

*Italics - proposed language*

**Title 14**

**INDEPENDENT AGENCIES**

**Subtitle 09. WORKERS' COMPENSATION COMMISSION**

**Chapter 10 Individual Employer Self-Insurer**

**Authority: Labor and Employment Article, §§9-309; 9-402, 9-403, 9-405, 9-406 Annotated Code of Maryland**

**.01 Definitions**

- A. "Acceptable" financial indicators" means indicators consistent with comparable industry financial health and performance criteria as reported in rating services such as RMA Annual Financial Statement Studies or equivalent recognized indices. B. "Act" means the Maryland Workers' Compensation Act.
- C. "Actuarial report" means a report written by an actuary who is a member of the Casualty Actuarial Society or the American Academy of Actuaries.
- D. "Affiliate" means a member of a group of companies with common ownership but not the company having a direct ownership interest.
- E. "Commission" means the Maryland State Workers' Compensation Commission.
- F. "Investment grade securities" means federal or state bonds accepted by the circuit courts for investment of trust money.
- G. "Irrevocable trust, custodian, safekeeping or book entry account" means a depository account of monies and investment grade securities held by a Federal Deposit Insurance Corporation bank that agrees to hold amounts ordered by the Commission for a self-insurer that can only be withdrawn by the Commission. Or if a trust exists pursuant to the terms of the trust document.
- H. "Self-insurer" means 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 Maryland Workers' Compensation Act including any approved subsidiary of the self-insurer. "Self-insurer" does not include a parent company or affiliate that has guaranteed the payment of the self-insurer's liability.
- I. "State" means the State of Maryland.

**.02 Application**

**A. Requirements**

- (1) An initial application for individual self- insurance shall be submitted to the Commission on forms prescribed by the Commission and shall include all required information and documentation required by the Commission.
- (2) A nonrefundable fee in the amount established by the Commission shall accompany the application.

*(3) The required information on the application shall be fully completed and particularly set forth under oath by the employer or a person acting on the employer's behalf. The affidavit shall be made upon personal knowledge of the matters set forth in the application. The Commission may require the applicant to supplement or explain any of the matters set forth or to provide additional information that the Commission considers necessary.*

*(4) Upon receipt of a complete application and all required information and documentation, the Commission shall act upon the application for self-insurance within 60 days.*

#### *B. Parental Guarantees and Subsidiaries*

*(1) When an employer applying to self-insure is a subsidiary company, the parent company must provide, on forms prescribed by the Commission, a written agreement adopted by its board of directors which states that the parent company guarantees the payment of all claims incurred by the self-insurer and its affiliates and subsidiaries that are approved under the self-insurance program. The parent company 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 until formally released by the Commission.*

*(2) When a subsidiary company applies to self-insure under a parent company's existing self-insurance program, the subsidiary company shall file application on forms prescribed by the Commission.*

#### *C. Approval*

*(1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the Commission shall consider all relevant factors including the following:*

*(a) Established record of financial stability and solvency, including:*

*(i) Net worth or unrestricted net assets of not less than \$10.0 million and at least 20 times average annual incurred claims net of reimbursements for the past 3 years;*

*(ii) Profitable and positive cash flow from operations 3 out of the last 5 years;*

*(iii) Acceptable debt-equity ratio;*

*(iv) Acceptable current and quick ratio;*

*(v) Acceptable interest coverage ratio; and*

*(vi) Acceptable financial stability of surety, excess carrier or letter of credit issuer;*

*(b) The proposed excess insurance policy limits and retention level;*

- (c) The experience of the organizational unit or service company processing and handling claims in the State;*
- (d) Workers' compensation loss history of the applicant; and*
- (e) The number of years in business, with a minimum of 3 consecutive years prior to application.*

*(2) Not-for-profit organizations need not be profitable provided all other provisions are satisfied and there are significant investments or endowments and other resources to assure payment of workers' compensation claims.*

### **.03 Revocation of Self-Insured Status**

*A. Approval for self-insurance privileges shall be continuous unless and until revoked or withdrawn.*

*B. Deterioration in the financial strength of the self-insurer, which may affect the ability of the self-insurer to pay current and future claims when due, may result in modification or revocation of self-insurance privileges.*

*C. Failure of a self-insurer to satisfy the Commission of its financial ability to secure compensation to pay current and future claims including the following conditions:*

- (1) Three straight years of losses or negative cash flow from operations;*
- (2) Negative tangible net worth;*
- (3) Eight straight quarters of losses;*
- (4) Non-compliance with lender covenants;*
- (5) Financial instability of surety, excess carrier or letter of credit issuer;*
- (6) Public disclosure of accounting irregularities;*
- (7) Potential insolvency or bankruptcy; or*
- (8) Any other issue that shows financial instability.*

*D. An employer whose self-insurance privileges have been revoked shall continue to provide competent administration of disputed claims. If it is determined by the Commission that the claims are not being competently administered or reported, the Commission shall notify the employer. If the problem is not resolved to the satisfaction of the Commission within a reasonable period of time, the Commission may require the designation of a new claims administrator and the costs shall be borne by the employer.*

*E. Whenever an employer voluntarily withdraws or is terminated or revoked from the self-insurance program, the Commission shall require such employer to provide all available information regarding case reserves and incurred but not reported estimates of remaining liability while self-insured.*

#### **.04 Voluntary Withdrawal From The Self-Insurance Program**

A. A self-insurer who voluntarily withdraws its privileges, or the privileges of a self-insured subsidiary must do so in writing to the Commission. The written notice shall be made to the Commission by personal delivery or by certified mail, return receipt requested, and shall provide the date and time of the intended withdrawal and the carrier name, policy number and effective date of coverage of the insurer assuming the risk.

B. All former self-insurers and their guarantors shall remain 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.

#### **.05 Revoked and Terminated Self-Insurers**

A. Effective on the date of self-insurance revocation or termination, a revoked or terminated self-insurer shall provide the Commission written evidence of workers' compensation insurance from an approved commercial carrier or the Maryland Injured Workers Insurance Fund, effective on the date of self-insurance termination.

B. A terminated or revoked self-insurer shall maintain the security, excess policy and parental guarantee which were in effect for the period while self-insured until released by the Commission.

C. Each year, a terminated or revoked self-insurer shall provide to the Commission, an audited financial statement prepared by an independent certified public accountant. A self-insurer shall provide a separate report on a form prescribed by the Commission on the balance remaining in reserves, including incurred but not reported costs, for the period while self-insured. Any payments made during the year as well as the amount of adjustment made to the reserves from the prior year shall also be included in the prescribed report. The Commission may waive these requirements after three years from the date of termination.

D. When the security has been exhausted, the surety or administrator shall make a final accounting to the Commission. The Commission shall direct the transfer of the workers' compensation records associated with the period of self-insurance.

#### **.06 Security**

A. Each self-insurer shall, as a condition for the approval and continuation of its self-insurance privilege, provide a qualifying security deposit to secure the payment of compensation. The security shall not be subject to assignment,

*execution, attachment, or any legal process whatsoever, except as necessary to guarantee compensation under these regulations. The Commission may waive security requirements for individually self-insured governmental entities.*

## *B. Types of Qualifying Security*

### *(1) Surety Bond.*

*(a) A surety bond shall be on a form prescribed by the Commission and issued by a company authorized to transact surety business in this State by the Maryland Insurance Administration.*

*(b) The surety company shall possess a current A. M. Best Rating of A- or better or a comparable rating by another insurance company rating service acceptable to the Commission.*

### *(2) Letter of Credit.*

#### *(a) Requirements*

*(i) A letter of credit shall be issued by a Federal Deposit Insurance Corporation member bank on a form prescribed by the Commission and in accordance with the Act.*

*(ii) A letter of credit shall possess a current financial standing according to Weiss Ratings, Inc. or equivalent rating service B- or better.*

*(iii) If the Commission executes a draw down against a letter of credit, the funds shall be wired to a Federal Deposit Insurance Corporation member bank account within the State.*

*(b) When a self-insurer, active or revoked, provides adequate security subsequent to the Commission drawing on the letter of credit, the funds shall be released back to the letter of credit issuer.*

### *(3) Irrevocable Trust, Custodian, Safekeeping Agreement or Book Entry Account*

*(a) The Commission in its discretion may accept an irrevocable trust, custodian, safekeeping agreement or book entry account for placement of securities issued by the federal government or by any state government in the United States, AA rated or better.*

*(b) Investment grade securities deposited in an irrevocable trust, custodian, safekeeping agreement or book entry account shall be held for the benefit of the Commission and must have a fair market value and be redeemable at or above the required security amount at all times.*

*(c) Irrevocable trust, custodian, safekeeping agreement or book entry account that contain adequate securities as defined in §§ (a) and (b) for the benefit of injured employees of the self-insurer may not be used for any other purpose or voided by order of owners, directors or creditors of the self-insurer, or by order of any court, without specific written authorization of the Commission.*

*(d) When a self-insurer is revoked or withdraws from the self-insurance program,*

*the securities remain pledged to the Commission to guarantee payment of any claim occurring during the self-insured period.*

*(e) At any time that the redeemable value falls below the security required, the self-insurer must provide the additional security within 60 days of notification of deficit by the banking depository or the Commission. Any securities subject to rollover are to be replaced concurrently with the maturity and receipt of proceeds from the rollover.*

*(f) Any earnings received on these securities shall be returned to the self-insurer.*

*(g) Request for release of securities or any part thereof shall be in writing to the Commission.*

#### *C. Security Deposit Determinations.*

*(1) Prior to approval of self-insurance status and periodically thereafter, the Commission, in establishing and adjusting security deposit amounts, shall consider, among other conditions or facts relevant to security and prompt payment of compensation, the following:*

*(a) Claims experience and reserves;*

*(b) Financial condition and performance;*

*(c) Safety record and program;*

*(d) Potential for catastrophic event;*

*(e) Compliance with law and regulations; and*

*(f) Reliability of audited financial statements, and reports of payroll, accident, claims and reserve data.*

*(2) A self-insurer shall after the third full year of an approved plan, or earlier if required by the Commission, and tri-annually thereafter, or at a time frequency determined by the Commission, an independent actuarial study prepared in accordance with actuarial standards of practice as a basis for security deposit determination. The Commission may use reported reserve amounts in addition to a factor for related administrative costs and the potential modifiers in this subsection to establish the security amount.*

*(3) The Commission may waive this requirement for security for individually self-insured governmental entities.*

#### **.07 Excess Insurance**

*A. The applicant for self-insurance shall purchase excess insurance in an amount determined by the Commission.*

*B. Specific retention amounts as defined in the excess policy shall be no higher than 5 percent of net worth or unrestricted net assets. The specific excess limit must be no less than 20 times the specific retention amount or as otherwise ordered by the Commission.*

C. The applicant for self-insurance may request the intended specific retention amount and specific excess limit. The Commission shall order the approved amounts.

D. The applicant for self-insurance shall provide proof of excess insurance by filing a copy of the excess certificate with the Commission within 30 days of its issuance or renewal.

E. The Commission may waive this requirement for excess insurance for individually self-insured government entities.

### **.08 Reporting Requirements**

#### **A. Financial Reports**

(1) A self-insurer shall file an annual audited financial report and 10K reports, if applicable, with the Commission within 120 days of the end of the reporting period. An extension may be granted upon written request of the Commission.

(2) The self-insurer shall submit interim reports as requested by the Commission.

#### **B. Claims Reports**

(1) A self-insurer shall maintain true and accurate records of workers' compensation paid and incurred costs and case reserves on each claim in indemnity, medical and allocated costs paid and reserves for each claim. This information shall be provided annually to the Commission or more frequently if requested by the Commission.

(2) Reports submitted by a service company or third party administrator on behalf of the self-insurer shall be treated as if they were submitted by the self-insurer directly.

#### **C. Reserves**

A self-insurer shall evaluate and maintain adequate records of the past, present and future liability of all claims incurred under its self-insurance program, their closed and current claims in addition to reserves for future anticipated costs. Future anticipated costs shall represent the expected total cost of compensation over the life of each claim, based on all available information at the valuation date. Annually required reserves reports shall also include estimates of incurred but not reported costs applicable to both open claims, closed claims and claims which have occurred, but not yet reported.

#### **D. Change In Ownership Or Financial Condition.**

(1) A self-insurer shall notify the Commission within 30 days of a change in majority ownership. Existing parental guarantees shall not be released until an acceptable replacement guarantee is received by the acquiring parent company.

(2) A self-insurer or parent guarantor that amends its organizational

documents to change its identity, status or business structure, including merger, acquisition and disposition, shall promptly notify the Commission in writing. All legal agreements and instruments that obligate the self-insurer, guarantors, excess carrier or security provider shall be updated by the provider within 30 days. The Commission may request copies of documents or information deemed necessary to determine whether such an action has affected the ability of the employer to self-insure.

**E. Bankruptcy and Closure**

A current or former self-insurer shall notify the Commission within 10 days by certified mail, return receipt requested, of petition for bankruptcy or closure filing and shall provide an updated claims report as defined in 14.09.10.08 B

**.09 Proceedings**

A An order of denial of an application for self insurance or a change in terms or conditions of the self insurance program shall be served upon the designated representative(s) of the self-insurer by personal delivery or by certified mail return receipt requested. The order shall include the reason(s) for denial.

B. Upon receipt of the order of denial of an application for self insurance or a change in terms or conditions of the self insurance program, a party may request a hearing before the Commission within 15 days. A hearing will be set as soon as practicable but no sooner than 20 days.

C. A Show Cause Order for termination or revocation of the self insurance program shall be served upon the designated representative(s) of the self-insurer by personal delivery or by certified mail, return receipt requested. The order shall contain the reason for reason for the termination or revocation and date, time and place of the hearing.

D. A self insurer who has been provided an Order of denial or a Show Cause Order may, at its option submit a written statement before the date set for hearing and at the hearing, may appear and present oral argument or other evidence on the issues contained in the hearing notice. When a written statement is presented, 15 copies shall be served on the Commission at least 5 days before the date set for the hearing.

E. Under exigent circumstances, the Commission may set a hearing in a time period less than prescribed above.

**.10 Examinations**

The costs of examinations pursuant to Maryland Annotated Code, Labor and Employment § 9-405 (e) shall be paid by the Commission. If the self-insurer is in default, the expense of the examination shall be paid by the self-insurer.



**.11. Access To Workers' Compensation Records of Self-Insurer**

*A self-insurer or its designee shall immediately upon notification by the Commission, or upon discontinuance of workers' compensation payments for the period while self-insured, release all relevant records to the Commission or the agent for the surety responsible for the continuation of workers' compensation payments.*

**.12 Confidentiality of Information**

*The Commission shall not release to the public any information concerning a self-insurer other than confirmation that an employer is individually self-insured, its address, the effective date of the such insurance program, and the name of the claims administrator, unless by order of a court, or as required by State or federal law.*