

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Rule amendments for the purpose
of prohibiting certain practices
by motor vehicle fuel franchise
suppliers.

STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF AUTHORITY

Minn. Stat. Section 80C.18, subd. 1 gives the Commissioner of Commerce ("Commissioner") authority to "promulgate rules and regulations to carry out the provisions of Sections 80C.01 to 80C.22..." The Commissioner is also empowered pursuant to Minn. Stat. Section 45.023 to "adopt...rules...whenever necessary or proper in discharging the Commissioner's official responsibilities." Further, Minn. Stat. Section 80C.18, subd. 1 provides "the Commissioner may define by rule false, fraudulent or deceptive practices in the offer and sale of franchises."

The Commissioner finds the proposed amendment necessary and appropriate in the public interest for the protection of investors in motor vehicle fuel franchises and consistent with the purposes fairly intended by the policy and provisions of Sections 80C.01 to 80C.22. The Commissioner further finds that the proposed amendment will have the effect of protecting certain small businesses from onerous and unfair franchise agreement terms, will provide redress for such franchisees, and will have a favorable regulatory impact on small businesses in accordance with Minn. Stat. Section 14.115.

History

On January 7, 1985, the Commissioner published notice of intent to solicit outside information at 9 SR 1576 for his consideration in the promulgation of rules and amendments under Minn. Stat. Ch. 80C. After a review of comments solicited the Commissioner published the proposed rules in the State Register on January 28, 1985.

Facts Establishing Reasonableness

Minn. Rules 2860.5400 defines unfair and inequitable practices with respect to motor vehicle fuel franchises. The purpose of the proposed amendment is to address complaints received by the Department of Commerce Enforcement Division regarding franchise contract terms which purport to waive the dealer (franchisee) survivorship rights under Minn. Stat. Section 80C.145.

Minn. Rules 2860.5400 (K) as proposed, prohibit suppliers from requiring dealers to waive any of the dealer's rights under Minn. Stat. Ch. 80C or 15 U.S.C. Section 2801 to 2806. The addition of this rule would prohibit suppliers from requiring waiver of survivorship rights and assignment rights and any other rights created by Minn. Stat. Ch. 80C and 15 U.S.C. Sections 2801 to 2806.

Minn. Rule 2860.5400 (L) is proposed to prohibit the inclusion of releases in franchise agreements. This rule would protect and preserve dealer statutory and common law rights. Further, this rule would prevent the harsh result in Sorensen vs. Coast-to-Coast Stores (Central Organization), Inc., 353 N.W. 2d 666 (Minn. App. 1984), where a franchisee unknowingly released all rights he had against the franchisor.

Minn. Rule 2800.5400 (M) is intended to prohibit suppliers from requiring or encouraging dealers to violate state laws. This rule would make such supplier action an independent violation of the Franchise Act and afford the dealer greater remedies.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes Section 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

Despite a lack of comments in this regard, the Department considered whether the provisions of the rule might be modified to accommodate the interests of small businesses.

Each of the methods described at Minnesota Statutes Section 14.115, subdivision 2(a) - (e) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.

It was determined that in all likelihood many of those affected by these rules would be small businesses; therefore, the impact on small businesses was a part of the entire rulemaking process.