

806 KAR 52:020. Aggregate excess insurance.

RELATES TO: KRS 304.50-120, 342.906

STATUTORY AUTHORITY: KRS 304.50-010(2), 304.50-120(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2), requires the commissioner to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups. KRS 304.50-120(1), requires the commissioner to promulgate administrative regulations setting forth the requirements for aggregate excess insurance and the standards for granting a waiver. This administrative regulation establishes requirements for aggregate excess insurance and for requesting a waiver from the requirement to obtain aggregate excess insurance.

Section 1. Definitions.

- (1) "Commissioner" means the Commissioner of the Department of Insurance.
- (2) "Department" means the Department of Insurance.
- (3) "Group" means a Self-insured group.
- (4) "Self-insured group" is defined in KRS 304.50-015(29).

Section 2. Waiver of Requirement to Obtain Aggregate Excess Insurance.

- (1) A self-insured group may request an annual written waiver from the commissioner, which shall not unreasonably be withheld, of the requirement to purchase aggregate excess insurance by submitting the following:
 - (a) A statement verifying that the group has been in continuous operation for at least five (5) years;
 - (b) Documentation from a qualified actuary indicating that the fund is adequately reserved to meet all predictable losses; and
 - (c) An explanatory narrative from the group's management describing the variables and factors considered in the determination to forego aggregate coverage.
- (2) A waiver shall be granted or denied in writing within thirty (30) days of application. The term of a waiver shall be limited to the upcoming fund year, whether calendar or fiscal.
- (3) In determining whether to grant a waiver, the commissioner director shall consider the following factors:
 - (a) The self-insured group's operating history;
 - (b) Whether the self-insured group is adequately reserved to meet all predictable losses; and
 - (c) Whether the fund has exercised reasonable care and diligence in evaluating the decision to operate the fund without aggregate coverage.

Section 3. Terms and Conditions for Aggregate Excess Insurance.

- (1) The minimum limit of liability of the aggregate excess insurance shall be fifteen (15) percent of the earned premium but shall not be less than \$2,000,000 or more than \$5,000,000.
- (2) A contract or policy of aggregate excess insurance shall comply with the following:
 - (a) The policy shall state that it is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the department at least forty-five (45) days before termination by the party desiring to cancel or not renew the policy;
 - (b) The policy shall state that the following apply toward reaching the retention amount in the excess contract:
 1. Payments made by the fund;
 2. Payments made on behalf of the fund from deposits or other forms of security;and

3. Payments made by the Kentucky Group Self-Insurance Fund, as established in KRS 342.906; and

(c) The policy shall state that if the fund is unable to make benefit payments due to insolvency or bankruptcy, the excess carrier shall make the payments to other parties involved in the paying of the fund's obligations, as directed by the department, subject to the policy's retentions and limits.

(31 Ky.R. 2067; 32 Ky.R. 503; eff. 10-7-2005; Crt eff. 2-26-2020; TAm eff. 3-10-2020.)