

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1193

Assigned Risk Plan. 05-0009-0119. recd 8/15

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-7-85
DATE FOR REVIEW 8-16-85
DATE DUE 8-21-85

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

Approved 8-16-85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

___✓___ Rule as Adopted

___✓___ Rule as Proposed See SR.

___✓___ Order Adopting 8.6.85 Date

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

___✓___ Orders for rulemaking w/ Hearing + c/o Hrg.
_____ date of Hearing

___N/A___ Certificate of Board's Authorizing Resolution

___✓___ Notice of rulemaking
___✓___ Sufficiency contains small biz statement

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

___✓___ Mailing list Certificate

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

___N/A___ Hearing Examiner's Report

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

___N/A___ Agency's Findings of Fact

___↓___ LCRAR Report or agency Affidavit

___↓___ Certificate of Board's Resolution Adopting Rules

___↓___ Order Approving Incorporation by Reference

___✓___ Statement of Need and Reasonableness 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~~ Notice of Submission to Attorney General

___N/A___ Notice of Submission to the Attorney General

___✓___ Affidavit of Richard G. Gomsrud

Note: there are two separate rules in this submission - some of the documents relate to just one set of rules, others relate to both.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Minnesota Department of Commerce

DATE: 8-19-85

ATTN: RICHARD G. GOMSURD
Department Counsel

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Rules Governing the Liquor Liability Assigned Risk Plan; and In the Matter of the Proposed Rules Governing the Liquor Liability Market Assistance Program

The above-referenced rule has been approved as to its legality by the Attorney General on August 16, 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.

JMM:pmf

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

SF-00006-04

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : 8/7/85

TO : Judith Wehrwein

STATE OF MINNESOTA

Office Memorandum

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Liquor Liability Assigned Risk Plan Rules and Liquor Liability Market Assistance Program Rules

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

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

(2.) Written material received as a result of Notice to Solicit Outside Opinion (2000.0400 subpart 1 B)

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

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

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

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

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

(8.) Copy of Notice of Intent to Adopt Rule Without Public Hearing and rules as published in the State Register (2000.0400 subpart 4)

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

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

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

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

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

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

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

16. Affidavit of Richard Gomsrud

Judith:

If at all possible I'd appreciate it if a couple days could be shaved off your period of review and I could have verbal approval by the 19th so I could send the Notice of Adoption to the State Register that day. I can save a week in activating the plan that way.

Dick

AG copy

Department of Commerce

Adopted Rules Relating to the Liquor Liability Assigned Risk Plan

Rules as Adopted

CHAPTER 2783
DEPARTMENT OF COMMERCE
LIQUOR LIABILITY ASSIGNED RISK PLAN

2783.0010 PURPOSE AND SCOPE.

This chapter governs administration of the liquor liability assigned risk plan hereby established pursuant to Minnesota Statutes, section 340.11, subdivisions 21 and 23.

2783.0020 AUTHORITY.

This chapter is adopted under the authority of Minnesota Statutes, sections 45.023 and 340.11, subdivisions 21 and 23.

2783.0030 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them unless the context clearly indicates a different meaning.

Subp. 2. **Administrator.** "Administrator" means the person or persons selected pursuant to part 2783.0040 to administer the assigned risk plan.

Subp. 3. **Applicant.** "Applicant" means a liquor vendor who makes application to the market assistance plan or the liquor liability assigned risk plan for insurance coverage.

Subp. 4. **Assigned risk plan.** "Assigned risk plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 23 to provide liquor liability coverage as required by Minnesota Statutes, section 340.11, subdivision 21 to those liquor vendors unable to obtain coverage through insurance companies.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 6. **Liquor vendor.** "Liquor vendor" means any person

required by Minnesota Statutes, section 340.11, subdivision 21 to demonstrate proof of financial responsibility.

Subp. 7. **Loss.** "Loss" means a demand for damages due or allegedly due on which some payment has been made or for which money has been reserved in good faith for actual or possible payment on the demand, exclusive of investigative or legal expenses.

Subp. 8. **Market assistance program.** "Market assistance program" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 9. **Monoline liquor liability policy.** "Monoline liquor liability policy" means an insurance policy for only one type of coverage. In regard to this chapter, it refers to a policy for only liquor liability insurance without any other type of coverage.

Subp. 10. **Multiline liquor liability policy.** "Multiline liquor liability policy" means an insurance policy which includes more than one type of insurance coverage. In regard to this chapter, it refers to liquor liability insurance offered in conjunction with other types of coverage such as general liability insurance, or fire insurance offered in a single package or policy.

Subp. 11. **Premium.** "Premium" means the price charged to a liquor vendor for coverage under the assigned risk plan for a one-year period.

Subp. 12. **Rate.** "Rate" means the cost of coverage under the assigned risk plan per $100 of annual liquor sales.

Subp. 13. **Rating plan.** "Rating plan" means the criteria for calculation of rates.

Subp. 14. **Violation.** "Violation" means a conviction or citation for a violation of Minnesota Statutes, sections 340.70 to 340.86. If a citation is dismissed or does not result in a conviction within one year of issuance, the citation shall not be deemed to be a violation.

2783.0040 ASSIGNED RISK PLAN ADMINISTRATION.

Subpart 1. **Administrator.** The assigned risk plan shall be

administered by a qualified insurer or vendor of risk management services selected by the commissioner. If the commissioner deems it necessary, he or she may select more than one person to administer the assigned risk plan.

Subp. 2. **Duties.** The administrator shall perform all services necessary to accomplish the purposes of the assigned risk plan, including the servicing of policies of contracts of coverage, data management, and collection of assessments.

Subp. 3. **Appeals.** A liquor vendor adversely affected by a decision of the administrator may object to the decision by appealing to the commissioner within 15 days after the decision. The appeal must be made by letter mailed to the commissioner, with a copy to the administrator, within the 15-day period. The letter must include a summary of the administrator's decision from which the appeal is taken, the basis for objection to the administrator's decision, and any argument or evidence in support of the appeal. Within 15 days after receipt of the letter, the administrator shall file a response, including the basis for the administrator's decision and all argument and evidence in support of the decision. Within ten days after receipt of the administrator's response, the commissioner shall either affirm, reverse, or modify the administrator's decision as the commissioner deems appropriate.

2783.0050 ASSIGNED RISK COVERAGE.

Subpart 1. **Generally.** Eligibility for assigned risk coverage is subject to the terms and conditions of subparts 2 and 3.

Subp. 2. **Minimum qualifications.** A liquor vendor who has a current written notice of refusal to insure from an insurer offering liquor liability insurance pursuant to Minnesota Statutes, section 340.11, subdivision 23, clause (2), is entitled to make written application to the assigned risk plan for coverage. Payment of the applicable premium or required portion thereof must be paid prior to coverage by the plan.

An offer of coverage at a rate in excess of the rate charged by the assigned risk plan for similar coverage and risk

is a written notice of refusal for purposes of the assigned risk plan. It shall not be deemed to be a written notice of refusal if the rate for the coverage offered is less than 20 percent in excess of the assigned risk plan rates for similar coverage and risk. However, the offered rate must also be the rate that the insurer has filed with the Department of Commerce if the insurer is required to file its rates with the department. If the insurer is not required to file its rates with the department, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Subp. 3. **Disqualifying factors.** A liquor vendor shall be denied or terminated from coverage through the assigned risk plan if the liquor vendor:

A. Applies for coverage for only a portion of the liquor vendor's statutory liability under Minnesota Statutes, section 340.11, subdivision 21.

B. Has an outstanding debt due and owing to the assigned risk plan at the time of application or renewal arising from a prior policy.

C. Refuses to permit completion of an audit requested by the commissioner or administrator.

D. Submits misleading or erroneous information to the commissioner or administrator.

E. Disregards safety standards, laws, rules, or ordinances pertaining to the offer, sale, or other distribution of liquor. A combination of losses and violations within the last three years in excess of ten shall be a rebuttable presumption that a liquor vendor is ineligible for the assigned risk plan.

F. Fails to supply information requested by the commissioner or administrator.

G. Fails to comply with the terms of the policies or contracts for coverage issued pursuant to the assigned risk plan.

H. Has not satisfied the requirements of the market assistance program established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 4. **Disqualification after coverage granted.** If an application is filed with the market assistance program less than 15 business days before the expiration date of the applicant's current insurance coverage, the market assistance program may continue to seek coverage for the applicant after coverage is extended by the assigned risk plan. The market assistance program will have 15 business days from the date of filing of the application with the market assistance program to obtain an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant within 15 business days of filing of the application and if the offer of coverage would not otherwise be considered a refusal for purposes of the assigned risk plan, the applicant will be deemed to not be qualified to participate in the assigned risk plan and coverage, if any, shall be terminated.

Subp. 5. **Notice.** An application for coverage under the assigned risk plan must be granted or denied within ten days after receipt by the administrator of a properly completed application and any supplemental information requested by the administrator. A liquor vendor covered under the assigned risk plan must be given at least 30 days' notice of nonrenewal or termination of the coverage.

2783.0060 RATING PLAN.

RATES APPLICABLE TO MINIMUM COVERAGE REQUIRED BY MINNESOTA STATUTES, SECTION 340.11, SUBDIVISION 21, PARAGRAPH (a)

ASSIGNED RISK LIQUOR LIABILITY RATES

RATE FOR THREE OR FEWER INCIDENTS IN THE LAST THREE YEARS

LIMITS	PACKAGE GOODS	RESTAURANTS	BARS
50/100	$ .42	$1.52	$1.89

RATE FOR MORE THAN THREE INCIDENTS IN THE LAST THREE YEARS

	Four Incidents
50/100	$6.25
	Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident

For purposes of the rating plan, no experience or scheduled credits apply.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340.95. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340.95, subdivision 2 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage

previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

2783.0070 ASSESSMENTS.

In the event the commissioner deems it necessary to make an assessment pursuant to Minnesota Statutes, section 340.11, subdivision 23, clause (4), an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority, and/or impose a civil penalty in an amount not to exceed $5,000, for an insurer's failure to pay the assessment within the 30-day period.

2783.0080 POLICY AND RATE FILING.

All policies or riders of licensed insurers concerning liquor liability insurance, together with any rate schedules, must be filed with the Department of Commerce within 30 days of any sales in Minnesota.

All surplus lines brokers selling liquor liability insurance must file the policies, riders, as well as any scheduled rates regarding this insurance, with the Department of Commerce within 30 days of any sales in Minnesota.

2783.0090 ASSIGNED RISK PLAN ADVISORY COMMITTEE.

Subpart 1. **Appointment.** The commissioner shall appoint a committee to advise the commissioner regarding operation of the assigned risk plan. The committee shall be comprised of 11 members, four of which shall be insurers, one of which shall be a vendor of risk management services, two of which shall be insurance agents, two of which shall be liquor vendors, and two of which shall be public members. The administrator and a representative of the commissioner shall be ex officio members of the assigned risk plan advisory committee.

Subp. 2. **Meetings.** The assigned risk plan advisory

committee shall meet at such times as the commissioner may request.

2783.0100 REQUEST FOR INFORMATION.

Subpart 1. **Commissioner's power.** The commissioner may require a liquor vendor or licensed insurer to provide the information the commissioner considers appropriate to implement the provisions and further the purposes of the assigned risk plan.

Subp. 2. **Administrator's power.** The administrator may require a liquor vendor to provide the information the administrator considers appropriate to administer the assigned risk plan.

8:45 AM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 19 1985
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
August 16 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

Department of Commerce

Adopted Rules Relating to the Market Assistance Plan for Liquor Liability Assistance

Rules as Adopted

2782.0100 PURPOSE.

Parts 2782.0100 to 2782.0800 establish a marketing assistance program to assist liquor licensees in obtaining liquor liability insurance coverage.

2782.0200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2782.0100 to 2782.0800, the terms defined in this part have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a liquor vendor who makes application to the market assistance plan or the liquor liability assigned risk plan for insurance coverage.

Subp. 3. **Assigned risk plan.** "Assigned risk plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 23 to provide liquor liability coverage as required by Minnesota Statutes, section 340.11, subdivision 21 to those liquor vendors unable to obtain coverage through insurance companies.

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

Subp. 5. **Liquor vendor.** "Liquor vendor" means any person required by Minnesota Statutes, section 340.11, subdivision 21 to demonstrate proof of financial responsibility.

Subp. 6. **Market assistance plan.** "Market assistance plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 7. **Monoline liquor liability policy.** "Monoline liquor liability policy" means an insurance policy for only one type of coverage. In regard to this chapter, it refers to a policy for only liquor liability insurance without any other

type of coverage.

Subp. 8. **Multiline liquor liability policy.** "Multiline liquor liability policy" means an insurance policy which includes more than one type of insurance coverage. In regard to this chapter, it refers to liquor liability insurance offered in conjunction with other types of coverage such as general liability insurance, or fire insurance offered in a single package or policy.

2782.0300 MARKETING ASSISTANCE PROGRAM COMMITTEE.

Subpart 1. **Structure.** A market assistance program committee is created consisting of 12 members appointed by the commissioner of commerce. The commissioner or the commissioner's designated representative shall serve as an ex officio member.

The commissioner shall appoint four members representing casualty insurance companies; two members who are surplus lines agents or brokers; two members who are insurance agents; two members from the liquor industry; and two public members. If at any time after their appointment a member of the committee through change of employment or similar circumstances no longer is representative of the group he or she was appointed to represent, that member will be deemed to be unable to continue to serve as a member of the committee.

Subp. 2. **Terms and vacancies.** In the event of a member's inability to continue to serve, the commissioner shall appoint a replacement. The committee shall elect a chairperson and a vice chairperson from among the members. The term of each member is one year commencing on the first day of June.

2782.0400 MEETINGS.

The committee shall convene upon the call of the commissioner, the chairperson, or the vice chairperson, or at the request of one-third of the committee members. No quorum requirements are necessary.

2782.0500 ELIGIBILITY FOR ASSISTANCE.

A Minnesota liquor vendor or an insurance agent licensed by

the Department of Commerce must submit a copy of the completed assigned risk plan application form to the Department of Commerce. The Department of Commerce will immediately advise the committee of the receipt of the application and forward the copy to the committee at an address the committee designates. Submission of the copy of the application to the Department of Commerce is submission to the market assistance program for all purposes under this chapter or applicable statutes.

2782.0600 DISPOSITION OF APPLICATION.

Subpart 1. **Action upon application.** Upon receipt of an application, the committee or such persons as the committee appoints or designates will immediately review the application to determine what assistance the committee can give. The assistance may include:

A. discussion with the applicant liquor vendor's most recent underwriter, if any, to determine if the applicant's coverage can be maintained with the most recent carrier;

B. discussion with other known available insurance markets to determine if any other carrier will accept the applicant;

C. negotiating extensions of coverage with the most recent carrier or temporary carrier, if possible, to permit additional exploration of insurance markets or accumulation of essential underwriting data; and

D. referring the application to the first five participating insurers (participants) on the list in subpart 2. Subsequent applications will be sent to the next five participants on a rotating basis. If at any time there are less than ten participants on the master list this item will no longer be utilized.

Subp. 2. **List of participating insurers.** A list of participants shall be prepared and updated at least every two years in the following manner:

A. The committee will secure a mailing list from the Department of Commerce of every licensed casualty insurer admitted to do business in Minnesota as an eligible surplus

lines licensee:

B. The committee will mail to each admitted casualty insurer and eligible surplus lines licensee an outline of the conditions of participation. The department will assist the committee by including the committee's mailing with any appropriate departmental mailings.

C. A master list of participants willing to take part in the market assistance program will be created from responses to the initial mailing. The master list will be updated at least every two years pursuant to items A and B. Order on the master list shall be determined by random selection.

Subp. 3. **Referral to participants.** Upon receipt of an application, the committee or such persons as the committee appoints or designates may mail or telex copies of the application to the first five participants on the master list.

Subp. 4. **Quotes.** A participant must quote on at least one out of every three applications submitted to it. Each participant will have the right to individually evaluate the risk the applicant poses and develop a price commensurate with that risk.

Subp. 5. **Rereferral.** If no quote is received from the first five participants on the list, the next five participants on the list shall receive the application and the same procedure shall be followed until a quote is obtained or the list is exhausted. All participants may, if the committee feels it appropriate, be given the application at once.

Subp. 6. **Response from participant.** Participants may provide a quote on the same coverage basis they normally provide liquor liability insurance in Minnesota. Participants will return their quotation or refusal to quote for a monoline liquor liability policy or a multiline liquor liability policy to the committee within ten days. The applicant or the applicant's agent, if any, will be notified of quotations. The agent will then complete the placement of the insurance, if the applicant accepts coverage from a participant at the price quoted, without need for an agency appointment from that participant. The

insurer is not required to pay the agent any commission, but the agent may negotiate a fee with the applicant prior to initial submission of the copy of the application.

Subp. 7. **Limitation on reapplication.** An applicant provided a quotation in accordance with the above procedure will not be eligible to seek additional quotations from the market assistance plan or to obtain coverage from the liquor liability assigned risk plan if the quotation received would not be a notice of refusal for purposes of determining eligibility for participation in the assigned risk plan.

Subp. 8. **Review by full committee.** If the procedures in subparts 1 to 7 do not produce a quote, the application may be submitted to the committee. The committee, after reviewing the application, shall proceed as follows:

A. attempt to place the applicant with a single carrier;

B. attempt to arrange coverage on a quota-share basis with a number of carriers; and

C. advise the applicant on where it may engage loss control or consulting services that will enhance its marketability or reduce future premium costs.

Subp. 9. **Disqualification after coverage granted.** If an application is filed with the market assistance program less than 15 business days before the expiration date of the applicant's current insurance coverage, the market assistance program may continue to seek coverage for the applicant after coverage is extended by the assigned risk plan. The market assistance program will have 15 business days from the date of filing of the application with the market assistance program to obtain an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant within 15 business days of filing of the application and if the offer of coverage would not otherwise be considered a refusal for purposes of the assigned risk plan, the applicant will be deemed to not be qualified to participate in the assigned risk plan and coverage, if any, shall be terminated.

Subp. 10. **Notification of failure to place.** If the market assistance program does not produce a quota, it shall advise the submitting agent or the applicant with a copy to the commissioner at least 24 hours before the time the applicant's current insurance coverage terminates. Notwithstanding this subpart the market assistance program may continue to act pursuant to subpart 9. Notice that the market assistance program is continuing to act pursuant to subpart 9 shall be included in the notice required by this subpart.

2782.0700 PROGRAM PARTICIPATION.

Subpart 1. **Termination.** A participant may terminate its participation in the program at any time by providing written notice 90 days in advance of the termination to the commissioner and to the committee.

Subp. 2. **New participants.** New participants may join the program at any time by submitting a written request to the commissioner and to the committee.

2782.0800 REPORTS.

The committee shall prepare and submit to the commissioner an annual report specifying the number and type of applicant liquor vendors assisted and results of the assistance for each liquor vendor. At the request of the commissioner, periodic reports shall be prepared.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 19 1985
Joan Anderson Growe
Secretary of State
8:45 AM

APPROVED AS TO FORM AND LEGALITY
August 16 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Governing the Liquor Liability Assigned Risk Plan

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 24, 1985 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minnesota Statutes Section 14.14, subd. 1a, on June 24, 1985.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules Governing the Liquor Liability Assigned Risk Plan are adopted this 6th day of August 1985 pursuant to authority vested in me by Minnesota Statutes Sections 45.023 and 340.11 subdivisions 21 and 23.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Liquor Liability Insurance Including but not limited to the establishment and operation of an Assigned Risk Plan 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 Liquor Liability Insurance Including but not limited to the establishment and operation of an Assigned Risk Plan. Promulgation of these rules is authorized by Minnesota Statutes, sections 45.023 and 340.11.

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

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard G. Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689.

All statements of information and comment shall be accepted until January 25, 1985. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

MICHAEL A. HATCH
Commissioner of Commerce

Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101
(612) 292-1099

January 23, 1985

State of Minnesota
JAN 23 1985
Department of Commerce

Mr. Richard G. Gomsrud
General Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Response to Department of Commerce Notice at 9 S.R.1577
Regarding Liquor Liability Insurance

Dear Mr. Gomsrud:

These comments are submitted by the Insurance Federation of Minnesota on behalf of its' members in response to your request published in the State Register of January 7, 1985, for outside opinions on proposed rules relating to liquor liability insurance including but not limited to the establishment and operation of an assigned risk plan.

In 1983 when the Minnesota Legislature enacted M.S.A. Section 340.11, Subd. 21, requiring that every person licensed to sell liquor at retail shall demonstrate proof of financial responsibility by filing a certificate of insurance coverage, a surety bond, or making a deposit with the State Treasurer, the legislature required the establishment of a market assistance program ("MAP") to relieve any perceived availability problems of liquor liability insurance. The Commissioner was given authority to set up an assigned risk plan only if this MAP did not work.

Experience to date shows that the MAP is working. The Plan of Operation of the MAP deliberately did not set any quorum requirements. At the first annual committee meeting held on December 13, 1983, at which seven of the ten members were present, the committee specifically elected a subcommittee consisting of four members, any one of whom was authorized to handle an application for assistance. For the first year, those MAP members were albe to handle all requests successfully. When the committee saw the liability insurance market in general tightening, they were concerned applications might increase and began setting up procedures for the involvement of more insurance companies. A small number of admitted insurance companies were surveyed and commitments were obtained from eight of those insurance companies to participate at some undefined level, depending on what terms would be worked out. One insurance company then incurred the expense of consulting with a law firm to determine from an antitrust standpoint how competing insurance companies could cooperate in the MAP structure to meet any liquor liability insurance market availability problems. Representatives of this insurance company next met with the Department of Commerce to see whether a State Attorney General's Opinion or other state action could be obtained to minimize the antitrust concerns.

However, before the Commerce Department could act to provide such protection, a new problem arose. Ideal Mutual Insurance Company, which wrote a great deal of the liquor liability insurance in Minnesota, was placed in rehabilitation by the New York Insurance Department. Shortly prior to this, cancellation notices were sent to all of its liquor liability insureds. This action arose so suddenly that it is highly doubtful that even if Minnesota had already had an assigned risk plan for liquor liability insurance in place, whether that plan could have dealt with this problem without considerable disruption. Again, the MAP was ready to go into action. A MAP member obtained a commitment from a surplus lines insurance company to help resolve this problem by giving consideration to insuring each of the risks cancelled by Ideal Mutual even though this company normally would have only considered risks with three or fewer claims.

To our knowledge, all of Ideal Mutual's former insureds who have applied to the MAP, have received an offer of insurance coverage. Even M.S.A. Section 340.11, Subd. 21 did not expect the MAP to help everyone as it states: "...If the committee finds it cannot assist in securing insurance coverage it shall notify the applicant in writing with a full explanation and recommendation for enhancing its ability to secure insurance..." The MAP has done better than expected.

There have been some complaints about rate increases for liquor liability insurance. It is quite likely that one of the reasons more insurance companies have not been writing liquor liability insurance is because the rates charged by Ideal Mutual and a few others were so low that other companies did not feel they could compete with them on a sound underwriting basis. These low rates may well have contributed to Ideal Mutual's financial problems. In early 1983 liquor liability insurance rates being charged in Minnesota by a major surplus lines insurance company were only approximately one-half of the rates which were charged for the same coverage in 1976. These low rates were not in our opinion, justified by underwriting experience and current rate increases are moving toward a correction of this inadequacy. For example, Columbia Casualty Insurance Company changed its rates for liquor liability insurance in Minnesota in October 1984 based on their poor loss experience, which rates have not been changed since then. In addition, all liability insurance has been underpriced the past few years and large rate increases are occurring now for all kinds of insurance, not just liquor liability insurance.

In any event, Minnesota's legislation only addresses availability and was not intended to have the MAP or an assigned risk plan meet affordability problems. M.S.A. Section 340.11, Subd. 21 provides in pertinent part: "...The commissioner of insurance shall establish a program to assist licensees in obtaining insurance coverage...The market assistance program...shall continue to function so long as its services are deemed by the commissioner of insurance to be necessary to relieve perceived availability problems in the liquor liability insurance market..." M.S.A. Section 340.11, Subd. 23(7) also specifically provides that: "...Assigned risk premiums shall not be lower than rates generally charged by insurers for the business..." As insurance rates become adequate, more insurance companies will likely enter the Minnesota liquor liability insurance market, though problems will court interpretation of the dramshop law remain.

In summary, since the MAP is working, there is no necessity to form an assigned risk plan for liquor liability insurance under the statute.

Additionally, we submit that an assigned risk plan for liquor liability insurance is not the answer for the following reasons:

1 - An assigned risk plan assumes that all retail sellers of liquor should be entitled to insurance so they can remain in business. This is a social policy question. The burden of determining which bars should be allowed to stay in business should not be placed on the insurance industry or the Commerce Department.

2 - An assigned risk plan for liquor liability insurance could be ultimately subsidized by businesses purchasing commercial multi-peril and other liability insurance policies.

3 - No other state has considered such a plan to be appropriate.

Thank you for your consideration of our comments. We will be available to discuss these issues and possible solutions with you in more detail as you proceed on this issue.

Sincerely yours,

Bob Johnson

Robert D. Johnson,
Vice President

RDJ:jt

AMERICAN INSURANCE ASSOCIATION

MIDWEST REGIONAL OFFICE

230 W. Monroe Street
Chicago, Illinois 60606
(312) 372-8123

State of Minnesota
JAN 24 1985
Department of Commerce

January 21, 1985

Richard G. Goumsrud
General Counsel
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Request of Commerce Department for Outside Opinion Regarding Proposed Rules Relating to Liquor Liability Insurance

Dear Mr. Goumsrud:

The American Insurance Association, a national property/casualty trade association, composed of 174 publicly owned insurance companies providing multi-line insurace coverages nationwide, respectfully submits this statement for the record in the above captioned matter.

Since its inception, the Minnesota Market Assistance Program (MAP) has functioned according to its statutory mandate, as provided within Subdivision 21 of Section 340.11 of the Minnesota Code. All liquor establishments identified as actively seeking dram shop insurance have been offered coverage and have, to the best of our knowledge, received premium quotations. Therefore, it is the Association's position that adoption and subsequent implementation of an Assigned Risk Plan, as authorized under Subdivision 23 of Sec. 340.11 of the Minnesota Code, is unnecessary. In view of the foregoing, we feel the creation of such a mechnism is beyond the scope of the Commissioner's authority. The language of the two aforementioned Subdivisions of Sec. 340.11 clearly indicates that implimentation of an Assigned Risk Plan is only to occur where there is a genuine "availability" problem in the liquor liability insurance market. This is not the case in Minnesota, given the excellent market assistance provided by Minnesota's MAP Program.

In conclusion, the American Insurance Association is vigorously opposed to any implementation of an Assigned Risk Plan for liquor liability

PETER LARDNER, CHAIRMAN EDWARD H. BUDD, VICE CHAIRMAN DeROY C. THOMAS VICE CHAIRMAN T. LAWRENCE JONES, PRESIDENT

insurance in Minnesota. While the market for this type of coverage has tightened because of occurrences outside of the State, the Minnesota MAP Program has functioned in accordance with its statutory authority, by providing premium quotations to all identified risks.

We appreciate having this opportunity to provide our thoughts and comments on this issue. We stand ready to provide any additional information which you might need.

Sincerely,

Frederick P. McGarvey
Vice-President
Midwest Region

SHIRLEY A.
BRANTINGHAM
ASSOCIATE COUNSEL
(612) 292-4670

January 25, 1985

Richard G. Gomsrud, Esq.
General Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Rules Relating to Liquor Liability

Dear Mr. Gomsrud:

Minnesota Association of Commerce and Industry is interested and concerned about the impact of new rules governing insurance for liquor liability. Subdivision 21 of Minnesota Statutes Section 340.11 requires the commissioner of insurance to establish an assigned risk plan if neccessary. Presumably, this option can be considered only if there is inadequate voluntary insurance policies available.

While MACI is concerned about the availability of this type of insurance, that concern is secondary to a deeper interest in the overall insurance picture in Minnesota. At this time we have more questions than suggestions or answers.

Is there a national problem with liquor liability insurance or only a Minnesota problem? If it is only a Minnesota problem, we should review the underlying cause and not address only an insurance symptom.

The problem may not be insurance availability but a change in market caused by changes in insurance companies in the Minnesota market, underlying "dram shop" laws that inflate damage awards, unusually liberal juries that increase potential liabilities, or other causes which will remain even after changes in insurance regulations.

If the problem is national, will a risk assignment plan solve the problem or possibly drive liquor liability insurance out of the state? If a risk assignment plan is implemented, is this going to affect premium costs for other lines of insurance in the long run.

We plan to follow this issue because we are concerned about the underlying message to the business community. Please place me on any service list for this issue. Thank you.

Sincerely,

Shirley Brantingham

Shirley Brantingham
Associate Counsel

SB:mmb

Bradley L. Kading
Regional Manager —
North Central Region

Alliance of American Insurers
1501 Woodfield Road, Suite 400 West
Schaumburg, Illinois 60195-4980
312•490•8634

January 24, 1985

Mr. Richard G. Gomsrud
General Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

State of Minnesota
JAN 28 1985
Department of Commerce

Dear Mr. Gomsrud:

The Alliance of American Insurers is a trade association of 175 property and casualty insurers doing business in all 50 states. Our members write all lines of insurance and are interested in dram shop insurance and the issues surrounding insurance availability presently being considered by the Department of Commerce.

We write today with our comments on liquor liability insurance availability. Briefly, we would like to state that in response to questions raised in the Department's January 11 hearing notice that:

1. Columbia Casualty's loss experience data support the company's rating plan.

2. Liquor liability insurance coverage has been available and remains available because of the work of the market assistance plan.

3. Present market conditions do not meet the grounds required by law for establishment of an assigned risk plan.

Currently, Minnesota law makes many establishments serving liquor to someone who is "obviously intoxicated" liable for any damage that person might cause to himself or others while drunk. Minnesota statute Section 340.11, subd. 21 (1984), requires certain vendors of liquor to demonstrate proof of financial responsibility, such as insurance coverage with regard to this liability imposed by Minnesota law. Minnesota law requires municipal licensing authorities to receive proof of a liquor vendor licensee's financial responsibility before it can issue a license. Minnesota statute Section 340.11, subd. 21 (a) (1984), states proof of financial responsibility may be given by proof of liability insurance, or by a bond of a surety company, or by a certificate of the state treasurer that the licensee has deposited a certain sum.

Despite the fact that there are many insurers eligible to write liquor liability coverage in the state of Minnesota and elsewhere, very few have chosen to do so. Even so, all liquor vendors have been able to obtain quotes for insurance coverage and are able to obtain liquor liability insurance in order to satisfy the financial

responsibility requirement..

Despite the fact that liquor vendors can prove financial responsibility by purchasing a surety bond, depositing a specified sum with the state treasurer, or by accepting a quote it has received from an insurer, the state of Minnesota is presently considering an assigned risk plan.

Minnesota statute Section 340.11, subd. 21 (1984), authorizes the Commissioner, if he deems it necessary to establish an assigned risk plan to make liquor liability insurance available. Minnesota law gives ample guidance as to what necessitates the establishment of an assigned risk plan. The statutory authority for implementing an assigned risk plan, section 340.11, subd. 21, states that the purpose of an assigned risk plan "is to provide coverage required by subd. 21 to persons rejected pursuant to this subdivision." In other words, if a person's attempts to obtain financial responsibility, as required by subdivision 21, whether by insurance, surety bond, or deposit certificate, has been rejected, then that person is entitled to coverage by an assigned risk plan. No tavern owner is entitled to assigned risk plan coverage unless his attempts to obtain financial responsibility have been rejected.

Minnesota statute, Section 340.11 subd. 21, states that a liquor liability market asisstance committee should assist tavern owners in securing insurance coverage. The committee must notify the applicant in writing with a full explanation and recommendation for enhancing its ability to obtain insurance. Because this section precedes the section authorizing, if necessary, an assigned risk plan, it was the legislature's intent that this stage be a prerequisite to the establishment of an assigned risk plan.

Fortunately, here the market assistance plan has worked successfully to make liquor liability coverage available. Every bar owner who needed insurance got a quote since the unfortunate cancellations caused by the Ideal Mutual insolvency. Since only tavern owners who have been rejected are entitled to assigned risk plan coverage and no tavern owners have been rejected, no tavern owners are entitled to assigned risk plan coverage and the establishment of an assigned risk plan is not necessary. Also, no one has suggested that a surety bond or a deposit certificate are unattainable.

Finally, the property/casualty insurance industry is coping with severe market-place problems in all lines. Just like the old neighborhood "gas wars" between competing service stations, our industry has been engaged in a vigorous price war. Losses have escalated and prices have lowered. To illustrate the consequences, A. M. Best reported that for the first six months of 1984, insurers lost 1.9 billion dollars. We are paying out approximately $1.10 for each dollar we have collected in premium. The industry as a result has stepped back and is taking a second look at its marketing. No doubt, this has led to a restriction in the availability of insurance in some lines. However, the Minnesota experience indicates insurance remains available. Existing rates for liquor liability insurance are appropriate and necessary to cover administrative, loss, and underwriting costs.

Thank you for the opportunity to present our views.

Sincerely,

Bradley L. Kading
Regional Manager
North Central Region

BLK/maf

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

ORDER FOR NOTICE OF INTENT
TO ADOPT RULES WITHOUT
PUBLIC HEARING

In the Matter of the Proposed Rules
Relating to The Liquor Liability Assigned
Risk Plan and Rules Relating to the Liquor
Liability Market Assistance Program.

IT IS ORDERED this 10th day of June, 1985 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

ORDER FOR HEARING

In the Matter of the Proposed Adoption of
Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

IT IS ORDERED this 10th day of June 1985, that a public hearing on the above proposed rules be held in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota on August 15, 1985, at 9:00 A.M. and continuing until all interested persons or groups have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of the hearing be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt rules with a Public Hearing if twenty-five or more persons request a hearing.

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing unless twenty-five more persons submit written requests for 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 - 14.28.

PLEASE NOTE, HOWEVER, THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINNESOTA STATUTES SECTION 14.14 - 14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons or groups 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 Department and do not result in a substantial change in the proposed rule.

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 - 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, telephone (612) 296-5689 Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her or his name and address and is encouraged to 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, Section 340.11 subdivisions 21 and 23 and Section 45.023 . 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 from the Department upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will be affected

by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so that if they are a small business they will only be burdened in proportion to their size.

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 G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

The text of the proposed rules follows this Notice in the State Register. Copies of this Notice and the proposed rules are available and may be obtained by contacting Richard G. Gomsrud, Department Counsel, at the above address.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on August 15, 1985, at 9:00 A.M.and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, George Beck, 4th Floor, Summit Bank Bulding, 310 - 4th Avenue South, Minneapolis, Minnsota 55415, telephone (612) 341-7601. The rule hearing procedure is governed by Minnesota Statute Section 14.14 -14.20 and by Minnesota Rules Parts 1400.0200 -1400.1200, as amended (Amended Rules published at 9.SR.2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

The Commissioner proposes to adopt rules relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program. Authority for the adoption of these rules is contained in Minnesota Statute Section 340.11, subdivisions 21 and 23 and Section 45.023. A text of the proposed rules follows this notice in the State Register.

The proposed rules, if adopted will govern the operation and other aspects of the liquor liability market assistance program and the liquor liability assigned risk plan.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be yyobtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will also be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so if they are a small business they will only be burdened in proportion to their size. Anyone wishing to present evidence or argument as

to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty-day comment period, there will be a three-day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three-day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three-day period. The written responses will be added to the record of the proceeding.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available after which date the Department of Commerce may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Deparatment of Commerce at any time prior to the filing of the rules with the Secretary of State.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this Notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, Minnsota 55101. Additional copies will be available at the door on the date of the hearing.

MICHAEL A. HATCH
Commissioner of Commerce

Dated: 6/10, 1985

In the Matter of the Proposed Rules
Governing the Liquor Liability Market Assistance Program

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

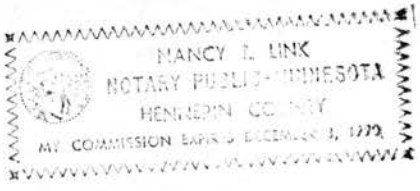
Richard G. Gomsrud, being first duly sworn, deposes and says:

That on the 24th day of June, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules without a public hearing was served by depositing in the State of Minesota 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.

Richard G. Gomsrud

Subscribed and sworn to before me
this 6th day of August, 1985.

Nancy L. Link
Notary Public



State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt rules with a Public Hearing if twenty-five or more persons request a hearing.

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing unless twenty-five more persons submit written requests for 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 - 14.28.

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Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Hearing

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Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be yyobtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will also be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so if they are a small business they will only be burdened in proportion to their size. Anyone wishing to present evidence or argument as

to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty-day comment period, there will be a three-day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three-day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three-day period. The written responses will be added to the record of the proceeding.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available after which date the Department of Commerce may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Deparatment of Commerce at any time prior to the filing of the rules with the Secretary of State.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this Notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, Minnsota 55101. Additional copies will be available at the door on the date of the hearing.

MICHAEL A. HATCH
Commissioner of Commerce

Dated: 6/18, 1985

In the Matter of the Proposed Rules
Governing the Liquor Liability Assigned Risk Plan

STATE OF MINNESOTA)
) ss. AFFIDAVIT OF
COUNTY OF RAMSEY) MAILING

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

That on the 24th day of June, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules without a public hearing was served by depositing in the State of Minesota 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.

Richard G. Gomsrud

Subscribed and sworn to before me
this 6th day of August, 1985.

Nancy I. Link
Notary Public



State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt rules with a Public Hearing if twenty-five or more persons request a hearing.

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing unless twenty-five more persons submit written requests for 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 - 14.28.

PLEASE NOTE, HOWEVER, THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINNESOTA STATUTES SECTION 14.14 - 14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons or groups 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 Department and do not result in a substantial change in the proposed rule.

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 - 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, telephone (612) 296-5689 Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her or his name and address and is encouraged to 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, Section 340.11 subdivisions 21 and 23 and Section 45.023 . 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 from the Department upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will be affected

by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so that if they are a small business they will only be burdened in proportion to their size.

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 G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

The text of the proposed rules follows this Notice in the State Register. Copies of this Notice and the proposed rules are available and may be obtained by contacting Richard G. Gomsrud, Department Counsel, at the above address.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program.

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on August 15, 1985, at 9:00 A.M.and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, George Beck, 4th Floor, Summit Bank Bulding, 310 - 4th Avenue South, Minneapolis, Minnsota 55415, telephone (612) 341-7601. The rule hearing procedure is governed by Minnesota Statute Section 14.14 -14.20 and by Minnesota Rules Parts 1400.0200 -1400.1200, as amended (Amended Rules published at 9.SR.2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

The Commissioner proposes to adopt rules relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program. Authority for the adoption of these rules is contained in Minnesota Statute Section 340.11, subdivisions 21 and 23 and Section 45.023. A text of the proposed rules follows this notice in the State Register.

The proposed rules, if adopted will govern the operation and other aspects of the liquor liability market assistance program and the liquor liability assigned risk plan.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be yyobtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will also be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so if they are a small business they will only be burdened in proportion to their size. Anyone wishing to present evidence or argument as

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One free copy of this Notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, Minnsota 55101. Additional copies will be available at the door on the date of the hearing.

MICHAEL A. HATCH
Commissioner of Commerce

Dated: 6/18, 1985

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Rules
Governing the Liquor Liability Assigned Risk Plan

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 24th day of June, 1985.

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Washington, DC 20036-2491

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Shepard & Donnelly
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Peterson, Popovich, Knutson & Flynn
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Katie McLenighan
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St. Paul, MN 55155

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Jean M. Reynolds, Treasurer
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St. Paul, MN 55101

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Rules
Governing the Liquor Liability Market Assistance Program

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 24th day of June, 1985.

Richard G. Gomsrud

Alliance of American In[illegible]ers
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STATE REGISTER

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B. When both a brand and variety name are stated, the terms must be shown in the following order from left to right to top to bottom: the brand name, the word "brand," the variety name, and the kind name.

C. When a brand name but no variety name is stated, the terms must be shown on the seed label in the following order from left to right or top to bottom: the brand name, the word "brand," the kind name, and the words "variety not stated." If the seed offered for sale is a blend, the word "blend" must be inserted between the kind name and the words "varieties not stated."

EFFECTIVE DATE. Part 1510.0011 is effective July 1, 1987.

Department of Commerce

Proposed Rules Relating to the Market Assistance Plan for Liquor Liability Assistance; and Proposed Rules Relating to the Liquor Liability Assigned Risk Plan

Notice of Intent to Adopt Rules without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing unless twenty-five more persons submit written requests for 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 14.21-14.28.

PLEASE NOTE, HOWEVER, THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINNESOTA STATUTES SECTION 14.14-14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE *STATE REGISTER* OF EVEN DATE AND MAILED ON THIS DATE.

Persons or groups 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 Department and do not result in a substantial change in the proposed rule.

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 14.14-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, telephone (612) 296-5689 Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her or his name and address and is encouraged to 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, Section 340.11 subdivisions 21 and 23 and Section 45.023. 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 from the Department upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so that if they are a small business they will only be burdened in proportion to their size.

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

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.

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 G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

The text of the proposed rules appear in this *State Register*. Copies of this notice and the proposed rules are available and may be obtained by contacting Richard G. Gomsrud, Department Counsel, at the above address.

Michael A. Hatch
Commissioner of Commerce

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on August 15, 1985, at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, George Beck, 4th Floor, Summit Bank Building, 310-4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7601. The rule hearing procedure is governed by Minnesota Statute Section 14.14-14.20 and by Minnesota Rules Parts 1400.0200-1400.1200, as amended (Amended Rules published at 9 S.R. 2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE *STATE REGISTER* OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

The Commissioner proposes to adopt rules relating to The Liquor Liability Assigned Risk Plan and Rules Relating to the Liquor Liability Market Assistance Program. Authority for the adoption of these rules is contained in Minnesota Statute Section 340.11, subdivisions 21 and 23 and Section 45.023. A text of the proposed rules follows this notice in the *State Register*.

The proposed rules, if adopted will govern the operation and other aspects of the liquor liability market assistance program and the liquor liability assigned risk plan.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will also be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so if they are a small business they will only be burdened in proportion to their size. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administration Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three-day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three-day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three-day period. The written responses will be added to the record of the proceeding.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available after which date the Department of Commerce may not take any final action on the rules for a period of five working days. If you desire

to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department of Commerce at any time prior to the filing of the rules with the Secretary of State.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

June 10, 1985

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2782.0100 PURPOSE.

Parts 2782.0100 to 2782.0800 establish a marketing assistance program to assist liquor licensees in obtaining liquor liability insurance coverage.

2782.0200 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 2782.0100 to 2782.0800, the terms defined in this part have the meanings given them.

Subp. 2. Applicant. "Applicant" means a liquor vendor who makes application to the market assistance plan or the liquor liability assigned risk plan for insurance coverage.

Subp. 3. Assigned risk plan. "Assigned risk plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 23 to provide liquor liability coverage as required by Minnesota Statutes, section 340.11, subdivision 21 to those liquor vendors unable to obtain coverage through insurance companies.

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

Subp. 5. Liquor vendor. "Liquor vendor" means any person required by Minnesota Statutes, section 340.11, subdivision 21 to demonstrate proof of financial responsibility.

Subp. 6. Market assistance plan. "Market assistance plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 7. Monoline liquor liability policy. "Monoline liquor liability policy" means an insurance policy for only one type of coverage. In regard to this chapter, it refers to a policy for only liquor liability insurance without any other type of coverage.

Subp. 8. Multiline liquor liability policy. "Multiline liquor liability policy" means an insurance policy which includes more than one type of insurance coverage. In regard to this chapter, it refers to liquor liability insurance offered in conjunction with other types of coverage such as general liability insurance, or fire insurance offered in a single package or policy.

2782.0300 MARKETING ASSISTANCE PROGRAM COMMITTEE.

Subpart 1. Structure. A market assistance program committee is created consisting of 12 members appointed by the commissioner of commerce. The commissioner or the commissioner's designated representative shall serve as an ex officio member.

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The commissioner shall appoint four members representing casualty insurance companies; two members who are surplus lines agents or brokers; two members who are insurance agents; two members from the liquor industry; and two public members. If at any time after their appointment a member of the committee through change of employment or similar circumstances no longer is representative of the group he or she was appointed to represent, that member will be deemed to be unable to continue to serve as a member of the committee.

Subp. 2. Terms and vacancies. In the event of a member's inability to continue to serve, the commissioner shall appoint a replacement. The committee shall elect a chairperson and a vice chairperson from among the members. The term of each member is one year commencing on the first day of June.

2782.0400 MEETINGS.

The committee shall convene upon the call of the commissioner, the chairperson, or the vice chairperson, or at the request of one-third of the committee members. No quorum requirements are necessary.

2782.0500 ELIGIBILITY FOR ASSISTANCE.

A Minnesota liquor vendor or an insurance agent licensed by the Department of Commerce must submit a copy of the completed assigned risk plan application form to the Department of Commerce. The Department of Commerce will immediately advise the committee of the receipt of the application and forward the copy to the committee at an address the committee designates. Submission of the copy of the application to the Department of Commerce is submission to the market assistance program for all purposes under this chapter or applicable statutes.

2782.0600 DISPOSITION OF APPLICATION.

Subpart 1. Action upon application. Upon receipt of an application, the committee or such persons as the committee appoints or designates will immediately review the application to determine what assistance the committee can give. The assistance may include:

A. discussion with the applicant liquor vender's most recent underwriter, if any, to determine if the applicant's coverage can be maintained with the most recent carrier;

B. discussion with other known available insurance markets to determine if any other carrier will accept the applicant;

C. negotiating extensions of coverage with the most recent carrier or temporary carrier, if possible, to permit additional exploration of insurance markets or accumulation of essential underwriting data; and

D. referring the application to the first five participating insurers (participants) on the list in subpart 2. Subsequent applications will be sent to the next five participants on a rotating basis. If at any time there are less than ten participants on the master list this item will no longer be utilized.

Subp. 2. List of participating insurers. A list of participants shall be prepared and updated at least every two years in the following manner:

A. The committee will secure a mailing list from the Department of Commerce of every licensed casualty insurer admitted to do business in Minnesota as an eligible surplus lines licensee.

B. The committee will mail to each admitted casualty insurer and eligible surplus lines licensee an outline of the conditions of participation. The department will assist the committee by including the committee's mailing with any appropriate departmental mailings.

C. A master list of participants willing to take part in the market assistance program will be created from responses to the initial mailing. The master list will be updated at least every two years pursuant to items A and B. Order on the master list shall be determined by random selection.

Subp. 3. Referral to participants. Upon receipt of an application, the committee or such persons as the committee appoints or designates may mail or telex copies of the application to the first five participants on the master list.

Subp. 4. Quotes. A participant must quote on at least one out of every three applications submitted to it. Each participant will have the right to individually evaluate the risk the applicant poses and develop a price commensurate with that risk.

Subp. 5. Rereferral. If no quote is received from the first five participants on the list, the next five participants on the list shall receive the application and the same procedure shall be followed until a quote is obtained or the list is exhausted. All participants may, if the committee feels it appropriate, be given the application at once.

Subp. 6. Response from participant. Participants may provide a quote on the same coverage basis they normally provide liquor liability insurance in Minnesota. Participants will return their quotation or refusal to quote for a monoline liquor liability policy or a multiline liquor liability policy to the committee within ten days. The applicant or the applicant's agent, if any, will be notified of quotations. The agent will then complete the placement of the insurance, if the applicant accepts coverage from a

participant at the price quoted, without need for an agency appointment from that participant. The insurer is not required to pay the agent any commission, but the agent may negotiate a fee with the applicant prior to initial submission of the copy of the application.

Subp. 7. Limitation on reapplication. An applicant provided a quotation in accordance with the above procedure will not be eligible to seek additional quotations from the market assistance plan or to obtain coverage from the liquor liability assigned risk plan if the quotation received would not be a notice of refusal for purposes of determining eligibility for participation in the assigned risk plan.

Subp. 8. Review by full committee. If the procedures in subparts 1 to 7 do not produce a quote, the application may be submitted to the committee. The committee, after reviewing the application, shall proceed as follows:

A. attempt to place the applicant with a single carrier;

B. attempt to arrange coverage on a quota-share basis with a number of carriers; and

C. advise the applicant on where it may engage loss control or consulting services that will enhance its marketability or reduce future premium costs.

Subp. 9. Disqualification after coverage granted. If an application is filed with the market assistance program less than 15 business days before the expiration date of the applicant's current insurance coverage, the market assistance program may continue to seek coverage for the applicant after coverage is extended by the assigned risk plan. The market assistance program will have 15 business days from the date of filing of the application with the market assistance program to obtain an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant within 15 business days of filing of the application and if the offer of covergage would not otherwise be considered a refusal for purposes of the assigned risk plan, the applicant will be deemed to not be qualified to participate in the assigned risk plan and coverage, if any, shall be terminated.

Subp. 10. Notification of failure to place. If the market assistance program does not produce a quota, it shall advise the submitting agent or the applicant with a copy to the commissioner at least 24 hours before the time the applicant's current insurance coverage terminates. Notwithstanding this subpart the market assistance program may continue to act pursuant to subpart 9. Notice that the market assistance program is continuing to act pursuant to subpart 9 shall be included in the notice required by this subpart.

2782.0700 PROGRAM PARTICIPATION.

Subpart 1. Termination. A participant may terminate its participation in the program at any time by providing written notice 90 days in advance of the termination to the commissioner and to the committee.

Subp. 2. New participants. New participants may join the program at any time by submitting a written request to the commissioner and to the committee.

2782.0800 REPORTS.

The committee shall prepare and submit to the commissioner an annual report specifying the number and type of applicant liquor vendors assisted and results of the assistance for each liquor vendor. At the request of the commissioner, periodic reports shall be prepared.

Rules as Proposed (all new material)

CHAPTER 2783
DEPARTMENT OF COMMERCE
LIQUOR LIABILITY ASSIGNED RISK PLAN

2783.0010 PURPOSE AND SCOPE.

This chapter governs administration of the liquor liability assigned risk plan hereby established pursuant to Minnesota Statutes, section 340.11, subdivisions 21 and 23.

2783.0020 AUTHORITY.

This chapter is adopted under the authority of Minnesota Statutes, sections 45.023 and 340.11, subdivisions 21 and 23.

2783.0030 DEFINITIONS.

Subpart 1. Scope. For the purposes of this chapter, the terms defined in this part have the meanings given them unless the context clearly indicates a different meaning.

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

Subp. 2. Administrator. "Administrator" means the person or persons selected pursuant to part 2783.0040 to administer the assigned risk plan.

Subp. 3. Applicant. "Applicant" means a liquor vendor who makes application to the market assistance plan or the liquor liability assigned risk plan for insurance coverage.

Subp. 4. Assigned risk plan. "Assigned risk plan" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 23 to provide liquor liability coverage as required by Minnesota Statutes, section 340.11, subdivision 21 to those liquor vendors unable to obtain coverage through insurance companies.

Subp. 5. Commissioner. "Commissioner" means the commissioner of the Department of Commerce.

Subp. 6. Liquor vendor. "Liquor vendor" means any person required by Minnesota Statutes, section 340.11, subdivision 21 to demonstrate proof of financial responsibility.

Subp. 7. Loss. "Loss" means a demand for damages due or allegedly due on which some payment has been made or for which money has been reserved in good faith for actual or possible payment on the demand, exclusive of investigative or legal expenses.

Subp. 8. Market assistance program. "Market assistance program" means the methods and procedures established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 9. Monoline liquor liability policy. "Monoline liquor liability policy" means an insurance policy for only one type of coverage. In regard to this chapter, it refers to a policy for only liquor liability insurance without any other type of coverage.

Subp. 10. Multiline liquor liability policy. "Multiline liquor liability policy" means an insurance policy which includes more than one type of insurance coverage. In regard to this chapter, it refers to liquor liability insurance offered in conjunction with other types of coverage such as general liability insurance, or fire insurance offered in a single package or policy.

Subp. 11. Premium. "Premium" means the price charged to a liquor vendor for coverage under the assigned risk plan for a one-year period.

Subp. 12. Rate. "Rate" means the cost of coverage under the assigned risk plan per $100 of annual liquor sales.

Subp. 13. Rating plan. "Rating plan" means the criteria for calculation of rates.

Subp. 14. Violation. "Violation" means a conviction or citation for a violation of Minnesota Statutes, sections 340.70 to 340.86. If a citation is dismissed or does not result in a conviction within one year of issuance, the citation shall not be deemed to be a violation.

2783.0040 ASSIGNED RISK PLAN ADMINISTRATION.

Subpart 1. Administrator. The assigned risk plan shall be administered by a qualified insurer or vendor of risk management services selected by the commissioner. If the commissioner deems it necessary, he or she may select more than one person to administer the assigned risk plan.

Subp. 2. Duties. The administrator shall perform all services necessary to accomplish the purposes of the assigned risk plan, including the servicing of policies of contracts of coverage, data management, and collection of assessments.

Subp. 3. Appeals. A liquor vendor adversely affected by a decision of the administrator may object to the decision by appealing to the commissioner within 15 days after the decision. The appeal must be made by letter mailed to the commissioner, with a copy to the administrator, within the 15-day period. The letter must include a summary of the administrator's decision from which the appeal is taken, the basis for objection to the administrator's decision, and any argument or evidence in support of the appeal. Within 15 days after receipt of the letter, the administrator shall file a response, including the basis for the administrator's decision and all argument and evidence in support of the decision. Within ten days after receipt of the administrator's response, the commissioner shall either affirm, reverse, or modify the administrator's decision as the commissioner deems appropriate.

2783.0050 ASSIGNED RISK COVERAGE.

Subpart 1. Generally. Eligibility for assigned risk coverage is subject to the terms and conditions of subparts 2 and 3.

Subp. 2. Minimum qualifications. A liquor vendor who has a current written notice of refusal to insure from an insurer offering liquor liability insurance pursuant to Minnesota Statutes, section 340.11, subdivision 23, clause (2), is entitled to make written application to the assigned risk plan for coverage. Payment of the applicable premium or required portion thereof must be paid prior to coverage by the plan.

An offer of coverage at a rate in excess of the rate charged by the assigned risk plan for similar coverage and risk is a written notice of refusal for purposes of the assigned risk plan. It shall not be deemed to be a written notice of refusal if the rate for the coverage offered is less than 20 percent in excess of the assigned risk plan rates for similar coverage and risk. However, the offered rate must also be the rate that the insurer has filed with the Department of Commerce if the insurer is required to file its rates with the

department. If the insurer is not required to file its rates with the department, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Subp. 3. Disqualifying factors. A liquor vendor shall be denied or terminated from coverage through the assigned risk plan if the liquor vendor:

A. Applies for coverage for only a portion of the liquor vendor's statutory liability under Minnesota Statutes, section 340.11, subdivision 21.

B. Has an outstanding debt due and owing to the assigned risk plan at the time of application or renewal arising from a prior policy.

C. Refuses to permit completion of an audit requested by the commissioner or administrator.

D. Submits misleading or erroneous information to the commissioner or administrator.

E. Disregards safety standards, laws, rules, or ordinances pertaining to the offer, sale, or other distribution of liquor. A combination of losses and violations within the last three years in excess of ten shall be a rebuttable presumption that a liquor vendor is ineligible for the assigned risk plan.

F. Fails to supply information requested by the commissioner or administrator.

G. Fails to comply with the terms of the policies or contracts for coverage issued pursuant to the assigned risk plan.

H. Has not satisfied the requirements of the market assistance program established pursuant to Minnesota Statutes, section 340.11, subdivision 21.

Subp. 4. Disqualification after coverage granted. If an application is filed with the market assistance program less than 15 business days before the expiration date of the applicant's current insurance coverage, the market assistance program may continue to seek coverage for the applicant after coverage is extended by the assigned risk plan. The market assistance program will have 15 business days from the date of filing of the application with the market assistance program to obtain an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant within 15 business days of filing of the application and if the offer of coverage would not otherwise be considered a refusal for purposes of the assigned risk plan, the applicant will be deemed to not be qualified to participate in the assigned risk plan and coverage, if any, shall be terminated.

Subp. 5. Notice. An application for coverage under the assigned risk plan must be granted or denied within ten days after receipt by the administrator of a properly completed application and any supplemental information requested by the administrator. A liquor vendor covered under the assigned risk plan must be given at least 30 days' notice of nonrenewal or termination of the coverage.

2783.0060 RATING PLAN.

RATES APPLICABLE TO MINIMUM COVERAGE REQUIRED BY MINNESOTA STATUTES, SECTION 340.11, SUBDIVISION 21, PARAGRAPH (a)

ASSIGNED RISK LIQUOR LIABILITY RATES
RATE FOR THREE OR FEWER INCIDENTS
IN THE LAST THREE YEARS

LIMITS	PACKAGE GOODS	RESTAURANTS	BARS
50/100	$ .42	$1.52	$1.89

RATE FOR MORE THAN THREE INCIDENTS
IN THE LAST THREE YEARS

	Four Incidents
50/100	$6.25

Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident.

For purposes of the rating plan, no experience or scheduled credits apply.

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.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340.95. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340.95, subdivision 2 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

2783.0070 ASSESSMENTS.

In the event the commissioner deems it necessary to make an assessment pursuant to Minnesota Statutes, section 340.11, subdivision 23, clause (4), an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority, and/or impose a civil penalty in an amount not to exceed $5,000, for an insurer's failure to pay the assessment within the 30-day period.

2783.0080 POLICY AND RATE FILING.

All policies or riders of licensed insurers concerning liquor liability insurance, together with any rate schedules, must be filed with the Department of Commerce within 30 days of any sales in Minnesota.

All surplus lines brokers selling liquor liability insurance must file the policies, riders, as well as any scheduled rates regarding this insurance, with the Department of Commerce within 30 days of any sales in Minnesota.

2783.0090 ASSIGNED RISK PLAN ADVISORY COMMITTEE.

Subpart 1. Appointment. The commissioner shall appoint a committee to advise the commissioner regarding operation of the assigned risk plan. The committee shall be comprised of 11 members, four of which shall be insurers, one of which shall be a vendor of risk management services, two of which shall be insurance agents, two of which shall be liquor vendors, and two of which shall be public members. The administrator and a representative of the commissioner shall be ex officio members of the assigned risk plan advisory committee.

Subp. 2. Meetings. The assigned risk plan advisory committee shall meet at such times as the commissioner may request.

2783.0100 REQUEST FOR INFORMATION.

Subpart 1. Commissioner's power. The commissioner may require a liquor vendor or licensed insurer to provide the information the commissioner considers appropriate to implement the provisions and further the purposes of the assigned risk plan.

Subp. 2. Administrator's power. The administrator may require a liquor vendor to provide the information the administrator considers appropriate to administer the assigned risk plan.

Department of Energy and Economic Development

Proposed Emergency Rules Governing the Waste Tire Recycling Grant Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority is proposing to adopt emergency rules for Waste Tire Recycling Grant. The agency is authorized by Minnesota Statutes, section 116M.08, subdivision 4, to adopt emergency rules for its financial assistance programs.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Governing Liquor Liability Assigned Risk Plan

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes § 340.11, subd. 21 and 23 provide for the creation and operation of a Liquor Liability Assigned Risk Plan. Minnesota Statutes § 340.11, subd. 23(7) gives the Commissioner of Commerce specific rulemaking authority in regard to the implementation of the Liquor Liability Assigned Risk Plan, in addition to the authority of Minnesota Statutes § 45.023.

Proposed Chapter 2783 are the rules promulgated under the cited authority.

Minnesota Statutes § 340.11, subd. 23 specifies many provisions of the plan. The rules supplement and expand upon the legislative provisions in regard to the plan.

Minnesota Statute § 340.11, subdivision 21 requires, as one of the ways to demonstrate financial responsibility, that liquor vendors have certain minimum liquor liability insurance coverage as a condition of licensing.

Insurance coverage is by far the most widely used means of satisfying the requirement of showing financial responsibility. As the inability to obtain such coverage would mean that a liquor vendor could not be issued a new license, have his old one renewed or continue to operate after coverage was cancelled or revoked, the

legislative changes that created the financial responsibility requirement for licensing also provided that the Commissioner of Commerce could if necessary establish an assigned risk plan to assure that coverage was available to liquor vendors. The Commissioner and his staff have been closely monitoring the liquor liability insurance market since at least December, 1984, and have determined that there is a need for the establishment of an Assigned Risk Plan. Accordingly, Rule 2783.0010 specifically establishes the Assigned Risk Plan.

In the past ten years, liquor liability insurance in Minnesota was underwritten by only the following companies, all of whom did not offer policies for the entire period:

Western World Insurance Company
Western Casualty Assurity
Jefferson Insurance Company
Stonewall Insurance Company
Progressive Casualty
Gibraltar Insurance Company
Insurance Incorporation of Ireland
Ideal Mutual Insurance Company
Mission Insurance Company
Proprietors Insurance Company
Admiral Insurance Company
Occidental Insurance Company
Home Insurance Company
St. Paul Insurance Company
Constitution Insurance Company

U.S.F.&G. Insurance Company

Allied Fidelity and Casualty Insurance Company

Columbia Insurance Company

Some of these companies sold liquor liability insurance on a "multiline" basis, by which they would sell liquor liability insurance to a liqour establishment only if it purchased all of its other insurance, such as workers' compensation and general liability insurance, from that insurer. Other companies would sell liquor liability insurance on a "monoline" basis; they would only sell the liquor liability insurance to a liquor establishment as a separate insurance product.

Prior to December 22, 1984, approximately 44 percent of the liquor vendors placed their insurance through three companies: Gibraltar Insurance Company, Insurance Corporation of Ireland, and Ideal Mutual Insurance Company. On or about December 21, 1984, Ideal cancelled, with only ten days notice, all liquor liability insurance it had written in Minnesota. On or about December 27, 1984, Ideal was placed under rehabilitation by the New York Commissioner of Insurance, and it was subsequently ordered liquidated by a New York Court. The Insurance Corporation of Ireland was prohibited by the Federal Reserve Board from selling insurance in this country as of January 1, 1985. At about the same time, Gibraltar Insurance Corporation ceased writing insurance in this state and nationwide. Other insurance companies on the list had withdrawn from the liquor liability insurance market because of high losses, low volume, or lack of a stable market.

As of December 22, 1984, essentially only two insurers--Columbia Casualty Insurance Company (hereinafter "Columbia") and Allied Fidelity Insurance Company (hereinafter "Allied")--sold the mandated liquor liability insurance coverage on a monoline basis. Allied limits the amount of liquor liability coverage it will write in this state to Two Million Dollars ($2,000,000) per year, which is approximately 10% of the expected 1985 market, and has indicated it will not write municipal-owned establishments or businesses where liquor sales amount to more than 75% of all gross receipts. In addition, because of Allied's low rating by Best's Rating Service, most umbrella insurance carriers will not provide umbrella coverage if Allied provides the primary liquor liability coverage.

Columbia is an eligible surplus lines carrier not licensed to do business in the State of Minnesota. Thus, persons insured by Columbia are not protected by the Minnesota Insurance Guaranty Association Act, Minnesota Statute Chapter 60C (1984). Moreover, for all practical purposes, Columbia is not subject to regulation by the Department of Commerce. See, e.g., Minnesota Statute § 60A.197 (1984). Because of Allied's substantial restrictions in the type and amount of liquor liability insurance it will write in this State, Columbia is essentially the sole liquor liability insurer writing insurance in this State on a monoline basis. Thus, 90% of the market may be limited to one supplier of insurance or to buying liquor liability insurance on a multiline basis from other carriers or brokers.

Because of the lack of liquor liability insurance carriers, the liquor liability insurance market was in a chaotic state at the end of December, 1984, the busiest time of the year for liquor establishments. Premiums were skyrocketing and some liquor vendors closed, either temporarily or permanently because they either could not obtain the mandated coverage or couldn't pay the cost of the greatly increased coverage. Other liquor establishments operated illegally without the mandated insurance. The broker for Columbia, John H. Crother Company Agency, was quoting rates up to four hundred percent (400%) greater than what Columbia claims it instructed the broker to charge. In addition, the broker used a different surcharge formula than the one Columbia apparently told the broker to utilize. The market was in such an unstable and uncertain condition that liquor establishments and insurance agents had no idea that the rates were inflated and the surcharge system was improper. Further deterioration of the market was all but assured as the existing policies of the insurance companies no longer writing in this state expired and the liquor vendors covered by them sought coverage, placing an even greater demand upon the market.

As soon as the crisis in the liquor liability insurance market became apparent, the Commissioner immediately met and continued to meet with insurance industry officials to determine whether there were other insurance companies who would offer the mandated insurance. No additional insurance carriers would agree to enter the market. As a result of the continuing chaotic liquor liability insurance market, the Commissioner held a hearing on February 4, 1985, to determine whether an assigned risk plan should be

established pursuant to the Commissioner's authority under Minnesota Statute § 340.11, subd. 21 (1984). Subsequent to that hearing, on February 11, 1985, the Commissioner issued a comprehensive order establishing an assigned risk plan. On March 28, 1985, Judge Joseph P. Summers issued a temporary injunction enjoining the operation of the assigned risk plan. The Commissioner is appealing that order to the Court of Appeals, and if there is a final court decision determining that the Commissioner's order dated February 11, 1985 properly established the assigned risk plan, the Commissioner intends to withdraw Rule 2783.0010.

The crisis that existed in the liquor liability insurance market in December 1984 continues. Recent legislative changes have been enacted to try to alleviate the problem but their effect if any, is unknown at this time. Since some companies are withdrawing from the liquor liability insurance market, an even greater demand will be placed upon the market. Thus, it is clearly necessary that an assigned risk plan be established now in order to alleviate the existing problem of uncertainty and instability in the liquor liability insurance market. Furthermore, it is necessary that the assigned risk plan be fully established and available for immediate utilization in the event that the liquor liability insurance market becomes even more unstable and the problem worsens.

In addition to the problem that has been created by the lack of insurance companies willing to sell liquor liability insurance on a multiline basis, and the potential for the worsening of that problem, an additional problem has resulted from the fact that Columbia is virtually the only carrier that sells liquor liability insurance on a

multiline basis. Because Columbia is an unlicensed company, it is not subject to Minnesota laws. More importantly, if Columbia were to suffer financial difficulties, its contractual obligations to Minnesota insureds would not be covered by the Minnesota Insurance Guaranty Association Act, Minnesota Statute chapter 60C (1984). Because Columbia is virtually the only company selling liquor liability insurance on a monoline basis its rates are not subject to competitive forces and may be higher than they could be.To the extent that some liquor establishments are not able to purchase liquor liability insurance through Columbia, or to the extent that Columbia's rates are too high for them to afford to pay, some liquor establishments will operate illegally without the coverage and others will close. If municipalities are forced to close their liquor establishments, they will lose a major source of revenue.

Columbia has indicated that it will not guarantee that it will, in fact, write every liquor establishment who applies for insurance to Columbia. Thus, some liquor establishments may not be able to purchase liquor liability insurance on a monoline basis. Even worse, if Columbia were to suddenly quit writing liquor liability insurance in Minnesota, there would be tremendous crisis in the liquor liability insurance market since there would be no one offering coverage.

Because of the lack of insurance carriers writing liquor liability insurance, and because of the fact that the major portion of the liquor liability insurance is written by Columbia, it is necessary than an assigned risk plan be established. In order to

effectively alleviate the existing problems and any worsening of those problems that may occur in the future, it is necessary to establish the assigned risk plan immediately.

It has been argued that an assigned risk plan is not necessary at this time. That assumes that the current liquor liability insurance market is resolving any problem that may have existed. It further assumes that no liquor establishment has been refused liquor liability insurance. However, the lack of insurance carriers willing to write liquor liability insurance on a monoline basis demonstrates that there is a need for the establishment of the assigned risk plan at this time. There has been no indication that new insurance companies are intending to enter the liquor liability insurance market. On the contrary, some companies have indicated that they intend to withdraw from the liquor liability insurance market. Although liquor liability insurance may be available on a multiline basis, Minnesota Statute § 340.11, subd. 21 (1984) mandates only liquor liability insurance and does not require liquor establishments to purchase other liability insurance. Moreover, multiline insurance is an unacceptable alternative to monoline liquor liability insurance for municipalities since many municipalities carry their general liability and workers' compensation protection through a pool created by the League of Minnesota Cities. Approximately 40% of municipalities operate liquor establishments, and if those municipalities were required to purchase their liquor liability insurance on a multiline basis, they would have virtually only one insurance company from which to choose Home Insurance. Since approximately October 1, 1984, Home Insurance Company has been the only insurance company that has

indicated a willingness to insure municipalities, and it has only insured those municipalities on a multiline basis. Thus, if a municipality is unable to purchase a monoline liquor liability insurance product through Columbia, it is forced to purchase its liquor liability insurance on a multiline basis through Home, even though Minnesota Statute § 340.11, subd. 21 (1984) only mandates liquor liability insurance. The diminishing market for liability insurance for municipalities further illustrates the chaotic state of the insurance market for unusual lines of risks.

Even if the market resolved its present situation and coverage became readily available, the crisis which began in December 1984 clearly shows that an assigned risk plan must be created and in place to deal with any future crisises. The Department of Commerce commenced the formal rulemaking process almost immediately after the crisis began but because of the inherent time delay in the Administrative Procedures Act has not as yet been able to establish a plan by that method. Taking this amount of time to respond to a future crisis where possibly no company was willing to offer the coverage would force many liquor vendors out of business.

Many of the factors that establish the need for the assigned risk plan also establish the reasonableness of the assigned risk plan. As discussed above, it is reasonable to establish an assigned risk plan now because Minnesota Statute § 340.11, subd. 21 authorizes its establishment when it is needed. Because the liquor liability insurance market has already been demonstrated to be

chaotic and unstable, and because of the further deteriorating condition of that market as other companies withdraw, it is reasonable to establish the assigned risk plan at this time.

The Commissioner has considered at least two alternatives to establishing the assigned risk plan. One alternative would be to delay the establishment of an assigned risk plan until there is even further evidence of a chaotic and unstable liquor liability insurance market. The Commissioner could wait until more liquor establishments are forced to close or operate without insurance. The rulemaking process, however, takes a minimum of six to nine months, so it is reasonable to establish an assigned risk plan at this time in order to have it ready to be fully operational before the market worsens any further.

Another alternative would be to establish only the framework for an assigned risk plan at this time and delay the actual implementation until the Commissioner makes another determination of immediate need. Once again, however, the Commissioner would probably be required to follow the rulemaking procedure with respect to his determination of a need. The problem with this alternative, of course, is that there would necessarily be some delay in establishing a fully operational assigned risk plan. As previously discussed, an assigned risk plan must be established at this time and made fully operational before the liquor liability insurance market worsens any further. Even if the delay of a rulemaking hearing were minimal, such a delay would be unacceptable to those who would be driven out of business.

Minnesota Rules 2783.0030 Definitions.

Subparts 1 through 10 contain the definitions of terms which it was felt would be useful to have specified in the rules. In many cases, the definitions are quite obvious or reference the statutory language found in the enabling legislation. However, it was thought useful to have as many aspects of the plan contained within Chapter 2783 as possible even if this meant some duplication of language or overlapping of the statute.

Subpart 1. Scope. This section states the obvious that the terms defined in the chapter have the meanings given them unless the context clearly indicates something to the contrary.

Subpart 2. Administrator. This repeats the obvious that the term "Administrator" means the person selected according to this chapter to administer the Assigned Risk Plan. This would be the person or persons authorized to be hired by the Commissioner for the purpose of administering the plan pursuant to Minnesota Statute § 340.11, subd. 23(3).

Subpart 3. Applicant. This definition states the obvious that an "applicant" is someone applying for coverage. Comments about the rules however indicated that for the sake of removing an ambiguity a formal definition should be included in the rule.

Subpart 4. Assigned Risk Plan. This explicitly defines the use of this term to mean only that plan set up pursuant to the provisions of Minnesota Statute § 340.11, subd. 23. Assigned Risk Plan is not specifically defined in either of the referenced subdivisions of the statute. It is clear that the use of the term in the statute contemplates the definition contained in subpart 4.

Subpart 5. Commissioner. The term Commissioner for purposes of Chapters 2782 and 2783 relates only to the Commissioner of Commerce. This is consistent with the enabling legislation previously cited.

Subpart 6. Liquor Vendor. Since the Assigned Risk Plan pertains only to liquor vendors required to prove financial responsibility pursuant to Minnesota Statute § 340.11, subd. 21 and it is possible that there might be other liquor vendors not required to meet that requirement, for the purposes of clarity it was deemed appropriate that liquor vendor as used in Chapters 2782 and 2783 be limited to those vendors subject to Minnesota Statute § 340.11, subd. 21.

Subpart 7. Loss. Since one of the criteria for calculating the premium to be charged a liquor vendor who obtains coverage pursuant to the liquor liability assigned risk plan is the losses that other insurers may have suffered during the past five years in regard to that vendor, it was deemed appropriate to include a definition of loss in this section. Loss is a term widely used in

the insurance industry. In its broad sense it is understood by most people in the industry. However, the Department has determined that loss when used to calculate rates in regard to liquor liability is not so capable of clear interpretation. Lewis E. David's Dictionary of Insurance, Sixth Revised Edition, Page 185 contains the following definition of loss. "The basis for a claim for indemnity or damages under the terms of an insurance policy. Any diminution of quantity, quality or value of property. With reference to policies of indemnity, this term means a valid claim for recovery thereunder. In its application to liability policies, the term refers to payments made in behalf of the insured. (See Claim.)" In regard to the definition of claim found in the same dictionary on Page 57, that definition is "A demand by an individual or corporation to recover under a policy of insurance for loss which may come within that policy or may be a demand by an individual against an insured for damages covered by a policy held by him. In the latter case, such claims are referred to the insurance company for handling on behalf of the insured in accordance with the contract terms. A demand for payment under an insurance contract or bond. The estimated or actual amount of a loss."

Based upon Departmental communication with people engaged in the writing of liquor liability coverage and others with knowledge of the area it was deemed that the broad definition of loss would be unfair to liquor vendors. It also did not reflect the actual practice throughout the industry. The problem with the broad definition of loss is that it would include every claim whether the claim was

deemed to be valid or not by the insurer. Therefore the more limited definition found in the rule which states that only losses for which payment has been made or money reserved would be included for rating purposes was used. This definition means that the "losses" used in the calculation of the premium to be paid by a liquor vendor would be only those "losses" which are indicative of the risk posed by that liquor vendor to the Assigned Risk Plan. Only including losses which have some validity would not penalize the liquor vendor by including in the calculation of his premium facetious claims that are not indicative of the risk the vendor would pose to the assigned risk plan.

Subpart 8. Market Assistance Program. While this definition may seem to be so obvious as to be unnecessary it was included to assure that there was no confusion as to what was meant by the term and that it was limited to the plan established under the referenced statute.

Subpart 9. Monoline Liquor Liability Policy. Monoline and multiline liquor liability insurance policies are the only two ways that this type of coverage is written. Some companies ony want to write the one type and not the other and don't want to be forced to offer the other type. Some liquor vendors do not want to be forced to buy on a multiline basis when all they want to do is obtain the mandated coverage. Accordingly, the rules contain a number of provisions seeking to resolve these problems. Because of the concern

of the affected groups, clearly defining the terms was imperative. While everyone generally understood the terms no existing definition was found in statute or industry usage.

The definition of monoline liquor liability policy restricts the definition to only liquor liability insurance so as to not have an application beyond the intended use. It states the obvious that monoline means only one type of coverage.

Subpart 10. Multiline Liquor Liability Policy. For the reasons stated in regard to subpart 9 a definition of multiline liquor liability policy was also necessary. Multiline obviously means more than one type of coverage. This definition further limits that definition by requiring that liquor liability insurance coverage be one of the types of coverage.

Subpart 11. Premium. This definition incorporates the commonly understood concept that a premium is the price charged for coverage under an insurance policy. Appropriate modifications were made to the definition for the fact that this premium relates to liquor vendors and an assigned risk plan.

Subpart 12. Rate. Rate is usually defined in variations of the following "the cost of insurance per unit; used as a means or base for the determination of premiums." In this particular instance this generally understood concept was used. It was modified to

reflect its use in the context of the assigned risk plan and Chapter 2783. Rate means the cost of coverage under the assigned risk plan per $100 of annual liquor sales.

Subpart 13. Rating Plan. This definition may also appear to be obvious but for the purposes of clarity a definition of rating plan is included. It states that the plan is the method for calculation of rates to be charged and includes the criteria to be applied when calculating the rates to be charged.

Subpart 14. Violations. The liability being insured against under the Liquor Liability Assigned Risk Plan is created primarily by Minnesota Statute § 340.95. That statute premises liability on the illegal selling or bartering of intoxicating liquors or nonintoxicating malt liquors, thereby causing the intoxication of a person who thereafter causes injury to a third party. Because the concept of a violation of the liquor laws is part of liquor liability insurance it is appropriate for purposes of clarity to specify which violations are to be considered in regard to the Liquor Liability Assigned Risk Plan. Accordingly, those violations are specified by this rule so that as much information as possible in regard to the operation of the plan is included in the rules pertaining to the assigned risk plan.

Minnesota Rules 2783.0040 Assigned Risk Plan Administration.

Under the premise that chapter 2783 is of greater utility to anyone dealing with it if as many aspects as possible of the assigned risk plan are contained within the chapter, certain statutory concepts regarding the administration of the plan are repeated in these rules.

Subpart 1 - Administrator and Subpart 2 - Duties. Minnesota Statutes § 340.11, subd. 23(3) allows the Commissioner of Commerce to enter into contracts for the administration of the assigned risk plan. While the literal language of the statute contemplates that the Commissioner of Commerce could administer the plan without the services of an administrator, past practice has shown that to be impractical and other assigned risk plans and plans of a similar nature employ an administrator from outside the Department. Having elected to follow past practice in employing an administrator the definition of administrator then follows the statutory language requiring that the administrator be a qualified insurer or a vendor of risk management services and that there may be more than one or person or persons employed to perform this function. In that same regard, subpart 2, Duties is also a repetition of the statutory directive found in § 340.11, subd. 23(3).

Subpart 3. Appeals. While not specifically called for in the enabling legislation, an appeal process was mentioned as one of the possible rules the Commissioner might include. Consistent with the

concept that everyone is entitled to due process and has a right to a hearing, an appeal process is prescribed by subpart 3. Because lack of insurance coverage caused by the administrator's denial of coverage may have an adverse business result the process is an expedited one. The appeal is to be made within 15 days after the decision of the administrator denying coverage. The administrator is required to make his response within 15 days and the Commissioner is to respond within 10 days thereafter. The longest period of time it would take to have a decision would be 40 days after the denial of coverage. It is possible that a decision might be rendered in a shorter time than that.

Minnesota Rules 2783.0050 Assigned Risk Coverage.

Subpart 2. Minimum Qualifications. Minimum qualifications as set forth in subpart 2 are virtually identical with Minnesota Statute § 340.11, subd. 23(2) and is a modified restatement of that item with the added provision that coverage requires a written application and payment of the appropriate premium amount.

Subpart 3. Disqualifying Factors. This subpart follows the concepts set forth in the Workers' Compensation Assigned Risk Plan as to reasons for denial. With appropriate adjustments so that the language is pertinent to liquor vendors as opposed to workers' compensation situations items A through E are virtually identical to that plan. Items 1 through 5 are the corresponding sections of the Workers' Compensation Assigned Risk Plan.

Subpart 3(A) is included as a basis for disqualification so that the Assigned Risk Plan does not become a means by which insurers could avoid the most onerous and expensive part of liqour liability insurance, the first dollar coverage. If splitting of coverage were allowed, it could attract business to the plan which, if not split, could be insured as part of a voluntary market policy but which the insurer would seek to avoid covering if the option were available. The insurer could then become merely an excess liability writer. This is inconsistent with the plan's purpose.

Subpart 3(B) requires payment of debts owed to the plan and is necessary to prevent abuse of the plan by liquor vendors cancelled for nonpayment of a premium who could, without this provision, continually reapply and be covered without making any payments. Allowing this would jeopardize the financial viability of the plan since cancellation would not be a penalty for failure to pay the premium.

Subpart 3(C) allows the disqualification of a liquor vendor if it refuses to allow an audit to be completed. Since premiums are based upon the dollar volume of liquor sales, if an audit cannot be completed to verify what the sales actually are, a liquor vendor could be able to avoid a portion of the premium that he should be paying by giving incomplete or inaccurate information to the plan. Accordingly, this right to audit is of absolute necessity to the fair and equitable operation of the plan. Without the ability to cancel

for denying the Commissioner or the administrator's right to an audit there would be no penalty and therefore no means of compelling such an audit.

Item (D) pertains to the submission of misleading or erroneous information relates to the same concept as noted in regard to item C above. The efficient operation of the plan and the equitable charging of premiums to the participants can only be based upon accurate and truthful information. Without such information, without the ability to impose a penalty for failure to provide such information, the plan would be unable to operate in a fair and equitable manner.

Item (E) in regard to disregard for safety standards, laws, rules or ordinances pertaining to the offer, sale or other distribution of liquor allows the plan to penalize those who represent an uncontrollable risk to the plan and who have by their actions evidenced a disregard for safety and loss control recommendations. As part of the obligation of any liquor vendor covered under the Assigned Risk Plan compliance with the safety standards, laws, rules and ordinances pertaining to liquor distribution would be a mandatory condition of coverage. It is the violation of these items that give rise to a liquor vendor's liability and therefore the Assigned Risk Plan's exposure under Minnesota Law. If as a part of the insurance contract the liquor vendor is not at least charged with not willfully violating these standards, laws, rules and ordinances, then the exposure of the Assigned Risk Plan is greatly increased, even to the point where it might be deemed to be a virtual certainty that a loss will result for which the assigned risk plan will be responsible.

The plan must be able to deny coverage to liquor vendors who flagrantly disregard their responsibility to not violate the standards, laws, rules and ordinances. Without this ability the plan stops being a method of insuring against a risk and becomes merely a method by which those who may be assessed under the plan, and therefore their policyholders, become guarantors of the liability of this type of liquor vendor.

A combination of losses and violations in excess of 10 was deemed to be an indication that the liquor vendor posed a serious risk to the plan which might require the vendor to be denied coverage. However the vendor has the right to rebut that presumption so that no inequities will occur.

Item (F) is a corollary to items (C) and (D) above in that the Commissioner and Administrator must have adequate information to evaluate the risks posed to the Plan and determine the rates that should be charged.

Item (G) is a very basic restatement of contract law where failure of one party to comply with their obligations under a contract allows the other party to terminate it. This also follows the philosophy that there are certain minimum requirements that the liquor vendor must meet and that failing to do so the liquor vendor is penalized by denial of coverage. This is very obvious and might not need to be restated in the rule but so as to include as many of the aspects of the plan as possible for the sake of clarity in the rules it has been incorporated.

Item (H) restates the statutory requirement but is included in the rule so that the Chapter includes everything in one place anyone dealing with the Plan needs to know. Reference back and forth between the statute and the Chapter is therefore not necessary.

Subpart 4. Disqualification After Coverage Granted. This subpart resolves two conflicting aspects of Chapters 2782 and 2783. Chapter 2782 is intended to allow the private market to secure coverage for an applicant without recourse to the assigned risk plan. Chapter 2783 is intended to assure the liquor vendor of coverage so that he may continue in business. This Subpart allows the market assistance program a minimum of 15 business days to attempt to meet its objective while still assuring the liquor vendor of coverage.

Subpart 5. Notice. Since the ability of a liquor vendor to apply to the Assigned Risk Plan is premised upon his already having been denied coverage by an insurer and that lack of coverage will put him out of business, an expeditious response to his application is crucial to keep him in business. Therefore, only ten days are allowed for the denial or granting of coverage to assure that the vendor is prejudiced as little as possible. In regard to a notice of termination, 30 days is proposed so that the vendor would have adequate time to make whatever plans would be appropriate if his coverage is to be terminated.

Minnesota Rules 2783.0060 Rating Plan.

Classifications. There is no class plan in liquor liability which is used uniformly by the liquor liability insurance industry. Most classification plans used by insurance companies do have a common core, with liquor vendors being divided into restaurants, bars, and package stores. However, this basic, three part, system has been refined by most companies through the use of additional classes and credit/debit plans.

Additional factors considered by insurers include the following:

1) the number of claims and/or violations

2) the type of vendor, e.g., country clubs, fraternal clubs, hotels, motels

3) the percentage of liquor sold, e.g., 15% or 25% or 30% of total receipts

4) whether or not the establishment is owned by a municipality

5) whether the only liquor sold is 3.2 beer and wine

6) what time the vendor closes; how many days a week the place is open

7) the type of entertainment, e.g., dancing, piano player, juke box, DJ's playing recorded music

8) whether or not there are pool tables, air hockey, pinball, and video games

9) how many times a year (if any) the facilities are rented

10) whether sets ups are available

11) the location, e.g., the county, the size of city, inside of the city limits

Insurance companies use these class plans and credit/debit systems to identify profitable market segments and to surcharge or reject risks where losses are more likely to occur.

In comparison with the sytems used by many insurers, the class structure for the Assigned Risk Plan is relatively simple. There are several reasons for this. First, the Department of Commerce wants the administration of the plan to be as straight forward as possible. Secondly, a simple system is appropriate for the class of business the plan expects to write. Insureds written by the plan will have been rejected by the private market, and will likely be worse than average. With risks that are more homogeneous, the Plan does not need a complicated class system.

A third reason is that credible data to support a more complex class system does not exist. The relationship between class rates and the credit/debit structure is largely based on underwriting judgment. These sorts of judgments, which are used in the private market, are more questionable in an Assigned Risk Plan.

Finally, the class system selected for the Plan is the one used by Columbia Casualty Company. Minnesota Statute § 340.11, subd. 23(7) requires Assigned Risk Plan rates to be not lower than the prevailing market rate. Columbia is the principal insurer currently accepting business in the Minnesota market. Its rates are therefore the prevailing rates charged for liquor liability coverage. Using Columbia's class plan with only a slightly higher rate satisfies the statutory requirement.

The class plan for the Assigned Risk Plan has a basic division of risks according to the number of losses and/or violations in the past five years. A risk with at most three losses or violations is rated according to the type of business, in one of three different classes. Risks with four or more losses or violations have the same rate, no matter what type of business they are in.

The lowest rate is for liquor vendors which have an off-sale business only. Liquor vendors with a combined off-sale/on-sale will not be rated in this class. In particular, municipal off-sale stores which are adjacent to a municipal bar will be combined with the bar for rating purposes.

The remaining two classes differentiate between on-sale establishments. The first class consists of restaurants where liquor sales are less than food sales and other "good risks". Generally included here are country clubs, fraternal clubs, and bars which serve 3.2 beer and wine only.

The second class is for bars and other establishments which sell more liquor than food. Bowling alleys are generally included here. Many insurance companies will not write these risks at all. Other companies underwrite very carefully.

The rate for liquor vendors with four or more losses is not based upon the type of business. If a vendor has several losses, then the most important fact is that this business generates claims. It no longer matters what type of business it is.

Rates

The first issue in setting rates is whether or not to use a graduated rate system. Several companies charge one rate for the first $25,000 of liquor receipts, a second and lower rate for the next $25,000, and a third and lowest rate for liquor receipts over $50,000. Other companies have a constant rate which does not vary according to the volume of business. The underlying issue here has to do with what an insurance company believes about the potential for loss, i.e., does the loss potential decrease as more liquor is sold?

The Assigned Risk Plan has adopted a constant rate rather than a graduated one. The rationale of a constant rate is that as liquor receipts increase, more customers are being served, and the loss potential increases proportionally. For example, assume that two risks are similar except that one has $200,000 in liquor receipts while the other has $100,000. If the two establishments are serving the same proportion of food and alcohol in the same sort of atmosphere, then we expect the first to be serving liquor to approximately twice as many people. The exposure, therefore, is twice as great. In other words, the potential for loss varies directly with the amount of liquor sold and a constant rate is appropriate.

Minnesota law requires the Assigned Risk Plan premiums to be no lower than the average premium in the private market. As a result, the rates for the various classes were based on what insurers are now charging.

Also as policies have already been issued and the original order under which the Assigned Risk Plan was created provided that there would adjustments in rates once permanent rules were adopted, language to that effect is included in this section.

Minnesota Rules 2783.0070 Assessments.

Minnesota Statutes § 340.11, subd. 23(4) gives the Commissioner the authority to assess insurers to fund the obligations of the Assigned Risk Plan. Because payment of the obligation of the Assigned Risk Plan in a timely manner is important to those people who may have claims against the plan it is not appropriate that there be an undue delay in obtaining the funds to satisfy the obligations. Accordingly, upon assessment a 30 day period is provided for the payment to be made. Appropriate powers are granted to assure that the payment is made and that it would not be more beneficial for an insurer to delay payment as it would be if the Commissioner had no authority to compel payment in a timely manner.

Minnesota Rules 2783.0080 Policy and Rate Filing.

Rules previously issued by the Department exempted from filing requirements policies and information pertaining to rates in regard to commercial line type coverage. Liquor Liability Insurance was included in that exemption. Therefore the Department was without warning or information as to the problems regarding this type of

insurance. To prevent this in the future this Part mandates filing with the Department.

Minnesota Rules 2783.0090 Assigned Risk Plan Advisory Committee.

While not a requirement under the statute the legislature did indicate that an advisory committee might be appropriate when it mentioned certain factors that might be considered in rulemaking. As advisory committees are used in various other areas and have been useful in many ways, it was deemed appropriate that such an advisory committee be created in regard to the Liquor Liability Assigned Risk Plan. The structure of the committee represents the Commerce Department's view that there are various groups affected by liquor liability insurance and that they all should have appropriate representation.

Minnesota Rules 2783.0100 Request for Information.

Subpart 1 and 2. Both the Commissioner and the Administrator can only perform their functions if they are able to secure complete and accurate information in regard to liquor vendors or to insurers. Information is always important in evaluating rates, the risks involved and the adequacy of the operation of the plan. These subparts give the Commissioner and the Administrator the power to obtain this information. Without this power the effectiveness of both the Commissioner and the Administrator in regard to the Assigned Risk Plan would be greatly reduced.

IMPACT ON SMALL BUSINESS

Pursuant to Minn. Stat. § 14.115, subd. 2 the Department has considered the feasibility of modifying the rules to lessen any negative effects on small business. In making that determination, the Department concluded that the primary impact of the rules falls on two groups. The first being insurers and the second liquor vendors. For the most part insurers would not fall within the classification of small businesses. The effect of the rules in addition would fall upon the insurers primarily in regard to the assessment for any unfunded obligation of the plan. As the assessment provision is statutory and is only incorporated within the rule for reference purposes, there would be little, if any, possibility of modifying the assessment's effect on insurers since it is not within the power of the Department to by rule amend the statute.

As to liquor vendors, it was determined that all liquor vendors in the State of Minnesota would have a possibility of being involved with the Liquor Liability Assigned Risk Plan. Further, virtually all liquor vendors would be classified as small businesses. Therefore, as to the impact of the Liquor Liability Assigned Risk Plan on small businesses, which in this case are the liquor vendors, the Department acted as if all liquor vendors were small businesses. The impact on liquor vendors of any part of these rules always contemplated that these liquor vendors would be small businesses.

Accordingly, items A, B, C, D and E of Subpart 2 were all considered in the promulgation of these rules and as it was deemed liquor vendors as a class were likely to be small businesses no separate standards were prepared for small businesses. No higher standards were set for non-small business liquor vendors.

As to the participation of the liquor vendors in the promulgation of the rules, the testimony of the liquor vendors at the hearing conducted by the Department before the issuance of the order establishing the Assigned Risk Plan and all related testimony and communications by liquor vendors has been considered in adopting these rules. In addition, the participation of various groups who represent liquor vendors was solicited. Notification of the rulemaking was published in the State Register. Meetings were held with representatives of the liquor industry and comments from them incorporated in the rules.

The impact of the Assigned Risk Plan was part of the hearing conducted by the Commissioner prior to the issuance of the Order. Direct notification of small businesses affected by the rule was determined to be not feasible because of the cost of mailing notices to more than 5,000 liquor vendors. In addition the rulemaking process and the Assigned Risk Plan in general have been and are the subject of extensive coverage in newspapers throughtout the state which have given a greater awareness to liquor vendors and the general public of the Assigned Risk Plan and the process of promulgating rules for it than any method the Department could have used.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Governing Liqour Liability
Market Assistance Program

STATEMENT OF NEED AND
REASONABLENESS OF
PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statute § 340.11, subdivision 21 and 23 provides for mandatory liquor liability insurance as a condition of licensing for liquor vendors. These subdivisions also provide for the creation and operation of a liquor liability assigned risk plan. Chapter 320, Laws of Minnesota 1983 also required the creation of a market assistance program for those liquor vendors who were having difficulty in obtaining the required coverage. Use of this market assistance program was permissive in the original legislation and not a prerequisite for eligibility for the assigned risk plan.

When the events of late 1984 created the necessity for the implementation of the assigned risk plan (as discussed in the Statement of Need and Reasonableness for the Assigned Risk Plan) the insurance industry became convinced that for the market assistance program to be effective when the assigned risk plan became operational the program had to be a prerequisite for participation in the assigned risk plan. Absent this requirement the insurance industry felt the market assistance program would not be used and liquor vendors who could have obtained coverage in the private market would instead obtain coverage from the assigned risk plan. Accordingly negotiations began between the insurance industry representatives, liquor vendor representatives and the Department of Commerce. As a

result of those negotiations certain changes in Minnesota Statute § 340.11, subdivision 21 and 23 were agreed upon. In addition, the same parties also agreed upon the rules for the market assistance plan and the liquor liability assigned risk plan to carry out § 340.11, subdivisions 21 and 23. These three items were interlocking parts of an agreement between the parties. The statutory changes were part of H.F. 265 which was passed by the 1985 Legislature and enacted into law as Chapter -----, Session Laws of 1985. The market assistance program is now a prerequisite to eligibility for the assigned risk plan. The proposed rules carry out the statute as amended and result from the aforementioned agreement.

Minnesota Rules 2782.0100 PURPOSE

This section specifies the purpose of Chapter 2782; to establish the market assistance program required by Minnesota Statute § 340.11, subdivision 21. The establishment of the program is mandated by Statute and this rule merely restates the statutory directive.

Minnesota Rules 2782.0200 DEFINITIONS

This part contains the definitions to be used in this chapter. Subparts 2, 3, 4, 5, 6, 7 and 8 are identical to the definitions found in the liquor liability assigned risk plan. The following statement of the need and reasonableness of the definitions is also

identical to that found in the statement of need and reasonableness for the assigned risk plan rules as to those subparts (Chapter 2783 Minnesota Rules).

Subpart 1. Scope. This section states the obvious that the terms defined in the chapter have the meanings given them unless the context clearly indicates something to the contrary.

Subpart 2. Administrator. This repeats the obvious that the term "Administrator" means the person selected according to this chapter to administer the Assigned Risk Plan. This would be the person or persons authorized to be hired by the Commissioner for the purpose of administering the plan pursuant to Minnesota Statute § 340.11, subd. 23(3).

Subpart 3. Applicant. This definition states the obvious that an "applicant" is someone applying for coverage. Comments about the rules however indicated that for the sake of removing an ambiguity a formal definition should be included in the rule.

Subpart 4. Assigned Risk Plan. This explicitly defines the use of this term to mean only that plan set up pursuant to the provisions of Minnesota Statute § 340.11, subd. 23, Assigned Risk Plan is not specifically defined in either of the referenced subdivisions of the statute. It is clear that the use of the term in the statute contemplates the definition contained in subpart 4.

Subpart 5. Commissioner. The term Commissioner for purposes of Chapters 2782 and 2783 relates only to the Commissioner of Commerce. This is consistent with the enabling legislation previously cited.

Subpart 6. Liquor Vendor. Since the Assigned Risk Plan pertains only to liquor vendors required to prove financial responsibility pursuant to Minnesota Statute § 340.11, subd. 21 and it is possible that there might be other liquor vendors not required to meet that requirement, for the purposes of clarity it was deemed appropriate that liquor vendor as used in Chapters 2782 and 2783 be limited to those vendors subject to Minnesota Statute § 340.11, subd. 21.

Subpart 7. Loss. Since one of the criteria for calculating the premium to be charged a liquor vendor who obtains coverage pursuant to the liquor liability assigned risk plan is the losses that other insurers may have suffered during the past five years in regard to that vendor, it was deemed appropriate to include a definition of loss in this section. Loss is a term widely used in the insurance industry. In its broad sense it is understood by most people in the industry. However, the Department has determined that loss when used to calculate rates in regard to liquor liability is not so capable of clear interpretation. Lewis E. David's Dictionary of Insurance, Sixth Revised Edition, Page 185 contains the following definition of loss. "The basis for a claim for indemnity or damages under the terms of an insurance policy. Any diminution or quantity,

quality or value of property. With reference to policies of indemnity, this term means a valid claim for recovery thereunder. In its application to liability policies, the term refers to payments made in behalf of the insured. (See Claim.)" In regard to the definition of claim found in the same dictionary on Page 57, that definition is "A demand by an individual or corporation to recover under a policy of insurance for loss which may come within that policy or may be a demand by an individual against an insured for damages covered by a policy held by him. In the latter case, such claims are referred to the insurance company for handling on behalf of the insured in accordance with the contract terms. A demand for payment under an insurance contract or bond. The estimated or actual amount of a loss."

Based upon Departmental communication with people engaged in the writing of liquor liability coverage and others with knowledge of the area it was deemed that the broad definition of loss would be unfair to liquor vendors. It also did not reflect the actual practice throughout the industry. The problem with the broad definition of loss is that it would include every claim whether the claim was deemed to be valid or not by the insurer. Therefore the more limited definition found in the rule which states that only losses for which payment has been made or money reserved would be included for rating purposes was used. This definition means that the "losses" used in the calculation of the premium to be paid by a liquor vendor would be only those "losses" which are indicative of the risk posed by that liquor vendor to the Assigned Risk Plan. Only including losses which

have some validity would not penalize the liquor vendor by including in the calculation of his premium facetious claims that are not indicative of the risk the vendor would pose to the assigned risk plan.

Subpart 8. Market Assistance Program. While this definition may seem to be so obvious as to be unnecesary it was included to assure that there was no confusion as to what was meant by the term and that it was limited to the plan established under the referenced statute.

Subpart 9. Monoline Liquor Liability Policy. Monoline and multiline liquor liability insurance policies are the only two ways that this type of coverage is written. Some companies only want to write the one type and not the other and don't want to be forced to offer the other type. Some liquor vendors do not want to be forced to buy on a multiline basis when all they want to do is obtain the mandated coverage. Accordingly, the rules contain a number of provisions seeking to resolve these problems. Because of the concern of the affected groups clearly defining the terms was imperative. While everyone generally understood the terms no existing definition was found in statute or industry usage.

The definition of monoline liquor liability policy restricts the definition to only liquor liability insurance so as to not have an application beyond the intended use. It states the obvious that monoline means only one type of coverage.

Subpart 10. Multiline Liquor Liability Policy. For the reasons stated in regard to subpart 9 a definition of multiline liquor liability policy was also necessary. Multiline obviously means more than one type of coverage. This definition further limits that definition by requiring that liquor liability insurance coverage be one of the types of coverage.

Subpart 11. Premium. This definition incorporates the commonly understood concept that a premium is the price charged for coverage under an insurance policy. Appropriate modifications were made to the definition for the fact that this premium relates to liquor vendors and an assigned risk plan.

Subpart 12. Rate. Rate is usually defined in variations of the following "the cost of insurance per unit; used as a means or base for the determination of premiums." In this particular instance this generally understood concept was used. It was modified to reflect its use in the context of the assigned risk plan and Chapter 2783. Rate means the cost of coverage under the assigned risk plan per $100 of annual liquor sales.

Subpart 13. Rating Plan. This definition may also appear to be obvious but for the purposes of clarity a definition of rating plan is included. It states that the plan is the method for calculation of rates to be charged and includes the criteria to be applied when calculating the rates to be charged.

Subpart 14. Violations. The liability being insured against under the Liquor Liability Assigned Risk Plan is created primarily by Minnesota Statute § 340.95. The statute premises liability on the illegal selling or bartering of intoxicating liquors or nonintoxicating malt liquors, thereby causing the intoxication of a person who thereafter causes injury to a third party. Because the concept of a violation of the liquor laws is part of liquor liability insurance it is appropriate for purposes of clarity to specify which violations are to be considered in regard to the Liquor Liability Assigned Risk Plan. Accordingly, those violations are specified by this rule so that as much information as possible in regard to the operation of the plan is included in the rules pertaining to the assigned risk plan.

Minnesota Rules 2782.0300 MARKET ASSISTANCE PROGRAM COMMITTEE

This Part creates the committee mandated by Minnesota Statute § 340.11, subdivision 21 as amended by Chapter -----, Session Laws of 1985. The committee must be representative of insurance carriers and producers, liquor vendors and the public, with no less than one-half the members representing casualty insurers and surplus lines agents and brokers. The later requirement was determinative of the size of the committee since representation on the committee by those insurers and brokers currently the most actively involved was deemed a necessity. To accomplish this at least 6 positions were required. The other six positions were divided equally among the other groups

required to be represented. While the size of the committee may be larger than appropriate for optimum effectiveness it is the smallest number that will include those most actively involved currently in the market and satisfy the statutory requirements.

The other provisions of this subpart provide the means for replacing members and sets the term of office. Because of changes in employment members may no longer be representative of the group they were appointed to represent. Since the participation of all representated groups is critical to the effective operation of the group it was felt to be imperative that such persons be immediately replaced by someone truely representative of their group.

For the same reasons a one year term was specified to allow for changes in employment and to allow for the replacement of those whose ardor for participation might have begun to wane. Fresh infusions of energy by new members would keep the program viable and would allow companies and groups not part of the original committee to have their chance to participate. June 1 was arbitrarily picked as the date for the members term to begin as it was the 1st day of the month closest to the effective date of the statutory changes.

Minnesota Rules 2782.0500 MEETINGS

As the program will only operate when there is a request for assistance regularly scheduled meetings would be unnecessary. Accordingly the mechanism for calling meetings allows the committee to only meet when necessary and then to meet as quickly and as often as the situation merits and the committee deems appropriate.

Minnesota Rules 2782.0500 ELIGIBILITY FOR ASSISTANCE

Minnesota Statute § 340.11, subdivision 23, as amended by Chapter ----, Session Laws of 1985 requires that the application for coverage to the assigned risk plan also be filed with the Market Assistance Program.

As the Market Assistance Program has no mailing address or place of business to file the application at, a filing with the Department of Commerce, with the Department then forwarding the application to wherever the committee might from time to time direct, was deemed to be the simplest way for applicants to satisfy this requirement. While the working address of the committee would likely change with each change in officers, the Department would always be aware of the change and act accordingly. Applicants would not be aware of the changes and would find it difficult to locate the program for purposes of satisfying this requirement.

Minnesota Rules 2782.0600 DISPOSITION OF APPLICATION

This rules specifies how the application is to be dealt with and constitutes the essence of the program.

None of the actions referred to in Subpart 1 of this rule are mandatory but rather list the possible ways of solving the problem of lack of availability, beginning with the simplest-having the most

recent insurer extend coverage-to the least attractive from the position of the participants-asking participants to extend coverage to the applicant.

Making the last alternative as fair as possible is accomplished by the creation of the list of participants in Subpart 2. So that all participants share equally in the burden their position on the list is continually rotating.

Sharing of the burden of offering coverage to applicants is critical to the program so Subpart 4 requires all participants to quote at least one out of every three applications. If the burden of offering coverage was felt to unfairly fall on any participant or group of participants their continued participation in the program would be unlikely.

The requirement that each participant quote on at least one of every three applications was deemed necessary to assure that participation in the program represented a sincere commitment to assist in solving the problem of lack of availability of liquor liability insurance. This requirement demands that participants actively share part of the burden of extending coverage and not merely be in the program without ever extending coverage or only extending coverage to very good risks. Agreeing to be part of the program, by virtue of this subpart, means that the participant will willingly shoulder an equal part of the burden the rest of the participants are carrying. Since participation in the program is not mandatory no one has to incur this obligation. But if they do chose to participate they do so with equal risk.

Subparts 3 and 5 merely specify the method in which applications are handled. It is arguably unnecessary to spell out such obvious and mundane aspects of the program but they are specified so that there is no question that all participants know how the process is handled and that the process is fair.

Subpart 6 of this rule contains critical requirements for both the market assistance program and the liquor liability assigned risk plan. To participate in the assigned risk plan an applicant must be rejected for insurance and fail to obtain coverage through the market assistance program. These requirements may seem simple but defining what constitutes rejection or failure to obtain coverage becomes a difficult criteria which this section and the definitions found in 2782.0200 seek to alleviate.

Liquor vendors and insurers have differing goals, needs and outlooks which must be accomodated. Insurers do not want to be required to offer a type of coverage, monoline for example, because they participate in the program that they would not normally offer. Liquor vendors on the other hand don't want to be forced to buy all their insurance, (multiline coverage) through an insurer when all they want is liquor liability coverage (monoline).

This subpart allows a participant to quote on their normal basis, for example--multiline only--even if the applicant has asked for monoline. If the applicant cannot receive coverage for monoline only as they requested the statute deems this to be a notice of refusal which allows the applicant to seek coverage from the assigned risk plan

The rest of the subpart describes the mechanical process for completing the work on the application and follows the concept already set forth whereby as many of the procedures as possible are spelled out so that the possibility of confusion is reduced. This is done even where describing this in a rule might be deemed unnecessarily over descriptive or repetitive of the statute.

For the same reason, the question of the payment of a commission to the agent is also dealt with. This subpart does not require the payment of a fee or commission by the insurer but it also does not preclude it. Agency contracts between the insurer and the agent may already require that a fee be paid.

Insurers are thus not compelled to pay fees to agents with whom they have no prior contractual relationship. Also much of the work normally done by the agent is done by the committee and the insurer.

Agents are also not required to work for free so payment of a fee by the applicant is allowable if negotiated before the application so the applicant's coverage can't be held hostage to the payment of a fee after coverage is offered.

Subpart 7 merely precludes the applicant from shopping for a better offer. The common purpose of the liquor liability market assistance program and the liquor liability assigned risk plan is to provide coverage, not the best price. Therefore once coverage is offered the duties of both the program and the plan to the applicant have been satisfied.

Subpart 8 relates what might be done if all else fails. All actions specified are permissive and the likelihood of their being successful is not great after all other methods have already been

unsuccessfully employed. They are set forth to allow the committee one last effort to obtain coverage before turning the applicant over to the assigned risk plan.

Subpart 9 is intended to assure that the needs of insurers and liquor vendors are both met. Insurers want to be able to use the Market Assistance Program to place liquor vendors through the private market and not through the assigned risk plan. Liquor vendors want to be assured they have the statutorily required coverage so they may continue in business. This subpart gives the market assistance program a minimum of 15 business days to place the applicant. If the applicant requires coverage before the 15 days are up the assigned risk plan may extend it subject to cancellation if coverage is obtained through the Market Assistance Program within the required time. Liquor vendors are assured of coverage and the insurers have an adequate amount of time to proceed under the Market Assistance Program.

Subpart 10 merely specifies when failure to place must be acknowledged to the applicants. The 24 hour period is long enough for the assigned risk plan to act since they received the application at the same time as the Market Assistance Program. It also prevents the liquor vendor from coming down to the very last minute and not knowing who he will have coverage with or if he will have coverage. This requirement is subject to Subpart 9 provided the applicant is notified of that.

Minnesota Rules 2787.0700 PROGRAM PARTICIPATION

These sections merely provide how to begin and end participation in the program. The 90 day period for termination was deemed to be the minimum needed to allow for an orderly withdrawal and adjustment of the list of insurers and pending applications. Because the committee only meets from time to time as needed, some period of time was deemed necessary to allow the committee to act upon the withdrawal. Withdrawal effective immediately upon receipt of notice would greatly impair the committee's ability to carry out its obligations and might unnecessarily require it to meet immediately on numerous occasions merely to make the adjustments withdrawal would require. The ability to deal with several adjustments at one meeting and to seek replacements prior to when withdrawal is effective would be aided by a longer withdrawal period. 90 days was felt to be the time period most conducive to those ends while least onerous to the withdrawing participant.

Minnesota Rules 2782.0800 REPORTS

The Commissioner needs to know how the program is working and what problem areas exist if any. A report was felt to be the best way to do this. If problems begin to emerge which cannot be monitored on an annual basis reports on a more frequent basis made be requested to keep the commissioner abreast of matters.

IMPACT ON SMALL BUSINESS

Pursuant to Minn. Stat. § 14.115, subd. 2 the Department has considered the feasibility of modifying the rules to lessen any negative effects on small business. In making that determination, the Department concluded that the primary impact of the rules falls on two groups. The first being insurers and the second liquor vendors. For the most part insurers would not fall within the classification of small businesses. The effect of the rules in addition would fall upon the insurers primarily in regard to the assessment for any unfunded obligation of the plan. As the assessment provision is statutory and is only incorporated within the rule for reference purposes, there would be little, if any, possibility of modifying the assessment's effect on insurers since it is not within the power of the Department to by rule amend the statute.

As to liquor vendors, it was determined that all liquor vendors in the State of Minnesota would have a possibility of being involved with the Liquor Liability Assigned Risk Plan. Further, virtually all liquor vendors would be classified as small businesses. Therefore, as to the impact of the Liquor Liability Assigned Risk Plan on small businesses, which in this case are the liquor vendors, the Department acted as if all liquor vendors were small businesses. The impact on liquor vendors of any part of these rules always contemplated that these liquor vendors would be small businesses.

Accordingly, items A, B, C, D and E of Subpart 2 were all considered in the promulgation of these rules and as it was deemed liquor vendors as a class were likely to be small businesses no separate standards were prepared for small businesses. No higher standards were set for non-small business liquor vendors.

As to the participation of the liquor vendors in the promulgation of the rules, the testimony of the liquor vendors at the hearing conducted by the Department before the issuance of the order establishing the Assigned Risk Plan and all related testimony and communications by liquor vendors has been considered in adopting these rules. In addition, the participation of various groups who represent liquor vendors was solicited. Notification of the rulemaking was published in the State Register. Meetings were held with representatives of the liquor industry and comments from them incorporated in the rules.

The impact of the Assigned Risk Plan was part of the hearing conducted by the Commissioner prior to the issuance of the Order. Direct notification of small businesses affected by the rule was determined to be not feasible because of the cost of mailing notices to more than 5,000 liquor vendors. In addition the rulemaking process and the Assigned Risk Plan in general have been and are the subject of extensive coverage in newspapers throughtout the state which have given a greater awareness to liquor vendors and the general public of the Assigned Risk Plan and the process of promulgating rules for it than any method the Department could have used.

Insurance Federation of Minnesota
1310 Pioneer Building
P.O. Box 1467
St. Paul, MN 55101
(612) 292-1099

June 18, 1985

Mr. Richard G. Gomsrud
Department Counsel
Office of the Commissioner
State of Minnesota
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Mr. Gomsrud:

This letter regards the proposed liquor liability market assistance program rules to be adopted through the Administrative Procedure Act process.

As we previously discussed, prospective members of the program need to evaluate prospective participation in same. We request that you inform the Antitrust Division of the Minnesota Attorney General's Office as to relevent aspects of the program (including a copy) and request that they inform you of their enforcement intentions under the Minnesota Antitrust laws in relation thereto. Our request, of course, assumes that operation, in fact, will be within the program parameters as approved by the Commissioner.

As you know, the rationale for requesting such a letter is that the Minnesota antitrust law is not necessarily governed by the recent U.S. Supreme Court decisions about state action and does not include a McCarran-Ferguson type exemption. The state antitrust law has its own exemption. Therefore, while we can evaluate the market assistance program under the federal anti-trust laws, we lack sufficient guidance under the state antitrust laws.

In addition, if it is desired to attempt to implement the proposed program prior to the rules becoming effective, we need Attorney General's Office review and indication of their enforcement intentions.

Your assistance in this matter is appreciated.

With kind regards, I am

Sincerely,

Ralph J. Marlatt,
President

RJM:cw

Insurance Federation of Minnesota
1310 Pioneer Building
P.O. Box 1467
St. Paul, MN 55101
(612) 292-1099

June 18, 1985

Mr. Richard G. Gomsrud
Department Counsel
Office of the Commissioner
State of Minnesota
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Proposed Market Assistance Plan
and Assigned Risk Plan Rules

Dear Mr. Gomsrud:

This letter is written regarding the captioned rulemaking proceedings which have been/or will be noticed for hearing as noncontroversial rules. The Insurance Federation of Minnesota and its 73 member companies support these rules.

The Laws of Minnesota, 1985 Chapter 309, contains the statutory authorization for the captioned rules. This authorization together with the two sets of rules constitute, in our view, an appropriate compromise with all affected parties. The compromise statute and rules should have the net effect of relieving the perceived dram shop insurance availability problem in Minnesota. As a part of a reasonable compromise on a difficult issue, we would support the need for and resonableness of these rules if they are adopted and implemented as drafted.

With kind regards, I am

Sincerely,

Ralph J. Marlatt,
President

RJM:cw

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Governing the Liquor Liability Market Assistance Program	CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, ALAN I. GILBERT, 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.

Alan I. Gilbert

Special Assistant Attorney General

Dated: 8/7/85

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Governing the Liquor Liability Assigned Risk Plan

AFFIDAVIT 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 he is Department Counsel for the Department of Commerce.

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

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

Richard G. Gomsrud
Department Counsel, Department of Commerce

Subscribed and sworn to before me this
6th day of August, 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 Rules Governing the Liquor Liability Market Assistance Program	AFFIDAVIT 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 he is Department Counsel for the Department of Commerce.

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

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

Richard G. Gomsrud
Department Counsel, Department of Commerce

Subscribed and sworn to before me this
6th day of August, 1985.

Nancy I. Link

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

In the Matter of the Proposed
Rules Governing the Liquor
Liability Assigned Risk Plan
and the Liquor Liability Market
Assistance Program

AFFIDAVIT OF
RICHARD G. GOMSRUD

RICHARD G. GOMSRUD, being first duly sworn does hereby make the following statement.

That he is Department Counsel for the Minnesota Department of Commerce and has been involved with the promulgation of the above captioned rules since the initiation of the rulemaking process.

Although the Notice of Intent to Adopt Rules without a Public Hearing was published in the June 24, 1985 State Register the events that led to that publication began in December of 1984. At that time numerous Minnesota liquor vendors were facing the loss of their statutorily mandated dramshop insurance coverage due to the insolvency of one carrier, the prohibition of the Bank of Ireland from continuing to write insurance in the United States and the withdrawal of other carriers from offering the coverage.

Because of that crisis a hearing was held on February 4, 1985 pursuant to Minnesota Statutes Section 340.11,subdivisions 21 and 23 to determine if it was necessary to activate the liquor liability assigned risk plan.

The hearing was held after notice had been published in the State Register on January 21, 1985 and after wide spread publicity about the crisis and the hearing in the media throughout the state. The Order for Hearing was also served upon all insurance carriers licensed to do business in the state.

After the hearing an Order was issued by the Commissioner activating the Liquor Liability Assigned Risk Plan. That Order was appealed by members of the insurance industry. Ultimately the Commissioner's right to proceed as he did was upheld by the Minnesota Court of Appeals.

The rulemaking process was proceeding at the same time as the hearing process. Notice of Intent to Solicit Outside Opinion was published in the January 7, 1985 State Register.

On March 4, 1985 proposed emergency rules were published in the State Register. Because of the litigation involving the establishment of the assigned risk plan they were never adopted.

On March 25, 1985 proposed rules for the assigned risk plan and a Notice of Hearing on the rules were published in the State Register. The hearing was scheduled for April 29, 1985. Again because of the litigation the hearing was postponed.

Before the hearing was rescheduled numerous meetings were held between the department, insurance carriers, liquor vendors, members of the Legislature and other groups which resulted in minor modifications to the assigned risk plan rules, statutory changes to the enabling legislation and new rules for the market assistance program.

As a result of the meetings and changes various insurance groups previously opposed to the assigned risk plan accepted the assigned risk plan rules, as modified from those originally published and the new market assistance program rules. As a result the new rules for both the liquor liability assigned risk plan and the liquor liability market assistance program were published on June 24, 1985 in the State Register as non-controversial rules. All insurance carriers licensed to do business in the State of Minnesota were served with a copy of the Notice to Adopt Rules Without a Public Hearing and a copy of both sets of rules. No requests for a hearing were received.

Richard G. Gomsrud

Subscribed and sworn to
before me this 6th day of
August, 1985.

Nancy I. Link

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