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INDEPENDENT REGULATORY  
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## CITY OF PHILADELPHIA

OFFICE OF THE DIRECTOR OF FINANCE  
RISK MANAGEMENT DIVISION  
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George Knehr, Chief  
Self-Insurance Division  
Bureau of Workers' Compensation  
Department of Labor & Industry  
1171 S. Cameron Street  
Harrisburg, PA 17104

June 1, 2009

**RE:** Proposed amendments to Chapter 125

Dear Mr. Knehr:

Please accept the following revisions and recommendations on behalf of the City of Philadelphia to the proposed changes to Chapter 125 of Title 34, Workers' Compensation Self Insurance.

Due to the volume of information to be compiled and analyzed in order to complete its application, the City requires section 125.3(b) pertaining to renewal applications to remain at 'no later than 2 months' from the expiration of the current permit for the due date for same.

Section 125.3(8)(iii) requires case reserves to be provided according to instructions provided by the Bureau, however these reserving instructions are not provided.

Section 125.6(1) and (i) compliance shall remain at 60 days as 45 days is insufficient. Section 125.6(d) shall allow 90 days to obtain workers' compensation coverage. This 90 days shall apply wherever reference to the necessity to obtain workers' compensation coverage is made.

Under 125.6(4), the burden should be placed upon the Bureau to show that it did not abuse its discretion or act arbitrarily in the reconsideration decision. Any appeal to the Commonwealth Court shall be *de novo*.

Section 125.6(f) mandates that where a timely appeal is filed, the prior permit shall be extended '...under the prior conditions established by the Bureau...'. These conditions are unclear, and this section should be revised to make the terms of the extension clear.

Section 125.10(4) relating to funding by public employers requires that the prescribed asset level must meet or exceed that set by the Bureau 120 days before the beginning of the next fiscal year. The City has always been permitted to meet this funding level in July, with the commencement of its fiscal year. Kindly confirm that this accommodation will continue. The next paragraph, (5), shall read that such adjustment may be made after a hearing

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where all parties may be heard and a determination made by a hearing officer. This will also confirm that the phase-in of the new funding regulation shall apply to the City in that the City shall be permitted to make annual deposits of 5% of its payout of benefits in the prior year (or \$100,000.00, whichever is greater), over the 6 year phase-in period. The City shall not be required to have its dedicated asset account fully funded until the expiration of the 6 year phase-in period.

The proposed section 125.17(d) fails to set forth any penalty for failure to comply. There should be a clear and concise penalty for failure to comply.

Section 125.19 allows for an order to show cause to issue where the Bureau '...has reason to question...' whether the insurer or self insurer continues to maintain financial ability to self insure. The standard for 'reason to question' is not stated, and absent any guidelines, is open to potential abuse and manipulation. The phrase **may** issue a letter to the self-insurer noting the reasons for its concerns shall be amended to read '**...shall** issue a letter...'

Sections 125.19(b)(1) and (2) shall be deleted, or in the alternative 90 days be given to obtain insurance. In the event that (b) is not deleted, then the phrase 'unreasonably failing to pay compensation' shall be defined and examples given.

Finally, the term dedicated asset account is not specifically defined. The terms of said account should be contained within the definition section of the proposed rule.

Subject to these revisions, the remaining sections appear acceptable to the City of Philadelphia. Thank you for your courtesy and cooperation in making the necessary changes.

Very truly yours,

Barry Scott, Risk Manager

BS/hsc