

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

INSURANCE

CERTIFICATES OF NO-FAULT SELF-INSURANCE

(By authority conferred on the director of the Department of Insurance and Financial Services by section 210 of 1956 PA 218, MCL 500.210; 1969 PA 306, MCL 24.201 to 24.328; E.R.O. No. 2011-4, MCL 445.2030; and E.R.O. No. 2013-1, MCL 550.991.)

R 257.531 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means the insurance code of 1956, 1956 PA 218, MCL 500.100 to MCL 500.8302.

(b) "Applicant" means a motor vehicle registrant who is required to maintain security for the payment of benefits under section 3101 of the no-fault law and who applies for a certificate of self-insurance.

(c) "Casualty insurance company" means an insurer authorized, as defined in section 108 of the act, MCL 500.108, to transact casualty insurance business in this state, or an eligible unauthorized insurer recognized by the director of insurance pursuant to section 1920 of the act, MCL 500.1920.

(d) "Financial responsibility law" means Chapter V of the Motor vehicle code, 1949 PA 300, MCL 257.501 to MCL 257.532.

(e) "Motor vehicle" means a vehicle, including a trailer operated or designed for operation upon a public highway by power other than muscular power that has more than 2 wheels and is required to be registered under the Michigan vehicle code. Motor vehicle does not include a motorcycle or a moped.

(f) "No-fault law" means sections 3101 to 3179 of the act, MCL 500.3101 to MCL 500.3179.

(g) "Michigan vehicle code" means the Michigan vehicle code, 1949 PA 300, MCL 257.1 to MCL 257.923.

(h) "Qualified actuary" means an individual who meets the following:

(i) Is a member in good standing of the American academy of actuaries or the casualty actuarial society.

(ii) Notwithstanding subdivision (c) of this subrule, has not been found by the director to have done any of the following:

(A) Violated any provision of, or any obligation imposed by, the act or other law in the course of his or her dealings as a qualified actuary.

(B) Been found guilty of fraudulent or dishonest practices.

(C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary.

(D) 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.

(iii) If an individual has done any of the activities listed in paragraphs (i) to (iv) of this subrule, but has subsequently been reinstated as a qualified actuary following appropriate notice and hearing, the director may, in his or her discretion, deem the individual to be a qualified actuary for purposes of this rule.

(iv) Has notified the director of any action taken by the director of insurance of any other state similar to that described in paragraph (ii) of this subdivision.

(2) A term defined in the act has the same meaning when used in these rules, unless defined otherwise in this rule.

History: 1993 AACCS; 2018 AACCS.

R 257.532 Security equivalent; qualifications for certificate; excess insurance requirement.

Rule 2. (1) A certificate of self-insurance that is issued pursuant to these rules constitutes security equivalent to that afforded by a policy of insurance that provides for the payment of benefits pursuant to the no-fault law.

(2) Pursuant to section 3101d of the no-fault law, the director may issue a certificate of self-insurance to an applicant who possesses all the following qualifications:

(a) Registers in the applicant's name more than 25 motor vehicles, excluding trailers, in this state.

(b) Agrees, in writing, to comply with all of the provisions of the no-fault law, the financial responsibility law contained in chapter V of the Michigan vehicle code, and these rules.

(c) Has not been declared bankrupt or had a financial manager appointed or any substantially equivalent action taken within the 5-year period immediately preceding the date of application.

(d) Possesses a net worth of more than \$15,000,000.00 and complies with the provisions of subrule (3) of this rule.

(e) Possesses a sound financial condition, has sufficient liquid assets, and utilizes financial practices and methods that would not bring into question its ability to pay claims fully and in a timely manner.

(f) Establishes a fully funded loss reserve as described in R 257.536.

(g) Has not had a certificate of self-insurance denied or canceled by this state or any other state within 1 year preceding the date of application, and has maintained insurance coverage on the vehicles described in R 257.533(4)(f) at all times as required by law.

(h) Submits to the director a completed application for a certificate of self-insurance with all required documents attached.

(3) The applicant shall, in addition to meeting the qualifications specified in subrule (2) of this rule, secure and maintain an excess insurance policy, as described in R 257.537, with policy limits and retention amounts commensurate to its risks and exposure that are acceptable to the director.

(4) Except as provided in subrule (6) of this rule, a parent company and its subsidiaries shall make separate applications for the issuance of a certificate of self-insurance pursuant to these rules.

(5) Except for a parent company and its wholly owned subsidiaries making a combined application for the issuance of a certificate of self-insurance pursuant to the

provisions of subrule (6) of this rule, a parent company and its subsidiaries shall not combine or commingle net worth, motor vehicle registrations, or loss reserves for the purpose of qualifying or maintaining qualification for a certificate of self-insurance pursuant to these rules.

(6) A parent company and its wholly owned subsidiaries may make a combined application for the issuance of a certificate of self-insurance if either of the following provisions is satisfied:

(a) Both the parent company and each wholly owned subsidiary included in the combined application otherwise meet the qualifications for the issuance of a certificate of self-insurance set forth in this rule.

(b) Both of the following conditions are met:

(i) Both the parent company and each wholly owned subsidiary included in the combined application enter into a written indemnity agreement jointly and severally binding each entity for any liability under the no-fault law, the financial responsibility law contained in chapter V of the Michigan vehicle code, and these rules. The language and form of the written agreement must be approved by the director.

(ii) For each wholly owned subsidiary included in the combined application, the parent company guarantees in writing its subsidiary's liability for payment of benefits under the no-fault law, the financial responsibility law contained in chapter V of the Michigan vehicle code, and these rules. The form and substance of the guarantees must be approved by the director.

History: 1993 AACCS; 2018 AACCS.

R 257.533 Application; form; completeness; signature; effective date; accompanying documents.

Rule 3. (1) A person who seeks to qualify as a self-insurer or renew his or her certificate of self-insurance shall submit an application for a certificate of self-insurance to the director on a form prescribed by the director and available on the department of insurance and financial services website.

(2) The application for a certificate of self-insurance must contain complete answers to all questions and must be signed by the person who makes the application or by the applicant's duly authorized representative.

(3) An application must be submitted to the director not less than 45 days before the desired effective date of the certificate.

(4) An application must be accompanied by all of the following documents:

(a) A statement of financial condition that has been prepared in accordance with generally accepted accounting practices and principles, that has been certified by a certified public accountant, and that covers at least a 1-year period ending not more than 12 months before the date of application. The director may request more recent unaudited financial statements be filed with the application.

(b) A copy of the declaration sheet of any policy of excess insurance.

(c) Either of the following:

(i) A written estimate of loss reserve that is prepared by a qualified actuary.

(ii) A written estimate of loss reserve that is prepared by a qualified employee of a casualty insurance company.

(d) A copy of a written authorization that designates a specified employee of the applicant, or another authorized person, to receive and process claims that are submitted to the applicant.

(e) A copy of a claim form that is used by a person who submits a claim to the applicant for benefits due to suffering accidental bodily injury or property damage arising out of the ownership, operation, maintenance, or use of a motor vehicle that is registered or owned by the applicant.

(f) A list of all motor vehicles that are registered in this state in the name of the applicant at the time of application or that are to be self-insured under a certificate of self-insurance issued to the applicant as determined at the time of application. The vehicles must be identified by all of the following:

(i) Make.

(ii) Model.

(iii) Year.

(iv) Vehicle identification number (VIN).

(v) Registration number.

(g) A written policy and procedure or detailed description on how claims will be processed and paid in a timely manner.

(5) A claim form that accompanies an application must include all of the following information:

(a) A statement of a claimant's right to personal protection insurance benefits, property protection insurance benefits, and residual liability insurance benefits under the no-fault law.

(b) A statement of a self-insurer's responsibility to pay claims in a timely manner.

(c) An instruction that directs claimants to contact the director concerning a self-insurer's failure to fulfill its responsibilities under the no-fault law.

History: 1993 AACCS; 2018 AACCS.

R 257.534 Application; review; hearing; certificate duration; renewals.

Rule 4. (1) Upon receipt of a complete application for an original certificate of self-insurance, the director shall promptly review the application and all supporting documents. Within 45 days after receipt, the director shall notify the applicant that the application has been approved or denied.

(2) If an application has been denied, the applicant may request an administrative hearing to review the denial. This hearing must be conducted in accordance with the procedures set forth in R 257.539. The director shall affirm or reverse the denial based upon the record made at the hearing.

(3) If an applicant meets the qualifications for receipt of a certificate of self-insurance, the director shall issue the applicant a formal certificate that indicates that status as a self-insurer is conferred. An original certificate of self-insurance will expire 1 year after the effective date of the certificate.

(4) A self-insurer may apply for a renewal certificate of self-insurance by submitting a complete renewal application 45 days before the expiration of the previously issued certificate. The renewal application must be accompanied by the documents required pursuant to the provisions of R 257.533(4). The director shall promptly review the

renewal application and all supporting documents. Within 30 days after receipt, the director shall notify the applicant that the renewal application has been approved or denied.

(5) If a renewal application has been denied, the applicant may request an administrative hearing to review the denial. This hearing must be conducted in accordance with the procedures set forth in R 257.539. The director shall affirm or reverse the denial based upon the record made at the hearing.

(6) If a renewal application is submitted and approved, the existing certificate of self-insurance will be extended for 1 year from the date of expiration. A renewal application that is submitted after the expiration of the previously issued certificate is considered an application for an original certificate of self-insurance.

History: 1993 AACS; 2018 AACS.

R 257.535 Additional reports.

Rule 5. The director may require a self-insurer or applicant to submit additional reports, including an accident and claim activity report or a statement of claims and losses, and any relevant additional information that is necessary to determine the continuing ability of the self-insurer or applicant to pay present and future claims. Any additional report, statement, or information that is required must be made upon a form that is prescribed by the director and is due not later than 30 days after being requested by the director. If the director does not receive the additional report, statement, or information within the 30-day period, the self-insurer's certificate of self-insurance may be canceled or the applicant's application for a certificate of self-insurance may be denied.

History: 1993 AACS; 2018 AACS.

R 257.536 Loss reserve; use; amount; funding; expenditures; commingling; trust or escrow account.

Rule 6. (1) A loss reserve must be utilized to pay claims that are anticipated during the certification year and that are submitted for payment during that year and to pay claims that have been incurred and submitted before the certification year, but have not yet been paid by the applicant or self-insurer.

(2) Except as provided in subrule (7) of this rule, a fully funded loss reserve consists of an amount of money or investment grade securities that can be liquidated for face value, as determined by a qualified actuary, or as determined by a qualified employee of a casualty insurance company, that is sufficient to compensate claimants for all benefits that are due for claims that are to be paid or that are anticipated to be paid during the certification year and all benefits that are due for claims incurred before the certification year, but are to be paid or are anticipated to be paid during the certification year, including all benefits that may be due during the certification year for claims that can be anticipated or are incurred but not reported, exclusive of that portion of any claim that is covered by excess insurance.

(3) Before the beginning of a certification year, an applicant or self-insurer shall fully fund its loss reserve account.

(4) Loss reserve funds must only be expended to pay claims that are incurred and submitted under the no-fault law, the financial responsibility law contained in chapter V of the Michigan vehicle code, and these rules.

(5) Loss reserve funds must be kept in a segregated account and must not be commingled with other funds of the applicant or self-insurer. The funds must be physically located in this state unless otherwise approved by the director and may be maintained in a financial institution, in an escrow account, under a trust agreement, or by the applicant or self-insurer individually. With prior approval of the director, the loss reserve may be commingled for applicants with net worth of more than \$50,000,000.00 and sufficient liquidity.

(6) For a governmental unit that has the authority to tax, a fully funded loss reserve consists of an amount of money that is included in the budget or reserve accounts of the governmental unit for the fiscal year, which includes its certification year, as determined by a qualified actuary, or as determined by a qualified employee of a casualty insurance company, and that is sufficient to compensate claimants for all benefits that are due for claims that are to be paid or that are anticipated to be paid during the certification year and all benefits that are due for claims that are incurred before the certification year, but are to be paid or are anticipated to be paid during the certification year, including all benefits that may be due during the certification year for claims that can be anticipated or are incurred but not reported, exclusive of that portion of any claim that is covered by excess insurance.

History: 1993 AACCS; 2018 AACCS.

R 257.537 Excess insurance; conditions for compliance.

Rule 7. The director shall not recognize a contract or policy of excess insurance in considering the ability of an applicant to fulfill its financial obligations under the no-fault law or the financial responsibility law contained in chapter V of the Michigan vehicle code, unless the contract or policy is in compliance with all of the following requirements:

(a) Is issued by a casualty insurance company.

(b) Is not cancelable or nonrenewable, unless the party that desires to cancel or not renew the policy gives written notice, by registered or certified mail, to the other party to the policy and to the director not less than 30 days before termination of the policy.

(c) Does not contain policy coverage exceptions or exclusions, or any other policy provisions; that are not in compliance with the no-fault law, the Michigan vehicle code, and these rules.

(d) Does not contain a commutation clause, unless the clause provides that a commutation does not relieve an underwriter of further liability either in respect to claims and expenses unknown at the time of the commutation or in respect to any claim that is apparently closed at the time of initial commutation and that is subsequently reopened by, or through, a competent authority. The clause must, in addition, provide for both of the following:

(i) If the underwriter proposes to settle its liability for future claims with respect to accidents that occur during the term of the policy by the payment of a lump sum to the self-insurer, to be fixed as provided in the commutation clause of the policy, then not less than 30 days' prior notice of the commutation must be given to the director by the underwriter or its agent by certified mail.

(ii) If any commutation is effected, then the director may direct that the sum be placed in trust for the benefit of all claimants who are entitled to future payments of compensation.

(e) Contains a clause that provides that if a self-insurer becomes insolvent and is unable to pay claims, the excess insurer shall make, directly to claimants or their authorized representatives, such payments as would have been made by the excess carrier to the self-insurer after it has been determined that the retention level has been reached on the excess insurance contract.

History: 1993 AACCS; 2018 AACCS.

R 257.538 Denial or cancellation of certificate; certificates issued before effective date of rules.

Rule 8. (1) The director may disapprove an application for a certificate of self-insurance if the applicant fails to possess a qualification for the issuance of a certificate of self-insurance as set forth in R 257.532.

(2) The director may cancel a certificate of self-insurance if any of the following provisions applies to a self-insurer:

(a) Fails to pay a judgment that is rendered against the self-insurer upon a cause of action arising out of the ownership, operation, maintenance, or use of any motor vehicle, as defined in the Michigan vehicle code or the no-fault law, within 30 days after the judgment becomes final.

(b) Fails to pay an assessment bill that is issued pursuant to the provisions of section 3171 of the no-fault law within 30 days after billing.

(c) Fails to pay personal protection insurance benefits to which a claimant is entitled under the no-fault law within 30 days after the receipt of reasonable proof of the loss and the amount of loss.

(d) Files a petition in bankruptcy or is declared bankrupt by a federal court.

(e) Is placed in receivership, declared insolvent, or ordered dissolved or liquidated by a state court or has a financial manager appointed by the governor or any substantially equivalent action taken.

(f) Commits an act that would jeopardize the self-insurer's ability to pay claims that are filed with, or judgments that are obtained against, the self-insurer.

(g) Fails to continuously possess any qualification for a certificate of self-insurance as described in R 257.532 or fails to comply with any other provision of these rules.

(h) The director has reasonable grounds to believe that any information that is submitted by an applicant or self-insurer and that is contained in any application, renewal, document, statement, or report that is required pursuant to these rules is false.

History: 1993 AACCS; 2018 AACCS.

R 257.539 Administrative hearing.

Rule 9. (1) An administrative hearing that is conducted with regard to the denial of an application for a certificate of self-insurance, or before the cancellation of a certificate of self-insurance pursuant to the provisions of section 3101d of the no-fault law must be conducted pursuant to these rules, the procedures set forth in chapter 4 of 1969 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to MCL 24.287, and R 500.2101 to R 500.2142.

(2) Before the commencement of any proceeding with regard to the denial of a renewal application or the cancellation of a certificate of self-insurance, the director shall afford an applicant or self-insurer an opportunity to demonstrate compliance pursuant to section 92 of 1969 PA 306, MCL 24.292.

History: 1993 AACS; 2018 AACS.

R 257.540 Proof of insurance.

Rule 10. A person whose certificate of self-insurance has been canceled or whose renewal application has been denied shall immediately obtain a policy of insurance that affords security for the payment of benefits as required by the no-fault law for each motor vehicle that is required to be registered by the person in this state and shall provide proof of insurance to the director and the secretary of state.

History: 1993 AACS; 2018 AACS.