

1 **LABOR CABINET**

2 Department of Workers' Claims

3 (Amendment)

4 803 KAR 25:220. Guaranty funds.

5 RELATES TO: KRS 342.900-342.912

6 STATUTORY AUTHORITY: KRS 342.260, 342.900-342.912

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the
8 commissioner to promulgate administrative regulations necessary to implement the provisions of
9 KRS Chapter 342. KRS 342.906(4) requires the commissioner to promulgate administrative
10 regulations to establish a plan of operation for each guaranty fund created pursuant to KRS
11 342.906. This administrative regulation establishes the requirements for a guaranty fund written
12 plan of operation and regulates the powers and duties of the guaranty funds.

13 ~~[Section 1. Definition. "Kentucky coal employers' self insurance fund" means the self-~~
14 ~~insurance fund that consists of self insured employers engaged in the severance or processing of~~
15 ~~coal, excluding the transportation or processing of coal by the end user.]~~

16 Section 1. ~~[2.]~~ Plan of Operation. (1) Each guaranty fund shall submit to the commissioner
17 a plan of operation and each amendment necessary to assure the fair, reasonable, and equitable
18 administration of the fund. The plan of operation and amendments shall become effective upon
19 approval in writing by the commissioner.

1 (2) If a guaranty fund fails to submit an acceptable plan of operation by March 1, 1997, or
2 fails to submit a suitable amendment to the plan, the commissioner may, after notice and hearing,
3 adopt or amend a plan of operation for the guaranty fund. The plan adopted or amended by the
4 commissioner shall continue in force until modified by the commissioner or superseded by a plan
5 submitted by the guaranty fund and approved by the commissioner.

6 (3) A member of a guaranty fund shall comply with the plan of operation.

7 (4) The plan of operation shall establish:

8 (a) Procedures whereby all the powers and duties of the guaranty fund established by KRS
9 Chapter 342 shall be performed;

10 ~~[(b) Procedures to prorate a security posted by the insolvent self insurer and turned over to~~
11 ~~the guaranty fund, by allocating the security to reserves for injuries incurred before and after March~~
12 ~~1, 1997.]~~

13 (b) ~~[(e)]~~ Procedures for the collection of assessments, the sound investment, and
14 disbursement of assets of the guaranty fund;

15 (c) ~~[(d)]~~ The amount and method of reimbursing a member of the board of directors for
16 attendance at a board meeting or other reasonably necessary function of the guaranty fund;

17 (d) ~~[(e)]~~ Procedures by which a claim shall be filed with the guaranty fund and acceptable
18 forms for proof of a claim. Notice of a claim against the insolvent self-insurer to a bankruptcy
19 court or other court of competent jurisdiction shall be deemed notice to the guaranty fund;

20 (e) ~~[(f)]~~ A regular place and time for a meeting of the board of directors;

1 (f) [(g)] Procedures for a record to be kept of a financial transaction of the guaranty fund,
2 its agents, or the board of directors;

3 (g) [(h)] Procedures for the expeditious and informal resolution of a member grievance;

4 (h) [(i)] Additional provisions necessary or proper for the execution of the powers and
5 duties of the guaranty fund.

6 Section 3. Powers and Duties of the Guaranty Funds. (1) Each guaranty fund shall:

7 (a) Be [the insurer] required to pay the workers' compensation benefits incurred during the
8 period in which an insolvent self-insurer was a member of the guaranty fund, subject to the
9 limitations established by KRS 342.908(4).

10 [~~1. For a group self-insurer, membership in the Kentucky group self insurance fund shall~~
11 ~~continue until coverage of every group member has been terminated by normal expiration or order~~
12 ~~of a court of competent jurisdiction.~~]

13 1. [~~2.~~] For an individual self-insurer, membership in a guaranty fund shall continue until
14 the employer:

15 a. Becomes an insolvent self-insurer, as defined in KRS 342.901(1); or

16 b. Secures coverage through an authorized carrier or self-insurance group;

17 (b) Have the rights, duties, and obligations of the insolvent self-insurer, except as otherwise
18 provided by law;

19 (c) Determine the outstanding liabilities of the insolvent self-insurer and establish actuarily
20 responsible reserves for an incurred claim. [~~The reserves shall be applied pro rata to a claim~~
21 ~~incurred before and after March 1, 1997. The guaranty fund shall:~~]

1 1. When an insolvent self-insurer's security has been exhausted, the guaranty fund shall
2 not [Not] be responsible for payment of [a deficiency between the reserves so calculated and the
3 total claims liability for] a claim incurred prior to March 1, 1997; and

4 2. When an insolvent self-insurer's security has been exhausted, the guaranty fund shall
5 pay [Pay] a claim [liability] incurred on or after March 1, 1997;

6 (d) Establish a mechanism consistent with 803 KAR 25:021, Section 12(4), for a
7 distribution of security proceeds after the commissioner has determined that every claim for which
8 an insolvent self-insurer is responsible has been fully paid, fully settled, or lapsed so that the
9 insolvent self-insurer has no possibility of additional liability. [return to the insolvent self-insured
10 or the individual or entity posting the surety the remaining surety if there is a surplus.]

11 (e) Take possession of the books and records of the insolvent self-insurer necessary to
12 fulfill the duties of the guaranty fund;

13 (f) Investigate claims brought against the guaranty fund and adjust, compromise, settle and
14 pay workers' compensation benefits which might otherwise be delayed or terminated due to the
15 failure of an insolvent self-insurer to meet its obligations under KRS Chapter 342;

16 (g) Notify a claimant of the insolvent self-insurer of his rights through the guaranty fund;

17 (h) Reimburse each servicing facility for an obligation of the guaranty fund paid by the
18 facility and for an expense incurred by the facility while handling a claim on behalf of the guaranty
19 fund; and

20 (i) Notify the commissioner of information indicating that a member may be insolvent or
21 in a financial condition jeopardizing payment of claims.

- 1 (2) A guaranty fund may:
- 2 (a) Appear in, defend, and appeal an action on a claim brought against the guaranty fund;
- 3 (b) Employ or retain persons necessary to handle claims and perform other duties of the
- 4 guaranty fund;
- 5 (c) Borrow funds necessary to effect the purposes of KRS Chapter 342 and this
- 6 administrative regulation in accordance with the fund's plan of operation;
- 7 (d) Sue or be sued;
- 8 (e) Negotiate and become a party to a contract necessary to carry out the purpose of KRS
- 9 Chapter 342 and this administrative regulation; and
- 10 (f) Perform an act necessary to effectuate the purpose of the guaranty fund.

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
Department of Workers' Claims

2/18/21

Date

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

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 803 KAR 25:220

Contact person: B. Dale Hamblin, Jr, Assistant General Counsel

Telephone Number: (502) 782-4404

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a guaranty fund written plan of operation and regulates the powers and duties of the guaranty funds.

(b) The necessity of this administrative regulation: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.906(4) requires the commissioner to promulgate administrative regulations to establish a plan of operation for each guaranty fund created pursuant to KRS 342.906.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance regarding the powers and duties of a guaranty fund and establishes the requirements for a guaranty fund's written plan of operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements for a guaranty fund's written plan of operation.

(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 has not been amended since 1997. The amendment updates the administrative regulation to match current practices.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 1997. The amendment updates the administrative regulation to match current practices and to match the Department's current structure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.906 requires the commissioner to promulgate administrative regulations to establish a plan of operation for each guaranty fund. The amendment matches the current expectation for those plans.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to a guaranty fund in drafting or amending its plan of operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance fund.

(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: It is unlikely either guaranty fund will have to take any action to comply with the amendments unless its plan of operation needs updated.

(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 their written plan of operation.

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