

Regulations of Connecticut State Agencies

TITLE 31. Labor

Agency

Workers' Compensation Commission

Subject

Self-Insurance Certification

Inclusive Sections

§§ 31-284-1—31-284-20

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Self-Insurance Certification

Sec. 31-284-1. Definitions

As used in Sections 31-284-1 through 31-284-20, inclusive:

(1) "Act" means the State of Connecticut Workers' Compensation Act, Chapter 568, as amended; Sections 37-3a, 38a-470, 51-85, 52-149a, and 52-174; and Administrative Regulations 31-40v-1 through 31-40v-11, 31-279-1 through 31-279-10, and 31-280-1 through 31-280-3.

(2) "Commission" means the State of Connecticut Workers' Compensation Commission.

(3) "Chairman or his designee" means the governor-appointed chairperson of the State of Connecticut Workers' Compensation Commission pursuant to Section 31-276 whose powers are enumerated in Sec 31-280, or his designee.

(4) "Liabilities" means the amount of compensation for medical and indemnity benefits and related expenses incurred.

(5) "Outstanding Liabilities" means the estimated future costs of incurred claims.

(Adopted effective October 1, 1996)

Sec. 31-284-2. Application process

(a) **Application Filing.** An employer who seeks exemption from insuring its risk under the Workers' Compensation Act shall apply to the Chairman of the commission or his designee for the privilege of becoming an individual self-insurer. An employer who is approved to self-insure agrees to meet by cash payments, all obligations incurred by it under the Act as such become due and payable. An employer who is approved to self-insure is subject to the Commission's rules and regulations as adopted or amended and subject to the Commission's full right and authority to prescribe new and additional rules and regulations. The Commission's authority and its rules and regulations pertaining to self-insurance shall continue to apply to all employers previously self-insured until all liabilities incurred while self-insured have been fully discharged.

(b) **Application Form.** Application shall be made on the Commission's prescribed form and signed by an officer of the corporation, partnership, or the proprietor. All questions shall be answered fully and all required documentation shall be attached.

(c) **Insurance.** Workers' compensation insurance shall be maintained during the application process and until self-insurance authorization is effective. Applications from employers who do not have insurance as required by the Act pursuant to Section 31-284 of the general statutes shall not be considered.

(d) **Certificate of Self-Insurance.** Employers approved to self-insure are granted a certificate of self-insurance for a one-year period, or the otherwise stated duration on the certificate. The certificate shall be renewed annually, except for municipal employers issued certificates that are continuous until revoked. The Commission may stagger renewal dates of certificates to facilitate its workload. A certificate of self-insurance applies only to the applicant and its affiliated businesses or subsidiaries included in the application. Other affiliates or subsidiaries may be included under a self-insurer's certificate in the future upon

the approval of the Chairman or his designee.

(Adopted effective October 1, 1996)

Sec. 31-284-3. Partial self-insurance

An employer may be approved by the Chairman to self-insure the operations of one or more separately incorporated and independently managed business units and insure the remainder with an insurance carrier if it can show that there will be a clear distinction between the insured and self-insured portions of the employer's liabilities. The separation of operations and payroll shall be clear. The insured portions shall be identified by name, locations, carrier, policy number, and coverage dates. If a dispute arises as to responsibility for payment, the employer shall assume full financial responsibility to immediately render all payments to the injured employee without waiting for the dispute to be settled.

(Adopted effective October 1, 1996)

Sec. 31-284-4. Delayed start-up

If an employer has not implemented its self-insurance program within the first six (6) months following the Chairman or his designee's approval, the approval shall be void, thus requiring a new application to be filed for approval.

(Adopted effective October 1, 1996)

Sec. 31-284-5. Decisions of the commission

The Chairman or his designee may deny an application, or move to revoke a certificate of self-insurance if the employer does not have sufficient assets, net worth, or liquidity to meet its obligations, or any component of a proposed or existing self-insurance program does not meet the standards set by the Chairman or his designee.

(Adopted effective October 1, 1996)

Sec. 31-284-6. Evaluation factors

Self-insurance is a privilege and shall only be granted to those employers capable of demonstrating the following:

(1) Financial strength and stability sufficient to permit payment of all workers' compensation benefits and assessments required under the Act. Particular emphasis shall be placed upon:

- (A) Sufficient working capital and cash flow to meet current and future obligations;
- (B) Acceptable levels of long term debt; and
- (C) Established record of financial stability and solvency.

(2) Accurate reporting and reserving of workers' compensation injuries and illnesses.

(3) Acceptable levels of work hazards as determined by loss history.

(4) Qualified personnel who shall handle the administration of claims and reserves, and deliver benefits to injured workers or their beneficiaries or dependents in a fair, efficient, and competent manner in accordance with the Act.

(5) Protection against catastrophic occurrences by purchasing excess insurance at levels approved by the Chairman or his designee.

(6) Years in business in present corporate form.

(7) Reliable sources of information provided.

(8) Satisfactory responses to all applicable questions on the application.

(Adopted effective October 1, 1996)

Sec. 31-284-7. Reconsideration

An employer whose initial or renewal application for self-insurance has been denied, or a self-insurer who takes exception to excess insurance or reserve requirements made upon it, may request a reconsideration by the Chairman or his designee. The request for reconsideration shall be submitted in writing and be received by the Chairman or his designee no later than 30 days after the notice of the Commission's determination.

(Adopted effective October 1, 1996)

Sec. 31-284-8. Security requirements

As a condition of self-insurance, employers shall post and maintain a security deposit for the certificate period in a form and amount approved by the Chairman or his designee, unless waived by the Chairman or his designee. All self-insurers shall execute a security deposit agreement as part of the application process. If approved, an applicant shall post a security deposit in accordance with the security deposit agreement. Security shall be provided in the form of a surety bond, an irrevocable funded trust, an irrevocable letter of credit, or cash deposit.

(1) Surety bonds shall be issued on the prescribed form. Bonds shall not be released until either a new bond is executed which fully replaces and assumes the liabilities of the previous bond or until all obligations have been fully discharged under a terminated self-insurance program.

(2) Irrevocable funded trusts may be used as a security deposit. The fund's trustee is required to report the fund's assets, market value, and investment activity on a periodic basis. Interest or dividends shall accumulate to the trust. Trust assets may not be transferred or reverted back to the employer unless amounts in excess of sufficient funding needs are approved by the Chairman or his designee.

(3) Irrevocable letters of credit and/or cash deposits may be accepted only at the discretion and approval of the Chairman or his designee. Letters of credit shall renew automatically, have a minimum sixty (60) day cancellation by certified mail, and not be subject to any conditions by the bank or contingent upon reimbursement. Letters shall be issued on the prescribed forms and issued by an acceptable bank with a branch office or confirming bank in Connecticut. Any outstanding liabilities under a letter shall be secured with a surety bond at least ten (10) days before any cancellation takes effect or the letter will be drawn on and the monies deposited to an account under the State's control. Cash deposits shall be made to a custodial account with the State or an approved depository institution. The account

shall be assigned to the State by the employer to secure the payment of the employer's obligations under the Act.

(4) Funds held by the State as security shall be accompanied by appropriate legal instruments which designate their use solely for payment of workers' compensation obligations, and effectively assign right, title, and interest in such funds to the State. No judgment creditors, other than claimants entitled to benefits under the Act, have a right to levy upon any of a self-insurer's security deposits made under this regulation.

(Adopted effective October 1, 1996)

Sec. 31-284-9. Guarantee of liabilities

Each subsidiary or affiliate company shall provide a guarantee by the parent corporation for payment of benefits under the Act with an accompanying authorization resolution. The form and substance of such guarantee shall be approved by the Chairman or his designee. Separate legal entities may be self-insured under one certificate only if they are majority-owned subsidiaries or if the same person or group of persons owns a majority interest in such entities. An agreement jointly and severally binding each entity for the liability created under the approval shall be executed in a form acceptable to the Chairman or his designee. Execution of a Guarantee of Liabilities shall not reduce the amount of required security.

(Adopted effective October 1, 1996)

Sec. 31-284-10. Excess insurance

(a) Excess insurance shall be maintained by each self-insurer unless waived by the Chairman or his designee.

(b) Excess insurance shall be issued by an insurance carrier permitted to write workers' compensation insurance in the State of Connecticut. The Chairman shall approve the issuing carrier, coverage language, upper limits, and retained amounts of the policy. Thirty (30) days advance notice to the Chairman or his designee is required for cancellation.

(c) Failure to maintain said coverage will be grounds for automatic revocation of a self-insurance certificate.

(Adopted effective October 1, 1996)

Sec. 31-284-11. Reporting requirements

(a) **Financial Reports.** Initial applications shall be accompanied by the three (3) preceding fiscal years' independently audited financial reports. Renewal applicants shall submit the latest available fiscal year-end audited financial reports. Current self-insurers shall submit audited financial year-end reports within thirty (30) days of availability.

(1) If the latest audited financial statement is more than six (6) months old, the corporate treasurer, partner, or proprietor, shall file an affidavit stating that there has been no significant deterioration in the financial condition of the applicant.

(2) If there has been a material adverse change since the date of the audited financial report, an explanation from the company treasurer shall be attached or a new statement

prepared and submitted.

(b) Interim reports may be requested by the Chairman or his designee when the financial strength of the employer is at question as determined by the Chairman or his designee.

(c) All applicants shall provide a description of the primary and secondary sources of funds for the payments of claims.

(Adopted effective October 1, 1996)

Sec. 31-284-12. Claims reporting requirements

Self-insurers shall maintain true and accurate loss records. All self-insurance applicants and self-insurers shall report loss information. Losses shall be reported at least annually at the time of renewal, but more frequent reports may be required.

(Adopted effective October 1, 1996)

Sec. 31-284-13. Reserves

All self-insurers are required to evaluate and maintain adequate records of the future liability of all claims incurred under its self-insurance program. Future liabilities shall represent the probable total cost of compensation over the life of each claim, based on all available information at the valuation date for the period of time covered by the annual report. Reserves shall be reported at least annually at the time of renewal, more frequent reports, however, may be required.

(Adopted effective October 1, 1996)

Sec. 31-284-14. Additional reporting requirements

(a) The Chairman or his designee shall be notified within ten (10) days by certified mail of any bankruptcy filing by a current or former self-insurer.

(b) If there is a change in the majority ownership of the self-insurer, through sale, merger, or corporate restructuring, the self-insurance certification shall automatically terminate and the employer shall reapply in order to continue self-insurance. The Chairman or his designee may extend termination of the self-insurance certification to allow for filing. In some cases, it may be possible to amend and transfer an existing certificate without a new application.

(Adopted effective October 1, 1996)

Sec. 31-284-15. Renewal applications

(a) Renewal applications are to be submitted sixty (60) days prior to the expiration of the current certificate of self-insurance. The application is to be completed in full and accompanied by:

- (1) Self-insurer's latest audited annual financial report;
 - (2) Certificate of insurance that shows continued or renewed excess insurance coverage;
- and
- (3) Documented compliance with security requirements.

(b) Municipal employers issued certificates that are continuous until revoked shall submit

a completed municipality update form by each November first (November 1) until all self-insured claims are fully discharged.

(Adopted effective October 1, 1996)

Sec. 31-284-16. Termination of self-insured status

(a) An employer may voluntarily terminate its self-insurance privileges of any or all of its operations by writing to the Chairman or his designee and providing the reason for the termination, the date and time of the intended termination, the carrier name, policy number and effective date of the full coverage insurer assuming the risk after the self-insurance termination, and full identification of the purchaser of any self-insured operations sold, including the date and time the sale is effective.

(b) The Chairman or his designee shall be provided with thirty (30) days advance written notice of an employer's intent to terminate its self-insurance, but no later than ten (10) days after a change in ownership in the case of a sale.

(c) All former self-insurers are responsible for any and all workers' compensation liabilities incurred during the self-insurance period. The incurred liabilities of a subsidiary or division are not subject to transfer to another entity through a sale unless the liabilities are to be fully covered under a workers' compensation insurance policy or a qualified self-insurance program. Such transfer shall have prior written approval from the Chairman or his designee.

(d) Whenever an employer exits the self-insurance program, the Chairman or his designee may require such employer to provide all available information regarding incurred liabilities.

(e) An employer whose self-insurance certification has been terminated or revoked shall continue to provide competent administration of incurred claims. If it is determined by the Chairman or his designee that the claims are not being competently administered or reported, the Chairman or his designee may notify the employer of the problem and require it to be addressed within sixty (60) days. If the problem is not addressed within sixty (60) days, the Chairman or his designee may require the employer to select a new administrator. If the employer fails to enter into an agreement with a new administrator in a timely manner the Chairman or his designee may designate a new claims administrator and the costs shall be borne by the employer.

(f) The Chairman or his designee may seek to enjoin a currently or previously self-insured employer from liquidating its assets, selling its tangible Connecticut property, or moving its operations out of Connecticut before it has received approval from the Chairman or his designee of an acceptable exit plan to provide for the continued payment of its outstanding workers' compensation liabilities.

(Adopted effective October 1, 1996)

Sec. 31-284-17. Assessments

The assessments made by the Connecticut State Treasurer under statutory provisions for

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the expenses of the operation of the Workers' Compensation Commission and the Second Injury Fund, or a subsequent guaranty fund, shall be paid in full. Delinquent assessments may be grounds for the revocation of a certificate of self-insurance. Each self-insurer shall report to the State Treasurer by April first (April 1) of each year the total amount of compensation paid in the previous calendar year on all losses incurred during any year of its self-insurance program. Administrative assessment payments are required of former self-insurers based upon any cases incurred during the entire period of self-insurance until all the cases are closed.

(Adopted effective October 1, 1996)

Sec. 31-284-18. New regulation grace period

If the specific requirements prescribed in Sections 31-284-1 through 31-284-17 would create a hardship on an existing self-insurer, the self-insurer may apply to the Chairman or his designee for a temporary deviation waiver. The request shall be made in writing before any deadline prescribed in Section 31-284-7 and should include a detailed explanation for the request and the estimated time needed to comply. The request may also suggest alternatives for achieving substantial compliance during such grace period. Approval of a temporary deviation waiver is discretionary upon showing of hardship. Approvals shall be in writing. Approvals will advise the self-insurer of its new deadline for regulatory compliance and may contain conditions necessary to the approval. The Chairman or his designee will not grant a temporary deviation waiver if there is reason to believe that a self-insurer is unable to comply with specific requirements because of deterioration in its financial position or if such waiver will impede the Commission's ability to obtain relevant information to monitor a self-insurer's financial condition.

(Adopted effective October 1, 1996)

Sec. 31-284-19. Severability

If any portion of this Section or its application is held invalid, remaining Sections or separate applications shall not be affected, to the end that the Sections of this regulation are severable.

(Adopted effective October 1, 1996)

Sec. 31-284-20. Grandfathered employers

These regulations apply to any self-insurance program approved by the Chairman or his designee on or after October 1, 1996. Employers with self-insurance programs approved by the Chairman or his designee prior to October 1, 1996 will continue to be covered by the requirements set forth by the Chairman at the time they were first approved, however, if the program has been approved for two (2) or more years, then at the time of the program's last renewal.

(Adopted effective October 1, 1996)