

**PROPOSED REGULATION OF THE DEPARTMENT
OF MOTOR VEHICLES**

LCB File No. R164-03

March 16, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-5 and 7-10, NRS 485.130; §6, NRS 485.130 and 485.380.

Section 1. Chapter 485 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *The Department may, before issuing a certificate of self-insurance to an applicant, require a guarantee of indemnification:*

(a) From the parent corporation, if the applicant is a subsidiary or affiliate of a corporation;

(b) From any partner, if the applicant is a partnership; or

(c) From the owner, if the applicant is a sole proprietorship.

2. *Entities making a joint application for a certificate of self-insurance pursuant to NAC 485.060 must enter into an indemnity agreement jointly and severally binding each entity for all liability arising from the operation of each motor vehicle that is self-insured pursuant to the certificate.*

Sec. 3. 1. *A self-insurer shall notify the Department not less than 60 days before any change in ownership or control. The Department will maintain the confidentiality of the notification and all related documents that it receives, unless otherwise required by a specific statute or a court of competent jurisdiction.*

2. If the Department receives notification from a self-insurer of a change in ownership or control, the Department may require the self-insurer to file a new application for self-insurance.

Sec. 4. NAC 485.060 is hereby amended to read as follows:

485.060 1. Before applying for a certificate of self-insurance, an applicant must submit a complete list of his motor vehicles to the Department. The list must contain the vehicle identification number, license plate number and the name of the make and model of each vehicle.

2. After the list is submitted, the number of vehicles registered in the name indicated on the application must not drop below 11.

3. An application for a certificate of self-insurance must be made on a form provided by the Department. The application must contain a statement by the applicant that he realizes that, in self-insuring, he is performing an insurance function and expressly agrees, as a condition to the granting of a certificate of self-insurance, to abide by the statutes of this state concerning unfair practices in settling claims and any regulations adopted thereunder by the Commissioner of Insurance.

4. Except as otherwise provided in this subsection, each applicant for a certificate of self-insurance must submit a copy of his annual balance sheet and profit and loss statement, including notes, for the confidential use of the Department. These financial statements must be ~~verified~~ *audited* by a certified public accountant. If the applicant is a natural person who does not have such statements, he must submit ~~copies of his returns for federal income tax for the preceding 3 years.~~ *audited personal financial statements.*

5. *The Department will use the financial statements submitted pursuant to subsection 4 to determine the net worth of the applicant, and will disallow the following items as assets:*

(a) *Accounts receivable, if they are factored or collateralized.*

(b) *An inventory, except one held for resale and not collateralized.*

(c) *A prepaid expense.*

(d) *An unqualified investment.*

(e) *An allocated bond fund.*

(f) *An investment in an affiliate.*

(g) *A restricted fund.*

(h) *A reserve.*

(i) *A security cost, such as a capitalized bond cost.*

(j) *A cash equivalent, unless it is described in the footnotes for the balance sheet by item, and for investments, by duration and nature. A cash flow statement is not a sufficient description.*

(k) *A contingency or commitment, including any estimated cost.*

(l) *Any book adjustment caused by a change in an accounting policy or a restatement.*

(m) *Goodwill or excess cost over the fair market value of assets.*

(n) *Any other items listed in the assets that are deemed unacceptable by the Department because the items cannot be justified or because they do not directly support the ability of the self-insurer to pay a claim.*

6. *In reviewing the financial statements submitted pursuant to subsection 4, the Department will consider:*

- (a) *The auditor's opinion.*
- (b) *The various financial ratios, including working capital and cash flow.*
- (c) *Any footnotes relating to the financial statements.*

7. A parent corporation and its wholly owned subsidiary may submit a joint application for self-insurance if both the parent corporation and the subsidiary independently qualify for the issuance of a certificate of self-insurance. If the Department approves the application, the Department will issue a combined certificate of self-insurance to the parent corporation and the subsidiary. As a condition of the issuance of a combined certificate of self-insurance, the parent corporation and the subsidiary must:

(a) Enter into an indemnity agreement pursuant to section 2 of this regulation; and

(b) Each deposit security in the respective amounts determined by the Department pursuant to NAC 485.080.

8. Except in the case of a parent corporation and its wholly owned subsidiary that submit a joint application for the issuance of a certificate of self-insurance, the Department will not accept from an applicant for self-insurance that is a subsidiary of another entity consolidated audited financial statements of the subsidiary and the other entity.

9. An applicant for self-insurance may be required by the Department to submit evidence of excess insurance or reinsurance written by an insurer authorized to do business in this state to provide protection against large or numerous judgments. This insurance may be in excess of the amount of security deposited with the Department. To determine if excess insurance or reinsurance will be required, the Director or the authorized representative will consider the number of vehicles registered to the applicant, the manner in which they are being used and the applicant's financial ability to pay claims.

Sec. 5. NAC 485.070 is hereby amended to read as follows:

485.070 1. No application will be approved unless:

(a) The Department receives a true, complete and correct application; ~~and~~

(b) The applicant provides appropriate security of ~~[the]~~ a type *set forth* in NAC 485.090 in the amount ~~[established by]~~ *determined by the Department pursuant to* NAC 485.080 ~~[.]~~;

(c) The Department determines that the applicant has a net worth of at least \$2.5 million;

(d) The Department is satisfied that the applicant can pay any judgment for which it may become liable;

(e) The Department determines that the loss record of the applicant, if any, is reasonable and not excessive; and

(f) All vehicles that the applicant wishes to self-insure are registered in this state.

2. No certificate of self-insurance may be issued or approved for an applicant whose previous certificate of self-insurance was cancelled within 1 year ~~[of]~~ *after* the date of the application for any of the reasons stated in ~~[subsections 3 to 6,]~~ *paragraphs (d) to (g)*, inclusive, of *subsection 1 of* NAC 485.120.

3. The Director or the authorized representative will review and approve or disapprove an application for a certificate of self-insurance. If the application is approved, the Director or authorized representative will issue a certificate to the applicant. The certificate is valid for 1 year after the date the application is approved, and the day and month of the expiration of the certificate must, to the extent practicable, remain the day and month of expiration of each renewal of the certificate.

4. The Department will notify the applicant by certified mail if his application is denied. The notice will include the reason for the denial.

5. A certificate of self-insurance is not transferable.

Sec. 6. NAC 485.080 is hereby amended to read as follows:

485.080 1. ~~{The amount of security required for fleets is determined in accordance with the following scale:~~

11	to	25 vehicles	\$ 40,000
26	to	50 vehicles	45,000
51	to	75 vehicles	50,000
76	to	100 vehicles	55,000
101	to	250 vehicles	75,000
251	to	500 vehicles	100,000
501	to	750 vehicles	150,000
751	to	1,000 vehicles	200,000

~~For fleets in excess of 1,000 vehicles, the amount is determined by the Department, but will not be less than \$200,000.~~

~~2.] A self-insurer shall deposit with the Department security in an amount determined by the Department. The Department will require security in an amount that the Department determines is reasonably sufficient to ensure the payment of a judgment resulting from an accident involving a motor vehicle of the self-insurer, but in no event will the amount of required security be less than 105 percent of the self-insurer's expected annual cost of claims as determined by the Department or \$100,000, whichever is greater.~~

~~2. The Department will:~~

~~(a) In determining a self-insurer's expected annual cost of claims, consider the past and prospective experience of the self-insurer with regard to losses and expenses arising from the~~

operation of motor vehicles in this state, the hazard of catastrophic loss, other contingencies and relevant trends within this state.

(b) In determining the amount of required security, consider the financial ability of the self-insurer to pay any judgment for which it may become liable and the probable continuity of operation of the self-insurer after the payment of such a judgment.

3. The security deposit must be used to satisfy judgments which have become final and remain unsatisfied after 30 days unless a court order mandates otherwise. Upon notification to the self-insurer that the security has been used to satisfy damages, the self-insurer must replenish the ~~[Fund]~~ *security* to the required amount within 24 hours. Failure to maintain the ~~[full-deposit]~~ *amount of required security* is grounds for *the* cancellation of the certificate of self-insurance.

4. *The Department may increase or decrease the amount of required security and specify the form of any additional required security. If the Department increases the amount of required security, the Department will send written notice of the required increase to the self-insurer. The self-insurer shall, within 30 days after receiving the notice, increase the security deposited with the Department in accordance with the amount specified in the notice.*

Sec. 7. NAC 485.090 is hereby amended to read as follows:

485.090 The Department may accept as security:

1. A time certificate of deposit with ~~[any chartered federal or state bank within this state]~~ *a bank chartered by this state or a bank that is a member of the United States Federal Reserve System which is* made payable to the ~~[person]~~ *self-insurer* and the Department.

2. A surety bond ~~[when submitted on behalf of the self insured by any company qualified to transact the business of a surety]~~ *which is issued by a company authorized and licensed to*

transact the business of surety insurance in this state and which is countersigned by a resident agent licensed in this state.

3. *Cash.*

4. *A letter of credit that:*

(a) Includes a clause stating that no document other than a demand for payment under the terms of the letter is necessary for payment;

(b) Is irrevocable;

(c) Does not expire unless written notice is given by the issuer to the Department not less than 30 days before the date of expiration;

(d) Is issued by a bank that:

(1) Is chartered by this state or is a member of the United States Federal Reserve System; and

(2) Has been approved by the Department;

(e) Includes a clause stating that the letter of credit is not subject to any condition or qualification that is not specified in the letter of credit;

(f) Although it may be the individual obligation of the issuer, is not contingent on the ability of the issuer to perfect any lien or security interest;

(g) Does not contain any reference to another agreement, agency, document or person;

(h) Includes a clause stating that the obligation of the issuer under the letter of credit is not contingent on reimbursement; and

(i) If the letter of credit includes a boxed section in the heading that sets forth the name of the applicant and other appropriate notations, the boxed section is clearly marked to indicate

that the information set forth therein is for internal identification only and does not affect the terms of the letter of credit or the obligations of the issuer.

5. Other forms of security which ~~meet the Department's requirements. The form of security will be evaluated in each case to determine if it is~~ *are* acceptable to the Department.

Sec. 8. NAC 485.100 is hereby amended to read as follows:

485.100 1. The security deposited under NAC 485.090 must be maintained for as long as the self-insurer holds or desires to hold a certificate of self-insurance in this state.

2. At the time of the relinquishment of the certificate of self-insurance, the self-insurer shall submit a properly executed affidavit to the Department indicating all outstanding claims against the self-insurer by listing all claimants and the amount of each claim. *The self-insurer shall administer all such claims.*

3. The security must remain on file *for a period of 3 1/2 years* after the self-insurer no longer desires to hold a certificate of self-insurance or the number of vehicles *registered in this state in the name of the self-insurer* drops below 11 , ~~for the period of 3 1/2 years~~ or until the Director is satisfied that all outstanding claims have been adjudicated and paid.

Sec. 9. NAC 485.110 is hereby amended to read as follows:

485.110 1. Each self-insurer ~~must~~ *shall* annually submit *to the Department* a:

(a) Copy of its *audited* balance sheet and profit and loss statement, including notes;

(b) Report on a form provided by the Department indicating the number of accidents, the number of claims submitted, the amount of each ~~claim~~ *claim*, the amount paid to a claimant if the claim has been adjudicated, and the adjusting companies which have settled claims on behalf of the self-insurer; and

(c) Complete listing of currently registered vehicles on a form approved by the Department.

↪ Each self-insurer shall submit these reports no earlier than 60 days before and no later than 15 days before the date of expiration of ~~the~~ *its* certificate of self-insurance.

2. ~~The~~ *A* self-insurer may settle its own claims or use the services of an adjusting company licensed in accordance with chapter 684A of NRS to settle claims on its behalf. If the self-insurer uses an adjusting company to settle claims, an affidavit must be ~~submitted~~ *included* with the reports ~~required in~~ *submitted pursuant to* subsection 1 which lists all companies that settled claims during the reporting period.

3. *A self-insurer shall calculate the estimated expenditure for each claim included in the reports submitted pursuant to subsection 1. The estimated expenditure for a claim is the total liability attributable to the motor vehicle accident from which the claim arose, and includes the total amount of money disbursed for the claim and the estimated additional cost, including future costs actually and potentially due, which may result from the settlement of the claim, regardless of when it will be paid.*

Sec. 10. NAC 485.120 is hereby amended to read as follows:

485.120 *1.* The Department may cancel the certificate of self-insurance of a self-insurer if:

~~1.]~~ *(a)* The self-insurer no longer has security in ~~the form required by~~ *a form acceptable pursuant to* NAC 485.090;

~~2.]~~ *(b)* The self-insurer no longer has security in the amount ~~required by~~ *determined by the Department pursuant to* NAC 485.080;

~~3.]~~ *(c)* *The self-insurer fails to increase the amount of security to the required amount within 30 days after receiving notice from the Department of a required increase;*

(d) The self-insurer fails to pay a judgment within 30 days after it becomes final;

~~4.]~~ *(e)* The self-insurer submits false information in the application for self-insurance;

~~5.~~ (f) The self-insurer fails to submit or falsifies any report required pursuant to NAC 485.110;

~~6.~~ (g) The self-insurer fails to comply with ~~the provisions~~ *any provision* of NRS 686A.310 or NAC 686A.600 to 686A.680, inclusive, an order of the Commissioner of Insurance in any informal or administrative hearing or an order of any court;

~~7.~~ (h) The number of vehicles registered in *this state in* the name of the self-insurer drops below 11; or

~~8.~~ (i) The self-insurer fails to comply with any ~~of the provisions~~ *provision* of NRS 485.380 or ~~of~~ this chapter.

2. If the Department cancels the certificate of self-insurance of a self-insurer:

(a) The Department will send notice of the cancellation, including the reason for the cancellation, to the self-insurer by certified mail; and

(b) The self-insurer shall comply with the requirements concerning liability insurance set forth in NRS 485.185.