

## **Minnesota Department of Commerce**

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### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendment to Rules Governing Data Service Organizations, Minnesota Rules chapter 2705**

##### **I. BACKGROUND AND INTRODUCTION**

In 1981 the Minnesota Legislature enacted a comprehensive update of the laws governing the administration of the workers' compensation system. Among other changes, this legislation created a licensed entity known as a data service organization (DSO). This DSO was to replace a statutorily created entity known as the Workers' Compensation Insurers Rating Association. Both organizations collect data and provide information related to the operation of the workers' compensation system.

While the legislation contemplated that the new DSO would assume essentially all of the functions of the Workers' Compensation Insurers Rating Association, the legislation also stated that there could be more than one DSO licensed in Minnesota and imposed certain limitations on the activities of any licensed DSO. These limitations were consistent with the Legislature's decision to move from a workers' compensation system where premiums were largely determined by an administered pricing method to a system where premiums were largely determined by competitive forces in the marketplace. The legislation was to be fully effective in 1983.

Under this legislation a DSO was required and empowered to perform functions essential to the operation and regulation of workers' compensation insurance in Minnesota. For example, a DSO collects from all insurance companies, and most self-insurers, data on premiums paid by employers or its equivalent for self-insurers, and loss and medical costs paid and incurred in providing benefits to injured workers. Important information from this data is compiled and published in an annual ratemaking report, which assists insurers and Minnesota Workers' Compensation Assigned Risk Plan (MWCARP) in the pricing of workers' compensation policies and the Minnesota Department of Commerce in the regulation of those activities.

A DSO also collects the workers' compensation experience of individual employers and calculates an experience modification factor for each qualifying employer. This allows the premium paid by that employer for workers' compensation insurance to be more closely adjusted to reflect the risk of loss of that employer relative to other employers performing similar types of work related activities.

Finally, a DSO publishes manuals and forms related to the operations of the workers' compensation system. These manuals, among other things, provide information on how workers are to be classified by the type of work they perform, how payroll and loss experience is to be measured and reported to the DSO, how experience modification

factors are to be calculated, and what policy forms outlining benefits due injured workers and other insurance policy terms must be used.

A DSO is also authorized to conduct studies and perform other activities helpful to the functioning of a competitive market for workers' compensation insurance. The state's only licensed DSO, Minnesota Workers' Compensation Insurers Association, Inc. (MWCIA), also assists the Minnesota Department of Labor and Industry in assuring that all covered workers are protected by workers' compensation insurance through the collection of data on issuance, renewal or cancellation of workers' compensation insurance policies.

Because workers' compensation insurance or self-insurance must be provided by virtually all Minnesota employers to protect their employees, the activities of the DSO are intended, in part, to ensure a necessary degree of uniformity in the insurance protections provided injured workers, and to also ensure compliance with the workers' compensation laws by insurers and self-insurers. The activities of the DSO thus assist the Minnesota Department of Commerce in regulating the terms and pricing of workers' compensation insurance policies, and, as noted above, the Minnesota Department of Labor and Industry in assuring that all covered employees are properly insured for benefits due under the workers' compensation law.

The rules in chapter 2705 when originally adopted were designed to serve two basic purposes. First, to assist in the transition of functions from the Workers' Compensation Insurers Rating Association to the newly created DSO. Second, to regulate the ongoing operations of the DSO. Since the original adoption of these rules, the initial transition has been fully completed, there have been changes and updates in the forms, manuals and procedures anticipated and required by these rules, and there have been additional statutory changes in laws governing the workers' compensation insurance system. As a result portions of these rules are no longer necessary or other portions are in need of updating.

In mid-2004 the Minnesota Department of Commerce staff working with the MWCIA and other impacted parties drafted proposed amendments to these rules and circulated that draft to various persons known to be interested in the matter, including specifically the MWCIA staff and insurance companies which serve on MWCIA's Board of Directors. On September 26 2005, the Minnesota Department of Commerce published in the *State Register* a notice indicating that the Department was contemplating amendments to these rules and soliciting public comments on these proposed amendments. In that notice, the Department indicated that the draft amendments were available for public review. The comment period ended on November 28, 2005. On January 23, 2006, the Minnesota Department of Commerce staff acted to finalize the proposed amendments. Throughout this process the Department's staff was available to work with interested persons in the review of the proposed amendments.

The purpose of the amendments outlined in this Statement of Need and Reasonableness is to remove outdated and unnecessary transition rules and to update other rules to reflect

changes in the manuals and other activities of the DSO over time. Finally this amendment seeks to delete a procedural rule related to the operation of the workers' compensation insurance experience rating plan. The existing rule has been superseded by the enactment of Minnesota Statutes, section 79.211, subdivision 4, which became effective August 1, 2005.

## **II. ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact Tammy L. Lohmann at the Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101-2198, phone (651) 296-2327, fax (651) 284-4106, or e-mail [tammy.lohmann@state.mn.us](mailto:tammy.lohmann@state.mn.us) For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for the Minnesota Department of Commerce.

## **III. STATUTORY AUTHORITY**

The Minnesota Department of Commerce was granted authority to adopt rules regulating the operations of a DSO in the 1981 workers' compensation legislation. The authority to adopt rules is found in Minnesota Statutes section 79.51. Minnesota Statutes section 79.51 provides,:

The commissioner shall adopt rules to implement provisions of this chapter. (a) The commissioner in issuing rules shall consider: (1) data reporting requirements, including types of data reported, such as loss and expense data; (2) experience rating plans; (3) retrospective rating plans; (4) general expenses and related expense provisions; (5) minimum premiums; (6) classification systems and assignment of risks to classifications; (7) loss development and trend factors; (8) the Workers' Compensation Reinsurance Association; (9) requiring substantial compliance with the rules mandated by this section as a condition of workers' compensation carrier licensure; (10) imposing limitations on the functions of workers' compensation data service organizations consistent with the introduction of competition; (11) the rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association or other licensed data service organizations; (12) the supporting data and information required in filings under section 79.56 including but not limited to, the experience of the filing insurer and the extent to which the filing insurer relies upon data service organization loss information, descriptions of the actuarial and statistical methods employed in setting rates, and the filing insurers interpretation of any statistical data relied upon; and (13) any other factors that the commissioner deems relevant to achieve the purposes of this chapter.

(b) The rules shall provide for the following: (1) adequate safeguards against excessive or discriminatory rates in workers' compensation; (2) encouragement of workers' compensation insurance rates which are as low as reasonably necessary, but shall make provision against inadequate rates, insolvencies, and unpaid benefits; (3) assurances that employers are not unfairly relegated to the assigned risk pool; (4) requiring all appropriate data and other information from insurers for the purpose of issuing rules, making legislative recommendations pursuant to this section; and (5) preserving a framework for risk classification data collection, and other appropriate joint insurer services.

Under this statute the Department has the necessary statutory authority to adopt the proposed rules.

In addition, Minnesota Statutes, section 45.023 provides:

“The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.”

This rulemaking is an amendment of rules and so Minnesota Statutes, section 14.25, does not apply.

#### **IV. REGULATORY ANALYSIS**

Minnesota Statutes section 14.131 requires that an agency that is proposing to adopt rules must address a number of factors in the Statement of Need and Reasonableness. The required factors are addressed below.

**(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the cost of the proposed rule and classes that will benefit from the proposed rule.**

The persons who will bear the costs, as well as most of the benefits, of these rules are the Minnesota Workers Compensation Insurers Association, Inc., (MWCIA) which is the state's only licensed DSO, and licensed workers' compensation insurance companies who are members of MWCIA and who utilize the data, manuals and ratemaking reports published by that entity. Self-insurers who do business with the MWCIA and others who obtain information from the association may also be slightly impacted.

Employers purchasing workers' compensation policies will only be indirectly impacted by these changes and that impact should primarily be the elimination of potential confusion or inefficiencies in rules governing the operations of the DSO, thus benefiting those entities.

- (2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effects on state revenues.**

The cost of promulgating these rules will be borne by the Minnesota Department of Commerce; however, assistance in the drafting of these rules and related documents has been provided by MWCIA thus lessening these costs. Since these amendments are largely intended to remove outdated rules and to update aspects of current rules, it is not anticipated that the amendments will result in any increased enforcement costs. The implementation and enforcement of the proposed rules should not result in any costs to any other agency. There is no anticipated impact on state revenues.

- (3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

Since these amendments are largely intended to remove outdated rules and clarify aspects of current rules, the Minnesota Department of Commerce does not believe there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

- (4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

The need for these rules was set forth in the initial legislation which considered issues related to the structure and form of the DSO. There was consideration given to addressing these revisions by proposing legislation to codify the rules, but due to the technical clean-up nature of the revisions and the department's belief that they are non-controversial it was determined that rulemaking was the preferred approach.

- (5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

Since these amendments remove outdated rules and update other rules, there are no probable costs to either the impacted DSO or the Minnesota Department of Commerce in complying with these rules over and above current costs associated with complying with the existing rules.

- (6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

Failure to adopt this rule will cause continued unnecessary confusion between the provisions of the old, outdated rules and the current operations of the DSO. Much effort

is expended by the Minnesota Department of Commerce in trying to comply with the outdated rules whose original meaning is now uncertain. The cost and administrative burden of addressing this confusion has not been measured but has been borne both by the DSO and the Minnesota Department of Commerce.

**(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

Workers' compensation insurance is predominately regulated by individual states as opposed to the federal government. Thus, there are no known differences between this rule and federal regulations that will be impacted by the proposed rule.

**V. PERFORMANCE-BASED RULES**

Minnesota Statutes section 14.002 and 14.131 require an agency that is developing rules to describe in the Statement of Need and Reasonableness how it considered ways it might afford flexibility for the regulated party in complying with the regulatory requirements being proposed while still meeting the agency's objectives. The purpose underlying the rules is to provide regulatory oversight of the operations of the DSO, while allowing the DSO to gather and provide the information needed to meet its statutorily mandated or permitted goals and activities.

As originally adopted, the rules dealt, in part, with the transition of activities and preexisting duties between the Minnesota workers' compensation insurers association and the newly created DSO. The proposed rules remove the completed and now unnecessary portions related to that transition and update the ongoing and currently regulated activities of that organization. By removing unneeded rules and updating certain other rules impacting the DSO and experience rated employers, the proposed rule is designed to simplify the current regulation of the DSO. This is consistent with the agency objectives, while maintaining flexibility by the regulated party to comply with these rules.

**VI. ADDITIONAL NOTICE**

Minnesota Statutes section 14.131 and 14.23, require that the agency describe in the Statement of Need and Reasonableness the efforts the agency made to notify persons who might be affected by the proposed rules about the proposed rulemaking. In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to the persons on the Minnesota Department of Commerce's rulemaking list, the Minnesota Department of Commerce also issued the Request for Comments to the MWCIA's bulk e-mail list, which includes 473 representatives of insurance companies and 354 interested parties (insurance agents and government agencies).

The Minnesota Department of Commerce staff worked with the state's only licensed DSO in drafting the proposed amendments to these rules and circulated that draft to

various persons known to be interested in the matter. This included the Board of Directors of the DSO which contains a cross section of licensed workers' compensation insurers, and the Insurance Federation of Minnesota which represents many of the state's workers' compensation insurers.

## **VII. CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**

Minnesota Statutes section 14.131 requires the agency to consult with the Department of Finance to help evaluate the fiscal impact and benefits of proposed rules on local governments. The department has had a initial consultation with the Executive Budget Officer (EBO) for Commerce, Keith Bogut, to brief him on the purpose of the proposed rules and the impact that they would have on the interested parties.

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. The department did this by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. The Department sent copies on January 23, 2006.

## **VIII. COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The entity that will be directly affected by these rule revisions, the MWCIA, is a small business under the definition of this statute. The association has been involved in the drafting of these rules and has assured the department that the cost of complying with the proposed rules will not exceed \$25,000. The assessment of the association is that the revised rules should not be any more costly to comply with than the current rules.

## **IX. RULE-BY-RULE ANALYSIS**

This part of the Statement of Need and Reasonableness is a rule-by-rule discussion of the reasons why the rule of amendment is being proposed.

### **2705.0200 DEFINITIONS**

Subpart. 11. **Rating association.** The original legislation in Minnesota Statutes, section 79.52, subdivision 3 and the rule promulgated in 1982 recognized that the activities and preexisting duties of the Workers' Compensation Insurers Rating Association of Minnesota would transition to the state's first licensed DSO. That organization has incorporated under the legal name of Minnesota Workers' Compensation Insurer's Association, Inc. This change corrects the rule to reflect

this new legal name. This is simply a technical change and does not substantively change the operations of the rule.

#### **2705.1000 APPLICATION INFORMATION.**

The original rule required the Minnesota workers' compensation insurers association to submit its initial application to be licensed as a DSO by July 1, 1983. Since that requirement has been completed and this provision is no longer necessary, it is being deleted.

#### **2705.1100 MANUALS**

The rule recognized that at the time of the transition, the Workers' Compensation Insurers Rating Association had on file five manuals. The rule required that these manuals be filed as part of that organizations initial DSO license application. Since this provision related to the transition to DSO status and has been completed, it is no longer necessary and has been eliminated.

In its place the amendment specifically identifies the manuals which a DSO filed and continues to maintain. One of the original manuals, the "classification code manual" is now part of the basic manual and the amendment reflects that fact. A more detailed description of the basic manual is included to allow for a clearer comparison between the old and new provisions of this rule.

#### **Subpart D (1) through (3).**

The transition rule specifically identified subsections of the basic manual in existence in 1983 which related to the filing of statistical data by insurers. With changes in the manual over time the numbering of those sections is no longer accurate and is being eliminated. Instead, the rule is amended to state that insurers must complete their data filing obligations pursuant to the uniform classification system, the unit statistical plan manual and the basic manual rules approved by the Commerce Commissioner and which govern this obligation.

#### **Subpart E (1) and (2).**

The transition rule specifically identified subsections of the basic manual in existence in 1983 which related to premium factors, experience rating and retrospective rating plans developed by the rating association. With changes in the manual over time the numbering of those sections is no longer accurate and is being eliminated. In addition the rule is expanded to include other filed manuals, such as the forms manual, which contains policy forms required or available for use in Minnesota.

#### **2705.1150 AMENDMENTS TO APPLICATION.**

##### **Subpart 2. Changes filed.**



The manuals and plans filed by a DSO may be amended from time to time with approval of the Commerce Commissioner. All of the plans mentioned in the current rule are included in the manuals filed by the DSO. The manuals themselves have been updated and in some cases have eliminated the phrase “manual rule” in favor of another term such as guideline. This rule is amended to more clearly reflect the current practice which requires that all manual changes must be filed with and approved by the Commerce Commissioner regardless of whether a manual change is formally classified as a “rule” in the manual.

## **2705.1600 DATA SERVICE ORGANIZATIONS**

### **Subpart 1. Initial outline and report.**

This rule described the obligations of a DSO to prepare and submit its initial ratemaking reports in 1983 and 1984. Since those activities have been completed, this rule is no longer needed and is being eliminated.

### **Subpart 2. Subsequent outlines and draft reports.**

Since the transition requirements have been completed the word “Subsequent” was deleted from the heading for this subpart, and the phrase “After 1984” is also being eliminated from the rule, as the date reference is no longer needed.

### **Subpart 3. Annual reports.**

Likewise the phrase “Beginning in 1984” was eliminated from this subpart, as the date reference is no longer needed.

## **2705.1700 CONTENTS OF RATEMAKING REPORT.**

### **Subpart 1. Statutory and other data.**

The contents of the ratemaking report have been expanded by Minnesota Statutes, section 79.55, subdivision 8 which was enacted after the adoption of this rule. That additional statutory reference is being added.

## **2705.1800 USE OF RATEMAKING REPORT.**

**Subpart A.** The reference to actions “effective January 1, 1984” refers to the transition to a competitive rating system between insurers. This date reference is no longer needed and is being deleted.

**Subpart C.** The phrase “filed and approved” has been added as Minnesota Statutes, section 79.56, subdivision 1, which was revised in 1995, requires all

rates and rating plans to be filed with the commissioner at least 60 days prior to their effective date.

#### **2705.1900 REVIEW BY COMMISSIONER.**

##### **Subpart 1. Nonconforming ratemaking report.**

The contents of the ratemaking report have been expanded by Minnesota Statutes, section 79.55, subdivision 8, which was enacted after the adoption of this rule. That additional statutory reference is added.

#### **2705.2200 INSURER VARIATIONS**

Minnesota Statutes, section 79.56, subdivision 1 was revised in 1995 to require that insurers file all rates and rating plans and changes and amendments thereto with the commissioner at least 60 days prior to the effective date. This rule has been revised to be consistent with the statute.

#### **2705.2300 INFORMATION AND ANALYSIS.**

The 1981 legislation authorized the Commerce Commissioner to determine if a competitive market in workers' compensation insurance existed. This rule was adopted to further define the activities of the Commissioner in making that determination. That section of the statute was repealed in 1995 and other provisions referring to competitive market were also removed making this rule unnecessary. *See* 1995 Minnesota laws, ch. 231, Art. 1, § 36, repealing Minnesota Statutes, section 79.54 (2004). Prior approval provisions that were enacted in 1995 have replaced the competitive market provisions in Chapter 79.

#### **2705.2400 CRITERIA.**

The 1981 legislation authorized the Commerce Commissioner to determine if a competitive market in workers' compensation insurance existed. This rule was adopted to further define the factors the Commissioner would consider in making that determination. That section of the statutes was repealed in 1995 and other provisions referring to competitive market were also removed making this provision unnecessary. *See* 1995 Minnesota laws, ch. 231, Art. 1, § 36, repealing Minnesota Statutes, section 79.54 (2004). Prior approval provisions that were enacted in 1995 have replaced the competitive market provisions in Chapter 79.

#### **2705.2700 AGGRAVATED INEQUITY.**

This rule created a mechanism to reflect the impact of the settlement of a claim that had previously impacted an employer's experience rating factor if that settlement occurs between normal valuation dates under the experience rating plan. The 2005 Legislature enacted Minnesota Statutes, section 79.211, subdivision 4, effective August 1, 2005, to

address the issue of revising experience modification factors to reflect closed claims. Since this rule has been superseded by and is inconsistent with the language of this new law, the current rule is being deleted.

**2705.3000 SCHEDULE RATING PLANS.**

The original rule allowed the Commerce Commissioner to place caps on credits and debits under filed schedule rating plans. Minnesota Statutes, section 79.55, subdivision 6 was passed after the adoption of this rule and now prevents the Commerce Commissioner by rule from placing a percentage limit on credits. The rule is being amended to reflect this statutory limitation.

**2705.3100 FAILURE TO COMPLY**

The revisions made to Minnesota Statutes, section 79.56, subdivision 1 in 1995 made significant changes to the filing procedures for workers' compensation rate and rating plan filings that make this section unnecessary.

**CONCLUSION**

Based on the forgoing, the proposed amendments to Minnesota Rules chapter 2705 are both needed and reasonable.

Dated: 1-23-06



Glenn Wilson, Commissioner

**EXHIBIT I  
PROPOSED AMENDMENTS**

**2705.0200 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Classification plan; classification.** "Classification plan" or "classification" means the same, as it is defined in Minnesota Statutes, section 79.52, subdivision 4.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subp. 4. **Data service organization; organization.** "Data service organization" or "organization" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 3.

Subp. 5. **Insurer.** "Insurer" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 13.

Subp. 6. **Pure premium.** "Pure premium" means that portion of a premium, as defined in Minnesota Statutes, section 79.52, subdivision 7, designated for claim payments.

Subp. 7. **Pure premium base rate schedule.** A "pure premium base rate schedule" is a set of pure premium rates with no adjustments for trend and with only partial loss development reflecting some additional development but not developed to the ultimate expected loss level.

Subp. 8. **Pure premium rate.** "Pure premium rate" means that portion of a rate designated for claim payments.

Subp. 9. **Pure premium relativities.** "Pure premium relativities" means the mathematical relationship of pure premium rates for each reporting classification one to another, to a base class or classes, or to some common index or indices.

Subp. 10. **Rates.** "Rates" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 5.

Subp. 11. **Rating association.** "Rating association" means the Minnesota Workers' Compensation Insurers Rating Association, Inc. of Minnesota.

Subp. 12. **Rating plan.** "Rating plan" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 15.

## 2705.1000 APPLICATION INFORMATION.

A data service organization shall apply to the commissioner for a license. ~~The rating association shall submit an application to be licensed as a data service organization by July 1, 1983.~~ An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

A. the organization's plan of operation including:

- (1) a description of the applicant's operating premises and computer capabilities;
- (2) a description of the management and operation of the organization, including a description of major staff positions and necessary qualifications for the positions;
- (3) a list of members and their responsibilities; and
- (4) a procedure by which insureds and any other interested party may challenge the action of the data service organization; and

B. a plan for data collection and analysis, and other activities of the data service organization, including:

- (1) A statistical plan for the collection and reporting of exposure base and loss data of individual insureds from each member;
- (2) A system for the classification of risks to be used for reporting by member insurers, and for calculating pure premium relativities, and all other rate or rating plan related or data analytic activities it proposes to undertake;
- (3) Manual rules reasonably related to the recording and reporting of data pursuant to the statistical plan and the classification system;
- (4) Data reporting requirements for members and monitoring procedures. A data service organization may not collect or report expense or profit data from its members but may collect loss adjustment costs. Premium data may be reported to the extent needed to monitor the quality and integrity of the data bases. Following the approval of a pure premium base rate schedule, the data service organization may require premium data to be reported at that level, provided that reporting need not be required of companies writing a small volume of Minnesota workers' compensation premiums. The criteria for being excused from reporting will be determined by the data service organization;

- (5) a plan for the collection of any other data not prohibited in subitem (4) and a description of these data;
- (6) A plan for and description of the ratemaking report required by Minnesota Statutes, section 79.61;
- (7) Plans for disseminating information to members of the organization and to the commissioner;
- (8) Plans for audit procedures to ensure that data reporting requirements are met by organization members;
- (9) A plan for compiling expense data reported to the commissioner for development of advisory rates, rating plan values, and discount factors; and
- (10) A description of any changes from the uniform statistical plan, classification system, and related rules which are in effect at the time the application is made.

#### **2705.1100 MANUALS.**

~~A. There are five manuals currently filed by the rating association and in force in Minnesota. The rating association must file similar manuals as part of their application to become a data service organization. The application must include a list of any changes in the current manuals. The rating association or any other licensed data service organization must file and maintain the following manuals:~~

- (1) a basic manual containing a uniform classification system for risks and other general standards related to the identification and underwriting of risks,
- (2) a unit statistical plan manual; ,
- (3) an experience rating manual; and
- (4) a policy forms manual.

B. The commissioner shall approve a uniform classification system and a uniform statistical plan and manual rules related to the classification system and the statistical plan.

C. The commissioner shall disapprove changes in the manuals which would substantially lessen competition or which would lead to premiums which are unfairly discriminatory.

D. Every workers' compensation insurer shall report its data in accordance with the uniform classification system code manual, and the unit statistical plan manual, and the related rules in the basic manual. ~~In the current basic manual these rules consist of the following:~~

(1) ~~in part one, rules I, II, III, IV, V, VIII (A.1, A.2a, A.2.b.1, A.2.c e, B.1, B.2, B.6, C.1, C.2, C.4), IX, XI (A, B), XII, XIII, XIV (A-D), XV (A and C);~~

(2) ~~all of part two on classifications; and~~

(3) ~~in part three, pages 9-17 on classifications; pages 18-19, special rules (IV, V, IX); and pages 20-23.~~

E. Insurers may use the premium factors, the experience rating plan, ~~or~~ the retrospective rating plans and other filed manual rules developed by the rating association. They may also develop and use their own factors and plans. ~~In the current basic manual, the rules which insurers will not be required to use consist of the following:~~

(1) ~~in part one, rules VI, VII, VIII (A.2.b.2-4, B.3-5, C.3) X, XI (C-H), XIV (E-G), XV (B); and~~

(2) ~~in part three, pages 1-8; pages 18-19, special rules VI and VII; and appendix B.~~

#### **2705.1150 AMENDMENTS TO APPLICATION.**

Subpart 1. **Commissioner notified.** A data service organization which has applied for a license must notify the commissioner of every change in the plan of operation on which its application was based. Any amendment to a document filed under this paragraph is effective 30 days after filing unless disapproved by the commissioner.

Subp. 2. **Changes filed.** A data service organization must file with the commissioner every proposed change in the uniform classification system, the uniform statistical plan, or ~~associated manuals~~ rules. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

#### **2705.1200 GRANTING OF LICENSE.**

A. The commissioner shall issue a license if the commissioner finds that:

(1) the applicant meets the requirements of Minnesota Statutes, section 79.62 and part 2705.1000;

(2) the applicant demonstrates staff competence and technical qualifications necessary to provide the services proposed;

(3) the applicant's premises and computer capabilities are sufficient to provide the services proposed; and

(4) the applicant's plan for data collection and analysis will result in a reliable, credible data base.

B. The commissioner shall issue a notice of the acceptance or rejection of the application for licensure as a data service organization within 90 days of receipt of a complete application.

#### **2705.1600 DATA SERVICE ORGANIZATIONS RATEMAKING REPORTS.**

~~Subpart 1. **Initial outline and report.** In 1983 licensed data service organizations must prepare their first ratemaking report. The outline of the report should be submitted to the commissioner for comment by September 1, 1983. A draft of the report should be submitted to the commissioner for comment by November 1, 1983. The final ratemaking report must be submitted no later than January 1, 1984.~~

Subp. 2. **Subsequent Outlines and draft.** After 1984, Licensed data service organizations must submit an outline of their annual ratemaking report to the commissioner for comment by July 1 of each year. A draft of the report should be submitted to the commissioner for comment by October 1. The final ratemaking report must be submitted no later than January 1 of the succeeding year. Interim reports on the effect of changes in the law on rates may be submitted at any time during a year.

Subp. 3. **Annual reports.** ~~Beginning in 1984,~~ Licensed data service organizations shall make yearly ratemaking reports to the commissioner. Insurers may not make reference to a report in their filings until it has been filed with the commissioner.

#### **2705.1700 CONTENTS OF RATEMAKING REPORT.**

Subpart 1. **Statutory and other data.** A ratemaking report shall meet all requirements of Minnesota Statutes, sections 79.55, subdivision 8 and 79.61, subdivision 1, clause (c) and, in addition, may contain information useful to data service organization members regarding factors pertinent to Minnesota workers' compensation business such as legislative concerns, Workers' Compensation Reinsurance Association operations, loss control programs, and programs



developed by insurers that may be of interest and applicability to workers' compensation insurers.

Subp. 2. **Minimum content.** A ratemaking report shall include:

A. A compilation of financial data collected under Minnesota Statutes, section 79.61 without adjustments for either premium or loss development or trend. Financial data must be reconcilable to that reported by insureds in their annual financial statements to the commissioner;

B. A compilation of reporting classification data collected under Minnesota Statutes, section 79.61 without adjustments for either premium development or loss development or premium trend or loss trend;

C. A calculation of factors to adjust reported loss data to a common development level. The development level is subject to approval by the commissioner;

D. A calculation of factors to reflect any benefit level changes mandated by statute or by the courts;

E. The development of a schedule of pure premium base rates using the data reported by insurers and the factors calculated in item C;

F. A schedule of pure premium relativities, based on the pure premium base rate schedule;

G. An analysis and calculation of factors to adjust reported premium and loss data to an expected ultimate level. The analysis shall be in detail so as to permit insurers to select and modify the factors based on their own interpretations of underlying data;

H. An analysis and calculation of trended data to reflect future conditions through the use of factors or some other method. The analysis shall be in detail so as to permit insurers to select and modify the factors or utilize other trending methods based on their own interpretations of underlying data;

I. A calculation of any other quantitative factor or modifications and a description of any subjective considerations reflected in the determination of pure premiums in a manner so as to permit insurers to evaluate and modify the factors and considerations based on their own interpretations of underlying data; and

J. A calculation of any other quantitative factors required to maintain advisory discount factors as defined in Minnesota Statutes, section 79.52,

subdivision 8 and advisory merit rating plans as defined in Minnesota Statutes, section 79.52, subdivision 9.

Subp. 3. **Dissemination.** The ratemaking report shall be disseminated to all members of the data service organization. In addition, the data service organization and the commissioner shall each make a copy of the ratemaking report available for public inspection during normal working hours.

#### **2705.1800 USE OF RATEMAKING REPORT.**

A. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. ~~Effective January 1, 1984, i~~Insurers may also develop and use rates based upon any reasonable factors which are not inconsistent with Minnesota Statutes, sections 79.50 to 79.62.

B. If an insurer uses the pure premium base rates contained in the ratemaking report, then the insurer may calculate rates by:

(1) application of trend factors based on the analysis provided by the data service organization or on the insurer's own interpretations of underlying data;

(2) application of loss development factors reflecting expected development beyond that in the pure premium base rate schedule to the ultimate loss level;

(3) application of a factor to reflect the insurer's expected expense requirements;

(4) application of any other factor based on the analysis provided by the data service organization or on the insurer's own interpretation of underlying data.

C. Insurers may adjust premiums by application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own filed and approved plans or plans developed by a data service organization in which they maintain membership.

D. An insurer shall not refuse to write insurance for an employer solely because:

(1) the employer was denied coverage by another insurer, whether by cancellation or nonrenewal or refusal to offer coverage; or

(2) the employer was insured through the assigned risk plan.

E. All data and calculations used to calculate rates from the pure premium base rate schedule shall be clearly documented.

#### **2705.1900 REVIEW BY COMMISSIONER.**

Subpart 1. **Nonconforming ratemaking report.** If the commissioner finds upon review that the ratemaking report is not as prescribed, then the commissioner shall issue an order specifying in which respects it fails to meet the requirements of Minnesota Statutes, sections 79.55, subdivision 8 and 79.61 and parts 2705.1600 to 2705.1900, and stating a reasonable period within which the defects shall be corrected.

Subp. 2. **Hearing.** The data service organization shall be given a hearing to review the commissioner's order upon a written request made within 30 days after the order.

#### **2705.2000 UNIFORM CLASSIFICATION AND STATISTICAL PLAN.**

Subpart 1. **Commissioner approves.** The commissioner shall approve a uniform classification system, a uniform statistical plan, and manual rules related to the classification system and the statistical plan. Every workers' compensation insurer must report its data in accordance with the approved uniform plans and rules.

Subp. 2. **Manual rules.** No insurer shall agree with any other insurer or with any data service organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

#### **2705.2100 AMENDMENTS TO UNIFORM CLASSIFICATION OR STATISTICAL PLANS.**

Any data service organization may file with the commissioner a petition to change the uniform classification system or the uniform statistical plan. Any change must be approved by the commissioner who shall also establish an effective date for the change. If a change is ordered by the commissioner, it must be used by every workers' compensation insurer in reporting data to the data service organization of which it is a member.

#### **2705.2200 INSURER VARIATIONS.**

An insurer may develop variations of the uniform classification system upon which a rate may be made. A variation must be filed with the commissioner 60 days prior to its use. The commissioner shall disapprove variations if the insurer fails to demonstrate that the data produced by the variation can be reported consistent with the uniform statistical plan and classification system.

## **2705.2300 INFORMATION AND ANALYSIS**

~~In determining whether a competitive market exists, the commissioner shall monitor the degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems, and other sources, or cause or participate in the development of new relevant information and analytical systems. The commissioner shall require insurers to provide additional data or reports as necessary to develop new information systems.~~

## **2705.2400 CRITERIA**

~~In determining whether a reasonable amount of competition exists, the commissioner shall consider the criteria listed in items A to F.~~

~~A. Premium and loss experience which includes, but is not limited to, consideration of movement in premium and losses over time, changes in premium relative to losses, and comparisons with other states.~~

~~B. Ease of entry which includes, but is not limited to, consideration of barriers to entry and the number of firms entering and exiting from the market.~~

~~C. Market share which includes, but is not limited to, consideration of the number, size, and dispersion of firms writing workers' compensation insurance.~~

~~D. Class rates which include, but are not limited to, consideration of comparison of changes in rates with changes in costs, variation in rates, and frequency of rate changes.~~

~~E. Residual market which includes, but is not limited to, change in size, percent of total market, and composition of the residual market.~~

~~F. Any other reasonable criteria if they are enumerated in the commissioner's eventual determination.~~

## **2705.2500 RATING CRITERIA**

Subpart 1. **Determining compliance.** In determining whether rates and rating plans comply with Minnesota Statutes, section 79.55 and part 2705.1800, the commissioner shall consider the criteria in subparts 2 to 4.

Subp. 2. **Loss experience and other rate factors.** The commissioner shall consider past and prospective loss and expense experience within and outside of Minnesota, catastrophe hazards and contingencies, events or trends within and outside of the state, loadings for leveling premium rates over time or for dividends

or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and any other relevant factors if they are enumerated in the commissioner's eventual determination.

Subp. 3. **Expenses.** The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

Subp. 4. **Profits.** The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

### **2705.2600 EXPERIENCE RATING PLANS**

An insurer may use the experience rating plan developed by the data service organization of which it is a member. An insurer may also develop and use its own experience rating plan. Any experience rating plan is subject to the conditions in parts 2705.2800 to 2705.2900.

### **~~2705.2700 AGGRAVATED INEQUITY.~~**

~~If a claim is settled between a normal valuation date and the next rating effective date and if the settlement results in an aggravated inequity, then the experience modification factor must be revised if requested by either the insurer or the insured. An aggravated inequity includes, but is not limited to, the following situations:~~

~~A. the expected loss for the insured is less than \$50,000 and the primary value of the claim has changed by more than \$2,500; or~~

~~B. the expected loss for the insured is greater than \$50,000 and either the primary value of the loss has changed by more than five percent of the expected loss or the total value of the claim has changed by more than \$50,000.~~

### **2705.2800 LOSS INFORMATION**

Each insurer or the data service organization to which it belongs must annually provide the following loss information to each insured eligible for experience rating:

- A. the insured's experience modification factor;
- B. the payrolls and incurred losses used to calculate the experience modification factor; and
- C. whom to contact if the insured desires more information.

## **2705.2900 FORMS**

The forms for providing this information may be developed by either the insurer or by the data service organization to which the insurer belongs. The forms must be filed as part of the experience rating plan.

## **2705.3000 SCHEDULE RATING PLANS**

The ~~maximum credit and~~ maximum debit which can be developed by schedule rating shall be determined by the commissioner and shall be no more than 25 percent of manual premium, after application of any experience modification.

## **~~2705.3100 FAILURE TO COMPLY~~**

~~Subpart 1. Notice. If the commissioner finds upon review of the insurer's rate filing that the rates or rating plans do not comply with the requirements of Minnesota Statutes, sections 79.55 to 79.61 and this chapter, or that the filing lacks the necessary information to determine whether the rates comply with the cited statutes and rules, then the commissioner shall notify the insurer in what respects the rates or rating plans fail to comply and specify a reasonable period within which the defects shall be corrected.~~

~~Subp. 2. Failure to correct; penalty. If the insurer fails to correct the specified defects within the time period specified, the insurer is in violation of Minnesota Statutes, section 79.56 and subject to a fine as provided in Minnesota Statutes, section 79.56, subdivision 3.~~

## **2705.3200 POLICY FORMS**

Workers' compensation insurance must be written using policy forms filed by the data service organization of which the insurer is a member except that if the insurer files a rating plan requiring a policy provision or endorsement for which the data service organization has made no usable filing, then the insurer may file its own policy forms needed to implement its rating plans.