

1 Public Protection Cabinet

2 Department of Insurance

3 Division of Property and Casualty

4 (Amendment)

5 806 KAR 39:050. Self-insurance.

6 RELATES TO: KRS ~~304.8-030~~, 304.39-020(12), 304.39-080, 304.39-290, 304.39-170

7 STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.39-080 authorizes ~~[allows]~~
9 the Commissioner ~~[Executive Director]~~ of Insurance to approve applications for self-insurance
10 and set standards that ~~[which]~~ shall ~~[must]~~ be met by ~~[such]~~ applicants ~~[thereof]~~. The function
11 ~~[purpose]~~ of this administrative regulation is to set forth ~~[in detail]~~ the criteria ~~[that must be met~~
12 ~~in order]~~ to apply for self-insurance, and the authority of the commissioner to ~~[grounds on which~~
13 ~~the executive director may]~~ revoke self-insurance status.

14 Section 1. Any person that desires ~~[desiring]~~ to be self-insured as established in ~~[for the~~
15 ~~purposes of]~~ KRS Chapter 304, Subtitle 39, shall submit an application to the Commissioner
16 ~~[Executive Director]~~ of Insurance on the form, "Application for Motor Vehicle Self-Insurance,"
17 12/2020 edition ~~[forms provided by the Office of Insurance]~~.

1 Section 2. The applicant shall agree in writing to pay all tort liability and basic reparation
2 benefits incurred and established [~~required~~] by KRS Chapter 304, Subtitle 39, and shall further
3 agree to become a member of the Kentucky Arbitration Association, to meet all obligations
4 incurred [~~thereby~~]; and further, shall agree to become a member of the Assigned Claims Bureau,
5 and to meet all obligations incurred [~~thereby~~].

6 Section 3. The applicant shall file with the application, and every year after [~~annually~~
7 ~~thereafter~~], a balance sheet and income statement that [~~which~~] shall reflect the actual financial
8 condition of the applicant as of the last complete calendar or fiscal year preceding the date of the
9 application; and, in the case of an individual, the [~~such~~] balance sheet and income statement shall
10 be certified, under oath, by the individual that it truly reflects his financial condition and income
11 as of that time. In the case of a corporation or partnership, it shall be certified by a Certified
12 Public Accountant or responsible accounting officer of the applicant. This [~~Such~~] information
13 shall be confidential, and the Commissioner [~~Executive Director~~] of Insurance shall not release
14 this [~~such~~] information unless he has the prior written consent of the applicant.

15 Section 4. The application shall list the vehicles as of the date of application and annually
16 thereafter for which the self-insurance shall provide security and advise the commissioner
17 [~~executive director~~] of any changes in the number of insured vehicles thereof unless they have
18 furnished maximum security.

19 Section 5. The applicant shall furnish security to the commissioner [~~executive director~~] to
20 meet his continuing obligation [~~obligations~~] as agreed to in Section 2 of this administrative
21 regulation. The security [~~so~~] furnished may be in the form of a bond, with surety [~~thereon~~], by an
22 insurer authorized by the Department [~~Office~~] of Insurance to engage in surety insurance
23 contracts or an irrevocable letter of credit issued by a bank chartered by the Commonwealth of

1 Kentucky or a member bank of the Federal Reserve System whose capital and surplus shall equal
2 or exceed twenty-five million dollars (\$25,000,000) [~~or with such other surety as the executive~~
3 ~~director may approve~~].

4 Section 6. Security may also be furnished by depositing with the Custodian of Insurance
5 Securities cash or assets of the kind that [~~which~~] may be deposited by a domestic insurer
6 pursuant to KRS 304.8-030. Where the security tendered to the commissioner [~~executive~~
7 ~~director~~] is of a kind that may [~~which tends to~~] vary in market value, including [~~(~~]U.S.
8 obligations, bonds, stocks or real estate[~~)~~], the commissioner [~~executive director~~] may, in his
9 discretion, require the amount [~~sø~~] tendered to have a current market value greater than the
10 minimum required security, but not in excess of 150 percent of minimum required security.

11 Section 7. The minimum requirement security that shall [~~must~~] be furnished to the
12 commissioner [~~executive director~~] is for one (1) secured vehicle, \$50,000; and for each
13 additional vehicle: \$10,000, up to a maximum of \$200,000.

14 Section 8. The commissioner [~~executive director~~] shall hold the securities furnished under
15 Sections 5, 6, and 7 of this administrative regulation for the benefit of the person [~~those persons~~]
16 to whom the self-insured is obligated under the provisions of KRS Chapter 304, subtitle 39.

17 Section 9. Each self-insured shall furnish to the commissioner [~~executive director~~], no
18 later than January 10, April 10, July 10, and October 10 of each year, a report on forms,
19 authorized by the commissioner [~~prescribed by the executive director~~], of all claims incurred
20 during the preceding calendar year.

1 Section 10. If, based upon the number of claims incurred by the self-insured, the
2 commissioner [~~executive director~~] shall determine [~~determines~~] that the security furnished is
3 inadequate, he may require additional security and more frequent report of claims incurred.

4 Section 11. If a self-insured fails to meet its obligations under KRS Chapter 304, Subtitle
5 39, or fails to make his required report of claims, or to post additional security required by the
6 commissioner [~~executive director~~], the commissioner [~~executive director~~] shall disapprove the
7 self-insured for self-insurance.

8 Section 12. A self-insured may, at any time, by written request to the commissioner
9 [~~executive director~~], withdraw as a self-insured.

10 Section 13. When a self-insured voluntarily withdraws as a self-insured, or when the
11 commissioner [~~executive director~~] disapproves the self-insured, the commissioner [~~executive~~
12 ~~director~~] shall retain the security furnished to him until such time as he is satisfied that the self-
13 insured has met all obligations incurred as a self-insured under KRS Chapter 304, Subtitle 39. If
14 any [~~said~~] obligation remains unsatisfied for ninety (90) days, the commissioner [~~executive~~
15 ~~director~~] may institute proceedings to assure that all persons [~~person~~] to whom the self-insured is
16 obligated under KRS Chapter 304, Subtitle 39 shall receive their equitable share of the securities
17 available.

18 Section 14. Incorporation by Reference. (1) The following material is incorporated by
19 reference:

20 (1) “Application for Motor Vehicle Self-Insurance”, 12/2020 edition

21 (2) This material may be inspected, copied or obtained, subject to applicable copyright
22 law, from the Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort,

- 1 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on
- 2 the office's Web site at www.insurance.ky.gov

806 KAR 39:050
READ AND APPROVED:

Sharon P. Clark

12/18/2020

Sharon P. Clark
Commissioner, Department of Insurance

Date

Kerry B. Harvey

12/21/2020

Kerry B. Harvey
Secretary, Public Protection Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on March 22nd, 2021 at 500 Mero Street, Frankfort, KY 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 March 31st, 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
Title: Executive Administrative Secretary
Address: 500 Mero Street, Frankfort, KY 40601
Phone: +1 (502) 564-6026
Fax: +1 (502) 564-1453
Email: abigail.gall@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 39:050

Contact Person: Abigail Gall

Phone: +1 (502) 564-6026

Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria to apply or re-apply for self-insurance and the jurisdiction that authorizes the commissioner to revoke self-insurance.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the application criteria for self-insurers and the limitations of approval or disapproval determined by the commissioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.39-080 authorizes the commissioner to approve or disapprove self-insurance applications and set the standards at which self-insurance applications are approved or disapproved, this administrative regulation conforms to this statute by establishing those limitations,

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations to aid in the effectuation of the Insurance Code. This administrative regulation promulgates the application criteria for self-insurers, conforming to the effectiveness of KRS 304.39-080.

(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 made in this administrative regulation are to abide by the requirements of Chapter 13A. the amendments also incorporate the “Application for Self Insurance” into the regulation, which requires a materials incorporated section and a summary of said materials.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are to conform to the drafting requirements set forth in Chapter 13A.222. The form newly incorporated allows entities to apply for self-insurance in the Commonwealth according to Subtitle 39 of the Kentucky Revised Statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments change and replace old language, as well as address outdated formatting. The amendments will allow the administrative regulation to read more clearly and effectively.

- (d) How the amendment will assist in the effective administration of the statutes: The amendments meeting Chapter 13A requirements assist in the effective administration of KRS 304.2-110 and KRS 304.39-080 by ensuring the administrative regulation is easily understood by lay men and can be clearly received by entities affected by the administrative regulation itself.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who is looking to apply for self-insurance, is currently self-insured, those seeking to re-apply for self-insurance, those disapproved by the commissioner for self-insurance and the department.
- (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: Applicants must file an application with the commissioner to be approved or disapproved to be self-insured. If approved they must file annually every year and if disapproved they must re-apply to meet the proper standards not met in the initial application.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Pursuant to 806 KAR 4:010, the fee to apply to be a motor vehicle self-insured entity is \$200.
- (c) As a result of compliance, what benefits will accrue to the entities: If a person is compliant to the administrative regulation they should receive approval by the commissioner to be self-insured.
- (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 establish any fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied. Tiering is not applied. The application process applies in the same manner to all entities who desire become self-insured for the purpose of motor vehicle insurance.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 39:050

Contact Person: Abigail Gall

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Email: abigail.gall@ky.gov

(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? Persons who wish to be self-insured and the department.

(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, 304.39-300

(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? No revenue is expected.

(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 is expected.

(c) How much will it cost to administer this program for the first year? There is not expected cost to administer this program, as it has been in place for many years prior.

(d) How much will it cost to administer this program for subsequent years? There is not expected cost to administer this program, as it has been in place for many years prior.

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

(4) Revenues (+/-): Neutral

(5) Expenditures (+/-): Neutral

(6) Other Explanation:

SUMMARY OF MATERIALS INCORPORATED

806 KAR 39:050

(1) “Application for Motor Vehicle Self-Insurance”, 12/2020 edition, this form has to be filled out and accepted by the Commissioner of Insurance if a person desires to be self-insured according to this administrative regulation and Subtitle 39 of the Kentucky Revised Statutes.