

## CHAPTER 114. SELF-INSURANCE

### §114.1. Purpose.

- (a) The provisions of this chapter are promulgated pursuant to Texas Labor Code, Chapter 407, to explain and enforce provisions related to the self-insuring of liability and to guarantee full and timely payment of compensation benefits by certified self-insurers.
- (b) The provisions of this chapter apply to private employers in the State of Texas. They do not apply to the state or to political subdivisions, as made clear by Texas Labor Code §401.011(6).
- (c) These rules provide guidance and requirements in addition to those requirements imposed by the Act and other commission rules.

*The provisions of this §114.1 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

### §114.2. Definitions.

- (a) The following words and terms are defined in the Texas Labor Code §407.001, and are so used in this chapter:
  - (1) Association;
  - (2) Director;
  - (3) Impaired employer;
  - (4) Incurred liabilities for compensation; and
  - (5) Qualified claims servicing contractor.
- (b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:
  - (1) Applicant - an employer that applies for an initial certificate of authority to self-insure or, once initially certified, any subsequent certificate of authority to self-insure.
  - (2) Certificate - A certificate of authority to self-insure issued by the commission under Texas Labor Code §407.042, which entitles an employer to be a certified self-insurer and is valid only for the persons, firms, or corporations named on the certificate. For a certificate of authority to self-insure delivered, issued for delivery, or renewed on or after January 1, 1996, a sole proprietor, partner, or corporate executive officer of a business may be specifically excluded from coverage pursuant to Texas Labor Code §406.097.
  - (3) Certified self-insurer – A private employer that has been granted a certificate of authority to self-insure for payment of compensation, either currently or for a prior period.
  - (4) Claims Contractor - A qualified claims servicing contractor.
  - (5) Division - The division of self-insurance regulation of the Texas Workers' Compensation Commission.
  - (6) Excess Insurance - Insurance that an employer purchases to pay claim costs that exceed the employer's retention amount up to a specified limit.
  - (7) Retention - All payments that must be paid by a certified self-insurer before an excess insurance policy will respond to a loss for claims filed under the Workers' Compensation Act including: indemnity

benefits, medical payments, death benefits and all other related claims expenses not otherwise covered by insurance.

- (8) Trust Fund -The Texas certified self-insurer guaranty trust fund created by the fee assessed by the Association for emergency payment of the compensation liabilities of an impaired employer.

*The provisions of this §114.2 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective November 6, 1995, 20 TexReg 8612; amended to be effective May 9, 2004, 29 TexReg 4186.*

### **§114.3. Application Form and Financial Information Requirements.**

- (a) Employers shall submit an application by filing a completed and signed application in the form and manner prescribed by the director and must include:
- (1) if required to file a Form 10-K by the U.S. Securities and Exchange Commission (SEC), the applicant's Form 10-K for the preceding three fiscal years; and
  - (2) the applicant's independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants with the accompanying footnotes and the auditor's opinion for the preceding three fiscal years.
- (b) Incomplete applications may be returned to the applicant.
- (c) An incomplete application may be treated as voluntarily withdrawn if the applicant fails to respond to any request for information by the director for more than 90 days from the date the request is deemed received by the applicant, as provided by commission rule.
- (d) The sworn affidavit required on any self-insurance application or other document requiring a sworn affidavit also applies to all attachments, additions, and any subsequent amendments to those documents.
- (e) If the financial statements under subsection (a)(2) of this section are dated more than six months prior to the date of the application, interim financial statements may be required.
- (f) Applicants will be evaluated for stability and financial strength. Applicants shall provide information relevant to the factors specified in Texas Labor Code §407.061 and §407.062 and shall ensure that a credit or debt rating and an analysis of that rating have been prepared by one of the following:
- (1) Dun & Bradstreet or other recognized credit reporting agency's ratings; or
  - (2) debt ratings from Standard & Poor's or Moody's.
- (g) In addition to reviewing the information required in subsection (f) of this section, the director shall consider the applicant's:
- (1) liquidity ratio;
  - (2) ratio of current assets to current liabilities;
  - (3) ratio of tangible net worth to long-term debt;
  - (4) ratio of tangible net worth to total liabilities;
  - (5) cash flow;
  - (6) working capital;

(7) profitability; and

(8) one of the following:

(A) Dun & Bradstreet or other recognized credit reporting agency's ratings; or

(B) debt ratings from Standard & Poor's or Moody's.

*The provisions of this §114.3 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

#### **§114.4. Security Deposit Requirements.**

(a) A security deposit shall be one or a combination of any of the following:

(1) surety bond. The surety bond must be issued by a company authorized to conduct such business in Texas and possess either a current A.M. Best rating of B+ or better or a Standard & Poor's rating of claims paying ability of A or better;

(2) cash, bonds or other evidence of indebtedness issued, assumed or guaranteed by the United States of America or the State of Texas. Any such securities shall be deposited with the Comptroller of Public Accounts pursuant to a trust agreement prescribed by the director; or

(3) irrevocable letter of credit issued by a Texas state chartered bank or a federally chartered bank with a branch office in Texas. The bank shall have a long-term debt rating of at least A or better in the current monthly edition of "Moody's Statistical Handbook" or a long-term investment grade rating of at least A or better in the current edition of "Global Ratings Handbook" prepared by Standard & Poor's Corporation. If the bank's rating subsequent to issuing the letter of credit falls below the acceptable rating, the certified self-insurer shall replace the letter of credit within 60 days with a new letter of credit issued by a bank with an acceptable rating.

(b) Bonds and irrevocable letters of credit must be in a form approved by the director.

(c) A security deposit in the form of cash must be in United States currency.

(d) The amount of the security deposit shall in no case be less than the retention amount of the excess insurance required by the director.

(e) The commission will not issue a certificate before the guarantor of the security has submitted to the commission a security deposit that meets the requirements of this section.

(f) The certified self-insurer shall notify the director if the security bond or letter of credit no longer meets the requirements of subsection (a) of this section. This notice shall be provided in writing to the director within 30 days of that change.

(g) The director may require a substitution of the security deposit in the event that the certified self-insurer's surety or guarantor no longer meets the requirements of subsection (a) of this section.

*The provisions of this §114.4 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective December 2, 1997, 22 TexReg 11692; amended to be effective May 9, 2004, 29 TexReg 4186.*

### **§114.5. Excess Insurance Requirements.**

- (a) The upper limit of liability for a contract or policy of excess insurance shall be in the amount required by the director. The minimum amount the director may require is \$5 million per occurrence.
- (b) A contract or policy of excess insurance must be issued by an insurance company authorized by the State of Texas to transact such business and shall include the following provisions:
  - (1) cancellation requires notice to the director in the form and manner prescribed by the director at least 60 days before termination;
  - (2) non-renewal requires notice to the director, in the form and manner prescribed by the director at least 60 days before the end of the policy;
  - (3) the Association must be named as an additional insured on the excess policy and may assume the rights and responsibilities of the certified self-insurer under the policy when the certified self-insurer is declared to be impaired; and
  - (4) all of the following benefits to which the injured employee is entitled under the Act must be applied toward reaching the retention amount:
    - (A) payments made by the certified self-insured employer;
    - (B) payments due and owing by the certified self-insured employer;
    - (C) payments made on behalf of the certified self-insured employer by any form of security as required by the Act or commission rules; and
    - (D) payments made by the Association pursuant to Texas Labor Code §407.121 and §407.127.
- (c) The commission will not issue a certificate before the excess insurance carrier has submitted to the commission evidence of a qualifying excess insurance policy that meets the requirements of this section.
- (d) The certified self-insurer who elects to cancel or chooses not to renew a policy of excess insurance shall notify the director 60 days prior to the cancellation or termination in the form and manner prescribed by the director.

*The provisions of this §114.5 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective March 13, 2000, 25 TexReg 2088; amended to be effective May 9, 2004, 29 TexReg 4186.*

### **§114.6. Safety Program Requirements.**

To qualify as an effective safety program under Texas Labor Code §407.061(d), an applicant's safety program must include the following components at a minimum:

- (1) A management component that includes:
  - (A) a clearly written safety policy distributed to all employees;
  - (B) a written assignment of safety responsibilities and delegation of authority which includes oversight of implementation of the safety program and the authority to communicate directly with the employer's top management regarding health and safety issues;
  - (C) a method of receiving, evaluating, and responding to employee input regarding workplace health and safety; and

- (D) a process to ensure review and revision of the safety program when changes in processes, procedures, operations, or equipment are implemented or anticipated, to ensure continued effectiveness of the safety program.
- (2) An analysis component that:
- (A) facilitates the recognition of injury and illness trends, and
  - (B) facilitates the focus of corrective action on identified trends.
- (3) A records component that requires documentation of:
- (A) analysis results and any consequent improvement effort or corrective action;
  - (B) safety-related employee training, including the training topic and date trained;
  - (C) internal and/or external safety audits or inspections of facilities, equipment, practices, and procedures;
  - (D) accident investigations;
  - (E) safety committee meeting minutes, if such a committee is present in the workplace; and
  - (F) any other safety-related records deemed appropriate by the applicant.
- (4) A safety-training component that provides employees with initial and recurring training on all topics required to perform assigned duties safely.
- (5) An audit/inspection component that requires:
- (A) periodic inspections of facilities, equipment, and safety-related practices and procedures; and
  - (B) periodic evaluation and monitoring of industrial hygiene exposures.
- (6) An accident investigation component that focuses on the identification and mitigation of causal factors.

*The provisions of this §114.6 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

#### **§114.7. Certification Process.**

- (a) The director shall request review and approval of the Association by forwarding a summary of the relevant application information after the director deems the application complete and finds the applicant's financial information required under §114.3 of this title (relating to Application Form and Financial Information Requirements) reflects one of the following qualifying financial ratings:
- (1) Dun & Bradstreet rating of 3A1 or better;
  - (2) Standard & Poor's rating of BBB or better;
  - (3) Moody's rating of Baa or better; or
  - (4) minimum tangible net worth of \$5 million with a ratio of tangible net worth to long-term debt of 1.5 to one or greater.
- (b) The director may audit information supplied by an employer applying for a certificate.

- (c) The director shall recommend an applicant for certification only with approval of the application by the Association. Failure of the Association to respond within 120 days after the Association's receipt of the information provided for in subsection (a) of this section will be deemed as the Association's approval of an applicant to be a certified self-insurer.
- (d) Within a reasonable time after approval by the Association of a completed application, the director will recommend to the commission approval or denial of the application at a public meeting for self-insurance business (generally quarterly) that follows the completion of an application and the approval process described in subsection (c) of this section.

*The provisions of this §114.7 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

**§114.8. Refusal To Certify an Employer.**

- (a) When the commissioners determine an application should be denied, the applicant will be notified of the following:
  - (1) the specific reasons for the denial;
  - (2) the specific conditions, if any, the applicant must meet to become certified;
  - (3) that the applicant has a 30-day period from the date the applicant receives the notice to meet the conditions required or provide compelling information to the commission to rebut the reasons for denial; and
  - (4) the form and format required to notify the commission of the actions taken by the applicant to overcome the denial.
- (b) The notice described in subsection (a) of this section shall be:
  - (1) in writing; and
  - (2) sent to the contact person, return receipt requested.
- (c) The denial becomes final on the 31st day after the applicant receives the notice of denial if the applicant has not responded.
- (d) When the applicant timely responds to the denial, the commissioners may grant or deny the application by majority vote within 130 days after the applicant received the notice of denial, and such action shall be final immediately. If the commission fails to take action within 130 days after the applicant received the notice of denial, the denial becomes final on the 131st day.

*The provisions of this §114.8 adopted to be effective January 1, 1993, 17 TexReg 7896.*

**§114.9. Required Safety Program Inspections.**

- (a) An employer seeking to obtain a certificate shall have its safety program reviewed and/or inspected by the commission before the issuance of its initial certificate and thereafter, as appropriate, to demonstrate the existence of an effective safety program for each location.
- (b) To facilitate the review or inspection process, the employer shall provide the commission with access to all of the documents related to its safety program and its workers' compensation claims and shall permit the

inspection of any of its work sites during working hours. Unreasonable refusal to provide access to the required information or facilities may be considered as:

- (1) submission of an incomplete application or grounds for revocation of a certificate; and
  - (2) a Class A administrative violation, with each day of noncompliance constituting a separate violation.
- (c) Unless significant deficiencies are noted in a safety program review or inspection, the commission is not required to issue a review or inspection report.

*The provisions of this §114.9 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

#### **§114.10. Claims Contractor Requirements.**

- (a) Claims administration must be performed by an adjuster licensed in Texas to handle workers' compensation claims.
- (b) Each proposed contract to provide claims services to a certified self-insurer must be approved by the director prior to recommending approval of an application to self-insure or, if a certified self-insurer is changing from one claims contractor to another, prior to the effective date of the new contract.
- (c) An applicant must ensure that a current signed claims administration contract remain on file with the division at all times.
- (d) The claims contractor must promptly investigate each reportable injury and either pay benefits or controvert, as required by the Act and commission rules.

*The provisions of this §114.10 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

#### **§114.11. Audit Program.**

- (a) The director shall audit certified self-insurers as frequently as necessary to assure compliance with the Act and commission rules, but shall audit each certified self-insurer at least once every three years.
- (b) An audit may include, but not be limited to:
  - (1) any representation made on an application or in an annual report required by §114.15(b) of this title (relating to Revocation of Certificate of Authority to Self-Insure);
  - (2) payroll and classification;
  - (3) loss history;
  - (4) claims administration;
  - (5) loss reserves;
  - (6) interviews of the certified self-insurer, its agents, or employees regarding any matter within their knowledge and pertaining to the obligations of the certified self-insurer under the Act or commission rules; and
  - (7) any other issue deemed appropriate by the director.

(c) A written report shall be provided to the certified self-insurer within 30 days after the audit is completed.

(d) A certified self-insurer's unreasonable refusal to make the required information available constitutes:

(1) grounds for revocation of the certificate; and

(2) a Class A administrative violation, with each day of noncompliance constituting a separate violation.

*The provisions of this §114.11 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

**§114.12. Required Reporting.**

(a) Each certified self-insurer shall file with the division an annual application or, if required by §114.15(b) of this title (relating to Revocation of Certificate of Authority to Self-Insure), an annual report, according to a schedule established by the director. The director may, in his or her discretion, require an annual application or annual report to include the following:

(1) claims information, such as loss run information, in the form and manner prescribed by the director;

(2) an information report, in the manner prescribed by the director, that includes an analysis of accident trends which:

(A) identifies losses by location, occupation, or job function; and

(B) provides an analysis of those losses based on:

(i) nature, source, and severity of the injury;

(ii) cause of the injury;

(iii) parts of the body affected;

(iv) equipment involved in the injury;

(v) number of injuries and fatalities other than occupational diseases; and

(vi) identification of the number of occupational diseases;

(3) independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants; and

(4) any substantive policy or procedure changes in the certified self-insurer's safety program.

(b) If any of the information required by this section is more than six months old, it may be considered incomplete and the director may require the certified self-insurer to provide updated information.

(c) An application, annual report required by §114.15(b) of this title (relating to Revocation of Certificate of Authority to Self-Insure), or other designated document will not be complete until all parts of the document, including all required attachments and any required updates, are filed.

*The provisions of this §114.12 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*



### **§114.13. Required Notices to the Director.**

- (a) A certified self-insurer that amends its charter, articles of incorporation, or partnership agreement to change its identity or business structure, or in any other manner materially alters its status as it existed at the time of issuance of its certificate shall, within 30 days after the amendment or other action, notify the director of such action in the form and manner prescribed by the director and provide the director with a copy of such amendment or other action.
- (b) A certified self-insurer that ceases doing business entirely, ceases doing business in Texas, or disposes of, by sale or otherwise, the controlling interest of the business for which the certificate was issued, shall immediately notify the director in the form and manner prescribed by the director of such action and the director will notify the Commissioners who will act on the notice pursuant to Texas Labor Code, §407.045.
- (c) A certified self-insurer shall give notice to the director in the form and manner prescribed by the director of any change in contact person within 10 working days of this change. The notice shall include the name, title, office address, and telephone number, facsimile number and e-mail address of the new contact person.
- (d) A certified self-insurer shall give notice to the director in the form and manner prescribed by the director at least 30 days prior to any change in the claims contractor. The notice shall include the name, title, office address, and telephone number, facsimile number and e-mail address of the person or persons appointed to administer both the existing cases and the new cases and the location or locations of records required to be kept and maintained pursuant to Texas Labor Code, §407.082.
- (e) A certified self-insurer shall notify the director in the form and manner prescribed by the director of any change or expected change which will significantly alter the liability or solvency of the certified self-insurer within 30 days of the certified self-insurer's knowledge of the change.
- (f) For purposes of §406.006 of the Texas Labor Code, coverage takes effect upon approval by the director and the director shall notify the Commission within 10 days of the approval. This notification by the director fulfills the certified self-insurer's requirement to file notice of coverage and claim administration contact information as required by §406.006.

*The provisions of this §114.13 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective March 13, 2000, 25 TexReg 2088.*

### **§114.14. Impaired Employer.**

If a certified self-insurer becomes an impaired employer, the director shall protect the employees of such employer by promptly:

- (1) calling the security deposit and placing the funds in an account for the impaired employer;
- (2) notifying the Association or other entity designated by the commission to assume the liabilities of the impaired employer; to begin paying, pursuant to Texas Labor Code §407.127, benefits out of the impaired employer's account; and, if necessary, to notify the Association to begin paying benefits out of its trust fund; and
- (3) estimating the amount of any additional funds needed to supplement the security deposit and available assets of the impaired employer and advise the Association of the amount the Association will need to assess each certified self-insurer to cover the estimated liabilities once the impaired employer's security account has been expended.

*The provisions of this §114.14 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective May 9, 2004, 29 TexReg 4186.*

**§114.15. Revocation or Suspension of Certificate of Authority To Self-Insure.**

- (a) The commission may revoke the certificate of a certified self-insurer who fails to comply with requirements or conditions established by Chapter 407 of the Texas Labor Code or any rule within Chapter 114 of this title (regarding Self-Insurance), including:
- (1) failure to maintain financial strength;
  - (2) failure to implement and maintain an effective safety program;
  - (3) failure to maintain acceptable claim services;
  - (4) failure to obtain and maintain the required security deposit;
  - (5) failure to obtain and maintain excess insurance as required by the director;
  - (6) failure to file any required information under §114.12 of this title (relating to Required Reporting);
  - (7) unreasonable refusal to make information available as required under §114.11 of this title (relating to Audit Program);
  - (8) failure to provide notice as required in §114.13 of this title (relating to Required Notices to the Director);  
or
  - (9) failure to comply with any provision of the Act or with any commission rule.
- (b) The commission may suspend or revoke the certificate of a certified self-insurer due to the certified self-insurer's failure to pay an assessment as required by Texas Labor Code §407.124(b) and §407.125.
- (c) A certified self-insurer whose certificate has been revoked, suspended, withdrawn, or denied must file an annual report, in the form and manner prescribed by the director.
- (d) Pursuant to Texas Labor Code §§407.046, 407.047, and 407.082, the director shall continue to audit the claims of any certified self-insurer whose certificate has been revoked, suspended, withdrawn, or denied.
- (e) Prior to revoking a certificate, the commission shall refer the matter to the State Office of Administrative Hearings, which shall hold a hearing to determine if the certificate should be revoked.

*The provisions of this §114.15 adopted to be effective January 1, 1993, 17 TexReg 7896; amended to be effective December 4, 1995, 20 TexReg 9698; amended to be effective May 9, 2004, 29 TexReg 4186.*