

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed
Amendments to the Rules Governing
Self-Insurance for Workers' Compensation
4 MCAR § 1.9285 - § 1.9294

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED AMENDMENTS

STATEMENT OF AUTHORITY

Minn. Stat. § 176.181, subd. 2 requires every employer in the State of Minnesota, except political subdivisions, to either insure payment of compensation under the Workers' Compensation Act (Minn. Stat. ch. 176) through an authorized insurance company, or obtain an order from the Commissioner of Insurance (hereinafter "Commissioner") permitting the employer to self-insure. Pursuant to the authority set forth in Minn. Stat. § 176.181, subd. 2. Rules were adopted on June 10, 1980, setting out the terms conditions, and requirements applicable to employers desiring to self-insure, either individually or as a member of a group, and applicable to those entities who will be administering and servicing workers' compensation self-insurance programs. The above-captioned amendments are proposed by the Commissioner pursuant to the authority set forth in Minn. Stat. § 176.181, subd. 2.

On October 27, 1980, the Commissioner published Notice of Intent to Solicit Outside Information for his consideration of amendments to the rules governing self-insurance for workers' compensation.

FACTS ESTABLISHING NEED AND REASONABLENESS

As more specifically stated below the proposed amendments are needed in order to better regulate employers self-insuring their workers' compensation liability pursuant to the requirements of Minn. Stat. § 176.181, subd. 2. As more fully indicated below, the proposed amendments reasonably address the above-stated need.

4 MCAR § 1.9288

Rule 4 MCAR § 1.9288 specifies the types of securities and surety bonds that will be accepted by the Commissioner for the purpose of complying with the deposit requirement of 4 MCAR § 1.9291 G and § 1.9292 H. In addition, this rule describes the method by which employers shall file securities or surety bonds and how long those securities or bonds need to remain on deposit.

Subdivision H of this section, which is proposed to be amended herein, presently allows an employer to exchange securities or a surety bond for other securities or surety bond of like amount. The proposed change is needed in this subdivision because it presently provides that when the employer replaces a security deposit with a surety bond, the securities previously deposited are returned to the employer. In such an instance the new surety bond will only assure payment of accruing liabilities beginning on the date the surety bond was effective and will not cover the prior time period during which the employer has used securities to meet the deposit requirement. Since the securities are required to be returned to the employer in this instance there will be no source from which benefits for claims arising in the prior time period can be paid in the event the employer is no longer able to make such payments. Thus, a change is needed in this rule to cure this defect.

The proposed amendment to this subdivision requires that if an employer replaces securities on deposit with a surety bond deposit, it will have to maintain on deposit securities sufficient to meet its outstanding workers' compensation liability for the prior period during which the securities were on deposit. This amendment further anticipates that no securities will need to be maintained on deposit when the outstanding liability reaches zero. This amendment is reasonable since it will provide a source for payment of benefits for claims arising during this time period in the event the employer can no longer pay benefits. Further, a limitation of the amount of securities to be so maintained to the maximums established in 4 MCAR § 1.9291 B and § 1.9292 H is reasonable to the extent that said maximums are prescribed in the original rules.

4 MCAR § 1.9289

Rule 4 MCAR § 1.9289 requires each self-insurer to file certain reports with the Commissioner. Subdivision A of this rule requires the self-insurer to annually report payroll and loss information by April 1 of each year for the preceeding calendar year. In many instances losses from the preceeding calendar year cannot be accurately determined until May or June of the next year. The Workers' Compensation Reinsurance Association (WCRA) recognizes this fact and requires its members, including self-insurer members, to determine losses for the preceeding calendar year on June 1 of each year. In recognizing the reality of determining workers' compensation losses and the requirement of the WCRA there is a need to amend the requirement that loss data must be reported

by April 1. In this regard the proposed amendment to this subdivision would require self-insurers to report loss information by August 1. This would provide self-insurers with a period of two months after their losses are to be reported to the WCRA to report that data to the Commissioner.

Subdivision C of this rule requires self-insurers to report losses with values in excess of \$50,000. It appears that there is little need to obtain this information as quickly as originally required and it would be more reasonable and efficient to process this reporting requirement at the same time as the annual loss report is filed. For this reason this subdivision is proposed to be amended to require self-insurers to report claims from the previous year that are in excess of \$50,000 along with the annual loss report due on August 1.

Subdivision E of this rule requires that each group self-insurer annually file a statement showing the combined net worth of its members based on each member's annual certified financial statement. To the extent that annual certified financial statements may not be required pursuant to the proposed amendments to 4 MCAR § 1.9292 discussed below, it is reasonable to waive the requirement that the annual financial statement of the group to be based on certified financial statements of individual members. For this reason the proposed amendment to subdivision E of this rule is needed and reasonable.

4 MCAR § 1.9291

Rule 4 MCAR § 1.9291 delineates the requirements for individual self-insurers. Proposed subdivision M of this rule would require individual self-insurers to notify the Commissioner 30 days in advance of any voluntary termination of self-insurance programs. This notice is needed so that the Commissioner can properly notify the Department of Labor and Industry that a particular employer will no longer have the authority to self-insure and, therefore, must obtain insurance to comply with the workers' compensation law. Further, any employer that decides to terminate its self-insurance authority will have made such a decision well in advance of such termination so as to permit proper planning so, therefore, it will not be unreasonable to notify the Commissioner of their decision.

4 MCAR § 1.9292

Rule 4 MCAR § 1.9292 delineates and clarifies the requirements for group self-insurers. More specifically, subdivision B of this rule requires,

among other things, the group self-insurer to file the certified financial statement of each member at the time of its application for authority to self-insure. At the time this rule was adopted it was felt that certified financial statements were needed in order to give the Commissioner independent verification as to the existence of assets. This was needed for the Commissioner to make his statutory determination as to the financial ability for the group to meet all of its workers' compensation liability.

The proposed amendment to subdivision B provides the group with another avenue to meet the financial requirements of this rule while still being able to satisfy the Commissioner that the group will be able to meet all of its workers' compensation liability. This amendment is needed in order to provide greater flexibility for the group. As amended, this rule will still provide the Commissioner with the assurance that the group self-insurer will be able to pay workers' compensation claims as they become due. While this amendment permits an accounting review which is not as reliable as the certified financial statement that is presently required, it provides adequate assurance of ability to meet future liabilities by requiring the group to post a million dollar bond and select the lower retention with the WCRA.

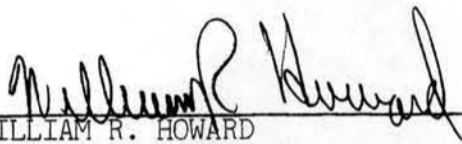
To provide additional flexibility for the prospective group self-insurer this rule is proposed to be amended by adding subdivision R. This proposed subdivision would waive the financial requirements of subdivisions B and C, provided that the group purchases aggregate excess insurance that covers all losses of the group not reimbursable by the WCRA in excess of the annual premium of its members less any applicable administration expenses. This approach is reasonable because it provides the group with added flexibility, while giving the Commissioner the assurance that the group will pay its claims as they become due. Under this proposed amendment, assuring the financial integrity of the group members becomes less critical since all workers' compensation claims will be able to be met from either the annual premiums of the group, the WCRA, or the aggregate excess insurance coverage. If the group maintains this type of arrangement there will be little need to assess the member employers for any claims thus alleviating the need to hold the group to the stringent financial standards set out in subdivisions B and C of this rule. Further, when the aggregate excess insurance is terminated the Commissioner has a definite need to immediately be informed since the financial requirements of subdivisions B and C would then apply. The Commissioner would thereby be able to make a determination as to

whether the group self-insurer is in compliance with these subdivisions.

Proposed subdivision S to 4 MCAR § 1.9292 is needed and reasonable for the same reasons that the proposed amendment 4 MCAR § 1.9291 subdivision M is needed and reasonable.

CONCLUSION

For the reasons stated above the Commissioner believes that each of the proposed amendments to the existing rules governing self-insurance for workers' compensation 4 MCAR § 1.9285 through § 1.9294 are needed to effectively and properly regulate employers and employer groups who self-insure their workers' compensation liability. The Commissioner further believes that the proposed amendments reasonably effectuate the above stated need.



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