

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation 7 CCR 1101-4

RULES GOVERNING THE ISSUANCE OF SELF INSURANCE PERMITS UNDER THE WORKERS' COMPENSATION ACT

PART 1

INTRODUCTION

(A) STATEMENT OF BASIS AND PURPOSE

The specific right of the Executive Director to issue and revoke permits which allow employers to fulfill their insurance requirements under the Workers' Compensation Act of Colorado by the self-insured method is found under §8-44-201. C.R.S.

The following rules set forth procedures for applying for a self-insurance permit, submission of periodic reports for retention of self-insured status, approval or denial of applications and revocation of a permit. Also set forth by these rules are the security deposit and insurance requirements of self-insurers and the authority of the Executive Director to perform audits to determine adequacy of reserves and security or require an audit and certified statement by an independent source.

PART 2 DEFINITIONS

"Act" means the "Workers' Compensation Act of Colorado".

"Executive Director" means the "Executive Director of Labor and Employment".

"Permit" means the instrument issued to an approved employer by the Executive Director authorizing such employer the privilege to insure its risk under the Act as a self-insurer.

"Permit Holder" means that employer who has qualified under the rules of the Executive Director and has been granted the authority to self-insure its risks under the Act.

"Self-Insurer" means a permit holder.

"Specific Excess Insurance" means insurance purchased from either an insurer or a non-admitted surplus line company licensed by or approved by the Insurance Commissioner of Colorado that is liable for payment of any amount of a claim in excess of a retained predetermined value paid by the self-insured.

"Aggregate Excess Insurance" means insurance purchased from either an insurer or a non-admitted surplus line company licensed or approved by the Insurance Commissioner of Colorado that is liable for payment of the aggregate of all self-insured claims in excess of a retained predetermined aggregate value paid by the self-insured.

PART 3

APPLICATION PROCESS AND PERMIT REQUIREMENTS

- (A) Employer Self-Insurance; Application.
- (1) An employer seeking to insure its risk under the Act as a self-insurer pursuant to §8-44-201, C.R.S., shall apply to the Executive Director on a form prescribed and furnished by the Executive Director titled "Application for Self-Insurance".
 - (2) All questions on the Application for Self-Insurance must be answered under oath by an authorized agent of the applicant.
 - (3) Only those applications submitted by employers who regularly employ at least three hundred (300) employees in Colorado will be considered by the Executive Director. In his/her discretion, the Executive Director may waive the 300 employee limitation for corporations, division(s) of a corporation, or subsidiaries of a corporation who can affirmatively demonstrate to the Executive Director their continued ability to meet all obligations under the Workers' Compensation Act at all times. In considering whether any waiver should be allowed, the Executive Director may consider factors such as, but not limited to:
 - (a) Total assets of at least \$100,000,000;
 - (b) The ratio of current assets to current liabilities of 1.5:1; or more
 - (c) The ratio of long term debt to tangible net worth of 1:1.5; or less
 - (d) Accounting ratios which equal or exceed industry standards.
 - (4) In addition to the application, a favorable applicant must comply with all of the following:
 - (a) Submission of the applicant's most recent certified financial statement and certified financial statements for the immediate preceding four consecutive years.
 - (b) Evidence that the employer has been in business for a period of not less than five (5) years and can demonstrate sufficient financial strength and liquidity to assure that all obligations will be met promptly. An employer in business less than five (5) years may be considered if liability is guaranteed by a parent corporation with a business history of no less than five (5) years. If the applicant is an entity which has formed through merger, bifurcation or divestiture, the Executive Director may consider business history created prior to the applicants present formation as well as pro forma financial information.
 - (c) An insurance policy of specific excess insurance with policy limits and retention amounts acceptable to the Executive Director shall be required of each self-insured. Aggregate excess insurance may be required as a condition of approval of any self-insured program.
 - (d) An applicant for a permit shall provide security in the amount and in a manner prescribed by the Executive Director to insure payment of all workers' compensation claims required by the Act. The minimum amount of such security

shall be \$300,000. The Executive Director may consider, but is not limited to, the following forms of security:

- 1) Cash, government bonds, certificate of deposit or other forms of liquid security that are deemed acceptable by the Executive Director. All such security under this provision shall be bound in trust by proper agreement as approved by the Executive Director and duly executed by all parties to said trust.
 - 2) A surety bond of the form prescribed by the Executive Director. When a surety bond is used, the following criteria shall apply:
 - (a) The Executive Director will not accept a surety bond unless it is issued by a surety company authorized by the Colorado Insurance Commissioner to transact such business in Colorado.
 - (b) A surety bond shall be issued on a prescribed form. A replacement surety bond must be on a prescribed replacement form, be of the current coverage amount and contain inclusive dates of surety coverage. The Executive Director must be advised immediately of such a change.
 - (c) The bond must include a statement that the bonding company must give ninety (90) days' notice of its intent to terminate liability to both the principal and the Executive Director.
 - 3) The Executive Director may consider an irrevocable letter of credit of a form prescribed by the Executive Director at his/her discretion.
- (e) All forms of security shall name the Executive Director as beneficiary and may be held by the Office of Treasurer of the State of Colorado. Upon discontinuance of self-insured status, for any reason, the Executive Director shall claim such security of that permit holder as reserves for all outstanding workers' compensation liabilities. The Executive Director shall retain such security until he/she is satisfied that all liabilities have been met; or the Executive Director or his/her agent shall oversee the appropriate disbursements of such security. In all forms of security such proceeds may be used in any manner to include payment of administrative or other costs necessitated in discharging any workers' compensation liability on the part of the employer under the act.
- (5) All parent companies (permit holders) shall make application on behalf of their subsidiaries and provide a guarantee of liability for payment of compensation claims on the prescribed Division form. Changes subsequent to the initial application that pertain to acquisitions, mergers, spin-offs, creation of new subsidiaries, changes with Federal Employer Identification Number(s) must be reported a minimum of 30 days, prior to the effective date of the change, to the Executive Director or his/her agent for coverage approval if the self-insured permit holder's intention is to continue self-insurance coverage and/or add coverage under the existing self-insurance permit.
 - (6) Each permit holder shall have within its own organization ample facilities and competent personnel to service its own program with respect to claims and administration or shall contract with a service company competent to provide these services.

PART 4

ADDITIONAL INSURANCE REQUIREMENTS

(A) SPECIFIC EXCESS INSURANCE AND AGGREGATE EXCESS INSURANCE

- (1) The contract or policy of specific excess insurance and/or aggregate excess insurance shall comply with all of the following:
 - (a) Is issued from either an insurer or a non-admitted surplus line company licensed or approved by the Insurance Commissioner of Colorado.
 - (b) 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 Executive Director not less than ninety (90) days before termination by the party desiring to cancel or not renew the policy.
 - (c) Any contract or policy containing any type of commutation clause shall provide that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by or through a competent authority. If the underwriter proposes to settle a liability for future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to the employer to be fixed as provided in the commutation clause of the policy, then not less than thirty (30) days prior notice to such commutation shall be given by the underwriter(s) or its (their) agent by registered or certified mail to the Executive Director. If any commutation is effected, the Executive Director shall have the right to direct that such sum be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation.
 - (d) If a permit holder becomes insolvent and is unable to make benefit payments, the excess carrier shall make such payments as would have been made by the excess carrier to the employer, after it has been determined that the retention level has been reached on the excess contract, as directed by the Executive Director.
 - (e) All of the following shall be applied toward the reaching of retention level in the specific excess contract and/or the aggregate excess contract:
 - (1) Payments made by the employer;
 - (2) Payments due and owing to claimant by the employer;
 - (3) Payments made on behalf of the employer by any surety bond under a bond required by the Executive Director or from other security, as defined in Part 3(A)(4)(d).
 - (f) Copies of a certificate of the excess insurance and aggregate insurance shall be filed, on an annual basis, with the Executive Director together with a certification that such policy fully complies with the rules of the Workers' Compensation Act.

PART 5

APPROVAL OR DISAPPROVAL OF THE APPLICATION

(A) EVALUATING APPLICANT; FACTORS FOR APPROVAL, DENIAL, OR REVOCATION OF A PERMIT

- (1) An applicant or a self-insurance permit holder at the time of its annual review shall, if the Executive Director requests, pay the fees of a consultant approved by the Executive Director to determine if the employer has the financial ability to become self-insured or to have its self-insurance permit remain in force.
- (2) The Executive Director will deny an application for self-insurance or revoke the self-insurance privilege if the applicant/permit holder is unable to demonstrate that the employer will be able to meet all obligations under the Act. The Executive Director may use but shall not be limited to the following factors in determining if the applicant/permit holder can meet those obligations:
 - (a) Ratio of tangible net worth to maximum of all of the self-insured's retention limits;
 - (b) Ratio of current assets to current liabilities;
 - (c) Ratio of debt to tangible net worth;
 - (d) Profit and loss history for the current year and previous four years;
 - (e) Organizational structure and management background;
 - (f) Compensation loss history for the current year and previous four years.
 - (g) Number of employees;
 - (h) Excess insurance;
 - (i) Guarantee by parent company;
 - (j) Surety bond or other security based upon approved level of security as determined by the Executive Director;
 - (k) Claims administration, efficiency and effectiveness;
 - (l) Safety engineering program.

(B) ACTION OF EXECUTIVE DIRECTOR UPON DENIAL OF APPLICATION FOR SELF-INSURANCE OR REVOCATION OF SELF-INSURANCE PERMIT

- (1) Notice of denial of an application or revocation of self-insured status will be mailed to the employer at the address on file at the Division. The notice will include the grounds for denial or revocation. Within fifteen (15) days of issuance of notification of denial of an application, the employer may request reconsideration by the Executive Director of the denial. The employer shall furnish with such request all information and documentation it wishes to submit for Executive Director consideration.

- (2) When the Executive Director revokes a self-insured permit, the Director of the Division of Workers' Compensation shall promptly implement §8-43-409, C.R.S., if necessary.
- (3) The holder of a permit revoked by the Executive Director may not reapply for self-insured status for a minimum period of five (5) years from the effective date of revocation.
- (4) The holder of a permit revoked by the Executive Director must continue to provide annual financial and/or claims data to the Executive Director until he/she is satisfied that all liabilities have been met.

**(C) EMPLOYER INDIVIDUAL SELF-INSURANCE, COMPLIANCE WITH REQUIREMENTS
NOTICE, ADDITIONAL TIME, AND CERTIFICATION**

- (1) After considering the application and all supportive data, the Executive Director may grant approval, deny approval, or advise the employer of the requirements to be met before approval is granted. In the latter instance the employer shall be given thirty (30) days from the mailing of notice in which to comply with the requirements. Self-insurance authority is not effective until all requirements for self-insured approval have been met and a permit has been issued.
- (2) The applicant may be granted additional time to meet the requirements of a self-insured. A request for an extension of time shall be made in writing by the applicant within the thirty (30) day compliance period. Failure of the applicant to meet the requirements as advised by the Executive Director within the time prescribed shall cause the application to be denied.
- (3) Upon meeting the requirements, an applicant will receive a formal certificate approving its status as a self-insured employer and will be issued a block number. The certificate will be considered to be in force unless it is revoked at the Executive Director's discretion or discontinued at the request of the applicant/permit holder. Compliance with the annual review requirements as set forth by the Executive Director in Part 6 is a prerequisite to retaining a permit.

PART 6

ANNUAL REVIEW PROCESS

(A) EACH PERMIT HOLDER WILL SUBMIT TO THE EXECUTIVE DIRECTOR WITHIN SIXTY (60) DAYS FOLLOWING THE ANNIVERSARY DATE OF ITS PERMIT A REPORT CONTAINING THE FOLLOWING INFORMATION:

- (1) A copy of the permit holder's most recent certified financial statement;
- (2) A copy of the permit holder's payroll statement submitted to the Division of Workers' Compensation for Premium surcharge assessment purposes;
- (3) Total number of workers' compensation claims for the current year and all preceding years;
- (4) Total payments and reserves on claims for the current year and all preceding years;
- (5) Evidence by certificate that the required insurance is currently in force and the bond, if a bond(s) had been tendered for security, is currently in force.

(6) Other annual data as requested by the Executive Director or his/her agent.

(B) EXECUTIVE DIRECTOR EVALUATION OF THE DATA

- (1) Upon review of the annual report the Executive Director will enter an order only when a change in self-insured status is necessary.
- (2) The Executive Director or his/her agent, will notify a permit holder of any required change in security or when change in insurance requirements is necessary.
- (3) Revocation as a result of the review shall be pursuant to Part 5(A).

(C) EXECUTIVE DIRECTOR RESPONSIBILITY FOR NON-SCHEDULED REVIEWS

The Executive Director may request information similar to that developed at the time of the annual review at any time in order to examine the financial status of the permit holder. Such an interim examination of status shall be conducted after a written request to the permit holder. Such a request by the Executive Director shall not reduce or delay the obligation of the permit holder to file the reports required hereunder.

(D) EXECUTIVE DIRECTOR RIGHT TO AUDIT CLAIMS

The Executive Director, or his/her agent, has the right to perform on site audits/reviews of claim files to determine workers' compensation liability and security needs. The audits/reviews will also evaluate efficiency, effectiveness and competency of the claims administration. The Executive Director, or his/her agent will give ten (10) days notice of the audit, unless in the opinion of the Executive Director, an immediate audit is necessary. The Executive Director, in lieu of an audit by his/her agent may require a certified statement by an approved independent source evaluating such liability.

PART 7

Expired Emergency Amendment Deleted and Reserved