



Preliminary Cost-Benefit Analysis

Chapter 296-15 WAC, Workers' Compensation Self-Insurance Rules and Regulations.

Table of Contents

Introduction.....	3
Probable Costs and Benefits of the Proposed Rule	4
Cost-Benefit Determination	10

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Introduction

Administrative Procedure Act Requirements

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (department) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs.” [RCW 34.05.328(1)(d)]

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement.

Proposed Rule

The purpose of this rulemaking is to update the rules for the financial qualification and maintenance of self-insurance certification, so that these rules are consistent with modern business practices. These amendments are being proposed to:

- Ensure self-insured employers can accurately and timely provide workers’ compensation benefits to their workers;
- Protect and safeguard the Insolvency Trust Fund;
- Promote transparency for L&I actions when a firm is placed on financial watch;
- Make the rules relevant to current financial conditions and business models; and
- Create efficient and adaptable standards for employers’ overall financial management.

Probable Costs and Benefits of the Proposed Rule

There are several amendments or additions in the proposed rules that are exempt from the cost-benefit analysis requirement. The proposed rules considered significant legislative rules are as follows:

WAC 296-15-021, Self-insurance qualifications.

- Rule Overview

The entirety of this section is updated to reflect more modern criteria for qualifying to become a self-insured employer. Subsections (1) – (7) were removed from the rule because they reflect outdated standards and a rigid metric system. The subsections were replaced by new language that adds more modern approach that better aligns with current business and financial practices.

- Rule Cost/Benefit Analysis

The rule does not add additional cost to those wishing to become self-insured, because the rule does not add a requirement for compliance. It merely adds new and modern measures the department will use to assess qualification.

WAC 296-15-021(1), Self-insurance qualifications.

- Rule Overview

Removes outdated qualifications to become a self-insured employer in Washington state. The amendment moves a current requirement for the employer to be in business for three years prior to applying to become self-insured from (a) to (a)(i). The proposed rules also adds a qualifier that no substantial changes to ownership, structure, or operations can occur during these three years.

The proposed rule establishes and modernizes the factors used by the department to assess whether an employer qualifies to become a self-insured workers' compensation employer. A number of changes in WAC 296-15-021(1) are reformatting or moving current standards around to provide clarity for prospective self-insured employers. Notable changes include:

- In addition to requiring an employer to be in business for three years prior to applying, changes in principle ownership, structure, or operations may not occur during that time period.
- Adds more options to meet the sufficiency standard. These include in addition to the current standard of having a net worth of \$25 million, employers can also

meet the standard if they have \$50 million in revenue, or have workers' compensation premiums or loss costs of \$1 million.

- The rule modernizes the analysis done by the department moving from a rigid metric system to a modern credit rating based system. The proposed rule does this by outlining specific credit rating thresholds that determine a low likelihood of default by the employer.

The proposed rule also reiterates the department's authority to look at other factors when necessary to make a final determination regarding eligibility to become self-insured.

- Rule Cost/Benefit Analysis

The proposed rule does not add a cost to employers, it merely outlines thresholds employers can use to apply to become a self-insured entity. The proposed rule is beneficial to employers because it provides clarity to the eligibility measures used to qualify as a self-insured employer and modernizes the financial analysis used by the department. These changes, while different than the current standard do not change which employers can or cannot be a self-insured employer, they are needed so the department can properly assess a business's solvency as it is vital that self-insured employers have the ability to pay future claim benefits.

WAC 296-15-021(2), Self-insurance qualifications.

- Rule Overview

The proposed rule outlines the factors used by the department in determining eligibility to become a self-insured employer when special circumstances with ownership, structure, or operations exist. The majority of the proposed rule moves existing language with plain talk updates and reformatting from WAC 296-15-024 into this section. The most notable change is the addition of language regarding partnerships, this includes a definition and the items a partnership would have to include in their application to the department. The rule also removes several provisions that were formerly used to determine eligibility that became outdated. The addition of partnerships is codifying the department's current practice of accepting applications from partnership structured employers.

- Rule Cost/Benefit Analysis

The proposed rule is codifying a current practice at the department does not add a cost to employers, it merely defines certain employer structures and what those employers need to submit with their application to become a self-insured entity.

WAC 296-15-121(1), Surety for a self-insurance program.

- Rule Overview

The proposed rule makes changes to provide clarity and modernize the standards for surety requirements for all entities except for public entities (WAC 296-15-151) and groups covered under WAC 296-15-161. The rule:

- Modifies language making clear where surety requirements can be found for public entities and groups. The changes provide clarity to all entities on what type of surety they are required to provide and where those standards can be found.
- Provides clarity that the department will provide information annually, the language was moved from WAC 296-15-121(3). This codifies current department processes.
- Allows an employer to submit a report from an independent qualified actuary. The department's actuary can review and approve the report to set surety. This codifies current department processes.
- Adds ability for the department to increase surety based on credit ratings or director's discretion. Providing a clearing direction to employers on when surety increases may occur.
- Codifies current requirement for privately held entities to submit an audited financial report prepared by a Certified Public Accountant annually. Adds the ability for the department to increase a surety by 10% if self-insurer does not provide required reports after 12 months, or 25% if the reports haven't been submitted in more than 24 months.

- Rule Cost/Benefit Analysis

The proposed rule codifies current practices at the department and does not add a cost to employers. The rule is beneficial to employers by providing clear guidance on how surety will be set, and how sureties can be increased by the department. The rule outlines the levels of required surety associated with various employer credit ratings. Required surety levels will increase as credit ratings drop which is reflective of the increased likelihood of default. This provides certainty for employers in regards to required surety levels.

WAC 296-15-121(4), Surety for a self-insurance program.

- Rule Overview

The proposed rule allows for surety to be maintained at a current level unless the department's or an independent qualified actuary's estimate of outstanding claim liabilities of the self-insured employer changes more than \$100,000. This is an increase from the previous standard which was a change of more than \$25,000.

- Rule Cost/Benefit Analysis

This change does not add cost to self-insured employers, it is actually a benefit. It will reduce administrative burdens of having to more regularly update surety amounts year to year overall reducing cost to the employer.

WAC 296-15-121(5), Surety for a self-insured employer.

- Rule Overview

The proposed rule removes language that stated factors that may be looked at in determining surety levels. The language was removed to take out redundant language and all the factors listed are part of the standard actuarial review processes used by the department and independently qualified actuaries.

- Rule Cost/Benefit Analysis

Removing the language provides clarity to employers by reducing redundant language from the rules that could cause confusion if not changed. Therefore the rule does not add any cost.

WAC 296-15-123, Monitoring Certification.

- Rule Overview

The section title is changed to reflect the overall changes in approach to maintaining certification as a self-insured employer. Current law sets forth the standards when a self-insured employer is put on financial watch by the department. Financial watch occurs when the department has concerns over the employers ability to meet its financial obligations by having the ability to promptly provide workers' compensation benefits for its workers. The proposed rule removes the financial watch standard and replaces it with a maintenance of certification standard. The proposed rule removes several subsections that were used under the financial watch approach.

- Notably subsection (1) is amended to require self-insured employers to retain good standing with the department by complying with reporting and payment of assessment requirements. The self-insured employer is still required to continue to demonstrate they have the ability to meet their claim benefit obligations.
- Subsection (2) outlines the credit rating evaluation the department will use to determine whether financial monitoring would need to occur, changing from a financial ratio based system to credit rating evaluation.

- Rule Cost/Benefit Analysis

The proposal allows for a better way for self-insured employers because it provides clarity and certainty on what the department will use to consider ongoing maintenance of certification which relies on employers complying with reporting and assessment requirements. It also creates a more uniform and consistent approach to determining when surety is increased for companies with weaker financials.

WAC 296-15-151(1) – (2), Surety for a public entity’s self-insurance program.

- Rule Overview

Subsection (1) of the proposed rule outlines the requirements for a public entity to become a self-insured employer.

- It requires public entity sureties to be set consistent with WAC 296-15-121(2).
- Surety must cover 125% of the expected workers’ compensation claim costs occurring in the next year or \$500,000 whichever is the higher of the two.
- The surety may be increased up to the total amount of outstanding claim liabilities occurring while the employer functioned as a self-insured employer.

Subsection (2) removes outdated language due to the updates to subsection (1).

- Rule Cost/Benefit Analysis

The rule is beneficial to public entities seeking to become self-insured employers. The proposed rule does this by providing clear guidance on how surety will be set, and how sureties can be increased by the department. The rule outlines the levels of required surety associated with various credit ratings. Required surety levels will increase as credit ratings drop which is reflective of the increased likelihood of default. This provides certainty for employers in regards to required surety levels. The rule does not have a cost associated with it based on the factors above.

WAC 296-15-151(3), Surety for a public entity’s self-insurance program – financial monitoring.

- Rule Overview

The proposed rule reiterates the changes from WAC 296-15-123 regarding financial monitoring. Under current law a public entity self-insured employer can be put on financial watch by the department. Financial watch occurs when the department has concerns over the employers ability to meet its financial obligations by having the ability to promptly provide workers’ compensation benefits to its workers. The proposed rule removes the financial watch standard and replaces it with a maintenance of certification standard.

The rule outlines the credit rating evaluation the department will use to determine whether financial monitoring would need to occur, changing from a financial ratio based system to credit rating evaluation. The proposed rule also allows for the director to use economic conditions in evaluating increases in surety when necessary.

- Rule Cost/Benefit Analysis

The proposal allows for a better way for self-insured employers because it provides clarity and certainty on what the department will use to consider ongoing certification which relies on employers complying with reporting and assessment requirements. It also creates a more uniform and consistent approach to determining where surety is increased for companies with weaker financials.

WAC 296-15-161(1) – (2), Surety for a group self-insurance program.

- Rule Overview

The proposed rule outlines what group structured self-insured employer must submit to the department in their actuarial report. It changes the focus on the adequacy of rates, reserves, and contingency reserves. The proposed rule also adds a requirement for groups to provide a report from an independent qualified actuary. The proposed rule also removes language that required groups to have a reserve fund in cash. The requirement was removed because it has not been used in the surety setting process and the rules need to adequately reflect what does go in to the financial monitoring of group self-insured employers.

- Rule Cost/Benefit Analysis

There is no cost associated with the changes above. It is industry practice to use qualified actuaries and the department is making an affirmative statement in rule by codifying that practice. The rule changes provide greater clarity to group self-insurers which is a benefit to them in reducing miscommunication and any administrative burdens they may face by not submitting all necessary information.

WAC 296-15-161(7), Surety for a group self-insured programs.

- Rule Overview

The proposed rule makes updates to what occurs when a group self-insured employer collects insufficient premiums during a fund year and has a deficit. The change adds language to clarify that deficiencies can be covered by rate increases, allocation of prior year redundancies, or contingency reserves.

- Rule Cost/Benefit Analysis

The proposed changes are a benefit to group self-insured employers by adding clarity around what can be used to cover insufficient premiums to cover their claim obligations. There is no cost associated with the rule because it doesn't add a requirement for compliance it makes clear how self-insurers can meet their own obligations.

WAC 296-15-221(4)(c), Self-insurers' reporting requirements.

- Rule Overview

The proposed rule removes the standard:

- To have audited financial statements within 6 months of the end of the self-insurer's fiscal year; and
- The requirement that those documents support a report that demonstrates the self-insured employer can remain financially solvent and the ability to cover claims.

The proposed rule updates a requirement for privately held entities to provide audited financial statements annually within six months of the end of their fiscal year. This proposed update affirms current department practice of annual submissions of these statements, and reiterates that the department is able to grant an extension to a group self-insured employer. This is in alignment with WAC 296-15-121. It also adds that failure to meet this standard will result in increases in surety requirements or decertification.

- Rule Cost/Benefit Analysis

The proposed rule primarily reiterates the standard for group self-insured employers have to submit audited financial statements to the department. Workers in Washington are required to be protected from workplace injury and illness. The proposed rule is a benefit to workers by allowing the department to have adequate information on an employer's ability to pay workers' compensation benefits. There is no cost associated with the rule because it reiterates a current requirement and adds language that alerts group self-insured employers how their surety may be impacted for lack of compliance.

Cost-Benefit Determination

As described above, the changes subject to the cost-benefit analysis requirement will not add costs to customers and individuals seeking to become a self-insured employer. In total, the probable benefits of this rule are likely much greater than the probable costs.