

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 the amendments of rules in Chapter 0780-1-83. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the ____ day of September, 2008.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Division to discuss any auxiliary aids of 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 Division 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, telephone (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Karen L. Heidel, Assistant General Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Second Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-3388.

Substance of Proposed Rules

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

Amendments

Chapter 0780-1-83 Self-Insured Workers' Compensation is amended by deleting the Chapter in its entirety and substituting the following language so that, as amended, the Chapter shall read:

0780-1-83-.01 Purpose

~~0780-1-83-.02 Scope~~

~~0780-1-83-.03 Authority~~

0780-1-83-.04 Definitions

0780-1-83-.05 Certificate of Authority Required

0780-1-83-.06 Application for Certificate of Authority

0780-1-83-.07 Security Deposit Requirements

0780-1-83-.08 Excess Insurance Requirements

0780-1-83-.09 Reserve Requirements

0780-1-83-.10 Reporting Requirements

0780-1-83-.11 Loss Prevention

0780-1-83-.12 Taxes and Delinquency

0780-1-83-.13 Service of Process

0780-1-83-.14 Examinations and Investigations

0780-1-83-.15 Suspension or Revocation of Certificate of Authority

0780-1-83-.16 Surrender of Certificate of Authority

0780-1-83-.17 Impaired Employers

0780-1-83-.18 Severability

0780-1-83-.01 Purpose

The purpose of this Chapter is to better protect the health and welfare of the Employees working for such Employers as well as the public at large.

- Deleted: and
- Deleted: 2
- Deleted: 3
- Deleted: 4
- Deleted: 5
- Deleted: 6
- Deleted: 7
- Deleted: 08
- Deleted: 09
- Deleted: 0
- Deleted: 1
- Deleted: 2
- Deleted: 3
- Deleted: 4
- Deleted: 5
- Deleted: 6
- Deleted: and Scope

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

0780-1-83-.02 Scope.

The scope 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 T.C.A. § 50-6-405(b).

Formatted: Indent: Left: 0"

Deleted: in order to better protect the health and welfare of the Employees working for such Employers as well as the public at large.

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

0780-1-83-.03 Authority

This chapter is issued pursuant to the authority vested in the Commissioner of Commerce and Insurance of the State of Tennessee under Tenn. Code Ann. §§ 50-6-405(b) and (h).

Formatted: Indent: Left: 0.5"

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

0780-1-83-.04 Definitions.

Deleted: Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h). ¶

Deleted: 2

- (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 self-insure the workers' compensation liabilities of its Employees in this State.
- (3) "Commissioner" means the Commissioner of the Tennessee Department 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 T.C.A. § 50-6-405(a)(2).
- (6) "Employer" means an employer that self-insures its workers' compensation liabilities pursuant to T.C.A. § 50-6-405(a)(2).
- (7) "Governmental entity" means any political subdivision of the state of Tennessee including, but not limited to, any municipality, metropolitan government, county, utility district, human resource agency, public building authority, and development district created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local government entities of by an act of the general assembly.
- (8) "IBNR" means incurred but not reported claims.
- (9) "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;

Deleted: volunteer fire department receiving funds appropriated by a county legislative body or a legislative body of a municipality,

- (d) Against whom bankruptcy proceedings have been filed; or
 - (e) For whom a receiver has been appointed by a court of this state.
- (10) “Known Claims” means claims that have been incurred by an Employee of the Employer and submitted to an Employer for payment of workers’ compensation benefits.
- (11) “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.
- (12) “Loss Prevention Plan” means a plan developed by the Employer with the primary emphasis on reduction of workplace injuries and illnesses.
- (13) “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.
- (14) “Loss Prevention Services Program” means a program intended to promote occupational health and safety, and to help eliminate and control work hazards to Employees.
- (15) “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.
- (16) “NAIC” means the National Association of Insurance Commissioners.
- (17) “Person” means an individual or a business entity.
- (18) “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 Tennessee Insurance Law or other law in the course of his or her dealings as a qualified actuary;

2. Been found guilty of fraudulent or dishonest practices;
 3. Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;
 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.
- (19) “Qualified United States Financial Institution” shall have the meaning assigned by T.C.A. § 56-2-209(c).
- (20) “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.
- (21) “SIR” means self-insured retention, which is the portion of the risk retained by the self-insured Employer.
- (22) “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.
- (23) “Tennessee Insurance Law” means any law administered by the commissioner affecting the business of insurance in this state, including, but not limited to T.C.A. § 50-6-405 and T.C.A. §§ 56-1-101, *et. seq.* as well as any rules promulgated thereunder.
- (24) “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.
- (25) “Workers’ compensation” means both workers’ compensation and employer’s liability as prescribed under Title 50, Chapter 6 of the Tennessee Code Annotated.

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

| 0780-1-83-.05 Certificate of Authority Required.

Deleted: 3

No person shall act as an Employer without a Certificate of Authority issued to it by the commissioner.

Authority: T.C.A. §§ 50-6-405(b)(3), 50-6-405(b)(8) and 50-6-405(h).

| 0780-1-83-.06 Application for Certificate of Authority.

Deleted: 4

- (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 T.C.A. § 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 Commission, if such Employer files such 10-K's; and
2. The Employer's independently audited financial statements according to Generally Accepted Accounting Principles or other such basis of accounting that the commissioner may allow, with the accompanying footnotes and the auditor's opinion for the preceding three (3) fiscal years. In determining the financial condition of the Employer, the commissioner may, in the commissioner's sole discretion, non-admit the following assets of the Employer for any regulatory purpose:
 - (i) Account receivables over ninety (90) days;
 - (ii) Discounting Reserves;
 - (iii) Goodwill;
 - (iv) Intangible assets;
 - (v) Loans on personal security and cash advances;
 - (vi) Office furniture, computer systems with a value of less than fifty thousand dollars (\$50,000), and vehicles;
 - (vii) Pre-paid expenses
 - (viii) Unearned Premium

(b) Loss history.

Documentation evidencing the applicant's loss history to include the following:

1. The applicant's organizational structure and management background;
2. The applicant's profit and loss history for the past three (3) years;
3. The applicant's workers' compensation loss history for the past three (3) years;
4. The number of Employees employed by the applicant and/or affected by the applicant's self-insurance program; and

5. The Employer's experience modification factor computed in compliance with the procedures set forth by the commissioner's designated rate service organization.
- (c) Administration.
1. A plan for claims administration that is acceptable to the commissioner and that designates a third party administrator, if applicable.
 2. 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 any applicable statutes or rules.
 - (i) 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.
 - (ii) The commissioner may choose not to issue a Certificate of Authority to an Employer whose plan of claims administration is not acceptable to the commissioner.
- (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;
- (4) In addition to any other requirements provided by this Chapter, in order to initially obtain a certificate of authority, the financial statements submitted to the commissioner must demonstrate that the applicant has:
- (a) Positive working capital;
 - (b) Net worth that is twenty (20) times the Employer's SIR; and
 - (c) Any other information considered appropriate by the commissioner.
- (5) If an applicant is a subsidiary, the applicant's parent organization must guarantee the obligations imposed on the applicant by this Chapter and the Tennessee workers' compensation obligations as contained in T.C.A. § 50-6-405(a).

- (6) The commissioner may require any documents from the Employer necessary to verify the information contained in an application.

Authority: T.C.A. §§ 50-6-405(a), 50-6-405(b)(1)-(b)(2), 50-6-405(b)(8), and 50-6-405(h).

0780-1-83-07 Security Deposit Requirements.

Deleted: 5

- (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; or
 - (b) Such other amount determined by the commissioner to be necessary to provide sufficient security.
- (3) The initial security amount shall be determined by the Employer's past experience and any other factors the commissioner deems necessary to ensure that the initial security is adequate and safe.

- (4) The Department will calculate the continuing bond amount using the method below that produces the greatest bond amount.

Deleted: following formulas, whichever is greater:

- (a) Open claims method.
 - 1. If the Employer has a positive working capital, the amount of total outstanding reserves since the Employer became self-insured is multiplied by 1.5.
 - 2. A factor of two (2) times the SIR will be added if the SIR is over \$500,000.
- (b) Average paid claims method.
 - 1. If the Employer has a positive working capital, the average of the three (3) most recent years of paid claims is multiplied by 1.5.
 - 2. A factor of two (2) times the SIR will be added if the SIR is over \$500,000.
- (c) Actuarial opinion method.
 - 1. If the Employer has a positive working capital, the amount of total reserves from the most recent biennial actuarial report multiplied by 1.5.

2. Reserve amounts for Employers submitting annual actuarial reports will be multiplied by 1.0.
- (d) Such other amount determined by the commissioner to be necessary to provide sufficient security.
- (5) The commissioner may apply a factor of 2 to any of the above methods ~~if the commissioner finds that~~ one or more of the following conditions exist:
 - (a) The ratio of the Employer's Debt to its Total Capital is at or below sixty percent (60%);
 - (b) The ratio of the Employer's current assets to its current liabilities is at or greater than .75; or
 - (c) The Employer has negative working capital.
- (6) If the commissioner determines that an Employer is operating in a hazardous financial condition, including but not limited to, operating with negative working capital, then the commissioner may take the following courses of action:
 - (a) Require the Employer to increase the security deposit on file with the commissioner;
 - (b) Require the Employer to submit financial statements ~~more frequently than prescribed in Rule 0780-1-83-10~~;
 - (c) Conduct an examination pursuant to T.C.A. 56-1-409; or
 - (d) Suspend or revoke the Employer's Certificate of Authority.
- (7) For purposes of complying with this Rule, Employers that are governmental entities shall only be required to post security in the amount of five hundred thousand dollars (500,000), unless the commissioner determines another amount to be more appropriate.
- (8) 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 Rule, shall be held by the commissioner and shall be conditioned to run solely and directly for the benefit of the Employees of the Employer..
- (9) 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.
- (10) 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.
- (11) The venue for any suit filed by the commissioner under this provision is in Davidson County, Tennessee.
- (12) Negotiable securities.
 - (a) All negotiable securities filed under this Rule shall be the classes of securities listed below and shall be subject to the following requirements:

Deleted: s

Deleted: she

Deleted: ¶
<#>The ratio of the Employer's flow from operations is at or greater than twenty-five percent (25%);¶

Formatted: Indent: Left: 0"

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Deleted: 08

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 Rule, 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.
- (13) Bonds.
- (a) All bonds filed under this Rule 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 Rule shall contain a provision requiring the insurer to give the commissioner 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 and a copy of such notice is given to the Employer.
 - (c) An insurer that cancels a bond issued pursuant to this Rule before the date specified in the written notice as set forth 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.
- (14) Certificates of deposit.
- (a) All certificates of deposit filed under this Rule 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 T.C.A. § 50-6-405(b)(1)(G)(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.
- (15) 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.
- (16) 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.
- (17) 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.

- (18) 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: T.C.A. §§ 50-6-405(b)(1), 50-6-405(b)(8), 50-6-405(e), and 50-6-405(h).

~~0780-1-83-08~~ Excess Insurance Requirements.

Deleted: ¶

Deleted: 6

- (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.
 - (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.
- (3) Notwithstanding the requirement of Paragraph (1) of this Rule, the commissioner may, in the commissioner's discretion, exempt an Employer from having to obtain aggregate excess insurance. The Employer shall make a request to the commissioner for the exemption stating that the coverage is unavailable or that the cost of the coverage outweighs any benefit the coverage would provide to the employees of the Employer.

Deleted: e

- (a) Any request granted under this Paragraph shall be valid for one year. Any Employer receiving an exemption under this Paragraph must annually request a waiver and provide the information required under this Paragraph.

Authority: T.C.A. §§ 50-6-405(b)(1)-(b)(2), 50-6-405(b)(8), 50-6-405(f), and 50-6-405(h).

0780-1-83-.09 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 this Chapter, the commissioner may require, after notice and opportunity for 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 an Employer's 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.

Deleted: ¶

Deleted: 7

Authority: T.C.A. §§ 50-6-405(a)(2), 50-6-405(b)(1), 50-6-405(b)(8), and 50-6-405(h).

0780-1-83-.10 Reporting Requirements.

- (1) Every Employer no later than the last day of the sixth month after the end 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 Accounting Principles, or such other basis of accounting that the commissioner may allow;
 - (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;

Deleted: (3) . The reserve amounts submitted to the commissioner shall delineate the Employer's workers' compensation liabilities in the State of Tennessee and, if applicable, the Employer's total reserves for all workers' compensation liabilities. . ¶

Deleted: 08

- (d) The Employer's experience modification factor computed in compliance with the procedures set forth by the commissioner's designated rate service organization.
 - (e) The filing requirements in subparagraphs (b), (c), and (d) above shall be reported based on Tennessee specific information only.
 - (f) A renewal application for workers' compensation self-insurance, on a form prescribed by the commissioner.
- (2) Every Employer shall biennially and no later than the last day of the sixth month after the end 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. The reserve amounts submitted to the commissioner shall delineate the Employer's workers' compensation liabilities in the State of Tennessee and, if applicable, the Employer's total reserves for all workers' compensation liabilities.
 - (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 merges or consolidates with another person shall notify the commissioner within thirty (30) days of the merger or consolidation. The commissioner may require the Employer or surviving company to submit revised financial information, or obtain a new actuarial opinion.
 - (5) 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.
 - (6) 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. These notices should be sent to the following address: General Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243.

Authority: T.C.A. §§ 50-6-405(b)(2), 50-6-405(b)(8), and 50-6-405(h).

| 0780-1-83-.11 Loss Prevention.

Deleted: 09

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: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

| 0780-1-83-.12 Taxes and Delinquencies.

Deleted: 0

- (1) Each Employer shall be subject to pay a tax computed pursuant to T.C.A. § 56-4-207. Such tax shall also include the surcharge imposed on insurance companies pursuant to

T.C.A. § 56-4-207 to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, as contained in T.C.A. § 50-3-101, *et seq.*

- (2) Premium taxes shall be submitted on a form prescribed by the commissioner pursuant to T.C.A. § 56-4-207 on or before June 30 of each year.
- (3) The Employer shall determine the amount of taxes due pursuant to T.C.A. § 56-4-207 and in accordance with the procedures, as set forth by the designated rate service organization, by using the following:
 - (a) A payroll audit performed by an independent third party, to be submitted by the Employer with the annual tax return;
 - (b) The Employer's designated rate service organization experience modification factor, to be submitted by the Employer with the annual tax return;
 - (c) The advisory loss costs, which the commissioner shall make available on the Department's website.
- (4) 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: T.C.A. §§ 50-6-405(b)(8), 50-6-405(h), 56-4-207 and 56-4-216.

0780-1-83-.13 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: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

Deleted: <#>Any Employer failing and neglecting to make such returns and payments promptly and correctly on or before the last day of the sixth (6th) month following the end of the Employer's fiscal year shall forfeit and pay to the commissioner, an addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of the delinquency. 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 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. ¶

¶

<#>The commissioner has the discretion, for good cause shown, upon application made at least thirty (30) days in advance of delinquency date, to grant an extension of time determined by the commissioner but not to exceed sixty (60) days for an Employer to file the premium tax returns and pay the tax imposed by T.C.A. § 56-4-206, without penalty attached, but such tax shall bear interest as herein provided from the date the amount was due. ¶

¶

<#>Any Employer failing to pay the tax due plus the penalty and interest for sixty (60) days beyond the due date shall thereafter be barred from acting as a single employer in this state until the taxes and penalties are fully paid, and the commissioner shall revoke the certificate of authority granted to the Employer and, if applicable, its administrator to transact business in this State. ¶

¶

Deleted: 1

| 0780-1-83-.14 Examinations and Investigations.

Deleted: 2

- (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 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-insures 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: T.C.A. §§ 50-6-405(b)(7)-(b)(8), 50-6-405(h), and 56-1-408-413.

| 0780-1-83-.15 Violations.

Deleted: 3

Deleted: Suspension or Revocation of Certificate of Authority.

- (1) After notice and an opportunity for a hearing, unless the commissioner meets the standards for summary proceedings contained in T.C.A. § 50-6-405(b)(4), 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-.04(3). The Commissioner may consider such other factors in evaluating the financial or operational condition of an Employer deemed to be appropriate. In determining the financial condition of the Employer, the commissioner may, in the commissioner's sole discretion, non-admit assets of the Employer set forth in Rule 0780-1-83-.04(2)(a)(2);
 - (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 orders of the commissioner, 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 applicable 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 deemed by the commissioner to be related to the Employer’s overall fitness to self-insure 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 Tennessee Code Annotated Title 50, Chapter 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) An Employer’s failure to file any financial statements or reports required under this Chapter, authorizes the commissioner to assess a civil penalty of one hundred dollars (\$100) per day for each day of delinquency.

~~(3) With respect to any Employer licensed or required to be licensed under this Chapter, and in addition to or in lieu of any applicable denial, suspension or revocation of a license, the commissioner, upon finding that such Employer has violated any statute, rule or order, may assess civil penalties as set forth in T.C.A. § 56-2-305.~~ Formatted: Bullets and Numbering

Authority: T.C.A. §§ 50-6-405(b)(2)(A), 50-6-405(b)(4), ~~50-6-405(b)(8), and 56-2-305.~~ Deleted: and

0780-1-83-.16 Surrender of Certificate of Authority. Deleted: 4

- (1) An Employer may surrender its Certificate of Authority to self-insure at any time with the approval of the commissioner upon showing the commissioner that the Employer 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
 - (a) Any Employer that cedes its liabilities to an approved insurance company must maintain its security for such period as claims are still open. .
 - (b) An Employer that self-administers its run-out shall continue to comply with the reporting requirements of Rule 0780-1-83-.08 as long as there are still open claims.

- (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: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

0780-1-83-.17 Impaired Employers. Deleted: 5

- (1) If an Employer has become an Impaired Employer as determined by the commissioner, the commissioner shall protect the Employees of such Employer by promptly:
 - (a) Calling the security deposit and placing the funds in an account identifying the Impaired Employer; and

- (b) Begin paying benefits out of the Impaired Employer’s account under the authority of this Rule or as directed by the court that takes jurisdiction of the funds under applicable law.
- (2) The commissioner may negotiate agreements with insurance companies for administration of an Impaired Employer’s claims or for the assumption of the Impaired Employer’s workers’ compensation liabilities prior to the appointment of a receiver. All such agreements shall be presented to the court for approval.

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

0780-1-83-.1§ Severability.

Deleted: 6

If any section or portion of a section of these regulations or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Authority: T.C.A. §§ 50-6-405(b)(8) and 50-6-405(h).

Deleted:

Legal contact and/or party who will approve final copy for publication:

Formatted: Indent: First line: 0"

Karen L. Heidel
 Assistant General Counsel
 Department of Commerce and Insurance
 Second Floor, Davy Crockett Tower
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 615-741-3388 (fax) 615-741-4000

Deleted:

Deleted: ¶

Contact for disk acquisition:

Formatted: Indent: Left: 2"

Karen L. Heidel
 Assistant General Counsel
 Department of Commerce and Insurance
 Second Floor, Davy Crockett Tower
 500 James Robertson Parkway
 Nashville, Tennessee 37243
 615-741-3388 (fax) 615-741-4000

Deleted: ¶

Davy Crockett Tower

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

 Karen L. Heidel
 Assistant General Counsel

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.

Karen L. Heidel
Assistant General Counsel

Subscribed and sworn to before me this the _____ day of _____, 2008.

Notary Public

My commission expires on the _____ day of _____, _____.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the _____ day of _____, 2008.

Riley C. Darnell
Secretary of State

By: _____