

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee For
Review of Administrative
Rules (JCR-AR)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ 97hrJCR-AR_Crule_98-088

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

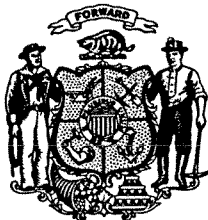
➤ **

DUD 80.60 - SEC - INS BY EMPLOYEE - LIBRARY
98-088 COMP

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-088

AN ORDER to amend DWD 80.60 (2), (3) (b) and (4) (a), (am), (b) 1. and 4. and (d) (intro.); and to create DWD 80.60 (4) (d) 4. to 7., (dm) and (dx), relating to employer self-insurance under the worker's compensation program.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-15-98 RECEIVED BY LEGISLATIVE COUNCIL.
07-10-98 REPORT SENT TO AGENCY.

RNS:DF:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

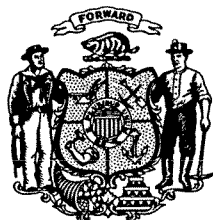
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98-088

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In SECTIONS 1, 3 and 4, the section number, e.g., "DWD 80.60," should be set forth preceding the text of the subsection, paragraph or subdivision that is being amended or created. [See s. 1.04 (2), Manual.]

b. In s. DWD 80.60 (3) (b) 2., ".Stats." should be inserted at the end.

c. In s. DWD 80.60 (4) (b) 1., the parentheses should be replaced by commas. [See s. 1.01 (6), Manual.]

d. In s. DWD 80.60 (4) (b) 4., after "and," the strike mark should be deleted from the comma.

e. In s. DWD 80.60 (4) (d) (intro.), "Compensation Rating Bureau" and "Commissioner of Insurance" should be lower case.

f. An effective date provision should be included in the rule-making order. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the last sentence of s. DWD 80.60 (4) (a), "this section" should replace "DWD 80.60." [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. DWD 80.60 (4) (b) 1., should "or audited" be inserted after the first "unaudited"? As drafted, the rule does not seem to allow an employer to submit audited quarterly statements if it chooses to do so.

The Wisconsin Department of Workforce Development proposes an order to amend DWD 80.60

Analysis of the Proposed Rule

Statutory Authority: ss. 102.15(1) and 102.28(2)(b), Stats.

This rule authorizes the Department to expand the duration of self-insurance orders from one year to three years, although the employer's annual reporting requirements for financial and claims information, and the \$200 annual fee, are retained. The rule clarifies that the annual fee does not apply to political subdivisions that self-insure. The rule also clarifies the Department's authority to require other timely monitoring reports, particularly those related to the employer's organizational changes.

In Wisconsin, no self-insured employer has ever defaulted on its obligation to pay worker's compensation benefits due to financial problems. Still, under current law, as a condition of self-insurance, the Department typically requires self-insured employers to provide some form of security. This rule establishes standards for determining the amounts and types of security that the Department may require from self-insured employers. It also provides that the Department may call the security provided by the employer and use it to pay and administer that employer's worker's compensation liabilities if the Department has a reasonable basis to believe that the employer is not or will not be able to timely pay its worker's compensation liabilities from other employer resources.

SECTION 1. DWD 80.60(2) is amended to read:

(2) EXCESS INSURANCE. Excess insurance may be carried without further order of the department or may be required by order of the department as set forth in sub. (4)(d)3. and 7.

SECTION 2. DWD 80.60(3)(b) is amended to read:

DWD 80.60(3)(b) 1. Any political subdivision or taxing authority of the state electing to self-insure shall notify the department in writing of ~~such~~ the election before undertaking self-insurance, every 3 years after the initial notice, and 30 days before withdrawing from the self-insurance program.

2. The notice of election to self-insure shall be accompanied by a resolution, adopted by the governing body and signed by the elected or appointed chief executive of the applying ~~municipality~~ political subdivision or taxing authority, stating its intent and agreement by the governing body to self-insure its worker's compensation liability and an agreement to faithfully report all compensable injuries

and to comply with ch. 102 Stats., and the rules of the department in accordance with s. 102.28 (2) (b) and (c).

SECTION 3. DWD 80.60(4)(a) is amended to read:

(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) *Application.* Employers other than those specified in sub. (3), but including those specified in sub. (3) (c), desiring self-insurance shall submit an application on a form available from the department. A ~~non-refundable~~ non-refundable fee, determined by the department as described in par. (ag), per employer, shall accompany the initial application. If the application is approved, the department shall permit self-insurance by written order. ~~Employers granted self insurance shall submit renewal applications on a departmental form to the department annually.~~ Every 3 years, a self-insured employer shall submit an application to renew self-insurance at least 60 days before the expiration date specified in the department's order. Each quarter, or more often if requested by the department, a self-insured employer shall submit the most current financial statements to the department. Each year, a self-insured employer shall report work-injury claims payments to the department and other information related to worker's compensation liability requested by the department. A self-insured employer shall immediately report to the department in writing any change in organizational structure that differs from the information provided in the annual report submitted to the department, including mergers, acquisitions, company name changes, consolidation, sale, or divestiture of divisions or subsidiaries. After a change in organizational structure, the department may revoke or modify the exemption from the duty to insure by providing reasonable written notice to the self-insured employer. If these changes result in the creation of a new parent or subsidiary, the department may waive or modify the requirement in par. (b)1. to submit five years of audited financial statements. A fee of \$200, per employer, and the assessment surcharge ~~for each renewal application~~ described in par. (am) may be billed by the department at the same time as the annual assessment under s. 102.75 (1), Stats. Self-insurance shall expire on the day specified by the department in its order.

Unless the context indicates otherwise, all information submitted to the department to comply with DWD 80.60 shall be submitted on the latest version of a department approved form.

SECTION 4. DWD 80.60(4)(am) is amended to read:

80.60(4)(am) In addition to any fee-for-service costs under par. (ax), each year the department shall assess each ~~applicant for renewal of self insurance~~ self-insured employer except those specified in sub. (3), but including those specified in sub. (3)(c), a \$200 ~~renewal fee~~ and a proportionate share of the department's remaining costs to administer the self-insurance program after deducting the total amount estimated to be collected from ~~all self-insured employers from the \$200 renewal assessments fees~~ and the fees charged under par. (ag) for initial applications. The department shall determine the assessment amount under this paragraph in the same manner as costs and expenses are apportioned in s. 102.75 (1), Stats.

SECTION 5. DWD 80.60(4)(b)1. and 4. are amended to read:

DWD 80.60(4)(b)1. The applicant, when submitting an initial request for self-insurance, shall submit audited financial statements (which includes the opinion of a certified public accountant) for a minimum of the latest five ~~or more~~ years. ~~For renewals, audited financial statements for the current year are sufficient.~~ Except as authorized by the department, employers self-insured under this subsection shall submit to the department unaudited financial statements each quarter and audited financial statements each year.

4. Corporations ~~and~~ limited partnerships and limited liability companies shall be registered in the office of the ~~secretary of state~~ department of financial institutions.

SECTION 6. DWD 80.60(4)(d)(intro) is amended to read:

DWD 80.60(4)(d)(intro) *Surety bond, deposit of securities, cash deposit, letter of credit, excess insurance, or other security guarantee or pledge.* The required minimum bond, minimum amount of cash, letter of credit or securities deposits, minimum acceptable excess insurance upper limit, maximum

excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer and the employer's surety or other agent providing security shall use the ~~bond and deposit agreement~~ latest version of any forms required by the department. All surety bonds and excess policies shall be written on standard forms approved by the Wisconsin Compensation Rating Bureau or the Commissioner of Insurance, or both. Any change in the language used in the approved standard form is not accepted unless the department approves it in writing. The following conditions shall also apply to self-insured employers:

SECTION 7. DWD 80.60(4)(d)4. to 7. are created to read:

DWD 80.60(4)(d)4. Each self-insured employer shall provide security of at least \$500,000. The department may increase the minimum required security amount after considering the criteria in par. (c).

5. If the self-insured employer provides a surety bond, the surety company shall pay worker's compensation liabilities of the employer up to the aggregate amount of the bond without deducting any of its costs for investigating, paying, defending against, or providing other services related to the worker's compensation claims. If a self-insured employer has more than one surety bond, the surety company whose bond is in effect on the date of injury is liable for claims related to that injury.

6. If the self-insured employer provides security in any form other than a surety bond, the department shall add 30 percent to the minimum amount in subd. 4.

7. Each employer self-insured under this subsection shall obtain a specific per occurrence excess insurance policy with retention and maximum limits approved by the department and in a form approved by the Wisconsin compensation rating bureau under ch. 626, Stats. In determining the limits the department shall consider, among other things, the criteria in par. (c).

SECTION 8. DWD 80.60(4)(dm) and (dx) are created to read:

DWD 80.60(4)(dm). The department may call and use any security provided by an employer under par. (d) to pay that employer's worker's compensation liabilities and to administer that employer's

worker's compensation claims if the department has a reasonable basis to believe that the employer is not able or will not be able to timely pay the worker's compensation liabilities incurred during the period for which that employer was authorized to be self-insured. The department may contract with a third-party administrator or other agent to administer payments. The employer is responsible for any unpaid liabilities. Within 2 working days of receiving written notice from the department, the employer whose security was called shall provide the department with the names and addresses of all present and former employees of the employer during the most recent three years in which the employer was self-insured. Within 30 days of receiving written notice from the department, the employer whose security was called shall provide the department with copies of any worker's compensation, medical or employment files requested by the department or summary information related to those files in a format requested by the department.

NOTE: In addition to a demonstrated failure to make timely worker's compensation payments, "a reasonable basis to believe that an employer...will not be able to timely pay worker's compensation liabilities" is intended to include such things as proceedings before bankruptcy court which may have an adverse financial impact on the employer or credible reports that an employer is preparing to seek some form of shelter in bankruptcy or receivership.

(dx) A surety or bonding company shall provide the department with a written plan acceptable to the department for the review and payment of any worker's compensation liability of the self-insured employer within 15 days after the department notifies the surety or bonding company that it is calling the bond. When the department approves the plan the surety or bonding company may contract with a third-party administrator or other agent to pay worker's compensation benefits and other liabilities.

ADMINISTRATIVE RULE CORRESPONDENCE DWD

Date: July 22, 1998

To: Linda Stewart, Secretary
Department of Workforce Development

From: Gregory Krohn, Administrator
Workers Compensation Division

Rule No.: DWD 80.60

Relating To: Self-Insurance

Subject: Step 2

There were no appearances or written comments submitted at the public hearing.

The Legislative Council's Rules Clearinghouse, suggested several minor drafting changes. The Division made only those changes to the rule you approved in Step 1.

Pursuant to the attached timetable, we are requesting that your office work with the Division to transmit the appropriate materials to the Senate and Assembly by July 31, 1998.

If you have any questions please contact Richard D. Smith, Director, Bureau of Legal Services, at 267-6704.

Proposed Timetable for Rule-Making

Rule Ind: 80.60

Relating to: Self-Insurance

	<u>Deadline</u>	<u>Who</u>	<u>Activity</u>
1.	April 15	WCD	Find Hearing Location
2.	April 30	WCD	Submit Step-1 documents to Secretary for review and approval
3.	May 15	Secretary	Submit ADM 7420 to Revisor of Statutes and ADM 6044 to Legislative Council
4.	June 10	Revisor	Publishes notice of hearing in official bulletin
5.	July 15		10-day waiting period expires (earliest date hearing can be held)
6.	July 8		20-working-day period after ADM 6044 to Leg. Council expires (hearing can be held)
7.	July 16	WCD	Public hearing date
8.	July 17	WCD	Close of the record after hearing
9.	July 24	WCD	Submit Step-2 materials to Secretary for review and approval
10.	July 31	Secretary	Transmits appropriate materials to presiding officers of Senate and Assembly
11.	Aug 7	Presiding Officers	Refer transmitted material to the appropriate standing committee
12.	Sept. 7	Standing Cmtes	30-day review period expires (unless extended by committee)
13.	Sept 15	Secretary	Approves and transmits material for publication to Revisor of Statutes
14.	Oct. 1	Revisor	Publishes rule in official bulletin
15.	Nov. 1		Earliest possible effective date after publication (30-days after publication)

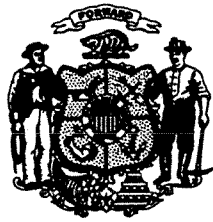
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 3

RULES CLEARINGHOUSE

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PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

WLCS
DJS:kjf,kja
2/96

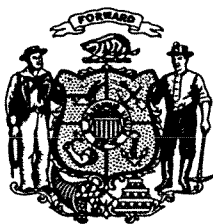
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CLEARINGHOUSE RULE 98-088

AN ORDER to amend DWD 80.60 (2), (3) (b) and (4) (a), (am), (b) 1. and 4. and (d) (intro.); and to create DWD 80.60 (4) (d) 4. to 7., (dm) and (dx), relating to employer self-insurance under the worker's compensation program.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-15-98 RECEIVED BY LEGISLATIVE COUNCIL.

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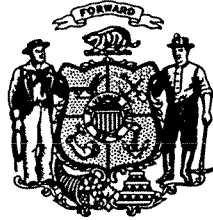
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CLEARINGHOUSE RULE 98-088

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In SECTIONS 1, 3 and 4, the section number, e.g., "DWD 80.60," should be set forth preceding the text of the subsection, paragraph or subdivision that is being amended or created. [See s. 1.04 (2), Manual.]

b. In s. DWD 80.60 (3) (b) 2., ". Stats." should be inserted at the end.

c. In s. DWD 80.60 (4) (b) 1., the parentheses should be replaced by commas. [See s. 1.01 (6), Manual.]

d. In s. DWD 80.60 (4) (b) 4., after "and," the strike mark should be deleted from the comma.

e. In s. DWD 80.60 (4) (d) (intro.), "Compensation Rating Bureau" and "Commissioner of Insurance" should be lower case.

f. An effective date provision should be included in the rule-making order. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the last sentence of s. DWD 80.60 (4) (a), "this section" should replace "DWD 80.60." [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. DWD 80.60 (4) (b) 1., should “or audited” be inserted after the first “unaudited”? As drafted, the rule does not seem to allow an employer to submit audited quarterly statements if it chooses to do so.

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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Senate Chief Clerk
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1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORTS**

CLEARINGHOUSE RULE NO.: 98-088
RULE NO.: DWD 80.60
RELATING TO: Self-Insurance

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary



Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
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<http://www.dwd.state.wi.us/>

Senator Brian Rude
President of the Senate
119 MLK Blvd. Rm 301
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Rude and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 98-088
RULE NO.: DWD 80.60
RELATING TO: Self-Insurance

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) DWD Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) DWD Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

Also included is a waiver of authority letter. If the respective standing committees have no objections to the rules, we respectfully request that their chairpersons sign the letter and return it as soon as possible.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Linda Stewart'.

Linda Stewart
Secretary





State of Wisconsin
Department of Workforce Development

RULES in FINAL DRAFT FORM

Rule No.: DWD 8060

Relating to: Self-Insurance



State of Wisconsin
Department of Workforce Development

ADM-6046 HEARING DRAFT OF PROPOSED RULES

HEARING DRAFT of PROPOSED RULES

Rule No.: DWD 80.60

Relating to: Self-Insurance

The Wisconsin Department of Workforce Development proposes an order to amend DWD 80.60

Analysis of the Proposed Rule

Statutory Authority: ss. 102.15(1) and 102.28(2)(b), Stats.

This rule authorizes the Department to expand the duration of self-insurance orders from one year to three years, although the employer's annual reporting requirements for financial and claims information, and the \$200 annual fee, are retained. The rule clarifies that the annual fee does not apply to political subdivisions that self-insure. The rule also clarifies the Department's authority to require other timely monitoring reports, particularly those related to the employer's organizational changes.

In Wisconsin, no self-insured employer has ever defaulted on its obligation to pay worker's compensation benefits due to financial problems. Still, under current law, as a condition of self-insurance, the Department typically requires self-insured employers to provide some form of security. This rule establishes standards for determining the amounts and types of security that the Department may require from self-insured employers. It also provides that the Department may call the security provided by the employer and use it to pay and administer that employer's worker's compensation liabilities if the Department has a reasonable basis to believe that the employer is not or will not be able to timely pay its worker's compensation liabilities from other employer resources.

SECTION 1. DWD 80.60(2) is amended to read:

DWD 80.60(2) EXCESS INSURANCE. Excess insurance may be carried without further order of the department or may be required by order of the department as set forth in sub. (4)(d)3. and 7.

SECTION 2. DWD 80.60(3)(b) is amended to read:

DWD 80.60(3)(b) 1. Any political subdivision or taxing authority of the state electing to self-insure shall notify the department in writing of ~~such~~ the election before undertaking self-insurance, every 3 years after the initial notice, and 30 days before withdrawing from the self-insurance program.

2. The notice of election to self-insure shall be accompanied by a resolution, adopted by the governing body and signed by the elected or appointed chief executive of the applying ~~municipality~~ political subdivision or taxing authority, stating its intent and agreement by the governing body to self-insure its worker's compensation liability and an agreement to faithfully report all compensable injuries

and to comply with ch. 102 Stats., and the rules of the department in accordance with s. 102.28 (2) (b) and (c), Stats.

SECTION 3. DWD 80.60(4)(a) is amended to read:

DWD 80.60(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) *Application.* Employers other than those specified in sub. (3), but including those specified in sub. (3) (c), desiring self-insurance shall submit an application on a form available from the department. ~~A non-refundable~~ non-refundable fee, determined by the department as described in par. (ag), per employer, shall accompany the initial application. If the application is approved, the department shall permit self-insurance by written order. ~~Employers granted self-insurance shall submit renewal applications on a departmental form to the department annually.~~ Every 3 years, a self-insured employer shall submit an application to renew self-insurance at least 60 days before the expiration date specified in the department's order. Each quarter, or more often if requested by the department, a self-insured employer shall submit the most current financial statements to the department. Each year, a self-insured employer shall report work-injury claims payments to the department and other information related to worker's compensation liability requested by the department. A self-insured employer shall immediately report to the department in writing any change in organizational structure that differs from the information provided in the annual report submitted to the department, including mergers, acquisitions, company name changes, consolidation, sale, or divestiture of divisions or subsidiaries. After a change in organizational structure, the department may revoke or modify the exemption from the duty to insure by providing reasonable written notice to the self-insured employer. If these changes result in the creation of a new parent or subsidiary, the department may waive or modify the requirement in par. (b)1. to submit five years of audited financial statements. A fee of \$200, per employer, and the assessment surcharge ~~for each renewal application~~ described in par. (am) may be billed by the department at the same time as the annual assessment under s. 102.75 (1), Stats. Self-insurance shall expire on the day specified by the department in its order. Unless the context indicates otherwise, all

information submitted to the department to comply with this section shall be submitted on the latest version of a department approved form.

SECTION 4. DWD 80.60(4)(am) is amended to read:

DWD 80.60(4)(am) In addition to any fee-for-service costs under par. (ax), each year the department shall assess each ~~applicant for renewal of self-insurance~~ self-insured employer except those specified in sub. (3), but including those specified in sub. (3)(c), a \$200 ~~renewal fee~~ and a proportionate share of the department's remaining costs to administer the self-insurance program after deducting the total amount estimated to be collected from ~~all self-insured employers from the \$200 renewal assessments fees~~ and the fees charged under par. (ag) for initial applications. The department shall determine the assessment amount under this paragraph in the same manner as costs and expenses are apportioned in s. 102.75 (1), Stats.

SECTION 5. DWD 80.60(4)(b)1. and 4. are amended to read:

DWD 80.60(4)(b)1. The applicant, when submitting an initial request for self-insurance, shall submit audited financial statements, which includes the opinion of a certified public accountant, for a minimum of the latest five ~~or more~~ years. ~~For renewals, audited financial statements for the current year are sufficient.~~ Except as authorized by the department, employers self-insured under this subsection shall submit to the department audited or unaudited financial statements each quarter and audited financial statements each year.

4. Corporations ~~and~~, limited partnerships and limited liability companies shall be registered in the office of the ~~secretary of state~~ department of financial institutions.

SECTION 6. DWD 80.60(4)(d)(intro) is amended to read:

DWD 80.60(4)(d)(intro) *Surety bond, deposit of securities, cash deposit, letter of credit, excess insurance, or other security guarantee or pledge.* The required minimum bond, minimum amount of cash, letter of credit or securities deposits, minimum acceptable excess insurance upper limit, maximum

excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer and the employer's surety or other agent providing security shall use the ~~bond and deposit agreement~~ latest version of any forms required by the department. All surety bonds and excess policies shall be written on standard forms approved by the Wisconsin compensation rating bureau or the commissioner of insurance, or both. Any change in the language used in the approved standard form is not accepted unless the department approves it in writing. The following conditions shall also apply to self-insured employers:

SECTION 7. DWD 80.60(4)(d)4. to 7. are created to read:

DWD 80.60(4)(d)4. Each self-insured employer shall provide security of at least \$500,000. The department may increase the minimum required security amount after considering the criteria in par. (c).

5. If the self-insured employer provides a surety bond, the surety company shall pay worker's compensation liabilities of the employer up to the aggregate amount of the bond without deducting any of its costs for investigating, paying, defending against, or providing other services related to the worker's compensation claims. If a self-insured employer has more than one surety bond, the surety company whose bond is in effect on the date of injury is liable for claims related to that injury.

6. If the self-insured employer provides security in any form other than a surety bond, the department shall add 30 percent to the minimum amount in subd. 4.

7. Each employer self-insured under this subsection shall obtain a specific per occurrence excess insurance policy with retention and maximum limits approved by the department and in a form approved by the Wisconsin compensation rating bureau under ch. 626, Stats. In determining the limits the department shall consider, among other things, the criteria in par. (c).

SECTION 8. DWD 80.60(4)(dm) and (dx) are created to read:

DWD 80.60(4)(dm). The department may call and use any security provided by an employer under par. (d) to pay that employer's worker's compensation liabilities and to administer that employer's

worker's compensation claims if the department has a reasonable basis to believe that the employer is not able or will not be able to timely pay the worker's compensation liabilities incurred during the period for which that employer was authorized to be self-insured. The department may contract with a third-party administrator or other agent to administer payments. The employer is responsible for any unpaid liabilities. Within 2 working days of receiving written notice from the department, the employer whose security was called shall provide the department with the names and addresses of all present and former employees of the employer during the most recent three years in which the employer was self-insured. Within 30 days of receiving written notice from the department, the employer whose security was called shall provide the department with copies of any worker's compensation, medical or employment files requested by the department or summary information related to those files in a format requested by the department.

NOTE: In addition to a demonstrated failure to make timely worker's compensation payments, "a reasonable basis to believe that an employer...will not be able to timely pay worker's compensation liabilities" is intended to include such things as proceedings before bankruptcy court which may have an adverse financial impact on the employer or credible reports that an employer is preparing to seek some form of shelter in bankruptcy or receivership.

(dx) A surety or bonding company shall provide the department with a written plan acceptable to the department for the review and payment of any worker's compensation liability of the self-insured employer within 15 days after the department notifies the surety or bonding company that it is calling the bond. When the department approves the plan the surety or bonding company may contract with a third-party administrator or other agent to pay worker's compensation benefits and other liabilities.

SECTION 9. The rule shall take effect November 1, 1998.

RULE REPORT

Department of Workforce Development

Rule No.: DWD 80.60
Relating to: Self-Insurance

Agency contact person for substantive questions.

Name Richard D. Smith
Title Director, Bureau of Legal Services, Worker's Compensation Division
Phone Number 267-6704

Agency contact person for internal processing.

Name Sharon Fellows
Title Administrative Assistant
Phone Number 266-2041

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
ss. 102.15 and 102.28(2)(b), Wis. Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
None
3. Citation of court decisions which are applicable to the proposed rule(s).
None
4. Description of the proposed rule(s).
The rule sets standards for establishing the amount and type of security that the Department may require from self-insured employers, and it sets the process for calling the security to pay worker's compensation claims. The rule also makes minor changes in requirements for reporting financial and claims information.
5. Reason for the proposed rule(s).
The Department believes every self-insured employer should be required to provide some minimum security.

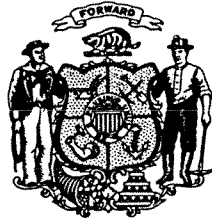
WISCONSIN LEGISLATIVE COUNCIL STAFF



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Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-088

AN ORDER to amend DWD 80.60 (2), (3) (b) and (4) (a), (am), (b) 1. and 4. and (d) (intro.); and to create DWD 80.60 (4) (d) 4. to 7., (dm) and (dx), relating to employer self-insurance under the worker's compensation program.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-15-98 RECEIVED BY LEGISLATIVE COUNCIL.

07-10-98 REPORT SENT TO AGENCY.

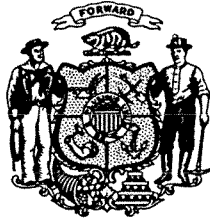
RNS:DF:kjf;jt

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CLEARINGHOUSE RULE 98-088

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In SECTIONS 1, 3 and 4, the section number, e.g., "DWD 80.60," should be set forth preceding the text of the subsection, paragraph or subdivision that is being amended or created. [See s. 1.04 (2), Manual.]
- b. In s. DWD 80.60 (3) (b) 2., ", Stats." should be inserted at the end.
- c. In s. DWD 80.60 (4) (b) 1., the parentheses should be replaced by commas. [See s. 1.01 (6), Manual.]
- d. In s. DWD 80.60 (4) (b) 4., after "and," the strike mark should be deleted from the comma.
- e. In s. DWD 80.60 (4) (d) (intro.), "Compensation Rating Bureau" and "Commissioner of Insurance" should be lower case.
- f. An effective date provision should be included in the rule-making order. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In the last sentence of s. DWD 80.60 (4) (a), "this section" should replace "DWD 80.60." [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. DWD 80.60 (4) (b) 1., should “or audited” be inserted after the first “unaudited”? As drafted, the rule does not seem to allow an employer to submit audited quarterly statements if it chooses to do so.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Workforce Development

CLEARINGHOUSE RULE NO.: 98-088
RULE NO.: DWD 80.60
RELATING TO: Self-Insurance

Agency contact person for substantive questions.

Name: Richard D. Smith
Title: Director, Bureau of Legal Services, Worker's Compensation
Telephone No. 267-6704

Legislative Council report recommendations accepted in whole.

Yes No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R 02/97)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Amendment No.
DWD 80.60

Subject
Self-insurance

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$None

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$ -0
(FTE Position Changes)		(0 FTE)	(-0 FTE)
State Operations - Other Costs		0	-0
Local Assistance		0	-0
Aids to Individuals or Organizations		0	-0
TOTAL State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS		0	-0
SEG/SEG-S			-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/WC Richard D. Smith 267-6704

Authorized Signature/Telephone No.

Date

[Signature] 266-6704 6/12/98

FISCAL ESTIMATE
DOA-2048 (R 02/97)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 80.60
Amendment No. if Applicable

Subject
Self-insurance

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Local: No local government costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|--|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes are intended to simplify and clarify requirements for employers to be exempted from the need to carry worker's compensation insurance. The rule authorizes the Department to expand the duration of self-insurance orders from one year to three years, even though the employer is still required to report financial and claims information to the Department annually and to pay an annual self-insurance fee of \$200. The rule establishes a minimum security requirement for self-insurers of \$500,000, unless certain financial criteria are met to exempt the employer from this requirement. The rule also requires employers to use standard Department insurance and security forms. The Department is also granted authority to "call" the employer's security to administer and pay worker's compensation claims for which the employer is liable, if the Department determines the employer is not willing or able to timely meet its worker's compensation claim liabilities. The proposed rule changes do not modify the application fee for employers seeking exemption from the duty to insure, or the annual fee charged to employers already exempted. Therefore, there is no expected increase or decrease in revenue related to fees and assessments. The rule changes will reduce some of the staff work involving the issuance of annual renewal orders, but this will not result in a reduction in staff positions. Other aspects of the proposed rule change will modestly increase the staff workload, especially related to determining appropriate security requirements for self-insurers. The proposed rule changes to 80.60 are not expected to have a significant impact on program revenues or expenditures.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.)
Richard D. Smith 267-6704

Authorized Signature/Telephone No.

Date

6/12/98

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Workforce Development

CLEARINGHOUSE RULE NO. : 98-088
RULE NO.: DWD 80.60
RELATING TO: Self-Insurance

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Self-insured employers are, by definition, not small. They are the large employers with significant numbers of employees.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

.None.

3. Nature and estimated cost of preparation of any reports by small businesses.

Small businesses are not required to file anything. Self-insurance is purely voluntary.

4. Nature and estimated cost of other measures and investments required of small businesses.

None. See above.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small business.

Not applicable.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

Not applicable.

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
<http://www.dwd.state.wi.us/>

Secretary Linda Stewart
Department of Workforce Development
Room 401, GEF-1
201 East Washington Avenue
Madison, Wisconsin 53702

Dear Secretary Stewart:

NOTICE OF STANDING COMMITTEE WAIVER OF AUTHORITY

CLEARINGHOUSE RULE NO.: 98-088
RULE NO.: DWD-80.60
RELATING TO: Self-Insurance

Pursuant to section 227.19, Stats., notice is given that this legislative standing committee has reviewed the proposed rules and grants permission to promulgate the rules as proposed prior to the committee review period expiration date.

Very truly yours,

CHAIRPERSON

Assembly Committee _____ Date _____
 Senate Committee _____ Date _____



Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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<http://www.dwd.state.wi.us/>

July 31, 1998

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Dear Mr. Poulson:

NOTIFICATION OF RULE REFERRAL

This letter is to notify you that pursuant to section 227.19, Stats., the Department of Workforce Development has referred:

CLEARINGHOUSE RULE NO.: 98-088
RULE NO.: DWD 80.60
RELATING TO: Self-Insurance

to the presiding officers of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary

cc: Department of Administration (2)

