

Notice
of Rulemaking Hearing
Department of Commerce and Insurance
Division of Insurance

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. § 56-5-405(b)(8). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243 (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: John F. Morris or Tracey Gentry Harney, Staff Attorneys, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Pkwy Nashville, Tennessee 37243, telephone (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-83
Self-Insured Workers' Compensation Single Employers

New Rules
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0780-1-83-.01 Purpose and Scope.

The purpose of this Chapter is to provide for the administration of the regulation of employers that self-insure their workers' compensation liabilities in this State pursuant to Tenn. Code Ann. § 50-6-405(b) in order to better protect the health and welfare of the employees working for such employers as well as the public at large.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.02 Definitions.

- (1) “Aggregate Excess Insurance” means the amount of insurance required to cover the total accumulated workers’ compensation benefits for all claims payable for a given period of time with the Employer retaining an obligation for a designated amount as a deductible and the insurer paying all amounts due thereafter up to a maximum total obligation.
- (2) “Certificate of Authority” means a license issued by the Commissioner to an Employer granting it the authority to insure the workers’ compensation liabilities of its employees in this State.
- (3) “Commissioner” means the Commissioner of Commerce and Insurance.
- (4) “Department” means the Tennessee Department of Commerce and Insurance.
- (5) “Employee” means an employee of an Employer that self-insures its workers’ compensation benefits and liabilities pursuant to Tenn. Code Ann. § 50-6-405(a)(2).
- (6) “Employer” means an employer that self-insures its workers’ compensation liabilities pursuant to Tenn. Code Ann. § 50-6-405(a)(2).
- (7) “Impaired Employer” means an Employer:
 - (a) Whose liabilities exceed the value of its assets and/or that has stopped paying debts in the ordinary course of business or is unable to pay them as its debts fall due, as may be shown by an excess of the Employer’s required reserves and other liabilities over its assets;
 - (b) Who has suspended payment of workers’ compensation benefits as determined by the Commissioner;
 - (c) Who has filed for relief under bankruptcy laws;
 - (d) Against whom bankruptcy proceedings have been filed; or
 - (e) For whom a receiver has been appointed by a court of this state.
- (8) “Known Claims” means claims that have been incurred by an employee of the Employer and submitted to Employer for payment of workers’ compensation benefits.
- (9) “Loss Prevention Effort” means an ongoing effort by the Employer to integrate health and safety into the workplace in such a manner that occupational injuries and illnesses are reduced.
- (10) “Loss Prevention Plan” means a plan developed by the Employer with the primary emphasis on reduction of workplace injuries and illnesses.
- (11) “Loss Prevention Services” means services designed to advise and assist employers in the identification, evaluation, and control of existing and potential causes of accidents and occupational health and safety problems.
- (12) “Loss Prevention Services Program” means a program intended to promote occupational health and safety, and to help eliminate and control work hazards to employees.
- (13) “Loss Reserves” means funds of the Employer immediately available to pay:
 - (a) Known or open claims and expenses therewith;

- (b) IBNR and expenses associated therewith;
 - (c) Unearned premiums; and
 - (d) Bad or uncollectible debts.
- (14) “NAIC” means the National Association of Insurance Commissioners.
- (15) “Person” means an individual or a business entity.
- (16) “Qualified Actuary” means an individual who;
- (a) Is a member in good standing of the American Academy of Actuaries and an associate or fellow of the Casualty Actuarial Society;
 - (b) Is qualified to sign statements of actuarial opinion for workers’ compensation insurance company annual statements in accordance with the American Academy of Actuaries and Casualty Actuarial Society’s qualification standards for actuaries signing such statements;
 - (c) Is familiar with the reserve requirements applicable to workers’ compensation insurance companies and self-insuring employers; and
 - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - 1. Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or
 - 2. Been found guilty of fraudulent or dishonest practices; or
 - 3. Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
 - 4. Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
 - 5. Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards.
- (17) “Qualified United States Financial Institution” shall have the meaning assigned by Tenn. Code Ann. § 56-2-209(a).
- (18) “Reserve” means the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.
- (19) “Specific Excess Insurance” means the amount of insurance required to cover the workers’ compensation benefits arising out of a specific occurrence (accident) or occupational disease under the Workers’ Compensation Law with the Employer retaining an obligation for a designated amount as a deductible and the insurer assuming the obligation for all amounts due thereafter up to a maximum total obligation.

- (20) “Third party administrator” means any person engaged by an Employer, excluding an employee of the Employer, to carry out the policies established by the Employer and to provide day to day management of the Employer’s workers’ compensation benefits.
- (21) “Workers’ compensation” means both workers’ compensation and employer’s liability as prescribed under Title 50, Chapter 6 of the Tennessee Code Annotated.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.03 Certificate of Authority Required.

No person shall act as an Employer without a certificate of authority issued to it by the Commissioner.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.04 Application for Certificate of Authority.

- (1) To apply for a certificate of authority, an Employer shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under Tenn. Code Ann. § 56-4-101(a)(1). A person in this state applying for a certificate of authority to act as an Employer shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person’s knowledge and belief.
- (2) An application of an Employer or prospective Employer shall include the following documentation, together with such other information or documentation as the Commissioner may require:
 - (a) Financial statements.
 - 1. The last three (3) Form 10-K’s filed by the Employer with the U. S. Securities and Exchange Commissioner, if such Employer files such 10-K’s; and
 - 2. The Employer’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 (3) fiscal years.
 - (b) Loss history.
 - 1. Documentation evidencing the applicant’s loss history to include the following:
 - (i) The applicant’s organizational structure and management background;
 - (ii) The applicant’s profit and loss history for the past three (3) years;
 - (iii) The applicant’s workers’ compensation loss history for the past three (3) years; and
 - (iv) The number of employees employed by the applicant and/or affected by the applicant’s self-insurance program.
 - (c) Administration.
 - 1. A plan for claims administration that is acceptable to the Commissioner and that designates a third party administrator.

- (i) An Employer may not contract for services with a third party administrator unless the third party administrator holds a certificate of authority issued by the Commissioner pursuant to Rule 0780-1-81.
- 2. Copies of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant.
- (3) The Commissioner shall evaluate the information contained in the application required to be filed under this Rule to assure that no gaps in funding exist and that funds necessary to pay the financial obligations of the Employer will be available on a timely basis. The Commissioner may, in addition to any other factors set forth in this Chapter, consider the following factors in reviewing an application for a certificate of authority under this Rule:
 - (a) The applicant's organizational structure and management background;
 - (b) The applicant's profit and loss history;
 - (c) The applicant's workers' compensation loss history;
 - (d) The source and reliability of the financial information submitted by the applicant;
 - (e) The number of employees affected by self-insurance;
 - (f) The applicant's access to excess insurance markets;
 - (g) Financial ratios, indexes, or other financial measures that the Commissioner finds appropriate, including but not be limited to the following:
 - 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; and
 - 7. Profitability.
 - (h) Any other information considered appropriate by the Commissioner.
- (4) If an applicant is a subsidiary, the applicant's parent organization must guarantee the obligations imposed by this Chapter.
- (5) The Commissioner may require any documents from the Employer necessary to verify the information contained in an application.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.05 Security Deposit Requirements.

- (1) Each Employer shall provide security for incurred liabilities for compensation through a deposit with the Commissioner in the following forms:
 - (a) Negotiable securities;
 - (b) Surety bonds;
 - (c) Certificates of deposit; or
 - (d) Letters of credit.
- (2) The sum of the securities on deposit with the Commissioner shall be at least equal to the greater of the following:
 - (a) \$500,000;
 - (b) One hundred and twenty-five percent (125%) of the Employer's incurred liabilities for compensation; or
 - (c) Such other amount determined by the Commissioner to be necessary to provide sufficient security.
- (3) The security, or a contract between the Employer, a depository institution and the Commissioner evidencing the security held in said depository institution for purposes of compliance with this section, shall be held by the Commissioner and shall be conditioned to run solely and directly for the benefit of the employees of the Employer.
- (4) Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the Commissioner for the benefit of the employees of the Employer.
- (5) The security held pursuant to this Rule may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.
- (6) The venue for any suit filed by the Commissioner under this provision shall be in Davidson County, Tennessee.
- (7) Negotiable securities.
 - (a) All negotiable securities filed under this section shall be the classes of securities listed below and shall be subject to the following requirements:
 1. Obligations issued, assumed or guaranteed by any business entity created or existing under the laws of the United States or any state thereof; provided, that the obligation is or the issuing, assuming or guaranteeing business entities' long term obligations are rated one (1) of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the securities valuation office of the National Association of Insurance Commissioners or one (1), two (2) or three (3) by the securities valuation office of the National Association of Insurance Commissioners.
 2. Obligations, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States, or by any state thereof, or by any county, city, town, village, municipality or district therein, or by any political subdivision thereof, or by any civil division or public instrumentality of one (1) or more of the foregoing, if, by statutory or other legal

requirements applicable thereto, such obligations are payable, as to both principal and interest, from taxes levied, or by such law required to be levied, upon all taxable property or all taxable income within the jurisdiction of such governmental unit or from adequate special revenues pledged or otherwise appropriated or by such law required to be provided for the purpose of such payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements;

- (b) Before accepting any negotiable security for purposes of this section, the Commissioner shall determine whether such negotiable security is suitable for such use. The Commissioner shall consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with such negotiable security.

(8) Bonds.

- (a) All bonds filed under this provision of law shall be issued by an insurer authorized to do business in the state of Tennessee and the insurer shall maintain at least an A rating as determined by the A.M. Best Company.
- (b) Any bond issued by an insurer for purposes of this section shall contain a provision requiring the insurer to give the commissioner of commerce and insurance ninety (90) days written notice of its intention to cancel such bond. The insurer shall not cancel such bond until written notice is given to the commissioner of commerce and insurance and a copy of such notice is given to the Employer.
- (c) An insurer that cancels a bond issued pursuant to this section before the date specified in the written notice set forth in subsection (E) above shall be liable to the employees of the Employer for any lawful workers' compensation claims that were incurred on or before the date the bond was cancelled in amounts up to the maximum penal sum of the bond.

(9) Certificates of deposit.

- (a) All certificates of deposit filed under this provision must be held in a depository institution that is located in the state of Tennessee and is either federally chartered or state chartered.
- (b) If a certificate of deposit is filed with the Commissioner, an agreement shall be entered into between the Commissioner, the depository institution and the Employer pledging the certificate of deposit for the benefit of the Employer's employees. The agreement shall contain a provision executed between the depository institution and the Employer requiring the Employer and the depository institution to give at least ninety (90) days written notice of their intention not to renew the certificate of deposit and a provision that, unless written notice not to renew is given to the Commissioner by the Employer and depository institution within ninety (90) days, the certificate of deposit shall be automatically renewed. The Employer shall submit to the Commissioner, on an annual basis, the status of such certificate of deposit, including evidence of its renewal.
- (c) If the Employer and depository institution fail to comply with Tenn. Code Ann. § 50-6-405(b)(1)(F)(i) or this Rule, the certificate of deposit shall be automatically renewed.
- (d) Any interest accruing on the certificate of deposit while held in the depository institution shall be returned to the Employer at the termination of the certificate of deposit, with the prior written approval of the Commissioner, provided that no claim is due or asserted against the certificate of deposit by the Commissioner.

(10) Letters of credit.

- (a) Any letter of credit filed under this Rule must be issued or guaranteed by a qualified United States financial institution that is located in the State of Tennessee.
 - (b) If an Employer elects to secure payment of its workers' compensation claims by way of a letter of credit, an agreement shall be entered into between the Commissioner, the Employer and the depository institution pledging the letter of credit for the benefit of the Employer's employees and naming the Commissioner as beneficiary under such letter of credit.
 - (c) Such letter of credit shall be clean, irrevocable and unconditional and shall contain a provision which requires the issuer to automatically renew such letter of credit unless the issuer shall provide at least ninety (90) days' prior written notice to the Commissioner of an intention to revoke or not renew such letter of credit. The Employer shall annually submit to the Commissioner information regarding the status of such letter of credit, including evidence of its renewal.
 - (d) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or configuration shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first.
- (11) An Employer shall notify the Commissioner if the security no longer meets the requirements of this Rule. Such notice shall be given no later than fifteen (15) days from the time the Employer determines or should have determined that the security no longer meets such requirements.
 - (12) Any security held for purposes of compliance with this Rule shall be held for a minimum of ten (10) years after the Employer is no longer self-insured and the Employer shall maintain the fair market value of security on deposit at not less than five hundred thousand dollars (\$500,000), unless otherwise approved by the Commissioner.
 - (13) Any security held for purposes of compliance with this Rule shall be in a form substantively that has been previously approved by the Commissioner. Any security that fails to meet any requirement under this section shall not be considered for purposes of determining an Employer's compliance with any of the security maintenance requirements of this Rule.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.06 Excess Insurance Requirements.

- (1) In addition to any other requirements imposed under this Chapter, an Employer shall obtain and maintain excess insurance, both specific and aggregate, in an amount sufficient to cover its liabilities for losses not paid by the Employer and as set by a qualified actuary.
 - (a) Excess insurance policies issued pursuant to this Rule shall be issued by an insurance company holding a certificate of authority issued by the Commissioner to transact such business in this State.
 - (b) Excess insurance policies issued pursuant to this Rule shall contain the following provisions:
 - 1. A cancellation provision requiring notice to the Commissioner at least sixty (60) days prior to any cancellation or termination;

2. A non-renewal provision requiring notice to the Commissioner at least sixty (60) days before the end of the policy;
 3. A provision allowing the Commissioner to assume the rights and responsibilities of the Employer under the policy in the event of the insolvency of the Employer; and
 4. A provision requiring all of the following benefits to which an injured employee is entitled to be applied toward reaching the retention amount:
 - (i) Payments made by the Employer;
 - (ii) Payments due and owing by the Employer; and
 - (iii) Payments made on behalf of the Employer by any form of security as required by this Chapter.
- (c) An Employer shall notify the Commissioner not later than ten (10) days after the date on which the Employer has notice of the cancellation or termination of an excess insurance policy required under this Rule.
- (2) The Commissioner may order an Employer to increase its levels of excess insurance if, in the Commissioner's opinion, such is necessary to prevent the Employer from being considered to be financially hazardous.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.07 Reserve Requirements.

- (1) Each Employer shall establish and maintain adequate loss reserves for, as determined by a qualified actuary:
 - (a) Known claims and expenses associated therewith; and
 - (b) Claims incurred but not reported and expenses associated therewith.
- (2) In addition to the minimum requirements for reserves set out in these Rules, the Commissioner may require, after notice and opportunity for a hearing, additional amounts so that an Employer's reserves are reasonable in relation to the Employer's outstanding workers' compensation liabilities and adequate to meet its financial needs. For purposes of this Rule, in determining whether an Employer's reserves are adequate, the following factors, among others, shall be considered:
 - (a) The size of the Employer as measured by its assets, capital and surplus, reserves, and other appropriate criteria;
 - (b) The classes of risks in which the Employer is self-insuring and the experience of losses for such classes;
 - (c) The loss history of the Employer;
 - (d) The nature and extent of the Employer's excess insurance coverage;
 - (e) The quality, diversification and liquidity of the Employer's investment portfolio; and
 - (f) The recent past and projected future trend in the size of the Employer's investment portfolio;

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.08 Reporting Requirements.

- (1) Every Employer within sixty (60) days of its immediately preceding fiscal year shall file an annual report with the Commissioner to include the following:
 - (a) Independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants;
 - (b) Claims information, such as loss run information, in the form and manner prescribed by the Commissioner;
 - (c) A detailed accounting for reserves for losses outstanding incurred in connection with workers' compensation self-insurance.
- (2) Every Employer shall biennially and within sixty (60) days of its immediately preceding fiscal year file with the Commissioner an opinion from a qualified actuary attesting to the adequacy of the Employer's reserves.
- (3) An Employer 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 of authority shall, within thirty (30) days after the amendment or other action, notify the Commissioner of such action and provide the Commissioner with a copy of such amendment or other action.
- (4) An Employer that changes its third party administrator shall notify the Commissioner at least thirty (30) days prior to any such change, and shall file a copy of the contract with its new third party administrator at that time.
- (5) An Employer who declares voluntary bankruptcy or who is placed into involuntary bankruptcy under U.S.C. Title 11 shall notify the Commissioner, in writing, of the filing of a petition for bankruptcy within twenty-four (24) hours of such filing. An Employer shall also so notify the Commissioner of any affiliates of the Employer which have declared bankruptcy or have been placed into involuntary bankruptcy under U.S.C. Title 11.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.09 Loss Prevention.

Each Employer shall implement and maintain a loss prevention effort, loss prevention plan, and a loss prevention services program and shall maintain written documentation of such plan and provide such documentation to the Commissioner upon request.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.10 Taxes and Delinquencies.

- (1) Each Employer shall be subject to pay a tax computed pursuant to Tenn. Code Ann. § 56-4-207. Such tax shall also include the surcharge imposed on insurance companies pursuant to Tenn. Code Ann. § 56-4-207 to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, Tenn. Code Ann. § 50-3-101, *et seq.*
- (2) Any Employer failing and neglecting to make such returns and payments promptly and correctly on or before June 30 of each year shall forfeit and pay to the Commissioner, in addition to the

amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one half of one percent (.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any Employer not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by the due date and no such penalty or interest may be waived.

- (3) The Commissioner has the discretion, for good cause shown, upon application made in advance of delinquency date, to grant an extension of time determined by the Commissioner but not to exceed sixty (60) days to an Employer to file the premium tax returns and pay the tax imposed by Tenn. Code Ann. § 56-4-207, without penalty attached, but such tax shall bear interest as herein provided from the date the amount was due.
- (4) Any Employer failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date shall thereafter be barred from transacting any business of self-insurance in the state until these taxes and penalties are fully paid, and the Commissioner shall revoke the certificate of authority granted to the Employer to transact business in the state.
- (5) Notwithstanding any other provisions of this Chapter, no grace period for the filing of returns and payments shall be allowed. A premium tax return and payment made to the Commissioner shall not be considered as paid on or before the due date unless:
 - (a) The premium tax return and payment are received by the Commissioner on or before the due date;
 - (b) The premium tax return and payment bears a post office cancellation mark stamped by the United States post office on or before the due date, or are mailed by certified or registered mail, or have a certificate of mailing on or before the due date. A premium tax return and payment received by the Commissioner bearing a metered mail stamp and no post office cancellation mark stamped by the United States post office shall be deemed filed and received on the date such premium tax return arrives at the Commissioner; or
 - (c) In the event a premium tax return and payment are mailed but not received by the Commissioner, or received and the cancellation mark is illegible or omitted, such return and payment shall be deemed filed and received on the date they were mailed, if the sender establishes that the premium tax return and payment were deposited in the United States mail. In order to establish proof of mailing under these circumstances, a record authenticated by the United States post office that the original mailing was sent registered mail, certified mail, or by certificate of mailing, shall be the only proof accepted by the Commissioner.

Authority: Tenn. Code Ann. §§ 50-6-405(b)(8); 56-4-207; 56-4-216.

0780-1-83-.11 Service of Process.

Every Employer that has operated, will operate or is operating in this State as a self-insurer shall be deemed through acceptance of its certificate of authority to have appointed the Commissioner as its attorney-in-fact to receive service of legal process issued against it in this State with respect to its self-insurance of workers' compensation liabilities. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the Employer.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.12 Examinations and Investigations.

- (1) The Commissioner has the authority to examine the affairs of any Employer that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition of the arrangement or to determine whether the arrangement is in compliance with all insurance laws and regulations applicable to it. Such examinations shall be conducted when ever deemed necessary but no less than once every five (5) years, and all expenses of such examinations shall be assessed against the Employer, including the costs of contract examiners or specialists.
- (2) The Commissioner has the authority to investigate the affairs of any Employer that self-insured its workers' compensation liabilities in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.13 Cease and Desist Orders.

- (1) Except as otherwise provided in Paragraph (2) of this Rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring an Employer to cease and desist from engaging in any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.
- (2) Whenever the Commissioner determines that an Employer has self-insured in this State in violation of Rule 0780-1-83-.03, the Commissioner may issue a cease and desist order *ex parte* and without prior notice being given to the Employer; provided, however, that the Commissioner shall provide the Employer notice and the opportunity for hearing to challenge the issuance of the cease and desist order.
- (3) Any order issued pursuant to this Rule will be accompanied by a notice to the Employer as to the right to have a hearing. All hearings conducted pursuant to this Chapter will be done in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*
- (4) Without limitation on other remedies provided by law, upon finding that any person or Employer has violated any cease and desist order that is not currently subject to appeal issued by the Commissioner, the Commissioner may seek enforcement of such order, through the Attorney General and Reporter, in the Chancery Court of Davidson County.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

0780-1-83-.14 Suspension or Revocation of Certificate of Authority.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend the certificate of authority or a license issued under this Chapter upon a finding that any of the following exists:
 - (a) The Employer is in a hazardous financial or operational condition. The Commissioner, in evaluating the financial or operational condition of an Employer, may utilize the criteria contained in Rule 0780-1-66 and Rule 0780-83-.03(3). The Commissioner may consider such other factors in evaluating the financial or operational condition of an Employer deemed to be appropriate;
 - (b) The Employer has failed to maintain the security deposit required by Rule 0780-1-83-.05;
 - (c) The Employer has failed to maintain excess insurance in the amount or form required by Rule 0780-1-83-.06;

- (d) The Employer has failed to pay any premium tax, regulatory penalty or assessment imposed upon the Employer at the time when such obligations are owed;
 - (e) The Employer has failed to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-83-.12;
 - (f) The Employer, or an officer or director thereof, has failed to comply with any of the provisions of this Chapter, or with any lawful order of the Commissioner, including those issued pursuant to Rules 0780-1-83-.13, within the time prescribed;
 - (g) The Employer, or an officer or director thereof, has failed to comply with any of the provisions of the Tennessee Insurance Law or any regulations issued thereunder;
 - (h) The Employer, or an officer or director thereof, has provided incorrect, misleading, incomplete or materially untrue information to the Commissioner;
 - (i) The Employer, or an officer or director thereof, has been convicted of a felony and the Employer has failed to remove the officer or director;
 - (j) The Employer has failed to comply with any law applicable to the Employer with respect to the prompt payment of claims, including, but not limited to, those found in Tenn. Code Ann. Title 50, Part 6, and Title 56;
 - (k) The Employer is not sufficiently qualified or has not employed persons sufficiently qualified to administer a self-insurance program;
 - (l) The Employer fraudulently obtained its certificate of authority; or
 - (m) The Employer made a misrepresentation in the application for the certificate of authority.
- (2) With respect to any Employer licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-83-.13 or Paragraph (1) of this Rule, the Commissioner may assess a civil penalty against such Employer in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the Employer. Each day of continued violation constitutes a separate violation for purposes of computing such penalty. For failure to file any financial statements or reports required under this Chapter, the Commissioner may assess a civil penalty of one hundred dollars (\$100) per day for each day of delinquency.

Authority: Tenn. Code Ann. §§ 4-5-301, *et seq.*; 50-6-405(b)(8).

0780-1-83-.15 Surrender of Certificate of Authority.

- (1) An Employer may surrender its certificate of authority to self-insure at any time with the approval of the Commissioner. The Commissioner shall not grant the request of any Employer to surrender its certificate of authority until such time as the Employer has demonstrated to the Commissioner's satisfaction that it has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of self-insurance.
- (2) An Employer whose certificate of authority has been revoked, suspended, surrendered or otherwise terminated is not relieved of the obligation for compensation to an employee for any compensable injury that occurred during the period of self-insurance.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

If an Employer has become an impaired Employer as determined by the Commissioner, the Commissioner 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; and
- (2) Begin paying benefits out of the Impaired Employer's account.

Authority: Tenn. Code Ann. § 50-6-405(b)(8).

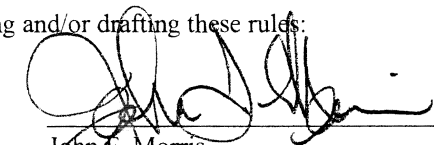
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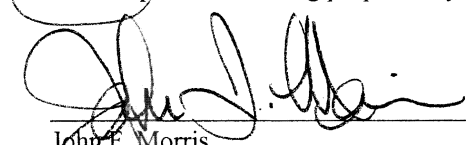
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Signature of the agency or officers directly responsible for proposing and/or drafting these rules:



John F. Morris
 Chief Counsel for Insurance and TennCare

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.



John F. Morris
 Chief Counsel for Insurance and TennCare

Subscribed and sworn to before me this the 29th day of October, 2004

Carlene J Bennett
 Notary Public

My commission expires on the 20th day of Sept, 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29 day of Oct, 2004.

Riley C. Darnell
Riley C. Darnell *MD*