

**DEPARTMENT OF STATE**

**BUREAU OF DEPARTMENT SERVICES**

**CERTIFICATES OF NO-FAULT SELF-INSURANCE**

(By authority conferred on the secretary of state by sections 204 and 501 of Act No. 300 of the Public Acts of 1949, as amended, being SS257.204 and 257.501 of the Michigan Compiled Laws)

**R 257.531 Definitions.**

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

(a) "Act" means Act No. 300 of the Public Acts of 1949, as amended, being S257.1 et seq. of the Michigan Compiled Laws.

(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 Act No. 218 of the Public Acts of 1956, as amended, being S500.108 of the Michigan Compiled Laws, to transact casualty insurance business in this state, or an eligible unauthorized insurer recognized by the commissioner of insurance pursuant to section 1920 of Act No. 218 of the Public Acts of 1956, as amended, being S500.1920 of the Michigan Compiled Laws.

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

(e) "No-fault law" means sections 3101 to 3179 of Act No. 218 of the Public Acts of 1956, as amended, being SS500.3101 to 500.3179 of the Michigan Compiled Laws.

(f) "Qualified actuary" means a member in good standing of the American academy of actuaries or the casualty actuarial society.

(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.

**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 531 of the act and section 3101 of the no-fault law, the secretary of state 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 Michigan.

(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 act, and these rules.

(c) Has not been declared bankrupt within the 5-year period immediately preceding the date of application.

(d) Possesses a net worth of more than \$5,000,000.00 and complies with the provisions of subrule (3) of this rule.

(e) Possesses a sound financial condition 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.

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

(3) If an applicant possesses a net worth that is less than \$20,000,000.00, 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 that are acceptable to the secretary of state.

(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 an 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 act, and these rules. The language and form of the agreement shall be approved by the secretary of state.

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

History: 1993 AAC.S.

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

Rule 3. (1) A person who seeks to qualify as a self-insurer shall submit an application for a certificate of self-insurance to the secretary of state on a form provided by the secretary of state.

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

(3) An application shall be submitted to the secretary of state not less than 30 days before the desired effective date of the certificate.

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

(a) A statement of financial status which has been prepared in accordance with generally accepted accounting practices and principles, which has been certified by a certified public accountant, and which covers a 1-year period ending not more than 12 months before the date of application.

(b) A copy of the declaration sheet of any policy of excess insurance that is intended to be used as partial security.

(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 which is prepared in conformity with the loss reserve methodology that is approved for utilization by the self-insurer by a qualified actuary within the 2-year period immediately preceding the date of the self-insurer's original application pursuant to the provisions of these rules and which is certified by an owner, officer, or director of the self-insurer.

(iii) A written estimate of loss reserve that is prepared by 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 shall be 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 Michigan 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 shall be identified by all of the following:

(i) Make.

- (ii) Model.
- (iii) Year.
- (iv) Vehicle identification number (VIN).
- (v) Registration number.

(5) A claim form that accompanies an application shall 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 secretary of state concerning a self-insurer's failure to fulfill its responsibilities under the no-fault law.

History: 1993 AACCS.

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

Rule 4. (1) Upon receipt of an application for an original certificate of self-insurance, the secretary of state shall promptly review the application and all supporting documents. Within 20 days after receipt, the secretary of state 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 shall be conducted in accordance with the procedures set forth in R 257.539. The secretary of state 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 secretary of state shall issue the applicant a formal certificate which indicates that status as a self-insurer is conferred. An original certificate of self-insurance shall expire 1 year after the effective date of the certificate.

(4) A self-insurer may apply for a renewal certificate of self-insurance 45 days before the expiration of the previously issued certificate. The renewal application shall be accompanied by the documents required pursuant to the provisions of R 257.533(4). If a renewal application is submitted and approved, the existing certificate of self-insurance shall be extended for 1 year from the date of expiration. A renewal application that is submitted after the expiration of the previously issued certificate shall be considered an application for an original certificate of self-insurance.

History: 1993 AACCS.

#### **R 257.535 Additional reports.**

Rule 5. The secretary of state 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 shall be made upon a form which is provided by the secretary of state and shall be due not later than 30 days after being requested by the secretary of state. If the secretary of state 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 AACCS.

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

Rule 6. (1) A loss reserve shall be utilized to pay claims which are anticipated during the certification year and which 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, as determined by a qualified actuary, as determined by utilization of a reserve methodology for the self-insurer as approved by a qualified actuary, or as determined by a casualty insurance company, that is sufficient to compensate claimants for all benefits which are due for claims that are to be paid or that are anticipated to be paid during the certification year and all benefits

which 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 which 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 shall 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 act, and these rules.

(5) Loss reserve funds shall be kept in a segregated account and shall not be commingled with other funds of the applicant or self-insurer. The funds shall be physically located in this state and may be maintained in a financial institution, in an escrow account, under a trust agreement, or by the applicant or self-insurer individually. This subrule shall not apply to an applicant or self-insurer that has a net worth of \$20,000,000.00 or more.

(6) Unless the written approval of the secretary of state is obtained, loss reserve funds shall not be used for any purpose other than as described in the no-fault law, the financial responsibility law contained in chapter V of the act, or these rules.

(7) 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, as determined by utilization of a reserve methodology for the self-insurer that is approved by a qualified actuary, or as

determined by a casualty insurance company, and that is sufficient to compensate claimants for all benefits that are due for claims which are to be paid or which are anticipated to be paid during the certification year and all benefits that are due for claims which 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 which can be anticipated or are incurred but not reported, exclusive of that portion of any claim that is covered by excess insurance.

History: 1993 AACS.

**R 257.537 Excess insurance; conditions for compliance.**

Rule 7. A contract or policy of excess insurance shall not be recognized by the secretary of state 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 act, 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 secretary of state 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 act, and these rules.

(d) Does not contain a commutation clause, unless the clause provides that a commutation shall 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 which is apparently closed at the time of initial commutation and which is subsequently reopened by, or through, a competent authority. The clause shall, 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 shall be given to the secretary of state by the underwriter or its agent by certified mail.

(ii) If any commutation is effected, then the secretary of state 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 which 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 AACS.

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

Rule 8. (1) The secretary of state 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 secretary of state may cancel a certificate of self-insurance if any 1 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 act 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 and R 11.115, 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.

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

(3) A certificate of self-insurance that is issued before the effective date of these rules shall not be canceled pursuant to the provisions of subrule (2)(c), (f), (g), or (h) of this rule before its date of expiration.

History: 1993 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 531 of the act, shall be conducted pursuant to these rules, the procedures set forth in chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being S24.271 et seq. of the Michigan Compiled Laws, and R 11.1 to R 11.9.

(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 secretary of state shall afford an applicant or self-insurer an opportunity to

demonstrate compliance pursuant to section 92 of Act No. 306 of the Public Acts of 1969, being S24.292 of the Michigan Compiled Laws.

(3) A complaint that alleges facts which constitute reasonable grounds to deny an application for, or cancel, a certificate of self-insurance may be drafted and filed with the secretary of state by an employee of the secretary of state or by any other person. Upon receipt of a complaint,

the secretary of state may prepare a notice of hearing or issue a warning letter for any apparent violation of the act and these rules. The warning letter shall not be construed as a finding that the self-insurer has committed a violation. In any subsequent administrative hearing, the letter may be made a part of the record to show that the self-insurer received notice that the conduct in question is prohibited.

(4) If the matter is to proceed to hearing, notice of hearing shall be served at the residence address or principal place of business of the applicant or self-insurer. Notice may be given by first-class or certified mail or by personal service.

(5) An applicant or a self-insurer who desires to file a written answer to allegations contained in a complaint shall file the answer upon the presiding officer who is designated in the notice of hearing, and a copy shall be furnished to the person who filed the complaint and any assistant attorney general of record.

(6) A person who is designated and authorized by the secretary of state shall serve as the presiding officer at the hearing. The applicant or self-insurer may appear in person or by attorney. If the applicant or self-insurer is a corporation, the applicant or self-insurer may be represented by an officer of the corporation.

(7) The presiding officer may postpone or continue the hearing on written motion of the department or the applicant or self-insurer for good cause shown.

(8) Upon completion of the hearing, the presiding officer shall prepare a hearing report and shall transmit it, together with the entire record, to the secretary of state for review and consideration, unless the secretary of state served as presiding officer.

(9) The secretary of state shall review the entire record and issue the final decision and order in the matter.

History: 1993 AACCS.

#### **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 Michigan and shall provide proof of insurance to the secretary of state.

History: 1993 AACCS.