

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

## **PART I INTRODUCTION**

### **A. STATEMENT OF BASIS AND PURPOSE**

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

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 disapproval of applications and termination 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 II 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 that insurance purchased from either an insurer or a non-admitted surplus line company licensed by or approved by the Insurance Commission of Colorado in which for each occurrence the self-insured pays the amount up to the predetermined amount and the insurer or an approved non-admitted surplus line company pays any amount in excess of the retained portion to their limit of liability.

"Aggregate Excess Insurance" means that insurance purchased from either an insurer or a non-admitted surplus line company licensed or approved by the Insurance Commission of Colorado in which the self-insured pays the aggregate of all self-insured claims up to the predetermined aggregate

amount and the insurer or an approved non-admitted surplus line company pays the amount in excess of those cumulative claims paid by the self-insured on claims incurred in a policy year to their limit of liability.

### **PART III 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 C.R.S., § 8-44-201, 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. Such answers shall be given 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 the following factors, including, but not limited to:
  - a. Assets of at least \$100,000,000;
  - b. The ratio of current assets to current liabilities of 1.5:1;
  - c. The ratio of long term debt to tangible net worth of 1:1.5;
  - 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 past 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 discretion.

- e. All forms of security shall name the Executive Director as beneficiary and 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 it is satisfied that all liabilities have been met or are properly reserved; or the Executive Director shall disburse the proceeds of such security to the maximum extent possible. 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 subsidiary companies shall have the parent company make application on behalf of the subsidiary, provide a guarantee of liability for payment of compensation claims, and become the permit holder.
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 to provide these services.

**PART IV**  
**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 Commission 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 III A.4.d.
- f. Copies of a certificate of the excess insurance and aggregate insurance shall be filed with the Executive Director together with a certification that such policy fully complies with the rules of the Workers' Compensation Act.

## **PART V APPROVAL OR DISAPPROVAL OF THE APPLICATION**

### **A. EVALUATING APPLICANT; FACTORS FOR APPROVAL, DENIAL, OR TERMINATION 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 must deny an application for self-insurance or terminate 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 annual self-insurance retention;

- 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;
- k. Claims administration, efficiency and effectiveness;
- l. Safety engineering program.

**B. ACTION OF EXECUTIVE DIRECTOR UPON DENIAL OF APPLICATION FOR SELF-INSURANCE OR TERMINATION OF SELF-INSURANCE PERMIT**

1. Notice of denial of an application or termination of self-insured status will be mailed to the employer. The notice will include the grounds for denial or termination. 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, and shall furnish with such request all further information and documentation in support thereof which the Executive Director may consider.
2. With the filing of a resolution denying an application for or terminating a self-insured permit the Director of the Division of Workers' Compensation shall promptly implement section 8-43-409 of the Act, if necessary.

**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 will either 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. The self-

insured authority will not become 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. The Executive Director will so advise the applicant.
3. Upon meeting the requirements, an applicant shall 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 terminated by the Executive Director's instance or at the request of the applicant. Compliance with the annual review requirements as set forth by the Executive Director in Part VI is a prerequisite to retaining a permit.
4. Failure of the Executive Director to grant or deny a self-insurance permit within ninety (90) days after all above requirements have been fulfilled and acknowledged shall cause the application to be construed as granted.

## **PART VI 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 Tax purposes;
3. Total number of workers' compensation claims for the current year and each of the preceding four (4) years;
4. Total payments and reserves on claims for the current year and each of the preceding four (4) 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.

**B. EXECUTIVE DIRECTOR EVALUATION OF THE DATA**

Upon review of the annual report the Executive Director will enter an order only when a change in self-insured status, a change in security deposit, or a change in insurance

requirements is necessary. Termination as a result of the review shall be pursuant to Part V.A.1.



**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 of claims files to determine workers' compensation liability and security needs. The Executive Director 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 VII**

**Expired Emergency Amendment Deleted and Reserved**