

LABOR CABINET
Department of Workers' Claims
(Amendment)

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 commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner [~~executive director~~] to establish requirements for individual self-insured employers [~~self-insurers~~]. This administrative regulation establishes minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of [~~self-insures~~] workers' compensation [~~liability~~].

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday. ["Employer" means an employer subject to KRS Chapter 342.]

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) [(2)] "Commissioner[Executive director]" is defined by KRS 342.0011(9).

(4) "Employer" means an employer subject to KRS Chapter 342.

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

(a) That agrees it is responsible for and shall meet any and all workers' compensation obligations of the subsidiary when the subsidiary fails to meet its responsibilities as a self-insured employer; and

(b) Whose financial condition and affairs related to workers' compensation are the basis upon which the subsidiary is authorized to self-insure.

(6) "Lapsed" means there is no possibility of compensation under KRS Chapter 342 because the claim is barred by time or otherwise.

(7) "Loss Statement," or "loss run" means a statement of all claims stemming from a self-insured employer's entire period of self-insurance in the form required by the Department of Workers' Claims of:

(a) All past known liabilities and amounts paid at a given point in time; and

(b) Reserve estimates for all future liabilities; and

(c) Known liabilities and amounts paid or amounts anticipated to be paid for the immediate prior calendar year.

(8) "Paid" means there is no possibility of further compensation under KRS Chapter 342 because the employee and any eligible dependent of the employee has been provided all compensation awarded or that could possibly be awarded under KRS Chapter 342 with respect to a compensable claim.

(9) "Period of self-insurance" means the period an employer was authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342 in the amount, manner, and when due.

(10) "Reserve" means an estimate by the employer of the undiscounted total compensation to be paid over the entire life of a claim. A reserve may be limited to a specific portion of the entire compensation when so designated; a medical reserve would refer to the medical compensation to be paid through the entire life of the claim.

(11) "Security" means a required deposit by an employer authorized to self-insure, acceptable to the commissioner and in the amount he directs, that provides the commissioner immediate access to security proceeds sufficient to make direct payment of compensation in claims arising from the employer's period of self-insurance until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(12) "Security proceeds" means:

(a) Security in the form of cash money paid by an issuer of security from its own property in response to the commissioner's call or demand; or

(b) Cash money deposited directly with the commissioner in a financial institution's account.

(13) "Self-Insurance" or "Self-Insure" means the nontransferable status of an employer:

(a) That secured its liability for workers' compensation by depositing with the commissioner acceptable security, in the amount directed by the commissioner, to secure the payment of compensation provided by KRS Chapter 342 until every claim for compensation has been fully paid, fully settled, or lapsed, so that there is no possibility of further liability; and

(b) That has been authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342, in the amount, manner, and when due, rather than the employer insuring and keeping insured his liability for compensation in an entity authorized to transact the business of workers' compensation insurance in this state;

(14) "Self-Insured Employer" means an employer currently authorized by the Commissioner to self-insure and is synonymous with the term "self-insurer" as that term is defined in KRS 342.0011.

(15) [(4)] "Service organization" or "third party administrator," means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss statements, preparation of any other required self-insurance report, and other services that may be required by a self-insured employer.

(16) "Settled" means there is no possibility of future compensation arising from an injury because the employee has bargained for and received money for all compensation the employee and any eligible dependent could be awarded under KRS Chapter 342 for that injury and the bargain has been approved by an administrative law judge.

(17) [or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.

(5)] "Specific excess insurance" means a contract or policy of insurance whereby a self-insured employer is indemnified for amounts paid in excess of a specific dollar amount stemming from one (1) injury or exposure for which compensation is provided in this chapter. [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-insured employer [self-insurer] unless the employer has been approved by the commissioner [executive director] in accordance with this administrative regulation.

(2) An employer authorized[A certification issued] by the commissioner [executive director] to self-insure shall be self-insured until voluntary surrender by the employer pursuant to Section 10 of this administrative regulation or revocation [revoked or modified] by the commissioner [executive director] pursuant to Section 11 [40] of this administrative regulation.

(3) A self-insured employer shall adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. An employer shall hire only those persons duly licensed under Kentucky law to administer and adjust workers' compensation claims.

(a) A self-insured employer may contract with an individual, service organization, or third party

administrator, to adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. The employees and agents of the contracted individual, service organization, or third party administrator, shall be duly licensed under Kentucky law to administer and adjust workers' compensation claims.

(b) Where an employer has contracted with an individual, service organization, or third party administrator, to perform these functions, the actions of the individual, service organization, or third party administrator, are subject to the standards set forth in KRS 342.267 and 803 KAR 25:240 and the self-insured employer for whom the individual, service organization, or third party administrator, is acting is subject to any penalties which may be assessed for failure to meet those standards.

Section 3. Application Process. (1) In order to be certified as an individual self-insured employer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000.

(2) [(4)] An initial application for individual self-insurance shall be submitted to the commissioner [executive director] on Form SI-02, Employer's [Employers] Application for Permission to Carry Its [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 of shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. The applicant shall disclose and fully identify the relationship with all subsidiaries. [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 the number of employees at each site;

(c) A certified audit report of the applicant's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant or, if the applicant is a subsidiary desiring its parent to be a Guarantor, a certified audit report of the parent's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant.

(3) The department shall review the applicant's Form SI-02 and certified audit reports and notify the applicant within sixty (60) days after receipt of the Form SI-02 and certified audit reports whether its application has been rejected or whether the applicant may continue with the application process.

(4) Within fifteen (15) days of notification by the department that the applicant may proceed with the application process, the applicant shall provide:

(a) Loss Statements in the required electronic format of all claim payments for the five (5) years immediately preceding the application;

(b) An estimate of annual payroll;

(c) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(d) Any other states in which the employer is authorized to self-insure.

(5) The Department shall review the applicant's Loss Statements, estimate of annual payroll, any OSHA violations, and any other states in which the employer is authorized to self-insure and notify the applicant within sixty (60) days after receipt of the applicant's information whether its application has been rejected or whether the applicant may continue with the application process.

(6) Upon notification the applicant may continue, the applicant shall provide:

(a) The proposed specimen specific excess insurance policy, identifying the insurance company, retention level and limits of liability; and

(b) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim:

1. A statement to the commissioner attesting to the individual or organization's qualifications to administer and adjust a workers' compensation claim; and

2. A statement from the service organization and self-insured employer that any contract between the employer and 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 commissioner finding the self-insured employer in default unless a substitute service organization has been procured.

(7) The Department shall review the applicant's proposed specimen specific excess insurance policy, statement attesting to the qualifications of the proposed service organization, and statement from the proposed service organization, and notify the applicant within thirty (30) days after receipt whether the applicant's application has been rejected or whether the applicant may continue with the application process. If the applicant may continue with the application process the department will notify the applicant of the amount of required security.

(8) Upon notification that the applicant may continue, the applicant shall provide:

(a) A copy of the proposed letter of credit, bond or security deposit instrument required by Section 5 of this administrative regulation;

(b) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

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

(9) The commissioner shall consider all relevant factors, the prospect of increased losses due to the employer's cessation of operations, and the information supplied by the applicant during the application process when evaluating whether an applicant may be authorized to directly pay its workers' compensation liabilities as incurred. The information submitted during the application process shall accurately reflect:

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

(b) The experience of the proposed service organization;

(c) The applicant's ratio of current assets to current liabilities, the applicant's ratio of long-term debt to net worth, and shareholder equity, or, when applicable, the guarantor's ratio of current assets to current liabilities, the guarantor's ratio of long-term debt to net worth, and shareholder equity;

(d) The profit and loss history of the applicant or guarantor;

(e) The workers' compensation loss history of the applicant or guarantor;

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

(g) Any functioning safety programs;

(j) Whether the applicant uses an approved managed care plan for treatment of injured workers;

(k) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(l) Any other states in which the employer is authorized to self-insure.

(10) The commissioner shall render a decision regarding whether the applicant is authorized to self-insure within thirty (30) days of completion of the application process and submission of all required documents.

(a) The commissioner's decision shall state the date upon which the applicant is authorized to self-insure;

(b) The security to be deposited by the applicant with the commissioner shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes

authorized to self-insure;

(c) A copy of the specific excess insurance policy obtained by the applicant shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure.

(11) Variation from the requirements of this section may be sought by application to the commissioner;[,] variation may be granted by the commissioner for good cause shown.[

~~(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 directing 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 4[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 commissioner; upon approval of a retention level in excess of \$1,000,000, additional security may be required [executive director].

(2)(a) To be eligible to write specific excess insurance for an individual self-insured employer [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.

Section 5. Security. (1) [(3)] Except as provided in subsection (4) of this section, each employer authorized to self-insure [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 the [an] amount specified by the commissioner [executive director], but not less than \$500,000.

(2) In fixing the amount of security, the commissioner [executive director] shall consider all relevant factors which may include the following:

- (a) Liability associated with the cessation of operations by the individual self-insured employer;
- (b) Examination of injury claims reported to the Department of Workers' Claims;
- (c) Examination of the loss history associated with injury claims reported to the Department of Workers' Claims;
- (d) Examination of the financial condition of the employer;
- (e) Examination of the service organization, if any;
- (f) Examination of the financial condition and assets of the issuer of the security;
- (g) Additional factors found pertinent by the commissioner; and
- (h) The experience of the Department of Workers' Claims.

(3) The amount of security maintained with or under the commissioner's control shall be the amount determined by the commissioner to be necessary to secure the payment of all compensation liabilities incurred by a self-insured employer until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability. The failure to challenge the commissioner's determination as provided in section 13 of this administrative regulation shall constitute an admission by the employer that the determined amount is necessary to pay all incurred claims until fully paid, fully settled, or lapsed, so there is no possibility of further liability to the employer and a waiver of any future challenge by the employer of the determined security amount.

(4) Only upon approval by the commissioner, in lieu of a bond or letter of credit, may an employer deposit cash or securities in an amount specified by the commissioner and in a financial institution approved by the commissioner, but not less than \$5,000,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies. The deposited cash or securities shall be maintained directly with the commissioner or be in the commissioner's control and a perfected security interest shall be granted to the commissioner in the deposited cash or securities. [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. (1) A corporation having a wholly-owned subsidiary may submit one (1) joint application to the commissioner [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 from [ef] 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 commissioner [executive director].

(2) Any employer currently authorized to self-insure shall immediately notify the commissioner and fully identify any and all subsidiaries obtained during the employer's period of self-insurance and shall execute a Form SI-01, Guaranty Agreement.

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

Section 8. Annual Filings. (1) Annually, the Department shall by facsimile, electronic mail or the United States Postal Service, deliver to every employer authorized by the Commissioner to self-insure a letter stating the requirements to maintain the employer's certification to self-insure. The letter shall include a request for:

(a) A completed Employers Application for Recertification, Form SI-02R;
(b) A certified version of the most current audited financial statements;
(c) The amount and form of the security to be deposited with the commissioner;
(d) Information related to the employer's required specification excess insurance;
(e) Information related to any service organization used by the employer; and
(f) May include a request for the completion of a Self-Insurer's Guarantee Agreement, SI-01, when applicable, or any other information the commissioner may deem necessary in order to determine the employer has the financial ability to directly pay the compensation provided in KRS Chapter 342.

(2) Annually, the department shall by facsimile, electronic mail or the United States Postal Service, deliver to every employer authorized by the Commissioner to self-insure a letter instructing self-insured employers to file the following no later than the third Monday in February of each year:

(a) A loss statement;
(b) A statement furnishing the premium specified in KRS 342.0011(28) and its calculation;
(c) A statement of the total payroll for the prior calendar year by quarter;
(d) A certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and
(e) Any other reasonable information requested by the commissioner, including relevant claim data.

(3) In order to maintain its certification to self-insure, an employer shall timely complete and provide all information and documentation requested in the annual letters; failure to do so may subject the employer's self-insurance certification to revocation.[]

~~(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) When [If] there is a change in majority ownership of a self-insured employer or its [a] parent company, the individual self-insured employer [self-insurer] shall notify the commissioner [executive director] within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) When [If] another [an] employer is added to, merged, [acquired,] or otherwise acquired by

an employer currently authorized to self-insure [brought within the self-insurance coverage], the individual self-insured employer shall notify the commissioner [executive director] within thirty (30) days and the adequacy of the employer's premium and security [surety bond] shall be reviewed and shall be increased if the review determines an increase is necessary. [accordingly if necessary to remain adequate.]

(3) When there is a change in majority ownership of a formerly self-insured employer or its parent company, the individual self-insured employer shall notify the commissioner within thirty (30) days of that change. [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. Voluntary Surrender of Certificate.

(1) An employer voluntarily surrenders its Certificate to self-insure:

(a) Upon written notice to the commissioner that the employer no longer desires to be self-insured, including the date and time at which the employer intends to cease to be self-insured; or

(b) Upon the effective date of a policy of workers' compensation insurance securing the employers' liability for the compensation provided in this chapter; or

(c) Upon notification to the commissioner the employer shall cease to pay directly the compensation provided in this chapter; or

(d) Upon the failure to deposit adequate security in the amount required by the commissioner;
or

(e) Upon filing an action in bankruptcy unless the employer notifies the commissioner of its intent to continue to pay the compensation provided in this chapter and the commissioner agrees to authorize the continued direct payment.

(2) An employer that intends to secure its liability for compensation by obtaining a policy of workers' compensation insurance shall notify the commissioner of the name of the insurance carrier whose policy shall become effective and the date and time such coverage shall become effective.

(3) A formerly self-insured employer shall not be relieved of the compensation obligations incurred during its period of self-insurance until every claim has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(4) (a) When the employer is no longer self-insured due to the voluntary surrender of its certificate, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured; no request for reduction shall be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction thereafter shall be considered no more frequently than every thirty (30) months following the conclusion of the prior request, if any.

(b) The formerly self-insured employer bears the burden to persuade the commissioner the amount and form of the security, as last determined by the commissioner, is excessive and a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(5) When the employer is no longer self-insured due to the voluntary surrender of its certificate, the security required by the commissioner shall not be less than \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured and shall not be less than \$100,000 for the eleventh through, and including, the twentieth years following the date on which the employer ceased to be self-insured.

Section ~~11~~¹⁴. Revocation [~~or Modification~~] of Certification. (1) A self-insured employer's certification may be revoked by the commissioner after a hearing is held.

(a) The hearing order shall set forth the grounds for revocation and set a hearing date no sooner than ten (10) business days from the date of the order.

(b) The hearing shall be conducted pursuant to Section 13 of this administrative regulation. Upon a prima facie showing by the Department of Workers' Claims of one (1) or more of the grounds set forth in subsection 2 of this section, there shall exist a rebuttable presumption that the employer's authorization should be revoked.

~~(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 commissioner [~~executive director~~] may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insured employer [~~self-insurer~~] is operating in:

1. Contravention of its submitted application; or
2. In material violation of this administrative regulation;

(b) The individual self-insured employer [~~self-insurer~~] or its 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 self-insured employer [~~insurer~~] has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity; [~~or~~]

(d) The self-insured employer failed to pay an assessment by the appropriate guaranty fund; or

(e) The self-insured employer failed to pay compensation provided in this chapter.

(3) When [~~If~~] the commissioner [~~executive director~~] revokes an individual self-insured employer's [~~self-insurer's~~] certification, the commissioner [~~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.~~

(4) [(e)] During the pendency of a hearing or appeal, the commissioner shall call the entirety of the security deposited [~~executive director may utilize the surety deposit provided~~] by the individual self-insured employer:

(a) When the commissioner has received information indicating the deposited security will not be maintained or timely replaced with other acceptable security, or

(b) When compensation is due but has not been paid by the self-insured employer. [~~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.~~]

(5)(a) When the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured; no request for reduction shall be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction thereafter shall be considered no more frequently than every thirty (30) months following the con-

clusion of the prior request.

(b) The formerly self-insured employer bears the burden to persuade the commissioner the amount and form of the security, as last determined by the commissioner, is excessive and a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(6) When the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the security required by the commissioner shall not be less than \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured and shall not be less than \$100,000 for the eleventh through, and including, the twentieth years following the date on which the employer ceased to be self-insured.

Section 12. Default. When a self-insured employer or a formerly self-insured employer fails to meet an obligation as a self-insured employer, including the obligation to deposit acceptable security in the amount required by the commissioner, the failure to timely pay a compensation obligation to an employee injured during the employer's period of self-insurance, or the failure to pay an assessment by a guaranty fund, the commissioner shall:

(1) Call the entirety of the deposited security;

(2) Retain the security proceeds in the commissioner's possession or control until each claim for workers' compensation benefits has been fully paid, fully settled, or lapsed, so there is no possibility of further liability;

(3) Use the security proceeds to pay the compensation provided in KRS Chapter 342 in claims incurred during the employer's period of self-insurance as follows:

(a) Where the employer was a member of a guaranty fund, forward to the appropriate guaranty fund the security proceeds and order the guaranty fund to commence payment of the member's incurred compensation liabilities using the security proceeds; or

(b) Where the employer was not a member of a guaranty fund, the commissioner shall use the security proceeds to pay the employer's incurred compensation liabilities.

(4) When the commissioner determines all claims of the employer have been fully paid, fully settled, or lapsed, so there is no possibility of further liability, and the security proceeds are not exhausted, the commissioner shall pay any remaining security proceeds into the Franklin Circuit Court for determination as to whether there is an entity legally entitled to the remaining security proceeds. If no claim is made alleging entitlement to the remaining security proceeds within sixty (60) days of the payment into the court, or the court ultimately determines there is no rightful entitlement claim, the commissioner may petition the court to deposit the remaining security proceeds into the fund established pursuant to KRS 342.920.

(5) The obligations of a self-insured employer or formerly self-insured employer may be guaranteed by a parent entity by way of a fully executed form SI-01, Guarantee Agreement; the form SI-01, Guarantee Agreement, does not preclude the commissioner from calling the security nor does it preclude the commissioner from pursuing all available means to separately recover from the defaulting employer or its guarantor.

Section 13 [44]. Aggrieved Parties. (1) A person aggrieved by an action of the commissioner [executive director] may request a hearing by filing a written request with the commissioner within thirty (30) [executive director setting forth the basis within sixty (60)] days of the action of the commissioner; the request shall set forth the specific basis for the challenge to the commissioner's action. [executive director.] Upon receipt of the written [a] request, the commissioner [executive director] shall issue a notice of hearing within ten (10) business days of receipt of the written request. The notice of hearing shall set the date, time, and place of the hearing to be held no sooner

than ten (10) days after the date of the notice of hearing and no later than ninety (90) business days after the date of the notice of hearing and may provide the date, time, and place for an informal conference between the aggrieved party and the commissioner. The date and time of the hearing may be rescheduled as required upon motion by either party or upon agreement of the parties. [to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.]

(2) The aggrieved person has the burden to persuade the commissioner the action taken by the commissioner should be amended or withdrawn. The aggrieved person may present evidence to support its position and to contest evidence presented by other parties.

(3) [(2)] No later than thirty (30) days after the termination of the hearing, the commissioner [executive director] shall issue a written ruling [order] addressing all matters involved at the hearing and if applicable, any further basis for his action, creating an adequate record for review. The ruling shall contain concise findings of fact and conclusions of law. The commissioner shall serve a copy of the ruling [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.]

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

Section 14. [12.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Self-Insurers' Guarantee Agreement, Form SI-01", (November 2005 edition);
- (b) "Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, Form SI-02", (January 2021 [2004] edition);
- (c) "Employer's Application for Recertification", Form SI-02R (January 2021 edition);
- (d)[(e)] "Continuous Bond, Form SI-03", (January 2004 edition); and
- (e)[(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 Department [Office] of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 2:38 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted through May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of workers' compensation.

(b) The necessity of this administrative regulation: KRS 342.260(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner to establish requirements for individual self-insured employers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.340 requires every employer to secure its liability for workers' compensation by either obtaining and maintaining a policy of insurance or by depositing security after proving to the commissioner of the Department of Workers' Claims it has the financial ability to pay directly all the compensation provided in KRS Chapter 342. KRS 342.345 requires the security to be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed, so there is no possibility the employer has further liability. KRS 342.347 requires the commissioner to examine the financial condition and affairs related to workers' compensation of any individual self-insureds. KRS 342.900 through 342.920 speaks to the responsibilities of self-insured employers who are members of a guaranty fund and to the use of the security deposited with the commissioner to secure the payment of workers' compensation liabilities of those self-insured employers. This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities. The amendments will clarify the process, requirements, responsibilities, challenge methodology, and address issues not contemplated or addressed in the current administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The current language was

unclear regarding certain issues and failed to address other issues; the amendment is to more clearly address specific issues and to address issues left out of the current language. For example, the current regulation does not address the process and situations under which an employer may voluntarily surrender its authorization to self-insure or the responsibilities of an employer that has voluntarily surrendered its authorization to self-insure. The amendments address those issues. Likewise, the amendments clarify when an employer is in default of its obligations as a self-insured employer and the action the commissioner will take upon the employer's default in its obligations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.340 requires every employer to secure its liability for workers' compensation by either obtaining and maintaining a policy of insurance or by depositing security after proving to the commissioner of the Department of Workers' Claims it has the financial ability to pay directly all the compensation provided in KRS Chapter 342. KRS 342.345 requires the security to be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed, so there is no possibility the employer has further liability. KRS 342.347 requires the commissioner to examine the financial condition and affairs related to workers' compensation of any individual self-insureds. KRS 342.900 through 342.920 speaks to the responsibilities of self-insured employers who are members of a guaranty fund and to the use of the security deposited with the commissioner to secure the payment of workers' compensation liabilities of those self-insured employers. The amendments to this administrative regulation further clarify the process an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, the method to challenge an action by the commissioner related to those requirements and responsibilities and address circumstances not anticipated or addressed in the current administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to employers desiring to be self-insured, to those currently authorized to self-insure, and to those formerly authorized to be self-insured.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers desiring to be authorized to self-insure, employers currently authorized to self-insure, and employers formerly authorized to be self-insured.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers desiring to be authorized to self-insure will have to follow the application process as established in the amendments. Employers currently authorized to self-insure and those formerly authorized to self-insure will not be required to take new actions; however, there will be increased clarity regarding those actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not add additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have clear guidance regarding the application process, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, the method to challenge an action by the commissioner related to those requirements and responsibilities and guidance regarding circumstances not anticipated or addressed in the current administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this ad-

ministrative regulation:

(a) Initially: None

(b) On a continuing basis: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Those governmental agencies authorized to self-insure for the purpose of workers' compensation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.0011, 342.260(1), 342.342, 342.345, 342.347, 342.900-920.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department of Workers' Claims does not anticipate there will be any effect on the expenditures and revenues of a state or local government agency; however, should there be any, the change from current expenditures should be minimal.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: