

**STATE OF MINNESOTA
Department of Commerce**

**Proposed Permanent Rules Relating
to Workers' Compensation Self-Insurance**

**STATEMENT OF NEED
AND REASONABLENESS**

STATEMENT OF AUTHORITY

Minnesota Statutes section 176.181 subdivision 2 authorizes the Commissioner of Commerce to promulgate rules to carry out the purposes of that statute in regulating entities that self-insure for workers' compensation liabilities. In 1992, the Minnesota legislature enacted chapter 545, Article 2, section 3, which requires the Commissioner of Commerce to amend Minnesota Rules Part 2780.0400 so that the rule is consistent with the changes made under chapter 545 (1992 Laws of Minnesota.)

The amendments to Part 2780.0400 are proposed pursuant to the authority stated above, and the authority granted to the Commissioner under Minnesota Statutes section 45.023.

FACTS ESTABLISHING NEED AND REASONABLENESS

Under Minnesota Statutes section 176.181 subdivision 2, the Commissioner of Commerce ("Commissioner") is vested with the responsibility of regulating entities that desire to self-insure for obligations that arise under workers' compensation laws. This statute also authorizes the Commissioner to establish by rule the terms, conditions and requirements governing the ability of an entity to self-insure for purposes of providing workers' compensation coverage. Pursuant to this authority, the Commissioner promulgated chapter 2780 of the Minnesota Rules. The rules cover a variety of topics which are generally related to the ability of a licensee or applicant to demonstrate that it is financially solvent, and that it is able to administer and process claims in a fair and prompt manner.

Part 2780.0400 as it currently exists in the rules lists the types of securities that are deemed to be acceptable to ensure that the self-insurer has adequate resources to pay claims and meet all obligations under the workers' compensation laws. At the time when this part was adopted, there was no other place in the statute or rules that gave a comprehensive list of what types of bonds or securities would be appropriate for purposes of meeting these legal obligations.

In 1992, the Minnesota legislature enacted a number of changes affecting the regulation of workers' compensation insurance. One of these pieces of legislation caused the list of acceptable securities (for purposes of funding self-insurance and group self-insurance plans) to be enacted under Minnesota Statutes section 176.181 subdivision 2b. The legislature acknowledged the existence of Part 2780.0400 of the Minnesota Rules, and specifically required, as part of the bill, that Part 2780.0400 be amended to make it consistent with subdivision 2b of section 176.181.

In reviewing Part 2780.0400, it was determined that this part of the rules should be repealed (except for subpart 4 relating to the calculation of interest on securities) for the following reasons: (1) Subpart 1 of Part 2780.0400 contains a description of securities that is now found under Minnesota Statutes section 176.181 subdivision 2b. It is redundant to have the list of securities appear in both places. Since the statute clearly governs in this area, it is reasonable and appropriate to repeal the provisions in the rules that are no longer necessary. (2) In addition, Subpart 1 of Part 2780.0400 refers to Part 2870.1400 subpart 1 and Part 2780.2700 as the sections to which the list of acceptable securities should be applied. However, both of these sections were repealed by the legislature in 1989, and replaced with statutory provisions. As a result, subpart 1 of Part 2780.0400 serves no purpose and should be repealed.

Subpart 4 of Part 2780.0400 should be retained, since it is not inconsistent with the legislative directive under chapter 545, Article 2, subdivisions 2 and 3. The provision under subpart 4 is important, since it is the only place where self-insurers are instructed how to handle interest on securities. The title of Part 2780.0400 should be changed, for practical purposes, to reflect the changes discussed above.

It should be noted that the changes being proposed to Part 2780.0400 are consistent with the response to Executive Order 92-15 submitted by the Commissioner of Commerce to Governor Arne H. Carlson in February 1993. The proposed changes to Part 2780.0400 will achieve the objectives of Executive Order 92-15 by eliminating portions of the rule that do not have an immediate and substantial impact on achieving the interest intended to be protected by the rule.

SMALL BUSINESS CONSIDERATIONS

The Commissioner believes that some employers who self-insure (and thus are subject to these proposed rules) could fall within the definition of a small business under Minnesota Statutes section 14.115 subdivision 1. Accordingly, in


compliance with Minnesota Statutes section 14.115, the impact of the proposed rules on small businesses was considered at each and every stage and in regard to every requirement involved in the rulemaking process.

The proposed changes to Part 2780.0400 will not adversely impact small business. The bill enacted by the legislature in 1992 (ch. 545) can be seen as reducing the burden on small businesses who wish to self-insure by allowing a wider variety of acceptable forms of security. Some of these new forms of security will be easier for small businesses to obtain, and thus make it easier for such employers to self-insure for workers' compensation coverage. Since the changes to Part 2780.0400 eliminate any inconsistencies between the rules and Minnesota Statutes section 176.181 subdivision 2b, the proposed rules would be supportive of small business and would not adversely impact them.

As to the various items in subdivision 2 of Minnesota Statutes section 14.115, the Commissioner does not believe that less stringent compliance, performance or reporting standards are needed or reasonable, based on the discussion above.

For all of the reasons discussed herein, the Commissioner finds that the proposed rules are reasonable and necessary.

Date: August 20, 1993



Patrick L. Nelson
Commissioner of Commerce (Acting)



OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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August 23, 1993

Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, MN 55155
ATTN: Michelle

Re: Proposed Rules Relating to Workers' Compensation Self-Insurance

Dear Michelle:

Pursuant to Minnesota Statutes Section §14.23 we enclose a copy of the Statement of Need and Reasonableness for the proposed rules relating to Workers' Compensation Self-Insurance.

Should you have any questions about these rules, please call me at 297-1118.

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

A handwritten signature in cursive script that reads "Donna M. Watz".

Donna M. Watz
Staff Attorney

DMW:joc