STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Trade Conduct - Agent Conduct

STATEMENT OF NEED AND REASONABLENESS

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Minn. Stat. § 60A.17, subd. 15, gives the Commissioner of Commerce (hereinafter "Commissioner") authority to "adopt rules pursuant to Chapter 14 to further implement and administer the provisions of this section." This section requires that all persons that act or assume to act as insurance agents in the solicitation or procurement of applications for insurance, the sale of insurance policies, or in any manner act as an insurance agent in negotiation of insurance by or with an insurer, must obtain a license from the Commissioner to do so. This section sets forth the requirements to obtain such a license and Subd. 6(c) of that section sets forth the grounds on which the Commissioner may revoke or suspend a license or impose a civil penalty upon an agent. These rules are needed to further delineate those requirements and standards.

There are a number of areas where the standards specified in section 60A.17 are unclear and there is a need to further delineate those standards. Some of those areas include standards for supervision of agents, standards and guidelines for obtaining loans from clients, recordkeeping requirements for agents regarding complaints received by them and their financial records, and requirements for insurers and agencies to report information to the Commissioner upon termination of an agent's appointment.

The staff of the Department of Commerce has noted the re-occurence of a number of complaints about similar agent practices or activities. Although most agents are diligent in their efforts to serve their clients and other people they deal with, there are occasions in which the service rendered or the actions of the agent are so wanting that reasonable rules are necessary to assure that fair and reasonable standards of conduct are established and adhered to.

Also, it should not be necessary that courts be burdened because of such practices. The Department recognizes that redress may be available in the Court system, however, this is often not practical because of the cost in time, fees, and lost wages.

The rules define in greater detail practices related to agent conduct which are improper. As more fully indicated below, the proposed rules reasonably address the above-stated needs.

HISTORY

On July 11, 1983, the Commissioner published Notice of Intent to Solicit Outside Opinion at 8 S.R. 65 for his consideration in the promulgation of regulations under Minn. Stat. § 60A.17. After review of the comments solicited, the Commissioner proposed rules governing insurance agent conduct on November 14, 1983, and published the proposed rules in the State Register on November 28, 1983.

FACTS ESTABLISHING REASONABLENESS

4 MCAR § 1.9012 Definitions.

Proposed Rule 4 MCAR § 1.9012 defines certain terms used in the proposed substantive rules. The definitions are necessary to enable persons affected by the propsed rules to comprehend their full meaning,

effect and applicability. Definitions which are material to a full understanding of the proposed rules are more fully discussed below in the context of the appropriate substantive provisions.

4 MCAR § 1.9013 Loans from clients.

This proposed rule is intended to address one of the most serious situations which the Department has learned of in recent years. The Department has documented many cases of insurance agents accepting loans from clients under what are at best questionable circumstances. In some cases clients were clearly taken advantage of, and loans were indicative of fraudulent, coercive, dishonest and/or untrustworthy practices committed by the agent in violation of Minn. Stat. § 60A.17, subds. 6 and 6c(a)(9) (1982), as amended.

The proposed rule has two parts. Paragraph A requires that loans obtained from clients be reduced to writing and that the lenders be given a copy. The contract or note can be the sole effective means a client has of proving the existence of a debt, and the document is essential to an objective review of the transaction.

Paragraph B of the rule states that agents must not solicit or accept loans under dishonest, unfair or unconscionable circumstances. The Department's experience in this area shows a variety of misconduct, including the acceptance of no interest loans from unsophisticated lenders based only on questionable, oral agreements; the acceptance of loans from persons known to be susceptible to high pressure solicitations; the use of loans to conceal past systematic overcollection of premiums; the refusal to pay agreed-upon interest; and the acceptance of unsecured loans for questionable investments. There have also been cases involving disputes as to whether particular funds were intended as loans to agents or as

payment of insurance premiums. Given this variety of fact situations, it would be difficult if not impossible to formulate a simple rules governing loans. The proposed rule therefore uses the general terms "dishonest, unfair or unconscionable", and contains a number of criteria for evaluating individual transactions to determine whether the agent involved acted in an honest, trustworthy and fair manner toward her/his client lender.

With respect to the individual criteria, the most important is clearly the prior relationship between agent and lender. It should be noted that the rule only applies to individuals (i.e. natural persons) with whom the agent came into contact in the course of her/his business (i.e. clients). Taken together, these two factors would eliminate from further Department scrutiny the vast majority of cases where agents borrow money from old friends or business associates whose relationship with the borrower is only incidental to that person's role as an insurance agent.

The remaining criteria are all calculated address the issue of whether a particular loan was made in an arm's length transaction between two individuals of relatively equal bargaining power, on the one hand, or under circumstances indicating agent misconduct on the other.

Paragraph C of the proposed rule requires agents to compile and maintain a file pertaining to client loans. Loan records must be kept for at least six years after the loans have been fully repaid. Since agents who have borrowed money from clients presumably have records thereof, paragraph C merely calls for pulling that information together in a single file. That file will be useful for agents in assessing their financial obligations, and will facilitate investigations and monitoring of agent compliance with the substantive rule.

4 MCAR § 1.9014 Delivery of Policies.

This proposed rule requires agents to deliver or mail policies to their clients within 20 working days after receipt from the insurance companies. In some cases, insurance companies send newly issued policies directly to the insureds. It is common, however, for agents to request that new policies be sent to them for delivery. This practice permits agents to review policies for correctness, offers them the opportunity to personally contact insureds, re-explain policy provisions and answer questions. There are no uniform guidelines for delivery time, however, and the lack of standards has caused a number of problems. Based on complaints of non-delivery, and experience which suggests that the failure to deliver policies leads to coverage disputes, prompts time-consuming and unnecessary consumer inquiries, and can be a significant indicator of fraud or professional neglect, the Department has proposed this rule as a means of standardizing practice and establishing norms and expectations for policy delivery.

The proposed rule will ensure that valuable contracts are put into the hands of their owners, upon whom the documents confer important legal rights. Insureds need their policies to determine coverage and compare benefits, and may at the least experience delays in claim processing if policies cannot be found. Timely delivery will also provide customers with assurances that their policies have in fact been issued, thereby substantially decreasing the number of inquiries handled by insurance agents, companies and the Commerce Department from people who have not received their policies and do not know when to expect them. The rule will also deter and aid in the discovery of agent misconduct. Experience shows that the failure to deliver policies can mean that agents failed to apply for them and instead coverted the premiums to their own use. In

addition, some agents have wilfully failed to deliver contracts to conceal other illegal conduct, such as the issuance of life insurance policies to persons who originally applied for health insurance.

The twenty (20) working day delivery requirement should provide ample time for agents who go on vacation or find themselves temporarily indisposed, particularly since the rule permits mailing as well as personal delivery of the policies. The provision for written waiver of delivery recognizes that some insured want agents to retain their insurance policies or portfolios for safekeeping or convenient servicing, while providing that they have a means of proving the location and control of policies in case of later disputes.

4 MCAR § 1.9015 Receipts for insurance-related materials.

This proposed rule simply states that when an agent takes possession of policies or other documents relating to insurance from an insured, she/he must leave an itemized receipt for those materials. The requirement is really one of common courtesy and careful business practices. Nonetheless, the Department has received complaints from individuals unable to contact agents who had taken their policies, or who later had occasion to question what exactly was taken. The Department has also learned of cases of agents taking policies and destroying them in order to conceal illegal conduct such as the sale of unnecessary and duplicative policies. This rule, which again reflects the inherent importance of insurance policies and related documentation to a person who

may be submitting claims and needs to know her/his contractual rights, will reduce the number of complaints and disputes in the future, and expedite the filing and payment of claims.

4 MCAR § 1.9016 Other licenses.

Minn. Stat. § 60A.17, subd. 6, states that a person who is untrustworthy shall not be licensed as an insurance agent. The proposed rule relating to other licenses is largely definitional. It states, in effect, that if a person who holds an insurance agent's license and a real estate or securities license engages in conduct which is serious enough to lead to revocation of the non-insurance license, that same conduct gives the Commissioner grounds to revoke the person's insurance agent license. The proposed rule recognizes the increasing similarity among and overlap in regulation of these industries. Real estate brokers and salespersons, and securities brokers and agents, are in positions of trust and importance similar to those of insurance agents. All hold their licenses from the Commissioner of Commerce. Violations of the statutes pertaining to securities and real estate agents frequently involve the same types of misconduct which are violations of Minn. Stat. § 60A.17, and reflect equally on the violators' fitness to be licensed as insurance agents and to deal with the public in positions of turst. The rule would in no way detract from an agent's right to defend herself/himself in a revocation proceeding under any Department administered statute, and embraces only conduct leading to license revocation, the most serious administrative sanction, not less serious offenses. The rule will provide the

Commissioner with a convenient procedural tool for acting against dishonest persons who hold more than one Commerce Department license, and reduce the need to bring multiple actions against a single individual.

4 MCAR § 1.9017 Criminal convictions; disciplinary actions in other states.

Paragraph A of this proposed rule implements Minn. Stat. § 60A.17, subd. 6c(a)(7) which provides for action against an insurance agent's license if the licensee is convicted of a felony, gross misdemeanor or misdemeanor involving moral turpitude. This rule would require an agent so convicted to report the conviction to the Commissioner within ten working days thereof. In the past, evidence of agents' criminal convictions has come to the Commissioner only by chance, or by affirmative Department investigation. Public protection considerations require that agents notify the Commissioner of criminal convictions, so that she/he may have the opportunity to determine whether disciplinary action is appropriate.

Paragraph B of the proposed rule requires an insurance agent whose insurance, securities or real estate license is disciplined in another state to report that disciplinary action to the Commissioner within ten working days. Other states' disciplinary actions clearly bear on a licensee's fitness to be licensed generally. This section is needed so that the Commissioner may be aware of such disciplinary actions and conduct his own evaluation as to the agent's fitness to be licensed in Minnesota.

4 MCAR § 1.9018 Duties of supervising agents.

Proposed Rule 4 MCAR § 1.9018 defines the responsibilities and duties of supervising agents. "Supervising agent" is defined in Proposed Rule 4 MCAR § 1.9018 as an agent or general agent who contracts with, employs or engages one or more other agents to solicit business or otherwise act as an insurance agent(s) on her/his behalf. The rule is needed in order to correct abuses which have been caused by improper training and supervision of field agents by their supervisors. The rule is really an explicit application of the well settled rule of agency law that a principal is responsible for the conduct of her/his agent. The agency principle and its rationale follow with even greater force from the fact that agents and principals in the insurance industry are held to high statutory standards of care, and their conduct and relationships are closely regulated in the public interest. Making supervising agents responsible for their subagents will increase professionalism, give supervisors incentives to properly train and oversee their subordinates and enhance agent accountability to the Commissioner and to the public.

Paragraph A of the proposed rule provides that supervising agents have the duty to ensure that (1) the agents they employ or contract with are licensed, (2) properly remit all premiums, return premiums or refunds to their rightful owners, and (3) that they comply with all applicable insurance laws and regulations.

Paragraphs B and C of the proposed rule require the supervising agents to exert supervision and control over agents that they employ or contract with on their behalf. Paragraph B requires the supervising agent

to maintain and enforce working procedures and Paragraph C requires an annual review of the agent's accounts. These provisions are needed to implement paragraph A of this proposed rule.

4 MCAR § 1.9019 Suitability.

This proposed rule requires agents to have reasonable grounds for believing that the purchases of insurance they recommend to their customers are appropriate, or suitable, and to make reasonable inquiries to determine suitability. The duty to recommend suitable coverage stems directly from the statutory requirements of Minn. Stat. § 60A.17, subds. 6 and 6c(a)(9) that agents conduct their business in a competent and honest manner, while the requirement that agents make reasonable inquiries to determine suitability is necessary to effectuate the purposes of the rule. The rule recognizes agents' position of superior knowledge and the critical immportance of proper and adequate coverage to insurance consumers. A fire in the home, an automobile accident, a catastrphic illness or an untimely death can impose extreme financial and personal hardship on individuals who are not properly insured. Clearly, a person who holds herself/himself out as a licensed agent invites the public to rely on her/his expertise in the critical and often complicated area of deciding on insurance coverage.

The rule also recognizes that the most important factors in determining the appropriateness of a recommended purchase of insurance are the customer's need for insurance, her/his ability to pay, and the person's existing insurance program. Because other factors, in individual cases, may also bear on the suitability of a particular purchase, the rule does not limit the suitability inquiry to income, need and existing insurance alone.

The clearest illustration of the need for the rule can be found in the multitude of cases involving the sale of duplicative health and life insurance policies to senior citizens. Many senior citizens have been sold more than 30--in one case 72--health and life insurance policies within a period of a few years by agents who either knew that the sales were unnecessary and unconscionable or failed to inquire into their clients' incomes, needs and existing insurance programs.

To summarize, the duty to recommend suitable coverage, tailored to client needs, is a fundamental professional duty, flowing from the requirement that agents be competent and trustworthy. The proposed rule reflects the social and financial imporance of insurance protection, the superior knowledge and expertise of agents as opposed to their clients, and the reliance and trust which clients necessarily place on their agents' recommendations. The rule recognizes that consumers can be either underinsured or overinsured as a result of an agent's breach of professional duty. The rule will impose no more than the burdens of ordinary care already practiced by competent professionals.

4 MCAR § 1.9020 High standards of commercial honor.

Proposed Rule 4 MCAR § 1.9020 requires every agent to observe high standards of commercial honor and just and equitable principles in the conduct of her/his business. This rule succinctly and positively summarizes the professional standard expected of insurance agents in the course of their business and their dealings with the public. It restates affirmatively the standards expressed as prohibitions in Minn. Stat. § 60.17, subds. 6 and 6c, and provides a needed model for agent behavior.

4 MCAR § 1.9021 Registered office for resident agents.

Proposed Rule 4 MCAR § 1.9021 requires every agent who is licensed as a resident agent to maintain a registered office for service of process in this state and to specify the office address on all license applications and renewal applications. There is a special need for this rule since, pursuant to Minn. Stat. § 60A.17, subd. 1a(b)(1), a person may become a resident agent if she/he either has her/his principal place of business in this state, or if she/he is a "resident of a community or trade area, the border of which is continguous with the state line of this state...." Minn. Stat. § 60A.17, subd. 1a(c)(2) already requires agents licensed as nonresidents to appoint the Commissioner as agent for service of process. However, there is no similar statutory provision for residents, or for the special class of nonresident persons who are licensed as resident agents pursuant to Section 60A.17, subd. 1a(b)(1). Therefore, it is necessary for agents who qualify as and are licensed as resident agents, but who do not reside in Minnesota, to designate a registered office for service of process in the State of Minnesota. Clearly, a person who is licensed as a Minnesota resident agent submits to the Commissioner's jurisdiction, and must give the Commissioner and Minnesota residents a convenient means of serving legal process on them.

4 MCAR § 1.9022 License display and use.

Paragraph A of this proposed rule requires that an agent display her/his license(s) where the license(s) can be readily viewed and inspected by others. This rule will permit the agent's clients, and investigating authorities, to determine whether an individual is in fact properly licensed by the Commissioner.

Paragraph B of this proposed rule prohibits an agent from representing, either orally or in writing, that her/his status as licensee immplies some endorsement or sponsorship of the agent or her/his products by the State of Minnesota. An insurance agent's license merely gives a person the right to sell a particular line of insurance in the State of Minnesota. The Commissioner does not and cannot prefer, endorse or sponsor one agent or company over another. Some agents, however, have used their status as licensees to imply more than mere qualification to sell insurance, or have implied that the State affirmatively approves of their products. The proposed rule prohibits such representations, and to ensure that no confusing advertising is used, requires that references to licensure affirmatively disclaim any inference of endorsement or sponsorship of the licensee or its product by any agency of the State.

4 MCAR § 1.9023 Receipt of client funds.

Paragraph A of proposed 4 MCAR § 1.9023 states that an agent who receives insurance funds from his client holds those funds in a fiduciary capacity. In 1983 the legislature amended Minn. Stat. § 60A.17 by adding a new subdivision, effective August 1, 1983, requiring premiums received by agents to be deposited directly in a business account if the premiums are not forwarded directly to the designated insurer. See Minn. Laws 1983, ch. 263, § 4. The proposed rule further specifies the conduct expected of agents who accept premiums or other funds from their clients, the insurance consumers; it gives content and substance to the statutory language which prohibits an agent from unreasonably failing to pay over money he receives from a client in connection with an insurance transaction. See Minn. Stat. § 60A.17, subds. 6 and 6c(a)(5) and (9) (1982), as amended.

Insurance agents frequently receive, from their principals and clients, thousands of dollars each week, and hold the funds for a period of time. Unlike attorneys, real estate brokers and other professionals in similar positions of trust, however, insurance agents are not required to maintain trust accounts, and can and do commingle others' money with their general business and/or personal funds.

The term "fiduciary capacity" is defined, in pertinent part, by Black's Law Dictionary as follows:

> One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity", when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part...

Black's Law Dictionary (Revised Fourth Edition West 19). This definition accurately describes the Department's view of the proper role of an agent who receives client funds. Insurance consumers rely heavily on the expertise and honesty of their agents in selecting coverage, and must trust them to procure insurance and deal honestly and faithfully with their money.

In the normal course of business an agent receives premiums or other funds from a client and designates those funds as being for a particular insurance policy or company. The designation of an insurer is crucial, since it determines who, between the agent and the insurance company, is liable to the client for return of the premium or for provision of coverage. See e.g. Rommel v. New Brunswick Fire Ins. Co., 214 Minn. 251, 8 N.W.2d 29 (1943). See also Minn. Stat. § 72A.03 (1982) (a company whose agent fraudulently collects premiums is bound thereby). At the point when an agent does designate funds to a particular insurer, technical ownership of and liability for the funds passes to the insurer. Because in the vast

majority of cases agents do designate insurers, and do not receive unspecified funds belonging only to a client, paragraph B of proposed 4 MCAR § 1.9023, which requires monthly reporting of client funds held by the agent, has limited applicability and imposes little burden on agents. However, if a consumer has given an agent money with the expectation that the agent will procure coverage, or if an agent has received return premiums, refunds or other things of value on the client's behalf from an insurance company or another source, the consumer has the right to know what is being done with her/his money.

To summarize, the rule is needed to define the relationship between agent and client in those cases where agents hold client funds, clarify the statutory standard of care expected of agents in such cases, and increase the accountability of agents to their clients. The monthly statement will serve to remind agents of their duty to procure insurance or make refunds to the proper owners, give clients valuable records, and alert clients to any possible lack of coverage.

4 MCAR § 1.9024 Mandatory financial records of agents and agencies.

Proposed 4 MCAR § 1.9024 requires agents to keep detailed records of funds received from insurance consuemrs. As noted in discussion of the preceeding rule (Receipt of client funds), insurance agents, who are not required to keep trust accounts, receive large amounts of money from clients who rely on their agents to handle their money in an honest and professional manner. As a matter of basic good business practices most agents and agencies do keep records of the receipt and disbursement of their clients' funds. Too many, however, do not, or keep inadequate records, with the result that clients' funds are lost, agents lose control

of their expenditures and, in some cases, slide down the slippery slope of failing to remit newly collected premiums in order to cover past obligations. The lack of proper accounting for premiums results in coverage disputes, unnecessary litigation, and financial loss to the public both directly, through conversion of client funds by agents, and indirectly, through increased costs for insurance passed on to consumers by insurers who are obligated to provide coverage or make refunds despite their agents' failure to remit premiums. in addition, the failure to remit premiums and refunds has historically been the single most common cause of disciplinary action and criminal charges against agents. In many such cases, problems began not because of fraudulent design but because of simple poor bookkeeping.

There has heretofore been no regulation of the way agents handle client funds other than actions taken on a case by case basis against agents who "unreasonably failed to pay over premiums" within the meaning of Minn. Stat. § 60A.17, subd. 6 (1982). The proposed rule, like others addressed in this Statement of Need, is intended to establish professional norms and provide guidance as to what is considered "reasonable" handling of client money, and is needed to protect the public and effectuate and implement the purposes of the licensing statute.

Paragraph A, the substantive heart of the proposed rule, requires agents to keep records of funds received from their clients or for their clients. The records must specifically include the time, amount, source and deposit of the funds. In addition, the agent or agency must keep monthly balances for business accounts into which client funds are deposited, and maintain cash receipts and disbursement journals in accordance with generally accepted accounting principles. Paragraph A

also recognizes the unique status of "exclusive" or "captive" agents - i.e. agents who are employed by and sell for a single insurance company - and permits company personnel to maintain the required records.

Paragraph B futher specifies procedures for deposit of client funds into business accounts as required by Minn. Laws 1983, ch. 263, § 4. The availability of specific information, itemized by client and transaction, will permit agents, companies, consumers and the Department to trace funds, decreasing coverage and financial disputes and greatly facilitating law enforcement.

Paragraph C requires records to be maintained for at least six years, the general statute of limitations for contractual actions, and reminds agents that their financial records can be examined by the Commissioner pursuant to Minn. Stat. § 60A.031 (1982), as amended.

4 MCAR § 1.9025 Mandatory complaint records.

Proposed Rule 4 MCAR § 1.9025 requires every agent for herself/himself, and every agency for those agents under its supervision, to compile and maintain separate records of complaints made against each agent. Agents and agencies receive many complaints which the Commissioner does not. When the Commissioner has cause to investigate particular agents, the existence of individual complaint files will facilitate the administration and enforcement of the insurance agent licensing statute. The six-year maintenance requirement relates to the general statute of limitations for contractual and other actions.

4 MCAR § 1.9026 Termination of appointments or contracts.

Proposed Rule 4 MCAR § 1.9026 requires companies or agencies which terminate their agents based on complaints or allegations of misconduct to report the reason for the termination to the Commissioner within ten working days. The rule also prescribes the content of the termination report. Insurance companies and agencies can and should be primary sources of information about licensee misconduct. In the past, however, some companies have ignored their responsibility to report violations despite Minn. Stat. § 60A.17, subd. 5b which requires reporting of reasons for termination of appointments. Other companies and agencies have, for public relations or other reasons, engaged in what can only be described as coverups of patently criminal conduct by agents and former agents. The result has been that persons who were clearly unfit to be licensed, and posed a danger to the public, were permitted to continue in business. The proposed rule is necessary to protect the public from such agents and to effectuate the purpose of the licensing statute.

4 MCAR § 1.9027 Refunds.

Proposed Rule 4 MCAR § 1.9027 governs the handling of premium refunds; it requires an agent who receives a request for cancellation of an insurance policy to make the refund or initiate the cancellation and refund process within ten days of the agent's receipt of the request. The proposed rule further states that if the agent receives a refund for an insured she/he must deliver or mail the refund within five days after receipt. This section implements and further defines the requirement of Minn. Stat. 60A.17, subd. 6 (1982) which prohibits an agent from unreasonably failing to pay over to a policyholder any money the policyholder is entitled to.

Recent complaints and investigations reveal that some agents have failed to act on clients' refund and cancellation requests. By doing so, those agents have been able to keep policies in force and retain commissions which they did not earn. Thus, the requirement that an agent who receives a request for a cancellation must forward that request to the insurer so that the cancellation may be processed as soon as possible. Further, if an agent receives a refund for a policyholder, she/he must remit that money to the policyholder within five days. The reasonableness of the rule is clear in light of abuses and of existing laws pertaining to life and health insurance which require that consumers receive their refunds within ten days of request. See Minn. Stat. §§ 72A.51 and 72A.52 (1982).

4 MCAR § 1.9028 Insurance in connection with a loan.

Proposed Rule 4 MCAR § 1.9028 prohibits agents from misrepresenting the necessity for a client to purchase insurance in connection with a loan, or the terms of such insurance. Insurance obtained in connection with a loan, commonly referred to as "credit insurance", is regulated per se by Minn. Stat. ch. 62B (1982). Other statutes pertaining to financial institutions and insurance trade practices control whether and to what extent insurance can be required as a condition of obtaining a loan. See Minn. Stat. §§ 52.04, subd. 13; 56.155; 72A.31 (1982). The instant rule recognizes that agents employed by lenders are in a unique position to exert undue sales influence on borrowers to get them to purchase insurance as a condition for the granting of a loan. Abuses in the sale of credit insurance have been documented in numerous studies and reports, and have been the subject of many complaints to the Department. Accordingly, the

proposed rule is necessary to clarify the conduct expected of agents who seel credit insurance and to facilitate disciplinary action against violators.

4 MCAR § 1.90281 Penalties.

Minn. Stat. § 60A.17, subd. 6c(a)(3) (1982) makes the violation of any rule or order of the Commissioner grounds for disciplinary action against an agent's license. This proposed rule alerts affected persons to the potential consequences of violating any of the proposed rules.

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Agent Conduct

SUPPLEMENT TO
STATEMENT OF NEED
AND REASONABLENESS

These rules were promulgated because of the substantial volume of complaints in the area of Unfair Trade Practices and particularly insurance agent conduct.

The Notice of Intent to Solicit Outside Opinions Regarding Proposed Rules Relating to Insurance Agent Conduct was published in the July 11, 1983 State Register (8 S.R. 65). The proposed rules were published in the November 28, 1983 State Register (8 S.R. 1256).

After the Notice to Solicit Outside Opinions was published various industry groups, individual companies and other concerned parties contacted the Department in regard to the proposed rules. Certain of these parties indicated their desire to be involved in the development of the rules. Accordingly, once an initial draft of the rules was formulated by the Department it was circulated among the concerned parties. Some of the people and groups involved included the Insurance Federation of Minnesota, State Farm Insurance Companies, Blue Cross - Blue Shield, and the St. Paul Companies. The representatives of these entities provided comments and suggested changes through written comments and at various meetings regarding the rules, which continued until shortly before publication of the rules. Numerous changes were made in the rules as a result of those discussions. The changes, in some cases, adopted the suggestions made. In other instances, changes were made which were intended to address the concerns raised even if the changes were not exactly those suggested.

At the same time these discussions were occurring, a public information program was undertaken to make the rules known to the widest spectrum of persons possible. Press releases were issued which were reported in various newspapers in the State including the Minneapolis Star and Tribune. The news releases were provided to radio and television stations as well.

The same information was also provided to various industry groups who in turn alerted their members as to the rules.

During the same period, Commissioner Hatch met with various industry groups or spoke before them. At these times, he brought the rules to the attention of these groups.

The Department made every effort to give the fact of the promulgation of these rules and their content the broadest possible exposure. The exposure that they did receive far exceeds that received by rules in the normal rulemaking process.

The rules themselves are promulgated primarily for the benefit of those to whom the insurance is being sold. Their impact will be largely upon insurance companies that would not be considered small businesses pursuant to Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. While it is possible that some of the entities, particularly individual agents, affected by the rules may come under the aforementioned definition, it was determined that since the intent of the rules was to protect the purchaser, their rights and expectations should not be affected because the party they were dealing with came within the definition of a small business. Upon review it was decided that there was no reasonable basis for setting different standards for small businesses that might be subject to these rules.