

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1172

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-21-85
DATE FOR REVIEW 6-30-85
DATE DUE 7-5-85

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

Approved 7-3-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 7-3-85 Revisor approved 6/24/85 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 6.14.85 Date combined with F&F

✓ Notice of Intent to Solicit Outside Opinion SR. 1.30.84 + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking no "encouragement"
? Sufficiency

✓ Supplementary Notice re Small Biz

✓ Affidavits of Mailing Notice or rulemaking
11.5.84 At least 30 days prior to ~~hearing~~/adoption
✓ 1.3.85

✓ Mailing list Certificates — 11.5.84
1.3.84

✓ Publications in State Register
11.5.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption
1.9.85 – Supplementary Notice re small biz

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 combined w/ Order Adopting

N/A LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

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~~ re Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

To:
Date: 6/25/85
Re: Commerce - Political Subdivision Self-Insurance Pools.

Rules as Adopted

p. 15, line 6 2785.1100 subp 5
This section directs pools to take "appropriate" action to collect past due premiums with no indication of what is appropriate. standards appropriate to be sufficient to give notice as to what consist appropriate

p. 18, line 14 2785.1400 subp. 3. D.
"accordingly" should be "according" grammer

p. 20, line 30 2785.1500 subp. 6
The pools board is directed to ~~use~~ methods "including but not limited to" to maintain a sound financial condition but there is no indication of what would be acceptable. → not good, but is an example list - OK

p. 22, line 9 2785.1600, subp. 2.G.
Certain pools are required to provide ~~Reports~~ on "any other matters the commissioner requests. . . ." without any criteria to limit what may be required. → presentation & description & only representation of data

SF-00006-04

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : 6/20/85

TO : Judith Wehrwein
Administration Division
Attorney General's Office

FROM : Richard G. Gomsrud
Department Counsel

STATE OF MINNESOTA

Office Memorandum

RECEIVED
JUN 21 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT : Political Subdivision Self Insurance 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) None

(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. Additional Notice re: Small Business Impact

17. Affidavit of Mailing re Additional Notice

18. Certificate re: Mailing List

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Department of Commerce

DATE: 7-5-85

ATTN: JOHN C. BJORK
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC

PHONE: 296-4692

Special Assistant Attorney General

SUBJECT: In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Political Subdivision Self-Insurance Pools.

The above-referenced rule has been approved as to its legality by the Attorney General on July 3, 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 Rules Governing Political Subdivision Self-Insurance Pools

Rules as Adopted

CHAPTER 2785
DEPARTMENT OF COMMERCE
POLITICAL SUBDIVISION SELF-INSURANCE POOLS

2785.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

Subp. 2. **Board.** "Board" means a pool's board of trustees.

Subp. 3. **Bylaws.** "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

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

Subp. 5. **Coverage.** "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

Subp. 6. **Coverage document.** "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

Subp. 7. **Days.** "Days" means calendar days.

Subp. 8. **Employee health benefit pool.** "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

Subp. 9. **Financial administrator.** "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing

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no less than five years' experience as an organization in money management and investments with demonstrated competence.

Subp. 10. **Fund year.** "Fund year" means a pool's 12-month fiscal year.

Subp. 11. **Member.** "Member" means a political subdivision or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

Subp. 12. **Political subdivision.** "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

Subp. 13. **Pool.** "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

Subp. 14. **Premium.** "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

Subp. 15. **Public/private pool.** "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

Subp. 16. **Runoff pool.** "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

Subp. 17. **Self-insure.** "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

Subp. 18. **Service company.** "Service company" means an entity licensed under Minnesota Statutes, section 60A.23,

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subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

Subp. 19. **Sponsoring association.** "Sponsoring association" means a statewide nonprofit organization of political subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

Subp. 20. **Surplus.** "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

Subp. 21. **Workers' compensation pool.** "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

2785.0200 PURPOSE.

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these pools is maintained, and that they are administered competently and equitably.

2785.0300 SCOPE.

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

2785.0400 BYLAWS.

Subpart 1. **Content.** Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws

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must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

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S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.

Subp. 2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

2785.0500 BOARD.

Subpart 1. **Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

Subp. 2. **Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

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A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

2785.0600 APPLICATION.

Subpart 1. **Initial application.** Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

Subp. 2. **Prior existing pools.** Pools in existence at the

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time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than ~~July~~ December 1, 1985.

Subp. 3. **Renewal application.** Existing plans may apply for renewal of their self-insurance authority by so indicating on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

Subp. 4. **Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

Subp. 5. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules, as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.

Subpart 1. **Ending self-insurance authority.** A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

Subp. 2. **Revocation of self-insurance authority.** The

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commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100 to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. **Runoff period.** A pool shall continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. **Dissolution.** A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

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A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

2785.0800 ADMINISTRATION.

Subpart 1. **Service company.** A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;

F. loss control, safety programs, or both; and

G. underwriting.

Subp. 2. **Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. **Recordkeeping.** A pool must maintain within Minnesota all records necessary to verify the accuracy and

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completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

2785.0900 MEMBERSHIP.

Subpart 1. **Availability.** Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

Subp. 2. **Joining.** New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

Subp. 3. **Public/private pool membership.** Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be

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maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

Subp. 4. **Leaving.** The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

Subp. 5. **Expulsion.** No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

A. a member may be expelled with outstanding premiums

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or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

Subp. 6. **Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

2785.1000 COVERAGE.

Subpart 1. **Distinct pool types.** Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

Subp. 2. **Coverage administration and related requirements.** Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

Subp. 3. **Uniform underwriting.** All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

Subp. 4. **Continuing responsibility.** Notwithstanding

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cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

Subpart 1. **Minimum annual premium.** All pools must have and maintain an annual premium volume of no less that $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

Subp. 2. **Monitoring premium volume.** A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

Subp. 3. **Surplus or stop-loss advancement.** A pool may

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protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

Subp. 4. **New pool deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its

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first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

Subp. 5. **Premium payments.** A pool may permit installment payments if payment is always due before premium is to be earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

Subp. 6. **Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

2785.1300 STOP-LOSS INSURANCE.

Subpart 1. **Purchase and change.** A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must

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indicate what corrective action will be taken.

Subp. 2. **Required stop-loss coverage.** All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

Subp. 3. **Return of liability.** No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

2785.1400 DEFICIT AND ASSESSMENTS.

Subpart 1. **Joint and several liability.** Each current member is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after

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leaving the pool.

Subp. 2. **Runoff pool liability.** If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

Subp. 3. **Correction of a deficit.** If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most

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recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

Subp. 4. **Assessment to increase surplus.** The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

2785.1500 FINANCIAL INTEGRITY.

Subpart 1. **Fidelity bond.** All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required

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contractors and individuals not covered under the plan's bond.

Subp. 2. **Integrity of assets.** A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

Subp. 3. **Sources and uses of funds.** A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota

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Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the pool.

Subp. 4. **Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

Subp. 5. **Investments.** A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

Subp. 6. **Monitoring financial condition.** The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to ? but what else adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the

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pool's self-insurance authority; or order that an assessment be levied against the members.

2785.1600 REPORTING.

Subpart 1. **Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

Subp. 2. **Quarterly reports.** If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

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B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

? overly broad discretion

Subp. 3. **Extraordinary audits.** Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

Subp. 4. **Annual status report.** No later than 60 days after the end of a pool's fund year, a pool must file with the

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commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

Subp. 5. **Penalty.** The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL - 3 1985
Joan Anderson Growe
Secretary of State

3:10 PM

APPROVED AS TO FORM AND LEGALITY

July 3 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Political Subdivision Self-Insurance Pools

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE ADOPTED WITHOUT PUBLIC HEARING

Notice of the Commissioner's proposed adoption of the above-entitled rule was published in the State Register on November 5, 1984 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1, paragraph (a) and 14.22 on January 3, 1985.

Due to questions as to the adequacy of the Notice of Intent to Adopt Rules Without Hearing in regard to the Impact of the Rules on Small Business, an additional Notice was published on January 7, 1985 at page 1543 of the State Register and the comment period extended 30 days from the date of publication.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Fewer than 25 written requests for hearing within the 30-day comment period as extended were received.

No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the agency, I find the following:

That it was originally expected that the rules would be in effect prior to March 1, 1985, thus giving those affected by the rules more than 120 days to comply with the July 1, 1985 filing date required by Part 2785.0600 subpart 2. However, because of the extension of the comment period the rules will not be effective until after July 1, 1985. So as to not impose undue hardship upon anyone required to immediately comply with the requirements of Chapter 2785 of Minnesota Rules and also to honor the original expectation of at least 120 days in which to comply, the date specified in Part 2785.0600 subpart 2 is hereby changed from July 1, 1985 to December 1, 1985.

P-7

The above-captioned rule as modified is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Chapter 2785 Rules Governing Political Subdivision Self-Insurance Pools is adopted this 14th day of June, 1985 pursuant to authority vested in me by Minnesota Statutes, sections 471.617, subdivision 2 and 471.982, subdivision 2.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion 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

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Political Subdivision Self Insurance Pools

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 22nd day of October, 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

AFFIDAVIT OF
MAILING

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision Self
Insured Pools Rules

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 5th day of November, 1984, 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
17th day of June, 1985.

Nancy T. Link
Notary Public

NANCY T. LINK
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 31, 1990

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision
Self-Insurance Pools

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 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, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, 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, sections 471.617, subd. 2 and 471.982, subd. 2 . 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 Rose Weiner 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 Richard Gomsrud, General Counsel, or Rose Weiner, Secretary at the above address.

Reynard L. Hay for

Michael A. Hatch

MICHAEL A. HATCH
Commissioner of Commerce

Rules as Proposed (all new material)

CHAPTER 2785
DEPARTMENT OF COMMERCE
POLITICAL SUBDIVISION SELF-INSURANCE POOLS

2785.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

Subp. 2. **Board.** "Board" means a pool's board of trustees.

Subp. 3. **Bylaws.** "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

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

Subp. 5. **Coverage.** "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

Subp. 6. **Coverage document.** "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

Subp. 7. **Days.** "Days" means calendar days.

Subp. 8. **Employee health benefit pool.** "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

Subp. 9. **Financial administrator.** "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

Subp. 10. **Fund year.** "Fund year" means a pool's 12-month fiscal year.

Subp. 11. **Member.** "Member" means a political subdivision

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or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

Subp. 12. **Political subdivision.** "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

Subp. 13. **Pool.** "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

Subp. 14. **Premium.** "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

Subp. 15. **Public/private pool.** "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

Subp. 16. **Runoff pool.** "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

Subp. 17. **Self-insure.** "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

Subp. 18. **Service company.** "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

Subp. 19. **Sponsoring association.** "Sponsoring association" means a statewide nonprofit organization of political

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subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

Subp. 20. **Surplus.** "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

Subp. 21. **Workers' compensation pool.** "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

2785.0200 PURPOSE.

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these pools is maintained, and that they are administered competently and equitably.

2785.0300 SCOPE.

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

2785.0400 BYLAWS.

Subpart 1. **Content.** Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and

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responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.

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Subp. 2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

2785.0500 BOARD.

Subpart 1. **Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

Subp. 2. **Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

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C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

2785.0600 APPLICATION.

Subpart 1. **Initial application.** Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

Subp. 2. **Prior existing pools.** Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than July 1, 1985.

Subp. 3. **Renewal application.** Existing plans may apply for renewal of their self-insurance authority by so indicating

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on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

Subp. 4. **Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

Subp. 5. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules, as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.

Subpart 1. **Ending self-insurance authority.** A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

Subp. 2. **Revocation of self-insurance authority.** The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100

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to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. **Runoff period.** A pool shall continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. **Dissolution.** A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services,

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including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

2785.0800 ADMINISTRATION.

Subpart 1. **Service company.** A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;

F. loss control, safety programs, or both; and

G. underwriting.

Subp. 2. **Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. **Recordkeeping.** A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and

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other matters necessary for the pool's operations are the pool's property.

2785.0900 MEMBERSHIP.

Subpart 1. **Availability.** Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

Subp. 2. **Joining.** New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

Subp. 3. **Public/private pool membership.** Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

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A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

Subp. 4. **Leaving.** The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

Subp. 5. **Expulsion.** No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

Subp. 6. **Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the

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commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

2785.1000 COVERAGE.

Subpart 1. **Distinct pool types.** Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

Subp. 2. **Coverage administration and related requirements.** Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

Subp. 3. **Uniform underwriting.** All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

Subp. 4. **Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This

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responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

Subpart 1. **Minimum annual premium.** All pools must have and maintain an annual premium volume of no less that $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

Subp. 2. **Monitoring premium volume.** A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

Subp. 3. **Surplus or stop-loss advancement.** A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

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B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

Subp. 4. **New pool deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

Subp. 5. **Premium payments.** A pool may permit installment payments if payment is always due before premium is to be

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earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

Subp. 6. **Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

2785.1300 STOP-LOSS INSURANCE.

Subpart 1. **Purchase and change.** A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

Subp. 2. **Required stop-loss coverage.** All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund

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year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

Subp. 3. **Return of liability.** No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

2785.1400 DEFICIT AND ASSESSMENTS.

Subpart 1. **Joint and several liability.** Each current member is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

Subp. 2. **Runoff pool liability.** If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until

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final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

Subp. 3. **Correction of a deficit.** If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

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B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

Subp. 4. **Assessment to increase surplus.** The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

2785.1500 FINANCIAL INTEGRITY.

Subpart 1. **Fidelity bond.** All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

Subp. 2. **Integrity of assets.** A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or

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used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

Subp. 3. **Sources and uses of funds.** A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the

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pool.

Subp. 4. **Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

Subp. 5. **Investments.** A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

Subp. 6. **Monitoring financial condition.** The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

2785.1600 REPORTING.

Subpart 1. **Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a

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statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

Subp. 2. **Quarterly reports.** If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

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D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

Subp. 3. **Extraordinary audits.** Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

Subp. 4. **Annual status report.** No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

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Subp. 5. **Penalty.** The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD564

Agency: Department of Commerce

Division:

Agency Contact: Dick Gomsrud

Minnesota Rules: Parts 2785.0100; 2785.0200; 2785.0300; 2785.0400; 2785.0500; 2785.0600; 2785.0700; 2785.0800; 2785.0900; 2785.1000; 2785.1100; 2785.1200; 2785.1300; 2785.1400; 2785.1500; 2785.1600

Title: Proposed Rules Governing Political Subdivision Self-Insurance Pools

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: October 12, 1984

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision
Self-Insurance Pools Rules

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 3rd day of January, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice Concerning the Impact on Small Businesses of the Previously Published Proposed Rules Realting to Political Subdivision Self-Insurance Pools 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.

Rose T. Weiner
ROSE T. WEINER

Subscribed and sworn to before me this
3rd day of January, 1985.

Nancy I. Link

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 31, 1989

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision
Self-Insurance Pools Rules.

Notice Concerning the Impact on Small Businesses of the Previously Published Proposed Rules Relating to Political Subdivision Self-Insurance Pools.

The Department of Commerce recently published rules relating to Political Subdivision Self-Insurance Pools in the State Register on November 5, 1984, (Cite 9 SR 946). 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 expired on December 5, 1984. This notification hereby extends that comment period an additional 30 days from the date of this notification.

Copies of this Notice and the 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) 296-5689.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

CHAPTER 2785
DEPARTMENT OF COMMERCE
POLITICAL SUBDIVISION SELF-INSURANCE POOLS

2785.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

Subp. 2. **Board.** "Board" means a pool's board of trustees.

Subp. 3. **Bylaws.** "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

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

Subp. 5. **Coverage.** "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

Subp. 6. **Coverage document.** "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

Subp. 7. **Days.** "Days" means calendar days.

Subp. 8. **Employee health benefit pool.** "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

Subp. 9. **Financial administrator.** "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

Subp. 10. **Fund year.** "Fund year" means a pool's 12-month fiscal year.

Subp. 11. **Member.** "Member" means a political subdivision

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or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

Subp. 12. **Political subdivision.** "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

Subp. 13. **Pool.** "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

Subp. 14. **Premium.** "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

Subp. 15. **Public/private pool.** "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

Subp. 16. **Runoff pool.** "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

Subp. 17. **Self-insure.** "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

Subp. 18. **Service company.** "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

Subp. 19. **Sponsoring association.** "Sponsoring association" means a statewide nonprofit organization of political

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subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

Subp. 20. **Surplus.** "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

Subp. 21. **Workers' compensation pool.** "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

2785.0200 PURPOSE.

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these pools is maintained, and that they are administered competently and equitably.

2785.0300 SCOPE.

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

2785.0400 BYLAWS.

Subpart 1. **Content.** Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and

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responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.

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Subp. 2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

2785.0500 BOARD.

Subpart 1. **Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

Subp. 2. **Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

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C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

2785.0600 APPLICATION.

Subpart 1. **Initial application.** Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

Subp. 2. **Prior existing pools.** Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than July 1, 1985.

Subp. 3. **Renewal application.** Existing plans may apply for renewal of their self-insurance authority by so indicating

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on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

Subp. 4. **Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

Subp. 5. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules, as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.

Subpart 1. **Ending self-insurance authority.** A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

Subp. 2. **Revocation of self-insurance authority.** The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100

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to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. **Runoff period.** A pool shall continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. **Dissolution.** A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services,

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including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

2785.0800 ADMINISTRATION.

Subpart 1. **Service company.** A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;

F. loss control, safety programs, or both; and

G. underwriting.

Subp. 2. **Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. **Recordkeeping.** A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and

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other matters necessary for the pool's operations are the pool's property.

2785.0900 MEMBERSHIP.

Subpart 1. **Availability.** Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

Subp. 2. **Joining.** New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

Subp. 3. **Public/private pool membership.** Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

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A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

Subp. 4. **Leaving.** The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

Subp. 5. **Expulsion.** No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

Subp. 6. **Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the

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commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

2785.1000 COVERAGE.

Subpart 1. **Distinct pool types.** Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

Subp. 2. **Coverage administration and related requirements.** Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

Subp. 3. **Uniform underwriting.** All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

Subp. 4. **Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This

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responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

Subpart 1. **Minimum annual premium.** All pools must have and maintain an annual premium volume of no less that $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

Subp. 2. **Monitoring premium volume.** A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

Subp. 3. **Surplus or stop-loss advancement.** A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

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B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

Subp. 4. **New pool deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

Subp. 5. **Premium payments.** A pool may permit installment payments if payment is always due before premium is to be

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earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

Subp. 6. **Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

2785.1300 STOP-LOSS INSURANCE.

Subpart 1. **Purchase and change.** A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

Subp. 2. **Required stop-loss coverage.** All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund

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year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

Subp. 3. **Return of liability.** No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

2785.1400 DEFICIT AND ASSESSMENTS.

Subpart 1. **Joint and several liability.** Each current member is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability.. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

Subp. 2. **Runoff pool liability.** If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until

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final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

Subp. 3. Correction of a deficit. If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

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B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

Subp. 4. **Assessment to increase surplus.** The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

2785.1500 FINANCIAL INTEGRITY.

Subpart 1. **Fidelity bond.** All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

Subp. 2. **Integrity of assets.** A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or

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used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

Subp. 3. **Sources and uses of funds.** A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the

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Subp. 4. **Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

Subp. 5. **Investments.** A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

Subp. 6. **Monitoring financial condition.** The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

2785.1600 REPORTING.

Subpart 1. **Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a

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statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

Subp. 2. **Quarterly reports.** If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

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D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

Subp. 3. **Extraordinary audits.** Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

Subp. 4. **Annual status report.** No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 5. **Penalty.** The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD564

Agency: Department of Commerce

Division:

Agency Contact: Dick Gomsrud

Minnesota Rules: Parts 2785.0100; 2785.0200; 2785.0300; 2785.0400; 2785.0500; 2785.0600; 2785.0700; 2785.0800; 2785.0900; 2785.1000; 2785.1100; 2785.1200; 2785.1300; 2785.1400; 2785.1500; 2785.1600

Title: Proposed Rules Governing Political Subdivision Self-Insurance Pools

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: October 12, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision Self
Insured Pools Rules

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 5th day of November 1984.

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STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Political Subdivision Self
Insured Pools Rules.

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 3rd day of January, 1985.

Rose T. Weiner

ROSE T. WEINER

STATE REGISTER

STATE OF MINNESOTA



VOLUME 9, NUMBER 19

November 5, 1984

Pages 941-1012

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 9		
20	Monday Oct 29	Friday Nov 2	Monday Nov 12
21	Friday Nov 2	Friday Nov 9	Monday Nov 19
22	Friday Nov 9	Friday Nov 16	Monday Nov 26
23	Friday Nov 16	Monday Nov 26	Monday Dec 3

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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Cover graphic: Minnesota State Capitol, ink drawing by Ric James.

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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Governing Political Subdivision Self-Insurance Pools

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 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, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, 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, sections 471.617, subd. 2 and 471.982, subd. 2. 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 Rose Weiner 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 Richard Gomsrud, General Counsel, or Rose Weiner, Secretary at the above address.

Reynard Harp,
Deputy Commissioner
for
Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

CHAPTER 2785
DEPARTMENT OF COMMERCE
POLITICAL SUBDIVISION SELF-INSURANCE POOLS

2785.0100 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

Subp. 2. Board. "Board" means a pool's board of trustees.

Subd. 3. Bylaws. "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

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

Subp. 5. Coverage. "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

Subp. 6. Coverage document. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

Subp. 7. Days. "Days" means calendar days.

Subp. 8. Employee health benefit pool. "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

Subp. 9. Financial administrator. "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

Subp. 10. Fund year. "Fund year" means a pool's 12-month fiscal year.

Subp. 11. Member. "Member" means a political subdivision or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

Subp. 12. Political subdivision. "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

Subp. 13. Pool. "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

Subp. 14. Premium. "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

Subp. 15. Public/private pool. "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

Subp. 16. Runoff pool. "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

Subp. 17. Self-insure. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

Subp. 18. Service company. "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

Subp. 19. Sponsoring association. "Sponsoring association" means a statewide nonprofit organization of political

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.

subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

Subp. 20. Surplus. "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

Subp. 21. Workers' compensation pool. "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

2785.0200 PURPOSE.

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these people is maintained, and that they are administered competently and equitably.

2785.0300 SCOPE.

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

2785.0400 BYLAWS.

Subpart 1. Content. Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.

Subp. 2. Adoption and changes. The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

2785.0500 BOARD.

Subpart 1. Structure. A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

Subp. 2. Duties. The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

2785.0600 APPLICATION.

Subpart 1. Initial application. Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

Subp. 2. Prior existing pools. Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than July 1, 1985.

Subp. 3. Renewal application. Existing plans may apply for renewal of their self-insurance authority by so indicating on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

Subp. 4. Merger. Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

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Subp. 5. Approval or disapproval. Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules; as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.

Subpart 1. Ending self-insurance authority. A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

Subp. 2. Revocation of self-insurance authority. The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100 to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. Runoff period. A pool shall continue to exist as a runoff after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. Dissolution. A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

2785.0800 ADMINISTRATION.

Subpart 1. Service company. A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverages. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;

F. loss control, safety programs, or both; and

G. underwriting.

Subp. 2. Financial administrator. A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. Recordkeeping. A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

2785.0900 MEMBERSHIP.

Subpart 1. Availability. Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

Subp. 2. Joining. New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

Subp. 3. Public/private pool membership. Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

Subp. 4. Leaving. The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

Subp. 5. Expulsion. No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

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A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

Subp. 6. Runoff pool membership. After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

2785.1000 COVERAGE.

Subpart 1. Distinct pool types. Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

Subp. 2. Coverage administration and related requirements. Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

Subp. 3. Uniform underwriting. All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

Subp. 4. Continuing responsibility. Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

Subpart 1. Minimum annual premium. All pools must have and maintain an annual premium volume of no less than $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

Subp. 2. Monitoring premium volume. A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

Subp. 3. Surplus or stop-loss advancement. A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

Subp. 4. New pool deposit premium. As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

Subp. 5. Premium payments. A pool may permit installment payments if payment is always due before premium is to be earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

Subp. 6. Dividend procedures. A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

2785.1300 STOP-LOSS INSURANCE.

Subpart 1. Purchase and change. A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

Subp. 2. Required stop-loss coverage. All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

Subp. 3. Return of liability. No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

2785.1400 DEFICIT AND ASSESSMENTS.

Subpart 1. Joint and several liability. Each current member is jointly and severally liable for all liabilities and expenses of the

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pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

Subp. 2. Runoff pool liability. If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

Subp. 3. Correction of a deficit. If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

Subp. 4. Assessment to increase surplus. The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

2785.1500 FINANCIAL INTEGRITY.

Subpart 1. Fidelity bond. All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

Subp. 2. Integrity of assets. A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

Subp. 3. Sources and uses of funds. A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the pool.

Subp. 4. Separate accounts. A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

Subp. 5. Investments. A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

Subp. 6. Monitoring financial condition. The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

2785.1600 REPORTING.

Subpart 1. Financial statements. A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be

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filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

Subp. 2. Quarterly reports. If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

Subp. 3. Extraordinary audits. Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

Subp. 4. Annual status report. No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

Subp. 5. Penalty. The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

Department of Commerce

Proposed Rules Relating to Nonrenewal of Homeowners Insurance

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, sec. 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, sec. 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Bill Kyle, 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, sec. 65A.29. 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, Department 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 Richard Gomsrud, General Counsel or Rose Weiner, Secretary, at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2880.0050 APPLICABILITY.

Parts 2880.0050 to 2880.0800 do not apply to commercial dwellings or farms, nor to policies under joint underwriting agreements where one of the insurers is a township mutual.

2880.0100 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2880.0050 to 2880.0800, the terms defined in this part have the meanings given them.

Subp. 2. Commercial dwelling. "Commercial dwelling" means a building used primarily to produce income, such as a motel, hotel, or apartment house, but does not include an owner-occupied dwelling of four units or less.

Subp. 3. Experience period. "Experience period" means the period of three years immediately preceding the insurer's nonrenewal of a policy of homeowners insurance.

Subp. 4. Multiline contract. "Multiline contract" means a single insurance contract which provides coverage for homeowners insurance and for at least one other line of insurance authorized under Minnesota Statutes, section 60A.06, subdivision 9.

Subp. 5. Nonrenewal. "Nonrenewal" means an action taken by an insurer on an existing policy, at the end of the policy period, to:

A. terminate the policy;

B. reduce the policy's coverage, unless all the existing policies and those policies to be accepted as new business by the insurer in this state will have the same coverages;

C. increase the policy's deductible, unless all existing policies and those policies to be accepted as new business in this state, by the insurer, will provide for the same higher deductible; or

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D. transfer a named insured from one rating plan to another within the same company, or from one company to another within a group of insurance companies, if the transfer results in a higher premium. A surcharge applied to a premium for a condition which increases the potential for loss, or the deletion of a claims free discount do not constitute a transfer of rating plans.

A policy of homeowners insurance written for a term longer than one year is not subject to nonrenewal until the end of the policy term even if the insurer can rerate the policy annually.

Subp. 6. Nonrenewal notice. "Nonrenewal notice" means a written notice to a named insured clearly and expressly informing the named insured of the insurer's intention not to renew the policy as of the renewal date.

Subp. 7. Policy of homeowners insurance. "Policy of homeowners insurance" means a policy providing property and liability coverage on dwellings and includes policies which are generally described as homeowners policies, mobile homeowners policies, dwelling owners policies, condominium owners policies, and tenants policies.

2880.0200 GROUNDS FOR NONRENEWAL.

No insurer shall refuse to renew a policy of homeowners insurance unless based on one or more reasons which shall be limited to the following:

A. The reasons stated for cancellation in Minnesota Statutes, section 65A.01, subdivision 3a.

B. Use of the premises for an illegal activity.

C. The termination of an agency contract, except as provided under Minnesota Statutes, section 60A.171, unless the insurer assigns the terminated agent's book of business to another agent. The insurer must transfer the policy to another agent if the insured makes a written request prior to the nonrenewal date. Notification of this right must be included in the nonrenewal notice.

D. Violations of local laws or ordinances which increase the possibility of a loss.

E. Refusal of the insured to eliminate known conditions which increase the potential for loss after notification by the insurer that the condition must be removed. Before a nonrenewal notice can be issued under this item, two written requests stating the condition to remove and the reason why the condition increases the potential for loss must be sent to the insured. The first notice must inform the insured as to any time limits for compliance. The second notice must inform the insured of the intent to nonrenew the policy if the condition is not removed.

F. A substantial change in the quality or availability of fire protection services.

G. If the insured has two or more losses during the experience period, but not to include:

(1) losses caused by natural causes including but not limited to lightning, wind, or hail; or

(2) losses for which no payment was made by the insurer; or

(3) losses for which the insurer recovers 80 percent or more of the payment through subrogation.

H. The insurer ceases to write homeowners insurance in Minnesota.

I. Failure of the named insured to provide necessary underwriting information upon written request from the insurer, provided that before a nonrenewal notice can be issued under this item, two written requests asking for the information must be sent to the insured stating the reasons why the information is necessary. The second request must inform the insured of the intent to nonrenew the policy if the information is not received.

J. If real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of nonrenewal is issued.

K. The named insured no longer owns the property or resides at the insured location, unless the spouse resides at the insured location and retains ownership, in which event the spouse will be endorsed onto the policy as the named insured.

If an insurer has grounds to nonrenew a homeowners policy on a primary residence of a named insured, homeowners policies on secondary residences of the insured may also be nonrenewed. Grounds for nonrenewing homeowners policies on secondary residences cannot be used to nonrenew a homeowners policy on the primary residence. If an insured fails to renew the primary residence with an insurer, the insurer may nonrenew the secondary residence.

L. The reasons stated in Minnesota Statutes, section 72A.20, subdivision 13.

2880.0300 WAIVER OF PENALTIES.

If an insurer encounters a situation in which the insurer believes that the nonrenewal is not addressed by parts 2880.0050 to 2880.0800, the insurer may seek a waiver of penalties under the following procedure:

A. Notify the commissioner in writing, at least 90 days prior to the policy renewal date, by referring to this part and by stating the reasons for the proposed nonrenewal action.

B. If the commissioner determines that the situation is not covered by parts 2880.0050 to 2880.0800, but warrants a nonrenewal, the penalties in part 2880.0800 must be waived. The commissioner may decline to render an opinion.

C. The waiver of penalty decision must be retained by the insurer. A copy of the waiver of penalty decision must be returned to the commissioner by the insurer with its response to a written complaint made by the insured.

D. The commissioner's decision regarding waiver of penalties will have no bearing on the final decision as to the approval or disapproval of the nonrenewal action.

E. There is no precedential value in the commissioner's action under this part and each request must be judged on individual considerations.

2880.0400 NONRENEWAL NOTICES.

A nonrenewal notice must be on a form approved by the department of commerce and the following information must be furnished to the insured on the front of the notice:

A. The specific reasons for the termination, which if based on loss experience must include the date of the loss, the type of loss, and amount of payment.

B. A statement advising the insured of the right of complaint with wording such as: "Minnesota law and rules limit the reasons for which your homeowners insurance policy may be nonrenewed, reduced as to the limits of coverage or coverage eliminated, or for which the policy may be canceled. If you believe this termination notice is in violation of Minnesota law or rule, you may, within 30 days of receiving this notice, send a written letter of complaint to the Commissioner of Commerce."

C. A statement advising the insured of the availability of insurance from the Minnesota Property Insurance Placement Facility with wording such as: "You may be eligible to obtain insurance coverage through the Minnesota Property Insurance Placement Facility. Your agent can assist you in arranging this coverage."

The named insured cannot waive his or her right to receive a nonrenewal notice under the nonrenewal statutes and parts 2880.0050 to 2880.0800.

2880.0500 VALIDITY OF NOTICE AND NONRENEWAL.

No nonrenewal and no notice of nonrenewal of a homeowners policy is valid unless done in compliance with parts 2880.0050 to 2880.0800.

2880.0600 RECORDKEEPING.

Each insurance company shall keep a register of all nonrenewals and company initiated cancellations, except those for nonpayment of premium. The register must be retained for three years and be available to the commissioner of commerce, or a designee, during business hours at the insurance company's place of business.

2880.0700 NONRENEWAL OF MULTILINE CONTRACTS.

Nothing in parts 2880.0050 to 2880.0800 prohibits an insurance company from nonrenewing a multiline insurance contract. However, if parts 2880.0050 to 2880.0800 prevent nonrenewal of the homeowners insurance portion of the contract, then the insurance company shall issue to the named insured a policy of homeowners insurance providing coverage as included in the multiline contract.

2880.0800 PENALTIES.

Subpart 1. Generally. An insurer failing to comply with parts 2880.0050 to 2880.0800 is subject to the following penalties during each calendar year period:

A. first violation, $100;

B. second violation, $300; and

C. third and subsequent violations, $500.

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Subp. 2. Waiver. Monetary penalties will not be levied if the commissioner determines that the nonrenewal notice was based on a good faith judgment supported by evidence that was in the possession of the insurer at the time of the sending of the nonrenewal notice, or if the nonrenewal was subject to the waiver of penalty provisions in part 2880.0300.

Subp. 3. Additional penalties. Nothing contained in parts 2880.0050 to 2880.0800 prohibits the commissioner of commerce from applying additional penalties or remedies as may be imposed under Minnesota Statutes, chapter 72A.

Department of Commerce

Withdrawal of Proposed Rules Relating to Nonrenewal of Homeowner Insurance

Notice is hereby given that the Proposed Rules Relating to Nonrenewal of Homeowners Insurance published in the *State Register* on Monday, October 8, 1984 at 9 S.R. 721 to 9 S.R. 724 are hereby withdrawn. New prepared rules will be published in their stead.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce
Financial Examinations Division

Proposed Rules Relating to the Operation of Commercial Banks

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Commissioner of Commerce proposes to adopt amendments to the above rules without a public hearing. The Commissioner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28. The amendments including repeal of certain rules are needed to respond to changes already made in state and federal law relating to banking and with particular attention to removing burdensome or unnecessary requirements.

Persons interested in these rules shall have 30 days after publication in the *State Register* to submit comments in support of or in opposition to the proposed amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Commissioner and do not result in a substantial change to the proposed language.

Unless twenty-five or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14 to 14.20, and a notice of the public hearing will be published in the *State Register*.

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

David A. Shern, Deputy Commissioner
Division of Financial Examinations
Department of Commerce
500 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
(612) 296-2135

Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Authority for the adoption of these rules is contained in Minn. Stat. § 46.01, subdivision 2. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Deputy Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments reviewed, 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 revise a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Deputy Commissioner. Notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any person requesting to receive the notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Linda Phillips, at the Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101, (612) 297-2548.

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2675.0200 FINANCIAL STATEMENTS.

~~All unsecured loans of $500 or more in banks of less than $1,000,000 in deposits and unsecured loans of $1,000 or more in banks of $1,000,000 or more of deposits shall be supported by~~ Signed, current financial statements of the borrowers, endorsers, or guarantors~~. Such current financial information is also~~ are required on loans which the commissioner or ~~his~~ an examiner ~~considers~~ determines to be inadequately secured ~~or those which are secured by a chattel mortgage on farm livestock and/or machinery~~. ~~Such~~ Financial statements ~~shall be~~ are considered current when renewed at least annually ~~as long as such loans remain unpaid at such amounts~~.

2675.0300 DELINQUENT LOANS.

Subpart 1. When delinquent. ~~Any note, including a real estate mortgage note, in the absence of a properly executed extension, will be considered past due the next day after maturity, unless subsequent interest has been received, in which case the date to which interest has been paid becomes the maturity date. If that date has gone by, the entire note becomes "B" paper, except that after six months it becomes "A" paper.~~ For the purposes of the report of examination of banks, loans, leases, and unplanned overdrafts are considered delinquent and are separated into two distinct groupings as follows:

A. "A" paper consists of all loans and leases which are six months past their maturity, or on which interest or principal is due and unpaid for six months or more, including unplanned overdrafts.

B. "B" paper consists of all other loans and leases which are 30 days, but less than six months past their maturity, or on which interest or principal is due and unpaid for a period of 30 days, but less than six months including unplanned overdrafts. An installment loan will not be considered overdue until at least two monthly payments are due. The same will apply to real estate mortgage loans, term loans, or any other loans payable on regular monthly installments of principal and/or interest.

Subp. 2. Installment loans Examples of "A" paper and "B" paper. ~~All notes due on a monthly installment basis are allowed 30 days grace and neither the principal nor payment is considered as past due, if any payment is less than 30 days overdue. However, in the event that a payment runs over 30 days delinquent, the whole principal balance becomes past due and subject to "B" classification, except that if such delinquency runs six months or more, it becomes subject to "A" classification. Interest payments will have no effect to change classification described above.~~ The following examples will illustrate the applications to "A" paper and "B" paper:

A. Single payment notes: Note dated January 2, 1984, due July 2, 1984, with interest to be paid at maturity. If unpaid, the note becomes "B" paper at close of business August 2, 1984, and "A" paper at close of business January 2, 1985.

B. Demand notes: Note dated January 2, 1984, written "due on demand." Interest will be considered to be due every six months, if not otherwise indicated in the body of the note. If interest is unpaid, this note becomes "B" paper at the close of business January 2, 1985.

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C. Installment notes: Note dated January 2, 1984, to be paid in monthly installments beginning February 2, 1984. Allowing one month grace, if the installment due on February 2, 1984, is unpaid, the balance of this note will become "B" paper at the close of business March 2, 1984, and "A" paper at the close of business on August 2, 1984.

~~Subp. 3. Demand notes~~ **Apportionment.** ~~Demand notes are considered current if no longer than six months have elapsed since the date to which interest was previously paid. Such notes are considered to mature exactly six months from such a date and become past due one day thereafter, unless subsequent interest is received.~~ The overdue figure shall include the total dollar balance of the lease or loan that is not current.

For examination purposes, past due loans that are in a nonaccrual status or that are renegotiated troubled debt are to be apportioned to "A" paper or "B" paper as appropriate.

2675.0901 REAL ESTATE LOANS-DOCUMENTATION.

Each real estate secured loan file shall include the following documentation and evidence where the loan is in an amount over $7,500 or not otherwise exempt from the definition of real estate in Minnesota Statutes, section 48.19, subdivision 4:

A. An attorney's opinion, a title insurance policy, or, in the case of Torrens title property, the mortgagee's duplicate certificate of title with memorial of the bank's mortgage thereon is required on all real estate loans which shall describe the status of fee title, the validity of the bank's lien, and the position of the lien.

B. Evidence of adequate insurance coverage with loss payable clause payable to the bank shall be required for mortgages on improved property.

Written binders of insurance are acceptable evidence of insurance. No bank shall refuse to accept a binder tendered at the time of closing as evidence of any insurance coverage required as a condition of a loan agreement if the binder conforms with usual and customary conditions as to designation of loss payee and mortgagor.

C. Real estate appraisal reports are required for each mortgage. The appraisal and the reasonableness of its accuracy is the responsibility of the appraisal committee. The appraisal report and its acceptance by the appraisal committee shall be made part of the mortgage file.

2675.1100 BOND INVESTMENT RECORDS.

During the period in which such investment is carried on a bank's books, it shall be required that original invoices of bond purchases and sales be retained as a part of the records of a bank; a record be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where pledged or deposited for safekeeping; ~~and~~ all municipal and corporation bonds owned by a bank be supported by full credit information at the time of purchase; and every sale and every purchase will be considered a separate transaction and trades, switches and securities received under debt readjustment, as well as new purchases, must meet the requirements of these parts.

2675.1110 ELIGIBLE SECURITIES.

An obligation of indebtedness which may be purchased for its own account by a state bank, in order to come within the classification of eligible securities within the meaning of this part, must be a marketable obligation. It must be salable under ordinary circumstances with reasonable promptness at a fair value; and with respect to the particular security, there must be present one or more of the following characteristics:

A. a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; or;

B. other existing securities of the obligor must have such a public distribution as to protect or insure the marketability of the issue under consideration; or;

C. in the case of eligible securities for which a public distribution as set forth in item A or B cannot be so provided, or so made, and which are issued by established commercial or industrial businesses or enterprises, that can demonstrate the ability to service such securities, the debt evidenced thereby must mature not later than ~~ten~~ 20 years after the date of issuance of the security and must be of such sound value or so secured as reasonably to assure its payments; ~~and such securities must, by their terms, provide for the amortization of the debt evidenced thereby so that at least 75 percent of the principal will be extinguished by the maturity date by substantial periodic payments. Provided, that no amortization need be required for the period of the first year after the date of issuance of such securities.~~

2675.1130 INVESTMENT QUALITIES.

Securities, in order to be eligible for purchase by state banks, must be in the form of bonds, notes, and/or debentures, and must be of recognized investment quality. Eligible securities are those which are included among the four highest ratings of the rating services, and nonrated securities of equivalent value~~, the latter to be determined by the bond department of the Banking Division~~. With regard to the ratings, the following items shall apply:

A. to C. [Unchanged.]

2675.1140 HOLDING BONDS ON PAR OR FACE VALUE.

The statutory limitation on the amount of the eligible securities of any one obligor or maker which may be held by the bank, not otherwise exempted by Minnesota Statutes, section 48.24, subdivision 6, is to be determined on the basis of the par or face value of the securities, and not on their book value.

2675.1150 ~~WHEN~~ PURCHASE ~~PRICE MAY EXCEED PAR~~ OF ASSET AT A PREMIUM OR DISCOUNT.

~~Subpart 1. Purchase. Purchase of an eligible security at a price exceeding par is prohibited, unless the bank shall:~~

~~A. charge off the premium when the securities are placed on the books; or~~

~~B. provide, for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or~~

~~C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under item B.~~

~~Subp. 2. Interest and commissions. Accrued interest paid on securities must be charged to interest received. Bond commissions and all costs of sales or purchases must be charged to expense.~~

When assets are purchased at a premium or discount, a bank:

A. shall charge off the premium when the asset is placed on the books; or, provide for the regular amortization of the premium pursuant to generally accepted accounting principles; and

B. may provide for the regular accretion of the discount pursuant to generally accepted accounting principles.

2675.1180 FOREIGN BORROWERS SECURITIES.

Purchase of securities of foreign borrowers, whether private, corporate, or governmental, is prohibited with the exception of:

A. [Unchanged.]

B. bonds of the International Bank for Reconstruction and Development, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the International Bank for Reconstruction and Development only by banks, trust companies, and savings banks;

C. bonds of the Inter-American Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Inter-American Development Bank only by banks, trust companies, and savings banks; ~~and~~

D. bonds of the Asian Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Asian Development Bank only by banks, trust companies, and savings banks; and

E. bonds of the African Development Bank, which are payable in dollars of the United States; provided however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual

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surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the African Development Bank only by banks, trust companies, and savings banks.

2675.2000 BANKS SELLING WITH REPURCHASE AGREEMENT.

As to repurchase agreements accompanying sales of securities, it is permissible for the bank selling securities to another to agree that the bank shall have an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement, but in no case in excess of the market value at the time of repurchase.

Except for securities which are the direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof, it is not permissible for the bank selling securities to another to agree that the purchaser shall have the right or the option to require the bank to repurchase said securities at a price stated or at a price subject to determination under the terms of the agreement, notwithstanding the fact that the bank may also, under such agreement have the right or option to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement.

2675.2050 PURCHASE OF NONELIGIBLE SECURITIES PROHIBITED; DISPOSITION; EXCEPTIONS.

The purchase of securities other than eligible securities as defined in part 2675.1110 is prohibited. Any such purchase will be considered a violation of this part and the commissioner ~~of banks, in his discretion,~~ will require that any ~~such~~ noneligible security so purchased be disposed of within a reasonable length of time. No bank shall be permitted to purchase securities of business or municipal corporations that shall have undergone debt readjustment until 12 months shall have elapsed since the effective date of the readjustment. Such securities, if purchased, must also be disposed of. However, the purchase of railroad equipment trust obligations which are not in default either as to principal or interest, or both, and which are considered to be of eligible quality shall not be prohibited.

2675.2100 CASH ITEMS.

A daily record shall be maintained of all cash items for anything other than currency or coin being held over until the following day's business and not in the process of being forwarded for collection or being returned to endorsers. No checks shall be held in a bank's cash account to avoid the showing of overdrafts. ~~These daily records shall be retained for a period of at least two years.~~

2675.2110 BANKING HOUSE.

~~All new investments in banking quarters must be approved by the commissioner of banks, subject to statutory requirements, whether or not a fee interest is involved, with the exception that subsequent expenditures for improvements or remodeling need not require such approval, provided that the total such charges to this account will not increase such investments to a point where the total will exceed 40 percent of a bank's capital and surplus accounts.~~

A. Investment for banking house and premises requires no prior written approval of the commissioner pursuant to Minnesota Statutes, section 47.10, unless:

(1) the investment is in nonadjacent property, or

(2) the total investment exceeds 50 percent of the bank's capital and paid-in surplus.

B. In determining the total investment in banking premises, the net book value for land, buildings, real estate for future use, leasehold improvements, and leases capitalized according to financial accounting standard board practices are to be aggregated.

C. A bank shall maintain documentation to reflect that investments in banking premises are depreciated or amortized pursuant to generally accepted accounting principles. The documentation shall disclose the period of time the assets are expected to remain on the books, and the accepted practice used to consistently assign the cost and write down the value.

D. Investment in nonadjacent real estate to be used for future banking premises not utilized as intended within five years shall be considered other real estate unless definite plans for utilization are in process and extended time is approved by the commissioner.

E. Prior to December 31, 1985, a bank may, without obtaining approval, restate the net book value of its banking premises to reflect the original cost less any prior write down required under generally accepted accounting principles. Adequate documentation shall be maintained to substantiate any restatement of banking premises. Alternatively, a bank not restating the value of banking premises may write down the remaining net book value pursuant to generally accepted accounting principles.

2675.2130 FURNITURE AND FIXTURES, PERSONAL PROPERTY, AUTOMOBILES, AND EQUIPMENT.

Purchases capitalized in this account shall be amortized ~~at the minimum rate of ten percent annually~~ as required by generally accepted accounting principles, ~~with such exceptions~~ or a greater amount as may be ~~made~~ approved in writing by the commissioner ~~of banks. Each such annual charge shall be based on the remaining book value at the end of each year~~ Furniture and fixtures, personal property, automobiles, and equipment used in the conduct of banking business may be acquired by purchase or lease without obtaining prior approval of the commissioner unless the seller or lessor has an existing direct or indirect interest in the management or ownership of the acquiring bank.

2675.2140 LEASEHOLD INVESTMENT AMORTIZATION.

~~A Leasehold investment which has been approved by the commissioner of banks~~ investments shall be amortized ~~over the period of the lease~~ as required by generally accepted accounting principles. Leasehold investments receiving prior approval pursuant to Minnesota Statutes, section 47.10, subdivision 3, are subject to further prior approval of renegotiated and amended terms. If there is an optional clause in such lease for an additional period to be covered thereby, this shall serve to extend the amortization period to such extent. ~~In no event, however, shall the rate of amortization be less than five percent or less than four percent if the total of a bank's investment in banking quarters be more than 40 percent of its capital and surplus accounts.~~

2675.2170 OTHER REAL ESTATE.

Other real estate:

A. Any real estate acquired or owned by a bank ~~through foreclosure; conveyed to a bank as satisfaction of a debt previously contracted, or acquired by a bank in any legal manner in satisfaction of debts previously contracted~~ (1) pursuant to Minnesota Statutes, section 48.21, clauses (2) to (5); (2) not used in the business resulting from relocation of the principal office, or closing of a detached facility; or (3) abandonment of plans to use real estate acquired for future expansion, shall be designated as "other real estate." The property acquired pursuant to (1) shall be so designated from the date upon which the bank actually acquires title. Property owned pursuant to subitems (2) and (3) shall be so designated from the date the determination is made to divert or abandon as actual operating bank premises.

B. "Other real estate" ~~cannot~~ shall not be entered upon the books of a bank at an amount greater than the balance of the principal amount of the indebtedness at the time of acquisition or the remaining book value if owned. In any case, the book value of other real estate shall never exceed the estimated fair market value of the property. The fair market value shall be determined by an appraisal prepared by an independent qualified appraiser within 30 days of acquisition. The appraisal shall be made part of the other real estate file.

C. ~~A chargeoff of ten percent of the original amount at which the "other real estate" was placed on the books shall be made annually at the close of each calendar year. The chargeoff for the first calendar year of ownership shall be an amount to be arrived at by using the same percentage to the full annual chargeoff requirements as the number of months investment has been on the books is to a 12 month period~~ Reasonable attempts shall be made to dispose of other real estate by sale. The other real estate file shall be documented with disposal attempts. In no case, is depreciation required on other real estate, but it shall be removed from the books within five years after acquisition.

D. "Other real estate" sold on contract for deed ~~must~~ may be carried as ~~"other real estate" until at least 25 percent of the purchase price has been paid in cash, after which it may be transferred to loans and discounts~~ a loan at the lesser of the principal balance due on the contract, or at its present book value. Loss on sale of "other real estate" shall be recognized in the period the sale occurs. Gains on sale of other real estate shall be either accreted ratably on the same basis as repayment, or may be deferred until title is transferred to the buyer.

E. ~~It is required that a bank have an abstract of title, continued to show title in the bank on each item of "other real estate." Insurance should be obtained where necessary and taxes must be kept current if the "other real estate" is carried as an asset.~~

~~Bank must also have an attorney's opinion or equivalent evidence to show the status of its ownership as to other possible existing liens against each property~~ "Other real estate" shall be documented with an attorney's opinion or equivalent evidence

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to reflect title and all encumbrances. Adequate property and liability insurance shall be carried, and taxes shall be kept current.

2675.2200 CHARGED OFF ASSETS; DUAL CONTROL.

Subpart 1. Record. A complete record of charged off assets shall be maintained on which all recoveries shall be shown. This record shall also cite authority of directors with regard to any debts that have been compromised, and include signed compromise agreements, if it is possible to obtain them.

The original records of charged off assets shall be maintained under dual control to effect any entry subsequent to the board's charge off resolution.

Subp. 2. and 3. [See repealer.]

2675.2220 ADDITIONAL COMMON STOCK SALES.

Any bank which increases its common capital account by means of the sale of additional common stock need not carry such funds in any other bank but may carry them on its own books among demand liabilities and furnishing appropriate certificate to the commissioner of banks as to the total paid in.

2675.2240 DIVIDENDS.

The dividend period for the purpose of declaring dividends in accordance with the provisions of Minnesota Statutes, section 48.09 shall be the period commencing on January 1 and ending as of the close of business December 31 of each calendar year and the net profits income for each such period shall be determined from the annual earnings and dividends reports consolidated report of income of each bank.

The Division of Banking Department of Commerce will supply each bank with forms to be completed with information called for by such. The forms and returned must be mailed or delivered to the commissioner of banks within ten days of the date of declaration of any dividend and at least 15 days prior to the proposed payment date of any dividend. The forms shall contain a statement by the commissioner of banks providing that if certain requirements as set forth therein are met, the bank may pay a cash dividend or dividends without specific approval of the commissioner of banks in the year succeeding the dividend period in such amount or amounts as will not reduce the bank's capital, surplus, undivided profits, and reserves below such requirements. Except as provided in the preceding sentence, no bank or trust compaany shall pay a cash dividend to its stockholders until written approval for such the dividend has been obtained from the commissioner of banks.

The Division of Banking will supply forms to each bank which shall, within ten days of the date of declaration of any dividend, report to the commissioner of banks the date of declaration, the rate and amount of the dividend, and the date on which such dividend is payable Declared dividends shall be deducted from undivided profits and carried on the books as another liability entitled "dividends payable." The other liability account shall be reversed upon payment or nonapproval by the commissioner.

2675.2246 CERTIFICATE OF DEPOSIT OF OTHER BANKS FINANCIAL INSTITUTIONS.

Where a bank incurs a direct liability to another bank by an issuance of a certificate of deposit, such must be carried on its books as "bills payable."

Where a bank makes a direct investment in a certificate of deposit of another bank financial institution, such investment shall not exceed its legal lending limit as provided in Minnesota Statutes, section 48.24 and shall also be carried under "other assets."; however, this limitation shall apply only to that portion, if any, of the investment which is not insured by an agency of the United States.

2675.2250 OVERDRAFTS; OFFICERS OR EMPLOYEES.

Overdrafts:

A. All checks which are to be honored by a bank shall be charged to the proper account on the same or next business day after receipt.

B. Checks which are not paid because of causing overdrafts shall be returned to the proper endorser before the close of the next business day after receipt.

C. Such checks as have been referred to in item B shall at no time be carried as cash items, beyond midnight of the next business day after receipt, but returned to respective endorsers, excepting in instances where checks are cashed over the counter and there is no opportunity to return them to the endorser.

D. No overdraft shall be permitted to an officer or employee of a bank with the exception of those which occur in the ordinary course of posting and are reimbursed during the same or following business day. Overdrafts originating and disposed of in this manner shall not be construed as being in violation of Minnesota Statutes, section 48.08.

2675.2420 INSURANCE COMMISSION OTHER BUSINESS; EXPENSE REIMBURSEMENT AGREEMENTS.

If an officer of a bank is acting as an insurance agent and such, acting to effect transactions in securities or the business of an insurance agency or securities broker-dealer not owned by the bank is being conducted on the banking premises, there must be an arrangement as to allocating overhead expenses or as to distribution of net earnings and to be included in an appropriate board resolution. The allocations may include the credit insurance income required to be turned over to the bank pursuant to Minnesota Statutes, section 47.016, or commissions.

2675.2500 DISPLAY AND REPLACEMENT COPIES.

Every bank shall display its bank charter in a prominent place in the lobby. In case of destruction or misplacement of the charter, the Division of Banking commissioner will supply a duplicate, upon application, without at the cost set out in Minnesota Statutes, section 46.131, subdivision 10.

REPEALER. Minnesota Rules, parts 2675.0700; 2675.0800; 2675.0900; 2675.0910; 2675.0920; 2675.0930; 2675.0940; 2675.0950; 2675.1160; 2675.2010; 2675.2020; 2675.2030; 2675.2060; 2675.2070; 2675.2080; 2675.2090; 2675.2120; 2675.2150; 2675.2160; 2675.2190; 2675.2200, subparts 2 and 3; 2675.2230; 2675.2290; and 2675.2410 are repealed.

Department of Energy and Economic Development

Proposed Emergency Rules Governing Energy Financial Assistance

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Department of Energy and Economic Development is proposing to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program. The agency is authorized by Minnesota Statutes 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17) to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. With publication of this notice in the November 5, 1984 *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 30, 1984. Written comments should be sent to:

Kathryn Hahne
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1391

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days upon publication of a separate notice to such effect.

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 REGISTER

STATE OF MINNESOTA



VOLUME 9, NUMBER 28

January 7, 1985

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2725.0200 NOTIFICATION REQUIREMENTS FOR COORDINATORS AND INSTRUCTORS.

Coordinators and instructors must notify the commissioner within ten days after the occurrence of the following:

A. A felony or gross misdemeanor conviction or of disciplinary action taken against an insurance or other occupational license held by the coordinator or instructor. The conviction or action may be grounds for denying or revoking instructor or coordinator approval.

B. Any change of information contained in an application for approval.

2725.0210 LICENSEE REPORTING REQUIREMENT.

Continuing education credit must be reported by the licensee on forms and in a manner prescribed by the commissioner.

2725.0220 WAIVERS.

If a licensee provides satisfactory documentation to the commissioner that he or she is unable, and will continue to be unable, to attend actual classroom course work, because of a physical handicap, medical condition, or similar reason, attendance at continuing education courses shall be waived for a period not to exceed one year. The commissioner shall require that the individual read a sufficient number of insurance textbooks, or listen to a sufficient number of insurance related tapes as would be necessary for the licensee to satisfy his or her educational credit hour needs. The commissioner shall award the licensee credit hours for reading books or listening to tapes by determining how many credit hours would be granted to a classroom course involving the same material and giving the licensee the same number of credit hours under this part. The licensee may apply each year for a new waiver upon the same terms and conditions as were necessary to secure the original waiver. The commissioner may request such documentation of the condition upon which the request for waiver is based as shall be necessary to satisfy the commissioner of the existence of the condition and that the condition does preclude attendance at continuing education courses.

2725.0230 EXTENSIONS.

Upon appropriate showing of a bona fide financial or medical hardship, the commissioner shall extend, for up to 90 days, the time period during which the continuing education must be successfully completed. Loss of income from either attendance at courses or cancellation of a license is not a bona fide financial hardship.

Requests for extensions must be submitted in writing no later than April 1 of the year due and shall include an explanation with verification of the hardship, plus verification of enrollment at an approved course of study.

2725.0240 EXEMPTIONS.

A currently licensed insurance agent shall be exempted from continuing education requirements if the agent's age and years licensed as an insurance agent in good standing in Minnesota exceed 85 years, as long as that agent has maintained an active insurance agent license in the state for the last ten consecutive years.

Department of Commerce

Rules Relating to Political Subdivision Self-Insurance Pools

Notice Concerning the Impact on Small Businesses of the Previously Published Proposed Rules Relating to Political Subdivision Self-Insurance Pools

The Department of Commerce recently published rules relating to Political Subdivision Self-Insurance Pools in the *State Register* on November 5, 1984, (Cite 9 SR 946). 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 expired on December 5, 1984. This notification hereby extends that comment period an additional 30 days from the date of this notification.

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.

Copies of this notice and the 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) 296-5689.

Michael A. Hatch
Commissioner of Commerce

Department of Energy and Economic Development Energy and Economic Development Authority

Proposed Emergency Rules Relating to the Technology Product Investment Program

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for loan application procedures, Technology Product Loans. The agency is authorized by Minnesota Statutes, section 116J.91, subdivision 4, to adopt emergency rules for its financial assistance programs.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency in support of or in opposition to the proposed emergency rules, and comments are encouraged. With publication of this notice in the January 7, 1985, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on February 1, 1985. Written comments should be sent to:

Rosemary T. Fruehling, Director
Office of Software/Courseware Technology Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612-297-1554

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or dissapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days, although the proposed emergency rules may be continued in effect for an additional period of up to 180 days if the agency publishes a separate notice to such effect in the *State Register* and mails the same notice to all persons on the agency's list to receive notice of rulemaking proceedings.

A full copy of the proposed emergency rules is available by contacting Dr. Fruehling at the above address.

January 7, 1985

Mark B. Dayton, Commissioner of Energy
and Economic Development Department &
Chairman of the Minnesota Energy and
Economic Development Authority

Rules as Proposed (all new material)

8300.4101 [Emergency] DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 8300.4102 to 8300.4112 [Emergency], the following terms have the meanings given them.

Subp. 2. Product rights. "Product rights" means a product to which the rights have been acquired by the authority through purchase, lease, license, or loan default.

Subp. 3. Conceptual product. "Conceptual product" means an idea based upon a mental impression or general notion that can be documented in a technology-related product design or plan.

Subp. 4. Courseware. "Courseware" means specialized software for the delivery of education and training.

Subp. 5. Default. "Default" means the failure of the loan recipient to repay the principal and interest, to make royalty payments in accordance with the security agreement, or the breach by the loan recipient for more than ten days after mailing

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Political Subdivision Self-Insurance Pools

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE ADOPTED WITHOUT PUBLIC HEARING

Notice of the Commissioner's proposed adoption of the above-entitled rule was published in the State Register on November 5, 1984 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1, paragraph (a) and 14.22 on January 3, 1985.

Due to questions as to the adequacy of the Notice of Intent to Adopt Rules Without Hearing in regard to the Impact of the Rules on Small Business, an additional Notice was published on January 7, 1985 at page 1543 of the State Register and the comment period extended 30 days from the date of publication.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Fewer than 25 written requests for hearing within the 30-day comment period as extended were received.

No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the agency, I find the following:

That it was originally expected that the rules would be in effect prior to March 1, 1985, thus giving those affected by the rules more than 120 days to comply with the July 1, 1985 filing date required by Part 2785.0600 subpart 2. However, because of the extension of the comment period the rules will not be effective until after July 1, 1985. So as to not impose undue hardship upon anyone required to immediately comply with the requirements of Chapter 2785 of Minnesota Rules and also to honor the original expectation of at least 120 days in which to comply, the date specified in Part 2785.0600 subpart 2 is hereby changed from July 1, 1985 to December 1, 1985.

The above-captioned rule as modified is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Chapter 2785 Rules Governing Political Subdivision Self-Insurance Pools is adopted this 14th day of June, 1985 pursuant to authority vested in me by Minnesota Statutes, sections 471.617, subdivision 2 and 471.982, subdivision 2.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Political Subdivision Self-Insurance Pools

AFFIDAVITS RE: 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 part of his responsibilities is the promulgation of the above captioned rules.

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

Richard G. Gomsrud

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

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of the Rule of the Department of Commerce Governing Political Subdivision Self-Insurance Pools	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General John C. Bjork, 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.

Dated: June 20, 1985.

John C. Bjork

JOHN C. BJORK
Special Assistant Attorney General

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules
Governing Political Subdivision
Self-Insurance Pools
Minnesota Rules, Parts 2785.0100
to 2785.1500

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes, section 65B.48, subdivision 3a, authorizes the Commissioner of Commerce to adopt rules to assure the adequacy of the financing and administration of self-insurance plans for the benefits required by Minnesota Statutes, sections 65B.41 to 65B.71. Political subdivision self-insurance pools are a method for financing and administering these benefits. Minnesota Statutes, section 471.617, subdivision 2, authorizes the Commissioner of Commerce to adopt rules to provide standards for the operation of political subdivision self-insurance pools for any employee health benefits except life benefits. Minnesota Statutes, section 471.982, subdivision 2, authorizes the Commissioner of Commerce to adopt rules to provide standards for the operation of political subdivision self-insurance pools for risks and hazards excluding employee health, life, or disability benefits. Laws of Minnesota, 1983, chapter 290, section 171, provides that a public/private pool including the city of Duluth is subject to the rules adopted under Minnesota Statutes, section 471.982. Because of the many commonalities between political subdivision self-insurance pools of all kinds, these rules are proposed pursuant to each of these authorities. The rules' purpose is to ensure that the financial integrity of

these pools is maintained, and that they are administered competently and equitably. The rules govern the formation, operation, and dissolution of political subdivision self-insurance pools of all kinds.

FACTS ESTABLISHING NEED AND REASONABLENESS

As more specifically stated below, the proposed rules are necessary to insure the solvency and operation of political subdivision self-insurance pools.

Part 2785.0100 Definitions.

Part 2785.0100 defines 20 key words and phrases used in the rules. Most of the meanings are straightforward clarifications of commonly used terms. The following commentary is provided for the minority of definitions with less obvious meanings and necessity.

Subpart 9 defines "financial administrator." It establishes minimum standards of staff and organizational experience for entities to be eligible to administer a pool's funds. The standard of five years experience for the organization and current employment of experienced staff are reasonable criteria for precluding inexperienced organizations from assuming responsibility for a pool's finances. This requirement is necessary, because competent financial management is essential to a pool's stability and financial integrity.

Subpart 15 defines "public/private pool." Specific political subdivisions have been authorized to form workers' compensation pools including private employers. This definition is consistent with the statutory authorizations. No specific political subdivisions are named, to accomodate the possibility of additional authorizations over time.

Subpart 19 defines "sponsoring association." The definition distinguishes broad, multi-service associations such as the League of Minnesota Cities, the Association of Minnesota Counties, or the Minnesota School Boards Association, from associations formed primarily to sponsor insurance or self-insurance programs. This distinction is necessary because the rules accomodate the role of broad, multi-service associations in pool development. However, associations formed primarily to sponsor pools would not be considered to have a comparably objective and long-term interest in a pool's success, nor would they have a special basis for promoting pool development.

Part 2785.0200 Purpose.

Part 2785.0200 describes the rules' purpose. This part is necessary to describe the rules' regulatory intent as a guide to the rules' users. The statement of purpose is consistent with the statutory authorities.

Part 2785.0300 Scope.

Part 2785.0300 describes the rules' scope in terms of the entities and organizations that are directly affected. This part is necessary to identify the entities with rights and responsibilities under the rules as a guide to the rules' users.

Part 2785.0400 ByLaws.

Part 2785.0400 states minimum requirements for the content of a pool's bylaws, and procedures for adoption and change of the bylaws.

Subpart 1 specifies the content requirements. The requirements range from basic matters such as the pool's name, to important procedural issues such as the method for distributing dividends. It is necessary and reasonable that a pool decide in advance how important matters are to be resolved, such as membership rights, the relative powers of the various governing parties, access to money, and similar issues. Statements concerning these matters are necessary to the regulator to obtain a complete picture of the pool's method of governance. They are also necessary to enable prospective pool members to ascertain their rights and responsibilities within the pool's structure. Failure to clarify these important matters in advance could harm a pool's stability, because "mid-stream" decisions would be likely to harm some members' interests while benefitting others'. One of the principal elements of a pool's stability and financial integrity is the presence of long-term members. Maintenance of long-term members is enhanced by settling potentially divisive issues before they can disrupt a pool's unity.

Subpart 2 contains the requirements for adopting and changing the bylaws. It is necessary and reasonable that authority over the bylaws reside solely with the pool membership or with a representative board, because the membership is ultimately responsible for the pool's financial integrity. Under part 2785.1400, subpart 3, and part 2785.1500, subpart 6, a pool's members may be assessed to maintain the pool's financial integrity. Accordingly, although the pool's contractors play a major role in day-to-day administration, final responsibility for the pool's solvency and governance must reside with the membership or the board.

Part 2785.0500 Board.

Part 2785.0500 states minimum requirements for the structure and duties of a pool's board of trustees.

Subpart 1 contains the requirements concerning board structure. The most important requirement is that the board members be officials or employees of the members participating in the pool. This is a necessary and reasonable requirement because the pool's members are ultimately responsible for the pool's financial integrity. The pool's contractors, such as the service company, financial administrator, or stop-loss insurer, could have conflicts of interest in serving on the pool's board. A sponsoring association may appoint board members provided a majority of the board represent members other than the sponsoring association. The requirement that the board meet at least four times annually is necessary and reasonable to guarantee that the board will keep appraised of the pool's status, notwithstanding that day-to-day operations may be delegated to the contractors.

Subpart 2 defines the board's overall rights and responsibilities, and states the board's minimum responsibilities. Because the board represents the membership, and because the membership is assessable in the event the pool's financial integrity deteriorates, it is reasonable that the board is responsible for the pool's operation. It is specifically necessary to define the board's minimum responsibilities, lest a board abdicate its responsibilities to the service company or other contractors. This subpart establishes the basis for a pool's contractors reporting to the board, and bringing major decisions and policy issues to the board for its approval.

Part 2785.0600 Application.

Part 2785.0600 establishes the procedures for submission and review of applications for licensure as a political subdivision self-insurance pool.

Subpart 1 defines the initial application procedure. The basic 60 day period established for application review is reasonable and necessary to permit a thorough and orderly staff analysis. A shorter period could result in application rejections solely on the basis of inadequate time for analysis.

Subpart 2 requires pools in existence when the rules are adopted to submit an initial application by July 1, 1985. It is necessary for all pools, old and new, to operate under the same rules, since all pools face the same kinds of issues. However, it is reasonable to permit prior existing pools a transition period, so any changes they may choose or be required to make can be implemented without unnecessary disruption to existing programs.

Subpart 3 defines the renewal application procedure. It is a reasonable convenience that renewal applications consist of the pool's annual status report, since the report contains most of the same information as the initial application. This streamlines the renewal procedure.

Subpart 4 requires that two or more existing pools proposing to merge must assume all obligations of the prior pools. This requirement is necessary to guarantee continuity of coverage to pool members and their employees.

Subpart 5 establishes the period of licensure, and the criteria for approving or disapproving political subdivision self-insurance pool applications. The approval criteria are reasonable, consisting of adherence to the various rules and statutes governing such pools. No further criteria are necessary.

Part 2785.0700 Ending self-insurance, runoff period, and pool dissolution.

Part 2785.0700 establishes the procedures that apply at the end of a pool's life-cycle.

Subpart 1 states how a pool may voluntarily end its self-insurance authority. The three major requirements are that ending self-insurance coincide with the end of the fund year, that the commissioner is notified, and that a pool cannot end self-insurance when less than 45 days remain in a fund year. These requirements are reasonable and necessary to protect the continuity of coverage for pool members and their employees, and to allow members time to arrange alternative coverage.

Subpart 2 establishes standards for the revocation of a pool's self-insurance authority. The revocation standards parallel the criteria for evaluation of a pool's application for self-insurance authority. An additional standard is added concerning a deterioration of a pool's financial integrity. This standard is necessary and reasonable because notwithstanding the various financial safeguards built into the rules, it is possible that a pool's overall financial situation could deteriorate before any specific rules violation could be ascertained. In such circumstances, it would be necessary for the commissioner to be able to act before a pool's situation worsened to a point where it could not conduct an orderly runoff period.

Subpart 3 requires a pool to continue to exist after its self-insurance authority is ended to handle its "runoff" obligations, both regulatory and regarding coverage. This requirement is necessary, because of the time-delayed nature of coverage obligations.

Subpart 4 establishes standards and procedures for a pool's final dissolution. In order to dissolve, a pool must demonstrate that it has no further outstanding liabilities, or that it has contracted with an insurance company to assume all outstanding liabilities. These requirements are necessary to preserve the coverage rights of covered employees, lest a pool dissolve prematurely with open claims remaining.

Part 2785.0800 Administration.

Part 2785.0800 establishes requirements concerning a pool's operations and administration.

Subpart 1 requires pools to contract with a service company for handling most day-to-day operations. It is necessary and reasonable that a service company be assigned responsibility for daily operations, since they must demonstrate expertise and financial integrity to be licensed. Because joint self-insurance pools are not insurance companies, many of the services customarily provided by insurers must be secured from another source.

Subpart 2 requires pools to contract with a financial administrator for handling investments and for other financial services. The financial administrator cannot be affiliated with the service company. Because joint self-insurance pools are not insurance companies, financial services must be secured from an outside source. The minimum requirements for financial administrators are contained in the definition, part 2785.0100, subpart 9. It is reasonable that responsibility for financial services and daily operations is segregated, because service companies are not licensed on the basis of financial expertise. Segregation also reduces the potential for a single contractor assuming near-total control over a pool. Since the service company is likely to be respon-

sible for a pool's underwriting and marketing, conflicts of interest could arise if the service company had full access to a pool's reserves. A service company is not at financial risk, unlike an insurer.

Subpart 3 requires a pool to maintain all records necessary to verify its reports to the commissioner. This requirement is necessary and reasonable for prudent operation, as a basis for financial audits and examinations, and in the event of pool dissolution to provide a basis for allocating remaining assets.

Part 2785.0900 Membership.

Part 2785.0900 establishes procedures for joining a pool, leaving a pool, and monitoring membership size.

Subpart 1 limits pool membership to political subdivisions of Minnesota, although private employers may join public/private pools subject to the standards of subpart 3. These criteria are consistent with the authorizing statutes. There is no need for a more restrictive membership standard, such as limiting pools to homogenous types of political subdivisions (such as counties only). The underwriting criteria standard is reasonable and necessary to maintaining a pool's financial integrity. If a pool could not reject employers with poor loss experience, it may eventually be unable to sustain itself.

Subpart 2 states that membership is not effective until the prospective member signs a membership agreement, which must disclose the possibility of assessment. This requirement is reasonable and necessary because pool membership is likely to be marketed like insurance, but differs from conventional insurance in the possibility of assessment. If employers are not made aware of

this possibility, and do not acknowledge their responsibilities under the rules upon joining the pool, it would be difficult to levy an assessment should that become necessary.

Subpart 3 places several requirements on public/private pool membership. Private employer membership is limited to Minnesota domiciled employers located within 40 miles of a political subdivision member. The Minnesota domicile requirement is necessary because public/private pools represent a new self-insurance concept not recognized by other states. It is not the rules' intent to permit an inter-state or nationwide self-insurance pool anchored by Minnesota political subdivisions, nor would other states acknowledge the legitimacy of such a multi-state entity. The 40-mile requirement is necessary to limit private membership to employers in the locality or region of the political subdivision. Public/private pools are authorized to enable political subdivisions to cooperate in handling liabilities they have in common with private employers, with whom they also share common interests in regional development and welfare. Public/private pools are not intended as mechanisms for political subdivisions to enter the commercial insurance business state wide, underwriting diverse employers with no connection to the political subdivision, and without benefit to local citizens.

Finally, subpart 3 also requires private members of a public/private pool to maintain a surety bond conditioned on the employer's paying all premiums, assessments, and penalties when due. Such security is required by the authorizing statute. The requirement is comparable to the bonding required of private workers' compensation and auto self-insurers. Such requirements are reasonable and necessary, because the stability and longevity of private businesses is significantly less than that of political subdivisions.

Subpart 4 requires employers to give at least 30 days notice before leaving a pool, and prohibits withdrawal unless a minimum membership term has been served and any outstanding debts to the pool have been paid. Subpart 4 also requires the pool to notify the commissioner if a member's withdrawal would cause the pool to fall below the minimum annual premium requirement. The minimum membership term is necessary to preserving a pool's stability. Unlike an insurance company, a joint self-insurance pool has no capital, surplus, or investors to provide a cushion in the event of poor loss experience. As such, pools are particularly vulnerable to a rapid loss of members, because the members constitute pools' primary base of financial support. The minimum membership term requires new members to establish a basic commitment to the pool exceeding the commitment to a commercial insurance policy.

Subpart 5 requires a pool to review its members at least annually to determine whether any warrant expulsion. This requirement is necessary for the same reason that use of underwriting criteria is specifically sanctioned. A pool must be able to protect itself against members with extraordinarily poor loss experience, members that do not pay their debts, or members failing to meet other reasonable membership criteria.

Subpart 6 states that after self-insurance authority is ended, pool membership is frozen. This requirement is necessary to guarantee that the members at the time of self-insurance ending will remain available to sustain the pool while it fulfills its runoff responsibilities. The requirement also precludes any new members from joining should it appear likely that assets will remain upon pool dissolution.

Part 2785.1000 Coverage.

Part 2785.1000 establishes standards for a pool's coverage documents, and procedural requirements for initiating coverages.

Subpart 1 requires that pools self-insuring employee benefit coverage or workers' compensation coverage provide no other type of coverage. This requirement is necessary because these coverages' pay-out patterns and financial requirements differ markedly from most other coverages. The rules provide different standards for these types of pools as appropriate to their respective characteristics. Separate treatment is also warranted by the fact that employee health benefit pools are authorized by a separate statute. A separate pool requirement is also reasonable, considering that of the five pools already formed to self-insure employee health benefits or workers' compensation, each is a segregated pool providing one coverage only.

Subpart 2 imposes on a pool's coverage content, administration, rates, underwriting, and related matters, the same requirements that apply to comparable insurance policies provided by licensed insurance companies. These requirements are necessary and reasonable to guarantee a "level playing field" in the marketing of insurance policies and self-insurance pool memberships. These requirements are also reasonable in that they tie directly into the long-established and refined procedures and requirements applicable to policies of insurance. These include requirements concerning clarity of language, continuation and conversion coverage, mandated benefits, employee notice, and related matters. The purpose of the statutes authorizing political subdivision self-insurance pools is to permit formation of alternative, mutually beneficial financial arrangements for providing coverages that political subdivisions

require. The purpose was not to exempt such alternative arrangements from the basic coverage requirements applicable to comparable insurance, or to make such an exemption the basis for the alternative's attractiveness.

Subpart 3 requires pools to apply the same underwriting standards to all members. This requirement is necessary to guarantee equitable treatment. Specifically, this prohibits a pool from applying inconsistent underwriting standards for marketing purposes.

Subpart 4 states that a pool retains indefinitely the responsibilities associated with coverage previously in force. That is, a pool cannot avoid its responsibilities to covered members or their employees through ending self-insurance authority, expelling a member from the pool, or ceasing to offer a particular coverage. This requirement is necessary to guarantee the integrity of coverage provided through a pool.

Part 2785.1100 Premiums, cash flow, and dividends.

Part 2785.1100 establishes standards and procedures for premiums paid to a pool and dividends paid from a pool.

Subpart 1 establishes minimum annual premium volumes for pools. This is required by statute for most types of political subdivision self-insurance pools, and is reasonable for all types. The basic requirement is $300,000. Although there is no magic point at which a pool becomes sufficiently large to be self-sustaining, $300,000 is in the range where for many types of coverage a group becomes "self-rating." That is, sufficient spread of risk exists within the pool for the groups's losses to be relatively stable from year to year. Private workers' compensation self-insurance pools are also required to maintain a premium volume of at least $300,000 per year. Subpart 1 permits a pool or

prospective pool to apply for a lesser annual premium requirement, if the lesser volume would not compromise the pool's financial integrity. This is a reasonable provision for two reasons. First, a pool may obtain high levels of stop-loss insurance, establish a surplus, or otherwise secure financial safeguards beyond the minimum requirements of the rules. Second, a pool may only provide coverage that is limited in scope and potential liability. In either case, a lesser premium volume may be sufficient to maintain financial integrity.

Subpart 2 requires a pool to monitor its premium volume, to report to the commissioner if volume approaches the minimum, and to end self-insurance authority or submit a plan for increasing volume if the annualized volume falls below the minimum. These requirements are necessary for enforcement of the minimum annual premium requirement. It provides the commissioner an early-warning system if a pool's premium is declining significantly. But the 90-day grace period preserves some flexibility for a pool to restore compliance, particularly if non-compliance is readily correctable. It is not in the regulator's interest to revoke a pool's self-insurance authority on the basis of a readily correctable condition, provided the condition is corrected, and provided the overall financial integrity of the pool is not impaired.

Subpart 3 describes two primary methods by which a pool may protect itself from cash-flow difficulties, through establishing a surplus, or through obtaining a funds-advancement commitment from the pool's stop-loss insurer. Although these arrangements are not required, they are considered under subpart 4 if a prospective pool applies for a reduction in the new pool deposit premium requirement. Such arrangements would also be considered in other circumstances where a pool's overall financial integrity is at issue. A pool's premium levels and reserving should be adequate to prevent cash-flow difficulties. However, in

extraordinary circumstances such as very poor loss experience, investment losses, or difficulties in collecting money owed the pool, difficulties could still arise.

Subpart 4 requires prospective pools to submit evidence that their initial premium payments have been made. The subpart also requires new pool members to make an initial premium payment equal to at least 50 percent of the first year's premium (25 percent for employee health benefit pools), with the remainder in equal installments at equal intervals. Pools may apply for a reduction of this requirement, showing what other arrangements exist for paying large claims promptly during the first year of operation. This requirement is necessary because new pools are not required to have any surplus at start-up (unlike an insurance company), nor would they have any reserves at start-up. Although it is not expected, the occurrence of large losses are just as likely early in a pool's existence as at any other time. A pool is most vulnerable to large losses in its first year, before loss reserves of any size have been established. A pool must be able to sustain a large loss at any time, without the necessity of immediate recourse to member assessments. That is, a pool must have some inherent resiliency. The simplest method of establishing such resiliency in a pool's first year is to require that that year's premium payments be accelerated. That provides a cushion of cash for handling large claims, a function filled by loss reserves in later years. If a pool has made other arrangements for handling cash-flow difficulties, as mentioned under subpart 3, it is reasonable to relax the accelerated payment requirement. A lesser "down-payment" requirement applies to employee health benefit pools because for such pools claims tend to be smaller and more numerous, and large claims are unlikely to require as rapid a pay-out as property/casualty claims.

Subpart 5 requires premium to be calculated on a fund year basis; permits installment payments if paid before premium is earned; requires prompt collection of delinquencies; and requires delinquent employers to pay collection costs. These requirements are reasonable and necessary to guarantee a pool's prudent and conscientious operation and protection of its financial integrity.

Subpart 6 permits a pool to pay a dividend only if the dividend would not cause the pool to have an overall deficit, if the pool does not have any outstanding loans and, in the case of workers' compensation pools, if a one year loss-development period is completed. The deficit requirement is self-explanatory: if a dividend would cause or worsen a deficit, it cannot be consistent with preservation of the pool's financial integrity. Furthermore, if a pool has obtained a loan ("stop-loss advancement") from its stop-loss insurer due to financial difficulties, it is reasonable that the loan be repaid before members receive any benefits from good loss experience. Finally, it is reasonable that workers' compensation pools allow a one-year loss development period to elapse before paying a dividend, because the long pay-out period for workers' compensation makes accurate judgements of outstanding losses difficult until the years' experience is somewhat "seasoned." This requirement is less restrictive than the requirement applicable to private workers' compensation self-insurance pools, which may pay-out only 50% of a year's surplus after a one-year wait. The waiting requirement is necessary to prevent a pool from paying dividends based on a premature judgement of recent loss experience. Many insurance companies have consistently underestimated their Minnesota workers' compensation loss experience, despite efforts to be accurate. Although political subdivisions' taxing authority is an important component of a pool's financial integrity, member assessments are potentially disruptive to a pool's unity and membership continuity (also important for financial integrity). Accordingly,

the restriction on workers' compensation pool dividend pay-outs is not unduly constraining, because it preserves member assessments as a last rather than a first resort in the event of poor loss experience.

Part 2785.1200 Reserves.

Part 2785.1200 requires pools to establish reserves for losses, unearned premiums, and potential stop-loss insurance liability. The standards require prudence and conservatism in setting reserve amounts, with precise accounting instructions contained in the financial statement forms. The establishment of conservative reserves is reasonable and necessary to maintenance of a pool's financial integrity. Reserves are fundamental to the operation of an insurance entity. Failure to establish reserves, or setting reserves too low, may cause a pool to overestimate its financial resources or operating success. A pool may not realize it is in financial trouble until it is too late.

Part 2785.1300 Stop-loss insurance.

Part 2785.1300 establishes standards and requirements for a pool's stop-loss insurance policies.

Subpart 1 states that a pool may purchase stop-loss insurance for indemnification of a portion of its losses. The commissioner must be notified if stop-loss insurance required by subpart 2 is terminated or modified, and of the pool's corrective action. It is reasonable that a pool be permitted to secure stop-loss insurance, and most will in fact do so. Stop-loss insurance is required for workers' compensation pools by statute through the Workers' Compensation Reinsurance Association. In cases where stop-loss insurance is

required by subpart 2, it is necessary for the commissioner to be notified if the stop-loss insurance is cancelled or otherwise modified causing a violation. Such changes could pose a danger to a pool's financial integrity, for the reasons stated in the next paragraph.

Subpart 2 restricts the amount of liability a pool may retain on any one incident to ten percent of its annual premium volume, plus 20 percent of its surplus (except employee health benefit pools). This requirement is necessary to prevent a pool from being wiped out by one or several large losses. The requirement is comparable to, but considerably less restrictive than the requirement applicable to insurance companies. Insurers are not allowed to insure any risk for more than ten percent of their surplus. Annual premium is a much larger number than surplus. (Insurers are also restricted in how much business they can write overall in relation to surplus. Political subdivision self-insurance pools have no comparable requirements.) The requirement is less restrictive for political subdivision self-insurance pools because of their members' ability to tax. Notwithstanding this, however, some limit must exist on the amount a pool may insure to preserve its financial integrity. The ten percent of premium volume and 20 percent of surplus formula makes allowances for both size and surplus (if any), such that even a small volume pool could insure a greater amount by building up a surplus. A pool could also insure more by obtaining stop-loss insurance for any liability in excess of its permitted retention. This is also possible for workers' compensation pools, which may purchase stop-loss insurance below the WCRA's lower retention limit.

Subpart 2 also requires employee health benefit pools to purchase individual excess stop-loss insurance with liability limits no higher than $50,000 per person per year. This is twice as high an amount as required for private employee health benefit pools under Minnesota Statutes, chapter 62H, in

deference to political subdivisions' taxing capacity. This requirement is in place of the annual premium volume and surplus formula applicable to other pools, since employee health benefit pools have a special stop-loss requirement in Minnesota Statutes, section 471.617. The $50,000 standard gives meaning to that requirement, which is open-ended in the statute. A stop-loss insurance requirement without some limit is not meaningful.

Subpart 3 prohibits a pool or its members from making an arrangement with the stop-loss insurer whereby the liability assumed by the stop-loss insurer under subpart 2 is returned to the pool or its members. This prohibition is reasonable and necessary to prevent a "fronting" arrangement, whereby an insurer agrees to provide the appearance of insurance, although in fact liability is passed back to the original parties. Such an arrangement could harm a pool's financial integrity, by circumventing the purpose of the required stop-loss insurance.

Part 2785.1400 Deficits and assessments.

Part 2785.1400 establishes requirements concerning pool deficits and assessments.

Subpart 1 establishes that pool members are jointly and severally liable for all liabilities and expenses of the pool. Joint liability continues for past members for a certain time, which varies according to the type of pool. Joint and several liability is required by statute for some types of pools, and is appropriate for all. The purpose of joint and several liability is to ensure that a pool constitutes an actual pooling of liabilities and resources. That is, if any member's poor loss experience exceeds the pool's resources, all pool members are obliged to share in paying the loss. This is the essence of a

pool's worth, and is the primary underpinning of a pool's financial integrity. It is necessary to require joint and several liability to continue not just while a ~~pool~~ member remains in the pool, but for a fixed period of time after leaving the pool. Without such a requirement, a strong incentive might exist to leave a pool at the earliest sign of high losses. A member might hope to escape any assessments by getting out while time remained. This could make a pool's stability and financial integrity very vulnerable to the first episode of high losses -- which any pool will experience sooner or later. The period of continuing joint and several liability after leaving a pool corresponds roughly to the period of time ~~by~~ during which the claims incurred while a member was in the pool will "run off." For workers' compensation pools this could easily be ten or more years; for other types of pools it will be less. It is reasonable for a past member's continuing responsibility for a pool's integrity to continue during the period that that member's claims are still outstanding. The financial responsibilities from providing coverage end when claims end, not when coverage ends.

Subpart 2 establishes that joint and several liability is frozen during a pool's runoff period. That is, all current members, and all past members still within the period of continuing liability (as described in subpart 1) at the time a pool's self-insurance authority is ended, remain jointly and severally liable until the pool's final dissolution. This requirement is necessary to guarantee that members will not "drop out" of financial responsibility during the runoff period, potentially leaving few or no members to handle the runoff pool's most long-term cases and dissolution responsibilities. The requirement also removes any incentive to leave a pool if it appears imminent that self-insurance authority will end.

Subpart 3 requires the board to correct a deficit within 90 days after determining that one exists. If the board fails to do so, the commissioner must order an assessment. Various methods of assessment are permitted. The 90-day requirement is contained in the statute authorizing some pools, and is appropriate for all. Failure to correct a deficit is self-evidently harmful to a pool's financial integrity. The alternative methods of assessment are intended to permit flexibility in selecting the method appropriate for each pool, but excluding arbitrariness. The "default" method of assessment if the commissioner is obliged to initiate ~~one~~ an assessment is the most neutral, relying simply on the amount of premium paid by the various members.

Subpart 4 authorizes the board to levy an assessment at any time, if it judges an assessment necessary to forestall a deficit or otherwise to improve the pool's financial strength. There may be times when some preventive medicine could avoid serious financial difficulties. A pool might also wish to increase its surplus as a basis for increasing the amount it can insure (see part 2785.1300, subpart 2), or simply to improve the pool's strength and stability. It is reasonable that a pool's board should have the capacity to initiate such assessments, consistent with its fiduciary responsibility.

Part 2785.1500 Financial integrity.

Part 2785.1500 establishes several requirements affecting various aspects of a pool's financial integrity.

Subpart 1 requires all persons with access to pool funds to be covered by a fidelity bond of at least $300,000. This requirement is reasonable and necessary to protect a pool from losses by dishonesty, robbery, or related causes.

Such coverage is commonly required in commercial transactions involving funds-handling. Under rules governing service companies, fidelity bonds of greater amount must be secured.

Subpart 2 prohibits a pool's assets from being used for purposes other than those for which the pool was established. Specifically, pool assets cannot be commingled with member employer's assets, cannot be loaned, and cannot be considered the property of any other person, except as specifically permitted in the rules. These requirements are reasonable and necessary to guarantee that a pool's assets will be segregated, and that no party will use its affiliation with the pool and access to pool funds for their own ends.

Subpart 3 delineates the sources and uses of funds appropriate for a pool. A pool may expend funds for expenses consistent with its purpose. A pool can obtain funds from the usual sources available to an insurance company, but cannot borrow money except as permitted from the stop-loss insurer, and cannot obtain funds through subrogation of the rights of covered employees. These requirements are reasonable and necessary to circumscribe a pool's financial activity to the activities considered prudent, appropriate, and equitable for insurance entities. This would preclude a pool from engaging in business or transactions unrelated to its self-insurance purposes, and not generally permitted to comparable insurance companies. The restriction on borrowing money is reasonable, because a more appropriate and secure source of funds in times of financial difficulty is through a surplus reserve, through an assessment, or through an aggregate advancement as provided in part 2785.1100, subpart 3, item B. The restriction on the use of subrogation is reasonable, because the same restriction applies to comparable insurance companies.

Subpart 4 permits a pool to establish separate monetary accounts for the use of various contractors, provided their use and size is subject to reasonable controls. This requirement is reasonable and necessary to prevent any contractor other than the financial administrator from having more access than necessary to a pool's funds.

Subpart 5 restricts a pool's investments according to the standards of Minnesota Statutes, section 475.66, as required by statute for some pools and appropriate for all. This subpart also prohibits a pool from investing in securities or debt of its members or contractors. This requirement is reasonable and necessary to prevent conflicts of interest in handling of the pool's funds, and to prevent the possibility of a pool member or contractor defaulting and the pool's investments failing at the same time.

Subpart 6 requires the pool's board to monitor the pool's financial condition, and to take corrective action if necessary. The commissioner is empowered to take corrective action if the board is not doing so when required. ~~Standards-are-established-for-how-assessments-may-be-levied.~~ In part 2785.0500, subpart 2, the board is assigned fiduciary responsibility for the pool's financial condition. This subpart is a necessary complement to that mandate, stating in detail what the board must do to monitor and maintain the pool's financial integrity. This subpart presumes that financial integrity may be impaired before a deficit occurs. It is further reasonable and necessary that if the board does not take action to maintain the pool's financial integrity, that the commissioner be empowered to order changes to restore the pool's sound financial condition. This power is comparable to the commissioner's power to direct the rehabilitation of a financially impaired insurance company.

Part 2785.1600 Reporting.

Part 2785.1600 establishes various reporting requirements and standards necessary for the commissioner's monitoring of pools' status, operations, and financial integrity.

Subpart 1 requires pools to file annual financial reports, and that the reports be audited by an independent certified public accountant and reviewed by a qualified actuary. This requirement is reasonable and necessary to the commissioner's monitoring of a pool's financial condition. The requirement is also necessary to the proper application of various financial requirements in the rules, particularly the reserving requirements and the requirements that necessitate determining whether a surplus or deficit exists. Comparable but more complex financial reporting requirements exist for insurance companies. As a quasi-insurance entity, it is necessary for joint self-insurance pools to report on a basis similar to insurance entities.

Subpart 2 requires that pools with deteriorating financial integrity, as determined by the commissioner, must file quarterly statements summarizing key data from the full financial statements, and other key operating data such as the current total members. This requirement is reasonable and necessary to the commissioner's monitoring of a pool's stability and financial integrity. Because pools do not have the financial safeguards available to insurance companies, primarily surplus and membership in guaranty associations, it is important for the commissioner to be able to monitor their performance at more frequent intervals than annually if there is reason to believe their financial integrity is deteriorating. By requiring more frequent reports from such pools, it may be possible to correct problems before they fundamentally compromise a

pool's integrity. If the conditions giving rise to the quarterly report requirement no longer exist, it is reasonable that a pool be returned to annual reporting only.

Subpart 3 authorizes the commissioner to order investigations into a pool's finances and operations if warranted by irregularities in a pool's reports. The commissioner may order changes in a pool's operations if warranted by the investigation's findings. This power is reasonable and necessary to allow the commissioner to correct deficiencies in a pool's reserving, accounting, or recordkeeping practices. The commissioner's ability to monitor adequately a pool's financial integrity and compliance with the rules depends on the accuracy of the pool's reports. If there is any possibility that the reports may not be reliable, it is essential that the commissioner be able to investigate and order corrections.

Subpart 4 requires pools to file annual status reports, containing updated information from the initial application. This requirement is reasonable and necessary to monitor a pool's continuing compliance with the rules, and for practical administrative purposes such as maintaining accurate addresses, contact persons, membership lists, etc. The annual status report also serves the function of a renewal application in those years when self-insurance authority expires (see part 2785.0600, subpart 3).

Subpart 5 states that pools' financial statements, status reports, and other reports required by these rules are subject to the same standards as apply to comparable reports required of licensed insurance companies. Various penalties may be levied upon insurance companies if they fail to submit required reports. This requirement is reasonable and necessary as an enforcement tool, to compel timely compliance with reporting requirements. Without such a tool the only recourse for non-compliance available to the commissioner, besides

persuasion, is revocation of self-insurance authority. This is an excessive power to bring to bear on every minor reporting infraction. It is important that the commissioner have some direct enforcement power over a pool besides the ultimate authority over licensure. Reporting is the most common source of compliance problems with other insurance and self-insurance entities, but monetary penalties have proven effective in causing reporting requirements to be taken seriously.

IMPACT ON SMALL BUSINESSES

Qualitative impact.

In drafting these rules, their effect on small businesses has been considered as required by Minnesota Statutes, section 14.115.

Insofar as the rules affect political subdivisions, any effects on small businesses are secondary and relatively minor. The primary effect of these rules on small businesses will be in providing some political subdivisions and small businesses with an additional safe and competitive alternative for financing their workers' compensation liabilities, in the form of public/private pools. As stated in part 2785.0200, the purpose of these rules is to ensure that the financial integrity of pools is maintained, and that they are administered competently and equitably. In general, these are the same objectives as in the regulation of other insurance and group self-insurance entities. Regulation provides consumers a measure of safety and reliability in the marketplace. In this case, small businesses may be the "consumers" of public/private pool membership.

In this sense, the primary effect of the rules about public/private pools is a direct benefit to small businesses: ensuring the safety and reliability of a product small businesses buy. In considering other effects of the rules on small businesses, the importance of maintaining this primary effect and benefit has been weighed against the possible benefits of reducing, simplifying, or eliminating the rules' requirements for small businesses.

As stated in part 2785.0300, the rules affect private Minnesota ~~affect~~ employers that form, join, or leave a self-insurance pool including a political subdivision, and service companies administering plans. Both private employers and service companies may meet the definition of small businesses contained in Minnesota Statutes, section 14.115, subdivision 1.

The major responsibilities of the service company and other pool contractors are outlined in part 2785.0800. Other responsibilities may be assigned to the service company depending on each pool's bylaws and board resolutions. Although the rules assign specific responsibilities to the service company, most requirements apply to the pool as such. It is the service company's role to fulfill operating requirements of the pool, and to conduct its day-to-day activities. This is the business that service companies are in; they are licensed on the basis of their competence in these areas, and they are paid by their clients to do it. For these reasons, it is not appropriate to lessen requirements imposed on the service company or other contractors in the interests of making life easier for small businesses. The operating requirements are intended to ensure a pool's competent and equitable administration, and that its financial integrity is maintained. Service companies are licensed and paid to do this work. If the requirements were lessened or eliminated, it would actually harm service company small businesses by lessening the market for their services.

The only direct responsibilities of private employers that belong to a joint self-insurance pool are contained in part 2785.0900, subparts 2, 3, and 4; part 2785.1100, subpart 5; and part 2785.1400. All other requirements of the rules that affect private employers indirectly are, in fact, requirements of the pool, and would be implemented by the service company or other contractors on the pool's behalf.

Part 2785.0900, subparts 2 and 4, govern private employers' joining and leaving a pool. Subpart 2 states that a member may not join a pool until they have signed an agreement affirming their commitment to comply with the rules and the bylaws. The agreement must also specifically acknowledge the possibility of assessment if necessary to maintain the pool's sound financial condition.

The alternatives to this requirement are to eliminate it, or to allow the agreement to be completed after having joined a pool. These alternatives were considered, but were judged to be contrary to the purpose of the proposed rule. Self-insurance pool membership is fundamentally different from a conventional insurance policy, because members are assessable for pool deficits under certain circumstances. Members also have a much more direct role in a pool's administration than a policyholder has in an insurance company's administration. If a private employer is unaware that assessments are possible, it would be a rude awakening to learn of it first upon being presented with an assessment. The collection of an assessment in the face of such ignorance could be considerably complicated. However, the capacity to assess is a fundamental component of a pool's financial integrity. It would not benefit private employers to hide their major responsibilities from them, particularly for assessments and in pool governance, until after they had already joined. These facts should be understood ahead of time, so the employer can judge whether public/private self-insurance pool membership is appropriate to their needs.

Part 2785.0900, subpart 4, states that a member must notify the pool at least 30 days before withdrawing from the pool. Members also cannot withdraw from a workers' compensation pool until fulfilling a minimum membership term of three complete fund years, and until any outstanding debts had been paid.

The alternatives to these requirements are to eliminate some or all of them, or to establish shorter reporting periods or terms of membership. These alternatives were considered, but were judged to be contrary to the purpose of the proposed rule. The 30-day notice requirement is essential if a pool is to have advance notice that it may be dropping below the statutory minimum annual premium volume. The 30-day period allows a pool sufficient time to seek new members and prevent a violation of the minimum volume requirement, if possible. Longer periods were also considered, but 30 days was judged to be long enough to seek out new members if, indeed, they could be found at all. The minimum term of membership is required by the statute authorizing workers' compensation pools. The minimum membership term prevents excessive membership turnover and thereby preserves pool stability. Finally, the requirement to pay all debts to the pool before ending membership is a basic requirement to enforce the payment of debts and preserve the pool's financial integrity. The only alternative is to permit withdrawal with debts outstanding. However, a pool has more leverage over an employer if they can compel continuing membership if the debt is not paid. Elimination of this requirement would not be in the interests of the pool, nor would it be an appropriate concession to small businesses.

Part 2785.0900, subpart 3, imposes several requirements on public/private pools, including the 40-mile radius requirement, pool termination upon withdrawal of all political subdivisions, and the private employer surety bond requirement. The alternative to the 40-mile radius requirement is either a large radius or no radius. These alternatives were not considered appropriate

to the ~~state's~~ statute's purpose, which is specific to named political subdivisions. That is, in authorizing public/private pools for particular political subdivisions, it is apparent that a benefit was intended to a specific community or region, not to political subdivisions ~~of~~ or private employers statewide. The 40-mile radius limits a public/private pool to the named political subdivision and the surrounding county or counties. If public/private pools are to be offered to private employers in other parts of the state, a broader authorization or additional political subdivisions' authority would have to be legislated.

The alternative to automatically ending a pool's self-insurance authority upon withdrawal of all political subdivision members would be to permit the pool to continue. This alternative was rejected for three reasons. First, this would be inconsistent with the statutory authorization of a specific political subdivision to form a public/private pool. Second, withdrawal of the political subdivision would leave a pool without its most stable and (probably) important member, in view of political subdivisions' taxing authority. And third, separate authorization and rules exist for workers' compensation self-insurance pools for private employers only. Those rules contain requirements appropriate to the differences inherent in such a pool.

The statute authorizing public/private pools requires the pool's bylaws to describe what security private employers must provide to guarantee payment of assessments in case of employer insolvency. The rules mandate that a surety bond be filed with the commissioner equal to a year's premium. The alternative would be to leave the statutory mandate more vague, and to let each pool determine its own arrangement. This was rejected, because a political subdivision's interest in forming a pool may cause it to require only minimal security from private employers. Surety bonds or security deposits of comparable size are

required of other private self-insured employers to protect the pool and/or covered employees. In the interests of uniformity and to insure fulfillment of the statutory mandate, it was judged best that the rules delineate appropriate surety provisions.

Part 2785.1100, subpart 5, states that if a pool must undertake special costs to collect money from a member, the costs are also the member's obligation. This requirement was judged necessary to preserve a pool's financial integrity. Because a pool is not an independent company like an insurer, but consists of its collective members and their pooled funds, defaulting to the pool is a more serious matter than defaulting to a wholly separate for-profit business. This requirement compels all pool members to acknowledge this distinction, which would not occur if the pool were obliged to fund its own recovery costs entirely.

And finally, part 2785.1400, states that all pool members (and some past members) are jointly and severally liable for the pool's liabilities and expenses, and that the commissioner may assess a pool's member employers if necessary to maintain or restore a pool's sound financial condition. This is only one of several options available to the commissioner, none of which would be invoked unless the board had first failed in its responsibility to take corrective action.

The alternative to retaining the assessment possibility is to rely wholly on the other financial safeguards contained in the rules. The most important of these are the reserving requirements, the requirement that rates be adequate, and the various provisions of part 2785.1500 (fidelity bonds, separate accounts, investment restrictions, etc.).

The necessity of each of these requirements was carefully weighed before inclusion in the final proposed rules. It was judged that each requirement, including the assessment possibility, was necessary to insuring the stability and financial integrity of political subdivision self-insurance pools, especially public/private pools. As stated previously, unlike insurance companies, self-insurance pools have no investors who have paid-in capital to finance the venture, or who will bail the company out if loss experience is poor. Pools also do not participate in the collective insurance industry arrangements, such as the guaranty associations, which will assume outstanding claims in the event a company goes bankrupt. These differences make self-insurance pools less financially sound than insurance companies, unless substitute financial guarantees are required.

The requirements concerning reserves, rates, and related matters should be adequate to protect a pool in all but the most extreme circumstances. Nevertheless, there are scenarios that could occur in which these safeguards would prove inadequate, as occasionally happens with insurance companies. In such cases, there must be some other source to turn to, and it is appropriate that that should be the entities responsible for the pool's existence and direction. In this respect, a pool's members have a role much like the investors of a business. The rules contain sufficient safeguards to reduce the possibility of extreme cases of financial hardship arising. But to fulfill their purpose and the statutory mandate, the rules must contain some provision for handling a worst-case scenario. And for that reason, the assessability of the members must be established.

Quantitative impact.

The quantitative impact of the rules on small businesses depends on the efforts put forth to establish and market public/private pools. Although some political subdivisions have been authorized to form such pools, including the city of Duluth, none have yet come forth with proposals. If pools are formed, they could constitute a significant new participant in the competitive environment for workers' compensation. The proposed rules are not expected to constitute an impediment to pool's formation and growth. On the contrary, it is likely that the state oversight of these pools, which the rules represent, would be a major factor favoring these pools' growth. The overall market conditions for workers' compensation insurance are likely to dictate whether public/private pools are an appealing option.

FISCAL IMPACT ON POLITICAL SUBDIVISIONS

As required by Minnesota Statutes, section 14.11, subdivision 1, the agency considered whether the rules would require expenditure of public moneys by local public bodies.

In general, political subdivisions are not required to participate in self-insurance pools. For those political subdivisions not participating in any pool at the time of the rules adoption, there is no expenditure requirement.

Of those pools now in existence, some are exempted from the rules under Minnesota Statutes, section 471.982, subdivision 3 (Laws of Minnesota, 1983, ch. 290, section 170). For the pools thus "grandfathered" in there is also no expenditure requirement.

The only existing pools affected by the rules are the employee health benefit pools sponsored by the League of Minnesota Cities and the Minnesota School Boards Association and the property/casualty pool sponsored by the League of Minnesota Cities and providing auto liability coverage. Part 2785.0600, subpart 2, grants these pools until July 1, 1985 to submit an initial application under the rules. It is intended that in the interim period these pools could prepare an application, and make such adjustments in their bylaws and methods of operation as they considered appropriate or the rules required. Consideration has been given in drafting the rules to avoiding unnecessary changes in existing methods of operation, based on correspondence and discussions with the affected parties.

Although some changes will be necessary, they are relatively minor in comparison to the ongoing costs of operating the pools. The costs associated with these changes will not, in the agency's judgement, approach $100,000 in the first or second year after the rule's adoption. On this basis, a detailed fiscal note was not prepared.

CONCLUSION

For the reasons stated above, the commissioner believes that the proposed rules governing political subdivision self-insurance pools are necessary to ensure that the financial integrity of these pools is maintained, and that they are administered competently and equitably. For the reasons stated above, the commissioner believes that the proposed rules reasonably address that need, and accomodate the interests of small businesses to the extent permitted by the statutory objectives of the proposed rules.