

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS 342.0011, 342.340, 342.342, 342.345, 342.347

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the executive director to establish requirements for individual self-insurers. This administrative regulation establishes minimum requirements for an individual employer who self-insures workers' compensation liability.

Section 1. Definitions. (1) "Employer" means an employer subject to KRS Chapter 342.

(2) "Executive director" is defined by KRS 342.0011(9).

(3) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(4) "Service organization" means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.

(5) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. (1) A person, party, or employer shall not act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the executive director in accordance with this administrative regulation.

(2) A certification issued by the executive director shall remain in effect until revoked or modified by the executive director pursuant to Section 10 of this administrative regulation.

Section 3. Application. (1) An initial application for individual self-insurance shall be submitted to the executive director on Form SI-02, Employers Application for Permission to Carry His Own Risk Without Insurance, and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the executive director at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the executive director prior to certification of self-insurance;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and di-

recting the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on Form SI-01, Self-Insurers' Guarantee Agreement;

(j) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim, satisfactory evidence submitted to the executive director as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance.

(4) Upon receipt of a complete application and all required documents, the executive director shall approve or reject status as a self-insurer within thirty (30) days.

(5) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the executive director finding the self-insured employer in default unless a substitute service organization has been procured.

(6) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director.

Section 4. Approval. (1) In determining if an applicant is eligible for self-insurance and in establishing the amount of surety required, the executive director shall consider all relevant factors including the following:

(a) The financial strength of the applicant or guarantor;

(b) The excess insurance policy and retention level;

(c) The experience of the service organization;

(d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;

(e) Profit and loss history;

(f) Workers' compensation loss history of the applicant;

(g) The prospect of increased losses by the employer's cessation of operations in Kentucky;

(h) The number of employees and degree of hazard to which employees are exposed;

(i) Safety programs; and

(j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the executive director:

(a) Finds the applicant has complied with all sections of this administrative regulation; and

(b) Is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements. (1) Specific excess insurance shall be purchased with:

- (a) A coverage limit of at least \$10,000,000 per occurrence in excess of the retention level; and
- (b) A maximum retention level of \$1,000,000 per occurrence unless a different retention level is specifically approved by the executive director.

(2)(a) To be eligible to write specific excess insurance for an individual self-insurer in Kentucky, a casualty insurance company, admitted to do business in the Commonwealth of Kentucky, on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000.

(b) The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Except as provided in subsection (4) of this section, each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03, Continuous Bond, or by irrevocable letter of credit on Form SI-04, Letter of Credit, in an amount specified by the executive director, but not less than \$500,000. In fixing the amount of security, the executive director shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of Form SI-05, Deposit Contract, in an amount specified by the executive director, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

(5) If an employer is no longer self-insured, the amount of surety shall be set by the executive director in accordance with the minimum amounts established in this subsection.

(a) A minimum surety of \$250,000 shall be maintained for a period of ten (10) years.

(b) A minimum surety of \$100,000 shall be maintained for the eleventh to twentieth year after the employer's departure from self-insured status.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having a wholly-owned subsidiary may submit one (1) joint application to the executive director, if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the executive director.

Section 7. Examination and Review of Filings. A certified public accountant or other qualified individual may be employed by the Office of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Annual filings. (1) An individual self-insured employer shall file with the executive director on or before 120 days from the end of the self-insured's fiscal year:

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the executive director, including relevant claim data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the executive director.

(3) An individual self-insured employer shall file loss data reports which shall:

(a) Include a surety loss report;

(b) Include a premium loss report;

(c) Include a certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(d) Be filed no later than the third Monday in February of each year.

(4) If the annual required filings are not timely made, the self-insurance certificate shall be subject to modification or revocation.

Section 9. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) If there is a change in majority ownership of a parent company, the individual self-insurer shall notify the executive director within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) If an employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, the individual self-insured shall notify the executive director within thirty (30) days and the adequacy of the surety bond shall be reviewed and shall be increased accordingly if necessary to remain adequate.

(3) If the payroll of the individual self-insurer during a quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the executive director and the surety bond requirements may be reviewed and the bond shall be increased accordingly.

Section 10. Revocation or Modification of Certification. (1) If the executive director receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a hearing order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for a hearing.

(2) The executive director may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in:

1. Contravention of its submitted application; or

2. In material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of workers' compensation benefits; or

(c) The insurer has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity.

(3) If the executive director revokes an individual self-insurer's certification, the executive director shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund.

(4) Self-insurance certification may be revoked by the executive director after a hearing is held.

(a) The hearing order shall set the grounds of revocation and set a hearing date in not less than ten (10) days.

(b) The hearing shall be conducted pursuant to Section 11 of this administrative regulation.

(c) During the pendency of a hearing or appeal, the executive director may utilize the surety

deposit provided by the individual self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.

Section 11. Aggrieved Parties. (1) A person aggrieved by an action of the executive director may request a hearing by filing a written request with the executive director setting forth the basis within sixty (60) days of the action of the executive director. Upon receipt of a request, the executive director shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.

(2) No later than thirty (30) days after the termination of the hearing, the executive director shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The executive director's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

(3) The ruling of the executive director may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Self-Insurers' Guarantee Agreement, Form SI-01", (November 2005 edition);

(b) "Employers Application for Permission to Carry His Own Risk Without Insurance, Form SI-02", (January 2004 edition);

(c) "Continuous Bond, Form SI-03", (January 2004 edition);

(d) "Letter of Credit, Form SI-04", (January 2004 edition); and

(e) "Deposit Contract, Form SI-05", (January 2006 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (21 Ky.R. 2581; 3036; 22 Ky.R. 52; eff. 6-15-1995; 25 Ky.R. 1464; 1927; 2153; eff. 3-19-1999; 28 Ky.R. 2446; 29 Ky.R. 109; eff. 7-15-2002; 32 Ky.R. 150; 496; eff. 10-7-2005; 2349; 33 Ky.R. 392; eff. 8-10-2006.)