

Rulemaking Hearing Rules  
Of the  
Department of Commerce and Insurance  
Division of Insurance

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

Public Comments and Responses  
By the Commissioner of Commerce and Insurance

Compiled Pursuant to Tenn. Code Ann. § 4-5-222

On December 17, 2004, a rulemaking hearing was held by Larry C. Knight, Jr., Assistant Commissioner for Insurance and John F. Morris, Chief Counsel for Insurance, by designation of Paula A. Flowers, Commissioner, at the offices of the Department of Commerce and Insurance. This hearing, conducted pursuant to the requirements of the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, allowed the Commissioner of Commerce and Insurance and her designees to hear public comments and responses to the proposed rule. The rule is being promulgated pursuant to Tenn. Code Ann. § 50-6-405(b).

The Commissioner solicited comments from the public by causing notice of the hearing to be published in accordance with the requirements of Tenn. Code Ann. § 4-5-203. The Commissioner received oral and written comments at the rulemaking hearing.

**Comment 1**

Rule 0780-1-83-.08 Reporting Requirements

It was commented that subsection (1)(a) of this Rule requiring an employer to file independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants goes beyond what is required by statute as Tenn. Code Ann. § 56-4-405(b)(2) only requires certified financial statements, or those financials certified by an officer of the company.

***Agency Response to Comment 1***

Tenn. Code Ann. § 50-6-405(b)(2) requires a self-insuring employer to file evidence of its ability to pay claims that may arise against the employer in the form of an annual certified financial statement. The term "certified" is not currently defined by the statute. The proposed rules attempt to clarify who is responsible for certifying the financial statements of the self-insuring employer. Were the Department to interpret the statute the way the commenter proposes, the Department would need to examine each employer annually to verify the correctness of the financial condition being certified by the officers and directors of the reporting companies. The existence of an independent

audit allows the Department to rely upon the financial statements filed by the self-insuring employers.

## **Comment 2**

### Rule 0780-1-83-.08 Reporting Requirements

It was commented that the requirement of this Rule that each self-insured employer file an independently audited financial statement by March 1 of each year would create an undue hardship on such employers. To comply with this requirement, employers would be required to hire more staff so that the auditors would have sufficient data to complete the audit by March 1. In addition, it was commented that the audit firms would charge a much higher audit fee in order to speed up the audit process as typically only public companies rush to complete their audit by March 1.

### ***Agency Response to Comment 2***

Tenn. Code Ann. § 50-6-405(b)(2) provides, in pertinent part, that a self-insuring employer is required to provide the Commissioner “[e]vidence of the employer’s financial ability to pay all claims that may arise against the employer in the form of an annual certified financial statement, including a statement of assets and liabilities and a statement of profit and loss, to be filed no later than sixty (60) days after the company’s immediately preceding fiscal year.” This section describes the responsibilities for self-insuring employers as it relates to when they must file their annual statements. The Department does not have the authority to change these statutory requirements by rule, and intends to enforce the will of the General Assembly.

## **Comment 3**

### Rule 0780-1-83-.08 Reporting Requirements

It was commented that the proposed rules require the financial condition of self-insuring employers to be audited according to Generally Accepted Audited Standards while insurers providing workers’ compensation insurance are required to file audited financial statements that are prepared in conformity with statutory accounting practices prescribed or permitted by the Department, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

### ***Agency Response to Comment 3***

The Department agrees with this comment’s description as to what is required of self-insuring employers as opposed to insurance companies. The Department is also willing to accept an employer’s annual statement prepared in accordance with statutory accounting principles as being in compliance with this Rule as well.

## **Comment 4**

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

Section (3) of this Rule was objected to as it requires an employer to file a premium tax return. The commenter observed that, for a self-insured employer, there is no insurance policy with premium involved. The commenter further described the process for a self-insured employer to pay tax to the Department. First, the commenter stated, the Department requires the employer to file claims data with the National Council on Compensation Insurance in order for the employer to obtain an experience rating factor. This factor is filed with the Department along with the employer's payroll. The Department then computes the premium that the employer would have paid had the employer purchased insurance coverage by a licensed insurance company. The 4.4% tax is then applied to this figure in order to determine the amount of tax owed by the employer.

### ***Agency Response to Comment 4***

The commenter has adequately described the process historically used by the Department in facilitating the self-insured employers' compliance with the tax requirements of Tenn. Code Ann. § 56-4-207. This section requires self-insured employers to compute their taxes as a percentage of the amount of premium the employers would have paid had they obtained workers' compensation insurance coverage from a licensed insurance company. As this tax is essentially a tax on potential premium, the term "premium tax" seems to be a reasonable term to use in this Rule.

## **Comment 5**

It was commented that based upon the letter dated August 30, 2004 from the Department, the Department has interpreted Tenn. Code Ann. § 50-6-405(b)(2) to require a self-insured employer to have an actuary certify biannually the adequacy of workers' compensation self-insured losses and reserves. It was commented that this requirement exceeded what is statutorily required.

### ***Agency Response to Comment 5***

Tenn. Code Ann. § 50-6-405(b)(2) requires self-insuring employers to file on a biennial basis a certification by an actuary as to the correctness of the reported losses and the adequacy of the employer's reserves. This section describes the responsibilities for self-insuring employers as it relates to when they must file their actuarial certifications. The Department does not have the authority to change these statutory requirements by rule, and intends to enforce the will of the General Assembly.