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.

<u>Minnesota Rules 2783.0050 Assigned Risk Coverage.</u>

Subpart 2. <u>Minimum Qualifications.</u> 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. <u>Disqualifying Factors.</u> 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 <u>only</u>. 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 rule-making 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.