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STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE

In the Matter of the Proposed  
Rules Relating to Credit Unions

STATEMENT OF NEED  
AND REASONABLENESS

Background

Chapter 181 Laws of Minnesota 1987 which became effective on August 1, 1987 changed the membership requirements for credit unions as it applied to small groups. Prior to the passage of this law any 25 residents in the State of Minnesota representing a group with a common bond could apply to the Commissioner for a determination whether it was feasible for that group to form a credit union. Upon a determination that it was not feasible to organize because the number of potential members was too small the applicants could then be certified by the Commissioner as eligible to petition for membership in an existing credit union geographically situated to adequately service the group. Chapter 181 amended the existing law's requirement that the credit union which the group wished to join had to be geographically proximate to the group.

Chapter 181's other statutory amendments provided that the Commissioner was to adopt rules regarding groups that could apply to join existing credit unions. One of the requirements was that such rules would provide that groups with potential memberships of less than 1500 were to be automatically deemed to be too small to be a separate credit union unless there were compelling reasons to the contrary.

In addition groups with potential members in excess of 1500 were not automatically precluded from being allowed to join an existing credit union if appropriate circumstances were involved.

The authority for the Commissioner to certify select groups has been law since June 2, 1983 and to date, 172 select groups have been certified. The 1987 enactment amended that authority requiring that specific criteria be adopted by administrative rule to facilitate application and approval of petitioning small groups on an uniform basis. Over the period June 2, 1983 to date, the Commissioner has exercised administrative latitude in determining the number of persons in any petitioning group.

Chapter 181 specifically requires the Commissioner to adopt rules to implement the admission of select groups to existing credit unions. Appropriate standards for the application process are necessary to enable groups to know what the requirements are and what factors will be used in determining whether or not their application is approved.

The proposed rules will clarify the parameters for acceptance of groups of more or less than 1500 and on what basis the count of potential members is made. Issues of overlapping fields of membership and the requirement that an existing credit union be "capable of serving" select groups goes beyond mere geographical proximity and will be clarified within the context of current credit union operations.

## Part 2765.6400 Select Group Eligibility

Subpart 1 sets the definitional standards for what a select group is. They reference common bond requirements for groups that are allowed to make application to the Commissioner to start a credit union. They repeat statutory language for select group inability to have their own credit union in the rule so that all of the requirements for the application process are located in one place.

Subpart 2 establishes the application procedure. They require filing of a written statement of the facts upon which the Commissioner is to make the decision in regard to the application. Many of these requirements are the same as one set forth in the enabling statute. These rules require a factual explanation of how the statutory requirements are met. For example B of subpart 2 requires a description of the common bond that is required by statute. Certain other elements such as the basis upon which the persons who have signed the application derived their authority to represent the group are required to be explained as well. The application requires explanations of such things as who the potential members of the group are, their number and how those particular facts were arrived at. If the group is part of an existing credit union, a written waiver from the Board of Directors of the existing credit union that states no objection to the group petitioning another credit union for the membership is required in the application procedure. There is no specific procedure in Chapter 181 for allowing a group to separate from their existing credit union but only refers to obtaining an agreement from the existing credit union. If the members are requesting to leave an existing credit union or are capable of being members in an existing credit union, that credit union has to file a written waiver or consent to allow the application to go forward. This will allow groups that are not happy because of lack of adequate service, distance from the existing credit union or similar factors to proceed to form their own credit union if the other select group criteria of the rules and statute aren't met.

Identification of any membership by the petitioning group in an existing credit union is required to determine whether the certification is accurate. The criteria used to establish the common bond can then be reviewed to determine the availability of other existing credit unions. Also, a common employer who would qualify the group for membership in an existing credit union is required to be disclosed so that common bond can be reviewed as well as the availability of membership in existing credit unions.

Subpart 3, pertains to groups with fewer than 1500 potential members. Chapter 181 specifically stated that any rules adopted should deem groups of less than 1500 to be too small to feasibly form a separate credit union unless there are compelling reasons to the contrary. The department felt it was appropriate to set forth the reasons which would be compelling enough to allow a group of less than 1500 potential members to form a separate credit union. Basically those reasons are that the group does not want to be part of any other credit union and would like to form its own or they cannot obtain agreement from an existing credit union to join it. Under these circumstances groups with less than 1500 members who would like to have a credit union and cannot do so without either violating the law or are just not wanted by any credit union. These groups would have the ability to form their own credit union and have the benefits of credit union membership.

Subpart 4 of this rule repeats one of the criteria set forth in the statute as to the rules required to be adopted regarding the select group eligibility process. It restates that if groups with more than 1500 members meet the criteria that groups of less than 1500 are required to meet then they can be deemed to be a select group.

Subpart 5 sets a reasonable time period for the Commissioner to review the application and either approve or disapprove it. That time period is 30 days. Because certain evaluations have to be made such as the availability of other credit union membership, the common bond and that the procedure isn't being used to circumvent the common bond requirement other credit unions or employers may have to be contacted, 30 days is a reasonable time period in which to complete such a procedure and evaluate all of the relevant facts. The rule also requires that the Commissioner provide a written explanation of the denial. By receiving a more complete explanation than a mere denial of the application, the applicants are in a position where they can refute that particular denial or possibly correct the deficiencies that the Commissioner sees in their application. The Commissioner may ask for additional information or statements so that the application would be deemed to be a complete application. This merely restates a right which is inherent in any application review. The Commissioner has the right to obtain all pertinent data necessary to make an appropriate evaluation. However by stating it in the rule applicants are on notice that additional information may be requested and information beyond that which they submit may be used in the review of their application. The subpart also states that except for applications from groups made up members from an existing credit union, or those who have a common employer which qualifies them to belong to an existing credit union, all select group applications will be considered separately from any consideration of membership provisions of existing credit unions.

Subpart 6 is the final stage in the process of the select group's attempt to join an existing one. It provides the procedure which the credit union that the select group is to join must follow. That is to amend its bylaws to include the select group in its field of membership. To do so the existing credit union may have to demonstrate that the select group is within a reasonable distance of the credit union or that there is a reasonable plan to facilitate servicing the new members. These establish the affinity of the credit union and the select group and mirrors the requirements the select group has to show. Once this showing has been made the bylaws may be amended and the group taken into the credit union. However the existing criteria for credit unions are still met in that the common bond and geographic vicinity of the members are satisfied. Further, it would be determined that the procedure is not used to defeat the existing statutory limitations for credit unions field of membership.

#### Small Business Consideration

M.S. Section 14.155 requires that certain considerations be made in regard to the rulemaking process as to the effect of the rules upon small business and any mitigating factors that may be applied to the application of these rules in regard to small businesses. By definition the select groups that will be eligible to use these rules and will be affected by these rules if they are businesses will in all likelihood be small businesses. Accord-

ingly all of the factors pertaining to small business were considered throughout the entire promulgation of the rules. The department does not feel, except inadvertently, that any business other than a small business would be involved except for the larger credit union the select group may ultimately form. However the department constructed the rules presuming that in all instances small businesses or individual persons would be involved throughout so there are no different criteria or applications for small businesses.

In promulgating the rules pertaining to credit unions the department did consider the impact on small businesses. Specifically as pertaining to the provisions of subdivision 2 of Minnesota Statutes, 14.115 the department did consider the establishment of less stringent compliance and reporting requirements for small businesses but as indicated, by the very nature of the select groups being small or small credit unions or potential credit unions the department presumes they would be small businesses and therefore the standards set are standards for small business.

The only deadline of schedule for compliance in the rules is the 30 day review period by the department and accordingly no separate standard was set for small businesses.

To a large extent the criteria for the application procedure are set forth in Chapter 181 and the department did set what they believe to be simplified standards for all applications. Accordingly it was not deemed appropriate to set another standard for small businesses because once again it is presumed that the credit unions involved or the groups involved would be small businesses.

Item D in this subdivision is not applicable to these rules and as to the exemption of small businesses because by the very nature of this rule involving the application on what is presumed to be small businesses and the rules are required by the statute no exemption would be appropriate.



OFFICE OF THE COMMISSIONER

# STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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August 8, 1989

Michelle Swanson  
The Legislative Commission to Review  
Administrative Rules  
55 State Office Building  
St. Paul, Minnesota 55155

Dear Ms. Swanson:

Enclosed per your request is a copy of the Statement of Need and Reasonableness in regards to rules relating to Credit Unions. Your inquiry originated as a result of the Notice of Hearing to be held on August 23, 1989. Please be advised that that has been rescheduled for September 18, 1989.

Location and time will be the same.

Very truly yours,

MICHAEL A. HATCH  
Commissioner of Commerce

By:

A handwritten signature in cursive script, appearing to read "Richard G. Gomsrud".

Richard G. Gomsrud  
Department Counsel

RGG:jmt