WSR 21-08-069
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed April 6, 2021, 7:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-086

Title of Rule and Other Identifying Information: Self-insurance financial rules, chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations.

Hearing Location(s): On May 11, 2021, at 10:00 a.m. Zoom hearing. Join Zoom meeting at https://us02web.zoom.us/j/84089308844, Meeting ID 840 8930 8844, Passcode Meeting@10.

Join by phone +253-215-8782 US (Tacoma), Meeting ID 840 8930 8844, Passcode 7925639240. The hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 22, 2021.

Submit Written Comments to: Brian Schmidlkofer, 310 Israel Road S.E., Tumwater, WA 98501, email Brian.Schmidlkofer@Lni.wa.gov, fax 360-902-6900, by May 14, 2021, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Brian Schmidlkofer, phone 360-902-6839, fax 360-902-6900, email Brian.Schmidlkofer@Lni.wa.gov, by May 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make updates to the self-insurance financial rules. These amendments are being proposed to:

- Ensure self-insured employers can accurately and timely provide workers' compensation benefits to their workers;
- Protect and safeguard the Insolvency Trust Fund;
- Promote transparency for labor and industries (L&I) actions when a firm is placed on financial watch;
- Make the rules relevant to current financial conditions and business models; and
- Create efficient and adaptable standards for employers' overall financial management.

This rule making proposes repealing WAC 296-15-024 Additional certification requirements, and amending WAC 296-15-021 Self-insurance certification requirements and application process, 296-15-121 Surety for a self-insurance program, 296-15-123 Financial watch, 296-15-151 Surety for a public entity's self-insurance program, 296-15-161 Surety for a group self-insurance program, and 296-15-221 Self-insurer's reporting requirements.

Reasons Supporting Proposal: The purpose of this rule making is to update the rules for the financial qualification and maintenance of self-insurance certification, so that these rules are consistent with modern business practices. Existing rules are dated and out of alignment with industry best practices.

Statutory Authority for Adoption: RCW 51.14.020, 51.14.020(7).

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Schmidlkofer, Tumwater, WA, 360-902-6839; Implementation and Enforcement: Vickie Kennedy, Tumwater, WA, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brian Schmidlkofer, 310 Israel Road S.E., Tumwater, WA 98501, phone 360-902-6839, fax 360-902-6900, email Brian.Schmidlkofer@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule does not affect small businesses. The employers that participate in the self-insurance program are medium to large multi-regional and international entities that have the financial means to have their own workers compensation program and cover all those liabilities.

April 6, 2021
Joel Sacks
Director

OTS-2843.5

AMENDATORY SECTION (Amending WSR 09-01-177, filed 12/23/08, effective 1/23/09)

WAC 296-15-021 Self-insurance ((~~certification requirements and application process~~)) qualifications. ((~~(1)~~ ~~**What requirements must an employer meet to apply for self-insurance certification?**~~ ~~An employer must meet all the following minimum criteria:~~

~~(a) Be in business for three years prior to applying for self-insurance.~~

~~(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.~~

~~(c) Have total assets worth at least twenty-five million dollars as verified by audited financial statements prepared by independent certified accountants.~~

~~(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.~~

~~(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.~~

~~(2)~~ ~~**When are applications processed?**~~ ~~The department processes applications for certification the quarter after the application is accepted. Self-insurance certification for approved applicants will be effective the quarter following processing.~~

~~(3)~~ ~~**What documentation must be submitted with an application?**~~ ~~The following documentation must be submitted with each self-insurance application:~~

~~(a) A completed application form (Form F207-001-000) with a nonrefundable application fee. The application fee is reviewed annually~~

~~by the department and is based on the administrative costs incurred in processing an application, but in no instance will it be less than two hundred fifty dollars.~~

~~(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.~~

~~(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.~~

~~(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations, more than one copy of the accident prevention program may be required.~~

~~(e) A completed Self-Insurance Certification Questionnaire (Form 207-176-000).~~

~~(f) A completed self-insurance electronic data reporting system (SIEDRS) enrollment form (Form F207-193-000).~~

~~(4)~~ **What happens during the application review process?** ~~The department:~~

~~(a) Assesses the accident prevention program at department-selected sites.~~

~~(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.~~

~~(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.~~

~~The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.~~

~~(5)~~ **If the application is denied, when may the applicant submit a new application?** ~~If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the corrections to the program are made and have been in place for six months.~~

~~If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.~~

~~If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.~~

~~(6)~~ **What if the application is tentatively approved?** ~~The applicant must submit the following:~~

~~(a) Surety in the amount determined by the department and issued on the department form.~~

~~(b) A signed copy of the service agreement with a third-party administrator, if applicable.~~

~~(i) The contract copy may delete clauses(s) relating to payment of services.~~

~~(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail.~~

~~(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.~~

~~(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.~~

~~(e) Payment of any outstanding premium of the applicant's state industrial insurance account.~~

~~(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.~~

~~(g) Adequate electronic test data to SIEDRS, to demonstrate the ability to submit claim data electronically in the required format. Requirements are defined in the SIEDRS enrollment package (Publication F207-194-000). The department may waive the testing requirement if the applicant has a service agreement with a third-party administrator that already submits data to SIEDRS.~~

~~If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.~~

~~(7) **How is the initial surety requirement established?** The initial surety requirement is established at the highest of the following:~~

~~(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or~~

~~(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or~~

~~(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.~~

~~The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.~~)) (1) **What factors does the department consider whether an employer qualifies for self-insurance certification?** The department will consider whether:

(a) An employer satisfactorily demonstrates:

(i) Stability: Has been in business for three years prior to applying for self-insurance without substantial changes in principle ownership, structure, or operations.

(ii) Safety: Has a written accident prevention program in place in accordance with DOSH standards in Washington state for at least six months prior to making application.

(iii) Sufficiency: Has net worth of twenty-five million dollars, or revenue of fifty million dollars, or annual workers compensation premium payments or loss costs of one million dollars, to be adjusted once every five years as indexed to the U.S. Consumer Price Index beginning in 2025. This subsection does not apply to cities and counties, or groups, authorized under RCW 51.14.150.

(b) Credit ratings of investment grade or higher, or, in the case of authorized groups, an actuarially determined low likelihood of default:

(i) A publicly traded business' credit analysis shows a credit rating of investment grade or higher (Moody's Baa3 or higher, Standard and Poor's BBB- or higher), and carries excess insurance.

(ii) A privately held business' credit analysis shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, and carries excess insurance.

(iii) A public entity, such as a county or city, that shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.

(iv) An authorized group such as a hospital district, or an educational service district, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.

(c) In addition, other factors can be considered to establish, to the director's satisfaction, the employer has the ability to make certain the prompt payment of all compensation under Title 51 RCW, and all assessments that may become due to the department from the employer. For publicly traded companies, this may require providing up to one hundred twenty-five percent of the initial surety amount when credit ratings are below investment grade.

(2) **What factors does the department consider when determining whether an employer qualifies for self-insurance if there are special circumstances with principle ownership, structure, or operations?** If there are special circumstances, the department will consider the factors in subsection (1)(a) through (c) of this section, and an analysis that includes the following for:

(a) **Joint venture:** A joint venture is defined as two or more employers that have signed a contractual agreement to operate as a single unit for a specified period of time for the completion of a specific task. The department will consider a joint venture's application for self-insurance if the joint venture is sponsored by a current self-insurer. Applications must include:

(i) The name of a sponsoring party. The sponsoring party must be a certified self-insurer in good standing with the department and have a majority financial interest in the assets and profits of the joint venture.

(ii) A list of named participants. Each named participant must also demonstrate that it has at least twenty percent interest in the joint venture.

(iii) Submit three years' worth of audited financial statements prepared by certified independent accountants.

(iv) A written acknowledgment from each named participant of its joint and several liability for continuing compensation if any participant of the joint venture defaults. This responsibility continues until the department grants a written release to the joint venture or the remaining participant(s) of the joint venture. A written release from the department is granted only after the contract has been completed and final settlement of the joint venture account has been made.

(v) A written description of the obligations of each participant for the industrial insurance program of the joint venture.

(vi) A written acknowledgment of the sponsoring party's responsibilities for the management of all claims and payment of all compensation incurred during the period of the joint venture's self-insurance certification and after the joint venture is dissolved. This acknowledgment must include the sponsor's continuation of benefits if the joint venture or any of the other parties of the joint venture defaults.

(b) **Employee stock ownership program (ESOP):** An employee stock ownership program is defined as a firm in which the employees have purchased a majority of the financial interest. If the employees purchase an existing self-insured company, that company would be required to return to the state industrial insurance fund for a minimum of one year before the department would consider its application for self-insurance.

(c) **Partnership**: A partnership is defined as a business operation between two or more individuals who share management and profits. Applications must include:

(i) A copy of the partnership agreement; and

(ii) An explanation of allowed withdrawal of funds by partners.

(d) **Group**: A group is defined as a group of employers authorized under chapter 51.14 RCW to form self-insurance groups. Applications must include:

(i) A copy of the group's bylaws;

(ii) A current audited consolidated financial statement of the group (if the group exists at the time of the application);

(iii) An indemnity agreement jointly and severally binding the group and each member to comply with the provisions of Title 51 RCW; and

(iv) A detailed budget of all projected administrative revenues and expenses for the first year of operation.

(e) When the application for a group is tentatively approved, the applicant must submit the following:

(i) Initial surety, established at one hundred twenty-five percent of the standard industrial insurance premiums; and

(ii) A copy of the excess insurance coverage policy and a copy of any aggregate stop loss coverage policy.

[Statutory Authority: RCW 51.14.110. WSR 09-01-177, § 296-15-021, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-06-066, § 296-15-021, filed 2/28/06, effective 4/1/06. Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-021, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-121 Surety for a self-insurance program. (1) **What is surety?** Surety is the legal financial guarantee each self-insurer must provide to the department for its self-insured workers' compensation program. Failure to provide surety in the amount required by the department will result in the withdrawal of the self insurer's certification. If a self-insurer defaults on (stops payment of) benefits and assessments, the department will use its surety to cover these costs.

(a) Surety for all entities must be provided on the department's form. The original will be kept by the department. Surety must cover all ((~~past, present and future self insurance liabilities~~)) self-insurance claims liabilities associated with the claims occurring during the time an employer functions as a self-insurer. Excluding public entities and groups. Surety amounts for public entities and groups are covered by WAC 296-15-151 and 296-15-161 respectively.

(b) Surety may not be used by a self-insurer to:

(i) Pay its workers' compensation benefits; or

(ii) Serve as collateral for any other banking transactions.

(c) Surety is not an asset of the self-insurer and will not be released by the department if the self-insurer files a petition for dissolution or relief under bankruptcy laws.

(d) The department will determine the amount of surety each self-insurer must provide annually. ((~~The surety level may be increased or decreased to maintain its adequacy when necessary~~)) Surety can also be determined by an independent qualified actuary (associate or fellow of the casualty actuarial society). The surety estimate is subject to the approval of the department's actuary.

(e) Surety may be increased by a maximum of twenty-five percent of the estimated claim liabilities. These increases will be based on the self-insurer's credit rating or the director's discretion.

(f) Surety for privately held entities are required to submit audited financial reports prepared by a certified public accountant annually. Failure to provide timely updates will result in increased surety requirements. If the latest financial reports are older than twelve months past their fiscal year, surety will be increased by ten percent over the required surety calculated by the department. If the latest financial reports are older than twenty-four months, surety will be increased by twenty-five percent over the required surety calculated by the department and the department will proceed to decertify the employer from self-insurance.

(2) **What types of self-insurance surety will the department accept?** The department will accept the following types of surety:

(a) Cash, corporate, or governmental securities deposited with a department approved escrow agent and administered by a written agreement L&I form F207-039-000 between the department, self-insurer and escrow agent. Use L&I form F207-137-000 for any rider/amendment to the escrow account.

An escrow account may not be used by the self-insurer to satisfy any other obligation to the bank which maintains the escrow account.

(b) A bond on L&I form F207-068-000 written by a company approved to transact surety business in Washington. Use L&I form F207-134-000 for any rider/amendment to the bond.

(c) An irrevocable standby letter of credit (LOC) on L&I form F207-112-000 if the self-insurer has a net worth of at least 500 million dollars. Use L&I form F207-111-000 for any rider/amendment. LOCs are subject to acceptance by the department. Acceptance includes, but is not limited to, approval of the financial condition of the issuing or confirming bank.

(i) The issuing or confirming bank must have a location in Washington. The bank must provide the department with an audited financial statement or call report made to the banking regulatory agencies for the most recent fiscal year. An audited statement/call report is due at LOC issuance and annually while the LOC is in effect.

(ii) The self-insurer must provide the department a memorandum of understanding on L&I form F207-113-000 showing the self-insurer's agreement with the following conditions:

(A) The department will automatically extend an LOC for an additional year unless notified otherwise by registered mail at least sixty days prior to expiration.

(B) If the department is notified an LOC will not be replaced, and the self-insurer fails to provide acceptable replacement surety within thirty days of notice:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department;

(II) Accrued interest in excess of the surety requirement will be returned semiannually to the self-insurer; and

(III) If acceptable replacement surety is later provided, the proceeds of the LOC and accrued interest will be returned to the self-insurer.

(C) If the self-insurer defaults on the payment of workers' compensation benefits and has failed to provide acceptable replacement surety for an expired LOC:

(I) The title to the proceeds will be transferred to the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(D) If the self-insurer defaults on the payment of workers' compensation benefits and has an LOC in force:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(iii) If the self-insurer provides another acceptable type of surety in the amount required by the department, the department's interest in the LOC will be released.

(iv) All legal proceedings regarding a self-insurer's LOC will be subject to Washington laws and courts.

(3) ((~~**How often is each self insurer's surety requirement reviewed?**~~ ~~Each self insurer's surety requirement is reviewed annually based on the self insurer's annual report.~~

~~(4)~~)) **When could a self-insurer's surety level change?**

(a) Surety will be maintained at the current level unless the department's estimate or an independent qualified actuary's estimate of the self-insurer's outstanding claim liabilities changes by more than ((~~twenty-five~~)) one hundred thousand dollars.

(b) Surety changes are due by July 1 of each year.

((~~(5)~~)) (4) **How does the department determine the required surety level?** The department analyzes each self-insurer's loss history using incurred development, paid development or other department approved actuarial methods of loss development((~~. The following factors also may influence the surety determination:~~

~~(a) Pension claims.~~

~~(b) Reinsurance.~~

~~(c) Inconsistency in reserving practices.~~

~~(d) Independent qualified actuarial estimate.~~

~~(e) Surety cap~~)).

((~~(6)~~)) (5) **What is considered reinsurance?** For the purposes of Title 51 RCW, excess insurance and reinsurance mean the same thing.

((~~(7)~~)) (6) **May a self-insurer reinsure part of its liability?**

(a) A self-insurer may reinsure up to eighty percent of its liability under Title 51 RCW.

(b) The reinsuring company and its personnel are prohibited from participating in the administration of the responsibilities of the self-insurer.

(c) Reinsurance policies issued after July 1, 1975, must include endorsements which state (a) and (b) of this subsection.

(d) The self-insurer must:

(i) Notify the department of the name of the insurance carrier, the extent and coverage period of the policy; and

(ii) Submit copies of all reinsurance policies in force including all modifications and renewal provisions.

(e) The department may accept a certificate of insurance on L&I form F207-095-000 in place of the policy if the certificate certifies all coverage conditions and exceptions and that the reinsurance company and its personnel do not participate in the administration of the responsibilities of the self-insurer under Title 51 RCW.

((~~(8)~~)) (7) **What if a self-insurer ends its self-insured workers' compensation program?** If a self-insurer voluntarily surrenders certification or has its certificate involuntarily withdrawn by the department, the former self-insurer must continue to do all of the following:

(a) Pay benefits on claims incurred during its period of self-insurance. Claim reopenings and new claims filed for occupational diseases incurred during the period of self-insurance remain the obligation of the former self-insurer.

(b) File quarterly and annual reports as long as quarterly reporting is required. A former self-insurer may ask the department to release it from quarterly reporting after it has had no claim activity with the exception of pension or death benefits for a full year.

(c) Provide surety at the department required level. The department may require an increase in surety based on annual reports as they continue to be filed. Surety will not be reduced from the last required level (while self-insured) until three full calendar years after the certificate was terminated. A bond may be ((~~cancelled~~)) canceled for future obligations, but it continues to provide surety for claims occurring prior to its cancellation.

(d) Pay insolvency trust assessments for three years after surrender or withdrawal of certificate.

(e) Pay all expenses for a final audit of its self-insurance program.

((~~(9)~~)) (8) **When could the department consider releasing surety to a former self-insurer or its successor?**

(a) The department may consider releasing surety to a former self-insurer or its successor when all of the following have occurred:

(i) All claims against the self-insurer are closed; and

(ii) The self-insurer has been released from quarterly reporting for at least ten years.

(b) If the department releases surety, the former self-insurer remains responsible for claim reopenings and new claims filed for occupational disease incurred during the period of self-insurance.

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-121, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 06-07-141, filed 3/21/06, effective 5/1/06)

WAC 296-15-123 ((~~Financial watch.~~)) Monitoring certification.

((~~(1) What is financial watch? Financial watch occurs when the department has concerns regarding a self-insured employer's ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements provided by that employer.~~

~~The purpose of financial watch is two-fold:~~

~~(a) It serves to alert the employer that the department is concerned with its ability to provide benefits to its injured workers; and~~

~~(b) It enforces the due diligence that the department must exercise in preserving the financial integrity of each self-insurer.~~

~~(2) What factors can lead to a firm being placed on financial watch? Contributing factors that can lead to a firm being placed on financial watch are negative changes in the following ratios and trends:~~

~~(a) Net losses;~~

~~(b) Ratio of debt to equity;~~

~~(c) Liquidity ratios;~~

~~(d) Ratios of debt and equity to total assets;~~

~~(e) Ratio of net income to revenue;~~

~~(f) Trends in earnings;~~

~~(g) Trends in liquidity;~~

~~(h) Trends in levels of debt;~~

~~(i) Ratio of tangible net worth to levels of debt.~~

~~To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other analytical ratios. The department may also utilize industry standards and other relevant information in its analysis.~~

~~(3) What are the consequences of being placed on financial watch? At the department's discretion, the surety requirement for a firm being placed on financial watch may be increased by up to twenty-five percent. No reduction in surety will be allowed while an employer is on financial watch.~~

~~(4) How long can a firm remain on financial watch? The status of a firm on financial watch will be re-evaluated annually upon receipt of its audited financial statements. The department may request interim financial information in addition to the annual audited financial statement.~~

~~If significant improvement is not demonstrated to the department's satisfaction after three years of being placed on financial watch, the department may undertake action to withdraw the self-insurance certification of that employer.~~)) <u>(1) To maintain certification, a self-insured employer must remain in good standing with department reporting requirements and payment of assessments, and continue to demonstrate they have the ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements and related information for that employer.</u>

<u>(2) Credit rating evaluation for financial monitoring.</u>

<u>(a) Credit rating equal to or below B+/B1: Self-insurer must increase their surety by ten percent of estimated claim liabilities.</u>

<u>(b) Credit rating equal to or below CCC+/Caa1: Self-insurer must increase their surety by twenty-five percent of estimated claim liabilities.</u>

<u>(c) Credit rating equal to or below CCC-/Caa3: Self-insurer will be placed on corrective action for one year. If no improvement in credit rating, then certification may be withdrawn.</u>

<u>(d) To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other financial information. The department may also utilize industry standards and other relevant information in its analysis.</u>

<u>(e) In addition to the actions and other relevant information utilized in (a) through (d) of this subsection, the department, with the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.</u>

[Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-07-141, § 296-15-123, filed 3/21/06, effective 5/1/06.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-151 Surety for a public entity's self-insurance program. ((~~(1)~~ ~~**How does the department determine the required surety level for a public entity?**~~ ~~The required surety level for a public entity will be its estimated claim costs for all claims during the upcoming fiscal year. The minimum surety amount will be determined annually by the department.~~

~~(2)~~ ~~**How does a public entity provide surety?**~~ ~~By July 1 of each year, each public entity must submit its public entity surety certification. A public entity's surety certification must demonstrate that it has sufficient revenues in its next budget to meet its estimated claim costs for the next fiscal year by documenting:~~

~~(a) The estimated claim liabilities;~~

~~(b) Source of revenues, detailing accounts identified for self insurance obligations; and~~

~~(c) How the cumulative reserve (twenty-five percent of the required surety) is funded. Show the account balance.~~

~~(3)~~ ~~**What type of surety may a public entity use for its cumulative reserve?**~~ ~~A public entity may provide surety for its cumulative reserve using any of the surety types listed in WAC 296-15-221.~~)) (1) Surety for public entities must be provided on a department developed form consistent with WAC 296-15-121(2). The original will be kept by the department. Required surety must cover at a minimum one hundred twenty-five percent of the expected workers' compensation claim costs occurring in the next calendar year or five hundred thousand dollars, whichever is higher. The surety required may be increased up to the total outstanding liabilities associated with claims occurring during the time an employer functions as a self-insurer based on the credit rating of the employer.

(2) Public entities must provide a public entity surety certification which will provide an estimate of the next calendar year's expected claim costs and the current estimate of the outstanding claim liabilities.

(3) Credit rating evaluation for financial monitoring.

(a) For entities with acceptable credit ratings above B+/B1, the surety requirement will be one hundred twenty-five percent of the next calendar year's expected claim costs or five hundred thousand dollars, whichever is higher.

(b) For entities with credit ratings at or below B+/B1, the surety requirement will be the highest of the above amount, but not less than fifty percent of the current estimate of outstanding claim liabilities.

(c) For entities with credit ratings at or below CCC+/Caa1, the surety requirement will be the highest of the above amount, but not less than one hundred percent of the current estimate of outstanding claim liabilities.

(d) In addition to the actions and other relevant information utilized in (a) through (c) of this subsection, the department, with the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-151, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-161 Surety for a group self-insurance program. (1) **How does the department determine the required surety level for a group self-insurer?** ((~~After the initial five years of certification, the department will annually calculate the surety requirement for a group self insurer by comparing its original liability estimate to its reserve fund. If the difference is:~~

~~(a) Less than fifteen percent, the department will accept the stated reserves of the group as the required surety level.~~

~~(b) Greater than fifteen percent, the department will establish the group's required surety level.~~

~~(2)~~ ~~**What type of surety is acceptable for a group self insurer's reserve fund?**~~ ~~A group self insurer's reserve fund must be cash.~~

~~(3)~~)) The department will require that each group provide an actuarial report prepared by an independent qualified actuary (associate or fellow of the casualty actuarial society) that shows the following:

(a) Development of the next year's rates and allocation to members;

(b) Calculation of outstanding claims liabilities cover all years after being certified to self-insure; and

(c) Statement of the adequacy of the group's contingency reserve (assets and liabilities).

(2) **May a group self-insurer pay expenses from its reserve fund?** A group self-insurer may pay only the following items from its cash reserve fund:

(a) Administrative expenses for operating the group self-insurance program, including claims handling expenses, legal, investigative or administrative costs and department administrative assessments.

(b) Claim expenditures. Supplemental pension fund (SPRF) benefits may also be paid from the reserve fund if the group redeposits SPRF reimbursements into the reserve account. Interest earned by the reserve account must remain in the account while this method is in effect.

(c) Reinsurance premiums. All recoveries from these policies must be redeposited into the reserve fund. Within eighteen months of premium payment, the group must return the amount paid for premiums if reinsurance recoveries were not sufficient to return the account to its original amount.

((~~(4)~~)) (3) **How can a group self-insurer assess its members for reserve fund costs?** A group self-insurer may determine how it will assess members for required reserve fund costs. The group's bylaws must describe the procedures it will use to collect these costs.

((~~(5)~~)) (4) **Must a group self-insurer purchase reinsurance?** A group self-insurer must obtain reinsurance for each year of operation to ensure adequate protection against catastrophic or unexpected loss.

((~~(6)~~)) (5) **What if a group self-insurer collects excess premiums during a fund year and has a surplus?** A group self-insurer may refund surplus money from a fund year if it retains sufficient money to fulfill all of its workers' compensation obligations. This includes maintaining the required reserve fund.

((~~(7)~~)) (6) **What if a group self-insurer collects insufficient premiums during a fund year and has a deficit?** The department will demand a group self-insurer ((~~may~~)) to cover a deficit by:

(a) ((~~After receiving department approval, using:~~

~~(i)~~)) Unencumbered surplus from a different fund year;

((~~(ii)~~)) (b) An alternative method; or

((~~(b)~~)) (c) Assessing the membership. ((~~The department may require the group to use this method.~~))

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-161, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 09-13-018, filed 6/5/09, effective 7/6/09)

WAC 296-15-221 Self-insurers' reporting requirements. (1) **What information must self-insurers report to the department?** Each self-insurer must provide the department:

(a) The name, title, address and phone number of the single contact person who is the liaison with the department in all self-insurance matters. This contact will be sent all department correspondence and is responsible for forwarding information to appropriate parties for timely action.

(b) A copy of its current policy of applying sick leave, health and welfare benefits or any other compensation in conjunction with, or as a substitute for, time loss benefits.

(2) **When must self-insurers notify the department of business status changes?** Self-insurers must notify the department in writing:

(a) Immediately, of any plans to:

(i) Cease business entirely or cease business in Washington; or

(ii) Dispose of controlling financial interest of the original self-insurer. The self-insurer must surrender its certificate for cancellation if requested by the department.

(b) Within thirty days, of any:

(i) Amendment(s) or modification(s) to the self-insurer's articles, charter or agreement of incorporation, association, copartnership or sole proprietorship which will materially change the business identity or structure originally certified.

(A) The department may require additional documentation.

(B) If the self-insurer becomes a subsidiary to another firm, the parent must provide the department with its written guarantee on L&I form F207-040-001 to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities. See WAC 296-15-021 for additional information.

(ii) Separation (for example, divestiture or spinoff) of any part of the original self-insurer.

(A) The original self-insurer remains responsible for claims liability of the separated part up to the date of separation unless the department approves an alternative.

(B) If the separating part wishes to continue being self-insured, it must submit an application for self-insurance certification (L&I Form F207-001-000) to the department at least thirty days before separation.

(C) If certification cannot be granted before separation, industrial insurance coverage must be purchased from the state fund effective the date of separation.

(iii) Relocation, addition or closure of physical locations.

(3) **When must self-insurers notify the department of administrative changes?** A self-insurer must notify the department in writing within ten days, of any change to its:

(a) Single contact person who is the liaison with the department in all self-insurance matters. The self-insurer must include the contact's title, address and phone number.

(b) Contract with a service organization or third party administrator independent of the self-insurer which will participate in the self-insurer's responsibilities. The self-insurer must submit a copy of the new or updated service contract. See WAC 296-15-021 for additional information.

(c) Administrator of its workers' compensation program, if the self-insurer is self-administered instead of contracting with a service organization or third party administrator.

(4) **What reports must self-insurers submit to the department?** Each self-insurer must submit:

(a) Complete and accurate quarterly reports summarizing worker hours and claim costs paid the previous quarter. Self-insurers must use a form substantially similar to the preprinted Quarterly Report for Self-Insured Business, L&I form F207-006-000, form sent by the department. This report is the basis for determining the administrative, second injury fund, supplemental pension, asbestosis and insolvency trust assessments. Payment is due by the date specified on the preprinted report sent by the department.

(i) Worker hours must be reported as defined in chapter 296-17 WAC General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

(ii) Claim costs include, but are not limited to:

(A) Time loss compensation. Include the amount of time loss the worker would have been entitled to if kept on full salary.

(B) Permanent partial disability (PPD) awards.

(C) Medical bills.

(D) Prescriptions.

(E) Medical appliances.

(F) Independent medical examinations and/or consultations.

(G) Loss of earning power.

(H) Travel expenses for treatment or rehabilitation.

(I) Vocational rehabilitation expenses.

(J) Penalties paid to injured workers.

(K) Interest on board orders.

(b) A complete and accurate annual report of all claim costs paid for each year of liability with an estimate of future claim costs. The self-insurer must use a form substantially similar to the Annual Report for Self-Insured Businesses (SIF-7), L&I form F207-007-000. This report is due March 1 of each year. The department uses this for the annual determination of each self-insurer's surety requirement.

(c) ((~~A fully audited financial statement within six months after the end of the self-insurer's fiscal year. This report demonstrates the self-insurer's continued ability to provide benefits and pay as-~~

~~sessments as required. The department will consider a written request for filing time extension.~~)) Privately held entities are required to submit annually audited financial statements within six months of their fiscal year end, unless the department grants an extension. Failure to provide financial statements will result in increased surety requirements and may result in decertification as a self-insured.

(i) This statement must be prepared by a certified public accountant.

(ii) A self-insurer with a parental guarantee may submit the parent's fully audited financial statement if the parent's audited statement includes the financial condition of all subsidiaries, including the self-insurer.

(iii) A political subdivision of the state may submit a state auditor's report if it includes the self-insurer's audited financial statement. If the state auditor does not audit the self-insurer annually, the self-insurer must submit financial statements prepared internally for any year a report by the state auditor is not available.

[Statutory Authority: RCW 51.14.077, 51.14.150, 51.14.160, 51.44.040, 51.44.070, and 51.44.150. WSR 09-13-018, § 296-15-221, filed 6/5/09, effective 7/6/09. Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-221, filed 11/17/99, effective 12/27/99.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-15-024 Additional certification requirements.