

PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection Division
(Amendment)

806 KAR 10:030. Surplus lines reporting and tax payment structure.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-040, ~~304.10-050~~, ~~304.10-170~~, 304.10-180, 304.99-085

STATUTORY AUTHORITY: KRS 304.2-110~~((1))~~, 304.10-050, 304.10-170, 304.10-210,
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110~~((1))~~ authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as ~~defined~~~~[established]~~ in KRS 304.1-010. KRS 304.10-050 requires a surplus lines broker to file an affidavit setting forth facts from which it can be determined whether such~~[if the]~~ insurance was eligible for export under KRS 304.10-040. KRS 304.10-170 requires the commissioner to establish the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 304.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for~~[establishes]~~ the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax pursuant to KRS 304.10-170 and 304.10-180.

Section 1. Affidavit Reporting.

- (1) A licensed surplus broker shall file electronically a Kentucky Surplus Lines Affidavit of Insurance Transactions with the department within fifteen (15) days after the ~~invoice date or~~ effective date of each premium bearing surplus lines transaction~~[, whichever occurs later]~~.
- (2) The affidavit shall be filed electronically through the Department of Insurance's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.

Section 2. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions.

- (1) The department shall generate a quarterly report of all surplus lines transactions reported in a preceding calendar quarter, for each surplus lines broker based on the affidavits filed in accordance with Section 1 of this administrative regulation.
- (2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.
- (3) Each licensed surplus lines broker shall:
 - (a) Reconcile the surplus lines taxes owed on the quarterly report with the broker's own records;
 - (b) Notify the department of any discrepancy in surplus lines taxes owed; and
 - (c) Pay all surplus lines premium tax and any applicable penalties owed pursuant to KRS 304.99-085 within thirty (30) days of the end of the calendar quarter.
- (4) Surplus lines premium tax shall be:
 - (a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;
 - (b) Payable to the Kentucky State Treasurer; and
 - (c) Remitted to the Kentucky Department of Insurance electronically through the department's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.
- (5) Agencies paying a surplus lines premium tax on behalf of a broker shall submit payment electronically through the broker's Eservices account using the department's

secure Web site at <https://insurance.ky.gov/doieservices/UserRole.aspx>.

(6) The department shall consider the payment of the surplus lines premium tax and any applicable penalty to be the submission of the broker's quarterly report and verified statement of transactions.

(7) The quarterly shall be submitted quarterly report by all licensed brokers even if no insurance transactions were completed during the period.

Section 3. Effective Date. ~~The~~^{This} administrative regulation shall be effective beginning with the calendar quarter beginning July 1, 2021.

~~{Section 4.} {Incorporation by Reference.}~~

~~{(1)} {"Kentucky Surplus Lines Affidavit of Insurance Transaction", May 2019, is incorporated by reference.}~~

~~{(2)} [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

~~{(3)} [This material may also be obtained on the department's secure Web site at <https://insurance.ky.gov/doieservices/UserRole.aspx>.]~~

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 2021 at 3:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on December 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 11:59 PM on December 30, 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 below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to prescribe the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the commissioner to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides the process for surplus lines brokers to report and pay the required taxes on surplus lines business on a quarterly basis to the Department of Insurance.

(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:

The amendments will clarify the 15-day reporting period applicable to surplus lines brokers. "Invoice date" is not defined because of the use of the electronic system, so these amendments will keep the regulation and internal processes at DOI consistent, as the Department calculates the 15 days from the effective date, not the invoice date. The Department has also added language in Section 2, which requires surplus lines brokers to submit a filing even if they had no business within that quarter.

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

This proposed regulatory amendment is needed to remove the option of utilizing the invoice date in calculating the start of the 15-day reporting requirement for surplus lines brokers, in order to alleviate any confusion on when the Department begins this reporting timeframe.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the commissioner to prescribe the form of the verified

statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law.

(d) How the amendment will assist in the effective administration of the statutes:

This proposed regulatory amendment will ensure consistency between the regulatory language and DOI's internal practices, and will provide greater clarity regarding the deadlines applicable to the reporting process required under KRS 304.10-170.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect the approximately 1,147 surplus lines brokers licensed in Kentucky. (4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to report an affidavit within 15 days of the effective date of each premium bearing line, not the invoice date. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The process set forth in this administrative regulation clarifies a long-standing practice regarding the reporting process. Because insurers have already been complying in this manner, there is no cost to implement this administrative regulation. (c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this proposed regulatory amendment, regulated entities will ensure compliance with KRS 304.10-170 and 304.10-180. Additionally, brokers will now only have to report from the effective date of the premium, instead of the date of invoice, creating more stability in reporting.

(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:

No answer provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No answer provided.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

No answer provided.

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

(a) Initially:

Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis:

Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Department will use funds from its current operational budget to perform the tasks necessary.

(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:

An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all licensed surplus lines brokers subject to local government taxes.

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?

The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 304.2-110, 304.10-170, 304.10-210

(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.

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

(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?

This administrative regulation is not expected to generate any revenue in the first year.

(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?

This administrative regulation is not expected to generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year?

This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years?

This administrative regulation will not have a cost to administer subsequent years.

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

Revenues (+/-):Neutral

Expenditures (+/-):Neutral

Other Explanation:

As the amendments to this administrative regulation clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.