

ALABAMA DEPARTMENT OF WORKFORCE
WORKERS' COMPENSATION DIVISION
ADMINISTRATIVE CODE

CHAPTER 480-5-2
INDIVIDUAL SELF-INSURANCE

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480-5-2-.01 Revocation Of Self-Insurance Certificate.

(1) In the event a self-insurance certificate is revoked by the Department under the provisions of Code of Ala. 1975, §25-5-8(d) (1) the Department shall issue a notice of hearing to the employer as provided by rules 480-1-4-.09 and conduct a hearing as provided under rules 480-1-4-.02 through 480-1-4-.11.

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Statutory Authority: Code of Ala. 1975, §25-2-2(6).

History: This rule is intended to implement Code of Ala. 1975, §25-5-8(d) (1) and 41-22-12. Previous Rule Number 480-3-2-.15; Effective 9/30/82; Effective February 16, 1993.

480-5-2-.02 Requirements Of Qualification For Self-Insurance.

(1) Self-Insurance under the Alabama Workers' Compensation Law is authorized by Code of Ala. 1975, §25-5-8, as last amended. The following rules and regulations are adopted pursuant to the authority contained therein.

(2) Definitions as used herein:

(a) **Director** - the Director of the Department of Industrial Relations or the Director's official designee.

(b) **Division** - the Department of Industrial Relations, Workers' Compensation Division, Montgomery, Alabama, 36131, phone number (334) 242-2868.

(c) **Guaranty Association** - the Alabama Workers' Compensation Self- Insurer's Guaranty Association, created by Act 89-533.

(d) **Security Amount** - the monetary amount of Guaranty Association coverage, or any other security amount determined

by the Director of the Department of Industrial Relations to constitute adequate security to insure the payment of any and all Alabama workers' compensation claims which an individual self-insured employer may be reasonably expected to incur.

(e) **Certificate** - a certificate of Self-Insurance issued by the Alabama Department of Industrial Relations to an employer pursuant to Code of Ala. 1975, 25-5-8(d), as last amended.

(f) **Insolvency** - A self-insurer is insolvent for workers' compensation purposes under any of the following circumstances:

1. When a determination of insolvency has been made by a court of competent jurisdiction.

2. Upon institution of bankruptcy proceedings by or regarding the self-insured or its parent company which renders the company unable to pay its workers' compensation claims.

3. When the Director has determined that the self-insured is not financially able to pay its Alabama workers' compensation claims liability.

(3) Certificate of Self Insurance. The Director may issue to each employer who has made application for self-insurance, and is deemed qualified to operate as a self-insurer and who has met all requirements contained herein, a Certificate of Self-Insurance which shall evidence the Director's authorization for the employer to operate as a self insurer.

(a) If the Director deems that it is not in the best interest of the Alabama workers' compensation scheme for a self-insurance applicant to operate as a self-insured entity in Alabama, then the Director may, for good cause, at his or her discretion, deny the application for self-insurance.

(b) The certificate of self-insurance, once issued, shall become effective on the date the certificate is issued or on the date requested on the application and shall remain in force until cancelled or revoked or otherwise suspended by the Director. Applications cannot be approved retroactively.

(c) A certificate shall be valid only to that entity to which it is issued.

(d) No self-insured employer has the authority to extend use of its certificate to any other person, firm or corporation, and the unauthorized extension of said use shall constitute good cause for revocation of the certificate.

(e) Any self-insured employer that amends its articles, charter or agreement of incorporation, association or copartnership, or partnership, or merges or attempts to merge with another entity so as to change its identity or business structure or in any other manner materially alters its status as it existed at the time the certificate was issued, shall within thirty (30) days notify the Director in writing of such action and provide the Director with a copy of such amendments. Failure to comply with this provision may be grounds for revocation of the certificate of self-insurance at the discretion of the Director.

(f) Any self-insured employer that proposes to cease doing business in Alabama, or proposes to dispose of, by sale, transfer, convey, sell, or otherwise, the controlling interest of the business for which the certificate was issued, or proposes to dispose of, by sale or otherwise, a significant portion of the in-state assets of the business, or transfer of its workers' compensation liability, for which the certificate was issued, shall immediately notify the Director in writing of the proposed action. Failure to comply with this provision shall be grounds for revocation of the certificate of self insurance at the discretion of the Director.

(4) Application - Every employer seeking authority to operate as a self-insured shall make application to the Department of Industrial Relations, Workers' Compensation Division, Montgomery, Alabama, 36131, at least thirty (30) days prior to the requested effective date. The application shall be made on WCSI Form No. 1, and shall include as attachments current, certified, independently audited financial statements prepared in conformity with generally accepted accounting principles using either the historical cost balance sheet, statement of income, retained earnings and cash flows, or financial statements presented on an income tax basis complete with all schedules, notes and such other supporting financial information as may be deemed necessary by the Director.

(a) If required by the Director, each application must include an actuarially certified summary of the dollar amount of Alabama premiums paid, and losses paid and incurred, including IBNR claims, incurred by the business operations for which the certificate is being sought for the three (3) years preceding the requested effective date. The actuarial certification must also verify that each worker is properly classified in the proper job classification code and that loss reserves are adequately established in accordance with acceptable actuarial practices and procedures.

(b) An application fee in the amount of \$500.00 made payable to the Department of Industrial Relations Worker's Compensation Administrative Trust Fund for deposit to said Fund shall accompany each application. Any application

received without the \$500.00 application fee cannot be considered and will be returned.

(c) If the audited financial statements, actuarial reports or any other required reports or documents submitted with the application are dated more than six (6) months prior to the date of the application, the Director may require interim certified financial statements or other interim reports as deemed appropriate.

(d) A separate application must be filed for each subsidiary corporation seeking authority to operate as a self-insurer. A subsidiary corporation may submit with its application the consolidated financial statement of its parent corporation in lieu of its own along with a Parental Guarantee. In addition to the consolidated financial statements of the parent corporation, the Director may require statements and reports relating to the subsidiary's financial condition be certified and submitted by the appropriate financial officers. In the event that a subsidiary corporation is unable to furnish its own certified independently audited financial statements or in the event that the financial reports of a subsidiary do not satisfactorily evidence sufficient financial strength, it will be necessary for the subsidiary to submit with its application documentary evidence, satisfactory to the Director, that the parent corporation has undertaken an obligation to guarantee the payment of all workers' compensation claims which may be made against the subsidiary. Such a guarantee may be in the form of an indemnification agreement (sample attached) or a resolution of the board of directors of the parent company authorizing the guarantee of workers' compensation liabilities. The parent corporation must meet the financial qualification standards. The parent corporation must also maintain these standards.

(e) Upon request, an applicant may be required to supplement the application by providing accident statistics, records or other documents, reports, or any other information deemed appropriate relating to the applicant's claims liability and claims paying ability.

(f) The Director may request any other documents deemed necessary for the determination of the self-insured's workers' compensation claims paying ability and/or financial condition.

(g) Each application shall include a complete outline of the manner in which the applicant intends to administer its self-insured program. If claims are to be self-administered by the applicant's in-house resources, the personnel involved should be identified and their qualifications and the procedures to be utilized outlined. If a service company or third party administrator is to be utilized, the company or administrator

should be identified and the procedures to be utilized outlined.

(h) All financial statements, reports, or information submitted to the Director by any self-insured employer or by any applicant for authority to self-insure shall be considered confidential, and as such, shall not be disclosed to any unauthorized person or business entity without written authority, subpoena, or other order of an appropriate court.

(i) Any application for a certificate of self-insurance must identify or include as an attachment, a listing of the excess coverage, specifying the insurance company, the policy or contract number and the limits of liability and the retention amount. Each policy must be properly endorsed to require a minimum of sixty (60) days prior notice to the Director of any material changes, cancellation or nonrenewal, before the existence of such coverage will be considered in determining the applicant's financial ability to pay its workers' compensation claims. Any self-insured employer must notify the Division of any change in the retention amount of excess coverage within thirty (30) days after the effective date of the change.

(j) The Director may require, at his or her discretion, any other documents or reports as deemed necessary to determine the financial condition of the self-insurance applicant.

(5) Financial Qualification Standards - To qualify for a certificate of authority to self-insure, an applicant must furnish satisfactory proof of sufficient financial resources to pay all workers' compensation claims and benefits and costs for which it may become liable under the provisions of the Alabama Workers' Compensation Act.

(a) An applicant for a certificate of authority to self-insure, other than municipalities or political subdivisions, must have a net worth of not less than \$5,000,000, a current assets to current liabilities ratio of at least 1.0, and a positive net income for the past three years, shown on the submitted audited financial statements. After applicant is approved for self-insurance, the applicant must maintain a net worth of not less than \$5,000,000, a current assets to current liabilities ratio of at least 1.0, and a positive net income.

(b) Additionally, each five years after the effective date of this amended rule, the minimum net worth requirement may be adjusted for inflation by the annual cost of living as reflected by the U.S. Department of Labor consumer price index.

(c) A self-insured entity that is operating under an approved certificate of self-insurance prior to the effective date of

this amended rule is exempted from the increased net worth requirement.

(d) A self-insured must have and maintain specific excess insurance coverage for its workers' compensation liability. The retention amount shall be \$250,000 or greater. Excess coverage must be underwritten by an insurance carrier properly licensed or approved by the Alabama Department of Insurance to write workers' compensation insurance. Reinsurance may not be substituted for excess coverage. Upon request by the Director, a self-insured must identify or include as an attachment a listing of the excess coverage, specifying the name of the insurance company, the policy or contract number and the limits of liability and the retention amount. Each policy must be properly endorsed to require a minimum of sixty (60) days prior notice to the Director of any material changes, cancellation or nonrenewal, before the existence of such coverage will be considered in determining the applicant's financial ability to pay its workers' compensation claims. Any self-insured employer must notify the Division of any change in the retention amount of excess coverage within thirty (30) days after the effective date of the change. A self-insured entity that is operating under an approved certificate of self-insurance prior to the effective date of this amended rule is exempted from the excess insurance requirement.

(e) The amount of excess insurance and the amount of coverage provided by the excess carrier will be considered in determining an employer's financial ability to pay the claims it incurs. and in determining the Guaranty Association security amount required of the self-insured employer.

(6) Security Amount - Each self-insured employer, other than municipalities and political subdivisions, shall maintain security in an amount determined by the Director, in the form of membership in the Alabama Workers' Compensation Self-Insurer's Guaranty Association. Public utilities are eligible for membership in the Alabama Workers' Compensation Self-Insurer's Guaranty Association or shall furnish and maintain security in any amount determined by the Director in the form of a cash deposit with the Alabama State Treasury or other approved securities.

(a) The Director shall determine the Guaranty Association security amount for each employer authorized to operate as a self-insured at the time of the issuance of the certificate, and the security amount required of each self-insured employer will be reviewed throughout the period during which the certificate remains in effect. The Guaranty Association security amount shall be predicated on the self-insured's satisfactory proof to the Department of the self-insurer's financial strength and ability to pay all benefits and costs as required by the provisions of the Alabama Workers' Compensation Act. The security amount required of any

individual self-insurer may be increased for good cause at the Director's discretion, at any time.

(b) The minimum Guaranty Association security amount required of each self-insured employer shall be an amount which is deemed by the Director to be sufficient to pay any and all workers' compensation claims which may reasonably be expected to be incurred but in no event will it be less than the greater of the following:

1. The sum total of the two (2) highest years of workers' compensation insurance premiums paid by the applicant during the preceding three (3) years, or
2. The sum total of the two (2) highest years of incurred workers' compensation claims losses during the preceding three (3) years, or
3. The excess insurance retention amount, or
4. \$500,000.

(c) The Director may, for good cause, at his or her discretion, require a self-insured entity to post an additional security in the form of a cash deposit with the Alabama State Treasury, or other security subject to the approval of the Director, to secure the payment of workers' compensation claims in Alabama. Any additional security would be in addition to the Guaranty Association security amount.

(d) Each five years after the effective date of this amended rule, the minimum security of \$500,000 stated herein, may be adjusted for inflation by the annual increase in the cost of living as reflected by the U.S. Department of Labor consumer price index.

(e) A self-insured entity that is operating under an approved certificate of self-insurance prior to the effective date of this amended rule is exempt from the \$500,000 minimum security amount.

(7) Administration of Self-Insured Claims - Every self-insured employer shall conduct the administration of its self-insured claims program through the services of a competent administrator or administrative agency or company located in Alabama. Upon a showing of good cause and upon proof of the competency of the person, company or agency responsible for the administration of the claims, the Director may, within his or her discretion, permit such administration from locations outside Alabama. In the event that a change in the administrative company or agency is desired, notice must be given to and approved by the Director prior to the date on which the change is to occur. Failure to notify the

Director of the proposed change shall constitute good cause for revocation of the certificate of self-insurance.

(a) Self-insured employers are required to set reserves for claims in an amount deemed to be sufficient to pay any and all claims expense which may reasonably be expected to be incurred. Those reserves are to be independently verified by an independent actuary once every three (3) years. The actuary's report must be submitted to the workers' compensation division for review accompanied by a letter, signed by an officer of the company, verifying that reserves have been set up in the liabilities section of the balance sheet.

(b) The actuarial report must verify the Alabama workers' compensation claims liability, adequacy of loss reserves for incurred and IBNR claims.

(c) The Director may, for good cause, at any time, at his or her discretion, require an independent actuarial verification of the proper classification of workers and/or payroll to further ascertain the adequacy of the claims reserves and claims liability.

(d) Failure to comply with this provision shall be grounds for revocation of the certificate of self insurance at the discretion of the Director.

(8) Reports - In addition to all reports required by the Workers' Compensation Act, and required elsewhere in these rules, each employer authorized to operate as a self-insurer must file with the Division a loss summary for the year giving totals for compensation and medical expenses paid during the year regardless of injury date and reserves, and a copy of the most recent, certified, independently audited financial statement with accompanying financial notes for the financial year then ended.

(a) The Director, or the designee of the Director, or any contract designee of the Director, may, for good cause, at any time, examine, review, audit, or inspect all books and records of any self-insured or self insured applicant to determine the claims liability, the workers' compensation claims paying ability, the financial condition in relation to the claims paying ability, and to ascertain the workers' compensation administrative trust fund assessment liability. Any self-insurer that refuses to allow the Director, or his or her designee, to examine or audit any books or records shall be subject to revocation of the certificate of self-insurance, and to any other penalty allowed by law or regulation. Any applicant for self-insurance who refuses to provide any reports or documentation requested by the Director, or who refuses to allow the Director or his or her designee to examine, inspect, or audit any books or records so requested

by the Director shall be denied a certificate of self-insurance.

(b) All required reports, documents or requested information must be received by the division no later than ninety (90) days after the close of a self-insured's financial year. A self-insured employer may ask for a ninety (90) day extension in which to file a required report or document. Failure to submit a required report within ninety (90) days after the close of the self-insured's financial year, or within one hundred eighty (180) days if a ninety (90) day extension is granted, will subject the self-insured entity to an administrative penalty of \$50.00 per day for each day the required report is late for a maximum of thirty (30) days, at which time revocation proceedings will begin. This paragraph applies to all current and future self-insured entities.

(9) Cancellation or Revocation of Authority to Self-Insure: - The Director may revoke a certificate of self-insurance or may deny an application for self-insurance for failure to comply with any provision of this regulation, or for failure to comply with any other laws or regulations, or for other good cause.

(a) The Director may revoke the certificate of self-insurance for any self-insured that fails to meet its workers' compensation claims obligations or for failure or inability to pay its workers' compensation claims, or that is deemed to be unable to pay its workers' compensation claims, or is otherwise deemed insolvent.

(b) The Director may revoke the certificate of self-insurance for failure to pay any Guaranty Association fees, assessments, or security amounts, within the time prescribed.

(c) The Director may revoke the certificate of self-insurance for any self-insured that submits false information regarding the workers' compensation administrative trust fund assessment, or that hinders the Departments determination or verification of the trust fund assessment amount, including the failure to file a first report of injury.

(d) Any self-insured employer who is required by these rules or who desires to have its authority to self-insure cancelled, may do so by furnishing to the Director, at least thirty (30) days prior to the proposed date on which the cancellation is to become effective, notice of the desired action. Upon cancellation of self-insurance status, an employer, if legally required to do so, must have and maintain workers' compensation insurance in accordance with the Alabama workers' compensation laws.

(e) The authority to self-insure may be revoked by the Director for financial reasons or for failure of the employer

to faithfully discharge his obligations according to the agreements contained in his application for authority to self-insure, or for continued violations of these rules or the workers' compensation laws or other regulations as prescribed by the Director in accordance with Code of Ala. 1975, §25-5-8(d) as last amended. Any such employer shall provide the Director with any and all assistance, material and information, documentation or claims files or claims information which may be reasonably required to enable the Director to determine the total amount of claims liability, including IBNR claims, and outstanding future liabilities incurred by the employer. The cancellation or revocation of the authority to self-insure will be ineffective as to any claims which were incurred by an employer during the period in which the Certificate remained in effect.

(f) Upon cancellation, voluntary or otherwise, or revocation of a self-insurance certificate, any security held by the Director will continue to be held by the director until all Alabama workers' compensation claims have been paid or settled.

(10) Notice - Any notice required to be given by these rules and regulations to the Director shall be deemed proper if made in writing, addressed to Director, Department of Industrial Relations, Workers' Compensation Division, Montgomery, Alabama, 36131. Any notice required by these rules and regulations to be given to a self-insured employer shall be deemed properly given if in writing and addressed to the employer at the address shown on either the application or the last annual report.

Author: W. Scottie Spates, Workers' Compensation Director

Statutory Authority: Code of Ala. 1975, §25-2-2(6)

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