

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 125]

Workers' Compensation Self-Insurance

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), proposes to amend Chapter 125 (relating to workers' compensation self-insurance), which governs the processing of applications for and the administration of self-insurance under the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4) and The Pennsylvania Occupational Disease Act (Occupational Disease Act) (77 P. S. §§ 1201—1603). The amendments, as set forth in Annex A, are proposed under the authority provided in section 435 of the act (77 P. S. § 991). That section provides that the Department will adopt regulations as necessary to explain and enforce the provisions of the act.

Sections 125.2, 125.3, 125.9 and 125.16 are part of Subchapter A (relating to individual self-insurance) which pertains to self-insurance by individual employers. Sections 125.132—125.135, 125.148, 125.150 and 125.152 are part of Subchapter B (relating to group self-insurance) which enforces and administers the group self-insurance provisions of the act set forth in Article VIII of the act (77 P. S. §§ 1036.1—1036.18). In addition to section 435 of the act, the amendments to Subchapter B are proposed under section 818 of the act (77 P. S. § 1036.18). That section specifically authorizes the Department to promulgate rules for the administration and enforcement of group self-insurance. Section 125.202 falls under Subchapter C (relating to self-insurance guaranty fund) which provides regulations relating to the Self-Insurance Guaranty Fund (Guaranty Fund). Provisions concerning the Guaranty Fund are in Article IX of the act (77 P. S. §§ 1037.1—1037.7). In addition to section 435 of the act, the amendment to § 125.202 is proposed under section 908 of the act (77 P. S. § 1037.8), which specifically authorizes the Department to promulgate rules for the administration and enforcement of the Guaranty Fund.

Purpose of Proposal

On June 24, 1996, Governor Tom Ridge signed into law the act of June 24, 1996 (P. L. 350, No. 57) (Act 57), which substantially amended the act. Among many other things, Act 57 amended sections 305 and 802 of the act (77 P. S. §§ 501 and 1036.2) and added section 819 (77 P. S. § 1036.19). Those changes affected matters relating to the requirements for self-insurance. Portions of the proposed amendments to §§ 125.2 and 125.9 and the proposed amendments to §§ 125.134, 125.148 and 125.152 are necessary to bring Chapter 125 into conformity with the Act 57 amendments.

The Bureau is also proposing other amendments to § 125.9 to modify the formulas for calculating the amount of security which must be posted by individually self-insured private employers and to permit the discounting of the required amount of security in certain circumstances.

Another amendment to § 125.2 and amendments to §§ 125.3, 125.16 and 125.150 are also proposed to provide needed clarification to Chapter 125. The need for clarifi-

cation has been identified through the administration of Chapter 125 since its promulgation in October of 1995.

In addition, the Bureau is proposing amendments to Subchapter B to permit group self-insurance funds that must now charge contribution rates equal to insurance rates charged by the State Workers' Insurance Fund (SWIF) to use individual loss-cost multipliers to recoup operating expenses. The amendments to §§ 125.132, 125.133 and 125.135 relate to that proposal.

Finally, the amendment to § 125.202 simply updates the definition of "SWIF" used in Subchapter C to bring it in conformity with Act 57, which renamed the State Workmen's Insurance Fund the State Workers' Insurance Fund.

Summary of the Proposal

(1) Act 57 amended section 305(A)(2) of the act to exempt the Commonwealth and its political subdivisions from the requirement of posting security covering its workers' compensation liability. Prior to Act 57, only municipalities were granted the security requirement exemption. The Bureau proposes the following amendments to the individual self-insurance regulations under Subchapter A in response to that amendment to the act:

(i) The addition of a definition for "Commonwealth" under § 125.2 (relating to definitions). This is needed to clarify the self-insured entities that qualify for the security requirement exemption as the Commonwealth.

(ii) The addition of a definition for "instrumentality of the Commonwealth." This is needed to describe the class of public employers which are neither the Commonwealth nor political subdivisions, such as State-related universities.

(iii) The deletion of the definition of "municipality" under § 125.2. Entities included under the definition of "municipality" would be included under the proposed definition of "political subdivision."

(iv) The addition of a definition for "political subdivision" under § 125.2. The proposed definition derives from the definition of "political subdivision" under section 801 of the act (77 P. S. § 1036.1). Although section 801 of the act applies to group self-insurance, the proposed use of the definition for individual self-insurance is appropriate since it would result in a common treatment of political subdivisions for security and funding matters, whether those employers are individually self-insured or a member of a group self-insurance fund.

(v) An amendment to the definition of "public employer" under § 125.2 to incorporate changes to other related definitions under the section.

(vi) An amendment to subsection (a) of § 125.9 (relating to security requirements) to state that the security requirement exemption applies to the Commonwealth and its political subdivisions.

(2) Act 57 also amended section 305(A)(2) of the act to change the ratings banks must have from independent rating companies to provide letters of credit for self-insurance security. The amendment applies to letters of credit posted to secure liabilities of individual self-insurers and group self-insurers. The proposed amendments to § 125.9(b)(3)(i) and to § 125.148(3)(i) will provide for those changes.

(3) Act 57 amended section 802(b)(11) of the act (77 P.S. § 1036.2) to exempt group self-insurance funds comprised exclusively of political subdivisions from the security requirement. The Bureau proposes an amendment to § 125.134(d)(2) (relating to decisions on applications) to include that exemption in the self-insurance regulations.

(4) Act 57 added section 819 to the act. That section authorizes an association of employers to establish one board of trustees to oversee the operations of several related group self-insurance funds. The Bureau proposes adding subsection (e) to § 125.152 (relating to board of trustees) to implement section 819 of the act.

The proposed amendments require that the group self-insurance funds participating in a consolidated board of trustees be equally represented on the board. The proposal also clarifies that each member's pledge of joint and several liability, a requirement of the act for group self-insurance, applies to the liabilities and obligations of its fund only, not to the liabilities and obligations of the other funds participating in the consolidated board of trustees.

To ensure that each group self-insurance fund participating in a consolidated board of trustees maintains its ability to operate as an independent unit, the proposal provides that only the trustee-representative of each specific fund shall vote on matters relating to the amendment of the fund's governing documents and shall set policies on the admission of membership for the fund.

The proposal also would extend the restrictions on the makeup of independent boards of trustees contained under § 125.152(c) to the consolidated board of trustees.

(5) Under the current regulations, a new self-insured private employer must post security in an amount equal to the greater of its total incurred insured workers' compensation losses in the 3 years prior to the start of its self-insurance status or a certain minimum amount. The minimum is based on the retention amount of the self-insurer's excess insurance or a multiple of the State-wide average weekly wage. A mature self-insurer, that is, an employer which has been self-insured for five or more years, must post security in an amount equal to the greater of 110% of its developed outstanding liability or the minimum amount. Self-insurers with 1 to 5 years of experience must provide security in an amount equal to the greater of that required for a new self-insurer or that required for a mature self-insurer. The Bureau proposes to alter the existing security formulas in the following ways:

(i) The minimum security amount defined under § 125.9(d) (relating to security) would be changed to a security constant which will be added to the security requirement of all self-insurers. The security constant would replace the 10% of a self-insurer's outstanding liability which is added to its required amount of security. The 10% additive is intended to provide a margin for adverse loss development, to stabilize the results of self-insurers with a low volume of claims, and to provide funds for the administration of claims in the event of a default. The 10% additive may, however, overly inflate the security of self-insurers with a large liability while not providing a sufficient margin for small self-insurers, for which the additional margin is most needed. The replacement of the 10% additive with the security constant would correct that situation.

(ii) The amount of security required of a new self-insurer under § 125.9(d)(1) would be changed to the

applicant's greatest annual insured incurred loss during the 3 years prior to self-insurance plus the security constant. This would generally decrease the amount of security required of new self-insurers while providing sufficient security to cover the new self-insurer's likely incurred losses during its first year of self-insurance.

(iii) The transition period during which the amount of a renewal applicant's security is based on the greater of the initial amount of security or the self-insurer's outstanding liability would be reduced from 5 years to 3 years under a proposed amendment to § 125.9(d)(2). After 3 years, security would be based on a renewal applicant's self-insurance experience, as reflected in a proposed amendment to § 125.9(d)(3).

(iv) Under § 125.9(i) the Bureau may reduce a self-insurer's required amount of security to account for assets segregated in a trust fund for the payment of workers' compensation liability. A provision would be added to this subsection to state that the security reduction resulting from such a trust fund could be equal to no less than the security constant. It is the Bureau's current policy to reduce the security to no less than the minimum security amount under such circumstances.

(v) The current regulations do not permit a discounting of the amount of security for self-insurers with a strong financial condition. It has been suggested to the Bureau that the risk of default for those self-insurers is very low, making the requirement of security equal to the amount of outstanding liability unnecessary. In response, the Bureau proposes two levels of security discount: a 40% discount for self-insurers whose debt is rated in the two highest categories by Moody's Investors Services or Standard & Poor's Corporation; or a 20% discount for self-insurers whose debt is rated in the next two categories by Moody's or Standard & Poor's. (All four levels of qualifying debt ratings are investment grade ratings.) That proposal, contained in the addition of subsection (l) to § 125.9, provides for acceptable security discounts where merited. At the same time, the layering of the discounts recognizes that the financial condition of a strong self-insurer can decline, mandating the provision of additional security as the financial condition weakens.

(vi) An additional subsection, subsection (m), would be added to § 125.9 to provide that the termination of self-insurance status does not relieve a runoff self-insurer from the obligation of providing security in an amount as outlined in the section. That provision is essential to protect the compensation rights of employees of self-insurers, especially if self-insurers are permitted to provide security in amounts less than the amount of their outstanding liability while they maintain a certain debt rating.

(6) The proposed amendments to §§ 125.132, 125.133 and 125.135 would permit group self-insurance funds which must now charge contribution rates equal to those charged for insurance by SWIF to use individual loss-cost multipliers to recoup operating expenses. Under the proposal, those funds shall be required to continue to use current loss-costs, as approved by the Insurance Commissioner for workers' compensation insurance as the basis for charging members for losses under the act and The Occupational Disease Act. They would file with the Bureau a proposed loss-cost multiplier which would be based on their own projected administrative and operating expenses. The Bureau will review each fund's proposed loss-cost multiplier, which will be approved unless the Bureau determines that the proposed multiplier is unreasonably low.

Many current group self-insurance funds have expressed concerns that under current regulation they must charge rates for operating costs which are in excess of their actual costs. By permitting funds to request their own expense charges, the proposed regulation may result in lower contribution rates for members of funds.

The Bureau also proposes to amend § 125.135(b) to permit funds to reduce a member's contribution rates for 5 years if the member establishes a workplace safety committee which receives certification under section 1002 of the act (77 P.S. § 1038.2). The current regulation permits a 1-year 5% safety committee discount.

Act 57 also amended the act to expand the 5% safety committee discount for employers which insure their workers' compensation liability from 1 year to 5 years. The Department has interpreted Act 57 to permit the application of the 5% safety committee discount to group self-insurance members in order to further encourage the establishment and maintenance of workplace safety committees.

(7) The current definition of "applicant" under § 125.2 excludes a parent company which is an employer in this Commonwealth from submitting a self-insurance application on behalf of its subsidiaries unless the parent also applies for self-insurance. This is a drafting oversight. The Bureau proposes to amend the definition of "applicant" to correct the matter.

(8) The Bureau proposes to amend § 125.3(c)(3)(i) (relating to application) to provide that the financial statements required to be submitted as part of the self-insurance application shall be in conformity with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board or the Government Accounting Standards Board or with international accounting standards as prescribed by the International Accounting Standards Committee. International accounting standards financial statements are being added as acceptable to address the concerns of multinational companies adhering to those standards. International accounting standards are the recognized and prevalent accounting practices of many such companies.

The current regulation deems acceptable statements made in conformity with the principles prescribed by the American Institute of Certified Public Accountants (AICPA), even though the AICPA does not prescribe such standards. Since this has caused some confusion, the reference to the AICPA is being eliminated.

(9) Runoff self-insurers and runoff group self-insurance funds are now required to submit a report on their self-insurance claims by April 15 of each year under §§ 125.16 and 125.150, respectively. The Bureau proposes to amend those sections to permit the Bureau to set a separate filing deadline for the report for each runoff self-insurer or runoff fund. The Bureau will generally schedule the receipt of the reports to coincide with a runoff self-insurer's former annual reapplication due date or a runoff fund's annual report due date. This would permit runoff self-insurers or runoff funds to continue to maintain information based on the reporting cycle followed when they were self-insured.

Fiscal Impact

Overall, the proposed amendments will have a beneficial fiscal impact on most individual self-insured employers and group self-insurance funds affected by them. The proposed amendments also will not affect the Bureau's costs of administering the self-insurance regulations.

Through their implementation of Act 57's provisions expanding the self-insurance security requirement exemption to all self-insured political subdivisions, to the Commonwealth and to group self-insurance funds comprised of political subdivisions, the proposed regulatory amendments permit those entities to reduce the administrative costs of their self-insurance programs by eliminating associated costs for these security instruments as surety bonds and letters of credit.

The statutory amendment changing the independent ratings a bank must possess to post a letter of credit as self-insurance security increases the potential pool of banks acceptable for that purpose. This will increase competition among banks in providing letters of credit, which may reduce the self-insurers' cost in obtaining letters of credit.

The Act 57 amendment authorizing an association of employers to establish a consolidated board of trustees overseeing the operation of more than one group self-insurance fund may reduce the cost of operating the affected group self-insurance funds by permitting a consolidation of their service providers.

The proposed amendments changing the formulas for calculating the amount of security materially reduces the required amount of security of one-third of the self-insured private employers, while it increases the amount of security of another one-fifth of the self-insurers. The total decrease in the amount of security is far greater than the amount of additional security required. The average increase in security would be about \$200,000 or \$300,000 per affected self-insurer, while individual security decreases would be as large as \$10 million. Those self-insurers required to increase their amount of security are those with a low volume of claims which do not possess an investment grade debt rating. The increase in security for these self-insurers is justified because of their vulnerability to dramatic increases in the value of their outstanding liability and their generally lower financial capacity to absorb those fluctuations.

Approximately 10% of the self-insured private employers would qualify for the 40% discount to their amount of security due to their superior debt rating while 20% of the current self-insured private employers would qualify for the 20% reduction in security.

The proposed amendments to the regulations permitting certain group self-insurance funds to charge contribution rates reflective of their own administrative costs rather than a standard administrative rate may reduce the contribution rates which those group self-insurance funds charge their members.

Since the proposed amendments to the definition of "applicant" under § 125.2 and to §§ 125.3(c)(3)(i), 125.16 and 125.150(a) clarify existing regulation, they do not have a fiscal impact.

Affected Persons

The proposed amendments relating to the elimination of security shall affect the Commonwealth and current and prospective individually self-insured political subdivisions and political subdivision group self-insurance funds. The proposals pertaining to group self-insurance expense charges and board of trustees will affect current group self-insurance funds and prospective funds. The changes to the required ratings for banks posting letters of credit most directly affect the additional banks which now provide letters of credit, but also affect all self-insurers required to post security.

Paperwork Requirements

Only the amendments to Subchapter B relating to individual fund loss-cost multipliers will require additional paperwork. A fund shall complete and submit a form and supporting documentation to request Bureau approval of its proposed loss-cost multiplier. The potential savings should outweigh the paperwork requirement associated with the proposal.

Effective Date

The proposed amendments will be effective upon final publication in the Pennsylvania Bulletin.

Sunset Date

No sunset date is necessary for the proposed regulatory amendments. The regulations are continuously monitored by the Workers' Compensation Advisory Council and by the Bureau in the day-to-day handling and processing of individual self-insurance and group self-insurance fund applications. If needed, corrections can be initiated based on information obtained by these operations.

Public Comment and Contact Person

For further information on this proposal, contact George Knehr, Chief, Self-Insurance and Safety Division, at (717) 783-4476. Interested persons are invited to submit their written comments, suggestions or objections regarding this proposed rulemaking within 30 days following publication in the Pennsylvania Bulletin. Written comments, suggestions or objections should be sent to:

George Knehr, Chief
Self-Insurance and Safety Division
Bureau of Workers' Compensation
P. O. Box 15121
Harrisburg, PA 17105-5121

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 7, 1997, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committee review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor, of objections raised.

JOHNNY J. BUTLER,
Secretary

Fiscal Note: 12-49. No fiscal impact; (8) recommends adoption. The costs would be offset by the savings associated with this regulation for Workers' Compensation Self-Insurance.

Annex A

TITLE 34. LABOR AND INDUSTRY
PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter A. INDIVIDUAL SELF-INSURANCE

§ 125.2. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Applicant—An employer requesting permission to initiate or to renew self-insurance, an employer requesting permission for it and its affiliates or subsidiaries to initiate or to renew self-insurance, or a parent company [which is not an employer in this Commonwealth which requests] requesting permission for its subsidiaries to initiate or to renew self-insurance.

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Commonwealth—

(i) The government of the Commonwealth, including the following:

(A) The courts and other officers or agencies of the unified judicial system.

(B) The General Assembly, and its officers and agencies.

(C) The Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth.

(ii) The term does not include any instrumentalities of the Commonwealth or political subdivisions.

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Instrumentality of the Commonwealth—An employer, politic and corporate, exercising an essential government function. The term does not include the Commonwealth or any political subdivisions.

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[Municipality—A county, city, borough, incorporated town or township.]

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Political subdivision—A county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority, or other entity created by a political subdivision under law.

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Public employer—The Commonwealth [of Pennsylvania, any board, commission, agency, authority or], an instrumentality of the Commonwealth [and municipalities] or a political subdivision.

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§ 125.3. Application.

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(c) With the application, the applicant shall include:

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(3) Its latest audit report issued by a licensed certified public accountant or accounting firm. The report shall cover the last complete fiscal-year period immediately prior to the date of application. If the most current audited period precedes the application date by more than 6 months, the applicant's latest SEC Form 10-Q or unaudited interim financial statements shall be submitted. The audit report shall meet the following criteria:

(i) It shall include financial statements which are presented in conformance with applicable generally accepted accounting principles as promulgated by the Financial Accounting Standards Board[,] or the Government Accounting Standards Board [or the American Institute of Certified Public Accountants (AICPA)] or with international accounting standards promulgated by the International Accounting Standards Board.

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§ 125.9. Security requirements.

(a) This section applies to self-insured employers except [municipalities] the Commonwealth and political subdivisions. A private employer shall provide security in an amount as set forth in subsection (d). A public employer which is not [a municipality] the Commonwealth or a political subdivision shall provide security in the minimum amount of the Statewide average weekly wage multiplied by 1,000 rounded upward to the nearest hundred thousand or the retention amount of the self-insurer's current specific excess insurance policy if the self-insurer has that coverage, whichever is less, or in a greater amount as determined by the Bureau to protect employees and their dependents against temporary interruptions in the payment of benefits by the self-insurer. The security required in this section is not a substitute for the applicant demonstrating its financial ability to pay compensation under the act and the Occupational Disease Act. A self-insurer's security may be adjusted annually or more frequently as determined by the Bureau.

(b) The following forms of security are acceptable:

* * * * *

(3) An irrevocable letter of credit using language required by the Bureau issued by and payable at a branch office of a commercial bank located in the continental United States, Alaska or Hawaii. The letter of credit shall state that the terms of the letter of credit automatically renew annually unless the letter of credit is specifically nonrenewed by the issuing bank 60 days or more prior to the anniversary date of its issuance:

(i) At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a [B] B/C or better rating or 2.5 or better score by Thomson BankWatch or the issuing bank shall have a CD rating of BBB or better by Standard & Poor's Corporation.

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(d) The amount of security required of self-insured private employers is as described in paragraphs (1)–(4). The [minimum] security [amount] constant shall be the Statewide average weekly wage multiplied by 1,000 [rounded upward to the nearest hundred thousand or], but it shall be the retention amount of the self-insurer's current specific excess insurance policy if the self-insurer has that coverage[, whichever is less]:

(1) For a new self-insurer, the Bureau will determine the amount of security. The initial security will be no less than the amount of the applicant's [total] greatest annual insured incurred workers' compensation [losses] loss in this Commonwealth [for] during the 3 complete policy years prior to its application plus the security constant and rounded upward to the nearest hundred thousand [or the minimum security amount, whichever is greater].

(2) For those who have been approved for self-insurance for more than 1 year but less than [5] 3 years, the amount of security is the greater of that outlined in paragraph (1) or [110%] 100% of the self-insurer's outstanding liability net of excess insurance recoveries, as adjusted by its history of loss development by the Bureau or as projected by an actuary, plus the security constant and rounded upward to the nearest hundred thousand[, whichever is greater].

(3) For those who have been approved for self-insurance for [5] 3 or more years, the amount of security is [110%] 100% of the self-insurer's outstanding liability net of excess insurance recoveries, as adjusted by its history of loss development by the Bureau or as projected by an actuary, plus the security constant and rounded upward to the nearest hundred thousand[, or the minimum security amount, whichever is greater].

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(i) The Bureau may reduce the amount of security required of a self-insurer under subsection (d) to no less than the security constant rounded upward to the nearest hundred thousand if the self-insurer establishes a trust to provide a source of funds for the payment of its liability. A self-insurer may [volunteer to] establish a trust or it may be required by the Bureau to establish a trust as a condition of self-insurance. The trust agreement shall be in a form prescribed by the Bureau. The trust assets shall be held in a Commonwealth chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 or a Federally chartered bank or foreign bank with a branch office and trust powers in this Commonwealth. The Bureau may require that the value of the trust fund shall be adjusted at least annually to [the required funding level as determined] no less than 100% of the self-insurer's outstanding liability net of excess insurance recoveries, as adjusted by its history of loss development by the Bureau or as projected by an actuary.

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(l) The amount of security required of a self-insurer under subsection (d) shall be discounted by 40% and rounded upward to the nearest hundred thousand if the debt of the self-insurer or of the affiliate guarantying the self-insurer's liability is rated Aaa or Aa by Moody's Investors Services or AAA or AA by Standard & Poor's Corporation. The amount of security required of a self-insurer under subsection (d) shall be discounted by 20% and rounded upward to the nearest hundred thousand if the debt of the self-insurer or of the affiliate guarantying the self-insurer's liability is rated A or Baa by Moody's Investors Services or A or BBB by Standard & Poor's Corporation. A self-insurer receiving one of the discounts outlined in this subsection shall increase its security to the appropriate

amount if the debt rating of the self-insurer or of its guarantying affiliate is downgraded to below the rating qualifying it for the discount.

(m) Termination of self-insurance status does not relieve a runoff self-insurer from the obligation to provide security according to this section, including the obligation to provide additional security due to increases in the value of its outstanding liability.

§ 125.16. Reporting by runoff self-insurer.

A runoff self-insurer shall file [a] an annual report with the Bureau by [April 15 of each year] a date prescribed by the Bureau on a prescribed form. The report [will] shall include a list of the runoff self-insurer's open cases, the reserves on those cases, the administrator of those cases and the runoff self-insurer's payout for workers' compensation benefits in the preceding calendar year. This report shall be filed until all cases incurred during the runoff self-insurer's period of self-insurance are closed.

Subchapter B. GROUP SELF-INSURANCE

§ 125.132. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Loss costs—The dollar amounts per unit of exposure attributable to the payment of losses under the act and the Occupational Disease Act, filed by a rating organization based on aggregate experience of all members of that rating organization and approved by the Insurance Commissioner under Article VII of the act (77 P. S. §§ 1035.1—1035.22).

Loss-cost multiplier—A factor approved by the Bureau for each fund which is multiplied against the loss costs to recoup the fund's administrative and operating costs and expenses, including:

(i) The fund's costs in connection with the examination, investigation, handling, adjusting and litigation of claims.

(ii) The cost of excess insurance, loss control services, underwriting services, assessments and taxes.

(iii) The fees and commissions for accountants, attorneys, actuaries, investment advisors and other specialists whose services are necessary for the operation and administration of the fund.

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[**Manual premium**—A member's current policy year insurance premium derived by adding its bases of premium for each classification multiplied by the loss cost rates and lost cost multiplier used by the State Workmen's Insurance Fund before adjustments for experience or discounts.]

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§ 125.133. Application.

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(c) With the application, the applicant shall include:

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(4) An explanation of the same classification series, as described under § 125.155(a) (relating to homogeneity),

common to all prospective members with the amount of each member's [manual] premium derived from the classification codes within the common series, or an explanation of how the prospective members are engaged in the same or similar types of business, as described under § 125.155(b). The Bureau may request additional information to determine the homogeneity of the applicant.

(5) If the applicant is eligible [and is requesting to deviate from the manual rates used by the State Workmen's Insurance Fund] under § 125.135 (relating to classification system; experience rating; contribution rates) and is requesting to deviate from the loss costs of a rating organization as defined under section 703 of the act (77 P. S. § 1035.3), a report prepared by an independent actuary projecting the workers' compensation incurred loss experience of the applicant during its first fund year by various levels of actuarial confidence and rendering an opinion that the rates requested for use will be adequate to satisfy the applicant's obligations and expenses.

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(12) The applicant's proposed loss-cost multiplier on a form prescribed by the Bureau.

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§ 125.134. Decision on application.

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(d) The applicant will be issued a permit which is effective no sooner than 15 days after the following has been filed with the Bureau:

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(2) Security in an amount as determined by the Bureau, if any. This requirement does not apply to funds comprised exclusively of political subdivisions.

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§ 125.135. Classification system; experience rating; contribution rates

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(b) A fund shall base its member contribution rates on [those which are] no less than the current effective [rates filed by the State Workmen's Insurance Fund and approved or deemed approved by the Commissioner of the Insurance Department under Article VII of the act] loss costs plus the fund's approved loss-cost multiplier. A fund may reduce a member's contribution based on the premium discount specified in Schedule Y of the manual of rules, classifications and rates used by the State [Workmen's] Workers' Insurance Fund resulting from combining the standard premiums of all members. A fund may also reduce a member's contribution rates for [1] year up to 5 years by 5% if the member establishes a workplace safety committee which received certification by the Department and continues to meet certification requirements under section 1002 of the act (77 P. S. § 1038.2) and regulations thereunder.

(c) No later than 45 days prior to the beginning of a fund year, a fund may request the Bureau's permission to change its loss-cost multiplier for member contributions payable during that next

fund year. The request to change a fund's loss-cost multiplier shall be on a form prescribed by the Bureau. The fund may support its loss-cost multiplier request with a report prepared by an independent actuary but an actuarial report is not required.

(d) If the Bureau determines that the loss-cost multiplier requested under subsection (c) is unreasonably low, so that it may impair its ability to meet its expenses, it will notify the fund that the loss-cost multiplier request is denied. The notification will be sent to the fund no later than 30 days after the filing of the request. Use of a loss-cost multiplier which has not been approved by the Bureau shall result in the revocation of the fund's permit under section 805(a) of the act (77 P. S. § 1036.5).

(c) (e) No later than 45 days prior to the beginning of a fund year following its 3rd year of operation, a fund may request permission of the Bureau to deviate from the uniform classification system, uniform experience rating plan, [rates] loss costs and discounts outlined in subsections (a) and (b), including the use of retrospectively rated and deductible plans. An applicant comprised of a majority of prospective members who are participants in a group insurance purchase cooperative/safety group for at least 3 years prior to the submission of its application or comprised of a majority of prospective members who are [municipalities] political subdivisions approved as self-insurers under section 305 of the act (77 P. S. § 501) may also request permission of the Bureau to deviate from the requirements of subsections (a) and (b).

(d) (f) A deviation request under subsection (c) (e) shall be supported by a report prepared by an independent actuary projecting the incurred loss experience of the fund for its next fund year by various levels of actuarial confidence and rendering an opinion that the total contributions received if the deviation is permitted will be adequate to satisfy the applicant's obligations and expenses. A request for deviation from the [rates used by the State Workmen's Insurance Fund] loss costs of a rating organization shall include a schedule of the [rates] loss costs proposed for the fund year.

(e) (g) If the Bureau determines that the deviation requested under subsection (c) (e) may impair the fund's ability to meet its obligations, it will notify the fund that the deviation request is denied. The notification will be sent to the fund no later than 30 days after the filing of the request. Use of [rates] loss costs which have not been approved by the Bureau [will] shall result in the revocation of the fund's permit under section 805(a) of the act (77 P. S. § 1036.5).

§ 125.148. Security.

The security required in § 125.134(d)(2) (relating to decision on application) shall be in one of the following forms:

* * * * *

(3) An irrevocable letter of credit using language required by the Bureau issued by and payable at a branch office of a commercial bank located in the continental United States, Alaska or Hawaii. The letter of credit shall state that the terms of the letter of credit automatically renew annually unless the letter of credit is specifically

nonrenewed by the issuing bank 60 days or more prior to the anniversary date of its issuance.

(i) At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a [B] B/C or better rating or 2.5 or better score by Thomson BankWatch or the issuing bank shall have a CD rating of BBB or better by Standard & Poor's Corporation.

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§ 125.150. Runoff fund.

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(b) A runoff fund shall file [a] an annual report with the Bureau by [April 15 of each year] a date prescribed by the Bureau on a prescribed form. This report shall be filed until all cases incurred by the runoff fund when it was a permittee are closed. The report shall include the information outlined in section 815(b) of the act (77 P. S. § 1036.15(b)).

§ 125.152. Board of trustees.

* * * * *

(e) If an association of employers assist in the establishment of more than one fund, the plan committees of the several funds may decide to participate in a single board of trustees to oversee the operations of the several funds. The following restrictions and requirements apply to that single board of trustees:

(1) Each of the several funds shall be equally represented on the board of trustees.

(2) The pledge of joint and several liability of a member of a fund applies only to the liabilities and obligations of that member's fund; it does not apply to the other funds participating in the single board of trustees.

(3) Only the trustee-representatives of a specific fund shall vote on matters relating to the amendment of that fund's trust agreement or bylaws.

(4) Only the trustee-representatives of a specific fund shall set policies and make determinations governing the admission of members and the requirements for membership in that fund.

(5) At least 2/3 of the single board of trustees shall be members of the plan committees of the several funds. Other restrictions on the makeup of the board outlined under subsection (c) also apply to the single board of trustees.

Subchapter C. SELF-INSURANCE GUARANTY FUND

§ 125.202. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

SWIF—The State [Workmen's] Workers' Insurance Fund.

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