1985.

Facts Establishing Reasonableness

Minn. Rules 2860.5400 defines unfair and inequitable practices with respect to motor vehicle fuel franchises. The purpose of the proposed amendment is to address complaints received by the Department of Commerce Enforcement Division regarding franchise contract terms which purport to waive the dealer (franchisee) survivorship rights under Minn. Stat. Section 80C.145.

Minn. Rules 2860.5400 (K) as proposed, prohibit suppliers from requiring dealers to waive any of the dealer's rights under Minn. Stat. Ch. 80C or 15 U.S.C. Section 2801 to 2806. The addition of this rule would prohibit suppliers from requiring waiver of survivorship rights and assignment rights and any other rights created by Minn. Stat. Ch. 80C and 15 U.S.C. Sections 2801 to 2806.

Minn. Rule 2860.5400 (L) is proposed to prohibit the inclusion of releases in franchise agreements. This rule would protect and preserve dealer statutory and common law rights. Further, this rule would prevent the harsh result in Sorensen vs. Coast-to-Coast Stores (Central Organization), Inc., 353 N.W. 2d 666 (Minn. App. 1984), where a franchisee unknowingly released all rights he had against the franchisor.

Minn. Rule 2800.5400 (M) is intended to prohibit suppliers from requiring or encouraging dealers to violate state laws. This rule would make such supplier action an independent violation of the Franchise Act and afford the dealer greater remedies.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes Section 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 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.

Despite a lack of comments in this regard, the Department considered whether the provisions of the rule might be modified to accommodate the interests of small businesses.

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

It was determined that in all likelihood many of those affected by these rules would be small businesses; therefore, the impact on small businesses was a part of the entire rulemaking process.

In the Matter of the Proposed Adoption of Rules Governing Unfair Practices in Franchise Agreements

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Gregory P. Huwe, 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.

Gregory P. Huwe
Special Assistant Attorney General

Dated:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Governing Unfair Trade Practices in Franchise Agreements

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard G. Gomsrud, being first duly sworn, deposes and says:

That he is Department Counsel for the Department of Commerce.

That part of his duties is the promulgation and adoption of departmental rules, including those captioned above.

That to date, no person has requested notice of submission of the rules in the above-entitled matter to the Attorney General.

RICHARD G. GOMSRUD
Department Counsel, Department of Commerce

Subscribed and sworn to before me this 14th day of June, 1985.

Nancy I. Link

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990