

LCB File No. R164-03

PROPOSED REGULATION OF THE DEPARTMENT OF MOTOR VEHICLES

Proposed Effective Date: Upon Codification

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

AUTHORITY: §§ 1-8, NRS 485.130 and 485.380

Section 1. NAC 485.060 Application for certificate. (NRS 485.130, 485.380)

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 *and used by the department to determine the applicant's net worth*. 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]~~ *personal audited financial statements*.

(a) Each statement must be audited. In determining the tangible net worth of the applicant for self-insurance, the following items are disallowed as assets:

- (1) Accounts receivable, if they are factored or collateralized.*
- (2) An inventory, except one held for resale and not collateralized.*
- (3) A prepaid expense.*
- (4) An unqualified investment.*
- (5) An allocated bond fund.*
- (6) An investment in an affiliate.*
- (7) A restricted fund.*
- (8) A reserve.*
- (9) A security cost, such as a capitalized bond cost.*
- (10) 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.*
- (11) A contingency or commitment, including any estimated cost.*

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

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

(14) Any other items listed in the assets that are deemed unacceptable by the department because they cannot be justified or because they do not directly support the insurer's ability to pay a claim.

(b) The following factors must be used to review the audited financial statements:

(1) The auditor's opinion.

(2) The various financial ratios, including working capital and cash flow.

(3) Any footnotes related to the financial statements.

(c) The applicant for self-insurance must calculate the estimated expenditure for each claim reported in the annual report. The estimated expenditure for a claim is the total liability attributable to the motor vehicle accident, 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 or judgment of a claim, regardless of when it will be paid.

5. 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. 2. NAC 485.070 Approval or denial of application. (NRS 485.130, 485.380)

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 type in NAC 485.090 in the amount established by NAC 485.080~~[-]~~;

(c) The applicant is solvent; and

(d) The department is satisfied the applicant can pay judgments obtained against him.

2. No certificate of self-insurance may be issued or approved for an applicant whose previous certificate of self-insurance was canceled within 1 year of the date of the application for any of the reasons stated in subsections 3 to 6, inclusive, 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. Standard for solvency; for the purposes of this section, a self-insured is insolvent if his assets are greater than his liabilities.

6. Approved certificates of self-insurance are non-transferable to another individual, partnership, limited liability partnership, limited liability company, or corporation.

Sec. 3. NAC 485.080 Security required. (NRS 485.130, 485.380)

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.] A self-insurance certificate holder must, in addition to establishing financial ability to pay, deposit with the department a security appropriately executed and payable to the State of Nevada, Department of Motor Vehicles, and conditioned upon the payment of a judgment for a motor vehicle accident. The security must be in an amount reasonably sufficient to ensure payment of a judgment, but in no event may it be less than 105 percent of the self-insured's expected annual incurred cost of claims, or less than \$100,000, whichever is greater. In arriving at an amount for the expected annual cost of claims, due consideration must be given to the past and prospective experience of the self-insured with losses and expenses within this state, to the hazard of catastrophic loss, to other contingencies, and to trends within the state. In arriving at the amount of the deposit required, the department may consider the financial ability of the self-insured to pay any judgment and his probable continuity of operation.~~

2. 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 to the required amount within 24 hours. Failure to maintain the full deposit is grounds for cancellation of the certificate of self-insurance.

3. *The required deposit may be increased or decreased by the department in accordance with this regulation. If the department requires a self-insured to increase his deposit, the department may specify the form of the additional security. The self-insured shall comply with such a requirement within 30 days after receiving notice from the department.*

Sec. 4. NAC 485.090 Forms of security. (NRS 485.130, 485.380) 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* made payable to the ~~[person]~~ *self-insured certificate holder* and the department.

2. A surety bond, *if it is:* ~~[when submitted on behalf of the self insured by any company qualified to transact the business of a surety in this state.]~~

(1) Issued by a company authorized and licensed to transact the business of surety insurance in this state; and

(2) Countersigned by a resident agent licensed in this state.

3. *Cash.*

4. *A letter of credit which:*

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

(b) Must be irrevocable;

(c) Must not expire unless written notice is given by the issuer to the department no less than 30 days before the expiration;

(d) Must be issued by a bank chartered by this state or a bank that is a member of the United States Federal Reserve System and has been approved by the department;

(e) Must include a clause stating that it is not subject to any conditions or qualifications outside the letter. The letter may be the individual obligation of the financial institution issuing it, but must not be contingent upon the institution's ability to perfect any lien or security interest;

(f) Must not contain references to any other agreements, agencies, documents or persons;

(g) Must include a clause stating that the obligation of the financial institution under the letter is not contingent upon reimbursement; and

(h) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations. If such a section is present it must be marked clearly to indicate that the information is for internal identification only, and does not affect the terms of the letter or the financial institution's obligations under the letter.

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 acceptable to the department.

Sec. 5. NAC 485.100 Duration of security. (NRS 485.130, 485.380)

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.

3. The security must remain on file after the self-insurer no longer desires to hold a certificate of self-insurance or the number of vehicles 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.

4. It is the responsibility of the self-insured to administer all claims.

Sec. 6. NAC 485.110 Annual reports. (NRS 485.130, 485.380)

1. Each self-insurer must annually submit a:

(a) Copy of its 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, 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 certificate of self-insurance.

2. The 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 with the reports required in subsection 1 which lists all companies that settled claims during the reporting period.

3. The self-insured must calculate the estimated expenditure for each claim reported in the annual report. The estimated expenditure for a claim is the total liability attributable to the motor vehicle accident, 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 a claim, regardless of when it will be paid.

Sec. 7. NAC 485.120 Cancellation of certificates. (NRS 485.130, 485.380) The department may cancel the certificate of self-insurance of a self-insurer if:

1. The self-insurer no longer has security in the form required by NAC 485.090;

2. The self-insurer no longer has security in the amount required by NAC 485.080;

3. The deposit required pursuant to NAC 485.080 is not sufficient and the self-insured fails to increase the deposit after he has been ordered to do so by the department;

~~4.~~ The self-insurer fails to pay a judgment within 30 days after it becomes final;

~~5.~~ The self-insurer submits false information in the application for self-insurance;

~~6.~~ The self-insurer fails to submit or falsifies any report required pursuant to NAC 485.110;

~~7.~~ The self-insurer fails to comply with the provisions 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;

~~8.~~ The number of vehicles registered in the name of the self-insurer drops below 11; or

~~9.~~ The self-insurer fails to comply with any of the provisions of NRS 485.380 or of this chapter.

10. The department will notify the applicant by certified mail if his self-insurance is cancelled. The notice will include the reason for the cancellation.

Sec. 8. *If a certificate of self-insurance is cancelled, it is the sole obligation of the self-insured to ensure that each vehicle registered has valid insurance pursuant to NRS 485.185.*