

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Amendment of Rules Relating to
Cancellation, Nonrenewal and Renewal
With Altered Terms of Commercial
Insurance Policies

STATEMENT OF NEED
AND REASONABLENESS

On May 12, 1986 rules were adopted pertaining to the Cancellation, Nonrenewal and Renewal With Altered Terms of Commercial Insurance Policies. A Statement of Need and Reasonableness pertaining to those rules is attached hereto and incorporated by reference as a part of this Statement of Need and Reasonableness. The authority for the adoption of these amendments to the Cancellation, Nonrenewal and Renewal With Altered Terms of Commercial Insurance Policies Rules is identical to that stated in the previous Statement of Need and Reasonableness. Since the promulgation of those rules several events have occurred and various inconsistencies in the rules have been brought to the department's attention which require the amendment of those rules.

On May 25, 1986 Senate File 2078 was adopted as Chapter 455 Laws of Minnesota 1986. Section 58 and 59 of that Chapter affected those rules. Section 58 enacted into law, with some modifications, portions of the rules (part 2700.2430) that dealt with the Renewal With Altered Terms. In addition, Section 59 of that chapter included within the scope of those rules workers' compensation insurance which had previously been exempt. Accordingly amendments of the rules to conform with the statutory changes are necessary.

In addition when the original rules were promulgated it was always contemplated that all commercial policies including both liability and property insurance or combinations of both would be within the scope of the rules. The term commercial policies was used in the title of the rule rather than any limiting declaration that the rules applied only to liability policies. However, because the greater concern at that moment was liability policies references to liability policies unfortunately were used which implied that the rules were intended to only apply to those policies. Therefore the rules need to be amended to make clear that property insurance is within their scope. As indicated by the language of the statutory changes, that is the Legislature's intent as well. A copy of Chapter 455 is attached to this Statement to Need and Reasonableness and incorporated by reference.

Part 2700.2400 Scope.

This rule is amended to reflect the statutory changes brought about by Chapter 455. Section 59 of Chapter 455 includes within the scope of these rules workers' compensation insurance which was previously excluded from the rules. Employer's liability insurance is also proposed for removal from the exclusion because it was previously excluded only because of its similarity and its relationship to workers' compensation insurance which required that if one were excluded the other be excluded as well. Since the legislature has indicated that workers' compensation insurance should be included within the scope of the rules the same rationale that required that if one were excluded the other be excluded would apply to remove the exclusion.

The language found in the statutory provision pertaining to renewal with altered rates excludes only ocean marine insurance, accident and health insurance and reinsurance. The rules in addition exclude excess insurance and surplus lines insurance. Therefore reference has to be made in the Scope sections of the distinction between the scope of part 2700.2430 which is a verbatim recitation of the statute and the rest of the rules.

Since it was always the intent of the department to have the rules apply to all commercial policies - liability and/or property insurance policies - the language "and/or property" is added to make that completely clear. For all of the reasons stated in the original Statement of Need and Reasonableness notice of cancellation or nonrenewal is required for both liability or property insurance with equal merit.

Part 2700.2410 Midterm Cancellation

For the reasons stated in the foregoing discussion of part 2700.2400 the words "and/or property" are added to this part.

Part 2700.2420 Nonrenewal

The rule as it currently stands literally extends for an additional policy period - likely an additional year - the policy at its existing rate for the mere failure of an insurer to provide 30 days notice, prior to the policy expiration date, of its intent not to renew. This was never the department's intention in promulgating this rule. The intent of the department was to give the insured adequate notice to allow them to secure other coverage; not to in effect impose a penalty on the insurer for failure to meet the 30 day prior notice requirement.

It was the department's intent to require a 30 day notice. Once that 30 day notice requirement was complied with the insurer could proceed with nonrenewal. This is the way the renewal with altered terms section is stated and this section should also have been consistent with that. Therefore the section is being amended to carry out the department's intention, namely to require a 30 day notice, not to force the company to continue to insure if it fails to meet that requirement.

Part 2700.2430 Renewal With Altered Terms

This section is replaced with the statutory language from Chapter 455. While it is often not appropriate to repeat statutory language in a rule since these rules deal with all aspects of Cancellation, Nonrenewal and Renewal With Altered Terms of Commercial Policies it would be simpler for people who have to comply with these requirements to have all of the requirements located in one place and not be required to refer from the rules to the statute and back again depending upon what their situation would be. Accordingly the statute is being incorporated in these rules for the purpose of easy reference for the public.

Small Business Consideration

The small business considerations stated in the original Statement of Need and Reasonableness is still applicable to the amendment to the rules. The department reviewed the amendments to the rules in the same manner as stated in that discussion of small business considerations. Therefore the following discussion of the small business consideration of the rules will be nearly identical to that in the original Statement of Need and Reasonableness.

As is the case with most rules governing the conduct of insurance companies, especially trade practices, the intent is to benefit the policyholder. Every company no matter if they qualify as a small business or not must be subject to the same requirements or the group intended to be protected, the policyholder, would find that they have less rights if they deal with a company that qualifies as a small business then if they were dealing with a company that did not. While this may result in a lesser burden upon companies that qualify as small businesses it would defeat the purpose of protection of the policyholder. It might also have a negative effect upon the small business insurance company in that their policyholders would perceive that they have less protection then if they purchase their insurance from a non-small insurance company. The result of reducing the requirements would be loss of business rather than a reduction in regulatory burden for insurers that are small businesses. In promulgating these rules all of the considerations required by Minnesota Statute § 14.115 were addressed.

In regard to the considerations under subpart 2, item A would not be applicable since there are no compliance or reporting requirements. In the instance where "compliance" under these rules might be deemed to be the notice period, if a small business could use a period of time less than thirty days in which to give the required notices this would be counter productive and not appropriate to the intention of the rules.

For the reasons discussed in the preceding paragraphs changing schedules or deadlines for compliance or reporting requirements as discussed in item B would defeat the purpose of the rules and would probably be counter-productive for small businesses.

Item C would not be applicable for the reasons previously discussed in regard to items A and B.

Item D would not apply because of the nature of the rules. There are no design or operational standards in the rules.

The small businesses that are probably most affected by these rules are not insurers but rather the small businesses that gain protections and rights in regard to their insurance policies they did not have before. To give any insurance companies exemptions from these rules because they are small businesses would be to reduce the rights of small businesses that are policyholders. The department concluded that the intent of the rules was protection of policyholders, small businesses or not, and therefore all insurance companies, be they small businesses or not, must meet the same standards to insure equal protection of all their policyholders.

Small businesses have been a part of the promulgation of these rules since their inception. It was the complaints of many of these small businesses as to midterm cancellations, inadequate notice of nonrenewals, and the problems that they brought to the attention of the department that gave rise to these rules. The input of the various businesses be they small businesses or not, that are affected by midterm cancellations and nonrenewals was a part of this process even when not directly solicited. The department has had a number of articles and stories reported in the newspapers both in regard to rules themselves and the problem of midterm cancellation, which resulted in further contact with various businesses, small and large, explaining what the problems are and the kind of relief wanted. The problems and the rules were widely reported in the news media. The department is aware of no practical way of giving greater notification than has already occurred.