Regulatory Analysis Form

(Completed by Promulgating Agency)

IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency:
Department of Labor and Industry
Bureau of Workers' Compensation

(2) Agency Number:

Identification Number: 12-85

IRRC Number: 2758

(3) Short Title:
Workers' Compensation Self-Insurance

(4) PA Code Cite:
34 Pa. Code Chapter 125, Subchapter A

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:
George Knehr, Chief, Bureau of Workers' Compensation Self-Insurance Division; 717-783-4476

Secondary Contact:
Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Workers' Compensation; 717-783-4467

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau) is issuing these amendments to update and clarify the existing regulations that govern the administration of self-insurance for individual employers under the Workers' Compensation Act (act).

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:	N/A
B. The date or dates on which public meetings or hearings will be held:	N/A
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	Summer or early Fall 2010
D. The expected effective date of the final-form regulation:	Upon final publication
E. The date by which compliance with the final-form regulation will be required:	Determined at time of subsequent application/renewal
F. The date by which required permits, licenses or other approvals must be obtained:	Subsequent application/renewal

(10) Provide the schedule for continual review of the regulation.

The Department and the Workers' Compensation Advisory Council will continue to monitor the impact and effectiveness of the regulations. Changes to the act and court decisions may lead to amendment of the regulations.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Department issues these final-form regulations under the authority contained in sections 305 and 435(a) of the act (77 P.S. §§ 501 and 991(a)), and section 2205 of The Administrative Code of 1929 (71 P.S. § 565).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The final-form regulations are not mandated by law, court order or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Department seeks to increase clarity and consistency through the introduction of new standard terms that may be used throughout the regulations, to provide more objective standards for qualifying for and maintaining self-insurance status, and to improve and strengthen the Department's ability to efficiently and effectively monitor and regulate workers' compensation self-insurance in Pennsylvania. Doing so provides a substantial benefit to all employees who are currently employed by self-insured employers in the Commonwealth.

Problems associated with the current regulations would continue without these amendments. For instance, the lack of consistent standards in the area of the level of financial strength and condition an applicant needs to demonstrate financial ability has resulted in the granting of self-insurance to applicants who probably were not financially strong enough to have received such approval. As a result, Pennsylvania has experienced a large number of defaults (76 since 1975) on the payment of workers' compensation liability. The current regulations also allow some applicants to retain too much exposure and they do not require self-insurers to guard against the additional risk resulting from having a large number of employees and from catastrophic events.

Applicants for self-insurance will benefit from the establishment of objective standards for qualifying for self-insurance and from improved efficiencies in the processing of applications resulting from the amendments. The amendments seek to ensure that those employers approved to self-insure possess adequate financial strength and capacity to guaranty with reasonable certainty that they are able to satisfy the potentially lengthy and costly liability incurred as a self-insurer. As a result, the chief beneficiaries of the amendments will be the injured workers of self-insured employers through the elimination of or reduction in financial problems and defaults that could adversely affect their entitled benefits. Self-insured employers employ approximately 22 % of the Commonwealth's non-agricultural workforce.

The amendments will also provide certain benefits to certain self-insured employers. For example, employers with strong financial ratings will benefit through reduced costs as a result of a proposal to increase the security discounts for such ratings. Also, 37 of the 57 public employers now self-insured will see a 49% average reduction in the amount of funding dedicated to workers' compensation.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies or references have been used.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The amendments could adversely affect new applicants for self-insurance who will not meet the standards for possessing financial ability to self-insure, however there are certain provisions which do allow for "grandfathering" of current self-insurers.

Fifteen percent or less of the current self-insurers may experience greater indirect costs due to larger required security or funding amounts and stricter excess insurance coverage requirements. The benefits of strengthening the guaranty of compensation payments to the injured workers of self-insurers outweigh the adverse effects on these self-insurers.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The 768 current active self-insurers, the 346 employers now in runoff status and employers applying for self-insurance in the future will be affected by the amendments to varying degrees.

Self-insurance claims service companies, sureties and trustees will also be impacted by the amendments.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Bureau estimates that the regulatory amendments would save certain self-insurers approximately $60.4 million in the five-year period analyzed. The estimates of costs and savings are derived from calculations relating to the effect on security and funding resulting from the amendments. Some other additional costs could be incurred for certain self-insurers resulting from changes in excess insurance and reporting requirements. However, such costs are minor and cannot be estimated.

The savings for the Regulated Community are as follows. Security totaling $1.478 billion is now posted with the Bureau covering the liability of active private sector self-insured employers. In general, self-insurers pay premiums for security in the amount of around 2.0% of the face value of the security. (This does not include costs relating to the collateralizing of security, which in certain cases can be substantial.) Therefore, all private sector self-insurers are paying approximately $29.6 million for security. The Bureau estimates that the proposed regulations would reduce the amount of security required by private sector self-insurers by an average of 15%, yielding a savings in the cost of security of approximately $4.4 million under the first year of the amendments. A five percent annual inflation factor is used to calculate the savings in subsequent years.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments as well as other political subdivisions will be affected by the regulatory amendments to the extent that they are individually self-insured. Thirty-three of the current 49 political subdivision self-insurers would be allowed to reduce their funding amounts under the amendments, while 16 would have no change in their funding amounts.

The $25.0 million FY+1 Year Savings estimated for regulated Local Governments actually represents the aggregate reduction of the required funding under the revised funding requirements of the amendments. The subsequent fiscal years' savings reflect the aggregate reduction in annual funding amounts that will be required under the amendments compared to the current regulatory scheme, assuming a 5% annual inflation factor.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Some one-time additional costs associated with the implementation of the amendments are likely for the Bureau. Such costs, which will not be substantial (less than $100,000 in the first year of operation), would mostly result from the re-programming of the computer system used to monitor self-insurers and to decide applications. The amendments will not significantly impact the self-insurance costs for the Commonwealth and its three self-insured agencies.

No cost savings are provided for the State Government since the proposal would impose the same funding requirements on these self-insurers as are required for all other public sector self-insured employers. Currently, the Commonwealth self-insurers are excluded from specific funding requirements, although all of the employers in this category do maintain dedicated assets reserved for the payment of self-insurance liability.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year*	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	N/A	4.4 mm	4.7 mm	5.0 mm	5.2 mm	5.5 mm
Local Government	N/A	25.0 mm	2.5 mm	2.6 mm	2.7 mm	2.8 mm
State Government	N/A	0	0	0	0	0
Total Savings	N/A	29.4 mm	7.2 mm	7.6 mm	7.9 mm	8.3 mm
COSTS:						
Regulated Community	N/A	0	0	0	0	0
Local Government	N/A	0	0	0	0	0
State Government	N/A	0	0	0	0	0
Total Costs	N/A	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

* No estimates are provided for the current fiscal year because the final-form regulations will be implemented subsequent to the year.

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Administration of Workers' Compensation	$ 60,231,000	$ 63,383,000	$ 76,366,000	$ 72,218,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

While the amendments will result in $60.4 million of cost savings with no additional costs over the five-year projection period, the more pertinent benefit of the regulatory amendments is how they would improve the overall financial strength of self-insured employers and enhance the injured workers' guaranty of benefits.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

On November 14, 2005, a stakeholder meeting was held. All 791 employers self-insured in Pennsylvania and 335 employers in runoff status at that time were invited to the stakeholder meeting. A proposed rulemaking was published at 39 Pa. B. 2293 (May 2, 2009). As a result, the Department received written comments from the following: Jonathan H. Rudd, Esquire, on behalf of Kominklijke Ahold N.V. and Giant Food Stores, LLC; Cathy L. James, on behalf of Porter & Curtis, LLC; Walter T. Hannigan, on behalf of AVI Risk Services, LLC; Claudia Allen, on behalf of the Port Authority of Allegheny County; Barry Scott, on behalf of the City of Philadelphia; Yolanda Romero, on behalf of the Southeastern Pennsylvania Transportation Authority; Jayne K. Lemon, on behalf of Wells Fargo Disability Management; and, Richard A. Armbrust, on behalf of United States Steel Corporation. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated July 1, 2009. In response to comments received, changes were made to the proposed regulations.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Alternative regulatory schemes were not considered, as it is appropriate and least burdensome that the current regulations be updated. These amendments provide updated information and guidance to an already existing act and regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This question is inapplicable to the proposal. Federal standards do not apply to the administration of self-insurance under the act and the Occupational Disease Act.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Comparison to other states' provisions is impractical because statutory requirements and systems differ from state to state.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These final-form regulations amend 34 Pa. Code Chapter 125, Subchapter A (relating to individual self-insurance) by updating and clarifying the existing regulations that govern the administration of self-insurance for individual employers under the act.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The major reporting, recordkeeping and paperwork requirements resulting from the amendments are as follows:

- An active or runoff self-insurer must annually file an electronic listing all of its open and closed claims incurred after the effective date of these amendments.
- An active or runoff self-insurer may be required to file with the Bureau summary data on its claims when its arrangements with a registered claims service company terminates or expires.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The addition of subsection (e) to § 125.4 provides requirements for allowing self-insurance of employers owned by parent companies incorporated or organized under the laws of another nation.

The amendments to § 125.10 address the special circumstances relating to and analyses required for public employers.

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FACE SHEET
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INDEPENDENT REGULATORY
REVIEW COMMISSION

Copy below is hereby approved as to form and legality. Attorney General	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or Independent Agencies.
BY: DEPUTY ATTORNEY GENERAL DATE OF APPROVAL __ Check if applicable Copy not approved. Objections attached.	Department of Labor & Industry (AGENCY) DOCUMENT / FISCAL NOTE NO. 12-85 DATE OF ADOPTION: BY: TITLE: Sandi Vito Secretary (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)	BY: DATE OF APPROVAL Andrew C. Clark Deputy General Counsel JUN 11 2010 __ Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL-FORM RULEMAKING

Title 34. LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY
[34 PA. CODE CH. 125]

WORKERS' COMPENSATION; INDIVIDUAL SELF-INSURANCE

RULES AND REGULATIONS

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 125, SUBCH. A]

Workers' Compensation; Individual Self-Insurance

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), amends Subchapter A (relating to individual self-insurance) of Chapter 125 of Title 34 of the *Pennsylvania Code* (relating to workers' compensation self-insurance), to read as set forth in Annex A. This final-form rulemaking updates and clarifies the standards and procedures which govern the processing of applications for and the administration of self-insurance for individual employers under the Workers' Compensation Act (act) (77 P. S. §§ 1--1041.4 and 2501--2506 and 2701--2708) and the Pennsylvania Occupational Disease Act (Occupational Disease Act) (77 P. S. §§ 1201--1603).

Statutory Authority

This final-form rulemaking is published under the authority in sections 305(a) and 435(a) of the act (77 P. S. §§ 501 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565).

Background

Under section 305(a) of the act (77 P. S. § 501(a)) and under section 305 of the Occupational Disease Act (77 P. S. § 1405), an employer liable for the payment of benefits under those acts may be granted an exemption from the necessity of insuring the payment of its liability with an authorized insurer. The grant of an exemption, which is commonly referred to as self-insurance status, is based on the employer demonstrating to the Department that it has the financial ability to pay the compensation provided under the acts. Subchapter A of Chapter 125 addresses such technical issues as the application procedures for self-insurance by individual employers, the materials and information that must be provided with the application, minimum requirements to be considered for self-insurance, factors used in assessing the financial ability to self-insure, financial security and excess insurance requirements and requirements to service a self-insurer's claims.

These Chapter 125 regulations were adopted on October 13, 1995, and have seen only very limited regulatory amendments in the last 15 years. The most recent regulatory amendments followed the act of June 24, 1996 (P. L. 350, No. 57), which among other

things amended sections 305 and 802 of the act (77 P. S. §§ 501 and 1036.2) and added section 819 of the act (77 P. S. § 1036.19) affecting matters relating to the requirements for self-insurance. The Department then amended, in pertinent part, § 125.2 (relating to definitions) and § 125.9 (relating to security requirements). *See* 28 Pa. B. 5459 (Oct. 24, 1998).

On November 14, 2005, the Department held a stakeholder meeting to discuss possible changes to the regulations. A proposed rulemaking was published at 39 Pa. B. 2293 (May 2, 2009). As a result, the Department received written comments from the following: Jonathan H. Rudd, Esquire, on behalf of Kominklijke Ahold N.V. and Giant Food Stores, LLC (collectively referred to hereafter as Giant Foods); Cathy L. James, on behalf of Porter & Curtis, LLC; Walter T. Hannigan, on behalf of AVI Risk Services, LLC; Claudia Allen, on behalf of the Port Authority of Allegheny County (Port Authority); Barry Scott, on behalf of the City of Philadelphia; Yolanda Romero, on behalf of the Southeastern Pennsylvania Transportation Authority (SEPTA); Jayne K. Lemon, on behalf of Wells Fargo Disability Management (Wells Fargo); and, Richard A. Armbrust, on behalf of United States Steel Corporation (US Steel). The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated July 1, 2009. In response to comments received, changes were made to the proposed regulations.

Purpose

The final-form rulemaking increases clarity and consistency through the introduction of new standard terms throughout the regulations, provides more objective standards for qualifying for and maintaining self-insurance status, and improves and strengthens the Department's ability to efficiently and effectively monitor and regulate workers' compensation self-insurance in Pennsylvania.

Summary of Final-Form Rulemaking and Responses to Comments

The Department amends § 125.1 (relating to purpose) to clarify existing language.

The Department amends § 125.2 (relating to definitions) to clarify existing language, to delete the existing definition of "excess insurer" and "instrumentality of the Commonwealth," and to include definitions for the following terms: "active self-insurer," "adequate accident and illness prevention program," "authorized retention amount," "catastrophic loss estimation," "dedicated asset account, " "excess indemnity insurance," "excess insurance," "financial ability to self-insure," "guarantor," "investment grade long-term credit or debit rating," "liability limit," "long-term credit or debit rating," "maximum quick asset exposure amount," "minimum funding amount," "minimum security amount," "NRSRO," "self-insurance loss portfolio transfer policy," "special retention amount," "standard retention amount," "workers' compensation excess insurance," "workers' compensation excess insurance recoveries" and "workers' compensation insurer."

IRRC and Porter & Curtis commented that the Department should explain the basis of the definition for "catastrophic loss estimation." Porter & Curtis additionally asked whether it would affect the amount of security a self-insurer must provide. The catastrophic loss estimation is a general assumption of an applicant's potential worst-case loss that is used to determine if the applicant would be able to self-insure without the usual protection provided by excess insurance. The definition first takes into account an applicant's concentration of risk by considering the number of employees working at the same time at its largest location. It then assumes that a catastrophic event causes injuries to all of the employees such that compensation equal to the Statewide average weekly wage for 500 weeks must be paid on all employees. The use of the 500-week factor reflects the maximum 500-week period of partial disability allowable under the act. In and of itself, the catastrophic loss estimation will not affect the amount of security a self-insurer must provide. However, if the applicant's catastrophic loss estimation exceeds its quick asset exposure amount, the applicant must obtain excess insurance in order to self-insure.

IRRC also commented that the use of the word "usually" in the proposed definition of "catastrophic loss estimation" was vague and should be clarified. The Department agrees and has revised the final-form regulation to replace "usually" with "anticipated to work at one time during a work day."

IRRC questioned the process for administering the proposed definition for the term "default multiplier," as well the lack of criteria for its use. IRRC also commented that the regulation did not indicate the time of publication in the *Pennsylvania Bulletin*. Upon further consideration, the Department has deleted this term and its companion definition "default multiplier-calculated security factor" from the final-form regulations.

IRRC commented that the Department should explain when it would exercise the discretionary provision in calculating the "special retention amount" for current self-insurers. In response, the Department has removed the discretionary language to allow current self-insurers to use an amount equal to the retention amount of their excess insurance in effect on the effective date of these regulations.

IRRC also commented about the use of the terms "generally" and "commonly" in the definition of "standard retention amount" as well as the lack of information on when the Department intended to publish updates of the amount in the *Pennsylvania Bulletin*. In response, the Department revised the definition in the final-form rulemaking to remove these terms and to allow this amount to be calculated based upon the Statewide average weekly wage without the need to publish annual updates.

AVI Risk Services requested clarification on whether the "standard retention amount" would be a single amount encompassing all industries or multiple amounts based on industry groupings, since the latter may have an impact on excess insurance. The standard retention amount is a single amount covering self-insurers in all industries. Should the insurance market require a self-insurer to seek authorization to retain excess insurance with a retention amount that exceeds the standard retention amount, it may do

so through the application of the "special retention amount," which is separately defined in this section.

The Department amends § 125.3 (relating to application) so that the section better reflects the application requirements. The Department replaces the existing affidavit requirement with a verified statement. Under § 125.3(b), the Department allows renewal applicants to file their application 3 months before the expiration of the current permit, which is 1 month earlier than under the current language. Under § 125.3(c)(1), the Department specifies the application fees required for affiliates or subsidiaries who file a consolidated application under § 125.4 (relating to application for affiliates and subsidiaries). The Department amends § 125.3(c)(3)(i) to require that the text of financial statements must be in English. The Department amends § 125.3(c)(5) and (6) to require that loss information must be filed on each employer requesting self-insurance for an initial application, and that a report on incurred loss must be filed on each self-insurer for a renewal application. Also, § 125.3(c)(6) allows applicants that have retained an actuary to submit that actuary's report with the application.

The Department adds requirements that applicants include evidence of long-term credit or debt ratings, if any, in § 125.3(c)(9), as well as a listing of all Pennsylvania workers' compensation claims previously incurred as a self-insurer and closed on or after January 1, 2005, in § 125.3(c)(8). This will replace existing language related to the OSHA No. 200 report, which has not been utilized since the promulgation of Chapter 129 (relating to workers' compensation health and safety). The Department amends § 125.3(d) to require applicants to provide all data, information, explanations, corrections and missing items regarding an application within the time period prescribed in writing by the Bureau. Otherwise the application will be deemed withdrawn and a renewal applicant will have to obtain insurance coverage by the expiration of such time period. The Department amends § 125.3(e) to clarify that the Bureau will not issue a decision on an application until all data, information, explanations, corrections and missing items have been submitted. The Department also clarifies existing language and references currently recognized auditing standards where applicable.

SEPTA and the City of Philadelphia commented that the deadline for filing a renewal application should remain as it is due to the volume of information that needs to be compiled for the application. IRRC also asked the Department to provide justification for changing the application deadline. In considering the effect of the proposed change to subsection (b), the commentators apparently were left with the impression that the Department intended to reduce by 1 month the time an applicant would have to prepare and submit a renewal application. This is not the Department's intention. Rather, this change is intended to benefit self-insurers by providing an additional month between the filing of the application and the expiration of the present permit for the self-insurer to satisfy any revised conditions for renewal that are established by the Bureau. As such, this change will improve the ability of self-insurers to satisfy renewal conditions and obtain Department approval of their application in a timely manner.

Giant Foods and IRRC questioned how foreign corporations that do not file Forms 10-K or 10-Q with the Securities and Exchange Commission would be able to comply with the proposed documentary requirements in § 125.3(c)(2) and (c)(3). Giant Foods suggested amending the two paragraphs to reference equivalent forms filed by foreign corporations with the SEC or with the governing body of other international security exchanges. In response, the Department substantially adopted the language suggested by Giant Foods for applications of affiliates and subsidiaries under § 125.4(e) (relating to application for affiliates and subsidiaries). For clarity in § 125.3(c)(3), the Department has moved this language into a new subparagraph (iii).

Porter & Curtis expressed concern that the proposed requirement in § 125.3(c)(3)(i) that a parent company applicant provide consolidated financial statements for its subsidiaries in support of its application would be unduly burdensome. In response, the Department has removed this specific language since, when necessary, these consolidated statements already must be provided to conform to generally accepted accounting principles (GAAP) requirements.

Giant Foods also commented that the proposed requirement in § 125.3(c)(3)(i) that the currency values referenced in the supporting financial statements must be in U.S. dollars would be problematic for foreign corporations. In response, the Department substantially adopted the suggestion set forth by Giant Foods to require an applicant to assist the Department in converting financial statements not in U.S. dollars to U.S. dollar amounts.

Giant Foods commented that the required standard for reviewing financial statements submitted under § 125.3(c)(4) should include standards established by the International Accounting Standards Board (IASB) to accommodate foreign corporations. IRRC also expressed concern about how foreign corporations using IASB standards could comply with this provision. The Department agrees and has revised the rulemaking to allow for the submission of financial statements prepared in conformance with the International Auditing and Assurance Standards Board, which is the international counterpart organization to the American Institute of Certified Public Accountants.

IRRC questioned why the three accounting organizations referenced under § 125.3(c)(3)(i) vary from the organizations referenced under § 125.3(c)(4), which concerns the standards for reviewed financial statements. This difference lies in the fact that the organizations involved in the setting of standards for audited financial statements are different from those involved in setting standards for reviewed financial statements.

SEPTA expressed concern over § 125.3(c)(8)'s requirement that applicants must report data on all closed claims. Giant Foods commented that the information on closed claims should be limited to those claims closed within the past 5 years, while IRRC suggested limiting the information to claims closed within a specific time period. In response to these comments, the Department has revised § 125.3(c)(8) to limit this requirement to claims closed on or after the effective date of these final-form regulations.

Similar changes were made to the reporting provisions found in § 125.16(b) (relating to reporting by runoff self-insurer).

The City of Philadelphia and IRRC requested clarification on where to find the case reserve instructions referenced in § 125.3(c)(8)(iii) (now § 125.3(c)(8)(iv)). The Department has added language specifying that the instructions can be found on the Bureau-prescribed forms currently provided to employers requesting self-insurance.

AVI Risk Services and Porter & Curtis requested the Department to consider the potential compliance costs in developing the electronic formats for the required reserve and claims reporting. For the electronic reporting under § 125.3(c)(8), as well as the related reporting under § 125.16(b), the costs will be minimal. The Department intends to capture only a limited number of readily available data elements and will do so in a widely used format, such as an Excel spreadsheet.

IRRC commented that the time frame for an applicant to provide missing or incomplete application data in § 125.3(d) should both establish a reasonable minimum period and allow for extension due to unique conditions. The Department agrees and has specified a 21-day period for the provision of the application data, which may be extended if requested by the applicant and approved by the Bureau.

SEPTA expressed concern that the requirement under § 125.3(e) that all application materials must be provided before decision will delay the approval of renewal applications for reasons such as where the self-insurer's excess insurance does not correspond to the renewal of its application. This is not the case. The Department will not delay the issuance of a permit under these circumstances as long as excess coverage is currently in place pursuant to the requirement under § 125.6(c)(2)(ii). Under existing regulations, a significant cause for the delay in issuing decisions involving a public employer such as SEPTA was the regulatory requirement that they provide audited financial statements covering the last complete fiscal year. To address this issue, the Department revised § 125.3(c)(3) to clarify that only private employers must provide audited financial statements on the most recent fiscal year. This will eliminate the common cause of application delays for public employer applicants and will make public employers' compliance with §125.10 (relating to funding by public employers) paramount in determining whether they have adequate financial health to self-insure.

The Department amends § 125.4 (relating to application for affiliates and subsidiaries) to allow for the submission of audit reports and financial information for applicants that are subsidiaries of a foreign parent company. The Department deletes the provision in subsection (a) requiring that a parent company of a consolidated program be incorporated under the laws of a state of the United States, because this incorporation requirement is extended to all applicants in § 125.5 (relating to preliminary requirements). The Department also deletes the requirement that a Bureau form be used by an applicant to delete an affiliate or subsidiary from a consolidated permit, because a specific form for this purpose is unnecessary.

Giant Foods commented that the Department should include the terms "direct or indirect subsidiary" and "direct or indirect parent company" under § 125.4(a) and elsewhere throughout the regulations to recognize that an applicant's direct parent might be a holding company or other intermediary between the applicant and the ultimate holding company. IRRC also suggested clarifying the terminology relating to this subject. In response, the Department has amended the definitions of "subsidiary" and "parent company" under § 125.2 (relating to definitions) to include reference to direct or indirect ownership and control.

IRRC commented that § 125.4(d) of the final-form regulation should both establish a reasonable minimum period for the provision of a parent company's financial information and allow for extension by the Bureau due to unique conditions. The Department agrees and has specified a 21-day period for the provision of the financial information, which may be extended if requested by the applicant and approved by the Bureau.

Giant Foods commented that the provisions of § 125.4(d) should be excepted in the case of foreign corporations to whom § 125.4(e) applies. The Department agrees and has revised § 125.4 (d) accordingly.

Giant Foods also commented that the term "consolidated audit report" be replaced with "consolidated financial statements" under § 125.4(e). The Department agrees and has made this change in § 125.4(d) and (e). The Department also has made a similar change in § 125.3(c)(3), (c)(3)(i) and (c)(4) (relating to application) and § 125.6(h) (relating to decision on application).

The Department amends § 125.5 (relating to preliminary requirements) to require, for enforcement purposes, that an applicant be incorporated or organized under the laws of a state of the United States and have an adequate accident and illness prevention program under Chapter 129. The Department deletes existing language in § 125.5(b)--(d), because this information is addressed in § 125.6 (relating to decision on application).

IRRC commented that § 125.5(c) should be amended to specify what constitutes an "adequate" accident and illness prevention program. The term "adequate accident and illness prevention program" is defined under § 125.2 (relating to definitions), which references 34 Pa. Code Chapter 129 (relating to workers' compensation health and safety). The criteria for and determination of an adequate accident and illness prevention program are more properly governed by section 1001 of the act, 77 P.S. § 1038.1 and the Chapter 129 regulations. For consistency with those provisions, the Department has replaced the word "applicant" with "self-insured employer" in the definition of "adequate accident and illness prevention program" in § 125.2.

The Department amends § 125.6 (relating to decision on application) to add new paragraphs which set forth objective standards that an applicant must satisfy to demonstrate its financial ability to self-insure, including that the applicant has adequate financial capacity and adequate financial health. The criteria for adequate financial health

depends upon whether the applicant is a public or private employer. For a private employer, the Department requires an investment grade long-term credit or debt rating, or a long-term credit or debt rating that it is one grade below investment grade as issued by a rating organization or estimated by the Bureau. This will ensure that a private employer applicant which is approved to self-insure will have adequate, current financial health to meet its obligations, including its self-insurance liability, into the reasonably foreseeable future. The Department also adds language in § 125.6(a) to grandfather existing self-insurers who do not meet the rating requirements under certain conditions.

The Department amends § 125.6(a) to streamline the factors to be considered in assessing an application. The Department clarifies the information, standards and procedures pertaining to initial decisions, compliance with conditional approvals, issuance of permits, reconsideration requests and decisions, and appeals from reconsideration decisions to standardize and streamline the process and identify the necessary time frames involved. The Department also reduces the time period for compliance with conditional approvals in § 125.6 from 60 to 45 days. The Department modifies the hearing procedures following a reconsideration decision to replace the *de novo* hearing process with an appeal hearing process that will be conducted according to these regulations and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent not specifically superseded by these regulations.

Giant Foods commented that § 125.6(a)(2)(ii)(A) and (a)(2)(ii)(B) should contain a reference to the parent company's actual or estimated long-term credit or debt rating for determining the requisite financial health to self-insure. In response, the Department agrees and has revised these sections accordingly for applicants under § 125.4(e) (relating to applications for affiliates and subsidiaries).

IRRC commented that the Department should include the criteria to be used in the Bureau's rating estimation for applicants that do not have the referenced Nationally-recognized statistical rating organization (NRSRO) rating under § 125.6(a)(2)(ii)(A). An outline of the specific criteria for this determination is difficult to provide, as it requires a judgment based upon a review of all of the information provided pursuant to § 125.6(b)(1)(i)-(iii). The Department will be using generally available "financial analysis comparison databases and evaluations models" for this estimation however, and has added this language to subparagraph § 125.6(b)(1)(iii).

Giant Foods also commented that § 125.6(b)(1), (b)(1)(i) and (b)(2) should include references to an applicant's parent company. The Department agrees with regard to § 125.6(b)(1) and (b)(1)(i), and has revised those subsections accordingly for applicants under § 125.4(e). The Department does not believe this change is proper for § 125.6(b)(2) because the quick asset amount measured for self-insurance should be only that of the applicant. However, the Department has deleted the word "audited" and added a reference to § 125.4(e) in § 125.6(b)(2) to clarify that the financial statements reviewed under § 125.6(b)(2) may be the unaudited statements submitted under § 125.4(e).

The City of Philadelphia commented that the timeframe for satisfying approval conditions under § 125.6(c)(1) should remain at 60 days and not be decreased to 45 days. IRRC requested that the Department explain the reason for the decreased timeframe. The Department believes that the current 60-day compliance period is unnecessarily lengthy and causes delay in the timely processing of applications. A 45-day period is a reasonable timeframe where there has been a conditional approval. Moreover, should an applicant require additional time to meet conditions, it continues to have the ability to request a 30-day extension under § 125.6(c)(1)(ii).

The City of Philadelphia commented that an applicant should be given 90 days, rather than 30 days, to comply with the requirement to obtain workers' compensation insurance coverage found under § 125.6(d) and (f)(2) as well as § 125.19(a)(3) and (b)(2) (relating to additional powers of bureau and orders to show cause). The Department believes that the existing 30-day period is sufficient, as it has not proven to be problematic. It is also more closely aligned with the language of section 305(a)(3) of the act, 77 P.S. § 501(a)(3), which provides that such coverage must be obtained "immediately."

IRRC commented that the Department should provide timeframes for the Bureau to take certain actions, including issuing decisions, assigning appeals to hearing officers and appealing to Commonwealth Court in § 125.6(c), (d), (f), (g) and (g)(5). The Department does not believe timeframes for these actions are required or useful however, for several reasons. With the exception of § 125.6(g)(5), these actions have not been subject to time constraints in the past and this has never been problematic. Importantly, an applicant or current self-insurer's status is not affected by the time it takes for the Bureau to make its decision or assign an appeal. The Department has always acted within a reasonable time and will continue to do so. Finally, the timeframe for appeal to Commonwealth Court under § 125.6(g)(5) is separately governed by Pennsylvania Rule of Appellate Procedure 1512 (relating to time for petitioning for review).

IRRC commented that § 125.6(e)(1) of the final-form regulation should both establish a reasonable minimum period for the applicant to submit additional materials in support of its application and allow for extension by the Bureau due to unique conditions. The Department agrees and has specified a 21-day period for the provision of the additional materials, which may be extended if requested by the applicant and approved by the Bureau.

The City of Philadelphia commented that the conditions under which a self-insurer continues to operate when its permit is extended under § 125.6(e)(2) and (g) were unclear. In response, the Department has incorporated a reference to the conditions "as set forth under paragraph (c)(2)" of that section for clarification.

IRRC commented that the Department should explain its rationale for placing the burden on the applicant to prove that the Bureau acted arbitrarily or abused its discretion in § 125.6(g)(4). The Department added this provision consistent with the current case law as set forth in *City of Scranton v. Bureau of Workers' Compensation*, 787 A.2d 1094 (Pa. Cmwlth. 2001), wherein the Court determined that this was the appropriate burden in

the context of a self-insurance appeal. The Department therefore has retained this provision in the final-form rulemaking, but for clarity purposes has deleted the unnecessary phrase "under this subchapter."

The Department amends § 125.7 (relating to permit) to clarify the nature and applicability of the automatic extension of an existing permit, providing safeguards for renewal applicants where the Bureau fails to issue an initial decision on a renewal application before the permit's expiration, or where a renewal applicant is in the process of timely satisfying conditions set forth in the Bureau's decision at the time an existing permit is set to expire.

IRRC commented on the lack of a timetable for an applicant to satisfy conditions under § 125.7(c). The Department has revised this section in the final-form rulemaking to provide that the conditions must be satisfied within the applicable time periods for the initial or reconsideration decision set forth under § 125.6 (relating to decision on application).

The Department rescinds § 125.8 (relating to denial of renewal application) because it currently contains information that is duplicated in § 125.6.

The Department amends § 125.9 (relating to security requirements) to clarify existing language and to replace the use of the outdated security constant with the new term, "minimum security amount." The Department also modifies the requirements relating to the forms of acceptable security, the procedures for posting and replacing security and the methods for calculating security amounts. The Department amends § 125.9(b)(3) to delete Alaska and Hawaii as states in which a bank's branch office may issue a securing letter of credit to the Bureau, because time zone differences hamper the Bureau's ability to promptly draw down a letter of credit with a bank located in these states. The Department amends the various methods for calculating the required amount of security for private employers under § 125.9(d) to set forth in detail the factors for calculating security depending upon the status and duration of the private employer's self-insurance program.

The Department also adds a specific security discount table in § 125.9(l), based on the self-insurer's investment grade long-term credit or debt rating, if any, pursuant to which all security amounts calculated under subsection (d) may be discounted. The Department replaces the language in § 125.9(f) permitting present value discounting of liability projected in an actuary's report, which may result in an inadequate security amount, with language requiring the Bureau to use the overall experience of all self-insurers or of self-insurers in the self-insurer's industry in its selection of loss development factors under certain circumstances. The Department amends § 125.9(j) to allow for a phase-in of any increased security requirements under subsection (d) over a period of up to 2 years. It also amends § 125.9(k) to specify the circumstances under which the Bureau may release a runoff self-insurer of the obligation to provide security.

Wells Fargo commented that the Department should clarify when the 45-day time period for providing replacement security under § 125.9(b)(1)(ii) begins to run. The Department agrees and has revised the provision to state that the bond must be replaced within 45 days "of the self-insurer's receipt of written notification of the rating decline from the Bureau."

IRRC commented that the Department should specify the type of evidence that would be acceptable for a standby claims service arrangement under the proposed § 125.9(b)(2)(iii) and (b)(3)(iv). US Steel commented that the proposed standby claims service agreements would impose additional costs and an unnecessary administrative burden on self-insured employers, with limited benefit to the Department or injured workers, and therefore requested that the Department reconsider this requirement. The purpose of the standby claims service arrangements was to ensure the timely and efficient continuation of benefit payments to injured workers in the event of a default where deposits under trust or irrevocable letters of credit are used as security. Upon further consideration, the Department agrees with US Steel and has deleted these proposed subparagraphs.

With the elimination of the proposed standby claims service provisions, the Department also has deleted existing § 125.9(b)(3)(iii), which required the maintenance of a separate trust agreement to accommodate the proceeds from a letter of credit which is drawn on by the Bureau. The deletion of this requirement will alternatively accomplish the goal of a smooth transition in payment after a default where there is a letter of credit as security, without placing any additional cost on the self-insured employer. In light of the deletion of § 125.9(b)(3)(iii), which included a new requirement that the trust company obtain a nonprocurement registration number, the Department has deleted the proposed definition for the term "nonprocurement registration number" in § 125.2 (relating to definitions) as well, since it is no longer necessary.

AVI Risk Services commented that few self-insurers have a long-term credit or debt rating issued by a NRSRO, and therefore that the security discounts provided under § 125.9(d), as well as the similar funding discounts under § 125.10(b), (c) and (d) (relating to funding by public employers), should be extended to a self-insurer who receives a Bureau-estimated financial health rating equivalent to an investment-grade long-term credit or debt rating issued by a NRSRO. In response, the Department notes that 54% of all current self-insurers are rated by one or more NRSRO. Further, since ratings provided by a NRSRO are more complete and accurate than those estimated by the Bureau, the Department believes that it is appropriate to allow the security and funding discounts to be based only upon the actual investment-grade long-term credit or debt ratings issued by a NRSRO.

Giant Foods commented that the security discounts under § 125.9(d)(1)(ii) and (d)(4)(ii) should be expanded to apply to an appropriate long-term credit or debt rating from a NRSRO on the applicant's parent company. The Department disagrees and has not made this change. The Department believes that the privilege of the security discount

should directly correspond to the financial rating of the applicant alone, which will be either the actual self-insurer or the guarantor of the self-insurer.

Giant Foods similarly commented that the security discounts under § 125.9(d)(5)(ii) and (d)(6)(ii) should be expanded to apply to the calculation of a runoff self-insurer's security where a runoff self-insurer's guarantor possesses an appropriate long-term credit or debt rating by a NRSRO. The Department agrees that the discount should apply in this instance and has made this change to these subsections. This change was also made to § 125.9(d)(5)(iii). For clarity in this regard, the Department also added a definition for the term "guarantor" under § 125.2 (relating to definitions).

Giant Foods commented that the Department's use of the terms "runoff" and "runoff self-insurer" was not consistent in § 125.9(d)(5) and (d)(6), as well as in § 125.16(b). The Department agrees and has revised these sections to consistently use the term "runoff self-insurer."

IRRC commented that the provisions regarding submission and consideration of a self-insurer's actuarial report in § 125.9(e) do not establish a binding norm and should be deleted or rewritten to establish criteria the Department will apply to accept or use such a report. In response, the Department has deleted the proposed provisions, leaving the existing language of this subsection unchanged.

IRRC commented that § 125.9(f), which addresses the Department's selection of loss development factors to project a self-insurer's outstanding liability, did not provide enough certainty to the regulated community. IRRC also commented that § 125.9(g), which addresses the Department's ability to adjust loss development procedures, also did not provide enough certainty to the regulated community. By its very nature, a projection of liability based on loss development techniques contains many adjustments, selections and considerations based on the experience and judgment of the actuary performing the projection. To provide additional certainty regarding this necessary projection in § 125.9(f) however, the Department has revised this section to require that it "will" incorporate the overall Pennsylvania workers' compensation experience factors in its selection of loss development factors where the self-insurer's volume or experience is not sufficient based upon generally accepted actuarial procedures. Further, the Department has revised § 125.9(g) to require that it "will" make adjustments to the loss development procedures under the circumstances set forth in that subsection. The Department has deleted proposed language that would have provided discretion to use methods other than loss development to make this projection. The Department also deleted proposed § 125.9(g)(1) and (g)(2), consistent with its deletion of the proposed definitions of "default multiplier" and "default multiplier-calculated security factor" in § 125.2 (relating to definitions), by which the Department would have had additional discretion to substitute the loss development liability amount for a default-multiplier security factor.

Wells Fargo commented that self-insurers should be provided an opportunity to furnish additional information and participate in discussions prior to the Department utilizing the default multiplier-calculated security factor under § 125.9(g)(1). As noted

above however, the Department has deleted this provision from the final-form rulemaking.

Wells Fargo commented that the maximum security phase-in period under § 125.9(j) should remain at 3 years and not be reduced to a 2-year period. IRRC commented that the Department should provide justification for the change or maintain the current arrangement. The Department believes that a 2-year phase-in period for current self-insurers who are already posting security based upon the terms of the regulations is reasonable, based upon its past experience with this section and the fact that it is unlikely there will be significant increases in the amount of security under these amendments.

Wells Fargo and IRRC questioned whether the Department intended to discontinue the practice of reducing a runoff self-insurer's amount of security due to the deletion of language on the subject under § 125.9(k). The Department will continue to authorize security reductions for runoff self-insurers. The provisions for calculating the required amount of security for this category of self-insurer are now found under § 125.9(d)(5) and (d)(6).

IRRC commented that the Department should specify the type of evidence that would be acceptable under § 125.9(k)(2) for a runoff self-insurer to establish that its closed claims are unlikely to be reopened. In response, the Department has eliminated that requirement from the subsection.

Giant Foods commented that the Department should amend § 125.9(l) to clarify whether the security discount is based upon the current long-term credit or debt rating or a past rating. The Department has revised the final-form rulemaking to clarify that the security discount is based on the "current" long-term credit or debt ratings of the self-insurer or its guarantor.

IRRC commented that § 125.9(m) would give the Department the authority to amend the security discount table under subsection (l) of this section while bypassing the normal rulemaking process. The Department's sole intention in this subsection is to provide a method for the Department to set forth the discounts resulting from financial ratings issued by a new organization that receives a designation as a NRSRO after the effective date of the final-form rulemaking. Therefore, the Department has revised this subsection accordingly.

The Department amends § 125.10 (relating to funding by public employers) to focus on a public employer's short-term solvency rather than its long-term reserves. Therefore, the amendments require public employers to maintain sufficient dedicated cash reserves to meet payments over the next year for benefits and expenses in order to self-insure. The Department amends § 125.10(a) to provide that a public employer must maintain a dedicated asset account, which no longer needs to be a trust fund. This requirement now includes the Commonwealth, but not certain runoff self-insurer public employers who do not meet the threshold for average annual payout of benefits on self-insurance claims. The Department deletes existing language in § 125.10(b) and (c) regarding long-term

reserves and adds new subsections (b) through (e) which set forth in detail the various methods and factors for calculating the required asset level of a public employer's dedicated asset account depending upon the status and duration of the public employer's self-insurance program.

IRRC and the City of Philadelphia commented that the Department should include a definition for the term "dedicated asset account" for this section. The Department agrees and has added a definition of the term under § 125.2 (relating to definitions).

The Port Authority commented that by replacing the existing "trust" concept with the dedicated asset account for public employers under § 125.10, the regulations will create a financial burden on public employers and their taxpayers without increasing the security of benefit payments to injured workers. The Port Authority suggested that the Department either eliminate the requirement or establish an exemption for public employers with a history of financial responsibility in the payment of benefits. IRRC requested an explanation of the financial impact of this change on public employers. IRRC also commented that the Department should explain what constitutes "good cause" for purposes of the proposed retroactive phase-in requirement under § 125.10(d)(3).

The Department believes that the replacement of trusts with dedicated asset accounts will not increase costs. To the contrary, this change will likely decrease costs for most public employers since they will no longer be required to maintain a formal trust arrangement. While the amount of assets set aside in a dedicated asset account may increase for some public employers, overall this system will reduce the amount of funding required to be set aside under the existing trust concept. The Department recognizes the importance of allowing a public employer to use as much of its available financial resources as possible to provide its mandated public services. The Department believes that the dedicated asset account concept is carefully tailored to balance this recognition with the need to ensure that an employer who is granted the privilege to self-insure clearly has the financial resources to liquidate its workers' compensation liability. As set forth in more detail in the *Fiscal Impact* section below, the Department projects that 37 of the 57 current self-insured public employers actually will be able to *reduce* their reserve funding for workers' compensation by an average of 49% under this regulation. While the remaining 20 public employers may be required to increase their funding, this increase will be based upon the increases in their annual payments of benefits.

To avoid a possible undue burden on the few public employers that also may have been subject to the proposed retroactive funding phase-in requirement under § 125.10(d)(3), the Department has eliminated that requirement. The Department instead has included a "grandfathering" provision which establishes the initial dedicated asset account level for those public employers at their existing funding level as of the effective date of the rulemaking. Future funding increases for those employers would be based only on the same minimum funding calculations in § 125.10(d)(1) and (2) applicable to all public employers that fall under § 125.10(d).

Further, to limit the impact on a public employer's provision of services while ensuring that they maintain asset reserves within a reasonable margin of safety, the Department has revised the definition of "minimum funding amount" under § 125.2 (relating to definitions) to reduce in half the formula's consideration of the Statewide average weekly wage. Additionally, the Department has eliminated the separate definition for an "Instrumentality of the Commonwealth" under § 125.2 and included this type of public employer under the existing definition of "Commonwealth;" this will avoid the need for those employers to post unnecessary security under the separate requirements for private employers under § 125.9(a) (relating to security requirements). These employers are now treated as all other public employers under the final-form rulemaking.

IRRC commented that the Department should include additional details regarding the process of determining "a later date agreed to by the Bureau" for a public employer to meet its funding requirement under § 125.10(d)(4). The Department has revised the language to provide that this period may be extended if requested by the applicant and approved by the Bureau. Similar proposed language under § 125.10(c)(3) has also been revised accordingly. Additionally, for clarity, the Department has revised subparagraphs (a), (c)(1)(i) and (d)(1)(i) of § 125.10 to clarify that the required asset level is calculated based on a public employer's "fiscal" year payout of benefits.

The City of Philadelphia commented that any adjustments the Department would make to a public employer's annual payment of benefits under § 125.10(d)(5) for the purpose of calculating the required asset level should only occur following a hearing on the matter. The Department does not believe that a hearing prior to the adjustments is necessary or practical. However, it is important to note that these adjustments are made in the context of the Bureau's initial or reconsideration decision under § 125.6 (relating to decision on application). As such, where the self-insurer disputes the adjustment or funding amount related to their permit approval, the self-insurer may avail itself of the reconsideration and appeal proceedings consistent with § 125.6(c)(2)(i) and (e) through (g). For clarity, this subsection has been revised to include specific reference to § 125.6. A similar change also has been made to § 125.10(c)(4) for this reason.

The Department amends § 125.11 (relating to excess insurance) to replace the current requirements and limits of excess insurance with new language addressing excess insurance in terms of adequate financial capacity and the coverage of a possible catastrophic loss. Under § 125.11(a), the Department adds the requirement that, where excess insurance is required to demonstrate adequate financial capacity, the applicant's retention amount must at least equal its authorized retention amount, and the applicant's liability limit of its insurance must be in an amount acceptable to the Bureau to cover adequately a catastrophic loss. The Department deletes existing requirements for aggregate excess insurance found in § 125.11(b), as these requirements are no longer necessary. The Department also clarifies and organizes the contract requirements for excess insurance in § 125.11(c) (now found in § 125.11(b)).

IRRC and the Port Authority commented that the language in § 125.11(a) requiring that the liability limit of an excess insurance policy be "acceptable to the Bureau" was unclear and lacked detail. The language reflects the current practice of the Department, whereby the Bureau reviews the liability limit suggested by the self-insurer to ensure that it provides adequate protection for a catastrophic loss. For clarity, the Department has specified that the Bureau's determination will be based upon consideration of the financial capacity of the applicant consistent with § 125.6(a) (relating to decision on application) and the amount of the catastrophic loss estimation consistent with § 125.2 (relating to definitions) involving the applicant and its self-insured affiliates.

The Port Authority also commented that the regulations on excess insurance retention amounts should take into consideration the existence of cash flow protection coverage the self-insurer may have obtained. The Department notes that since "cash flow protection amount" is a defined term under § 125.2 and is included under the definition of "retention amount," the regulations do take this into consideration.

To further improve the clarity of the excess insurance provisions in this section, the Department has made minor editorial changes in the final-form rulemaking to the presentation of § 125.11(b) and the related definitions in § 125.2 for the terms "aggregate excess insurance," "cash flow protection amount," "excess indemnity insurance," "liability limit," "retention amount," "specific excess insurance," and "workers' compensation excess insurance." These changes do not affect the substance of the provisions or definitions, but simply constitute a reorganization of the existing information to make the excess insurance requirements easier to locate and understand within the regulations. Additionally, in light of these changes, the Department has deleted the proposed new term "nonworkers' compensation insurer" and its related references in the definitions under § 125.2, as it is no longer necessary or useful.

The Department amends § 125.12 (relating to payment, handling and adjusting of claims) to require self-insurers to notify the Bureau when they change claims handling or adjusting arrangements, whether self-administered or administered by a registered claims service company. A self-insurer will also have to provide a summary of its claims data to the Bureau, upon request, to explain discrepancies or problems that may arise due to the change in claims handling responsibilities.

IRRC recommended that § 125.12(c) include the time frame for a self-insurer to report a change in claims handling arrangements and an explanation of how the Bureau will notify the self-insurer of its deadline for filing the data outlined in the subsection. The Department has clarified that self-insurers must "immediately" report such changes and must provide the summary claims data in a format both prescribed and provided by the Bureau within 21 days of its receipt of notification that such data is required.

The Department amends § 125.13 (relating to special funds assessments) to include the Uninsured Employers Guaranty Fund as one of the listed special funds for which a self-insurer is liable to pay assessments. That fund was newly established in sections 1601--1608 of the act (77 P. S. §§ 2701--2708) by Act 147 of 2006, which was signed

into law on November 9, 2006. The Department also allows the Bureau to require a self-insurer to retain the services of its certified public accountant to resolve questions about the accuracy of annual compensation payments reported by the self-insurer.

IRRC and Wells Fargo commented on the rationale for including assessments against self-insurers for the maintenance of the Uninsured Employers Guaranty Fund (UEGF) under § 125.13(a). The Department included this provision consistent with section 1607 of the act, 77 P. S. § 2707, signed into law on November 9, 2006, which specifically provides that the Department shall assess both insurers and self-insurers for the maintenance of the UEGF.

The Department amends § 125.15 (relating to workers' compensation liability) to clarify existing language, including specific reference to self-insurance loss portfolio transfer policies.

The Department amends § 125.16 (relating to reporting by runoff self-insurer) to clarify existing language regarding the timing, format and contents of the runoff report, and to specify the procedure for a runoff self-insurer to request adjustment of its security amount.

The Department amends § 125.17 (relating to claims service companies) to set forth the continuing obligation of claims service companies to assist the self-insurer and the Bureau in providing data and information on the self-insurer's claims serviced by that company.

IRRC, the City of Philadelphia and Wells Fargo each commented that the Department should provide an enforcement provision for claims service companies who do not comply with § 125.17(d). Section 441(c) of the act, 77 P. S. § 997(c), requires that registered claims service companies "shall furnish such reports of its activities as may be required by rules and regulations of the department." This section of the act further provides an enforcement mechanism by which the company's privilege of conducting business may be suspended or revoked where the company's failure to assist or provide necessary information or reports affects the prompt payment of compensation. This provision does not appear to provide authority for the Department to impose any other penalties for non-compliance. However, self-insurers themselves do not appear to be prohibited from seeking the claims service company's cooperation, or pursuing other recourse, if any, pursuant to their prior or expiring contract with that company.

The Department amends § 125.19 (relating to additional powers of bureau and orders to show cause) to explain the procedures by which the Bureau may address changes in the financial condition of active self-insurers and violations of the act and this subchapter. The Department adds subsection (a) to set forth procedures whereby the Bureau may review the qualifications for self-insurance, and revoke an existing permit, where necessary, for active self-insurers whose financial condition declines before the expiration of an existing permit. Under paragraph (1), the Bureau will issue a letter to the self-insurer outlining its concerns. The Department further adds specific language

pertaining to the Bureau's ability to suspend or revoke a permit following the issuance of an order to show cause. This will proceed in the manner set forth in the order to show cause provisions contained within Chapter 121 (relating to general provisions), when a self-insurer unreasonably fails to pay compensation for which it is liable or fails to submit any report or pay any assessment made under the act.

The City of Philadelphia commented that the Department should provide a standard in § 125.19(a) for when the Bureau may question whether an applicant continues to maintain the financial ability to self-insure. This section implements section 305(a)(3) of the act (77 P. S.§ 501(a)(3)) and section 305 of the Occupational Disease Act (77 P. S. § 1405) which allow the Department to request further statements of financial ability and revoke a self-insurer's permit during the permit period. The Department does not believe any additional standard is required insofar as § 125.19(a) is based upon the self-insurer's financial ability to self-insure, the requirements of which are clearly set forth under §§ 125.2 (relating to definitions) and 125.6(a) (relating to decision on application). Additionally, § 125.19(a)(2) provides a self-insurer with the ability to dispute any such decision under the procedures set forth in § 125.6(e) – (g).

The City of Philadelphia further suggested that the Department replace "may" with "shall" in § 125.19(a) regarding the Bureau's issuance of a letter where it has reason to question the financial ability of a self-insurer. The Department substantially agrees and has modified the language to reflect that the Bureau "will" issue the letter.

IRRC and the City of Philadelphia commented that the Department should include specific language in the order to show cause provisions in § 125.19(b) to explain how a self-insurer acts unreasonably in failing to pay compensation. Since this issue involves a fact-specific, common sense inquiry, a more specific definition limited to self-insurers under the Chapter 125 regulations does not appear necessary or prudent at this time. In this regard, section 441(b) of the act, 77 P. S. § 997(b), on which this provision is based, states that the secretary "shall not [revoke or suspend self-insurance status] until the employer has been notified in writing of the charges made against it and has been given an opportunity to be heard before the secretary in answer to the charges." As such, the issue of whether a self-insurer's failure to pay was "unreasonable" under the circumstances would be addressed by the self-insurer and the Bureau before a presiding officer at the show cause proceeding. Section 441(a) of the act contains identical language regarding the repeated or unreasonable failure to pay compensation by licensed insurers, which are not governed by the Chapter 125 regulations. Moreover, reference to "unreasonable" delays in payment is also found in section 435(d)(i) of the act, 77 P. S. § 991, and the courts have addressed the fact-specific issue of what constitutes "unreasonable" delay under that section on a case-by-case basis.

The Department amends § 125.20 (relating to computation of time) to adjust the manner in which a period of time will be computed under this chapter to be consistent with the time computation provisions under Chapter 121.

The Department adds § 125.21 (relating to self-insurance loss portfolio transfer policy) to establish procedures and guidelines for the transfer of a self-insurer's workers' compensation liability to an insurance carrier through the use of a self-insurance loss portfolio transfer policy.

IRRC generally commented that the Department should provide direction in the final-form regulations on how an applicant can access the various Bureau-prescribed forms outlined in the regulations. As a result, § 125.3(a) (relating to application), § 125.4(a) (relating to applications for affiliates and subsidiaries) and § 125.9(b)(1) and (b)(2) (relating to security requirements) have been revised to state that the various forms described in those sections are available upon request from the Bureau. Additionally, § 125.3(c)(6), (c)(7) and (c)(8), § 125.12(c) (relating to payment, handling and adjusting of claims) and § 125.16(a) (relating to reporting by runoff self-insurer) have been revised to state that the various forms and formats mentioned in those provisions will be provided to the applicant by the Bureau.

IRRC also commented that the Department should specify the type of evidence that would be acceptable where the regulations require self-insurers to provide evidence of workers' compensation insurance coverage, such as in § 125.3(d) (relating to application), § 125.6(c)(1)(iv), (d), (f)(1)(ii) and (f)(2) (relating to decision on application), § 125.9(b)(1)(iii) (relating to security requirements) and § 125.19(a)(3) (relating to additional powers of bureau and orders to show cause). In response, the Department has added the phrase "such as a certificate of insurance" to provide clarification. This change has also been made to § 125.19(b)(2).

Porter & Curtis commented that it would like an estimate of the one-time additional costs associated with the Bureau's implementation of the regulations and how those costs would be applied to self-insurers. The Department is not able to accurately project these costs. However, they will be minimal and will be paid through the Workmen's Compensation Administration Fund. Any work in the re-programming of the self-insurance system will be done internally by the Department's Office of Information Services.

Affected Persons

Active self-insurers, runoff self-insurers and employers applying for self-insurance in the future will all be affected by the final-form rulemaking in various degrees. The procedural amendments will affect all categories of self-insurers and applicants for self-insurance. A number of the substantive amendments, including those relating to loss development calculations and security discounts, will affect existing private sector self-insurers. New and existing public sector self-insurers also will be affected by the amendments to funding requirements. Self-insurance claims service companies, sureties and trustees will also be impacted by the final-form rulemaking.

Fiscal Impact

Private employer applicants with a strong financial rating will likely see no significant, direct impact to their overall costs from the final-form regulations. These applicants may experience reduced costs, due to the greater security discounts for employers having strong financial ratings. Private employer applicants with lesser financial ratings, however, may experience some increase in costs as a result of the changes to security and excess insurance requirements.

The vast majority of public sector applicants will realize substantially reduced funding requirements under the amended regulations. The Bureau estimates that required funding amounts would decline by an average of 49% under the proposed regulations for 37 of the 57 public self-insurers. The remaining 20 public employers are subject to a grandfather waiver provision which requires increases to their amount of funding for workers' compensation based on any increases in annual compensation payments. Four of the public employers from this group also will realize cost savings as the result of the elimination of security requirements on them.

Some one-time additional costs associated with the implementation of the regulations are likely for the Bureau. Such costs, which will not be substantial, will mostly result from the re-programming of the computer system used to monitor self-insurers and to decide applications.

Reporting, Recordkeeping and Paperwork Requirements

The major reporting, recordkeeping and paperwork requirements resulting from the final-form regulation are as follows:

- An active or runoff self-insurer is required to annually file, in electronic format prescribed by the Bureau, a listing of its open and closed claims incurred after the effective date of these amendments.

- An active or runoff self-insurer may be required to file with the Bureau summary data on its claims when it changes claims handling arrangements.

Effective Date

This final-form rulemaking is immediately effective upon publication in the *Pennsylvania Bulletin.*

Sunset Date

No sunset date is necessary for these regulations. The regulations are continuously monitored by the Workers' Compensation Advisory Council and by the Bureau in the day-to-day handling and processing of individual self-insurance applications. If needed, corrections can be initiated based on information obtained by these operations.

Contact Person

Persons who require additional information about this final-form rulemaking may submit inquiries to George Knehr, Chief, Self-Insurance Division, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104-2501 or to gknehr@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa. B. 2293, to IRRC and to the Senate Committee on Labor and Industry and the House Labor Relations Committee (Senate and House Committees). In addition, the Department also provided IRRC and the Senate and House Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

The Department also provided IRRC and the Senate and House Committees with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department considered all comments from IRRC and the public. The Senate and House Committees did not comment.

Under section 5.1(j.1)—(j.3) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)—(j.3)), these final-form regulations were deemed approved by the Senate and House Committees on _____, 2010. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2010, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act ((71 P. S. § 745.5a(e).

Findings

The Department finds that:

(1) Public notice of proposed rulemaking given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations in 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 125, Subchapter A, are amended by adding § 125.21; by amending §§ 125.1—125.7, 125.9—125.13, 125.15—125.17, 125.19 and 125.20; and by deleting § 125.8 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate and House Committees as required by law.

(d) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effective immediately upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Sandi Vito
Secretary

FISCAL NOTE: Fiscal Note 12-85 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter A. INDIVIDUAL SELF-INSURANCE.

§ 125.1. Purpose.

This subchapter is promulgated under section 435 of the act (77 P. S. § 991) to provide regulatory guidelines for **the** uniform and orderly administration of self-insurance for individual employers. This subchapter ensures full payment of compensation when due to **[employes] employees** of self-insured employers and to their dependents under the act and the Occupational Disease Act.

§ 125.2. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act--The Workers' Compensation Act (77 P. S. §§ 1--**[1038.2] 1041.4, 2501--2506 and 2701--2708**).

***Active self-insurer*--A self-insurer that is not a runoff self-insurer.**

* * * * *

***Adequate accident and illness prevention program*--A determination by the Bureau under Chapter 129 (relating to workers' compensation health and safety) that ~~an applicant's~~** A SELF-INSURED EMPLOYER'S **accident and illness prevention services fulfill the program and service requirements as stated in that chapter.**

* * * * *

Aggregate excess insurance--Insurance **under** which **[provides that]** the **[excess]** insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on claims incurred during a policy period in excess of the retention amount to the **[excess]** insurer's **[limit of]** liability **limit ~~and that meets the requirements of § 125.11(b) (relating to excess insurance)~~**.

* * * * *

Authorized retention amount--**A retention amount that is equal to or is less than a self-insurer's maximum quick assets exposure amount or the current standard retention amount, whichever is less, or the special retention amount approved by the Bureau.**

* * * * *

Cash flow protection amount--The maximum amount of benefits a self-insurer pays over a 2-year period on an occurrence without reimbursement from **[an excess] a** ~~**nonworkers' compensation insurer or a workers' compensation**~~ AN insurer under a specific excess insurance policy with a per year per occurrence cash protection plan.

Catastrophic loss estimation--**The greater of the following:**

(i) The largest number of employees ~~**usually**~~ ANTICIPATED TO **work**~~**ing**~~ **at one time** DURING A WORK DAY **at the largest location in this Commonwealth in terms of the applicant's employment, or the employment of any of its affiliates or subsidiaries under a consolidated permit under § 125.4 (relating to application for affiliates and subsidiaries), multiplied by the current Statewide average weekly wage multiplied by 500.**

(ii) The current Statewide average weekly wage multiplied by 5,000.

* * * * *

Commonwealth—

(i) The government of the Commonwealth, including the following:

(A) The courts and other officers or agencies of the unified judicial system.

(B) The General Assembly, and its officers and agencies.

(C) The Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth~~.~~, OR

(ii) ~~The term does not include any instrumentality~~ AN EMPLOYER, POLITIC AND CORPORATE, EXERCISING AN ESSENTIAL GOVERNMENT FUNCTION UNDER THE LAWS of ~~the~~ THIS Commonwealth ~~or~~ THAT IS NOT A political subdivision.

* * * * *

DEDICATED ASSET ACCOUNT—AN ACCOUNT OR FUND, SUCH AS A BANK, CHECKING OR TRUST ACCOUNT OR AN INTERNAL SERVICES FUND, HOLDING CASH OR INVESTMENTS SOLELY TO FINANCE OR HOLD

RESERVES FOR THE PAYMENT OF A PUBLIC EMPLOYER'S WORKERS' COMPENSATION LIABILITY AND RELATED EXPENSES.

~~*Default multiplier*--A multiplier calculated by the Bureau, and published annually in the *Pennsylvania Bulletin*, based upon the Bureau's analysis of the total costs and expenses to liquidate defaulted self-insurers' claims compared to those self-insurers' average annual benefits payments in years preceding the defaults, as derived from the experience of the Self-Insurance Guaranty Fund and of sureties and others paying the claims of defaulted self-insurers.~~

~~*Default multiplier-calculated security factor*--The self-insurer's average annual payout of benefits, net of workers' compensation excess insurance recoveries, over the last 3 completed calendar years multiplied by the default multiplier.~~

* * * * *

Excess indemnity insurance--**Aggregate excess insurance or specific excess insurance that** ~~**does not meet**~~ MEETS **the** ~~**definition of workers' compensation excess insurance but that is provided by a workers' compensation insurer or a nonworkers' compensation insurer that possesses an A.M. Best rating of A- or better or a Standard & Poor's insurer financial strength rating of A or better or a comparable rating of another NRSRO**~~ REQUIREMENTS OF § 125.11(b)(1) (RELATING TO EXCESS INSURANCE).

[*Excess insurer***--An insurance company authorized to transact the class of insurance listed in section 202(c)(14) of The Insurance Company Law of 1921 (40 P. S. § 382(c)(14)).]**

Excess insurance--**Excess indemnity insurance or workers' compensation excess insurance.**

Financial ability to self-insure--**Possession of adequate financial capacity and adequate financial health, as specified in § 125.6(a) (relating to decision on application).**

GUARANTOR—THE AFFILIATE OR PARENT COMPANY THAT HAS GUARANTEED A SELF-INSURER'S LIABILITY BY EXECUTING AN AGREEMENT UNDER § 125.4(b) (RELATING TO APPLICATION FOR AFFILIATES AND SUBSIDIARIES) THAT IS ON FILE WITH THE BUREAU.

~~*Instrumentality of the Commonwealth*--An employer, politic and corporate, exercising an essential government function. The term does not include the Commonwealth or any political subdivisions.~~

Investment grade long-term credit **or** *debt rating*--**A long-term credit or debt rating identified as investment grade by the NRSRO that issued it.**

Liability limit--The maximum amount of benefits for which ~~a nonworkers' compensation insurer or a workers' compensation~~ AN insurer indemnifies a self-insurer under an excess insurance policy.

Long-term credit or *debt rating*--A measurement by a NRSRO of an applicant's willingness and intrinsic capacity to meet its long-term financial commitments as the commitments become due, exclusive of the effects of any guaranties, insurance or other forms of credit enhancements or legal priorities on any of the applicant's financial obligations.

* * * * *

Maximum quick assets exposure amount--Five percent of an applicant's average year-end quick assets amount for its last 2 completed fiscal years.

Minimum funding amount--The lower of the following:

(i) The current Statewide average weekly wage multiplied by ~~1,000~~ 500.

(ii) The retention amount of the applicant's current or any proposed excess insurance, if applicable.

Minimum security amount--The lower of the following:

(i) The current Statewide average weekly wage multiplied by 1,000.

(ii) The retention amount of the applicant's current or any proposed excess insurance, if applicable.

NRSRO--A designated Nationally-recognized statistical rating organization of the United States Securities and Exchange Commission or its successor.

~~*Nonprocurement registration number*--An identification number issued by the Commonwealth, Department of General Services, Central Management Vendor Unit, to entities who may receive payments from the Commonwealth that are not associated with a contract or purchase order.~~

~~*Nonworkers' compensation insurer*--An insurance company authorized to transact any class of insurance under the Insurance Company Law of 1921 (40 P. S. §§ 341--991.2361) other than the insurance under section 202(c)(14) (40 P. S. § 382(c)(14)), or an insurance company designated as an eligible surplus lines insurer as defined in section 1602 (40 P. S. § 991.1602).~~

* * * * *

Parent company—~~A corporation~~ AN ENTITY which DIRECTLY OR INDIRECTLY owns a majority of the voting stock of an employer or DIRECTLY OR INDIRECTLY controls a majority of the employer's board of directors appointments if the employer has no voting stock.

* * * * *

Public employer—The Commonwealth~~, an instrumentality of the Commonwealth~~ or a political subdivision.

Quick assets--The sum of an applicant's cash, cash equivalents, current receivables and marketable securities **or, if the applicant is a public employer who uses fund accounting, the total of the applicant's general fund assets.**

Retention amount--

(i) The maximum amount of benefits a self-insurer pays without reimbursement from the **[excess]** ~~**nonworkers' compensation insurer or the workers' compensation**~~ insurer under an aggregate excess insurance policy or under a specific excess insurance policy which does not include an annual cash flow protection plan.

(ii) The term also includes the **lower of the** maximum amount of benefits a self-insurer pays on each occurrence without reimbursement from the ~~excess~~ insurer**[, if any,] or the cash flow protection amount** under a specific excess insurance policy which includes an annual cash flow protection plan.

* * * * *

[*Security constant*--The Statewide average weekly wage multiplied by 300.]

Self-insurance--The privilege granted to an employer which has been exempted by the Bureau from insuring its liability under section 305**(a)** of the act (77 P. S. § 501**(a)**) and section 305 of the Occupational Disease Act (77 P. S. § 1405).

***Self-insurance loss portfolio transfer policy*--A policy of insurance accepted by the Bureau as meeting the requirements of § 125.21 (relating to self-insurance loss portfolio transfer policy) under which a self-insurer transfers liability incurred as a self-insurer to a workers' compensation insurer.**

* * * * *

Special retention amount—

(I) **A retention amount that exceeds the applicant's maximum quick assets exposure amount or the standard retention amount requested by the applicant and approved by the Bureau based on a determination that the applicant has sufficient quick assets to easily liquidate all losses ~~from a catastrophic event~~ at the requested greater retention amount.**

(II) ~~**For**~~ ADDITIONALLY, **an applicant whose self-insurance status began before ____ (*Editor's Note:* The blank refers to the effective date of ~~adoption of~~ this ~~proposed~~** FINAL-FORM **rulemaking.)~~, this may also be based on a determination that the requested~~** MAY USE A SPECIAL **retention amount** THAT **is ~~less than or is approximately~~ equal to the retention amount of the applicant's excess insurance in effect on ____ (*Editor's Note:* The blank refers to the effective date of ~~adoption of~~ this ~~proprosed~~** FINAL-FORM **rulemaking.).**

Specific excess insurance--Insurance **under** which **[provides that]** the **[excess]** insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on each occurrence in excess of the retention amount to the **[excess]** insurer's **[limit of]** liability **limit ~~and that meets the requirements of § 125.11(b) (relating to excess insurance)~~**.

***Standard retention amount*--~~The retention amount generally required for a self-insurer's excess insurance published annually by the Bureau in the *Pennsylvania Bulletin* that is based on a retention amount commonly used by current self-insurers and determined appropriate by the Bureau.~~**

(I) THE CURRENT STATEWIDE AVERAGE WEEKLY WAGE MULTIPLIED BY 500.

(II) ROUNDED UPWARD TO THE NEAREST HUNDRED THOUSAND.

* * * * *

Subsidiary—An employer whose voting stock or board of directors appointments are DIRECTLY OR INDIRECTLY controlled by a parent company.

* * * * *

***Workers' compensation excess insurance*--Aggregate excess insurance or specific excess insurance ~~provided by a workers' compensation insurer that includes the premium collected for the insurance in data used by the Workers' Compensation Security Fund set forth in the Workers' Compensation Security Fund Act (77 P. S. §§ 1051—1066) to calculate assessments against workers' compensation insurers to finance the operations of that fund~~** THAT MEETS THE REQUIREMENTS OF § 125.11(b)(2) (RELATING TO EXCESS INSURANCE).

***Workers' compensation excess insurance recoveries*--Payments made to a self-insurer under a policy of workers' compensation excess insurance or payments**

receivable under a policy of workers' compensation excess insurance ~~in the future~~ that the insurer has agreed in writing that it is liable to pay.

***Workers' compensation insurer*--An insurance company authorized to transact the class of insurance listed in section 202(c)(14) of The Insurance Company Law of 1921** (40 P. S. § 382(C)(14)).

§ 125.3. Application.

(a) An applicant shall file an application on a form prescribed by AND AVAILABLE UPON REQUEST FROM the Bureau. **[Questions] All questions** on the application shall be answered **[thoroughly and]** completely **and accurately** with the most recent information available. A rider may be attached if more space is necessary. The application shall be signed by the applicant, or if a corporation, an officer of the corporation**[, and attested to]. The application, including any attached riders and applicable forms, shall be verified** as set forth on the application**[. Attached riders and applicable forms enclosed with the application shall be verified to in the sworn affidavit requested on the application], subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).**

(b) Initial applications shall be filed with the Bureau no later than 3 months prior to the requested effective date of self-insurance. Renewal applications shall be filed with the Bureau no later than **[2] 3** months prior to the expiration of the current permit.

(c) With the application, the applicant shall include:

(1) The nonrefundable statutory fee in the amount of $500 for initial applicants or $100 for renewal applicants required **[by] under** section 305**(a)** of the act (77 P. S. § 501**(a)**), payable to the "Commonwealth of Pennsylvania." A statutory fee **is required** in the amount of $500 **[for initial applicants or $100 for renewal applicants is required]** for each affiliate or subsidiary **[included] being initially added or in the amount of $100 for each affiliate or subsidiary renewing** under a consolidated application under § 125.4 (relating to application for affiliates and subsidiaries).

(2) Its **[Security] Securities** and Exchange Commission (SEC) Form 10-K, OR EQUIVALENT FORM FILED BY A FOREIGN CORPORATION WITH THE SEC OR THE GOVERNING BODY OF AN INTERNATIONALLY RECOGNIZED PUBLIC SECURITIES EXCHANGE FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e) (RELATING TO APPLICATION FOR AFFILIATES AND SUBSIDIARIES), for the last complete fiscal year, if applicable. The ~~SEC Form 10-K~~ FILING OF THESE FORMS does not serve as a substitute for the full completion of the application form.

(3) Its latest ~~audit report~~ AUDITED FINANCIAL STATEMENTS issued by a licensed certified public accountant or accounting firm. FOR A PRIVATE EMPLOYER, ~~The~~

~~report~~ THE AUDITED FINANCIAL STATEMENTS **[shall] must** cover the last complete fiscal-year period immediately prior to the date of application. ~~If the most current audited period precedes the application date by more than 6 months, the applicant's latest SEC Form 10-Q or unaudited interim financial statements [shall] must be submitted.~~ The ~~audit report~~ AUDITED FINANCIAL STATEMENTS **[shall meet the following criteria] must ~~include~~** MEET **the following** CRITERIA:

(i) **[It shall include financial]** ~~**Financial** statements which are~~ THEY MUST BE presented in conformance with applicable generally accepted accounting principles as promulgated by the Financial Accounting Standards Board or the Government Accounting Standards Board or with international **[accounting] financial reporting** standards promulgated by the International Accounting Standards Board. ~~**The monetary values presented in the financial statements must be in United States dollars and t**~~**The text of the financial statements and their accompanying notes must be in the English language.** ~~**If the applicant is a parent company, consolidated financial statements of the applicant and its subsidiaries shall be provided**~~ IF THE CURRENCY USED IN THE FINANCIAL STATEMENTS IS NOT IN UNITED STATES DOLLARS, THE APPLICANT MUST COOPERATE AND ASSIST THE BUREAU IN CONVERTING THE CURRENCY TO UNITED STATES DOLLARS.

(ii) **[It shall state]** ~~**A statement** that the audit~~ THEY MUST BE AUDITED **[meets the reporting requirements defined either in the applicable] ~~was conducted~~ in accordance with** generally accepted auditing standards **[promulgated by the AICPA or the applicable generally accepted governmental auditing standards promulgated by the Comptroller General of the United States in "Government Auditing Standards," referred to as the Yellow Book] in the United States or in accordance with the standards of the Public Company Accounting Oversight Board (United States) or the International Standards on Auditing**. An unqualified or qualified opinion shall be stated on the most recent audited financial statements.

(III) IF THE MOST CURRENT AUDITED PERIOD PRECEDES THE APPLICATION DATE BY MORE THAN 6 MONTHS, THE APPLICANT'S LATEST SEC FORM 10-Q, OR SIMILAR FORM FILED BY A FOREIGN CORPORATION WITH THE SEC OR THE GOVERNING BODY OF AN INTERNATIONALLY RECOGNIZED PUBLIC SECURITIES EXCHANGE FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(E), OR UNAUDITED INTERIM FINANCIAL STATEMENTS MUST BE SUBMITTED.

(4) ~~Audit reports~~ AUDITED FINANCIAL STATEMENTS covering the applicant's second and third most recent complete fiscal-year periods prior to the date of the application, if an initial application. If ~~audit reports~~ AUDITED FINANCIAL STATEMENTS covering those periods are not available, financial statements reviewed by a certified public accountant in accordance with standards established by the **[AICPA] American Institute of Certified Public Accountants** OR THE INTERNATIONAL AUDITING AND ASSURANCE STANDARDS BOARD covering

the second and third most recent complete fiscal year periods PRIOR TO THE DATE OF THE APPLICATION will be accepted.

(5) A report of the **[applicant's]** paid and incurred workers' compensation loss experience in this Commonwealth under each of the 3 ~~complete~~ COMPLETED policy years prior to the application **of each employer requesting self-insurance**, if an initial application. **[Affiliates' paid and incurred workers' compensation loss experience shall be submitted if applicable.]** The loss information for each policy year shall be valued within 3 months prior to the date of the submission of the application.

(6) A report on a form prescribed by the Bureau AND PROVIDED TO EACH EMPLOYER REQUESTING SELF-INSURANCE stating the costs of claims incurred by **[the applicant]** ~~**each**~~ **THE employer** ~~**requesting self-insurance**~~ by annual periods and projecting **the total value of** its outstanding liability under the act and the Occupational Disease Act, if a renewal application. **[Applicants are encouraged, but not required, to have their projection of outstanding liability prepared by an actuary] A renewal applicant that has retained the services of an actuary to project the total value of its outstanding liability may submit the actuary's report with its application.**

(7) A report **for each employer requesting self-insurance** on a form prescribed by the Bureau AND PROVIDED TO EACH EMPLOYER REQUESTING SELF-INSURANCE summarizing the existence of the accident and illness prevention program required under section 1001(b) of the act (77 P. S. § 1038.1) and regulations promulgated thereunder**[, if a renewal applicant]**.

(8) **[At the direction of the Bureau, an applicant's annual summaries of occupational injuries and illnesses, OSHA No. 200, if the applicant is required to keep Occupational Safety and Health Administration records.] A listing for each employer requesting self-insurance, in a Bureau-prescribed electronic format** PROVIDED TO EACH EMPLOYER REQUESTING SELF-INSURANCE**, of the employer's Pennsylvania workers' compensation claims incurred as a self-insurer, including claims currently in litigation, and information such as payments and reserves on each claim. The listing must include:**

(i) All opens claims at the time of submission.

(ii) All claims closed ~~**in the past if these claims are available. If a listing of all claims closed in the past is not available, the listing must at least include all claims closed**~~ **on or after ____ (*Editor's Note*: The blank refers to the effective date of** ~~**adoption of**~~ **this** ~~**proprosed**~~ FINAL-FORM **rulemaking.).**

(iii) Case reserves provided in the listing must be established according to instructions ON FORMS **prescribed by the Bureau** AND PROVIDED TO EACH EMPLOYER REQUESTING SELF-INSURANCE.

(9) Written verification of the applicant's current long-term credit or debt ratings, if any.

(d) The applicant shall provide additional data **[and],** information **and explanation** that the Bureau deems pertinent to its review of the application based on the factors enumerated under § 125.6(a) (relating to decision on application), **and shall make any corrections determined necessary by the Bureau, and provide any items under subsection (c) determined missing or insufficient by the Bureau.** The applicant shall provide the data **[and],** information**, explanation, corrections or missing items** within ~~the time period prescribed by the Bureau~~**[, which will be reasonable based on the extent and availability of the data and information required]** 21 DAYS OF ITS RECEIPT OF WRITTEN NOTIFICATION FROM THE BUREAU OF ITS NEED TO DO SO, OR BY A LATER DATE IF REQUESTED BY THE APPLICANT AND APPROVED BY THE BUREAU. **If the applicant does not provide the data, information, explanation, corrections or missing items within the** PRESCRIBED **time period** ~~prescribed in writing by the Bureau~~**, the application will be deemed withdrawn. A renewal applicant that does not provide the data, information, explanation, corrections or missing items within the** PRESCRIBED **time period** ~~prescribed in writing by the Bureau~~ **shall obtain workers' compensation insurance coverage effective the expiration of that time period and shall provide evidence of the coverage,** SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date.**

(e) The Bureau will not **[begin its review of] issue a decision on** the application **under § 125.6 (relating to decision on application)** until the application **[and the required supporting materials as outlined in this section], including all items required under subsection (c) and all additional data, information, explanation and corrections under subsection (d),** have been submitted.

* * * * *

§ 125.4. Application for affiliates and subsidiaries.

(a) An affiliate or subsidiary may be included under an application submitted by another affiliate or its parent company **[if the parent company or affiliate is incorporated under the laws of a state of the United States] by providing information and data on the affiliate or subsidiary on a** SEPARATE **form prescribed by** AND AVAILABLE UPON REQUEST FROM **the Bureau.** The related entities will be included under one consolidated permit if the application is approved. A **written** ~~request~~ NOTIFICATION shall be ~~made~~ PROVIDED **[on a form prescribed by the Bureau] by the applicant** to **[add or]** delete an affiliate or a subsidiary **[to or]** from a consolidated permit after its issuance.

* * * * *

(d) ~~If~~ EXCEPT AS PROVIDED IN § 125.4(e), IF an affiliate or subsidiary not included under a consolidated application as outlined in subsection (a) wishes to self-insure, it shall submit an application in its own name and provide its own ~~audit reports~~ AUDITED FINANCIAL STATEMENTS in the manner indicated in § 125.3 (relating to application). The Bureau may require the parent company to furnish appropriate financial information within ~~a~~ **[reasonable]** ~~time~~ **[according to the extent and nature of the requested information]** ~~period prescribed by the Bureau~~ 21 DAYS OF ITS RECEIPT OF WRITTEN NOTIFICATION FROM THE BUREAU OF ITS NEED TO DO SO, OR BY A LATER DATE IF REQUESTED BY THE APPLICANT AND APPROVED BY THE BUREAU.

(e) If the applicant is a ~~direct or indirect~~ **subsidiary of a parent company that is not incorporated or organized under the laws of a state of the United States, the applicant may submit its parent company's consolidated** ~~audit report~~ AUDITED FINANCIAL STATEMENTS **and an unaudited consolidated balance sheet of the applicant's financial condition, or other financial information on the applicant that the Bureau deems pertinent to its review of the application, to satisfy the financial reporting requirements of § 125.3(c), provided the parent company's** ~~audit report complies~~ AUDITED FINANCIAL STATEMENTS COMPLY **with the** REQUIREMENTS OF **§ 125.3(c)(3)(i) and (ii).**

§ 125.5. **[Minimum] Preliminary** requirements.

(a) An **[initial]** applicant **[must] shall** have been in business for at least 3 consecutive years prior to application.

(b) **[A private employer applicant shall demonstrate that 10% of its quick assets or 20% of its cash and cash equivalents at the end of 2 of the last 3 fiscal-year periods exceed a proposed cash flow protection amount or the proposed retention amount of its aggregate excess or specific excess insurance, whichever is less] An applicant shall be incorporated or organized under the laws of a state of the United States.**

(c) **[A public employer applicant shall demonstrate that 10% of its general fund quick assets at the end of 2 of the last 3 fiscal-year periods exceed a proposed cash flow protection amount or the proposed retention amount of its aggregate excess or specific excess insurance, whichever is less] Each employer requesting self-insurance shall have an adequate accident and illness prevention program.**

[(d) Subsections (b) and (c) do not apply to applicants which are not required to obtain specific excess insurance under § 125.11 (relating to specific excess insurance and aggregate excess insurance) nor to applicants which are self-insured prior to October 14, 1995.]

§ 125.6. Decision on application.

(a) The application of an applicant which meets the requirements of § 125.5 (relating to **[minimum] preliminary** requirements) will be approved if the Bureau determines that the applicant has demonstrated**[, with reasonable certainty, the ability to meet all obligations under the act and the Occupational Disease Act] that it possesses the financial ability to self-insure.**

(1) An applicant shall demonstrate that it has adequate financial capacity by showing one of the following:

(i) The retention amount of the applicant's current or proposed excess insurance equals or is less than its authorized retention amount.

(ii) The applicant's catastrophic loss estimation is equal to or is less than its maximum quick assets exposure amount.

(2) An applicant shall demonstrate that it has adequate financial health, as follows:

(i) If a public employer, the applicant satisfies or will satisfy the requirements established for it under § 125.10 (relating to funding by public employers).

(ii) If a private employer, the applicant's level of financial stability, solvency and liquidity is such that it satisfies one of the following:

(A) The applicant, OR ITS PARENT COMPANY FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e) (RELATING TO APPLICATION FOR AFFILIATES AND SUBSIDIARIES), **possesses an investment-grade long-term credit or debt rating, or such a rating that is one generic rating classification below investment grade.**

(B) For ~~applicants~~ AN APPLICANT **who ~~do~~** DOES **not receive a long-term credit or ~~debit~~** DEBT **rating by an NRSRO,** OR WHOSE PARENT COMPANY DOES NOT RECEIVE A LONG-TERM CREDIT OR DEBT RATING BY AN NRSRO FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e), **the Bureau estimates that the applicant,** OR ITS PARENT COMPANY FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e), **would merit an investment grade long-term credit or debt rating, or a rating that is one generic rating classification below investment grade, if it were rated.**

(C) An applicant that was approved to self-insure as of ____ (*Editor's Note*: The blank refers to the effective date of ~~adoption of~~ this ~~proprosed~~ FINAL-FORM **rulemaking.) that possesses an actual or Bureau-estimated long-term credit or debt rating more than one generic rating classification below investment grade shall be deemed to possess adequate financial health if its generic rating does not decline further. This ~~exception~~** SUBPARAGRAPH **will no longer apply if the applicant's**

actual or Bureau-estimated long-term credit or debt rating SUBSEQUENTLY **increases to one generic rating classification below investment grade or higher.**

(b) The Bureau will **[include] consider** the following **[factors] information** in assessing an applicant's **financial** ability to **[meet those obligations] self-insure**:

(1) The **[audit opinion required under § 125.3(c)(3) (relating to application).] applicant's level of financial health,** OR ITS PARENT COMPANY'S LEVEL OF FINANCIAL HEALTH FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e), **based upon ~~its~~** THE APPLICANT'S OR ITS PARENT'S **long-term credit or debt rating, if any, or upon an evaluation by the Bureau of one or more of the following:**

(i) The applicant's financial statements, OR ITS PARENT COMPANY'S FINANCIAL STATEMENTS FOR AN APPLICATION BEING PROCESSED UNDER THE CONDITIONS OF § 125.4(e), **which may include comparisons of the applicant's** OR ITS PARENT COMPANY'S **financial ratios to general or to industry ratios and cash flow analysis.**

(ii) Public documents and reports filed with other state and Federal agencies including the United States Securities and Exchange Commission.

(iii) Other financial analysis information provided to or considered by the Bureau, INCLUDING FINANCIAL ANALYSIS COMPARISON DATABASES AND EVALUATION MODELS.

(2) The **[length of time that the applicant has been doing business under its present corporate identity] amount of the applicant's quick assets at the end of its last 2 completed fiscal years as shown on the ~~audited~~ financial statements provided to the Bureau under § 125.3**(C) **(relating to application)** OR UNDER § 125.4(e).

(3) The **[applicant's overall solvency, identified as its ability to meet its financial obligations as they come due] terms, conditions and limits of the applicant's existing or proposed excess insurance.**

(4) **[The applicant's organizational structure and management background.] For a public employer, its ability to satisfy or its past history in satisfying the requirements established under § 125.10.**

[(5) The nature of the applicant's operations and its industry.

(6) Financial analysis appropriate for the particular applicant, including for example, industry ratio and cash flow analyses.

(7) The applicant's debt ratings from National financial rating agencies, if any.

(8) The applicant's workers' compensation loss history and insurance history.

(9) The applicant's potential financial workers' compensation obligations, including average expected claims and maximum possible loss as limited by the excess insurance coverage obtained by the applicant, if any.

(10) The applicant's claims administration history and compliance with the act, the Occupational Disease Act and this part.

(11) The existence and adequacy of the applicant's accident and illness prevention program required under section 1001(b) of the act (77 P. S. § 1038.1(b)) and regulations thereunder.

(b)] (c) If the **[Bureau's assessment] Bureau finds** under subsection (a) **[is]** that the applicant **[can meet its obligations] possesses the financial ability to self-insure**, it will send to the applicant **[a preliminary approval notice of] an initial decision approving** the application and a list of conditions as set forth under ~~subsection~~ **[(d)]** PARAGRAPH **(c)(2)** that **[shall] must** be met before the applicant will be issued a permit. The Bureau **[may] will** issue a permit to a renewal applicant **[subject to] at the time of the initial decision when** the renewal applicant **[complying] is currently in compliance** with the conditions set forth by the Bureau.

[(c)] (1) An applicant has **[60] 45** days from the receipt of the **[preliminary approval notice] initial decision approving the application** to comply with the conditions set forth by the Bureau.

(i) The applicant may toll the **[60] 45**-day compliance period by filing a request for a conference **or notification of its intent to submit additional written information** under subsection **[(f)] (e)**.

(ii) An applicant may be granted a 30-day extension to meet the conditions if the applicant requests an extension in writing **[to the]. The** Bureau **must receive the extension request** within the initial **[60] 45**-day compliance period.

(iii) [The application of an] Unless a timely reconsideration is initiated under subsection (e), when the applicant **[which]** does not meet the conditions within this compliance period**, the application** will be deemed **[withdrawn] denied**.

(iv) A renewal applicant that does not meet the conditions within this compliance period and that has not timely initiated the procedures outlined in subsection (e) shall obtain workers' compensation insurance coverage effective the expiration date of the compliance period and provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date.**

[(d)] **(2)** The applicant will be issued a permit **[which is effective no sooner than 15 days]** after **all of** the following **[has] have** been filed with the Bureau:

[(1)] **(i)** Security in an amount as set forth in § 125.9 (relating to security requirements) or funding as set forth in § 125.10 **[(relating to funding by public employers)]**.

[(2)] **(ii)** A certificate providing evidence **[of] that the applicant has obtained** excess insurance **[as required by the Bureau] coverage with limits set forth under § 125.11(a) (relating to excess insurance), if required**.

[(3)] **(iii)** A guarantee agreement executed by its parent company or an affiliate as set forth in § 125.4 (relating to application for affiliates and subsidiaries), if required.

(iv) Contact information on the claims services company or in-house staff that will be handling the applicant's claims.

[(4)] **(v)** Documents relating to any other requirement set by the Bureau to protect the compensation rights of **[employes] employees**.

[(e)] **(d)** If **an applicant does not meet the requirements of § 125.5 or if** upon review **[of the pertinent data]** under subsection (a) the Bureau finds that the applicant has not demonstrated **[its ability to meet its obligations, it will] that it possesses the financial ability to self-insure, [it will] the Bureau** will send to the applicant **[a preliminary denial notice of] an initial decision denying** the application. The **[notice] initial decision** will state the documents, **[evidence and other data] data, information, explanation and corrections** received from the applicant or otherwise reviewed or considered by the Bureau in rendering its **[preliminary determination] initial decision. A renewal applicant shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of an initial decision denying the renewal application and shall provide evidence of the coverage,** SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date, unless the applicant has timely initiated the procedures outlined in subsection (e).**

(e) The applicant may request a conference with the Bureau to submit additional materials to support its application or the alteration of the conditions required in the initial decision, or to challenge the accuracy of underlying calculations made or data considered by the Bureau in its decision or conditions. The applicant may also notify the Bureau of its intention to submit these materials directly in writing without a conference. The Bureau must receive a request or notification within 20 days of the date of the Bureau's initial decision.

(1) Upon its receipt of the request or notification, the Bureau will schedule a conference. If a conference is not requested, ~~the Bureau will establish a deadline, not~~

~~to exceed 30 days from the Bureau's date of receipt of the notification, for the submission of the additional materials~~ THE APPLICANT MUST PROVIDE THE ADDITIONAL MATERIALS WITHIN 21 DAYS OF ITS RECEIPT OF WRITTEN NOTIFICATION FROM THE BUREAU OF ITS NEED TO DO SO, OR BY A LATER DATE IF REQUESTED BY THE APPLICANT AND APPROVED BY THE BUREAU.

(2) The prior permit of a renewal applicant that has filed a timely request for a conference or notification of intent to submit additional materials will be automatically extended ~~under the prior conditions established by the Bureau~~ beyond the permit's original expiration date until the Bureau issues a reconsideration decision on the renewal application under subsection (f). DURING THE TIME THE PERMIT IS EXTENDED, THE PRIOR CONDITIONS ESTABLISHED BY THE BUREAU, AS SET FORTH UNDER PARAGRAPH (c)(2), SHALL CONTINUE TO APPLY.

(f) **[The applicant may request a conference with the Bureau upon receipt of the Bureau's preliminary approval notice or denial notice. A conference request shall be made in writing within 20 days after the receipt of the preliminary notice. At the conference, the applicant may present additional evidence or data to support its application or the alteration of the conditions required in the preliminary approval notice. The applicant may present that information to the Bureau in writing, or in person, or both] After a conference or the receipt of additional materials, the Chief of the Self-Insurance Division of the Bureau will review the entire record of the application and will issue a reconsideration decision on the application.**

(1) The applicant shall have 30 days from its receipt of a reconsideration decision approving an application to comply with any conditions set forth by the Bureau in that decision.

(i) Unless a timely appeal is filed under subsection (g), when the applicant does not meet the conditions within this 30-day period, the application will be deemed denied.

(ii) A renewal applicant that does not meet the conditions within this 30-day period shall obtain workers' compensation insurance coverage effective the expiration of the compliance period and shall provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date, unless the applicant has timely initiated the procedures outlined in subsection (g).**

(2) Upon the issuance of a reconsideration decision denying a renewal application, the renewal applicant shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of the reconsideration decision and shall provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date unless the applicant has timely initiated the procedures outlined in subsection (g).**

(g) **[After a conference and the receipt of written submissions, the Chief of the Self-Insurance Division of the Bureau will promptly review the entire record of the application and will issue a reconsideration decision on the application.**

(h)] An applicant shall have the right to appeal a reconsideration decision issued under subsection **[(g) with the] (f). The** Bureau **must receive the appeal** within 30 days of the **[receipt] date** of the reconsideration decision. **The prior permit of a renewal applicant that filed a timely appeal shall be automatically extended ~~under the prior conditions established by the Bureau~~ beyond the permit's original expiration date, until a presiding officer issues a written decision on the appeal.** DURING THE TIME THE PERMIT IS EXTENDED, THE PRIOR CONDITIONS ESTABLISHED BY THE BUREAU, AS SET FORTH UNDER PARAGRAPH (c)(2), SHALL CONTINUE TO APPLY. Untimely appeals will be dismissed without further action by the Bureau.

(1) The Director of the Bureau will assign the appeal to a **[hearing] presiding** officer who will schedule a **[de novo]** hearing on the appeal from the **[initial] reconsideration** decision. **[The applicant will receive reasonable] The presiding officer will provide** notice **to the parties** of the hearing date, time and place.

(2) The hearing will be conducted **[in a manner to provide the applicant and the Bureau the opportunity to be heard. The hearing officer will not be bound by strict rules of evidence. Relevant evidence of reasonably probative value may be received into evidence. Reasonable examination and cross-examination of witnesses will be permitted] under this subsection and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent not superseded in paragraph (6). The presiding officer will not be bound by strict rules of evidence.**

(3) **[Testimony will be recorded and a full record kept of the proceedings. The Bureau and the applicant will be provided the opportunity to submit briefs addressing issues raised] Hearings will be stenographically-recorded. The transcript of the proceedings will be part of the record.**

(4) **[Following the close of the record, the hearing officer will promptly issue a written decision and order. The decision will include relevant findings and conclusions, and state the rationale for the decision. The decision will be served upon the applicant, the Bureau and counsel of record. The decision will include a notification to the applicant and the Bureau of further appeal rights to Commonwealth Court] The presiding officer will issue a written decision and order under 1 Pa. Code Chapter 35, Subchapters G and H (relating to proposed reports; and agency action) to the extent not superseded in paragraph (6). The presiding officer will determine whether the Bureau abused its discretion or acted arbitrarily ~~under this subchapter~~ in the reconsideration decision. The applicant has the burden to prove that the Bureau abused its discretion or acted arbitrarily in the reconsideration decision.**

(5) **[The applicant or the Bureau,] A party** aggrieved by a decision rendered **[on an appeal] by the presiding officer**, may **[file a further]** appeal **the decision** to Commonwealth Court.

(6) This subsection supersedes 1 Pa. Code §§ 35.131, 35.190, 35.201, 35.211--35.214 and 35.221.

[(i)] (h) An applicant which has been denied self-insurance may reapply after ~~an annual audit report is~~ AUDITED FINANCIAL STATEMENTS ARE published subsequent to the latest ~~one~~ ONES submitted with the denied application.

§ 125.7. Permit.

(a) A permit is issued for 1 year, except that the Bureau may shorten or extend the effective period of a permit by not more than 6 months to facilitate the filing of timely ~~audit reports~~ FINANCIAL STATEMENTS OR OTHER DATA AND INFORMATION REQUIRED with the next renewal application.

(b) If the Bureau fails to issue **[a] an initial** decision with respect to a renewal application **under § 125.6 (relating to decision on application)** prior to the expiration of the permit for the prior year, the prior permit **[shall] will** be automatically extended **under the prior conditions** AS SET FORTH UNDER § 125.6(c)(2) ~~**established by the Bureau**~~ **beyond the permit's original expiration date,** until a **[final]** decision on the renewal application is **[made] issued** by the Bureau. This automatic extension applies only in cases **[where] when** the renewal application has been timely filed under § 125.3 (relating to application) **and the applicant has submitted or is submitting all data, information, explanation, corrections and missing items, or has corrected or is correcting inaccurate data, within the time period prescribed in writing by the Bureau**.

(c) If a renewal applicant's permit for the prior year expires while the applicant is in the process of satisfying conditions set forth in an initial or reconsideration decision, the prior permit will be automatically extended beyond its original expiration date, pending satisfaction of the conditions within the time period ~~**prescribed in writing by the Bureau**~~ SET FORTH UNDER THE APPLICABLE PROVISIONS OF § 125.6.

§ 125.8. **[Denial of renewal application] (Reserved).**

[The applicant shall immediately secure workers' compensation insurance coverage upon the preliminary denial of a renewal application unless the applicant has initiated the procedures outlined under § 125.6 (f)--(h) (relating to decision on application). The applicant shall provide to the Bureau a certificate of insurance evidencing workers' compensation coverage within 30 days following receipt of a final decision denying its renewal application.]

§ 125.9. Security requirements.

(a) ~~This section applies to self-insured employers except the Commonwealth and political subdivisions~~. A private employer shall provide security in an amount as set forth in subsection (d). ~~An instrumentality of the Commonwealth shall provide security in~~ **[the minimum]** ~~an amount~~ **[of the security constant]** ~~equal to the minimum security amount rounded upward to the nearest hundred thousand or in a greater amount as determined by the Bureau to protect~~ **[employes]** ~~employees and their dependents against temporary interruptions in the payment of benefits by the self-insurer.~~ The security required in this section is not a substitute for the applicant demonstrating its financial ability to **[pay compensation under the act and the Occupational Disease Act] self-insure**. A self-insurer's security may be adjusted annually or more frequently as determined by the Bureau.

(b) The following forms of security are acceptable:

(1) A surety bond on a form prescribed by AND AVAILABLE UPON REQUEST FROM the Bureau issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department.

(i) **[The] At the time of the issuance of the bond, the** surety company shall possess a current A. M. Best Rating of **[B+] A-** or better or a Standard **[and] &** Poor's **insurer's financial strength** rating **[of claims paying ability]** of A or better **or a comparable rating by another NRSRO**.

(ii) The self-insurer shall replace the bond with a new bond issued by a surety company with an acceptable rating or with another acceptable form of security if the surety company's **highest** rating falls below **[the acceptable rating] an A. M. Best Rating of B+, a Standard & Poor's insurer's financial strength rating of A- or a comparable rating by another NRSRO** after the bond is issued. If the bond is not replaced within **[60] 45** days OF THE SELF-INSURER'S RECEIPT OF WRITTEN NOTIFICATION OF THE RATING DECLINE FROM THE BUREAU, the Bureau will have discretion to draw on the surety bond and deposit the proceeds with the State Treasurer to secure the self-insurer's liability **and to revoke the current permit if the bond exclusively secures claims currently being incurred against the self-insurer**.

(iii) An active self-insurer that does not post another bond or another acceptable form of security to cover claims currently being incurred against the self-insurer, after the surety of a bond that exclusively secures the claims provides notification of its intention to terminate the bond, shall obtain workers' compensation insurance coverage effective the bond's termination date. The self-insurer shall provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date.**

(2) A security deposit held under a trust agreement prescribed by AND AVAILABLE UPON REQUEST FROM the Bureau and maintained for the benefit of **[employes] employees** of the self-insurer:

(i) The deposit **[shall] must** consist of cash; bonds or other evidence of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality of the United States; investments in common funds or regulated investment companies which invest primarily in United States Government or Government agency obligations; or bonds or other security issued by the Commonwealth and backed by the Commonwealth's full faith and credit.

(ii) The securities **[shall] must** be held in a Commonwealth chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 (7 P. S. § 102) or a Federally-chartered bank or foreign bank with a branch office and trust powers in this Commonwealth.

~~**(iii) The trustee shall maintain a standby arrangement with a claims service company for the administration and the payment of the self-insurer's claims on behalf of the trust in the event of the self-insurer's default on its liability. Evidence of the standby arrangement shall be provided annually to the Bureau.**~~

(3) An irrevocable letter of credit using language required by the Bureau issued by and payable at a branch office of a commercial bank located in the continental United States**[, Alaska or Hawaii]**. The letter of credit **[shall] must** state that the terms of the letter of credit automatically renew annually unless the letter of credit is specifically nonrenewed by the issuing bank 60 days or more prior to the anniversary date of its issuance**[:].**

(i) At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a B/C or better rating or 2.5 or better **credit evaluation** score by **Fitch Ratings, as successor to the rating services of** Thomson BankWatch, or the issuing bank shall have a CD **or long-term issuer credit** rating of BBB or better **or a short-term issuer credit rating of A-2 or better** by Standard & Poor's **[Corporation] or a comparable rating by another NRSRO.**

(ii) The self-insurer shall replace the letter of credit with a new letter of credit issued by a bank with an acceptable credit rating or with another acceptable form of security if **[a] the issuing** bank's **highest** rating falls below the acceptable rating **outlined in subparagraph (i)** after the letter of credit is issued. If the letter of credit is not replaced within **[60] 45** days, the Bureau will draw on the letter of credit and will deposit the proceeds to secure the self-insurer's liability.

~~(iii) The applicant shall execute **and maintain** a trust agreement on a form prescribed by the Bureau with a Commonwealth-chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 or a Federally-chartered bank or foreign bank with a branch office and trust powers in this Commonwealth. **The bank**~~

~~and trust company or trust company shall have a nonprocurement registration number.~~ ~~The trust agreement will accommodate proceeds from a letter of credit drawn on by the Bureau.~~ ~~The Bureau may draw down on a letter of credit posted by a self-insurer to finance the maintenance of the trust arrangement if the self-insurer fails to maintain this arrangement.~~

~~(iv) The trustee of the trust agreement required under subparagraph (iii) shall maintain a standby arrangement with a claims service company for the administration and the payment of the self-insurer's claims on behalf of the trust in the event of the self-insurer's default on its liability and the deposit of the proceeds of the letter of credit in the trust fund. Evidence of the standby arrangement shall be provided annually to the Bureau.~~

(c) Affiliates included under a consolidated permit under § 125.4(a) (relating to application for affiliates and subsidiaries) must be included together under the forms of security provided. For purposes of this section, affiliates **[included under a consolidated permit are considered to be one self-insurer] that are runoff self-insurers are considered to be active self-insurers if they were included under a consolidated permit with affiliates that remain active self-insurers**.

(d) The amount of security required of **[self-insured]** private employers is **determined** as **[described] set forth** in paragraphs (1)--**[(4)] (6)**.

(1) For a new self-insurer, the Bureau will determine the **initial** amount of security **[. The initial security will], to** be **calculated as follows:**

(i) An amount no less than **two times** the amount of the applicant's total greatest annual insured incurred workers' compensation losses in this Commonwealth during the **last** 3 **[complete] completed** policy years prior to its application **[plus], or** the **minimum** security **[constant and rounded] amount, whichever is greater.**

(ii) Discounted by the percentage outlined under subsection ~~(i)~~ (L) **for the applicant's highest current long-term credit or debt rating, if any.**

(iii) Rounded upward to the nearest hundred thousand.

(2) For those **active self-insurers** who have been approved **[for self-insurance] to self-insure** for more than 1 year but less than 3 years, the amount of security is **[the] calculated as follows:**

(i) The greater of **[that]:**

(A) The amount outlined in paragraph (1) **[or 100%].**

(B) One hundred percent of the **Bureau's calculation of the** self-insurer's **undiscounted** outstanding liability **based on loss development,** net of **workers' compensation** excess insurance recoveries**[, as adjusted by its history of loss development by the Bureau or as projected by an actuary, plus the security constant and rounded].**

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(3) For those **active self-insurers** who have been approved **[for self-insurance] to self-insure** for 3 or more years, the amount of security is **[100%] calculated as follows:**

(i) One hundred percent of the **Bureau's calculation of the** self-insurer's undiscounted outstanding liability **based on loss development,** net of **workers' compensation** excess insurance recoveries, **[as adjusted by its history of loss development by the Bureau or as projected by an actuary, plus]** or the **minimum** security **[constant and rounded] amount, whichever is greater.**

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(4) **[Notwithstanding this subsection, the Bureau may require security in an amount greater than outlined in this section if it finds that the security resulting from the description in paragraphs (1)--(3) would not be adequate to secure fully and guarantee the payment of incurred and future benefits to each self-insurer's employes.] When multiple affiliates are included under a consolidated permit, the required amount of security for the consolidated program is calculated as follows:**

(i) The sum of each individual affiliate's required amount of security as calculated under the applicable paragraphs above but excluding the effects of any rounding or minimum applicable to the individual affiliates, or the minimum security amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(5) For runoff self-insurers, the amount of security is calculated as follows:

(i) One hundred percent of the Bureau's calculation of the ~~runoff's~~ RUNOFF SELF-INSURER'S **undiscounted outstanding liability based on loss development, net of workers' compensation excess insurance recoveries.**

(ii) Discounted by the percentage outlined under subsection (l) for the ~~runoff's~~ RUNOFF SELF-INSURER'S OR ITS GUARANTOR'S **highest current long-term credit or debt rating, if any.**

(iii) Rounded upward to either:

(A) The nearest ten thousand if the Bureau's calculated undiscounted outstanding liability, net of workers' compensation excess insurance recoveries, discounted by the percentage outlined under subsection (l) for the ~~runoff's~~ RUNOFF SELF-INSURER'S OR ITS GUARANTOR'S **highest current long-term credit or debt rating, if any, is $50,000 or less.**

(B) The nearest hundred thousand.

(6) When multiple runoff self-insurers are included under one security instrument, the required amount of security is calculated as follows:

(i) The sum of each individual runoff self-insurer's required amount of security as calculated under paragraph (5) but excluding the effects of any rounding applicable to the individual runoff self-insurers.

(ii) Discounted by the percentage outlined under subsection (l) for the runoff self-insurers' OR THEIR GUARANTOR'S **highest current long-term credit or debt rating, if any.**

(iii) Rounded upward to either:

(A) The nearest ten thousand if the Bureau's calculated undiscounted outstanding liability, net of workers' compensation excess insurance recoveries, discounted by the percentage outlined under subsection (l) for the ~~runoffs'~~ RUNOFF SELF-INSURERS' OR THEIR GUARANTOR'S **highest current long-term credit or debt rating, if any, is $50,000 or less.**

(B) The nearest hundred thousand.

(e) **[A self-insurer wishing to refute the Bureau's adjustment of its outstanding liability by its history of loss development may do so by providing a report prepared by an actuary.] ~~The Bureau may consider the analyses and projections of a report prepared by an actuary retained by a self-insurer. The Bureau is not required to accept or use the actuary's analyses or projections in calculating its projection of the self-insurer's outstanding liability under subsection (d).~~**

(f) **[Only a projection of a self-insurer's outstanding liability prepared by an actuary may be discounted to present value. The present value discount rate will be no more than the current yield of a 30-year United States Treasury bond.] The Bureau ~~may~~** WILL **incorporate ~~or use~~ the overall ~~Commonwealth's~~** PENNSYLVANIA **workers' compensation experience of insured or self-insured employers in the self-insurer's industry or of all insured or self-insured employers in its selection of loss development factors under subsection (d) if the claim volume or experience of the self-insurer is not sufficient to be considered fully credible based on generally accepted actuarial procedures. The loss development factors selected by the Bureau and its other judgments in its calculation of a self-insurer's outstanding liability will be sufficiently conservative to ensure the adequate provision of security.**

(g) The Bureau ~~may~~ WILL make ~~any~~ adjustments to the loss development procedures **under subsection (d)** it deems appropriate under the circumstances~~, or it may use methods other than loss development it determines to be reasonable to calculate the amount of the self-insurer's outstanding liability,~~ if the Bureau believes that a self-insurer has changed its reserving methodology in such a way as to invalidate loss development factors based on past experience. **[The Bureau may further require the self-insurer to obtain the services of an actuary to project its outstanding liability or require an appropriate party to conduct an audit of the self-insurer's claims reserves.]**

~~(1) The Bureau may substitute the self-insurer's default multiplier-calculated security factor for the outstanding liability amount based on loss development in calculating the self-insurer's required amount of security if the Bureau believes that the paid, incurred or case reserve data reported under § 125.3 (relating to application) or under § 125.16 (relating to reporting by runoff self-insurer) is substantially inaccurate and cannot be accurately replaced within a reasonable period of time.~~

~~(2) In applying the default multiplier-calculated security factor, the Bureau may adjust a self-insurer's annual payout of benefits to correct any material underpayment of benefits the Bureau believes results from the self-insurer's failure to pay compensation for which it is liable during the evaluation period or if the Bureau finds that the factor would inadequately estimate the self-insurer's outstanding liability, including liability from a significant infusion of claims.~~

* * * * *

(i) The Bureau may reduce the amount of security required of a self-insurer under subsection (d) to no less than the **minimum** security **[constant] amount** rounded upward to the nearest hundred thousand if the self-insurer establishes a funding trust to provide a source of funds for the payment of its liability. A self-insurer may elect to establish a funding trust or it may be required by the Bureau to establish a funding trust where the Bureau determines that a dedicated source of funds is needed to further ensure the timely

payment of the self-insurer's liability. In either case, the following conditions shall be met:

(1) The trust agreement **[shall] must** be in a form prescribed by the Bureau.

(2) The trust assets **[shall] must** be held in a Commonwealth chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 or a Federally chartered bank or foreign bank with a branch office and trust powers in this Commonwealth.

(3) The value of the trust fund **[shall] must** be adjusted at least annually to the required funding level as determined by the Bureau **[or an actuary]**.

(j) A self-insurer with security **[as of October 14, 1995,]** which is less than the level of security required by subsection (d) may be permitted to phase in the level of required security over a maximum of **[3] 2** years. The Bureau will determine the terms of the phase-in period, including the length of time and the annual **[adjustments] phase-in amounts**.

(k) **[The Bureau will not grant a request for a reduction in or release of security by a runoff self-insurer until at least 1 year has passed since the termination of its self-insurance status or the runoff self-insurer provides a certificate of insurance evidencing that its self-insurance liability has been assumed by an authorized workers' compensation carrier. Requests shall be supported by a report prepared by an actuary projecting the runoff self-insurer's outstanding workers' compensation obligation, a claims reserves analysis prepared by an appropriate party or a certificate of insurance evidencing assumption of self-insurance liability. The Bureau will consider but is not bound by the findings of the reports in deciding security reduction or release requests.] The Bureau may release a runoff self-insurer of its obligation to provide security if either of the following occurs:**

(1) The runoff self-insurer provides evidence that its liability was assumed under a self-insurance loss portfolio transfer policy.

(2) If the runoff self-insurer made no payments on its liability over the past 2 years, AND **all claims against the runoff self-insurer are closed ~~and the runoff self-insurer presents evidence acceptable to the Bureau that it is unlikely that any new claims will be filed or that any closed claims will be reopened~~.**

(l) The **[amount of security required of a self-insurer under subsection (d) shall be discounted by 40% and rounded upward to the nearest hundred thousand if the] following discount percentages shall be applied in calculating a self-insurer's required amount of security under subsection (d) based on the highest** CURRENT **long-term credit or** debt **rating** of the self-insurer or of ~~the affiliate guarantying the self-insurer's liability~~ ITS GUARANTOR: **[is rated Aaa or Aa by Moody's Investors**

Services or AAA or AA by Standard & Poor's Corporation. The amount of security required of a self-insurer under subsection (d) shall be discounted by 20% and rounded upward to the nearest hundred thousand if the debt of the self-insurer or of the affiliate guarantying the self-insurer's liability is rated A or Baa by Moody's Investors Services or A or BBB by Standard & Poor's Corporation. A self-insurer receiving one of the discounts outlined in this subsection shall increase its security to the amount required under subsection (d) as limited by this subsection, if applicable, if the debt rating of the self-insurer or of its guarantying affiliate is downgraded to below the rating qualifying it for the discount.]

Security Discount Table

Moody's Investors Service	*Standard & Poor's, Fitch Ratings, or Dominion Bond Rating Service*	*Security Discount*
Aaa	AAA	75%
Aa1	AA+	65%
Aa2	AA	60%
Aa3	AA-	55%
A1	A+	45%
A2	A	40%
A3	A-	35%
Baa1	BBB+	25%
Baa2	BBB	20%
Baa3	BBB-	15%
Ba1 and lower	BB+ and lower	0%

(m) **[Termination of self-insurance status may not relieve a runoff self-insurer from the obligation to provide security under this section, including the obligation to provide additional security due to increases in the value of its outstanding liability.] The Bureau may revise the table in subsection (l) through publication of a notice in the *Pennsylvania Bulletin*,** IN ORDER **to assign security discount rates for ~~revisions to the long-term credit or debt ratings of the outlined NRSROs or for the long-term credit or debt ratings of other NRSROs~~** ANY ORGANIZATION RECEIVING DESIGNATION AS A NRSRO AFTER _____ (*EDITOR'S NOTE*: THE BLANK REFERS TO THE EFFECTIVE DATE OF THIS FINAL-FORM RULEMAKING.).

§ 125.10. Funding by public employers.

(a) A self-insured public employer shall establish **and maintain** a **[trust fund] dedicated asset account** to provide a source of funds for the payment of benefits **and other obligations and expenses relating to its self-insurance program. [The trust agreement shall be in a form prescribed by the Bureau.]** This section does not apply to **[the Commonwealth] a runoff self-insured public employer whose average annual**

payout of benefits on self-insurance claims over its last 3 completed ~~calendar~~ FISCAL years, net of workers' compensation excess insurance recoveries, is less than the current Statewide average weekly wage multiplied by 100.

(b) [For a public employer whose self-insurance status began or begins on or after October 14, 1995, the funding level of the trust fund established under subsection (a) shall be maintained at a level which is at least equal to the self-insurer's outstanding liability.] For a new self-insured public employer and for an active self-insured public employer that has been self-insured for less than 3 consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to 20% of the public employer's modified manual premium calculated in accordance with § 125.202 (relating to definitions) or the minimum funding amount, whichever is greater.

(2) Discounted by the percentage outlined under § 125.9(l) (relating to security requirements) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) The dedicated asset account must equal the above prescribed asset level no later than 30 days before the effective date of the public employer's initial permit and may not be reduced below this asset level for the first 3 years of self-insurance.

(c) For an active self-insured public employer that has been self-insured for more than 3 consecutive years but less than 7 consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to the greater of the following:

(i) The self-insurer's greatest annual FISCAL YEAR **payout of benefits since its initial approval to self-insure, net of workers' compensation excess insurance recoveries, plus 20% of that annual payment amount.**

(ii) The minimum funding amount.

(2) Discounted by the percentage outlined under § 125.9(l) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) The dedicated asset account must be equal to or exceed the prescribed asset level 120 days before the beginning of the self-insurer's next fiscal year or BY **~~at~~ a later date ~~agreed to~~** IF REQUESTED BY THE APPLICANT AND APPROVED **by the Bureau.**

(4) ~~The Bureau may adjust~~ PRIOR TO ISSUING A PERMIT UNDER § 125.6(c), THE BUREAU WILL REQUIRE THAT THE ASSET LEVEL OF A SELF-

INSURER'S DEDICATED ASSET ACCOUNT UNDER PARAGRAPHS (C)(1) AND (2) BE BASED ON AN ADJUSTMENT TO **the self-insurer's greatest annual benefit payout amount to correct any material underpayment of benefits the Bureau believes is the result of the self-insurer's failure to pay compensation for which it is liable during the evaluation period.**

(d) For an active self-insured public employer that has been self-insured for 7 or more consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to the greater of the following:

(i) The self-insurer's average annual payout of benefits over its three most recent completed ~~calendar~~ FISCAL **years, net of workers' compensation excess insurance recoveries, plus 20% of that average payment amount.**

(ii) The minimum funding amount.

(2) Discounted by the percentage outlined under § 125.9(l) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) ~~For good cause shown, the Bureau may permit an active self-insurer, who is self-insured on _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proprosed rulemaking.) and whose existing workers' compensation account or trust fund is funded below the required level under subparagraphs (i) and(ii), to phase-in compliance with the required funding amount of this subsection within a time period prescribed by the Bureau. The following also apply to this arrangement:~~

~~(i) The phase-in must not diminish the injured workers' guaranty of benefits or provide inadequate funding for the proper administration of the self-insurer's claims or for the timely payment of other obligations relating to the self-insurance program.~~

~~(ii) The self-insurer shall make annual deposits into the dedicated asset account in the minimum amount of 5% of its payout of benefits in the prior calendar year, or $100,000, whichever is greater.~~

~~(iii) During the phase-in period, the self-insurer may not withdraw any assets from the dedicated asset account without the approval of the Bureau until the required funding level of the account under paragraphs (1) and (2) is met.~~

~~(iv)~~ If the asset level of the self-insurer's dedicated asset account ~~remains~~ IS below the required level under paragraphs (D)(1) and (2) ~~after six annual deposits under clause (A), thereafter~~ AS OF _____ (*EDITOR'S NOTE*: THE BLANK REFERS TO

THE EFFECTIVE DATE OF THIS FINAL-FORM RULEMAKING), **the required asset level of the account established under subsection (a) is calculated as follows:**

(A) The ~~actual asset value of the dedicated asset account at the time of the sixth annual deposit under clause A divided by the amount required under paragraphs (1) and (2) at that time.~~

~~(B) Multiplied by the~~ amount required to be in the ~~designated~~ DEDICATED **asset account under ~~sub~~paragraphs** (D)**(1) and (2) for the current year.**

(B) MINUS THE DIFFERENCE BETWEEN THE AMOUNT REQUIRED TO BE IN THE DEDICATED ASSET ACCOUNT UNDER PARAGRAPHS (D)(1) AND (2) AS OF _____ (*EDITOR'S NOTE*: THE BLANK REFERS TO THE EFFECTIVE DATE OF THIS FINAL-FORM RULEMAKING) AND THE ACTUAL ASSET VALUE OF THE DEDICATED ASSET ACCOUNT AS OF _____ (*EDITOR'S NOTE*: THE BLANK REFERS TO THE EFFECTIVE DATE OF THIS FINAL-FORM RULEMAKING).

(4) The dedicated asset account must equal or exceed the prescribed asset level 120 days before the beginning of the self-insurer's next fiscal year or BY **~~at~~ a later date ~~agreed to~~** IF REQUESTED BY THE APPLICANT AND APPROVED **by the Bureau.**

(5) ~~The Bureau may adjust~~ PRIOR TO ISSUING A PERMIT UNDER § 125.6(c), THE BUREAU WILL REQUIRE THAT THE ASSET LEVEL OF A SELF-INSURER'S DEDICATED ASSET ACCOUNT UNDER PARAGRAPHS (D)(1) AND (2) BE BASED ON AN ADJUSTMENT TO **the self-insurer's average annual payout of benefits to correct any material underpayment of benefits the Bureau believes is the result of the self-insurer's failure to pay compensation for which it is liable during the evaluation period.**

(e) For a runoff self-insured public employer, the asset level of the dedicated asset account established under subsection (a) is that outlined under subsection (d), except that the minimum funding amount does not apply.

[(c) For a public employer whose self-insurance status began prior to October 14, 1995, the funding level of the trust fund established under subsection (a) shall be maintained at a level which is at least equal to the difference between the self-insurer's outstanding liability as of a date determined by the Bureau following October 14, 1995, and its current outstanding liability or at a level which is greater than this amount as determined by the Bureau due to the financial condition or the workers' compensation loss experience or funding history of the self-insurer.] (f) If a SELF-INSURED **public employer ~~self-insurer~~ does not possess an investment grade long-term credit or debt rating, the Bureau may require that the asset level of its dedicated asset account established under subsection (a) be greater than that outlined under subsection (b), (c) or (d), in any amount which the Bureau**

determines will guaranty that the self-insurer will have sufficient funding to meet ~~fully~~ its claims payments and other obligations and expenses relating to its self-insurance program as they come due over the self-insurer's next fiscal year.

§ 125.11. **[Specific excess insurance and aggregate excess]** Excess insurance.

(a) **[A self-insured private employer with quick assets of less than the Statewide average weekly wage multiplied by 200,000 or with cash and cash equivalents of less than the Statewide average weekly wage multiplied by 100,000 or a self-insured public employer with general fund quick assets of less than the Statewide average weekly wage multiplied by 50,000 shall obtain specific excess insurance with a liability limit acceptable to the Bureau and a retention amount or cash flow protection amount which is less than 10% of its quick assets. The Bureau may waive this requirement upon written request if the self-insurer demonstrates that it has sufficient financial strength and liquidity to assure that all obligations under the act and the Occupational Disease Act will be promptly met without the protection of an excess insurance policy.] An applicant whose catastrophic loss estimation is greater than its maximum quick assets exposure amount shall obtain aggregate excess insurance or specific excess insurance with a retention amount that is no more than its authorized retention amount and a liability limit acceptable to the Bureau to provide an adequate level of protection to cover the losses from a catastrophic event.** THE BUREAU WILL CONSIDER THE FINANCIAL CAPACITY OF THE APPLICANT AND THE AMOUNT OF THE CATASTROPHIC LOSS ESTIMATION IN DETERMINING THE ADEQUACY OF THE APPLICANT'S PROPOSED LIABILITY LIMIT.

(b) **[Aggregate excess insurance may be obtained by a self-insurer. The Bureau will not recognize a contract or policy of aggregate excess insurance in considering the ability of an applicant to fulfill its financial obligations under the act and the Occupational Disease Act unless the contract or policy complies with subsection (c).**

(c) The] A contract or policy of **[aggregate]** excess insurance **[or specific excess insurance, or both, shall] must** comply with the following:

(1) **[It shall be issued by an excess insurer which possesses an A. M. Best Rating of B+ or better or a Standard and Poor's rating of claims paying ability of A or better.**

(2)] FOR EXCESS INDEMNITY INSURANCE:

(I) It **[shall] must** state that it is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the Bureau at least 45 days before termination by the party desiring to cancel or not renew the policy.

(II) IT MUST STATE THAT IT APPLIES TO ANY LOSSES OF A SELF-INSURER UNDER THE ACT OR THE OCCUPATIONAL DISEASE ACT.

(III) IT MAY NOT EXCLUDE COVERAGE FOR ANY CATEGORIES OF INJURIES OR DISEASES COMPENSABLE UNDER THE ACT AND THE OCCUPATIONAL DISEASE ACT.

(IV) IT MUST BE ISSUED BY AN INSURER THAT POSSESSES AN A.M. BEST RATING OF A- OR BETTER, OR A STANDARD & POOR'S INSURER FINANCIAL STRENGTH RATING OF A OR BETTER, OR A COMPARABLE RATING BY ANOTHER NRSRO.

[(3)] (2) FOR WORKERS' COMPENSATION EXCESS INSURANCE:

(I) IT MUST MEET THE REQUIREMENTS OF SUBPARAGRAPHS (1)(i)-(iii) ABOVE.

(II) It **[shall] must** state that if a self-insurer is unable to make benefit payments under the act and the Occupational Disease Act due to insolvency or bankruptcy, the excess carrier shall make payments to other parties involved in the paying of the self-insurer's liability, as directed by the Bureau, subject to the policy's retentions and limits.

[(4)] ~~(3)~~ (III) It **[shall] must** state that the following apply toward reaching the retention amount in the excess contract:

~~(i)~~ **(A)** Payments made by the employer.

~~(ii)~~ **(B)** Payments made on behalf of the employer under a surety bond or other forms of security as required under this subchapter.

~~(iii)~~ **(C)** Payments made by the Self-Insurance Guaranty Fund.

[(5)] ~~(4)~~ (IV) It **[shall] must** ~~state that it applies to any losses of a self-insurer under the act and the Occupational Disease Act~~**[; it]. It** ~~may not exclude coverage for any categories of injuries or diseases compensable under the act and the Occupational Disease Act~~ BE ISSUED BY A WORKERS' COMPENSATION INSURER THAT INCLUDES THE PREMIUM COLLECTED FOR THE INSURANCE IN DATA USED BY THE WORKERS' COMPENSATION SECURITY FUND SET FORTH IN THE WORKERS' COMPENSATION SECURITY FUND ACT (77 P.S. §§ 1051-1066) TO CALCULATE ASSESSMENTS AGAINST WORKERS' COMPENSATION INSURERS TO FINANCE THE OPERATIONS OF THAT FUND.

[(d)] (c) A certificate of the excess insurance obtained by the self-insurer **[shall] must** be filed with the Bureau together with a certification that the policy fully complies with subsection **[(c)] (b)**.

§ 125.12. Payment**, handling and adjusting** of claims.

* * * * *

(c) A self-insurer shall IMMEDIATELY **notify the Bureau when it changes arrangements for the handling or adjusting of its claims, including the initiation, modification or termination of self-administration arrangements or the initiation, termination, expiration or modification of services with a registered claims services company. ~~Upon the Bureau's request, t~~The self-insurer shall ~~forward to~~** FILE WITH **the Bureau a summary of data on its claims, such as cumulative payments sorted by year of loss, in a ~~Bureau-prescribed~~ format** PRESCRIBED **~~and in a time-frame agreed to~~ by the Bureau** AND PROVIDED TO THE SELF-INSURER WITHIN 21 DAYS OF ITS RECEIPT OF WRITTEN NOTIFICATION FROM THE BUREAU OF ITS NEED TO DO SO **~~if the Bureau determines that this data is necessary to maintain the integrity of past data on the claims filed or to rectify or explain discrepancies or questions raised by the data summary~~.**

§ 125.13. Special funds assessments.

(a) A self-insurer is responsible for the payment of assessments to maintain funds under the act, including:

* * * * *

(5) The Uninsured Employers Guaranty Fund.

* * * * *

(c) A self-insurer shall keep accurate records of compensation paid on a calendar year basis, including payment for disability of all types, death benefits, medical benefits and funeral expenses, for the purposes of assessments under the act and the Occupational Disease Act. The records **[shall] must** be available for audit or physical inspection by Bureau **[employes] employees** or other designated persons, whether in the possession of the self-insurer or a service company. **If the Bureau has a reasonable basis to question the annual compensation payments reported by the self-insurer, it may require the self-insurer to retain the services of the self-insurer's licensed certified public accounting firm to audit the data reported to provide confirmation or make necessary adjustments.**

§ 125.15. Workers' compensation liability.

(a) Notwithstanding the terms of a guarantee and assumption agreement executed under § 125.4(b) (relating to application for affiliates and subsidiaries), a self-insurer or a runoff self-insurer remains liable for workers' compensation on injuries or disease exposures occurring during its period of self-insurance. With application to and permission from the Bureau, liability can be transferred to another employer. Liability **also** may be transferred **[to a company authorized to write workers' compensation insurance in this Commonwealth if the employer gives written notice to the Bureau**

within 10 days of the transfer] through a self-insurance loss portfolio transfer policy.

(b) A self-insurer which liquidates or dissolves shall transfer its liability to a third party, subject to the approval of the Bureau, or shall **[insure its liability with a company authorized to write workers' compensation insurance in this Commonwealth] obtain a self-insurance loss portfolio transfer policy covering the liability.**

(c) If a self-insurer sells or divests a part of itself, self-insurance coverage ends for the separated parts on the date of separation. The self-insurer remains **[responsible] liable** for claims incurred against the separated part occurring up to the date of separation unless the Bureau approves **[an alternative arrangement for the payment of] a request to transfer** the self-insurer's liability **to another entity.**

§ 125.16. Reporting by runoff self-insurer.

(a) A runoff self-insurer shall file an annual report with the Bureau by a date prescribed by the Bureau on a prescribed form PROVIDED BY THE BUREAU UNTIL ALL CASES INCURRED DURING ITS PERIOD OF SELF-INSURANCE HAVE BEEN CLOSED FOR AT LEAST 2 YEARS.

(b) The **runoff** report **[shall] must** include a **[list of the runoff self-insurer's open cases, the reserves on those cases, the administrator of those cases and the runoff self-insurer's payout for workers' compensation benefits in the preceding calendar year] listing in a Bureau-prescribed electronic format** PROVIDED BY THE BUREAU TO THE RUNOFF SELF-INSURER **of the ~~runoff's~~** RUNOFF SELF-INSURER'S **Pennsylvania workers' compensation claims, including all claims currently in litigation, and information such as payments and reserves on each claim. The listing must include:**

(I) **all opens claims at the time of submission.**

(II) **~~and, if available, a~~All claims closed ~~in the past. If a listing of all claims closed in the past is not available, the listing must at least include all claims closed~~ on or after ____ (*Editor's Note*: The blank refers to the effective date of ~~adoption of~~ this ~~proprosed~~** FINAL-FORM **rulemaking.).**

(III) **Case reserves provided in the listing must be established according to the ~~Bureau's~~ instructions** ON FORMS PRESCRIBED BY THE BUREAU AND PROVIDED TO THE RUNOFF SELF-INSURER. ~~This report [shall] must be filed until all cases incurred during the runoff self-insurer's period of self-insurance are closed for at least 2 years.~~

(c) A runoff self-insurer that is a private employer shall make any request for the adjustment of its amount of security in writing when it submits its runoff report. If

the runoff self-insurer disagrees with the Bureau's decision on the request, it may request reconsideration of this decision under § 125.6(e) (relating to decision on application).

§ 125.17. Claims service companies.

* * * * *

(c) The claims service company shall employ at least one person on a full-time basis who has the knowledge and experience necessary to service claims properly under the act and the Occupational Disease Act. A resume covering that person's background **[shall] must** be attached to the registration form of the claims service company.

(d) A claims services company whose engagement to handle or adjust the claims of a self-insurer is terminating or expiring, or has terminated or expired, shall provide reasonable assistance to the self-insurer and the Bureau in providing data and information on the claims serviced to maintain the integrity of past data on the claims filed with the Bureau, to rectify or explain discrepancies or questions on the claims data raised by the Bureau, or to address other related issues identified by the Bureau.

§ 125.19. Additional powers of Bureau **and orders to show cause**.

[In addition to the powers enumerated elsewhere in this subchapter, the act and the Occupational Disease Act, the Bureau will have the authority, after notice and opportunity for hearing, to suspend a self-insurer's permit, to issue cease and desist orders and to order corrective actions if a self-insurer is in violation of this subchapter, the act or the Occupational Disease Act.] (a) If the Bureau has reason to question whether a self-insurer continues to maintain the financial ability to self-insure during the pendency of a permit, authorized under section 305(a)(3) of the act (77 P. S. § 501(a)(3)) and under section 305 of the Occupational Disease Act (77 P. S. § 1405), it ~~may~~ WILL issue a letter to the self-insurer noting the reasons for its concerns and outlining the documents, data and information upon which the Bureau's concerns are based. The following also apply:

(1) The Bureau's letter is treated for procedural purposes as if it were an initial decision denying a renewal application under § 125.6(d) (relating to decision on application).

(2) When the Bureau determines that the self-insurer no longer possesses the financial ability to self-insure, the self-insurer's current permit will be revoked, unless the self-insurer timely initiates the procedures outlined under § 125.6(e)--(g).

(3) The self-insurer shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of a notice of revocation by the

Bureau and provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Bureau no later than the coverage's effective date.**

(b) The Department may serve upon a self-insurer an order to show cause why its self-insurance status should not be suspended or revoked under section 441(b) of the act (77 P. S. § 997(b)) for unreasonably failing to pay compensation for which it is liable, or for failing to submit any report or to pay any assessment made under the act.

(1) The order to show cause proceedings are governed by provisions in Chapter 121 (relating to general provisions), found in § 121.27 (relating to orders to show cause).

(2) The self-insurer shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of an order revoking or suspending its self-insurance status and provide evidence of the coverage, SUCH AS A CERTIFICATE OF INSURANCE, **to the Department no later than the coverage's effective date.**

§ 125.20. Computation of time.

[Unless otherwise provided, reference to the term "days" in this subchapter means calendar days. For purposes of determining timeliness of filing and receipt of documents transmitted by mail, 3 days shall be presumed added to the prescribed period. If the last day for filing a document is a Saturday, Sunday, legal holiday or a day on which the Bureau's offices are closed, the time for filing shall be extended to the next business day. Transmittal by mail shall mean by first-class mail.] Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of time begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

§ 125.21. Self-insurance loss portfolio transfer policy.

A self-insurance loss portfolio transfer policy must comply with all of the following:

(1) The insurance carrier must be a workers' compensation insurer.

(2) The policy must provide statutory coverage limits and state that the insurer is responsible to defend, adjust and handle all open, reopened and incurred but not reported claims against the self-insurer for the period of time covered by the policy.

(3) The policy must be retrospective, providing coverage for a consecutive period of time of self-insurance.

(4) The policy must be noncancelable by either the insurance carrier or the self-insurer for any reason.

(5) The amount of annual compensation paid by the insurance carrier on any claims assumed under the policy must be included as compensation paid on the data reports filed with the Insurance Department.

(6) The insurance carrier must include the premium received on the policy in the amount of net written workers' compensation premium it annually reports to the Insurance Department or to the National Association of Insurance Commissioners.

(7) The insurance carrier must notify existing claimants with injuries or diseases covered by the policy that it has assumed liability for the payment and handling of their claims.

(8) The insurance carrier must file the policy with a rating organization approved by the Insurance Commissioner and identify it as a special self-insurance loss portfolio transfer policy. The insurance carrier should not report statistical information on claims assumed under the policy to the rating organization.

(9) The insurance carrier must enter an appearance with the appropriate workers' compensation judge, the Workers' Compensation Appeal Board and any appellate court on each pending claim in adjudication against the self-insurer for injuries or disease exposures occurring during the time period covered by the policy.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

TO: The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission

FROM: Thomas J. Kuzma
Deputy Chief Counsel

DATE: June 23, 2010

RE: Final-Form Regulation
Department of Labor & Industry
Workers' Compensation; Individual Self-Insurance, No. 12-85

Below is a list of the names and addresses of commentators who requested additional information on the final-form regulation. Should you need additional information, please feel free to contact me.

Jonathan H. Rudd, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Richard A. Armbrust
Director, Integrated Disability Management
United States Steel Corporation
600 Grant Street, Room 468
Pittsburgh, PA 15219-2800

COMMONWEALTH OF PENNSYLVANIA

June 23, 2010

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Final-Form Regulation
Department of Labor & Industry
Workers' Compensation; Individual Self-Insurance, No. 12-85

Dear Chairman Coccodrilli:

Enclosed is a Regulatory package consisting of a face sheet, preamble, annex, regulatory analysis form and a document listing the names and addresses of commentators who requested additional information on the above mentioned final-form regulation. This regulation amends 34 Pa. Code, Chapter 125. The regulation provides more objective standards for qualifying for and maintaining self-insurance status, and improves and strengthens the Department's ability to efficiently and effectively monitor and regulate workers' compensation self-insurance in Pennsylvania.

Questions should be directed to George Knehr, Chief, Self-Insurance Division, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Harrisburg, PA 17104, (717)783-5421.

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,

Sandi Vito
Secretary

TK/kjr

cc: wo/encl: Jane C. Pomerantz, Chief Counsel
Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance
Daniel Ruzansky, Director of Legislative Affairs
Thomas J. Kuzma, Deputy Chief Counsel
George Knehr, Chief, Self-Insurance Division

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	12-85
SUBJECT:	WORKERS' COMPENSATION; INDIVIDUAL SELF-INSURANCE
AGENCY:	DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/23/10	Maryann Ecklart	HOUSE COMMITTEE ON LABOR RELATIONS
6/23/10	Jennifer Khorac	MAJORITY CHAIRMAN Robert E. Belfanti, Jr.
6/23/10	Sherry M. Hess	SENATE COMMITTEE ON LABOR & INDUSTRY
6/23	Emilie Kintzer	MAJORITY CHAIRMAN John R. Gordner
6/23/10	K Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)