

Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

(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

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(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: | <u>30 days from publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Late 2009/early 2010</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Determined at time of subsequent application/renewal</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>Subsequent application/renewal</u> |

(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.

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SECTION II: STATEMENT OF NEED

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

The Department issues these proposed 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 proposed 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 the proposed 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 (74 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 would 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 proposed 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 proposed amendments would 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 proposed amendments would also provide certain benefits to certain self-insured employers. For example, employers with strong financial ratings would benefit through reduced costs as a result of a proposal to increase the security discounts for such ratings. Also, 35 of the 55 public employers now self-insured could see a 49% average reduction in the amount of funding dedicated to workers' compensation.

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(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 regulations could adversely affect new applicants for self-insurance who would not meet the standards for possessing financial ability to self-insure, however as to current self-insurers there are certain provisions which allow for "grandfathering" and "phase-in" periods.

Fifteen percent or less of the current self-insurers would 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 791 current active self-insurers, the 335 employers now in runoff status and employers applying for self-insurance in the future will be affected by this proposed rulemaking to varying degrees.

Self-insurance claims services companies, sureties and trustees would also be impacted by this proposed rulemaking.

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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, while costing other self-insurers \$25.9 million. The estimates of costs and savings are derived from calculations relating to the effect on security and funding resulting from the proposed 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 regulation. A five percent annual inflation factor is used to calculate the savings in subsequent years.

The additional costs for the Regulated Community are derived from an analysis performed by the Bureau of the additional annual deposits for members of the Regulated Community who would now be required to fund reserve accounts or to increase reserve accounts under the regulations. The deposits would equal up to 5% of their payments for workers' compensation benefits in the prior year for six 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 48 political subdivision self-insurers would be allowed to reduce their funding amounts under the proposed amendments, five would have no change and the remaining ten would have to increase their funding amounts annually by up to 5% of their prior year's payments of compensation for up to six years.

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 proposed regulations. The subsequent fiscal years' savings reflect the aggregate reduction in annual funding amounts that would be required under the proposed regulations compared to the current regulatory scheme, assuming a 5% annual inflation factor.

The additional costs for the Local Governments are derived from an analysis performed by the Bureau of the additional annual deposits for the political subdivisions who would now be required to fund reserve accounts or to increase reserve accounts under the regulations. The deposits would equal up to 5% of their payments for workers' compensation benefits in the prior year for six years.

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(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 proposed regulations 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 Commonwealth's self-insurance costs.

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	0.7 mm	0.7 mm	0.7 mm	0.7 mm	0.7 mm
Local Government	N/A	4.6 mm	4.6 mm	4.6 mm	4.3 mm	4.3 mm
State Government	N/A	0	0	0	0	0
Total Costs	N/A	5.3 mm	5.3 mm	5.3 mm	5.0 mm	5.0 mm
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 proposed regulations will be implemented subsequent to the year.

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(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	\$ 57,525,000	\$ 60,231,000	\$ 63,383,000	\$ 76,366,000

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

While the cost savings are 2.3 times the additional costs over the five-year projection period, the more pertinent benefit of the proposed 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.

(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.

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Alternative regulatory schemes were not considered, as it is appropriate and least burdensome that the current regulations be updated. These regulations 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 regulations will 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

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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 these proposed 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 services company terminates or expires.
- A security or letter of credit trustee would be required to show that it maintains a standby arrangement with a claims services company.

(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 proposed 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.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

Copy below is hereby approved as to form and legality. Attorney General

BY: 

DEPUTY ATTORNEY GENERAL

MAR 20 2009

DATE OF APPROVAL

Check if applicable
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Labor & Industry
(AGENCY)

DOCUMENT / FISCAL NOTE NO. 12-85

DATE OF ADOPTION:

SV


BY:

Sandi Vito
Acting Secretary

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY: 

DATE OF APPROVAL
Andrew C. Clark
Deputy General Counsel

FEB 25 2009

Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING

Title 34. LABOR AND INDUSTRY

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

WORKERS' COMPENSATION SELF-INSURANCE

Subchapter A. INDIVIDUAL SELF-INSURANCE

PROPOSED RULEMAKING
DEPARTMENT OF LABOR AND
INDUSTRY

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

Individual Self-Insurance

The Department of Labor & Industry (Department), Bureau of Workers' Compensation (Bureau), proposes the following amendments to 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 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 proposed 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 13 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), 28 Pa.B. 5459 (October 24, 1998).

By this proposed rulemaking, 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.

On November 14, 2005, the Department held a stakeholder meeting to discuss this proposed rulemaking. All 791 employers self-insured in Pennsylvania as well as the 335 employers in runoff status were invited to the meeting. Subsequently, the Department received written comments from: Henry L. Martin, of National Fuel Gas Distribution; and Richard White, of Wegman's Food Markets, Inc.

Additionally, the following individuals made presentations at the meeting: Gregory Gross, of Whirley Industries; Kimberly Rzomp, of Summit Health; Patrick Larkin, of Brokerage Professionals, Inc.; Jonathan H. Rudd, Esquire, on behalf of Royal Ahold; and Lou Ann Kauffman, of the Pennsylvania State System of Higher Education.

All comments and suggestions have been reviewed and considered.

Summary of Proposed Regulations

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

The Department proposes to amend § 125.2 (relating to definitions) to clarify existing language, to delete the existing definition of "excess insurer," and to include definitions of the following terms: "active self-insurer," "adequate accident and illness prevention program," "authorized retention amount," "catastrophic loss estimation," "default multiplier," "default multiplier-calculated security factor," "excess indemnity insurance," "excess insurance," "financial ability to self-insure," "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," "nonprocurement registration number," "non-workers' compensation insurer," "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."

The Department proposes to amend § 125.3 (relating to application) so that the section better reflects the application requirements. The Department proposes to replace the existing affidavit requirement with a verified statement. Under § 125.3(b), the Department proposes to allow 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 proposes to amend § 125.3(c)(2)(i) to require that the monetary values presented in the financial statements must be in U.S. dollars and that the text must be in English, as well as to require that parent companies provide consolidated financial statements for both themselves and their subsidiaries. The Department proposes to amend § 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, the proposed § 125.3(c)(6) allows applicants that have retained an actuary to submit that actuary's report with the application.

The Department proposes to add 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 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 proposes to amend § 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 proposes to amend § 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 proposes to clarify existing language and reference currently recognized auditing standards where applicable.

The Department proposes to amend § 125.4 (relating to application for affiliates and subsidiaries) to allow for a variation in the submission of audit reports and financial information for applicants that are subsidiaries of a foreign parent company. The Department proposes to delete 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 proposes to delete 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.

The Department proposes to amend § 125.5 (relating to preliminary requirements) to require, for enforcement purposes, that an applicant must be incorporated or organized under the laws of a state of the United States, as well as to require that the applicant must have an adequate accident and illness prevention program under Chapter 129. The

Department proposes to delete existing language in subsections (b), (c) and (d) of § 125.5, because this information is addressed in § 125.6 (relating to decision on application).

The Department proposes to amend § 125.6(a) (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 proposes to require 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 proposes to add language in § 125.6(a) to grandfather existing self-insurers who do not meet the rating requirements under certain conditions.

The Department also proposes to amend § 125.6(a) to streamline the factors to be considered in assessing an application. The Department further proposes to clarify 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 proposes to reduce the time period for compliance with conditional approvals in § 125.6 from 60 to 45 days. The Department proposes to modify 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 appellate practice and procedure) to the extent not specifically superseded by these regulations.

The Department proposes to amend § 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.

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

The Department proposes to amend § 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 will also modify 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 also proposes to add requirements for stand-by arrangements with claims service companies in the event of a default.

The Department proposes to amend § 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 proposes to amend § 125.9(b)(3)(iii) to require a trustee of a letter of credit trust to obtain a Commonwealth of Pennsylvania Non-procurement registration number to facilitate the transfer of the proceeds of a letter of credit from the Commonwealth to a trustee, and to allow the Bureau to draw down on a letter of credit and use the proceeds to finance the maintenance of a letter of credit trust arrangement should a self-insurer fail to do so. The Department proposes to amend 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 proposes to add 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 further proposes to replace 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 allowing 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 also proposes to amend § 125.9(g) to clarify that the Bureau may make adjustments and use alternative methods other than loss development for calculating a self-insurer's required security amount in certain situations, and to amend § 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.

The Department proposes to amend § 125.10 (relating to funding by public employers) to focus on short-term solvency rather than long-term reserves by requiring 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 proposes to amend § 125.10(a) to provide that a public employer must maintain a dedicated asset account, which no longer needs to be a trust fund, and include 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 proposes to delete the current language in § 125.10 (b) and (c) relating to long-term reserves and to add 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.

The Department proposes to amend § 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 proposes to add 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 proposes to delete existing requirements for aggregate excess insurance found in § 125.11(b), as these requirements are no longer necessary. The Department also proposes to delete existing language in § 125.11(c)(1), because it currently contains information that is duplicated in the definitions of "excess indemnity insurance" and "workers' compensation excess insurance".

The Department proposes to amend § 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 services company. The insurers will also have to provide a summary of the self-insurer's claims data to the Bureau, upon request, to explain discrepancies or problems that may arise due to the change in claims handling responsibilities.

The Department proposes to amend § 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 proposes to allow 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.

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

The Department proposes to amend § 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 proposes to amend § 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.

The Department proposes to amend § 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 proposes to add 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 proposes to add specific language pertaining to the Bureau's ability to suspend or revoke a permit following the issuance of an order to show cause, which will proceed in the manner set forth in the order to show cause provisions contained within Chapter 121 (relating to general provisions), where 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 Department proposes to amend § 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 (relating to general provisions).

The Department proposes to add § 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.

Affected Persons

Active self-insurers, runoff self-insurers and employers applying for self-insurance in the future will all be affected by this proposed 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 services companies, sureties and trustees will also be impacted by this proposed rulemaking.

Fiscal Impact

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

The vast majority of public sector applicants would realize substantially reduced funding requirements under the proposed regulations. The Bureau estimates that required funding amounts would decline by an average of 49% under the proposed regulations for

35 of the 55 public self-insurers. Of the remaining 20, eight public employers with existing funding requirements would be required to increase their workers' compensation funding by an average of 77%, amortized over a 6-year period. Another eight public employers who do not have funding requirements under the existing regulations would have such requirements under the proposal. However, these employers would experience no practical change since they voluntarily maintain funding accounts that meet or exceed the proposed funding requirements. Four additional public employers who do not currently fund any of their outstanding liability would have to make annual deposits into dedicated accounts of up to 5% of their prior year's payment of compensation for up to six years.

Some additional costs resulting from the requirement that the trustee maintain a standby arrangement with a claims service company are likely for those posting a letter of credit as security. Those costs would vary, but could be as much as a few thousand dollars.

Some one-time additional costs associated with the implementation of the proposed regulations are likely for the Bureau. Such costs, which will not be substantial, would 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 these proposed amendments 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.
- A security or letter of credit trustee is required to show that it maintains a standby arrangement with a claims services company.

Effective Date

These proposed amendments will take effect when published as final-form regulations in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date is necessary for the proposed regulatory amendments. 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.

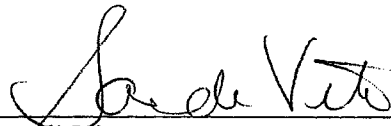
Public Comment and Contact Person

Interested persons may submit written comments to the proposed rulemaking to George Knehr, Chief, Self-Insurance Division, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 125 Regulations—Comments, P.O. Box 15121, Harrisburg, PA 17105 or to gknehr@state.pa.us. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.



Sandi Vito
Acting Secretary

FISCAL NOTE: 12-85

ANNEX A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter A. INDIVIDUAL SELF-INSURANCE

Sec.

- 125.1. Purpose.
- 125.2. Definitions.
- 125.3. Application.
- 125.4. Application for affiliates and subsidiaries.
- 125.5. [Minimum] Preliminary requirements.
- 125.6. Decision on application.
- 125.7. Permit.
- 125.8. [Denial of renewal application.] Reserved.
- 125.9. Security requirements.
- 125.10. Funding by public employers.
- 125.11. [Specific excess insurance and aggregate e] Excess insurance.
- 125.12. Payment, handling and adjusting of claims.
- 125.13. Special funds assessments.
- 125.14. Change in legal status, ownership or financial condition.
- 125.15. Workers' compensation liability.
- 125.16. Reporting by runoff self-insurer.
- 125.17. Claims service companies.
- 125.18. Contact person.
- 125.19. Additional powers of Bureau and orders to show cause.
- 125.20. Computation of time.
- 125.21. Self-insurance loss portfolio transfer policy.

§ 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 employees [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 indicated:

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.

Actuary—A member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries.

Adequate accident and illness prevention program—A determination by the Bureau under the provisions of 34 Pa. Code Ch. 129 (relating to workers' compensation health and safety) that an applicant's accident and illness prevention services fulfill the program and service requirements as stated in that chapter.

Affiliates—Employers which are closely related through common ownership or control.

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).

Applicant—An employer requesting permission to initiate or to renew self-insurance, an employer requesting permission for it and its affiliates or subsidiaries to initiate or to renew self-insurance, or a parent company requesting permission for its subsidiaries to initiate or to renew self-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.

Bureau—The Bureau of Workers' Compensation of the Department.

Cash flow protection amount—The maximum amount of benefits a self-insurer pays over a 2-year period on an occurrence without reimbursement from a[n excess] nonworkers' compensation insurer or a workers' compensation 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 working at one time at the largest Pennsylvania location 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 or subsidiaries), multiplied by the current Statewide average weekly wage multiplied by 500, or (ii) the current Statewide average weekly wage multiplied by 5,000.

Claims service company—An individual, corporation, partnership or association engaged in the business of servicing a self-insurer's claims, including the adjusting and handling of claims, the payment of benefits and the provision of required reports.

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.
- (ii) The term does not include any instrumentalities of the Commonwealth or political subdivisions.

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 three completed calendar years multiplied by the default multiplier.

Department—The Department of Labor and Industry of the Commonwealth.

Employer—An employer as defined in section 103 of the act (77 P. S. § 21) or under section 103 of the Occupational Disease Act (77 P. S. § 1203), or both.

[*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 indemnity insurance---Aggregate excess insurance or specific excess insurance that does not meet 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.

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).

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 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.

Loss development—The tendency of the cost of a group of claims to increase as they mature.

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: i) current Statewide average weekly wage multiplied by 1,000; or, ii) the retention amount of the applicant's current or any proposed excess insurance, if applicable.

Minimum security amount---The lower of the: i) current Statewide average weekly wage multiplied by 1,000; or, ii) the retention amount of the applicant's current or any proposed excess insurance, if applicable.

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. § 1 et seq.) other than the insurance under section 202 (c)(14) of this Law (40 P.S. § 382 (c)(14)), or an insurance company designated as an eligible surplus lines insurer as defined in section 1602 of this Law. (40 P.S. § 991.1602).

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

Occupational Disease Act—The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

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

Permit—The document issued by the Bureau to an employer which authorizes the employer to operate as a self-insurer.

Political subdivision—A county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority, or other entity created by a political subdivision under law.

Private employer—An employer who is not a public employer as defined in this section.

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—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. 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.

Runoff self-insurer—An employer that had been a self-insurer but no longer maintains a current permit.

Security—Surety bonds, letters of credit or cash or negotiable government securities held in trust to be used for the payment of a self-insurer's workers' compensation liability upon order of the Bureau if the self-insurer fails to pay its liability due to its financial inability or due to the self-insurer filing for bankruptcy or being declared bankrupt or insolvent.

[*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.

Self-insurer—An employer which has been granted the privilege to self-insure its liability and to maintain direct responsibility for the payment of this liability under the act and the Occupational Disease Act. The term includes a parent company or affiliate which has assumed a subsidiary's or an affiliate's liability upon the termination of the parent-subsidary or affiliate relationship.

Special retention amount—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. For an applicant whose self-insurance status began before [*Note: The effective date of these regulatory amendments*], this may also be based on a determination that the requested retention amount is less than or is approximately equal to the retention amount of the applicant's excess insurance in effect on [*Note: The effective date of these regulatory amendments*].

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.

Statewide average weekly wage—The amount calculated and reported by the Bureau under section 105.1 of the act (77 P. S. § 25.1).

Subsidiary—An employer whose voting stock or board of directors appointments are 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 such 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.

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 the Bureau. All [Q]uestions 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. 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 falsifications 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 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 being initially added or in the amount of \$100 for each affiliate or subsidiary renewing [included] 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 for the last complete fiscal year, if applicable. The SEC Form 10-K does not serve as a substitute for the full completion of the application form.

(3) Its latest audit report issued by a licensed certified public accountant or accounting firm. The report [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 [shall meet the following criteria] must include the following:

(i) Financial statements which are 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 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 must be provided.

(ii) A statement that the audit [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.

(4) Audit reports 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 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 covering the second and third most recent complete fiscal year periods 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 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 stating the costs of claims incurred by each employer requesting self-insurance [the applicant] 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 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, 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 [Note: The effective date of these regulatory amendments].

(iii) Case reserves provided in the listing must be established according to instructions prescribed by the Bureau.

(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 shall 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]. If the applicant does not provide the data, information, explanation, corrections or missing items within the 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 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 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, including

all items required under subsection (c) and all additional data, information, explanation and corrections under subsection (d), [and the required supporting materials as outlined in this section] have been submitted.

(f) An initial applicant's requested self-insurance effective date is subject to the approval of the Bureau. An initial applicant which fails to insure its liability pending review of its application will be subject to prosecution under the act and the Occupational Disease Act.

§ 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 by providing information and data on the affiliate or subsidiary on a form prescribed by the Bureau [if the parent company or affiliate is incorporated under the laws of a state of the United States]. The related entities will be included under one consolidated permit if the application is approved. A written request shall be made [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.

(b) An applicant shall provide a written agreement adopted by its board of directors on a form prescribed by the Bureau which states that the applicant guarantees the payment of all claims incurred by the affiliates or subsidiaries. The applicant shall further assume liability for the payment of an affiliate's or subsidiary's claims incurred during its period of self-insurance upon termination of the affiliate or parent-subsidiary relationship unless the applicant is relieved of this liability by the Bureau. In determining whether to relieve an applicant of a subsidiary's or affiliate's liability, the Bureau will consider, among other things, the financial ability of the new owner of the subsidiary or affiliate to pay the liabilities, the new owner's credit worthiness and the adequacy of security held by the Bureau covering the liability.

(c) The guarantor may not terminate the agreement under any circumstances without first giving the Bureau and the affected affiliate or subsidiary 45 days written notice. The affiliate's or subsidiary's self-insurance status automatically terminates upon expiration of the 45-day notice period.

(d) 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 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 period prescribed by the Bureau [according to the extent and nature of the requested information].

(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 and an unaudited consolidated balance sheet of the applicant's financial condition, or any

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)(relating to application), provided the parent company's audit report complies 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 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 who do not receive a long-term credit or debit rating by a NRSRO, the Bureau estimates that the applicant 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 [Note: The effective date of these regulatory amendments] 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 shall no longer apply if the applicant's actual or Bureau-estimated long-term credit or debt rating 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 based upon its 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, which may include comparisons of the applicant'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) Any other financial analysis information provided to or considered by the Bureau.

(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 (relating to application).

(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 (relating to funding by public employers).

[(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 finds under subsection (a) that the applicant [can meet its obligations] possesses the financial ability to self-insure, it will send to the applicant [a preliminary] an initial [approval notice of] decision approving the application and a list of conditions as set forth under subsection [(d)](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 at the time of the initial decision when the renewal applicant is currently in compliance [complying] with the conditions set forth by the Bureau.

[(c) (1) An applicant has [60] 45 days from the receipt of the [preliminary] initial [approval notice] 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 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 denied [withdrawn].

(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 shall provide evidence of the coverage 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 employees [employees].

[(e)] (d) If an applicant does not meet the requirements of § 125.5 (relating to preliminary requirements) 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] that it possesses the financial ability to self-insure, the Bureau will send to the applicant [a preliminary] an initial [denial notice of] decision denying the application. The [notice] initial decision will state the documents, data, information, explanation and corrections [evidence and other data] 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 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.

(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).

(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 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 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 (f) [(g) with the]. 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. 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 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 subsection (g)(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 shall be stenographically- recorded. The transcript of the proceedings shall 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 Subchapters G and H of 1 Pa. Code Part II (relating to general rules

of administrative practice and procedure) to the extent not superseded in subsection (g)(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) 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, 35.211-214 and 35.221.

[(i)] (h) An applicant which has been denied self-insurance may reapply after an annual audit report is published subsequent to the latest one 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 with the next renewal application.

(b) If the Bureau fails to issue 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 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 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.

§ 125.8. Reserved. [Denial of renewal application

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 employees [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 the Bureau issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department.

(i) At the time of the issuance of the bond, the [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, 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 to the Bureau no later than the coverage's effective date.

(2) A security deposit held under a trust agreement prescribed by the Bureau and maintained for the benefit of employees [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) above 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 subsection (b)(3)(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 completed policy years prior to its application, [plus] or the minimum security [constant] amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (1) below for the applicant's highest current long-term credit or debt rating, if any.

(iii) [and r]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 calculated as follows:

(i) The greater of (A) [that] the amount outlined in paragraph (1) above or (B) 100% 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,].

(ii) Discounted by the percentage outlined under subsection (1) for the applicant's highest current long-term credit or debt rating, if any.

(iii) [and r]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 calculated as follows:

(i) [100%] 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] amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (1) for the applicant's highest current long-term credit or debt rating, if any.

(iii) [and r]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 employees.] Where 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 (1) 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 undiscounted outstanding liability based on loss development, net of workers' compensation excess insurance recoveries.

(ii) Discounted by the percentage outlined under subsection (1) for the runoff'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 highest current long-term credit or debt rating, if any, is \$50,000 or less.

(B) The nearest hundred thousand.

(6) Where 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' 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' 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 incorporate or use the overall 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 make any adjustments to the loss development procedures under subsection (d) as 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.]

(i) 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.

(ii) 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.

(h) The Bureau may reduce the amount of security required of a self-insurer under subsection (d) if the self-insurer confirms that liabilities under the act and the Occupational Disease Act are funded through a Black Lung Benefits Trust established under section 501(c)(21) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(21)).

(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] two 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, 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 long-term credit or debt rating of the self-insurer or of the affiliate guarantying the self-insurer's liability: [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

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

(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 in the Pennsylvania Bulletin, 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.

§ 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 three completed calendar 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:

(i) 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.

(ii) 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.

(iii) The dedicated asset account shall equal the above prescribed asset level no later than 30 days before the effective date of the public employer's initial permit and shall 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:

(i) An amount greater than or equal to (A) the self-insurer's greatest annual payout of benefits since its initial approval to self-insure, net of workers' compensation excess insurance recoveries, plus 20% of that annual payment amount, or (B) the minimum funding amount, whichever is greater.

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

(iii) 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 at a later date agreed to by the Bureau.

(iv) The Bureau may adjust 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 seven or more consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(i) An amount greater than or equal to (A) the self-insurer's average annual payout of benefits over its three most recent completed calendar years, net of workers' compensation excess insurance recoveries, plus 20% of that average payment amount, or (B) the minimum funding amount, whichever is greater.

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

(iii) For good cause shown, the Bureau may permit an active self-insurer, who is self-insured on [Note: The effective date of this regulatory amendment] and whose existing workers' compensation account or trust fund is funded below the required level under (d)(i) and (d)(ii), to phase-in compliance with the required funding amount of this subsection within a time period prescribed by the Bureau. All of the following also apply to this arrangement:

(A) 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.

(B) 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.

(B) During the phase-in period, the self-insurer shall not withdraw any assets from the dedicated asset account without the approval of the Bureau until the required funding level of the account under (d)(i) and (d)(ii) is met.

(C) If the asset level of the self-insurer's dedicated asset account remains below the required level under (d)(i) and (d)(ii) after six annual deposits under (d)(iii)(A), thereafter the required asset level of the account established under subsection (a) is calculated as follows:

(1) The actual asset value of the dedicated asset account at the time of the sixth annual deposit under (d)(iii)(A) divided by the amount required under (d)(i) and (d)(ii) at that time.

(2) Multiplied by the amount required to be in the designated asset account under (d)(i) and (d)(ii) for the current year.

(iv) 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 at a later date agreed to by the Bureau.

(v) The Bureau may adjust 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 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 subsections (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 e] 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.

(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 excess insurance [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)] 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.

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

(i) Payments made by the employer.

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

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

[(5)] (4) It [shall] must state that it applies to any losses of a self-insurer under the act and the Occupational Disease Act.; i] It may not exclude coverage for any categories of injuries or diseases compensable under the act and the Occupational Disease Act.

[(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.

(a) A self-insurer and its claims service company are responsible for the prompt payment of compensation in accordance with the act, the Occupational Disease Act and this part.

(b) A self-insurer shall have ample facilities and competent personnel within its organization to service its program of claims handling and adjusting or shall contract with a registered claims service company to provide these services.

(c) A self-insurer shall 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, the self-insurer shall forward to the Bureau a summary of data on its claims, such as cumulative payments sorted by year of loss, in a Bureau-prescribed format and in a timeframe agreed to by the Bureau 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:

(1) The Workmen's Compensation Administration Fund.

(2) The Subsequent Injury Fund.

(3) The Workmen's Compensation Supersedeas Fund.

(4) The Self-Insurance Guaranty Fund.

(5) The Uninsured Employers Guaranty Fund.

(b) A runoff self-insurer is liable for the payment of any assessments made after the termination or revocation of its self-insurance status until it has discharged the obligations to pay compensation which arose during the period of time it was self-insured. The assessments of a runoff self-insurer shall be based on the payment of claims that arose during the period of its self-insurance status.

(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 employees [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.

§ 125.14. Change in legal status, ownership or financial condition.

(a) A self-insurer shall submit promptly a renewal application to continue its self-insurance status under this subchapter in the event of a change in its or its

parent's controlling interest, by sale or otherwise. Failure to comply with this subsection may result in the revocation of the self-insurer's permit.

(b) A self-insurer which amends its articles, charter or agreement of incorporation, association, partnership or sole proprietorship to change its identity or business structure shall promptly notify the Bureau in writing of that action. The Bureau may request copies of documents or information deemed necessary to determine whether the transaction has affected the ability of the employer to self-insure.

(c) A self-insurer shall promptly notify the Bureau in writing of any material adverse changes to its financial condition which occur after the date of the most recent financial statements submitted with its last application.

§ 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.

(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 of the runoff'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 all opens claims at the time of submission and, if available, 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 [Note: The effective date of these regulatory amendments]. Case reserves provided in the listing must be established according to the Bureau's instructions. 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 the provisions in § 125.6(e)(relating to decision on application).

§ 125.17. Claims service companies.

(a) A claims service company desiring to engage in the business of adjusting and handling claims for an approved self-insurer shall register with the Bureau as provided under section 441(c) of the act (77 P. S. § 997(c)) and regulations thereunder on a prescribed form before entering into a contract to provide these services. The claims service company shall answer the questions on the registration form and shall swear to the information provided on the form.

(b) A claims service company shall have adequate facilities and employ competent staff to provide claims services in a manner which fulfills a self-insurer's obligations under the act, the Occupational Disease Act and this part. A claims service company which repeatedly or unreasonably fails to provide claims adjusting or services promptly with the result that compensation is not paid as required under the act or the Occupational Disease Act may have its privilege of conducting this business revoked or suspended under the procedures of section 441(c) of the act.

(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.

§ 125.18. Contact person.

A self-insurer shall provide the Bureau with the name, title, address and phone number of a contact person who will be the liaison with the Bureau regarding all self-insurance matters, including the processing of applications, the provision of information and the payment of assessments, and to whom self-insurance correspondence will be sent. The self-insurer shall give written notice of a change in contact person or change in address or telephone number within 10 days of this change.

§ 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 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. All of 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 application).

(2) Where 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) through (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 shall provide evidence of the coverage 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 the provisions contained within Chapter 121 (relating to general provisions), found at 34 Pa. Code § 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 shall provide evidence of the coverage 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 shall 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 non-cancelable 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

April 20, 2009

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


**Re: Proposed Rulemaking
Labor & Industry
Workers' Compensation Self-Insurance, No. 12-85**

Dear Chairman Coccodrilli:

Enclosed is a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this proposed regulation. This regulation will increase clarity and consistency of existing procedures, provide more objective standards for qualifying for and maintaining self-insurance status, and improve and strengthen the Department's ability to efficiently and effectively monitor and regulate workers' compensation self-insurance in Pennsylvania. This regulation will amend the Pennsylvania Code (34 Pa. Code, Chapter 125).

Written comments, recommendations and objections to the proposed regulations may be sent to George Knehr, Chief, Self-Insurance Division, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 125 Regulations—Comments, P.O. Box 15121, Harrisburg, PA 17105. The Department's staff will provide your staff with any assistance needed to facilitate a thorough review of this proposal.

Sincerely,


Sandi Vito
Acting Secretary

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | www.dli.state.pa.us

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Equal Opportunity Employer/Program*

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Enclosures

cc: Jane C. Pomerantz, Chief Counsel
Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance
Neil E. Cashman, Jr., Senior Advisor for External Affairs
Neil Malady, Director of Legislative and Public Affairs

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

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

TYPE OF REGULATION

- X Proposed Regulation
- 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
4/20/09	<i>Maryann Eckhart</i>	HOUSE COMMITTEE ON LABOR RELATIONS
4/20/09	<i>Jennifer Horac</i>	MAJORITY CHAIRMAN <u>Robert E. Belfanti Jr.</u>
4/20/09	<i>Narda Trastu</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
4/20/09	<i>Burr Kn</i>	MAJORITY CHAIRMAN <u>John R. Gordner</u>
4/20/09	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4/20/09	<i>Maryna Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)