

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Rules
Regarding Workers' Compensation
Self-Insurance

STATEMENT OF NEED
AND REASONABLENESS

Minnesota Statutes, Section 176.181 was amended by Chapter 332 of the 1987 Session Laws. Chapter 332 created a statutory bond form and the requirements for the amount of the bond required to self-insure for workers' compensation insurance under Chapter 176 of Minnesota Statutes. Minnesota Rule 2780.0400 previously specified the acceptable securities and surety bond to be used for workers' compensation self insurance. In addition Minnesota Rule 780.0400 subpart 5 and part 2780.9910 specified the bond form to be used. As Chapter 332 created a specific bond form that was different from that prescribed by the rules the cited rules are at odds with the statute and accordingly should be repealed. Also, Minnesota Rules 2780.1400 subpart 1 specified the amount of the bond to be required. Chapter 332 specified amounts that were different from those required in the rule and accordingly this rule is also in conflict with the statutory requirements and should be repealed accordingly. Rule 2780.2700, as in the case with Rule 2780.1400, subpart 1, specified the amount of securities to be deposited and is in conflict with the statutory changes and accordingly should be repealed.

Minnesota Rule part 2780.0100 subparts 1 and 5 contained definitions pertaining to affiliated companies and control contained definitions that have proved to be unnecessary and in some cases inappropriately rigid in determining control and affiliation among companies. Accordingly since there are existing standards for affiliation and control that have been accepted for a wide variety of purposes such as taxation that in some cases these definitions are in conflict with it is appropriate that these particular definitions be removed.

A certified audit definition was specifically referenced in the amendments to Minnesota Statute 45.028. Accordingly this definition is now redundant with the statute and part 2780.0100 subpart 2 can be deleted.

Parts 2780.0200 and 2780.0300 merely state the authority and the purpose of the rules, neither of which are required to be a part of the rule since the authority and the purpose are required to be delineated by the department prior to the adoption of the rules and explained in the statement of need and reasonableness. It is unnecessary to have those particular provisions in the rules and accordingly they are being deleted.

Minnesota Statutes Section 65B.17, subpart 2 provides rulemaking authority to the commissioner to adopt rules for workers' compensation self-insurance. In addition Minnesota Statutes, section 45.03 provides the commissioner with the authority to adopt rules where necessary for the proper discharge of the commissioners duties.

These amendments are necessary to conform the rules to the statute as amended by the 1987 Legislature.

Small Business Consideration

Minnesota Statutes, section 14.115 requires that certain considerations be made in regard to the rulemaking process as to the effect of the rules upon small businesses and any mitigating factors that may be applied to the application of these rules in regard to small business. In the present instance although the department has little choice but to conform to the rules in the exact manner as the statute indicates, the department did consider the impact of the rules on small business as charged by section 14.115.

As is the case with most rules governing the conduct of insurance companies, the intent is to benefit the policyholder. Every insurer, 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 policyholders, would find that they have less rights if they deal with an insurer that qualifies as a small business then if they are dealing with a company that did not. While this may result in a lesser burden upon insurers that qualify as small businesses, it would defeat the purpose of protection of the policyholder. It might also have a negative effect upon insurance companies that qualify as small businesses in that their policyholders would perceive that they have less protection than if they purchase their insurance from a non small business 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 business.

In promulgating these rules all of the considerations required by Minnesota Statute section 14.115 were addressed. In regard to the considerations required by subpart 2, item A, the establishment of less stringent compliance on reporting requirements for small businesses, since the only compliance is with the statutory mandate it would be beyond the department's authority to reduce the requirement that the statute imposes. As there are no reporting requirements there would be no need for reduction in the same.

As to item B of subpart 2, since there are no schedules or deadlines for compliance or reporting this particular provision would not be applicable to this set of rules.

As to item C, consolidation or simplification of compliance requirements would not be feasible given the nature of the particular rule and the change in statutory requirements. As there are no reporting requirements that provision would not be applicable.

Item D would not be applicable given the nature of this particular rule.

Item E would not be appropriate for the reasons cited above in that it would take away the protection to policyholders that the statute intended to give them. In addition the department does not believe it has the authority to make such an exemption. The small businesses that are probably most affected by these rules are not insurers but rather the small businesses that will gain some protection and rights that they did not have before. To give any insurance company an exemption from the rules would be to reduce the rights of the small businesses that are policyholders. The department concluded that the intent of the statute was the protection of policyholders, small business or not and therefore all insurers, be they small or large must meet the same standards to insure equal protection to all of their policyholders.

Because of the nature of the amendments of the rules, namely to conform to the statutory mandate, no participation by small businesses was involved.