

College of Agriculture, Food and Environment Division of Regulatory Services

G 5 2 9 2020

September 29, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capital Annex Frankfort, KY 40601

Re: 12 KAR Chapter 4, Fertilizer Regulations

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the administrative regulation numbers listed below, the Division of Regulatory Services proposes the attached amendments to the administrative regulation numbers listed below.

12 KAR 4:075 Licenses and fertilizer product registration
12 KAR 4:080 Plant nutrient guarantees and labeling
12 KAR 4:130 Investigational allowances
12 KAR 4:140 Monetary Penalties
12 KAR 4:170 Maximum chlorine guarantees for tobacco fertilizers

Sincerely,

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Stephen McMurry, Director of Fertilizer and Seed Programs Division of Regulatory Services University of Kentucky 103 Regulatory Services Building Lexington, KY 40546-0275

see blue.

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Final 8/28/2020 4:26 PM

SUGGESTED SUBSTITUTE

AGRICULTURAL EXPERIMENT STATION

12 KAR 4:075. Licenses and fertilizer product registration.

RELATES TO: KRS 250.366(16), (26), 250.371 – 250.461

STATUTORY AUTHORITY: KRS 250.371, 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.371 authorizes the Kentucky Agricultural Experiment Station Director to promulgate administrative regulations for product registration and licensing of custom mix blending facilities. KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation establishes requirements for fertilizer product registration and licensing.

Section 1. Definitions.

(1) "Registrant" means the person who registers fertilizer.

(2) "Licensee" means the person who is licensed to distribute fertilizer.

Section 2. An applicant for registration shall complete and submit to the Fertilizer Regulatory Program:

(1) Application for Registration of Farm Fertilizer, Form RS-29-01 Farm Fertilizer;

(2) Application for Registration of Specialty Fertilizer, Form RS-29-03 Specialty Fertilizer (10 Pounds or Less).

(a) In accordance with KRS 250.371(1), a fifty (50) dollar registration fee shall accompany form RS-29-03; and

(b) In accordance with KRS 250.381(4) a fifty (50) dollar inspection fee shall accompany form RS-29-03*: or[-]*

(3) Application for Registration of Specialty Fertilizer, Form RS-29-04. Specialty Fertilizer (Packages Greater Than 10 Pounds). In accordance with KRS 250.371(1), a fifty (50) dollar registration fee shall accompany the submitted application form.

Section 3. An applicant for licensing shall complete and submit to the Fertilizer Regulatory Program:

(1) Application for Custom Mix Fertilizer Blending, Form RS-29-02 Bulk Fertilizer License; or

(2) Application for Custom Mix Specialty Fertilizer Blending, Form RS-29-05 Bulk Specialty Fertilizer License. In accordance with KRS 250.371(4), a one-hundred (100) dollar license fee shall accompany the submitted application form.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration of Farm Fertilizer", Form RS-29-01, October 2019;

(b) "Application for Registration of Specialty Fertilizer", Form RS-29-03, October 2019;

(c) "Application for Registration of Specialty Fertilizer", Form RS-29-04, October 2019;

(d) "Application for Custom Mix Fertilizer Blending", Form RS-29-02, October 2019; and

(e) "Application for Custom Mix Specialty Fertilizer Blending", Form RS-29-05, October 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,

at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building,

Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, email smcmurry@uky.edu.



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SUGGESTED AMENDMENT

AGRICULTURAL EXPERIMENT STATION

12 KAR 4:080. Plant <u>nutrient[nutrients]</u> guarantees and labeling.

RELATES TO: KRS 250.366(7), 250.371 - 250.451

STATUTORY AUTHORITY: KRS 250.366(7), 250.421

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 250.366(7) authorizes the Kentucky Agricul-</u> <u>tural Experiment Station Director to promulgate administrative regulations for the inspection</u> <u>and analysis of plant nutrient guarantees. KRS 250.421 requires the director to promulgate ad-</u> <u>ministrative regulations necessary to implement KRS 250.371 through 250.451. This administra-</u> <u>tive regulation establishes requirements for plant nutrient labeling requirements.</u>

Section 1. Plant Nutrient Guarantees. Plant nutrients, additional to nitrogen, phosphorus, and potassium, referenced by fertilizer labeling or information provided with a fertilizer shall be registered and guaranteed pursuant to this administrative regulation. Except guarantees for watersoluble nutrients labeled for ready-to-use foliar fertilizers, ready-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soils, garden soils, lawn soils, and any other growing media product labeled with a fertilizer guaranteed analysis, the minimum elemental percentages shall be as established in the Table established in this section[paragraph].

agraph):
Percent
1.00[00]
0.50[00]
1.00[00]
0.02[00]
0.10[00]
0.0005
0.05[00]
0.10[00]
0.05[00]
0.0005
<u>0.0010</u>
0.10[00]
0.05[00]

(1) Guarantees and claims shall not be referenced by fertilizer labeling or information provided with a fertilizer for elements other than those established in the Table established in this **section[subsection]**.

(2) Except for nitrogen, phosphorus, and potassium, if present and that shall be listed first, guaranteed elements referenced by fertilizer labeling or information provided with a fertilizer

shall be listed in the order established in the Table established in this section[subsection].

(3) The elements established in this **section**[subsection] shall be guaranteed on their elemental basis and are the only ones that **shall**[will] be accepted.

(4) Sources of the elements guaranteed and proof of availability shall be provided upon request.

Section 2. Fertilizer Labels.

(1) Fertilizer labels or information provided with a fertilizer shall be legible and conspicuous and shall include:

(a) Net Weight; [and]

line a

(b) <u>Brand and grade, except grade shall not be required if primary nutrients are not</u> claimed;[*and*]

(c) Under the heading of Guaranteed Analysis;[;]

<u>Total Nitrogen (N)</u>	<u>%</u>
Available Phosphate (P2O5)	<u>%</u>
Soluble Potash (K ₂ O)	<u>%</u>
Other Nutrients, Elemental Basis	<u>%</u>

1. If the percentage is zero, the nutrient shall be omitted from the statement, except in nutrient guarantee breakdowns.

2. If the chemical forms of nitrogen are claimed, the form shall be guaranteed in the format established in the Table established in this subparagraph, and the percentages of the individual forms shall add up to the total nitrogen percentage. Implied order of the forms of nitrogen is not intended.

	Total Nitrogen (N)	<u>%</u>
<u>%</u>	Ammoniacal Nitrogen	
<u>%</u>	Nitrate Nitrogen	
<u>%</u>	Water Insoluble Nitrogen	
<u>%</u>	<u>Urea Nitrogen</u>	
%	Other Recognized and Deter-	
	minable Forms of Nitrogen	

(d) The source or sources of the guaranteed elements that, if shown on the fertilizer labeling or information provided with a fertilizer, shall be listed below the completed guaranteed analysis statement; and

(e) Name and address of registrant or licensee.

(2) For packaged products, Fertilizer Labels shall:

(a) Appear on the front or back of the package;

(b) Occupy at least the upper third of a side of a package; or

(c) Be printed on a tag and attached to the package.

(3) If the chemical form of a plant nutrient is guaranteed, the percentage for each component shall be shown before the name of the form, as in the following example:

<u>Total Nitrogen (N)</u>	<u>34%</u>
17% Nitrate Nitrogen	
17% Ammoniacal Nitrogen	

Magnesium (Mg)	<u>2.0%</u>	
1% Water Soluble Magn	<u>esium (Mg)</u>	
<u>Sulfur (S)</u>	<u>10.0%</u>	
5% Free Sulfur (S)		
5% Combined Sulfur (S)		
Iron (Fe)	<u>2.0%</u>	
2% Chelated Iron (Fe)		

Section 3. Beneficial Substances and Beneficial Compounds.

(1) Beneficial substances or beneficial compounds guarantees shall be listed below the guaranteed analysis statement under one (1) of the following headings; "Also Contains Beneficial Substances", "Also Contains Beneficial Compounds", or "Also Contains NonPlant Food Ingredients."[-]

(2) The percentage for each beneficial substance or beneficial compound shall be shown after the name of the form, as in the following examples:

(a) Also Contains Beneficial Substances (Compounds)

Beneficial Substance	%	or	acceptable
	<u>uni</u>	<u>ts</u>	
Purpose Statement:			
(b) Also Contains NonP	lant l	Food	Ingredients
Beneficial Substance	%	or	acceptable
	<u>uni</u>	<u>ts</u>	
Purpose Statement:			

(3) For the beneficial substance, Silicon, the guarantee shall be "Soluble Silicon (Si)." The method of determination of Soluble Silicon shall be from the Journal of AOAC International, Volume 96, No.2, 2013.

Section 4. The term of "percentage" by symbol or word, when used on fertilizer labeling shall represent only the amount of individual plant nutrients in relation to the total product by weight.

Section 5. Incorporation by Reference.

(1) "Journal of AOAC International", Volume 96, No. 2, 2013, "A 5-Day Method for Determination of Soluble Silicon Concentrations in Nonliquid Fertilizer Materials Using a Sodium Carbonate-Ammonium Nitrate Extractant Followed by Visible Spectroscopy with Heteropoly Blue Analysis: Single-Laboratory Validation", **2013**, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.[To prescribe in detail when and how plant nutrients in addition to nitrogen, phosphorus and potassium shall be registered and guaranteed.

Section 1. Plant nutrients in addition to nitrogen, phosphorus and potassium when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided the director upon request. Except guarantees for those water soluble nutrients labeled for hydroponic or continuous liquid feed programs, and guarantees for potting soils, the minimum percentages which will be accepted for registration are as follows:

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Section 2. Guarantees or claims for the plant nutrients listed in Section 1 of this administrative regulation are the only ones which will be accepted. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in Section 1 of this administrative regulation which are guaranteed shall appear in the order listed and shall immediately follow guarantees for the primary nutrients of nitrogen, phosphorus and potassium if present.]

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smc-murry@uky.edu.



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Re: 12 KAR Chapter 4, Fertilizer Regulations

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the administrative regulation numbers listed below, the Division of Regulatory Services proposes the attached amendments to the administrative regulation numbers listed below.

12 KAR 4:075 Licenses and fertilizer product registration
12 KAR 4:080 Plant nutrient guarantees and labeling
12 KAR 4:130 Investigational allowances
12 KAR 4:140 Monetary Penalties
12 KAR 4:170 Maximum chlorine guarantees for tobacco fertilizers

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SUGGESTED SUBSTITUTE

AGRICULTURAL EXPERIMENT STATION

12 KAR 4:130. Investigational allowances.

RELATES TO: KRS 250.366(19), 250.391(3), 250.396(1), (2), 250.401

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 250.421 requires the director to</u> <u>promulgate administrative regulations necessary to implement KRS 250.361 through</u> <u>250.461. This administrative regulation establishes</u> [To prescribe] scientifically sound and fair investigational allowances as a basis for declaring a fertilizer sample deficient in its guaranteed analyses and to detail the calculation of the index value of a fertilizer.

Section 1. A fertilizer shall be deemed deficient if the analysis of an official sample for any primary nutrient is below the guarantee by an amount exceeding the values in the *table established in this section[following schedule]*.

Guaran-	Total	Available	Soluble
teed	Nitro-	Phosphate	Potash
percent	gen (N)	(P ₂ O ₅)	(K ₂ O)
	per-	percent*	percent*
	cent*		
05 or	0.37	0.65	0.39
less			
06	0.47	0.71	0.47
07	0.59	0.77	0.56
08	0.72	0.82	0.63
09	0.81	0.86	0.70
10	0.89	0.89	0.76
12	1.03	0.95	0.87
14	1.18	1.02	0.96
16	1.29	1.12	1.05
18	1.43	1.19	1.12
20	1.57	1.32	1.18
22	1.62	1.39	1.22
24	1.65	1.46	1.26
26	1.66	1.53	1.29
28 ·	1.58	1.59	1.33
30	1.28	1.67	1.36
32 or	1.28	1.67	1.36

more				
For guarantees not listed, calculate the				
appropriate value by interpolation.				
*For these investigational allowances to				
be applicable, the procedures recom-				
mended by AOAC International for ob-				
taining samples, preparation and analysis				
shall be used. These are described in the				
15th Edition (1990) of the Official Meth-				
ods of Analysis of the AOAC International.				
In evaluating replicate data, Table 19,				
page 935, Journal of the Association of				
Official Analytical Chemists, Volume 49,				
No. 5, October, 1966, shall be followed.				
[The above materials are hereby incorpo-				
rated by reference and are available for				
inspection and copying at 103 Regulatory				
Services Building, University of Kentucky,				
Lexington, Kentucky, during regular busi-				
ness hours of 8 a.m. to 5 p.m., Monday				
through Friday.]				

Section 2. A fertilizer shall be deemed deficient in the overall index value if the overall index value is less than ninety-seven (97) percent.

(1) The overall index value **shall be[is]** calculated by comparing the value guaranteed with the value found. Unit values of the nutrients used shall be those referred to in KRS 250.401.

(2) Overall index value. Example of calculation for a 10-10-10 grade found to contain ten and one-tenth (10.1) percent Total Nitrogen (N), ten and two-tenths (10.2) percent Available Phosphate (P_2O_5) and ten and one-tenth (10.1) percent Soluble Potash (K_2O). Nutrient unit values **shall be[are]** assumed to be three (3) dollars per unit N, two (2) dollars per unit (P_2O_5), and one (1) dollar per unit K_2O .

10.0 units N		x3	10.0
		=	
10.0 units P ₂ O ₅		x2	20.0
		=	
10.0 units K ₂ O		x1	10.0
		=	
Commercial	Value		60.0
Guaranteed =			
10.0 units of N		x3	30.3

	=	
10.2 units of P ₂ O ₅	x2	20.4
	=	
10.1 units K ₂ O	x1	10.1
	=	
Commercial Value		60.8
Found =		
Overall Index Value = 1	00(60).8/60.00) =
101.3%		

Section 3. Secondary and minor elements shall be deemed deficient if the analysis of an official sample for any of these elements is below the guarantee by an amount exceeding the values in the *table established in this section.[following schedule:]*

Element		Investigational Allow-	
		ance	
Calcium)	0.2 unit + 5% of guar-	
		antee	
Magnesi-)	0.2 unit + 5% of guar-	
um		antee	
Sulfur)	0.2 unit + 5% of guar-	
		antee	
Boron)	0.003 unit + 15% of	
		guarantee	
Molyb-)	0.0001 unit + 30% of	
denum		guarantee	
Chlorine)	0.005 unit + 10% of	
		guarantee	
Copper)	0.005 unit + 10% of	
		guarantee	
Iron)	0.005 unit + 10% of	
		guarantee	
Manga-)	0.005 unit + 10% of	
nese		guarantee	
Sodium)	0.005 unit + 10% of	
		guarantee	
Zinc)	0.005 unit + 10% of	
		guarantee	
The	max	kimum allowance	
[when] cald	[when] calculated in accordance with		
this table[to the above] shall be one			

(1) unit (1 percent).

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "15th Edition (1990) of the Official Methods of Analysis of the AOAC International", **1990**; and[-]

(b) "Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5", October, 1966

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SUGGESTED SUBSTITUTE

AGRICULTURAL EXPERIMENT STATION

12 KAR 4:140. Monetary penalties.

RELATES TO: KRS 250.396(1), (2)

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 250.421 requires the director to promulgate</u> <u>administrative regulations necessary to implement KRS 250.361 through 250.461. This adminis-</u> <u>trative regulation establishes [To prescribe]</u> the specific method of calculating the monetary penalties required by the fertilizer law.

Section 1. Penalties for deficiencies in Total Nitrogen (N), Available Phosphate (P_2O_5), soluble potash (K_20), and index value shall be calculated **based on the table established in this sec**-

tton. [from the following	,
Number of Investiga-	Penalty Schedule
tional Allowances Be-	
low Guarantee	
<2	Equal to the monetary
	value of the deficiency
>2 <3	Two (2) times the
	monetary value of the
	deficiency
>3	Three (3) times the
	monetary value of the
	deficiency
har we have a second seco	

tion.[from the following schedule:]

Section 2. Minimum standards and overages of primary nutrients <u>may[are allowed to]</u> reduce penalties calculated in Section 1 of this administrative regulation for fertilizer with index values equal to or greater than ninety-seven (97) percent on the basis of the <u>table established</u>

in this section.[following schedule:]

Number of Investiga-	Penalty Adjustments		
tional Allowances Below			
Guarantee			
No more than one (1)	Penalty adjusted to		
deficiency that is less	zero		
than or equal to two (2)			
investigational allow-			
ances			

No more than one (1) deficiency that is great- er than two (2) but less than three (3) investiga- tional allowances Two (2) deficiencies that are less than three (3) investigational allow- ances; or, no more than one (1) deficiency that is equal to or greater than three (3) but less than four (4) investigational allowances	may adjust up to 100% of the value of the deficiencies Value of overages may adjust up to 75% of the value of the deficiencies	Section 3. <i>If[When]</i> a fertilizer is subject to a penalty from both a primary nutrient deficiency and an index value deficiency, only the larger penalty shall apply <i>and[;</i> <i>however, in no case shall]</i> the penalty <i>shall not</i> exceed the total value of the ferti- lizer. Section 4. Penalties for deficiencies in secondary and minor elements and for ex- cess chlorine in tobacco fertilizer shall be calculated <i>as established in this sec-</i> <i>tion[from the following schedule]</i> . (1) Deficiencies.
Number of Investiga- tional Allowances Be- low Guarantee	Penalty Schedule	
<2	Equal to the mone- tary value of the deficien- cy	
>2	Two (2) times the monetary value of the deficien- cy	

(2) Excess chlorine in tobacco fertilizers. The investigational allowance for maximum chlorine shall be five-tenths (0.5) percent.

Shan be five terrais (0.5	Shall be five-terruis (0.5) percent.					
Number of Investi- gational Allowances	Penalty Schedule					
Above Maximum						
Chlorine Guarantee						
<2	Equal to the difference in the soluble potash (for tobacco) unit value and the nontobacco soluble potash unit val- ue					
>2	Two (2) times the differ- ence in the soluble pot- ash (for tobacco) unit value and the nonto- bacco soluble potash unit value					

, ^{*}

Section 5. Any penalty assessed under Section 1 of this administrative regulation shall be added to any penalty assessed under Section 4 of this administrative regulation, and the total shall be paid by the registrant to the consumer of the lot of fertilizer represented by the sample within three (3) months after the date of notice from the director, receipts taken therefore and **[promptly]** forwarded to the director.

(1) If **<u>a</u>[said]** consumer cannot be found, the amount of the penalty payments shall be paid to the Kentucky Agricultural Experiment Station within three (3) months after the date of the notice from the director to the registrant and set aside for purchase of equipment for the sampling, handling, analyzing, and reporting of results of analyses of official samples and for the education of the Kentucky fertilizer industry on the newest methods in manufacturing blended fertilizers.

(2) If the lot of fertilizer is on hand at a retail location the penalty payments assessed under this section shall be used to reduce the retail price of the fertilizer if it is to be relabeled and sold.

Section 6. [In no case shall] The total of the penalties assessed under this administrative regulation shall not exceed the retail value of the fertilizer.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smc-murry@uky.edu.



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12 KAR 4:170. Maximum chlorine guarantees for tobacco fertilizers.

RELATES TO: KRS 250.366(7), 250.376, 250.411(1)

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director of the Kentucky Agricultural Experiment Station to enforce the provisions of KRS 250.371 **through[te]** 250.451 and to promulgate and enforce administrative regulations necessary to implement KRS 250.371 **through[te]** 250.451. This administrative regulation establishes the specific format and conditions for maximum chlorine guarantee for tobacco fertilizers, which is necessary for production of quality tobacco.

Section 1. [(1) Until January 1, 2001, bagged tobacco fertilizer sold for or represented for use on field crop tobacco, shall, in addition to the other guarantees specified by 12 KAR Chapter 4, state a maximum chlorine guarantee not to exceed two and five-tenths (2.5) percent in the following format:

Chlorine (CI), Maximum 2.5 percent

(2) The maximum chlorine guarantee shall be prominently and conspicuously placed below the Guaranteed Analysis required by 12 KAR 4:090.

(3) On or after January 1, 2001, the provisions of Section 2 of this administrative regulation shall apply to bagged tobacco fertilizer.

Section 2.] (1) [Except as provided by Section 1 of this administrative regulation, all] <u>All fertilizers sold for or represented for use on field crop tobacco</u>, shall, in addition to the other guarantees **established[specified]** by 12 KAR Chapter 4, state a maximum chlorine guarantee not to exceed fifty (50) pounds chlorine per acre (equivalent to 100 pounds of muriate of potash per acre) in the following format:

Chlorine (Cl), Maximum 50 lb./acre

(2) The maximum chlorine guarantee shall be prominently and conspicuously displayed on the label as required by KRS 250.376.

(3) The invoice, shipping ticket, or bag label shall:

(a) State the rate of application expressed as pounds or tons of the blended fertilizer per acre;

(b) State clearly that the fertilizer is for use on tobacco; and

(c) Give directions for use to include a maximum application rate so that no more than fifty (50) pounds of chlorine *shall be[is]* applied per acre.

(4) The provisions of this administrative regulation shall not apply to fertilizers for use on plant beds.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smc-murry@uky.edu.

Andy Beshear Governor



Lt. Gov. Jacqueline Coleman Secretary Education and Workforce Development Cabinet

Jason E. Glass, Ed.D. Commissioner and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION 300 Sower Boulevard • Frankfort, Kentucky 40601 Phone: (502) 564-3141 • www.education.ky.gov

(C; Ξ OCT

October 8, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 16 KAR 3:090. Certifications for Advanced Educational Leaders

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 3:090, the Education Professional Standards Board proposes the attached amendment to 16 KAR 3:090.

Sincerely,

Cassie L. Trueblood, Policy Advisor and Counsel Education Professional Standards Board



Staff-suggested Amendment

Version 9/22/2020 12:29 p.m. EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board

16 KAR 3:090. Certifications for advanced educational leaders.

Page 1

STATUTORY AUTHORITY paragraph

Line 6

After "AUTHORITY: KRS", insert "161.020,".

Page 3

Section 3(5)

Line 11

After "the requirement of", insert "<u>subsection (1)</u>". Delete "paragraph (1)(a)".

Page 3

Section 3(5)

Line 14

After "pass the assessment if", insert "<u>he or she pursues</u>". Delete "they pursue".

Page 6

Section 5(2) and (2)(b)

Lines 10 and 13

After "which shall include", delete "the following".

After "the applicant demonstrates", delete "the following".

Page 11

Section 9(3)(a)

Line 17

After "districts that include", delete "the following".

Page 13 Section 10(1) Line 12

After "incorporated by reference:", return and insert the following:

(a) "Professional Standards for Educational Leaders", 2015;

(b) "Form CA-1, Application for Kentucky Certification or Change in Salary Rank", 10/18;

(c) "Form CA-2, Application for Certificate Renewal or Duplicate", 10/18;

(d) "Form CA-28, Request for Two-Year Certificate for Director of Special Education", 8/15; and

(e) "Form CA-40, Request for a One-Year Certificate for Director of Pupil Personnel", 8/15.

Delete the remainder of the initial subsection 1 paragraphs (a)-(e).

Andy Beshear Governor



Lt. Gov. Jacqueline Coleman Secretary Education and Workforce Development Cabinet

Jason E. Glass, Ed.D. Commissioner and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION 300 Sower Boulevard • Frankfort, Kentucky 40601 Phone: (502) 564-3141 • www.education.ky.gov

C **OCT**

October 8, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 16 KAR 9:010. Professional Certificate for Exceptional Work Experience

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 9:010, the Education Professional Standards Board proposes the attached amendment to 16 KAR 9:010.

Sincerely,

Cassie L. Trueblodd, Policy Advisor and Counsel Education Professional Standards Board



Staff-suggested Amendment

Version 9/22/2020 12:34 p.m. EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board

16 KAR 9:010. Professional certificate for exceptional work experience.

Page 1 Section 1(2) Lines 15 and 16

After "elementary, exceptional children", insert "".

Page 2

Section 2(1) Lines 2 and 3

After "exceptional work experience", delete the following:

"as defined in Section 1 of this administrative regulation".



Andy Beshear Governor

KENTUCKY BOARD OF PHARMACY

125 Holmes Street, Suite 300 State Office Building Annex Frankfort, Kentucky 40601 Phone (502) 564-7910 Fax (502) 696-3806 pharmacy.ky.gov

Board Members

Peter P. Cohron, R.Ph. Jody Forgy, Consumer John Fuller, R.Ph. Craig Martin, Pharm D. Ron Poole, R.Ph. Jill Rhodes, Pharm.D.

Executive Director

Larry A. Hadley, R.Ph.

October 1, 2020

Senator Stephen West, Co-Chair Representative David, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 702 Capitol Avenue Capitol Annex, 029 Frankfort, Kentucky 40601

RE: 201 KAR 2:311. Compounding drugs for veterinary use.

Dear Co-Chairs West and Hale

After discussion with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:311, Compounding drugs for veterinary use, the Kentucky Board of Pharmacy proposes the attached amendment to 201 KAR 2:311.

Sincerely,

Kann le flede

Larry A. Hadley, R.Ph. Executive Director Kentucky Board of Pharmacy 125 Holmes Street, Suite 300 State Office Building Annex Frankfort, Kentucky 40601



An Equal Opportunity Employer M/F/D

Final 10-1-2020

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS Board of Pharmacy

201 KAR 2:311. Compounding drugs for veterinary use.

RELATES TO: KRS 315.191(1)(a). 321.441[-] STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) <u>authorizes[requires]</u> the board to promulgate administrative regulations <u>necessary</u> to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. This administrative regulation <u>establishes requirements for[addresses]</u> compounding for veterinary use.

Section 1. <u>The pharmacist shall receive a written, verbal, facsimile, or electronic re-</u><u>quest for a compounded drug from a practitioner, indicating the formulation, strength,</u> and quantity ordered. [A pharmacist, pharmacist intern, or pharmacy technician may prepare a compounded drug to be dispensed for a veterinarian's administration with beyond use dates as assigned in accordance.]

Section 2. A compounded drug <u>containing</u> [that contains] a controlled substance shall only be compounded for patient specific dispensation [directly] from <u>the</u> pharmacy to the ultimate user.

Section 3. (1) A pharmacist, pharmacist intern, or pharmacy technician may prepare a non-controlled compounded drug to be dispensed for veterinary use or administration that is either [{]institutional or ambulatory,[]] and which does not designate a specific patient for the purpose of direct administration to patients for:

(a) Emergency treatment;

(b) $\int_{\tau} Situations$ when a time delay would negatively affect a patient outcome; $\int_{\tau} or$

(c) Diagnostic purposes.

(2) The compounded drug shall have a beyond use date.

(3) The veterinary institution or ambulatory unit shall maintain only an emergency stock supply.

(4) A veterinarian or licensed veterinary technician, [/]as defined in KRS 321.441, may [] shall be able to] administer a compounded drug for veterinary use. [The pharmacist shall receive a written, verbal, facsimile, or electronic request for a compounded drug from a practitioner, indicating the formulation, strength, and quantity ordered.]

Section 4. Label Requirements. <u>Except as provided for in Section 5</u>, a label shall be generated for the compounded drug and shall include:

(1) The name of the requesting veterinarian[practitioner];

(2) The designated name and strength of the compounded drug;

(3) The quantity dispensed;

(4) <u>If for a specific patient and the patient is a food producing animal, the withdrawal time;</u>

(5) A lot or batch number of the compounded drug;

(6[(5)]) The beyond use date for the compounded drug;

(**7**[(6)]) The date the compounded <u>drug</u> is dispensed;

(8[(7)]) The pharmacy's name, address, and telephone number;

(9[(8)]) Any special storage requirements;

(<u>10[(9)]</u>) A notation stating "For [Office or Institutional administration for] veterinary use"; and

(11[(10)]) Any auxiliary label required for the compounded drug.

<u>Section 5. (1) A non-controlled substance</u> [(11) The] compounded drug shall be [administered or] dispensed by a[the] veterinarian [or veterinarian technician] for emergency take home use when in his or her professional judgment, failure to provide the drug would result in potential harm to the patient.

(2) *If[When]* dispensed from the veterinary institution or ambulatory unit, a compounded drug prescription for a veterinary patient shall be for up to a 14-day supply in accordance with the veterinarian prescription and dispensation labeling requirements as <u>established[found]</u> in 201 KAR 16:600. [for up to a 14 day supply in accordance with veterinarian labeling requirements.]

Section <u>6[</u>5]. The prescription for the compounded drug shall be kept pursuant to 201 KAR 2:170.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

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KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear Governor Hurstbourne Office Park 310 Whittington Parkway, Suite 1B Louisville, Kentucky 40222

www.kbml.ky.gov (502) 429-7150

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:016, Kentucky Board of Medical Licensure proposes the attached amendment to 201 KAR 9:016.

Sincerely,

Janua Dicker

Leanne K. Diakov General Counsel Kentucky Board of Medical Licensure 310 Whittington Parkway, Suite 1B Louisville, KY 40222



Final Version: 10/8/2020

SUGGESTED AMENDMENT

KENTUCKY BOARD OF MEDICAL LICENSURE

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY Line 11 After "KRS 311.842(1)", insert "<u>requires</u>". Delete "authorizes".

Page 1

Section 1(1)

Line 15

After "is defined", insert "<u>by</u>". Delete "in".

Page 1

Section 1(3)

Line 18

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After "(3)", insert the following:
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"Licensee" means a person licensed to practice medicine or osteopathy or to practice as a physician assistant in the Commonwealth of Kentucky and authorized to prescribe, dispense, or administer controlled substances unless otherwise exempted by law.

<u>(4)</u>

Pages 1-2

```
Section 1(4)
Line 21
Before "(4)", insert "(5)".
Delete "(4)".
```

Lines 1-3

After "pursuant to", insert the following:

902 KAR 55:015, Section 3 or 4

Delete the remainder of this subsection in its entirety except for the period.

Page 2 Section 1(5) Lines 4-7 Delete subsection (5) in its entirety.

Page 2

Section 2

Line 9

After "or giving", insert "<u>an</u>". Delete "a".



KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear Governor Hurstbourne Office Park 310 Whittington Parkway, Suite 1B Louisville, Kentucky 40222

www.kbml.ky.gov (502) 429-7150

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 9:200. National Practitioner Data Bank Reports.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:200, Kentucky Board of Medical Licensure proposes the attached amendment to 201 KAR 9:200.

Sincerely,

Dicho

Leanne K. Diakov General Counsel Kentucky Board of Medical Licensure 310 Whittington Parkway, Suite 1B Louisville, KY 40222



Final: 10/8/2020

SUGGESTED AMENDMENT

KENTUCKY BOARD OF MEDICAL LICENSURE

201 KAR 9:200. National Practitioner Data Bank Reports.

Page 1 STATUTORY AUTHORITY Line 6 After "218A.205(3)(g),", insert "(<u>h),</u>".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY Line 11

After "311.842(1)", insert "<u>requires</u>". Delete "authorizes".



KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear Governor Hurstbourne Office Park 310 Whittington Parkway, Suite 1B Louisville, Kentucky 40222

www.kbml.ky.gov (502) 429-7150

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 9:210. Criminal background checks required for all new applicants.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:210, Kentucky Board of Medical Licensure proposes the attached amendment to 201 KAR 9:210.

Sincerely,

ann K. Dickov

Leanne K. Diakov General Counsel Kentucky Board of Medical Licensure 310 Whittington Parkway, Suite 1B Louisville, KY 40222



Final: 10/8/2020

SUGGESTED AMENDMENT

KENTUCKY BOARD OF MEDICAL LICENSURE

201 KAR 9:210. Criminal background checks required for all new applicants.

Page 1

STATUTORY AUTHORITY

Line 6

After "218A.205", insert "<u>(8)</u>". Delete "(3)(g)".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "311.842(1)", insert "<u>requires</u>". Delete "authorizes".

Line 17

After "KRS 218A.205", insert "<u>(8)</u>". Delete "(3)(g)".



KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear Governor Hurstbourne Office Park 310 Whittington Parkway, Suite 1B Louisville, Kentucky 40222

www.kbml.ky.gov (502) 429-7150

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 9:260. Professional standards for prescribing, dispensing, and administering controlled substances.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:260, Kentucky Board of Medical Licensure proposes the attached amendment to 201 KAR 9:260.

Sincerely,

Jana Bicker

Leanne K. Diakov General Counsel Kentucky Board of Medical Licensure 310 Whittington Parkway, Suite 1B Louisville, KY 40222



Final: 10/8/2020

SUGGESTED AMENDMENT

KENTUCKY BOARD OF MEDIAL LICENSURE

201 KAR 9:260. Professional standards for prescribing, dispensing, and administering controlled substances.

Page 2

Section 1(2)

Lines 6-7

After "required under KRS", insert "<u>311.854</u>". Delete "341.854".

Page 2

Section 1(2)(b)

Lines 14-15

After "or the supervising physician", insert "<u>becomes</u>". Delete "become".

Page 2

Section 1(3)

Line 23

After "to prescribing", insert a comma. Delete "or". After "dispensing", insert a comma.

Page 9

Section 4(2)(f)3.

Line 21

After "prescribe, dispense", insert a comma.

Page 11

Section 4(2)(j)

Line 10

After "prescribing, dispensing", insert a comma.



KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear Governor Hurstbourne Office Park 310 Whittington Parkway, Suite 1B Louisville, Kentucky 40222

www.kbml.ky.gov (502) 429-7150

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 9:360. Continuing education requirements for physician assistants.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:360, Kentucky Board of Medical Licensure proposes the attached amendment to 201 KAR 9:360.

Sincerely,

James Dicker

Leanne K. Diakov General Counsel Kentucky Board of Medical Licensure 310 Whittington Parkway, Suite 1B Louisville, KY 40222



Final: 10/1/2020

SUGGESTED AMENDMENT

KENTUCKY BOARD OF MEDIAL LICENSURE

201 KAR 9:360. Continuing education requirements for physician assistants.

Page 2

Section 2(2)(e)

Line 23

After "Any combination of", delete "the".

Page 3

Section 2(5)(a) Line 11

After "board-approved continuing education", insert "under".

Page 4

Section 3

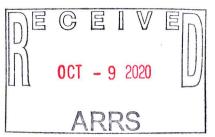
Line 1

After "promulgation of this", insert "administrative".



KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS

Andy Beshear Governor P. O. Box 1360 Frankfort, Kentucky 40602 Phone (502) 892-4250 Fax (502) 564-4818 <u>http://kbce.ky.gov</u>



October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 21:041

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 21:041, the Kentucky Board of Examiners of Chiropractic proposes the attached amendment to 201 KAR 21:041.

Sincerely,

Jeff Smith, DC

Chair, Kentucky Board of Examiners of Chiropractic 500 Mero Street P.O. Box 1360 Frankfort, KY 40601



Final 9-25-2020

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS Board of Chiropractic Examiners

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

(1) A completed New Licensee Application; and

(2) A nonrefundable application fee of \$350.

Section 2. Licenses. Each license by the board shall:

- (1) Set forth the:
- (a) Name of the issuing board;
- (b) Name of the licensee;
- (c) Number of license; and
- (d) Date of the license issuance;
- (2) Be signed by a minimum of three (3) members of the board; and
- (3) Have the seal of the board affixed.

Section 3. License Renewal. (1)(a) Each licensee of the board shall annually renew the license on or before the first day of March.

(b)1. A licensee seeking active status shall:

- a. Submit a completed Application for Annual License Renewal; and
- b. Pay a renewal fee of \$250.
- 2. A licensee seeking inactive status shall:
- a. Submit a completed Annual Inactive License Renewal Application; and
- b. Pay a renewal fee of seventy-five (75) dollars.

(2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.

(3) Continuing education requirements.

(a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with: **1**. [:

1. a minimum of six (6) hours obtained within Kentucky;] A minimum of six (6) hours of the required twelve (12) hours [must be] obtained at a live event, which is an event at which both the licensee and presenter are present in-person;[-]

2. No more than eight (8) hours completed in a day; and

3. Proof of completion submitted with the Application for Annual License Renewal <u>upon re-</u> <u>quest by the Board.[,]</u>

(b) A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, [prior to the first license renewal] within one (1) year of the date of *the licensee's[their]*

<u>initial license approval</u>. The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.

(c) <u>A new licensee *shall[must]* complete *the licensee's[their]* required *twelve* (12) hours of continuing education by the first relicensing period following the completion of *his or her[their]* first calendar year in practice.</u>

(d) An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.

Section 4. Activation of an Inactive License.

(1) To activate an inactive license, a licensee shall submit:

(a) A completed Application for Activation or Reinstatement of Kentucky License;

(b) The renewal fee required by Section 3(1)(b) of this administrative regulation;

(c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and

(d) License verification from each state or jurisdiction from which the licensee has held a license.

(2) If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

(1) Has a conviction for a felony or violation of any law involving moral turpitude; or

(2) Violates any of the provisions of KRS Chapter 312 or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "New Licensee Application", 2016;
- (b) "Application for Annual License Renewal", September 2020[November 2009];
- (c) "Annual Inactive License Renewal Application", 2013; and
- (d) "Application for Activation or Reinstatement of Kentucky License", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,

at the Kentucky Board of Chiropractic Examiners, [209 South Green Street, Glasgow, Kentucky 42142,] 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

MATERIAL INCORPORATED BY REFERENCE:

The agency needs to file <u>one (1) clean copy</u> of the "Application for Annual License Renewal" at the time that it files this staff suggested substitute that includes the following changes:

- Includes the September 2020 Edition Date
- Updates for consistency with the changes made to the continuing education requirements in this administrative regulation

APPLICATION FOR ANNUAL LICENSE RENEWAL KENTUCKY STATE BOARD OF CHIROPRACTIC EXAMINERS

Important Notice:

Completion of this application form is necessary for consideration for license renewal under KRS 312 of the Kentucky Revised Statutes. *All licensees have an obligation to update and supplement the information and responses on file with the Board office if they change.* Failure to supplement the information and responses provided on this application may result in denial or other appropriate action.

Carefully follow the directions on this application form. In addition, note the following:

- 1. Print legibly with black or blue ink only.
- 2. The renewal fee, or any part thereof, is **NOT** refundable.

Supporting Documentation and Fees:

If you are applying for license renewal as an **actively** practicing Kentucky Licensed Chiropractor you **MUST** submit the following documents and fees:

A ACTIVE LICENSE

- \$250 Renewal Fee - Proof of completion of continuing education must only be submitted if requested by the Board

If you are applying for an **INACTIVE** status license renewal you **MUST** submit the following fee: **A INACTIVE LICENSE**

- \$75 Inactive License Renewal Fee

If you are applying for a **HARDSHIP** license renewal, please provide an affidavit or letter from your doctor outlining your medical hardship.

Λ HARDSHIP LICENSE

Your application is **NOT** considered complete until <u>ALL</u> supporting documents and fees have been received by the Kentucky Board of Chiropractic Examiners. **INCOMPLETE RENEWAL APPLICATIONS WILL BE RETURNED TO THE LICENSEE.**

NO RENEWAL WILL BE PROCESSED UNTIL ALL REQUIRED DOCUMENTATION IS RECEIVED

THERE WILL BE A <u>\$300</u> LATE FEE ASSESSED TO ANY LICENSE NOT RENEWED PRIOR TO MARCH 1. ABSOLUTELY NO EXCEPTIONS!

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- 1 -

PART I: Applicant Identifying Information Complete this section of the form by providing all of the requested information. You must notify the Kentucky Board of Chiropractic Examiners, in writing, of any address changes after you file this application in order to receive any further information.

1. Last Name	2. First Name	3. MI	4. Suffix (JR.)
5. Business Mailing Address in	ncluding zip code (If PO Box, Must pro	ovide street address as well)	
6. Home Mailing Address inclu	udina zip code		
	3		
7. Identify Preferred mailing ac	ddress for Official Board Use.	Business D Home	
	address shall be available to the publi		
8. Identify any maiden name, s used and identify the reas	surname, or any other names or aliase on for your name change.	s you have been known by or	
9. County in which you Practic		10. Date of Birth	11.
3. County in which you i ractio		MM/DD/YYYY	D Male D Female
12. Contact Information		n (1 ₁₁₁) is the second s	
(a) Telephone Numbers:			
Office:			
Home:			
Cell:			
(b) Fax number:			
(c) E-mail address:			
13. Social Security Number:			
14. Name of Chiropractic facil	ity at which you practice:		
15. Name of Owner(s) of Chird	opractic facility at which you practice:		
16. Please attach a list of all sl	hareholders of the Chiropractic facility	at which you practice:	
(Include Name, Address, Od	ccupation and percentage of ownershi		_
17. If your facility employs a M	lanagement Company, please provide	name and address of management	company

PART II: Education Information

 SPECIALIZED CERTIFICATION Have you completed any specialty certification(s) consisting of 300 or more hours? If Yes, Name of Specialty Certification and Certifying Agency	YES 🗆 NO 🗖
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PART III. Work History/Practical Experience

This Section Must Be Completed by <u>ALL NEW LICENSEES</u>, and <u>All Licensees Who</u> <u>Have Changed Work Locations</u> Since the Last License Renewal Application.

Complete each of the following items. List all <u>CHIROPRACTIC RELATED</u> employment, chronologically for the past five (5) years to the present, beginning with your present employment. If you have never been employed, insert "N/A" for Not Applicable in Box 1. You are authorized to photocopy this form if additional space is required.

Explain any preaks in e	mployment history of gi	reater than 6 months.
1.Name of Business/ Institut	lion:	Job Title:
Address/Phone Number of B	usiness/Institution:	Description of Duties Performed:
Name of Supervisor:		
Date of Employment:	Hours Worked per Week:	Reason for employment termination/resignation?
FROM:/	Type of Employment:	
то:/	♥ Full-time □ Part-time	
2.Name of Business/ Institu		Job Title:
Address/Phone Number of E	Business/Institution:	Description of Duties Performed:
Name of Supervisor:		
Date of Employment:	Hours Worked per Week:	Reason for employment termination/resignation?
FROM:/	Type of Employment:	
то:/	🏶 Full-time 🛛 Part-time	
3.Name of Business/ Institu	tion:	Job Title:
Address/Phone Number of E	Business/Institution:	Description of Duties Performed:
Name of Supervisor:		
Date of Employment:	Hours Worked per Week:	Reason for employment termination/resignation?
FROM:/	Type of Employment:	
то:/	♥ Full-time □ Part-time	
4.Name of Business/ Institu	tion:	Job Title:
Address/Phone Number of E	Business/Institution:	Description of Duties Performed:
Name of Supervisor:		-
Date of Employment:	Hours Worked per Week:	Reason for employment termination/resignation?
FROM:/	Type of Employment:	1

1_

TO:

♥ Full-time □ Part-time

PART IV. Personal History Information Please answer each of the following questions by putting a check (b') in the appropriate box on the right. You must answer each question with a "Yes" or "No" response as no other response is acceptable. All "Yes" answers <u>MUST</u> be explained in detail in a separate SIGNED and NOTARIZED affidavit. The affidavit should include all relevant dates and identify the relevant jurisdiction and/or entity involved. Failure to disclose any of the requested information may result in the denial of your application or other appropriate action.

Please read and answer each question carefully, some of the questions have changed!

 Have you ever had any application for a chiropractic license refused or denied by any licensing authority? 	YES 🗖	
2. Have you ever been refused or denied the privilege of taking an examination required for a chiropractic license?	YES 🛛	
3. Have you ever voluntarily surrendered your chiropractic license?	YES 🛛	
4. Have you ever allowed your chiropractic license to lapse, or had a limited license issued by any chiropractic licensing authority?	YES 🗖	NO 🗖
5. Have you ever had any chiropractic license revoked?	YES 🗖	
6. Have you ever been the subject of disciplinary action with regard to your chiropractic license or been sanctioned by any chiropractic licensing authority other than Kentucky?	YES 🛛	
7. Have your chiropractic privileges ever been restricted or terminated by any chiropractic licensing authority other than Kentucky?	YES 🗖	
8. To your knowledge have any unresolved or pending complaints ever been filed against you with any chiropractic licensing agency other than Kentucky?	123 🖬	
Is there any disciplinary action pending against you by any licensing jurisdiction? If YES, where and when?	YES 🗖	NO 🗖
10. Have you ever been charged with or convicted (including a nolo contendere plea or guilty plea) of a felony (or criminal offense) in any state or in federal court (other than minor traffic violations) whether or not sentence was imposed or suspended? If YES, in addition to the affidavit, attach a certified copy of the court records regarding your conviction, the nature of the offense date of discharge, if applicable, as well as a statement from the probation or parole officer.	YES 🗖	NO 🗖
11. Have you ever been pardoned from a felony (or criminal) conviction?	YES 🛛	NO 🗖
12. Have you ever been charged with or convicted (including a nolo contendere plea or guilty plea) of any violation of any local, state or federal law, whether or not sentence was imposed or suspended? (Excluding minor traffic violations)	YES 🗖	
13. Have you ever been charged with or convicted (including a nolo contendere plea or guilty plea) of a violation of any federal or state drug law(s) or rule(s) whether or not sentence was imposed or suspended?	YES 🗖	
14. Do you currently have any disease or condition that interferes with your ability to competently and safely perform the essential functions of chiropractic?	YES 🛛	
15. Have you ever been named as a defendant to a civil suit related to your pro- fession (<i>i.e. malpractice</i>)? If YES, please provide Patient Name, Date, etc.	YES 🗖	
16. Do you operate your chiropractic practice under a general or limited partner- ship? If "yes," how long has the partnership been in existence?	YES 🗖	NO 🗖
List all the partners on additional sheet, including name, address, occupation of each partner.		
17. Do you own or work for a practice that is a sole-proprietor, S corporation, LLC, LLP, or other?	YES 🗖	
18. IF YES, ARE ALL SHAREHOLDERS LICENSED CHIROPRACTORS?	YES 🛛	NO 🗖

19. Have you ever been court-martialed or discharged other than honorably from the armed service?	YES 🗆	
20. Are you now, or have you ever, been in arrears with the Kentucky Higher Education Assistance Authority? If yes, please provide documentation that this matter has been resolved.	YES 🗆	

PART V. Certifying Statement

"By virtue of filing this application, I do solemnly swear or affirm that I am of good moral character, and that I understand the instructions and terms as set forth in this application form, that I have personally completed this form, that the information given in this application is true, correct, and complete to the best of my knowledge. I hereby authorize The Kentucky Board of Chiropractic Examiners to verify any and all information contained in this application."

Signature of Applicant (Do not print)

Printed Name of Applicant

Date

PLEASE RETURN ALL PAGES OF APPLICATION, INCLUDING COVER PAGE

PLEASE SEND YOUR COMPLETED APPLICATION TO:

KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS P.O. BOX 1360 FRANKFORT, KY 40602

KENTUCKY LAW The Late Fee is NOW \$300! Any license not renewed within 45 days of the mailing of a delinquent notice will be automatically revoked!

Kentucky Board of Chiropractic Examiners Continuing Education Application

*Complete the application in its entirety. All required information and documents must be included. Failure to do so will result in a delay in processing the application and possible denial of the course.

*Applications must be received 60 days prior to the date the course is to take place.

* Kentucky law allows for a maximum of 8 hours of continuing education to be obtained per day.

*A Course Outline/Syllabus must be included with this application.

*A CV for each course instructor must be included with this application.

*Each course must have an objective for the entire course or an objective for each section taught by each instructor.

*No CE credit can be given for Philosophy or Practice Building per KY law.

*PACE certified entities applying for online CE credits MUST apply through PACE.

*All fees are non-refundable.

-Live Events Only -A minimum fee of \$25.00 for a live one-time event of 16 hours or less. Any event over 16 hours will be \$2.00 per requested credit hour with a maximum fee of \$100.00. For events with multiple dates and locations there will be an additional \$25.00 fee.

-<u>Online Events Only</u>- A minimum fee of \$25.00 for a live one-time event or recorded event of 16 hours or less. Any event over 16 hours will be \$2.00 per requested credit hour with a maximum fee of \$100.00. The online event will remain approved for 1 calendar year.

-<u>Live Event That Will Also Be Recorded To Be Used As Online CE</u> – A minimum \$50.00 for an event of 16 hours or less. Any event over 16 hours will be \$2.00 per requested credit hour with a maximum fee of \$100.00. The online event will remain approved for 1 calendar year.



KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS

Andy Beshear Governor

P. O. Box 1360 Frankfort, Kentucky 40602 Phone (502) 892-4250 Fax (502) 564-4818 <u>http://kbce.ky.gov</u>

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 21:042

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 21:042, the Kentucky Board of Examiners of Chiropractic proposes the attached amendment to 201 KAR 21:042.

Sincerely,

Jeff Smith, DC

Chair, Kentucky Board of Examiners of Chiropractic 500 Mero Street P.O. Box 1360 Frankfort, KY 40601



Final 9-25-2020

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS Board of Chiropractic Examiners

201 KAR 21:042. Standards, application and approval of continuing education

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes **standards for continuing education and** the procedures relating to <u>the</u> [standards,] application[,] and approval <u>of</u>[for] continuing education.

Section 1. Standards for Continuing Education. (1) Continuing education shall be either:

(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or

(b) A continuing education program approved by the board, or a committee designated by the board to act between sessions of the board.

(2) The continuing education program shall be:

(a) Sponsored by a national or state chartered organization of chiropractors; and

(b) Open to all doctors of chiropractic in Kentucky who desire to attend.

(3) The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences.

(4)[(4)][(4)]The programs to be presented shall contain subjects of clinical benefit to licensees and on a postgraduate level of education.

Section 2. <u>Requirements for Online Continuing Education. (1) Any entity submitting an online</u> <u>course for approval shall[must]</u> be <u>Pre-Approved Continuing Education (PACE) Commis-</u> <u>sion</u> certified and submit the program through the PACE <u>pre-check</u> program <u>using the PACE</u> <u>Pre-Check Expedited Course Submission for Kentucky form.</u> Any entity not certified through PACE <u>shall[can]</u> submit an application for approval for a program directly to the board through December 31, 2020 by completing the Kentucky Board of Chiropractic Examiners <u>Continuing Education Application</u>.

(2) Any entity submitting an online course for approval must be PACE certified and submit the program through the PACE precheck program.

(2) The program shall:

(a) Have a mechanism to ensure that users view each page of the program:

(b)[(3) The program shall] Ensure the user has earned all of the time required for the program;

(c)[(4) The program shall] Have a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education programs;

(d)[(5) The program shall] Include a mechanism to evaluate the user's knowledge of the subject matter contained in the program;

(e)[(6) The program shall] Provide a printed verification or allow the user to print verification only upon completion of the program; and

(f)[(7) The program shall] Ensure that the course time cannot be earned away from the program and that[shall ensure] automatic lock out occurs if the keyboard becomes unattended.[;]

(3)[(8)] Programs shall be completed and earned one (1) at a time. The user of a program shall not earn credit for multiple windows or programs completed simultaneously.

<u>Section 3.</u> Application for Approval. (1) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation <u>by</u> <u>submitting either the PACE Pre-Check Expedited Course Submission for Kentucky form</u> <u>if PACE certified, or if not certified through PACE by submitting the Kentucky Board of</u> <u>Chiropractic Examiners Continuing Education Application, and</u> by providing to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of classroom hours over which the educational program will be presented and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications;

(g) The name and address of the person authorized to certify attendance; and

(h) <u>An</u> [A non-refundable] educational program review fee <u>as established in subparagraph</u>. <u>1. through 3. of this paragraph.[of][-twenty-five (25) dollars for programs with one (1) date</u> and one (1) location or \$100 for programs with multiple dates and locations.]

<u>1.[(i)]</u> Live Events Only - A live event is an event at which both the presenter and attendee are present in person. A minimum fee of twenty-five (25) dollars for a live one-time event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars[\$2.00] per requested credit hour with a maximum fee of \$100. For events with multiple dates and locations there will be an additional twenty-five (25) dollar fee.

2.[(ii)] Online Events Only - A minimum fee of twenty-five (25) dollars for a live one-time event or recorded event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars[\$2.00] per requested credit hour with a maximum fee of \$100. The online event shall[will] remain approved for one (1) calendar year.

<u>3.[{iii}]</u> Live Event That Will Also Be Recorded To Be Used As Online CE – A minimum fee of fifty (50) dollars for an event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall[will] remain approved for one (1) calendar year.

(2) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board.

(3)(a) A proposed program [shall be submitted to] <u>shall[must]</u> be received by the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more than thirty (30) days after receiving the proposed educational program.

(c) <u>An online course **shall[will]** remain approved for one (1) calendar year from a date of the event **provider's[providers]** choosing **if[so long as]** that date is no earlier than sixty (60) days from the date the board received the submission for approval. [Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board an individual, written certification of the:</u>

1. Name and license number of each licensee in attendance at the program;

2. Sessions attended by each licensee; and

3. Number of hours of each session attended.]

Section 4. *Incorporation[Incorporated]* by Reference. (1) The following *material is[forms* are] incorporated by reference:

(a) "PACE **Pre-Check Expedited Course Submission for Kentucky form**[application]", (2020); and

(b) "Kentucky Board of Chiropractic Examiners Continuing Education Application for approval to provide CE program]", September [[2020]].

(2) These materials may be *inspected*, *copied*, *or obtained*, *subject to applicable copyright law,[reviewed]* at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

MATERIAL INCORPORATED BY REFERENCE:

The agency needs to file <u>one (1) clean copy</u> of the "Kentucky Board of Chiropractic Examiners Continuing Education Application" at the time that it files this staff suggested substitute that includes the following changes:

- Includes the September 2020 Edition Date
- Updates for consistency with the changes made to the continuing education reguirements in this administrative regulation

Kentucky Board of Chiropractic Examiners Continuing Education Application

Organization or School Presenting the Course	Course Title	
Contact information of the person filling out this application: Name	Organization or School Presenting the	Course
Name Phone Email Fax Address Fax For Live Events - Date(s) and Location(s) For Online Events - Please choose a date that you want credit for the course to begin once approved.	Name of Cosponsor if Applicable	
Email	Contact information of the person fillir	ng out this application:
Address	Name	Phone
For Live Events - Date(s) and Location(s)		
For Online Events – Please choose a date that you want credit for the course to begin once approved.	Address	
 60 days from when the application was received by the Board Choose a Date - (no earlier than 60 days from when the application was received) Exact Hours the Course will be offered	For Live Events- Date(s) and Location(s	i)
Choose a Date - (no earlier than 60 days from when the application was received) Exact Hours the Course will be offered	For Online Events – Please choose a da	ate that you want credit for the course to begin once approved.
Exact Hours the Course will be offered	60 days from when t	he application was received by the Board
Total Hours Requested	Choose a Date - (no e	earlier than 60 days from when the application was received)
Total Hours Requested For Each Day	Exact Hours the Course will be offered	
Maximum Hours Doctor Can Attain/ Day	Total Hours Requested	
Maximum Hours Doctor Can Attain/Course	Total Hours Requested For Each Day _	
Name(s) of Instructor(s) *CV Must Be Attached for Each Instructor (1 st 2 pages of CV is sufficient)	Maximum Hours Doctor Can Attain/ D	ay
Provide the name of the attendance officer, method of certifying/assuring attendance, and who maintains the attendance records. I hereby certify that the information included in this application is correct and nothing has been omitted. I also certify that all required enclosures have been included. Print Name Title	Maximum Hours Doctor Can Attain/Co	ourse
the attendance records	Name(s) of Instructor(s) *CV Must Be	e Attached for Each Instructor (1 st 2 pages of CV is sufficient)
I also certify that all required enclosures have been included. Print Name Title		ficer, method of certifying/assuring attendance, and who maintains
Signature Date	Print Name	Title
	Signature	Date

Kentucky Board of Chiropractic Examiners 9/2020



KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS

Andy Beshear Governor P. O. Box 1360 Frankfort, Kentucky 40602 Phone (502) 892-4250 Fax (502) 564-4818 <u>http://kbce.ky.gov</u>

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 201 KAR 21:095

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 21:095, the Kentucky Board of Examiners of Chiropractic proposes the attached amendment to 201 KAR 21:095.

Sincerely,

Alfonth, DC

Chair, Kentucky Board of Examiners of Chiropractic 500 Mero Street P.O. Box 1360 Frankfort, KY 40601



Final 9-25-2020

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS Board of Chiropractic Examiners

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

RELATES TO: KRS 312.175, 312.200(3)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to promulgate administrative regulations *consistent with KRS Chapter 312 governing the practice of chiropractic*. KRS 312.200(3) requires that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, and annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration, and registration fee for persons to perform peer review services.

Section 1. Requirements for Licensure and Registration. A person performing chiropractic peer review shall:

(1) Hold a current active license to practice chiropractic within the Commonwealth of Kentucky;

(2) (a) For the first year that a person seeks to register to perform peer review, have previously successfully completed a course consisting of a minimum of 100 hours of utilization review and independent medical examination from a chiropractic college or university accredited by the Council on Chiropractic Education; and

(b) [For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of utilization review offered by a chiropractic college or university accredited by the Council on Chiropractic Education, which shall be obtained within the Common-wealth of Kentucky;] For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of continuing education in topics specifically related to utilization review and approved by the **board[KBCE]** to meet this requirement which shall be obtained at a live, in-person event[, which shall be obtained] within the Commonwealth of Kentucky; and

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements established in this section and of having met the education requirements of KRS 312.175;

(b) Completing the Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims; and

(c) Paying a registration fee of fifty (50) dollars.

Section 2. In performing peer review activities, a licensee shall:

(1) Render the actual review service and documented report;

(2) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years;

(3) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct established in 201 KAR 21:015;

(4) Provide a report that includes the rationale for the determination in order that the licensee provider is given adequate information to appeal;

(5) Sign all reports, unless the review is performed under the Kentucky Chiropractic Board of Examiners Peer Review Committee, in which case, the board's administrator or designee shall sign the determination;

(6) Review in accordance with accepted standards as defined in 201 KAR 21:001;

(7) Review thoroughly and rely on all documents provided to the reviewer;

(8) List in the resulting report all documents provided to the reviewer and list all documents reviewed; and

(9) Personally conduct the review and prepare the report.

Section 3. Complaint Procedure Related to Peer Reviewers. A complaint against a peer reviewer alleging a violation of this administrative regulation or any other provision of KRS Chapter 312 or 201 KAR Chapter 21 shall be filed and processed according to the procedure established in 201 KAR 21:051.

Section 4. Incorporation by Reference.

(1) "Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims" 2013, is incorporated by reference.

(2) <u>This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.</u> [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42141, Monday through Friday, 8:00 a.m. to 4:30 p.m.] [These materials may be reviewed at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.]

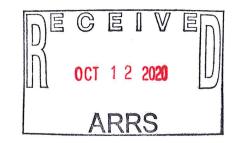
CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov. **Andy Beshear** GOVERNOR



Justice Mary C. Noble, Ret. CABINET SECRETARY

> **Robyn Bender GENERAL COUNSEL**

October 12, 2020



Ms. Emily Caudill, Regulations Compiler Legislative Research Commission 029, Capitol Annex 702 Capital Avenue Frankfort KY 40601

> 501 KAR 6:120. Blackburn Correctional Complex Re:

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:120, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached suggested substitute for 501 KAR 6:120.

Sincerely,

Dear Deanna Smith

Paralegal Consultant

enclosures

125 Holmes Street, 2nd Floor · Frankfort, Kentucky 40601 · (502) 564-7554



Final 10-8-2020

SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.

Section 1. Incorporation by Reference.

(1) "Blackburn Correctional Complex Policies and Procedures," <u>October 13[September 1]</u>, [<u>May 14,</u>] <u>2020[March 14, 2008]</u>, are incorporated by reference. Blackburn Correctional Complex Policies and Procedures include:

[BCC-01-11-	Roles of Consultants, Contract
01	Employees, Volunteers and
•	Employees of Other Agencies
BCC-01-13-	Relationships with Public, Media,
01	and Other Agencies
BCC 01-13-	Public Information and News
02	Media Access
BCC 01-19-	Inmate Access to BCC Staff]
01	
BCC 02-01-	Inmate Canteen <u>(Amended</u>
01	<u>10/13/20[5/14/20])</u>
BCC 02-01-	Inmate Canteen Committee
02	(Added 5/14/20)
BCC 02-07-	Inmate [Personal] Accounts
01	(Amended 10/13/20[5/14/20])
[BCC 05-01-	Inmate Participation in Authorized
01	Research]
BCC 06-02-	Offender Records (Amended
02	<u>5/14/20[10/14/02])</u>
[BCC 08-02-	Natural Disaster Plan (Tornado)
01	
BCC 08-04-	Fire Safety Plan, Drills and Related
01	Duties]
BCC 08-06-	Storage, Control and
01	Accountability of Flammable,
	Toxic, Caustic and Other

	Hazardous Materials (Amended
	<u>5/14/20[10/14/02])</u>
<u>BCC 08-08-</u> 01	Lockdown in Place (Added 5/14/20)
BCC 09-02-	Daily Controlled[Regulation of]
03	Inmate Movement (Amended
	5/14/20)
BCC 09-03-	Population Counts and Count
02	Documentation (Added 10/13/20[5/14/20])
[BCC 09-03- 01	Inmate Identification]
BCC 09-14-	Prohibiting Inmate Authority Over
01	Other Inmates (Amended 5/14/20)
BCC 09-23-	Restricted Areas (Added 5/14/20)
01	
[BCC 09-19-	Duties and Responsibilities of the
01	Institutional Captain]
BCC 10-01-	Temporary [Segregation] Holding
02	Area (Amended
02	<u>10/13/20[9/1/2020][5/14/20])</u>
BCC 11-01-	Meal Planning and Procedure
01	[Menu and Restricted Diets]
0.	(Amended
	<u>10/13/20[5/14/20][12/10/02])</u>
BCC 11-02-	Food Service[+]
01	Inspections[Inspection, Health
01	Inspections[Inspection, Health Protection and Sanitation]
01	
01 BCC 11-02-	Protection and Sanitation] (Amended 5/14/20)
	Protection and Sanitation] (Amended 5/14/20)
BCC 11-02- 02 [BCC 11-03-	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service
BCC 11-02- 02 [BCC 11-03- 04	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04-	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20)
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04	ProtectionandSanitation](Amended 5/14/20)Health Standards for Food ServiceWorkers (Added 5/14/20)Food Service: MealsDining Room Guidelines
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05-	Protection and Sanitation] (Amended 5/14/20)
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Food Service Security: Knife & Other Sharp Instrument Control
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05- 01	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Eood Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)]
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05- 04 BCC 11-06-	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Eood Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05- 01	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Dining Room Guidelines Food Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and Commodity[Farm]
BCC 11-02- 02 [BCC 11-03- 01 BCC 11-04- 04 BCC 11-04- 01 BCC 11-06- 01	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Dining Room Guidelines Food Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and Commodity[Farm] Products Amended 5/14/20
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05- 04 BCC 11-05- 01 BCC 11-06- 01 BCC 12-01-	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Dining Room Guidelines Food Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and Commodity[Farm] Products Amended 5/14/20 Treatment of Inmates with Body
BCC 11-02- 02 [BCC 11-03- 04 BCC 11-04- 04 BCC 11-05- 01 BCC 11-06- 01 BCC 12-01- 02	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Ecod Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and Commodity[Farm] Products Amended 5/14/20 Treatment of Inmates with Body Lice (Added 5/14/20)
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BCC 11-02- 02 [BCC 11-03- 01 BCC 11-04- 04 BCC 11-05- 01 BCC 11-06- 01 BCC 12-01- 02 BCC 12-02- 01	Protection and Sanitation] (Amended 5/14/20) Health Standards for Food Service Workers (Added 5/14/20) Food Service: Meals Dining Room Guidelines Dining Room Guidelines Food Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)] Purchasing, Storage, and Commodity[Farm] Products Amended 5/14/20 Treatment of Inmates with Body Lice (Added 5/14/20) Personal Hygiene Items (Amended 5/14/20) Clothing, Linens, Bedding Issuance, and Shower Facilities Shower Facilities
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BCC 13-01- 01	Sick Call and Pill Call (Amendec 5/14/20)
BCC 13-01-	Self-Administered Medication
02	(Added
	<u>10/13/20[9/1/2020][5/14/20])</u>
BCC 13-03-	[Provisions of] Health Care
01	Services[Delivery] (Amended
	<u>10/13/20[5/14/20])</u>
BCC 13-05-	Medical Alert System (Amendec
01	<u>5/14/20)</u>
[BCC 13-06-	Health Care Practices]
01	-
BCC 13-07-	Emergency Medical Care and
01	Specialized Health Services [Plan
	(Amended <u>5/14/20[10/14/02])</u>
[BCC 13-07-	Emergency and Specialized Health
02	Services (Ámended 10/14/02)
BCC 13-07-	Immediate Medical Treatment fo
03	Person's Injured by Weapon o
	Chemical Agent
BCC 13-08-	Inmate Health Screening and
01	Evaluation (Amended 10/11/02)
BCC 13-09-	Prohibition on Medica
01	Experimentation]
BCC 13-10-	Dental Services (Amendeo
01	<u>5/14/20[10/14/02])</u>
[BCC 13-11-	Suicide Prevention and
01	Intervention Program]
BCC 13-12-	Use of Pharmaceutical Products
01	(Amended <u>5/14/20[10/14/02])</u>
[BCC 13-12-	Parenteral Administration o
02	Medications and Use o
	Psychotropic Drugs
BCC 13-13-	Inmate Health Education
01	(Amended 10/14/02)]
BCC 13-14-	Management of Serious and
01	Infectious Diseases (Amendeo
	<u>10/13/20[5/14/20][10/14/02])</u>
[BCC 13-15-	Informed Consent]
01	
BCC 13-16-	Health Records (Amendeo
01	5/14/20)
BCC 13-17-	Notification of Inmate Family in the
01	Event of Serious Illness, Injury o
	Surgery (Amended
	<u>5/14/20[12/10/02])</u>
[BCC-13-19-	Physicians Referrals and
01	Continuity of Care
BCC 13-20-	Chronic and Convalescent Care

BCC 13-22- 01	Mental Health Program (Amended 10/13/20[5/14/20])[Psychiatric and Psychological Services, Handling
	of Mentally Retarded Inmates and Transfers]
BCC 14-00-	Americans with Disabilities Act and
01	Inmate Program Access (Added 10/13/20[5/14/20])
[BCC 14-01-	Office of Public Advocacy and
01	Attorney Visits (Amended 10/14/02)
BCC 15-01-	Restricted Areas
01	
BCC 15-02- 01	Inmate Pass System to Restricted
BCC 15-02-	Room Assignment (Amended
02	12/10/02)]
BCC 15-03-	Rules [and Regulations] for
01	Dormitories (Amended
	<u>5/14/20[10/14/02])</u>
[BCC 15-04-	Population Counts and Count
01	Documentation
BCC 15-05-	Extra Duty Assignments
01	
BCC 16-01-	Inmate Furloughs (Amended
01	<u>10/14/02)]</u>
BCC 16-02-	Inmate Visiting (Amended
01	<u>10/13/20[5/14/20][12/10/02])</u>
BCC 16-02-	Parole Board (Added 5/14/20)
<u>02</u>	
[BCC 16 03 02	Outgoing Inmate Packages]
BCC 16-03-	Inmate Correspondence and
03	Mailroom Operations (Amended
	<u>5/14/20[10/14/02])</u>
BCC 17-01-	Processing of New Admissions
01	(Added 5/14/20)
BCC 17-01-	Orientation for New Inmates
03	(Added 5/14/20)
BCC 17-02-	Inmate Personal Property
01	(Amended 5/14/20)
BCC 18-02-	Lesbian, Gay, Bisexual
<u>01</u>	Transgender, and Intersex (LGBTI (Added 5/14/20)
[BCC 18-01-	Classification of the Inmate
01	(Amended 10/14/02)]
BCC 19-01-	Inmate Work Programs (Amendeo
01	<u>10/13/20[5/14/20][10/14/02]</u>)
BCC 19-02-	Classification of Inmates to
01	Governmental Service

	Program[Programs] (Amended 5/14/20)
BCC 19-03- 01	Correctional Industries (Amended 10/13/20[5/14/20] (10/14/02])
BCC 20-01-	Educational Courses (Added
02	5/14/20)
IBCC 20-01-	Blackburn Education Center
0 1	
BCC 20-05-	Educational Program Planning
01	
BCC 20-06-	Academic and Vocational
01	Curriculum (Amended 10/14/02)]
BCC 21-01-	Library Services (Amended
01	<u>5/14/20[10/14/02])</u>
BCC 21-01-	Audio or Video <u>Recorded[Tape]</u>
02	Court Transcripts (Amended
	<u>5/14/20)</u>
BCC 22-02-	Privilege[d] Trips (Amended
01	<u>5/14/20[10/14/02])</u>
	Recreation and Inmate Activities
01	(Amended <u>5/14/20[12/10/02)]</u>
	Inmate Clubs and Organizations
02	(Amended <u>5/14/20[10/14/02])</u>
	Conducting Inmate Organizational
03	Meetings and Programs (Amended
	10/14/02)
	Recreation Program Availability
04	(Amended 10/14/02)
	Supervision of Leisure time Craft
05	Club Activities and Materials
DOO 00 00	(Amended 10/14/02)
	Music Club
01	Use of Inmates in Recreation
01	Programs]
BCC 23-01-	Religious Services (Amended
01	<u>5/14/20[10/14/02])</u> Social Services (Amended
BCC 24-03-	
01 BCC 25-01-	<u>10/13/20[5/14/20][12/10/02])</u> Inmate Check Out Procedure
01	(Amended 5/14/20) Release Preparation (Amended
BCC 25-02- 01	5/14/20[Reporting Inmate
01	<u>Misconduct</u> Following Favorable
	Perommandations nu the Parole
	Recommendations by the Parole
BCC 26.01	Board (Added 10/14/02])
BCC 26-01-	Board (Added 10/14/02]) Citizen Involvement and Volunteer
BCC 26-01- 01	Board (Added 10/14/02])

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CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

CHANGES TO MATERIAL INCORPORATED BY REFERENCE:

BCC 02-01-01

References/Authority Box

After "CPP 2.1,", delete "16.4,". After "10.2,", insert "<u>16.4,</u>".

BCC 02-07-01

Page 1

References/Authority Box

After "BCC", insert "<u>16-03-03</u>". Delete "16-03-02".

A.3.b.

After "inmate accounts;", delete "and".

A.3.c.(1)

After "BCC", insert "<u>16-03-03</u>". Delete "16-03-02".

Page 2

A.3.c.(3)

After "wrong account", insert "<u>; and</u>". Delete the period.

C.4.a.

After "after processing of", insert "<u>state</u>". Delete "sate".

BCC 09-03-02

Page 1

I. Definitions

Rearrange definitions to be in alphabetical order.

BCC 10-01-02

Page 3

II.B.11.

After "Classification Branch", insert the following: in accordance with CPP 10.2

Page 4

II.C.4.

After "special precautions or", insert "<u>restrictions</u>". Delete "restriction".

Page 5

II.E.4.

Before "A special", insert "<u>4.</u>".

Page 7

II.M.3.

After "Shift Supervisor", insert a dash. Delete the comma.

II.M.5.

After "Warden", insert "<u>and</u>". Delete the comma.

II.N.

After "Documentation Procedures", delete "1.". Renumber paragraphs "a." through "c." as "<u>1.</u>" through "<u>3.</u>".

BCC 11-01-01

Page 2

A.7.a.

After "equivalent list", delete the following:

, located in the Kentucky Food Service Manual, Chapter 8, Policy 8.4,

A.7.b.

After "following month.", delete the following:

(Format in Ky. Food Service Manual, Chapter 8).

Page 3

B.5.

After "served cold", insert a period.

BCC 12-05-01

Page 2

F.6.

After "all times", insert a period. Delete the semicolon.

F.7.

After "all refuse", delete the semicolon.

BCC 13-01-02

Page 1

C.3.

After "from the program", insert "<u>shall</u>". Delete "may".

BCC 13-03-01

Page 1

I. Definition – Informed Consent

Add quotation marks around "Informed consent".

Pages 4-5

E.-H.

Renumber sections "E." through "H." as "D." through "G.".

BCC 13-14-01

Page 2

C.2.

After "other blood-borne pathogens", insert a period. Delete the comma. Capitalize "The".

Capitalize

BCC 13-22-01

Page 1

References/Authority Box

After "CPP", delete "10.4,".

Page 6, L.

After "shall be available", insert "for".

Delete "to an inmate."

Lowercase "Psychiatric".

After "If the", insert "services".

Delete "service".

After "psychological practitioner", insert "are".

BCC 14-00-01

Page 1

I. Definitions

Rearrange definitions to be in alphabetical order.

BCC 16-02-01

Page 2

B.6.1.-3.

Renumber paragraphs "1." through "3." as "<u>a.</u>" through "<u>c.</u>".

Page 3

B.13.c.

After "shall not be", insert "<u>shorter</u>". Delete "less".

Page 4

B.13.d.

After "shall not be", insert "<u>shorter</u>". Delete "less".

B.13.g.(3)

After "or skirt that", insert "complies with this section". Delete the following: extends not less than two (2) inches above the knee.

BCC 19-01-01

Page 1

References/Authority Box

Delete "BCC 18-01-01".

Page 5

E.4.

After "procedures", insert "outlined in this policy". Delete "outline in BCC 18-01-01".

G.3.

After "procedures outlined in", insert "this policy". Delete "18-01-01".

BCC 19-03-01

Page 1

References/Authority Box

Delete "BCC 18-01-01".

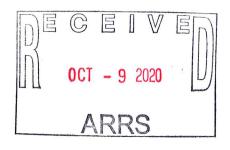
BCC 24-03-01

Page 1

References/Authority Box

After "197.020", delete "BCC 24-00-01".





118 James Court Lexington, KY 40505 1-800-782-6823 Fax: 859-256-3125

October 9, 2020

Senator West, Co-Chair Representative Hale, Co-Chair c/o Regulations Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Dear Co-Chair West and Co-Chair Hale:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 739 KAR 2:040 and 739 KAR 2:155, the Kentucky Fire Commission proposes the attached amendments to 739 KAR 2:040 and 739 KAR 2:155.

Sincerely,

Scott Lawson 10-9-20

Scott Lawson Chairman, Kentucky Fire Commission 118 James Court Lexington, KY 40505

REVISED: 10/9/2020 9:38 AM SUGGESTED SUBSTITUTE

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission (Amendment)

739 KAR 2:040. Survivor benefits for death of a firefighter.

RELATES TO: KRS 95A.210, KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(3) authorizes the <u>Ken-</u> <u>tucky Fire</u> Commission to promulgate administrative regulations establishing criteria and procedures applicable to the administration of survivor benefits for death of a firefighter. <u>This administrative regulation establishes these re-</u> <u>guirements.</u> [payment of survivor benefits of \$80,000 to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 2002. This administrative regulation establishes the procedures and criteria that shall be utilized to determine the eligibility of the paid or volunteer firefighter's survivor benefits.]

Section 1. Definitions. (1) "Child or children" means a:

(a) Biological child or children, including a child or children born after the firefighter's death;

(b) Stepchild or stepchildren; and

(c) Legally adopted child or children.

(2) "Commission" means commission as defined by KRS 95A.210(1).

(3) "Death in the line of duty" means death that occurs as a direct result of an act or acts in the "performance of duty" as defined in subsection (6) of this section and includes death that results from a heart or circulatory malfunction that is treated within forty-eight (48) hours after participation in the performance of these duties or as the result of illness, cancer as established in KRS 61.315(11)[(10)], or other sickness or injury caused by the performance of these duties that result in death within twelve (12) months of the activities as established in final the in this administrative regulation, if death is not caused by suicide or self-inflicted injury.

(4) "Firefighter" means firefighter as defined by KRS 61.315(1)(b).

(5) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest, or a cerebral vascular accident that **<u>is</u>[the symptoms are]** first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as established in subsection (6) of this section.

(6) "Performance of duty" means a firefighter acting in the performance of his or her duties while engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or if immediate action is required at the scene of an emergency not involving his department or other emergency organization:

(a) Firefighting;

(b) Fire drills or other related training;

(c) Rescue or emergency activities;

(d) Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;

(e) Traveling to or from a call for service;

(f) Riding in or upon the fire or emergency apparatus that is owned or used by the fire department;

(g) Performing other activities of the fire department as authorized by the jurisdiction that the department serves; or

(h) Attending meetings related to the fire service and travel to and from the meetings, as long as he or she is representing his or her local, state, or national fire related organization.

Section 2. Requirements for Eligibility. (1)(a) If death occurs after twelve (12) months and is related to the causes established in KRS 61.315(11)[(10)](b), the commission shall review the conditions to determine if the death constituted death in the performance of duty.

(b) Survivors. Benefits shall be paid to the surviving spouse, surviving child or children or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. *(a) Eligible survivors shall re*ceive benefits through KRS 61.325 if the firefighter:

1. Becomes an active member of a fire department;

2. Has not been medically diagnosed as having had, or has not been prescribed any medication for, the following conditions within 5 years prior to the date of membership:

a. Myocardial infarcation;

<u>b. Angina pectoris;</u>

c. Coronary thrombosis;

<u>d. Cardiac arrest; or</u>

e. Cerebral vascular incident; and

<u>3. Dies in the line of duty. [If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his or her eligible survivors shall receive the benefits if the firefighter dies in the line of duty.]</u>

(b)Eligible survivors shall receive the benefits granted through KRS 61.315 [(a)] if the firefighter <u>dies in the line of duty and:</u>

<u>1. The firefighter</u> has been medically diagnosed as having had, or <u>having been</u> <u>prescribed[receiving]</u> medication for, an illness <u>listed[established]</u> in <u>para-</u> <u>graph (a) of</u> this subsection within five (5) years prior to becoming an active member of a fire department; <u>and</u>

2. The commission has been presented with a medical statement from the firefighter's doctor that the firefighter has recovered or been medically rehabilitated sufficiently to meet the physical demands of firefighting.

(c) 1. Survivors shall not be eligible to receive benefits from this program until the medical statement required by paragraph (b) of this subsection is supplied to the commission in the following circumstances. The firefighter: a. Has been medically diagnosed as having had, or having been prescribed medication for, an illness listed in paragraph (a) of this subsection;

b. Returns to active fire service; and

c. Dies as a result of a heart or circulatory malfunction. [(b)1. If a firefighter of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, his or her survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from a physician establishes that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission.]

2. Upon <u>the commission's</u> review and approval <u>of the medical statement</u>, pursuant to KRS Chapter 61 and this administrative regulation, [of the statement by the commission,] the firefighter's survivors shall become eligible to receive benefits from this program.

(d)[(c)] A deceased firefighter's survivors shall not be eligible for benefits under this administrative regulation if the deceased firefighter was mistakenly or fraudulently included on a fire department's roster, or did not actively serve as a firefighter for a minimum of five (5) years prior to diagnosis of the cause of death.

(3)(a) Autopsy. The commission shall reserve the right to request an autopsy **<u>if</u>** [**providing**] sufficient cause is shown for this request.

(b) If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted to the commission.

Section 3. Application. (1)(a) <u>The fire department [Upon the death in the line</u> of duty of a firefighter, the fire department of which the firefighter was a member at the time of death] shall notify the commission's administrator [of the death] immediately <u>upon the death in the line of duty of a firefighter who</u> is a member of the department.

(b) Upon receipt of the notification, the administrator shall submit the Report of Firefighter's Death, Form KPF-4, to the notifying fire department in care of the chief; Claim for Survivor Benefits Form KPF-5, to the known survivors of the deceased firefighter; and the Requirements for Cancer Death Benefits form to both the notifying fire department in care of the chief and the known survivors of the deceased firefighter.

(2) Upon receipt of the forms required by subsection (1) of this section, the chief and survivors or their representative shall complete the forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the completed forms established in subsection (1) of this section, a licensed physician [member of the commission] shall review all pertinent medical records and forms submitted on behalf of the deceased firefighter and make a medical determination *as to whether*[*of if*] the conditions surrounding the death qualify the family members for benefits pursuant to this administrative regulation.

(a) Upon the <u>licensed physician's</u> [medical director's] determination that the requirements of KRS 61.315 and this administrative regulation have been met, a committee of the commission appointed by the chair of the commission shall review the forms and forward the forms with the <u>committee's</u> [commission's] recommendations to the full commission for determination of eligibility.

(b) If there are questions about the forms, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of \$80,000 shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Report of Firefighter's Death" Form KPF-4, November 7, 2016;
- (b) "Claim for Survivor Benefits" Form KPF-5, December 1, 2014; and
- (c) "Requirements for Cancer Death Benefits", July 2016.

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SUGGESTED SUBSTITUTE

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission (New Administrative Regulation)

739 KAR 2:155. Alan "Chip" Terry Professional Development and Wellness Program.

RELATES TO: KRS 95A.292

STATUTORY AUTHORITY: KRS 95A.292(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.292(4) requires the <u>Kentucky</u> <u>Fire</u> Commission to promulgate administrative regulations to implement the provisions of KRS 95A.292. This administrative regulation establishes (1) the qualifications and duties of persons used by the Commission to implement and administer the Alan "Chip" Terry Professional Development and Wellness Program; (2) the curriculum, programming, seminar type, and treatment modalities used in the program; (3) the extent to which a participating firefighter's relatives or friends may participate in seminars; (4) the standards by which professional and volunteer firefighters from other states may be accepted into the program by the executive director; and (5) a protocol for establishing reciprocity for interagency assistance with other state, federal, and tribal professional and volunteer firefighters in administering the program.

Section 1. Definitions. (1) "IAFF" means the International Association of Fire Fighters.

(2) "Program" means the Alan "Chip" Terry Professional Development and Wellness Program and the seminars conducted *under this program[thereunder]*.

Section 2. Instructor Qualifications. (1) Any instructor used by the commission to implement and administer the program shall:

(a) Be a professional, retired, or volunteer firefighter;

(b) Have a minimum of two (2) years experience as a peer supporter;

(c) Have a minimum of one (1) year of teaching or training experience; and

(d) Submit proof of completion of the two-day IAFF Peer Support Training, or its equivalent, to the commission.

(2) Any instructor used by the commission to implement and administer the program shall have training in general stress, [;] group processes, [;] human communication skills, [;] direct intervention strategies, [;] post-traumatic stress disorder and depression, [;] suicide awareness and postvention, [;] addressing stigma, [;] understanding barriers to care, [;] and substance abuse.

Section 3. Curriculum, Programming, Seminar Type, and Treatment Modalities. (1) The curriculum, programming, and treatment modalities used in the program shall be the IAFF Behavioral Health Peer Support Training Student Manual.

(2) The seminar shall consist of a prerequisite online course and two (2) in-person, eight (8) hour day peer support seminars designed to train peer support personnel to provide peer support to other firefighters.

Section 4. Non-firefighter Participation. (1) A participating Kentucky firefighter may permit no more than two (2) non-firefighters to attend and participate in the program with the Kentucky firefighter.

(2) Out-of-state non-firefighters shall not attend or participate in the program.

Section 5. Out-of-state Firefighter Participation. (1) The executive director shall permit any out-of-state, federal, or tribal professional or volunteer firefighter to participate in the program if the out-of-state, federal, or tribal professional or volunteer firefighter submits to the commission:

(a) A driver's license identifying the professional or volunteer firefighter;

(b) Proof of current status as a professional or volunteer firefighter;

(c) A completed Alan "Chip" Wellness Program Out-of-State Participant Application; and

(d) A letter from the chief of the fire department for which the firefighter works or volunteers setting forth the professional or volunteer firefighter's need to participate in the program.

(2)[(i)] The letter <u>required by subsection (1)(d) of this section</u> shall not include any medical or confidential information regarding the professional or volunteer firefighter without the professional or volunteer firefighter's written consent.

(3)[(2)] Notwithstanding section (1) of this section, an out-of-state professional or volunteer firefighter shall not be accepted into the program if the out-of-state professional or volunteer firefighter's participation in the program would prevent a Kentucky professional or volunteer firefighter from participating in the program. *in accordance with KRS 95A.292(3)*.

Section 6. Out-of-state Reciprocity for Interagency Assistance in Administering the Program.

(1) Any out-of-state instructor used by the commission to implement and administer the program shall:

(a) Satisfy the requirements of Section 2 of this administrative regulation;

(b) Submit a driver's license identifying the out-of-state instructor to the commission;

(c) Submit proof of status as a professional, retired, or volunteer firefighter to the commission; and

(d) Submit a completed Alan "Chip" Wellness Program Out-of-State Instructor Application to the commission.

(2) An out-of-state instructor who satisfies the requirements of this section shall be permitted to administer seminars under the program in the Commonwealth of Kentucky in coordination with the commission.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "IAFF Behavioral Health Peer Support Training Student Manual", [9/2018]:[-]

(b) "Alan "Chip" Wellness Program Out-of-State Participant Application", [6/20]; and[-]

(c) "Alan "Chip" Wellness Program Out-of-State *Instructor[Participant]* Application", [6/20].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Lexington, Kentucky 40505, Monday through Friday, 8:30 a.m. to 4:30 p.m.

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Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

PUBLIC PROTECTION CABINET

October 7th, 2020

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 3:170. Annual audited financial reports.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 3:170**, the Department of Insurance proposes the attached amendment to **806 KAR 3:170**.

Sincerely,

OD Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10/7/2020 9:40 AM

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 3:170. Annual audited financial reports.

RELATES TO: KRS <u>304.1-040</u>, 304.1-050, 304.2-065, 304.2-210-304.2-290, 304.3-120, 304.3-125, 304.3-240, 304.3-241, 304.17A-820, 304.32-210, 304.35-040, <u>304.36-140</u>, 304.37-010, 304.37-020, [304.36-140,]304.42-150, 304.45-030, 304.45-040, 304.48-110, 304.49-070(2), 304.49-080, 304.49-090, 304.50-060, 304.50-075, 18 U.S.C. <u>Chapter 96, Pub. L. 107-204</u>[1961, 1968]

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-240, 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as **established[defined]** in KRS 304.1-010. KRS 304.3-240 authorizes the commissioner to promulgate administrative regulations concerning the publication of financial statements. KRS **304.49-170[304-49-140]** authorizes the commissioner to promulgate administrative regulations relating to captive insurance companies that are necessary to enable the commissioner to carry out the provisions of KRS **304.49-010 through[304.39-010 to]** 304.49-230. This administrative regulation establishes requirements concerning the annual filing of audited financial reports by insurers.

Section 1. Definitions. (1)(a) "Accountant" means:

<u>(a)[and "independent certified public accountant" mean</u>] An independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which <u>the accountant is[they are]</u> licensed to practice;[.]

(b) For Canadian and British insurers, ["accountant" means] a Canadian-chartered or Britishchartered accountant.

(2) "Affiliate" or "affiliated" is defined by KRS 304.37-010(4).

(3) "Audit committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer of group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers.

(4) "Audited financial report" means <u>a report consisting of</u> those items <u>estab-</u> <u>lished[specified]</u> in Section 4 of this administrative regulation.

(5) "Commissioner" is defined **by[in]** KRS 304.1-050(1).

(6) "<u>Control[Controlling person]</u>" is defined <u>by[in]</u> KRS 304.37-010(3)[(8)].

(7) "Department" is defined in KRS 304.1-050(2).

(8) "Group of insurers" means those licensed insurers included in the reporting requirements of KRS 304.37-020, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Insurer" is defined by KRS 304.1-040.

(10) <u>"Internal audit function" means a person **who[that]** provides independent objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes."</u>

(11) "Internal control over financial reporting" means a process affected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements.

(12) [(11)] "SEC" means the United States Securities and Exchange Commission.

(13) [(12)] "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002, *Pub. L. 107-*204, and the SEC's rules and regulations promulgated under Section 404.

(14) [(13)] "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC <u>at 17 C.F.R. 240.13a-15(f)</u> and the related attestation report of the [*independent certified public*] accountant.

(15) [(14)] "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002, **Pub. L. 107-204**:

(a) The preapproval requirements of Section 202[201];

(b) The audit committee independence requirements of Section 301; and

(c) The internal control over financial reporting requirements of Section 404.

(16) [(15)] "Work papers" mean the records kept by the *[independent certified pub-lie]* accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the *accountant's[independent certified public account-ants]* audit of the financial statements of an insurer. Work papers *can[may]* include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents, and schedules or commentaries prepared or obtained by the *[independent certified public accountant's[independent certified public account_ant's[independent certified public]* accountant in the course of the *account_ant's[independent certified public accountant's]* audit of the financial statements of an insurer and *that[which]* support the *accountant's[independent certified public accountant's[independent certified public accountant's]* opinion of the financial statements of an insurer.

Section 2. Purpose and Scope. (1) This administrative regulation shall be to improve the department's surveillance of the financial condition of insurers by requiring:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by *[independent certified public]* accountants;

(b) Communication of internal control related matters noted in an audit; and

(c) Management's report of internal control over financial reporting.

(2) **Except as established in paragraph (a) of this subsection**, every insurer shall be subject to this administrative regulation.[Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this administrative regulation.]

(a) Unless the commissioner makes a specific finding that compliance is necessary for the department to carry out its statutory responsibilities, <u>an insurer[insurers]</u> shall be exempt during years in which the following conditions exist. The insurer has, at the end of the calendar year:

1. Direct premiums written in this state of less than \$1,000,000; and

2. Less than 1,000 policyholders or certificate holders of direct written policies nationwide.

(b) <u>An insurer with[Insurers that have]</u> assumed premiums of \$1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation.

(3) <u>A</u> foreign or alien <u>insurer[insurers]</u> filing the audited financial report in another state, pursuant to the other state's requirement for filing an audited financial report, which has been found by the commissioner to be substantially similar to the requirements of this administrative regulation, shall be exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state, are filed with the commissioner in accordance with Sections 4, **10[11]**, and **11[12]** of this administrative regulation:

1. A copy of the audited financial report;

2. Communication of internal control related matters noted in an audit; and

3. The accountant's letter of qualifications.[;] Canadian insurers may submit accountants' reports as filed with the Office of Superintendent of Financial Institutions, Canada; and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time <u>established[specified]</u> in Section 9 of this administrative regulation.

(4) <u>A</u> foreign or alien <u>insurer[insurers]</u> required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state if:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the **<u>other state's re-</u> <u>quired</u>** time[**specified**].

(5) This administrative regulation shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under KRS 304.2-210 through **304.2-290 through 304.2-300[304.2-290]**, 304.17A-820, 304.32-210, 304.35-040, 304.36-140, 304.42-150, 304.48-110, 304.49-080, or 304.50-075.

Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment. (1) All insurers shall have an annual audit by an *[independent certified public]* accountant and shall file an audited financial report with

the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may<u>, based on whether or not the company is determined to be in a</u> <u>"hazardous condition" pursuant to KRS 304.2-065</u>, require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty (30) day periods upon showing by the insurer and its *[independent certified public]* accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2) of this section, a similar extension of thirty (30) days shall be granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to this administrative regulation shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this administrative regulation at the election of the controlling person.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices *established[prescribed]*, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the [following]:

(a) Report of *the[independent certified public]* accountant;

(b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;

(c) Statement of operations;

(d) Statement of cash flows;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements as required by KRS 304.3-240 in accordance with KRS 304.3-241. These notes shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304.3-240 with a written description of the nature of these differences; and

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be:

1. Prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and

2. Comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. **[However,]** In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement forms and instructions **shall be[are]** those **established[prescribed]** by the National Association of Insurance Commissioners as required by KRS 304.3-240.

Section 5. Designation of *[Independent Certified Public]* Accountant. (1) Each insurer required by this administrative regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the commissioner in writing the name and address of the *[independent certified public]* accountant or accounting firm retained to conduct the annual audit <u>required by[set forth in]</u> this administrative regulation. *[Insurers not retaining an independent certified public accountant on the effective date of this administrative regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.]*

(2) The insurer shall obtain a letter from the accountant[,] and file a copy with the commissioner, stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant <u>shall[will]</u> express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices <u>established[prescribed]</u> or otherwise permitted by the insurance regulatory authority in that state, <u>stating[specifying]</u> any exceptions as the accountant <u>believes[may believe]</u> appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall:

(a) Within five (5) business days notify the commissioner of this event;

(b) <u>Submit to[Furnish]</u> the commissioner, [with] a separate letter within ten (10) business days of the [above] notification <u>established in paragraph (a) of this subsection, if</u> stating [whether] in the twenty-four (24) months preceding the accountant's resignation, there were any disagreements with the former accountant <u>that[which]</u>, if not resolved to the satisfaction of the former accountant, would cause the accountant to make reference to the subject matter of the disagreement in connection with the opinion. These shall include disagreements:

1. Concerning accounting principles, financial statement disclosure, or auditing scope or procedure;

2. That have been resolved to the former accountant's satisfaction and those not so resolved; and

3. That occur at the decision-making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel for the accounting firm responsible for rendering its report;

(c) Request the former accountant to **<u>submit[furnish]</u>** a letter addressed to the insurer stating whether **<u>or not</u>** the accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which the accountant does not agree; and

(d) <u>Submit[Furnish]</u> the responsive letter from the former accountant to the commissioner together with its own.

Section 6. Qualifications of **[Independent Certified Public**]Accountant. (1) The commissioner shall not recognize any person or firm as a qualified **[independent certified public**]accountant if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British insurer, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(2) Except as otherwise <u>established[provided]</u> in this administrative regulation, an [*inde-pendent certified public*] accountant shall be recognized as qualified if the [*independent certified public*] accountant conforms to the standards of the accounting profession, as contained in the statutes, administrative regulations, and codes of ethics and rules of professional conduct administered by the State Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1.

(3) The lead or coordinating audit partner having primary responsibility for the audit shall not act in that capacity for more than five (5) consecutive years. <u>After five (5) consecutive years</u>, the person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five (5) years.

(a) An insurer may make application to the commissioner for relief from this rotation requirement on the basis of *undue hardship[unusual circumstances]*. Application shall be made at least thirty (30) days before the end of the calendar year. The commissioner *shall[may]* consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a)1 of this subsection with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

(c) The commissioner shall not recognize as a qualified *[independent certified pub-lic]* accountant, nor accept any annual audited financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, or a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. *Chapter 96[1961, 1968]*;

2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this administrative regulation; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(4) If an insurer disagrees with a determination made by the commissioner pursuant to subsection (3) of this section, it may request a hearing in accordance with KRS 304.2-310.

(5)(a) The commissioner shall not recognize as a qualified *[independent certified pub-lie]* accountant, nor accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

2. Financial information systems design and implementation;

3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if **[the following conditions have been met]**:

a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services; or

8. Legal services or expert services unrelated to the audit.

(b) A qualified independent public accountant shall not:

1. Function in the role of management;

2. Audit his or her own work; and

3. Serve in an advocacy role for the insurer.

(6)(a) <u>An insurer[Insurers]</u> having direct written and assumed premium of less than \$100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(b) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If *requested and if* the commissioner finds, upon review of this statement, that compliance with this administrative regulation would constitute an organizational hardship upon the insurer, an exemption *shall[may]* be granted.

(7) A qualified **[independent certified public]** accountant who performs the audit may engage in other nonaudit services, including tax services, that are not **<u>established</u>[described]** in subsection **(**5)(a) of this section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(8)(a) All auditing services and nonaudit services provided to an insurer by the qualified **[independent certified public]** accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement shall be waived with respect to nonaudit services if:

1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

2.a. The aggregate amount of all non-audit services provided to the insurer constitutes not more than five (5) percent of the total amount of fees paid by the insurer to its qualified *[inde-pendent certified public]* accountant during the fiscal year in which the nonaudit services are provided;

b. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

c. The services are **[promptly]** brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one **(1)** or more members of the audit committee who are the members of the board of directors to whom authority to grant approvals has been delegated by the audit committee.

(9) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant the preapprovals required by subsection (8) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10)(a)1. The commissioner shall not recognize an **[independent certified public]** accountant as qualified for a particular insurer if the following were employed by the **[independent certi-fied public]** accountant and participated in the audit of that insurer during the one (1) year period preceding the date that the most current statutory opinion is due:

a. A member of the board;

- b. President;
- c. Chief executive officer;
- d. Controller;
- e. Chief financial officer;
- f. Chief accounting officer; or
- q. Any person serving in an equivalent position for that insurer.
- 2. This subsection shall only apply to partners and senior managers involved in the audit.

3. An insurer may make application to the commissioner for relief from the *[above]* requirements *established in this subsection* on the basis of *undue hardship[unusual circumstances]*.

(b) The insurer shall file, with its annual statement filing, the approval for relief from *para-graph (a)[subsection (10)(a)]* of this *subsection[section]* with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the in-surer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers **that[which]** utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as **established in subsections (1) through (5) of this section.[follows:]**

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.[;]

(2) Amounts for each insurer subject to this section shall be stated separately.[;]

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis.[;]

(4) Explanations of consolidating and eliminating entries shall be included. [: and]

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of *[Independent Certified Public]* Accountant. (1) Financial statements <u>submitted[furnished]</u> pursuant to Section 4 of this administrative regulation shall be examined by the *[independent certified public]* accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, ["]Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement["] and SAS No. 110, ["]Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained[", or their replacements], the [independent certified public] accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the *[independent certified public]* accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners <u>that[which]</u> the [independent certified public]accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to <u>sub-</u><u>mit[furnish]</u> the annual audited financial report shall require the [independent certified publie] accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the [independent certified public] accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.3-120 and 304.3-125 as of that date.

(b) An insurer <u>that[which]</u> has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the [*independent certified public*] accountant making the report with evidence of this report being <u>submitted[furnished]</u> to the commissioner.

(c) If the *[independent certified public]* accountant fails to receive this evidence within the required five (5) business day period, the *[independent certified public]* accountant shall *sub-mit[furnish]* to the commissioner a copy of its report within the next five (5) business days.

(2) An *[independent certified public]* accountant shall not be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts **<u>that[which]</u>** might have affected his report, the commissioner **<u>shall note[notes]</u>** the obligation of the accountant to take the action **<u>es-</u> <u>tablished[prescribed]</u>** in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

Section 10. Communication of Internal Control Related Matters Noted in an Audit.

(1)(a) In addition to the annual audited financial statements, each insurer shall <u>submit</u> <u>to[furnish]</u> the commissioner [with] a written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit.

(b) The communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report **[**, **]** and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of <u>the account-ant's[their]</u> audit of the financial statements.

(c) If **[no]** unremediated material weaknesses were <u>not</u> noted, the communication shall state that none were found.

(2) <u>If the action is not included in the accountant's communication</u>, an insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses[, if the action is not described in the accountant's communication].

Section 11. Accountant's Letter of Qualifications. The accountant shall *submit to[furnish]* the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KRS Chapter 325 and 201 KAR Chapter 1;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether <u>or not</u> each is an *[independent certified pub-lic]* accountant. This administrative regulation shall not prohibit the accountant from utilizing staff as the accountant deems appropriate if use is consistent with the standards <u>estab-lished[prescribed]</u> by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it **shall[will]** be filed in compliance with this administrative regulation, and that the commissioner will be relying on this information in monitoring the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make <u>the work papers</u> available for review by the commissioner, <u>the commissioner's[his]</u> designee, or <u>the commissioner's[his]</u> appointed agent[, the work papers];

(5) **[A representation]** That the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants; and

(6) **[A representation]** That the accountant is in compliance with the requirements of Section 6 of this administrative regulation.

Section 12. Availability and Maintenance of **[Independent Certified Public]** Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this administrative regulation shall require the accountant to make available for review by department examiners all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the department has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department examiners **<u>established[described]</u>** in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Reviews by the department examiners shall be considered investigations, and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department.

Section 13. Requirements for Audit Committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this administrative regulation. Each accountant shall report directly to the audit committee.

(2)(a) The audit committee of an insurer or group of insurers shall be responsible for **super-vising[overseeing]** the insurer's internal audit function and granting the person performing the function suitable authority and resources to fulfill the responsibilities if required by Section 14 of this administrative regulation.

(b) If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (6) [(5)] of this section and section 3(4) of this administrative regulation.

(4)[(3)](a) **Except as established in paragraph (b) of this subsection**, a member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee;

1. Accept any consulting advisory or other compensatory fee from the entity; or

2. Be an affiliated person of the entity or any subsidiary.

(b) **[Notwithstanding paragraph (a) of this subsection,]** If the law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless **the member is[they are]** an officer or employee of the insurer or one **(1)** of its affiliates.

(5) [(4)] If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of:

(a) The next annual meeting of the responsible entity; or

(b) One (1) year from the occurrence of the event that caused the member to be no longer independent.

(6) [(5)](a) At the election of the controlling person, the audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one (1) or more of these controlled insurers solely for the purposes of this administration regulation.

(b) To exercise the election of the controlling person to designate the audit committee for purposes of this administrative regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers.

(c) [(b)] Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election.

(d) [(c)] The election can be changed through notice to the commissioner by the insurer which shall include a description of the basis for the change.

(e) [(d)] The election shall remain in effect for perpetuity, until rescinded.

(7)[(6)](a) The audit committee shall require the accountant that performs for an insurer any audit required by this administrative regulation to timely report to the audit committee in accordance with the requirements of SAS 114, [--]The Auditor's Communication With Those Charged With Governance[--], or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

(b)<u>1.</u> If an insurer is a member of an insurance holding company system, the reports required by paragraph (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system.

<u>2.[, provided that</u>] Any substantial differences among insurers in the system <u>shall be[are]</u> identified to the audit committee.

(8) [(7)](a) <u>Except as established in paragraph (b) of this subsection</u>, the proportion of independent audit committee members shall meet or exceed the following criteria:

1. For prior calendar year direct written and assumed premiums between \$0 and \$300,000,000, no minimum requirements;

2. For prior calendar year direct written and assumed premiums over \$300,000,000 to \$500,000,000, fifty (50) percent or more of members shall be independent; and

3. For prior calendar year direct written and assumed premiums over \$500,000,000; seventy-five (75) percent of members shall be independent.

(b) [Notwithstanding subsection (7)(a) of this section,] The commissioner may require the audit committee's board to enact improvements to the independence of the audit committee membership if the insurer:

1. Is in a risk-based capital action level in accordance with 806 KAR 3:190; or

2. Meets one <u>(1)</u> or more of the standards of an insurer deemed to be in <u>"hazardous financial</u> condition<u>", as established in KRS 304.2-065</u>, or otherwise exhibits qualities of a <u>"troubled in-surer"</u>, as <u>established[set forth]</u> in KRS <u>304.3-625[304.2-065]</u>.

(c) An insurer with less than \$500,000,000 in prior year direct written and assumed premiums may structure its audit committee with at least a supermajority of independent audit committee members.

(d) For purposes of subsection (7)(a) of this section, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(9) [(8)](a) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and <u>National Flood Insurance</u>[Federal Flood] Program, less than \$500,000,000 may make application to the commissioner for a waiver from the requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners.

(c) If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners, via the Web site, https://www2.naic.org/servlet/Index.

Section 14. Internal Audit Function Requirements.

(1) An insurer *shall be[is]* exempt from the *requirements[requirement]* of this section if *the insurer*.

(a) [*The insurer*] Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and *National Flood Insurance*[*Federal Flood*] Program, less than \$500,000,000[\$5,000,000,000]; or

(b) [The insurer] Is a member of a group of insurers that has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and **National Flood Insur**ance[Federal Flood] Program, less than \$1,000,000,000.

(2) The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by:

(a) Performing general and specific audits, reviews, and tests; and

(b) Employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and *KAR Title 806[regulations]*.

(3) In order to ensure that internal auditors remain objective, the internal audit function **shall**[**must**] be organizationally independent.

(a) [Specifically.] The internal audit function shall:

1. [Shall]Not defer ultimate judgment on audit matters to others; and

2. [Shall] Appoint an individual to head[health] the internal audit function who shall have direct and unrestricted access to the board of directors.

(b) Organization independence shall not preclude dual-reporting relationships.

(4) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on:

(a) The periodic audit plan;

(b) Factors that **could[may]** adversely impact the internal audit function's independence or effectiveness;

(c) Material findings from completed audits; and

(d) The appropriateness of corrective actions implemented by management as a result of audit findings.

(5) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements **established**[set **forth**] in this section at:

(a) The ultimate controlling parent level;

(b) An intermediate holding company level; or

(c) The individual legal entity level.

<u>Section 15.</u> Conduct of Insurer in Connection with the Preparation of Required Reports and Documents. (1) A director or officer of an insurer shall not, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this administrative regulation; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead, or fraudulently influence an accountant with respect to the professional engagement period:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by

KRS 304.3-241, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Section <u>16</u> [15]. Management's Report of Internal Control over Financial Reporting. (1)(a) <u>*Ex-cept as established in subsection (2) of this section,*</u> every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and <u>*National Flood Insurance [Federal Flood]*</u> Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) **[Notwithstanding the premium threshold in subsection (1)(a) of this section,]** The commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:

(a) Is in any risk-based capital level event in accordance with 806 KAR 3:190; or

(b) Meets one (1) or more of the standards of an insurer deemed to be in <u>"hazardous finan-</u>cial condition<u>"</u> in accordance with KRS 304.2-065.

(3) An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements were included in the scope of the Section 404 Report:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404, but is a SOX compliant entity; and

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management **<u>shall be[is]</u>** responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether <u>or not</u> its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting; (d) A statement that briefly describes the scope of work that is included and whether <u>or not</u> any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one <u>(1)</u> or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer.

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

(b) The following shall have one (1) year following the year the threshold is exceeded to comply with the independence requirements in Section 6 of this administrative regulation, but not earlier than January 1, 2010. An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation:

1. Is not required to have independent audit committee members or is required to have only a majority of independent audit committee members because the total written and assumed premiums is below the threshold; and

2. Subsequently becomes subject to one (1) of the independence requirements due to changes in premium.

Section <u>17</u> [16]. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any <u>or[and]</u> all <u>provi</u>sions[provision] of this administrative regulation if the commissioner finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption. The hearing process shall be pursuant to KRS 304.2-310.

(2) <u>The requirements of this administrative regulation shall be in effect for audits of</u> <u>calendar years beginning January 1, 2010[Domestic insurers retaining a certified public</u> <u>accountant on the effective date of this administrative regulation who qualify as inde-</u> <u>pendent shall comply with this administrative regulation for the year ending December</u> <u>31, 2010, and each year thereafter unless the commissioner permits otherwise.</u>

(3) Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner permits otherwise:

(a) As of December 31, 2010, file with the commissioner an audited financial report.

(b) For the year ending December 31, 2010, and each year thereafter, these insurers shall file with the commissioner all reports and communication required by this adminis-trative regulation.

(4) Foreign insurers shall comply with this administrative regulation for the year beginning January 1, 2010, and each year thereafter.

(5)(a) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010.

(b) An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premiums is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements in Section 6 of this administrative regulation.

(c) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation.

(6)(a) The requirements of Section <u>16</u> [15] of this administrative regulation shall be effective beginning with the reporting period ending December <u>31</u>, 2010 and each year thereafter.

(b) An insurer or group of insurers that is not required to file an annual audit report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file an annual audit report.

(c) An insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements in Section 4 of this administrative regulation].

Section <u>18</u> [47]. Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be **[defined as]** the annual statement of total business in the manner filed by these insurers with their supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this administrative regulation.

Section <u>19</u> [18]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Financial Condition Examiner's Handbook", <u>2020</u> [2008], National Association of Insurance Commissioners; (b) AU Section 561, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report", 1996 Professional Standards of the American Institute of Certified Public Accountants;

(c) SAS 114, "The Auditors Communication with Those Charged with Governance", 2007, American Institute of Certified Public Accountants;

(d) SAS 109, "Understanding the Entity and Its Environment and Assessing the Risks of material Misstatement", 2007 American Institute of Certified Public Accountants; and

(e) SAS 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence", 2007 American Institute of Certified Public Accountants.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, <u>500 Mero Street</u> [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [This material is also available on the department's Web site at http://insurance.ky.gov.]

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.





Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Andy Beshear Governor

Ray A. Perry Deputy Secretary PUBLIC PROTECTION CABINET Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

October 6th, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 6:010. Valuation standards; audits.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 6:010**, the Department of Insurance proposes the attached amendment to **806 KAR 6:010**.

Sincerely,

Janson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10/5/2020 9:40 AM

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 6:010. Valuation standards; audits.

RELATES TO: KRS 304.2-290, 304.6-130-304.6-180 STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: **[EO 2004-731, signed July 9, 2004, created the Department**][Office]**[of Insurance.**]KRS 304.2-110(1) authorizes the <u>commissioner</u> [executive director] of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as **established[defined]** in KRS 304.1-010. KRS 304.6-130 **through[te]** 304.6-180 requires the <u>commissioner</u> [executive-director] to annually value the liability item of the NAIC Annual Statement form as itemized in Exhibit 5 of that statement. This administrative regulation **establishes[provides]** the framework for **acceptable** valuation standards **and establishes[that are acceptable, and provides]** mortality tables for the determination of adequate reserves.

Section 1. Definitions. (1) "1958 Commissioners Extended Term Table of Mortality" means the mortality table *that[which]*:

(a) Is based on underwriting requirements that do not include evidence of medical insurability; and

(b) Incorporates mortality rates adequate to take into account the increase in mortality rate to which the class of persons whose lives are insured with credit life insurance are subject.

(2) "1958 Commissioners Standard Ordinary Table of Mortality" means the mortality table *that is[which]*:

(a) [Is]Based on underwriting requirements that include evidence of medical insurability; and

(b) **[Hs]**A recognized table of mortality that will produce substantially the same result as the "1958 Commissioners Extended Term Table of Mortality" if thirty (30) percent is added, the additional thirty (30) percent being the amount necessary to result in mortality rates adequate to take into account the increase in mortality to which the class or persons whose lives are insured by credit life insurance are subject.

(3) "2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table" means a mortality table *that[which]*:

(a) Consists of rates for male lives in the ultimate form with smokers and nonsmokers combined;

(b) Was developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force and adopted by the NAIC in December 2002; and (c) Includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(4) "Credit Life Insurance" is defined in KRS 304.19-020(1).

(5) <u>"Life actuary" means a person who computes premium rates, dividends, and risks</u> <u>according to probabilities based on statistical records for life insurance and annuities.</u>

(6) "Single Premium Credit Life Insurance" means credit life insurance for which a charge often is passed on to the debtor for the term of the coverage of the term of the debt and that is often included in the total sum of the obligation.

Section 2. Valuation. In conjunction with the valuation required by KRS 304.6-130, each domestic life insurer shall, in the form of an affidavit by its actuary or consulting actuary, **submit to[furnish]** the life actuary[**, in the manner, form, and order as he may prescribe**], totals and summaries in connection with valuation as the life actuary may deem necessary. In addition, each domestic life insurer shall supply and **submit[furnish]** to the life actuary, in corresponding order, with the necessary documentation, lists, tabulations and working papers for policy contract obligations to be valued, which shall be in readily accessible and auditable form at the home office of the insurer.

Section 3. Certificate of Valuation. The <u>commissioner</u> [executive director] <u>shall[may]</u> accept for purposes of issuing a certificate of valuation, the ["]Request for Certification of Reserves["] by a domestic life insurance company, which <u>shall be[is]</u> certified by an actuary[*deemed satis-*<u>factory for the purpose by the <u>commissioner</u>][executive director]. [However,]The <u>commis-</u> <u>sioner</u> [executive director] shall annually cause the records of domestic life insurance companies to be audited, using appropriate methods to assure [himself]that life insurance companies are properly valuing their reserve liabilities as <u>established by KRS Chapter 304[provided by stat-</u> <u>ute]</u>.</u>

Section 4. Components of life insurance policies, annuities, and pure endowment contracts shall include contracts <u>and[,]</u> any riders or additional benefits related to the contract.

Section 5. Credit Life Insurance. (1) Pursuant to the authority <u>established[contained]</u> in KRS 304.6-140(2)(a), the reserves for all policies of single premium group credit life insurance and all single premium individual credit life insurance issued to be effective prior to January 1, 2006 shall be computed on the basis of:

(a) 100 percent of the 1958 Commissioners Extended Term Table of Mortality;

(b) 130 percent of the 1958 Commissioners Standard Ordinary Table of Mortality; or

(c) In accordance with subsection (2) of this section.

(2) Pursuant to **[the authority contained in]**KRS 304.6-140(2)(a) the minimum standard for reserves for all policies of group credit life insurance and individual credit life insurance issued to be effective prior to January 1, 2006, may be determined **as established in paragraphs (a) through (d) of this subsection.**[according to the following:]

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as **<u>established</u>[defined]** in KRS 304.6-145.[;]

(b) The method used in determining the minimum standard for valuation shall be the commissioners reserve valuation method as <u>established[defined]</u> in KRS 304.6-150_[;]

(c) The minimum mortality standard for both male and female insureds shall be the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table.*[; and]*

(d) Where the credit life insurance policy or certificate insures two (2) lives, the minimum mortality standard shall be twice the mortality in the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table based on the age of the older insured.

(3) Pursuant to the authority contained in KRS 304.6-140(2)(a) the minimum standard for reserves for all policies of group credit life insurance and individual credit life insurance issued to be effective on or after January 1, 2006, shall be determined according to the following:

(a) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in KRS 304.6-145;

(b) The method used in determining the minimum standard for valuation shall be the commissioners reserve valuation method as defined in KRS 304.6-150;

(c) The minimum mortality standard for both male and female insureds shall be the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table; and

(d) <u>If</u> [Where] the credit life insurance policy or certificate insures two (2) lives, the minimum mortality standard shall be twice the mortality in the 2001 Commissioners Standard Ordinary Male Composite Ultimate Mortality Table based on the age of the older insured.

(4) <u>Department</u> [Office] of Insurance examiners, in examining company affairs, shall deem reserves maintained in accordance with this administrative regulation to be in compliance with the Kentucky Insurance Code, KRS Chapter 304, for all years under examination.

Section 6. [-]Special[-] Policies. (1) "Coupon," "pure endowment," "founders," "charter," "special,[-]" and similar type policies, shall use all of the policy benefits afforded in the computation of the mean reserve formula.

(a) Mean reserve factors shall be printed for use in the computation of policy reserves.

(b) The timing: [,] frequency of contingency. [{]if any[}]: [,] and the method of pure endowment payment shall be clearly shown in the formula used to compute the mean reserve.

(c) Mean reserve computation shall not deviate from the formula and factor developed.

(2) Discriminatory and arbitrary action by the life insurance company to pay some benefits prior to contract date shall not create an asset or create a reduction of aggregate reserve liability unless an enforceable negotiable instrument is evidenced.

(3) A separate file of the ["]special["] type policies <u>established[mentioned]</u> in subsection (1) of this section, shall be initiated by the Life Actuary of the <u>Department</u> [Office] of Insurance and shall be maintained by <u>that[his]</u> department [Office] in addition to policies filed with the Policy Analyst in the Life Division. For each domestic life insurance company, a folder for each ["]special["] type policy in force shall include a specimen policy, actuarial formula used to arrive at the mean reserve, and a factor table of the various factors by age at issue distributed for the in-force durations considered.

(4) For domestic life insurance companies with less than \$500,000,000 of individual life in force and who do not use a standardized program package with unit programming, the following benefit breakdown shall be necessary.

(a) In force volume used in the mean reserve valuation run shall be segregated to allow for auditing of the various benefits.

(b) These benefits shall be enumerated as provided for in the filed specimen policy and shall include basic policy, return of premium, unmatured endowments, <u>and</u> termination benefit.

(5) Domestic life insurers excluded by subsection (4) of this section shall have reporting procedures and requirements compatible with the program package without sacrificing any audit trail of factors and their application. The requirements <u>may</u> vary from company to company based on the procedure but shall be in a pattern consistent with that approved for that company, <u>based on the annual audit in accordance with KRS 304.6-130 through 304.6-180</u>, and shall closely follow the requirements for other domestic life insurance companies.

Section 7. Cost of Noncompliance. (1) If material is not available as <u>established in this ad-</u> <u>ministrative regulation[outlined above]</u>, the additional burden of cost for additional time required by the staff of the <u>department</u> [Office] of Insurance, or its actuary, shall be borne by the life insurance company as <u>established[provided]</u> for in KRS 304.2-290. A special examination may be ordered by the <u>commissioner</u> [executive director], providing for a written report to <u>the</u> <u>commissioner,[him or her]</u> together with a time and expense billing to the company [se]examined.

(2) If a detail audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the <u>department</u> [Office], the <u>commissioner</u> [executive director] <u>shall[may]</u> order the withdrawal of certification and reissuance of certificates and copies, and require a refiled NAIC annual statement on a significant error, or <u>require[prescribe]</u> corrective internal procedures in the company prior to the next filed NAIC statement for when the resultant error is not significant.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

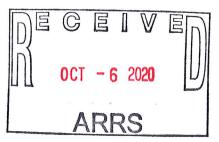
(a) "1958 Commissioners Extended Term Table of Mortality[(1958)]",<u>1958</u>;

(b) "1958 Commissioners Standard Ordinary Table of Mortality[(1958)]"<u>, 1958</u>; and

(c) "2001 Commissioner Standard Ordinary Male Composite Ultimate Mortality Table[{2001}.]", 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky <u>Department</u> [Office] of Insurance, <u>500 Mero Street</u> [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Web site at: http://doi.ppr.ky.gov/kentucky/.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.



Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

PUBLIC PROTECTION CABINET

October 7th, 2020

Kerry	B. Harv	vey
	Secre	tary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 6:080. Reserve standards for individual health insurance policies.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 6:080**, the Department of Insurance proposes the attached amendment to **806 KAR 6:080**.

Sincerely,

Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601

Final 10/5/2020 11:29 AM

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards

806 KAR 6:080. Reserve standards for individual health insurance policies.

RELATES TO: KRS 304.6-070

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.6-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes[provides that] the <u>Commissioner</u> [Executive Director] of Insurance <u>to promulgate[may make]</u> reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.6-070 <u>authorizes[provides that]</u> the <u>Commissioner</u> [Executive <u>Director</u>] of Insurance <u>to promulgate[shall issue]</u> administrative regulations establishing minimum standards for reserves for individual health insurance policies. <u>This administrative regulation establishes the minimum standards for reserves for individual health insurance policies.</u>

Section 1. Active Life Reserves. (1) General.

(a) Active life reserves <u>shall be</u> [are] required for all in-force policies and <u>shall be</u> [are] in addition to any reserves required in connection with claims. For policy Types A, B, and C, <u>estab-</u> <u>lished[described]</u> in subsection (2) of this section, the minimum reserve <u>shall be</u> [is] determined as **established[specified]** in subsection (3) of this section [herein].

(b)**1. Minimum standards[These]** shall be[It is emphasized, however, that these are] **[mini-mum standards_]** in accordance with [and that] KRS 304.6-070.[] [requires that] Higher, adequate reserves shall be established by the insurer in any case **in which[where]** experience indicates that these minimum standards do not place a sound value on the liabilities under the policy.

<u>2.</u> For policy Type D, the minimum reserve <u>shall</u> [should] be the gross pro rata unearned premium [(premium reserve)].

(2) Types of individual health insurance policies.

(a) Type A *[-]* policies *shall include policies that[which]* are guaranteed renewable for life or to a specified age, [such as sixty (60) or sixty-five (65),] at guaranteed premium rates.

(b) Type B **[-]** policies **shall include policies that**[**which**] are guaranteed renewable for life or to a specified age, [such as sixty (60) or sixty-five (65),] but under which the insurer reserves the right to change the scale of premiums.

(c) Type C [-] policies <u>shall include policies</u> in which the insurer has reserved the right to cancel or refuse for one (1) or more reasons, but has agreed implicitly or explicitly that, prior to a specified time or age, it will not cancel or decline renewal solely because of deterioration of health after issue.[; however,] Policies shall not be considered of this type if the insurer has reserved the right to refuse renewal provided the right is to be exercised at the same time for all

policies in the same category, if premiums are graded so as to be substantially proportionate to the costs of insurance at the various attained ages. [Policies which comply with KRS 304.17-275, on which premiums are based on issue age shall be][are of][this type.]

(d) Type D [-] policies shall include all other individual policies not already established in paragraphs (a) through (c) of this subsection.

(e) <u>A franchise policy shall not be classified</u> [The above does not classify "franchise"] as a type of policy. <u>Contract provisions within a franchise policy in which[where]</u> the right to refuse [Such policies are frequently written under an agreement limiting the insurer's right to cancel or refuse renewal. Usually the right is reserved to refuse] renewal of all policies in the group or other categories including [such as] those ceasing to be members of the association, shall be classified as [, and this would place such policies in] Type D [in accordance with the last clause under paragraph (c) of this subsection]. [However,] If premiums are based on the level premium principle in which any reflection of age is on the basis of age at issue, or if the renewal undertaking for the individual meets the requirements for Type A, B, or C, the franchise policy shall be [should be so] classified for reserve purposes according to the type to which it belongs.

(f) A policy <u>that has</u> [may have] guarantees qualifying it as Type A, B, or C until a specified age or duration after which the guarantees, or lack of guarantees[, may qualify it as Type A, B, C, or D. In such case, the policy in each period] <u>shall</u> [should] be considered for reserve purposes according to the type to which it then belongs.

(g) <u>If</u> [Where] all of the benefits of a policy, as <u>established[provided]</u> by rider or otherwise, are not of the same Type [(A, B, C, or D)], each benefit <u>shall</u> [should] be considered for reserve purposes according to the type to which it belongs.

(3) Reserve standards for policies of Type A, B, or C.

(a) Interest. The maximum interest rate for reserves <u>shall</u> [should] be the greater of <u>the max-</u> <u>imum rate allowed by KRS 304.6-120 through 304.6-180 and KAR Title 806 in the valua-</u> <u>tion of</u>:

1. [The maximum rate permitted by law in the valuation of] Currently issued life insurance:[_] or

2. **[The maximum rate permitted by law in the valuation of]** Life insurance issued on the same date as the health insurance.

(b) Mortality. The mortality assumptions used for reserves <u>shall</u> [should] be according to a table <u>allowed[permitted]</u> by <u>KRS 304.6-120 through 304.6-180 and KAR Title 806[law]</u> in the valuation of life insurance issued on the same date as the health insurance.

(c) Morbidity or other contingency. Minimum standards with respect to morbidity <u>shall be</u> [are those] stated in <u>["]Reserve Standards for Individual Health Insurance["]</u> incorporated by <u>reference in</u> [Appendix A of] this administrative regulation[, which is subject to revision from time to time with respect to dates of issue of contracts].

(d) Negative reserves. Negative reserves on any benefit may be offset against positive reserves for other benefits in the same policy, but the mean reserve on any policy <u>shall not</u> [should <u>never</u>] be taken as less than one-half (1/2) the valuation net premium.

(e) Preliminary term. The minimum reserve shall be on the basis of two (2) years preliminary term.

(f) Reserve method. Mean reserves diminished by appropriate credit for valuation net deferred premiums. <u>The [In no event, however, should the]</u> aggregate reserve for all policies valued on the mean reserve basis, diminished by any credit for deferred premiums, <u>shall not</u> be less than the gross pro rata unearned premiums under **[such]** policies.

(g) Alternative valuation procedures and assumptions. <u>If</u> [Provided] the reserve on all policies to which the method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards <u>established in paragraphs (a) through (f) of this</u> <u>subsection[specified above]</u>, an insurer may use any reasonable assumptions as to the interest rate, mortality rates, or the rates of morbidity or other contingency, and may introduce an assumption as to the voluntary termination of policies. [Also, subject to the preceding condition,] The insurer may employ methods other than the methods <u>established in paragraphs (a)</u> <u>through (f) of this subsection[stated above]</u> in determining a sound value of its liabilities under <u>its[such]</u> policies, including [but not limited to the following]:

1. The use of midterminal policy reserves in addition to either gross or net pro rata unearned premium reserves;

2. Optional use of either the level premium, the one (1) year preliminary term, or the two (2) year preliminary term method;

3. Prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;

4. The use of approximations <u>including</u> [such as] those involving age groupings, groupings of several years of issue, <u>and</u> average amounts of indemnity;

5. The computation of the reserve for one (1) policy benefit as a percentage of, or by other relation to, the aggregate policy reserves, exclusive of the benefit or benefits so valued; and

6. The use of a composite annual claim cost for all or any combination of the benefits included in the policies valued. For statement purposes, the net reserve liability may be shown as the excess of the mean reserve over the amount of net unpaid and deferred premiums, or, regardless of the underlying method of calculation, it may be divided between the gross pro rata unearned premium reserve and a balancing item for the ["]policy reverse.["]

(h) Gross unearned preliminary term premium. <u>If</u> [Where] a preliminary term method, either with a one (1) year or two (2) year preliminary term period, is employed, the gross pro rata unearned premium to be used in the comparison <u>established[set forth]</u> in paragraph (f) of this subsection shall bear the same relationship to the net premium for the preliminary term period on the basis of the mortality, morbidity, and interest assumptions used for subsequent valuation as the gross premium charged bears to the net valuation premium used in subsequent years.

Section 2. Claim Reserves, Present Value of Amounts not Yet Due on Claims[[][(also called "Disabled Life Reserves" in the case of insurance providing loss-of-time benefits for disability due to accident or sickness)].

(1) General. Reserves <u>shall be</u> [are] required for claims on all health insurance policies, <u>includ-</u> <u>ing[whether]</u> of Type A, C, or D, providing benefits for continuing loss, <u>including</u> [such as] loss of time or hospitalization.

(2) Claim reserve standards for total disability due to accident or sickness.

(a) Interest. The maximum interest rate for reserves <u>shall</u> [should] be the maximum rate <u>al-</u> <u>lowed[permitted]</u> by <u>KRS 304.6-120 through 304.6-180 and KAR Title 806[law]</u> in the valuation of life insurance issued on the same date as the date the claim is incurred. (b) Morbidity. Minimum standards with respect to morbidity <u>shall be</u> [are] those stated in ["]Reserve Standards for Individual Health Insurance[" incorporated by reference in] [Appendix A of] [this administrative regulation], except that for unreported claims and resisted claims and, at the option of the insurer, claims with a duration of disablement option of the insurer, claims with a duration of disablement of less than two (2) years, reserves may be based on the individual insurer's experience or other assumptions designed to place a sound value on the liabilities. Reserves based on <u>that</u> [such] experience or assumptions <u>shall</u> [should] be verified by the development of each year's claims over a sufficient period of years along the lines of Schedule O of the insurer's annual statement.

(c) For policies with an elimination period, the duration of disablement <u>shall</u> [should] be considered as dating from the time that benefits would have begun to accrue had there been no elimination period.

(d) A new disability connected directly or indirectly with a previous disability **<u>that's</u>**[which] had a duration of at least one (1) year and terminated within six (6) months of the new disability shall [should] be considered a continuation of the previous disability.

(3) Reserve standards for all other claim reserves.

(a) Interest. The maximum interest rate for reserves <u>shall</u> [should] be the maximum rate <u>al-</u> <u>lowed[permitted]</u> by <u>KRS 304.6-120 through 304.6-180 and KAR Title 806[law]</u> in the valuation of life insurance issued on the same date as the date the claim is incurred.

(b) Morbidity or other contingency. The reserve <u>shall</u> [should] be based on the individual insurer's experience or other assumptions designed to place a sound value on the liabilities. The results <u>shall</u> [should] be verified by the development of each year's claims over a sufficient period of years along the lines of Schedule O <u>of the insurer's annual statement</u>.

(4) Valuation procedures. The insurer may employ suitable approximations and estimates, including [but not limited to] groupings and averages, in computing claim reserves.

Section 3. [Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the administrative regulation and the application of <u>the</u> [such] provision to other persons or circumstances shall not be affected [thereby].

Section 4. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

<u>Section 5.</u>] Incorporation by Reference. (1) "Reserve Standards for Individual Health Insurance", [f]6/2020[]], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[

APPENDIX A RESERVE STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

Minimum morbidity standards for valuation of individual health insurance policies are as follows:

1. Total disability due to accident or sickness.

Act	tive life reserves:
	Policies issued on or after January 1 1965:
	The 1964 Commissioners Disability Table.

	Claim reserves:		
		The minimum morbidity standard in effect for active life reserves	
		on currently issued policies as of the claim is incurred.	
2. Hospital	benefits-surgio	al benefits, and maternity benefits (either specified or expense re-	
imburseme	nt).		
	Policies issued on or after January 1 1955 and before January 1 1982:		
		The 1956 Intercompany Hospital surgical Tables.	
	Polices issued on or after January 1 1982:		
	-	The 1974 Medical Expense Tables (Table A).	
3. Accidenta	al death benefi	t s.	
	Polices issued on or after January 1 1965:		
		The 1959 Accidental Death Benefits Table.	
4. All other	benefits includ	ing major medical cancer expense, and other than total disability.	
	The insurer	should adopt a standard which will produce reserves that place a	
	sound value on its liabilities under such benefit. The use of morbidity tables re-		
	flecting the insurer's own experience with suitable margins for stochastic varia-		
	tion is encouraged.]		

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email <u>dj.wasson@ky.gov</u>.

***General Reviewer's Note:** The material incorporated by reference did not seem to be included with this filing. Please file one (1) copy of the material with the Compiler in conjunction with filing this suggested substitute.

RESERVE STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

Minimum morbidity standards for valuation of individual health insurance policies are as follows:

1. Total disability due to accident or sickness.

	Active life reserves:
	Policies issued on or after January 1 1965:
	The 1964 Commissioners Disability Table.
	Claim reserves:
	The minimum morbidity standard in effect for active life reserves on currently issued policies as of the claim is incurred.
2. Hospital reimbursem	
	Policies issued on or after January 1 1955 and before January 1 1982:
	The 1956 Intercompany Hospital surgical Tables.
	Polices issued on or after January 1 1982:
	The 1974 Medical Expense Tables (Table A).
3. Accident	al death benefits.
	Polices issued on or after January 1 1965:
	The 1959 Accidental Death Benefits Table.
4. All other	benefits including major medical cancer expense, and other than total disability.
	The insurer should adopt a standard which will produce reserves that place a sound value on its liabilities under such benefit. The use of morbidity tables reflecting the insurer's own experience with suitable margins for stochastic variation is encouraged.



DECEIVE D: OCT - 6 2020 ARRS

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Andy Beshear Governor

Ray A. Perry Deputy Secretary PUBLIC PROTECTION CABINET Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 http://insurance.ky.gov

October 7th, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: **806 KAR 6:100.** Actuarial opinion and memorandum.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 6:100**, the Department of Insurance proposes the attached amendment to **806 KAR 6:100**.

Sincerely,

Janson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10/7/2020 3:15 PM

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 6:100. Actuarial opinion and memorandum.

RELATES TO: KRS 304.3-240, 304.6-070, 304.6-150, 304.6-155, 304.6-171, 304.6-180 STATUTORY AUTHORITY: KRS 304.2-110<u>(1)</u>, 304.6-171[, EO 2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance.] KRS 304.2-110[1] authorizes[provides-that] the Commissioner [Executive Director] of Insurance to promulgate[may make] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as established[defined] in KRS 304.1-010. KRS 304.6-171 requires every life insurance company doing business in this state to annually submit the opinion of a qualified actuary as to whether or not the reserves and related actuarial items held in support of the policies and contracts established[specified] by the commissioner [executive director] are computed appropriately. KRS 304.6-171 requires the commissioner [executive director] to establish[define], by administrative regulation, the requirements[specifies] of the actuarial opinion and to broaden the scope of the opinion if necessary. This administrative regulation establishes provisions[is necessary] for the commissioner to determine whether or not reserves and related actuarial items are computed appropriately, are based on assumptions that[which] satisfy contractual provisions, are consistent with prior reported amounts, and comply with KRS Chapter 304[the applicable laws of this state].

Section 1. Definitions. (1) "Actuarial opinion" means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 4 of this administrative regulation and with presently accepted actuarial standards.

(2) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3) "Annual statement" means the statement required by KRS 304.3-240.

(4) "Appointed actuary" <u>is defined by KRS 304.6-131(2)[means a qualified actuary who is</u> appointed or retained to prepare and provide the statement of actuarial opinion and supporting memorandum required by this administrative regulation; either directly or by the authority of the board of directors through an executive officer of the company other than the qualified actuary].

(5) "Asset adequacy analysis" means an analysis that meets the standards and other requirements of Section 4 of this administrative regulation.

(6) "Commissioner" is defined by KRS 304.1-050(1)[means the Commissioner of the Department of Insurance]. (7) "Company" <u>is defined by KRS 304.6-131(3)[means a life insurance company; fraternal</u> benefit society doing business in this state; or a life insurance company or fraternal benefit society which is authorized to reinsure life insurance, annuities, or accident and health insurance business].

[(8) "Noninvestment grade bond" means a bond that is designated as a class 3, 4, 5, or 6 by the National Association of Insurance Commissioners Securities Valuation Office.

(9) "Qualified actuary" means any individual who is qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement and who meets the qualifications of Section 2 of this administrative regulation.]

Section 2. Actuarial Qualifications. In order to be considered a qualified actuary for the purposes of this administrative regulation, a person shall:

(1) Be a member in good standing of the American Academy of Actuaries;

(2) Be qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement in accordance with the qualification standards for actuaries established by the American Academy of Actuaries for actuaries signing those statements;

(3) Be familiar with the valuation requirements applicable to life and health insurance companies;

(4) Not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as a gualified actuary;

(b) Been found quilty of fraudulent or dishonest practices;

(c) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five (5) years, pursuant to this administrative regulation, an actuarial opinion or memorandum that the commissioner rejected because it did not comply with this administrative regulation or standards established by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(5) Not have failed to notify the commissioner of any action taken by any commissioner of any other state <u>if the[which]</u> action was based on a disqualification standard <u>estab-</u> <u>lished[outlined]</u> in subsection (4) of this section.

Section 3. General Requirements. (1) Every company doing business in this state shall annually submit the opinion of an appointed actuary **<u>stating</u>**[setting forth] an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 4 of this administrative regulation. The actuarial opinion shall be:

(a) Included on or attached to Page 1 of the annual statement for each year [beginning with the year in which this administrative regulation becomes effective];

(b) Entitled "Statement of Actuarial Opinion"; and

(c) The statement of an appointed actuary **<u>stating</u>[setting forth]** an opinion relating to reserves and related actuarial items held in support of policies and contracts in accordance with Section 4 of this administrative regulation.

(2) The commissioner **shall[may]** accept the statement of actuarial opinion filed by a foreign or alien company with the insurance supervisory regulator of another state if the commissioner determines that the opinion meets the requirements applicable to a company domiciled in this state.

(3) The commissioner **<u>shall[may]</u>** grant an extension of the date for submission of the statement of actuarial opinion upon written request by the company.

(4) The company shall give the commissioner timely written notice:

(a) If an actuary is appointed or retained and the notice shall state:

1. The name of the appointed actuary;

2. The title of the appointed actuary;

3. If the actuary is a consulting actuary, the name of the firm;

4. The manner of appointment or retention by the company of each appointed actuary; and

5. That the person appointed or retained by the company meets the requirements of a qualified actuary pursuant to Section 2 of this administrative regulation;

(b) If the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of a qualified actuary; or

(c) If that any person appointed or retained as an appointed actuary replaces a previously appointed actuary, which notice shall state the reason for replacement.

(5) The asset adequacy analysis required by Section 4 of this administrative regulation shall:

(a) Conform to the Standards of Practice as promulgated by the Actuarial Standards Board and *available at http://www.actuarialstandardsboard.org/standards-of-practice/* to this administrative regulation, which standards shall form the basis of the statement of actuarial opinion in accordance with this administrative regulation; and

(b) Be based on methods of analysis *that shall be[as are]* appropriate for those purposes based on standards established by the Actuarial Standards Board.

(6) Pursuant to KRS 304.6-171, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued.

(7) If the appointed actuary determines as the result of the asset adequacy analysis that a reserve in addition to the aggregate reserve held by the company and calculated in accordance with the methods <u>established[set forth]</u> in KRS 304.6-171 is necessary, the company shall establish the additional reserve.

(8)(a) Additional reserves established under subsection (7) of this section and determined by an actuary to not be necessary in subsequent years may be released <u>as reserves on the compa-</u> ny's financial statement.

(b) Any amounts released shall be disclosed in the actuarial opinion for the applicable year.

(c) The release of reserves shall not result in the adoption of a lower standard of valuation.

Section 4. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph, which shall:

(a) Identify the name and title of the appointed actuary;

(b) Identify the name of the consulting firm, if applicable;

(c) Identify the name of the company;

(d) Identify the qualifications of the appointed actuary;

(e) Identify the manner in which the actuary was appointed or retained to render the actuarial opinion; and

(f) Include language identical or substantially similar to the following:

1. For a company actuary: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."; or

2. For a consulting actuary: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The statement of actuarial opinion shall contain a scope paragraph, which shall:

(a) Identify the subjects on which an opinion is to be expressed;

(b) Describe the scope of the work of the appointed actuary;

(c) Include a tabulation delineating the reserves and related actuarial items **<u>that</u>**[**which**] have been analyzed for asset adequacy and the method of analysis;

(d) Identify the reserves and related actuarial items covered by the opinion **<u>that</u>[which]** have not been **[so]** analyzed; and

(e) Include language identical or substantially similar to the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (year). Tabulated below in the Table of Reserves and Liabilities are those reserves and related actuarial items <u>that[which]</u> have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop portions of the analysis, the statement of actuarial opinion shall contain a reliance paragraph, which shall:

(a) Describe each <u>situation in which[area where]</u> the appointed actuary has deferred to another expert in developing data, procedures, or assumptions; and

(b) [If the appointed actuary has relied on other experts to develop certain portions of the analysis,]Include a statement identical or substantially similar to the following and be accompanied by a statement in accordance with subsection (10) of this section:

1. "I have relied on (name), (title) for (*for example[e.g.]*, anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement,..."; or

2. "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

(4) If the appointed actuary has examined the underlying asset and liability records, the statement of actuarial opinion shall include a statement identical or substantially similar to the following: "My examination included **[such]** review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and **[such]** tests of the actuarial calculations as I considered necessary."; and

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, the statement of actuarial opinion required shall include a statement identical or substantially similar to the following and be accompanied by a statement in accordance with subsection (10) of this section: "In forming my opinion on (specify types of reserves) I relied upon data prepared by (name and title of company officer certifying in-force records) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

(6) The statement of actuarial opinion required by this section shall contain an opinion paragraph, which shall:

(a) Express the opinion of the appointed actuary with respect to the adequacy of the supporting assets to mature the liabilities that reserves and related actuarial values concerning the identified statement items:

1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

2. Are based on actuarial assumptions **<u>that[which]</u>** produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

3. Meet the requirements of <u>KRS Chapter 304, 201 KAR Chapter 1, and KAR Title 806[the</u> *insurance laws and administrative regulations]* of the state of domicile and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exception noted; and

5. Include provision for all actuarial reserves and related statement items [which ought to be]established;

(b) Express an opinion as to the adequate provision for the anticipated cash flow by including language identical or substantially similar to the following: "The reserves and related items, *[when]* considered in light of the assets held by the company with respect to *[such]* reserves and related actuarial items including, but not limited to, the investment earnings on *[such]* assets, and the considerations anticipated to be received and retained under *applicable[such]* policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.";

(c) State that the actuarial methods, considerations, and analyses used in forming the actuarial opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of the statement of opinion; (d) State whether or not there has been a material change from the applicable date of the annual statement to the date of the rendering of the actuarial opinion which should be considered in reviewing the opinion and include language identical or substantially similar to one (1) of the following:

1. "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion."; or

2. "The following material change(s) **<u>that</u>[which]** occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (describe the change or changes.)";

(e) Include a statement regarding unanticipated events which is identical or substantially similar to the following: "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis"; and

(f) Contain the signature, address, and telephone number of the appointed actuary.

(7) A change in actuarial assumptions shall not include the adoption for a new issue, a new claim, or other new liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

(8) If the appointed actuary is unable to form an opinion, the actuary shall refuse to issue a statement of actuarial opinion.

(9) If the opinion of the appointed actuary is adverse or qualified, the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for **<u>the</u>[such an]** opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(10) If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion shall:

(a) Indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance; and

(b) Provide a certification from the persons on whom the appointed actuary relied that:

1. Precisely identifies the items on which the person is providing information;

2. Includes a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items; and

3. Includes the following information for the person rendering the certification:

a. Signature and date signed;

b. Title;

c. Company;

d. Address; and

e. Telephone number.

(11) <u>Except as established in subsection (12) of this administrative regulation and</u> as an alternative to the requirements of <u>subsection[Section]</u> 4(6)(a)3. of this <u>section[administrative</u> regulation], the commissioner may make one (1) or more of the following alternatives available to the opining actuary:

(a)1.a. A statement that the reserves meet the requirements of the insurance laws and administrative regulations of the insurer's state of domicile; and

b. A formal written list of the standards and conditions for filing an opinion based on the law of the insurer's state of domicile.

2. If an insurer uses this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked.

3. If no formal written list of the standards and conditions is available, the commissioner shall not offer this alternative;[-]

(b)1.a. A statement that the reserves meet the requirements of the insurance laws and administrative regulations of the insurer's state of domicile;

b. Verification that the actuary's request to file an opinion based on the law of the insurer's state of domicile has been approved; and

c. A statement that any conditions required by the commissioner for approval of that request have been met.

2. If the commissioner offers this alternative, a formal written statement of the allowance shall be issued no later than March 31 of the year it is first effective.

3. Subsequent to that statement being issued, if an insurer wants to use this alternative, the insurer shall file a request with the commissioner, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date: and[-]

(c)1.a. A statement that the reserves meet the requirements of the insurance laws and administrative regulations of the insurer's state of domicile; and

b. A statement that the actuary has submitted the required comparison as **<u>estab-</u>** <u>**lished[specified]**</u> by the insurer's state of domicile.

2. If the commissioner offers this alternative, a formal written list of products for which the required comparison shall be provided shall be published on the department's Web site, http://insurance.ky.gov.

3. If a company uses this alternative, the formal written list of products in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked.

4. If a formal written list of products for which the required comparison shall be provided is not available, this alternative shall not be allowed.

5.a. If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under National Association of Insurance Commissioners' codification standards, as <u>established[set forth]</u> in KRS 304.6-171.

b. Gross nationwide reserves shall equal the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded.

c. The comparison shall include the following:

(i) Product type;

(ii) Death benefit or account value;

(iii) Reserves held;

(iv) Codification reserves; and

(v) Codification standard.

d. The comparison shall include all products identified by either the state of filing or any other states *that accept[subscribing to]* this alternative.

e. If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

f. The comparison provided by the company <u>shall</u> [is to] be kept confidential in accordance with KRS 304.6-171.

(12)(a) [Notwithstanding the provisions of Section 4(11) of this administrative regulation,] The commissioner may reject an opinion based on the laws and administrative regulations of the state of the insurer's domicile and require an opinion based on the laws of the Commonwealth of Kentucky.

(b) If an insurer is unable to provide the opinion within sixty (60) days of the request or other period of time determined by the commissioner after consultation with the insurer, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

Section 5. Description of Actuarial Memorandum Including an Asset Adequacy Analysis. (1) In accordance with KRS 304.6-171, the appointed actuary shall prepare a memorandum to the company **<u>that[which]</u>** shall describe the analysis done in support of the actuary's opinion regarding the reserves.

(2) The memorandum shall:

(a) Be made available to the commissioner, upon request, for examination;

(b) Be returned to the company after an examination by the commissioner; and

(c) Not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(3) The commissioner may designate a qualified actuary to review the actuarial opinion and prepare a supporting memorandum, which reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner, if:

(a) The commissioner requests a memorandum and no memorandum exists;

(b) The commissioner finds that the analysis **<u>stated</u>[described]** in the memorandum fails to meet the standards of the Actuarial Standards Board; or

(c) The commissioner finds that the analysis **<u>stated</u>[described]** in the memorandum fails to meet the standards of this administrative regulation.

(4) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuarial memorandum, memoranda prepared and signed by another actuary who is qualified in accordance with Section 2 of this administrative regulation with respect to the subjects covered in the memorandum.

(5) The reviewing actuary shall have the same status as an examiner for the purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner. (6) Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as other material provided by the company to the commissioner pursuant to KRS 304.6-171.

(7) The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this administrative regulation for any one (1) of the current year or the preceding three (3) years.

(8)(a) In accordance with KRS 304.6-171, the appointed actuary shall prepare a regulatory asset adequacy issues summary in accordance with subsection (12) of this section.

(b) The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) The regulatory asset adequacy issues summary shall be kept confidential in accordance with KRS 304.6-171(5)(h).

(9) The memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Section 3(5) of this administrative regulation.

(10) The actuarial memorandum referred to in this section shall specify:

(a) For reserves, the documentation of the assumptions made shall be in a manner to allow an actuary reviewing the actuarial memorandum to form a conclusion as to the reasonableness of the assumptions and shall include:

1. Product descriptions including a market description, underwriting and any other aspect of a risk profile and the specific risks the appointed actuary deems significant;

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves;

5. Reinsurance arrangements;

6. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adeguacy analysis; and

7. Documentation of assumptions to test reserves for the following:

a. Lapse rates, both base and excess;

b. Interest crediting rate strategy;

c. Mortality;

d. Policyholder dividend strategy;

e. Competitor or market interest rate;

f. Annuitization rates;

g. Commissions and expenses; and

h. Morbidity**:[-]**

[The documentation of the assumptions shall be made in a manner to allow an actuary reviewing the actuarial memorandum to form a conclusion as to the reasonableness of the assumptions.]

(b) For assets, the documentation of the assumptions made shall be in a manner to allow an actuary reviewing the actuarial memorandum to form a conclusion as to the reasonableness of the assumptions and shall include:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets:

2. Investment and disinvestment assumptions;

- 3. Source of asset data;
- 4. Asset valuation bases; and
- 5. Documentation of assumptions made for:
- a. Default costs;
- b. Bond call function;
- c. Mortgage prepayment function;
- d. Determining market value for assets sold due to disinvestment strategy; and
- e. Determining yield on assets acquired through the investment strategy;[-]

[The documentation of the assumptions shall be made in a manner to allow an actuary reviewing the actuarial memorandum to form a conclusion as to the reasonableness of the assumptions.]

(c) Analysis basis:

1. Methodology;

2. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

3. Rationale for degree of rigor in analyzing different blocks of business, including the level of materiality that was used in determining how rigorously to analyze different blocks of business;

4. Criteria for determining asset adequacy, including the precise basis for determining if assets are adequate to cover reserves under moderately adverse conditions or other conditions as **established[specified]** in relevant actuarial standards of practice; and

5. Effect of federal income tax, reinsurance, and any other relevant factor;[-]

(d) Summary of material changes in methods, procedures or assumptions from prior year's asset adequacy analysis;

(e) Summary of results; and

(f) Conclusion.

(11) The memorandum shall include a statement <u>that[which]</u> indicates that the memorandum conforms to the appropriate Standards of Practice and <u>that[which]</u> shall include language identical or substantially similar to the following: "Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

(12) The regulatory asset adequacy issues summary shall include:

(a) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios.

1. If negative ending surplus results under certain tests in the aggregate, the actuary shall describe those tests and the amount of additional reserve as of the valuate date <u>that[which]</u>, if held, would eliminate the negative aggregate surplus values.

2. Ending surplus values shall be determined by:

a. Extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial; or

b. Adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) Comments on any interim results that may be of significant concern to the appointed actuary;

(e) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

(f) Whether <u>or not</u> the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability, including those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(13) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rending the actuarial opinion.

(14) The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions, and the results obtained.

Section 6. Additional Considerations for Analysis. (1) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis.

(2) Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR).

(3) AVR assets shall not be applied for any other risks with respect to reserve adequacy.

(4) Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

(5) The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities and in the memorandum.

(6) The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

Section 7.][Effective Date. This administrative regulation will take effect for annual statements for the year 2009.

Section 8.] Incorporation by Reference. (1) The "Table of Reserves and Liabilities", 5/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, <u>500 Mero Street</u> [<u>215 West Main Street</u>], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's internet Web site at: http://insurance.ky.gov.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

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PUBLIC PROTECTION CABINET

Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

October 7th, 2020

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 7:035. Finance committee of domestic insurers.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 7:350**, the Department of Insurance proposes the attached amendment to **806 KAR 7:350**.

Sincerely,

Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10-5-2020

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 7:035. Finance committee of domestic insurers.

RELATES TO: KRS 304.2-205, 304.7-361[, 304.2-205]

STATUTORY AUTHORITY: KRS 304.2-110, 304.2-205, 304.3-240, 304.7-367[304.2-110] NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 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 in KRS 304.1-010. KRS 304.2-205 requires[authorizes] the commissioner [of Insurance] to prescribe additional filings to be made by an insurer, along with its annual statement filing, by March 1 of each year. KRS 304.3-240 requires each authorized insurer to annually file with the commissioner a true statement of its financial condition, transactions, and affairs. KRS 304.7-367 authorizes the commissioner to promulgate administrative regulations implementing the provisions of KRS Chapter 304, Subtitle 7.[KRS 304.2-110 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 in KRS 304.1-010.1 The administrative regulation requires a domestic insurer transacting business in Kentucky to notify the commissioner [of Insurance] of the names of the members of the finance or executive committees of its company or the board of directors responsible for approval of the insurer's investment policy.

Section 1. (1) Each domestic insurer shall, with each annual statement report, file with the commissioner the names of the members of any finance or executive committee or the board of directors which has, during the preceding year, exercised the authority to approve investments or investment policy.

(2) The filing required by subsection (1) of this section shall be accompanied by an affidavit signed by a financial officer of the insurer or its president, attesting that the members of the executive or finance committee or the board of directors have been advised as to the requirements of Subtitle 7 of KRS Chapter 304, administrative regulations, and other pertinent provisions of law applicable to investments or investment policy submitted for their approval.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

The agency needs to file at the time that it files this Staff Suggested Substitute, <u>one (1)</u> <u>clean copy</u> of a corrected RIA that includes a corrected answer on <u>Page 6</u>, in 4(a) of the RIA statement where the agency stated "The amendment includes technical changes only". As pointed out by the reviewer on the Staff review form, this proposed administrative regulation is new.

• For the RIA make sure to paginate as pages 5-7

Regulation: 806 KAR 7:035 Contact Person: DJ Wasson Phone: +1 (502) 564-6026 Email: dj.wasson@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires domestic insurers to provide the Commissioner of Insurance the names of the committee members or the board of directors that are responsible for approving the investments of the insurer. Additionally, the regulation requires an affidavit attesting that these members have been provided information regarding their responsibilities for investments under the Insurance Code.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the commissioner to identify those responsible for the investments of insurers in order to ensure proper financial oversight of domestic insurers doing business in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-205 authorizes the Commissioner of Insurance to prescribe additional filings to be made by an insurer, along with its annual statement filing, by March 1 of each year. KRS 304.2-110 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 in KRS 304.1-010. The administrative regulation requires a domestic insurer transacting business in Kentucky to notify the Commissioner of Insurance of the names of the members of the finance or executive committees of its company or the board of directors responsible for approval of the insurer's investment policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the individuals responsible for the investment policies of a domestic insurer doing business in Kentucky and ensures that they have been notified of their responsibilities under the law.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact the approximately 147 domestic insurers doing business 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: Each domestic insurer will be required to file the names of those approving the investment policy of the insurer, along with an attestation that those individuals have been provided information regarding their statutory responsibilities, with the annual statement filing made to the Department of Insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There should not be any cost to comply with this administration as this information is currently provided with the annual statement filing.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, domestic insurers will be providing the department with information necessary to ensure the financial soundness of the company.

(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. No, tiering is not applied as this administrative regulation applies equally to all domestic insurers in Kentucky.

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Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

PUBLIC PROTECTION CABINET

October 7th, 2020

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 7:090. Custodial accounts for investment securities of insurance companies.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 7:090**, the Department of Insurance proposes the attached amendment to **806 KAR 7:090**.

Sincerely,

OD Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601

Final 10-5-2020

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 7:090. Custodial accounts for investment securities of insurance companies.

RELATES TO: KRS 304.7-360

STATUTORY AUTHORITY: KRS 304.2-110, 304.7-360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 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 in KRS 304.1-010. KRS 304.7-360 requires the <u>Commissioner</u> [Executive Director] of Insurance to promulgate administrative regulations governing the deposit by insurers of securities with clearing corporations, the Federal Reserve book-entry system, <u>and with[or]</u> custodian banks. <u>This administrative regulation establishes[sets forth the]</u> provisions to be included in an agreement for the custody of an insurance company's securities with a custodian bank and qualifications for a custodian bank.

Section 1. Definitions.

(1) "Certificated security" is defined by[in] KRS 304.7-360(1)(g).

(2) "Clearing corporation" is defined by[in] KRS 304[034].7-360(1)(a).

(3) "Commissioner" is defined by[in] KRS 304.1-050(1).

(4) "Custodian bank" is defined by[in] KRS 304.7-360(1)(b).

(5) "Custodied securities" means securities held by the custodian bank, its nominee, a clearing corporation, the Federal Reserve book-entry system, or in any combination of these entities.

(6) "Direct participant" is defined by[in] KRS 304.7-360(1)(c).

(7) "Federal reserve book-entry system" is defined by[in] KRS 304.7-360(1)(d).

(8) "Member bank" is defined by[in] KRS 304.7-360(1)(e).

(9) "Security" is defined by[in] KRS 304.7-360(1)(f).

(10) "Uncertificated security" is defined *by[in]* KRS 304.7-360(1)(h).[Terms defined in KRS 304.7-360 shall have the same meaning when used herein.]

Section 2. Standards for Custodial Agreements. Pursuant to KRS 304.7-360, an insurance company may provide by agreement for the custody of its securities with a custodian bank meeting the qualifications set forth in Section 3 of this administrative regulation which securities may be held by the custodian bank, its nominee, in a clearing corporation, or in the Federal Reserve book-entry system. [Such securities, whether held by the custodian bank, its nominee, in a clearing corporation, in the Federal Reserve book-entry system, or in any combination of these entities, are referred to here in as "custodied securities."] Any [such] agreement shall contain provisions to comply with the following standards:

(1) The agreement shall be in writing and shall be authorized by a resolution of the Board of Directors <u>or an authorized committee</u> of the insurance company [or of an authorized committee thereof].

(2) Certificated securities held by the custodian bank may be [so] held separate from the securities of the custodian bank and of all its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement. (3) Securities [se] held in a fungible bulk by the custodian bank and securities in a clearing corporation or the Federal Reserve book-entry system shall be separately identified on the custodian bank's official records as being owned by the insurance company. <u>The</u> [Said] records shall identify which custodied securities are held by the custodian bank or by its nominee and which securities are in a clearing corporation or the Federal Reserve book-entry system. If the securities are in a clearing corporation or the Federal Reserve book-entry system, the [said] records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation or, if held in nominee name, the name of the nominee.

(4) All custodied securities that are registered shall be registered in the name of:

(a) The [the] insurance company; [, in]

(b) A [the name of a] nominee of the insurance company; [, in]

(c) The [the] [name of the] custodian bank or its nominee; [7] or[7]

(d) If [if] in a clearing corporation, [in the name of] the clearing corporation or its nominee.

(5) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company.

(6) The custodian bank shall arrange for execution of transactions in custodied securities in accordance with the insurance company's instructions and shall not exercise discretionary authority to effect transactions in custodied securities except in such limited or special circumstances as the insurance company may authorize.

(7) The custodian bank shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian bank shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company, but not less frequently than monthly.

(8) During the course of the custodian bank's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, or any representative of the <u>commissioner</u> [executive director] shall be entitled to examine, on the premises of the custodian bank, the custodian bank's records relating to custodied securities and the custodied securities, but only upon furnishing the custodian bank with written instructions to that effect from an appropriate officer of the insurance company or the <u>commissioner</u> [executive director].

(9) The custodian bank and its nominee shall be required to send to the insurance company:

(a) All reports which they receive from a clearing corporation or the Federal Reserve bookentry system on their respective systems of internal accounting control; and

(b) Reports prepared by outside auditors with respect to the respective systems of internal accounting control of the custodian bank and its nominee pertaining to custodial record keeping as the insurance company may reasonably request from time to time.

(10) The custodian bank shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules as filed with various regulatory authorities and in connection with any audit of the financial statements of the insurance company.

(11) The custodian bank shall provide upon request <u>an affidavit</u> [appropriate affidavits] <u>with</u> respect to custodied securities on the form, **["]**Custodian Affidavit**[" incorporated by reference** <u>in this administrative regulation</u>] or in a substantially similar format. [substantially in the form attached hereto (Appendix A) with respect to custodied securities].

(12) The custodian bank shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian bank shall not be [se] obligated to the extent that <u>the</u> [such] loss was caused by other than the negligence or dishonesty of the custodian bank.

(13) <u>If</u> [In the event that] there is a loss of custodied securities for which the custodian bank shall be obligated to indemnify the insurance company as provided in subsection (12) of this section, the custodian bank shall promptly replace the securities or the value <u>of the securities</u> [thereof] and the value of any loss of rights or privileges resulting from <u>the</u> [said] loss of securities.

(14) The agreement may provide that the custodian bank will not be liable for any failure to take any action required to be taken under the agreement <u>if</u> [in the event and to the extent that] the taking of such action is prevented or delayed by war₁ [{]whether declared or not and including existing war[}], revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause [whatever] beyond its reasonable control.

(15) If [In the event that] entry in a clearing corporation or in the Federal Reserve book-entry system is gained through a direct participant or a member bank, there shall be an agreement between the custodian and the direct participant or member bank under which the direct participant or member bank shall be subject to the same liability for loss of custodied securities as the custodian bank. However, [; provided, however, that,] if the direct participant or member bank shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian bank, the <u>commissioner</u> [executive director] may accept a standard of liability applicable to the direct participant or member bank which is different from the standard of liability applicable to the custodian bank.

(16) The agreement <u>shall</u> [must] be terminable by the insurance company on not more than thirty (30) days' notice.

Section 3. Qualifications of Custodian Banks. Any custodian bank selected by an insurance company to act as custodian under an agreement authorized by KRS 304.7-360 shall possess the following qualifications:

(1) Its custodial functions for the insurance company shall be carried out under its trust department;

(2) It shall be audited annually by independent public accountants whose audit report, together with the related financial statements, and whose report on internal controls are made available to the insurance company and the <u>commissioner</u> [executive director];

(3) It <u>shall</u> [must] be organized under the laws recognizing that the custodied securities are ["]special deposits["] rather than ["]general deposits,["] remain the specific property of the insurance company, and <u>shall not be</u> [are not] subject to any creditor relationship of the custodian bank.

(4) It <u>shall</u> [must] maintain blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association.

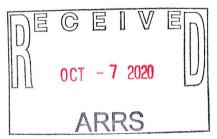
(5) Its capital and surplus funds shall equal or exceed \$25,000,000 [unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus funds shall equal or exceed \$10,000,000]; and

(6) It shall [must] have demonstrated sufficient experience in handling custodial accounts.

Section **4[5]**. Incorporation by Reference. (1) "Custodian Affidavit", (6/2020), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.



PUBLIC PROTECTION CABINET **Department of Insurance** P.O. Box 517 Frankfort, Kentucky 40602-0517

October 7th, 2020

Kerry	B. Harvey
	Secretary

Sharon P. Clark Commissioner

Andy Beshear Governor

Ray A. Perry Deputy Secretary

1-800-595-6053 http://insurance.ky.gov

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

806 KAR 8:010. Valuation of assets on deposit. Re:

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 8:010, the Department of Insurance proposes the attached amendment to 806 KAR 8:010.

Sincerely,

Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10-6-2020

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 8:010. Valuation of assets on deposit.

RELATES TO: KRS 304.8-040, 304.8-095, 304.8-120

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the <u>Commissioner</u> [Executive Director] 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. This administrative regulation sets forth the method of <u>valuation</u> [value] of assets on deposit with the <u>Commissioner</u> [Executive Director] of Insurance.

Section 1. Insurance companies making deposits and revaluations of <u>deposits</u> [the same] with the Custodian of Insurance Securities shall utilize the Insurance Department Form 143, ["]Detailed Listing of Securities Held Under Safekeeping Pursuant to KRS 304.8-095[" incorporated by reference in this administrative regulation].

Section 2. Assets on deposit with the Custodian of Insurance Securities which are obligations having a fixed term, rate and face value, shall be valued as follows:

(1) At face value if acquired at face value; or

(2) If acquired above or below face value, [they shall be valued] on the basis of the purchase price adjusted annually to bring the value to face value on maturity. <u>The</u> [Such] obligations when in default as to either principal or interest are not eligible for deposit, and the <u>commissioner</u> [executive director] shall require replacement of <u>the</u> [such] deposits <u>in accordance with</u> [{]KRS 304.8-120[]].

Section 3. Preferred and common stocks shall be valued, for deposit purposes, at the then market value. Twice each year these classes of securities shall be revalued, once as of the preceding December 31 and again as of June 30. The latter revaluation shall be accompanied by a statement from a recognized securities brokerage firm to the effect that the prices [se] used were the fair market values at June 30.

Section 4. Mortgage loans and [/or] notes shall be valued at the unpaid principal balance of the note at the time of deposit. Each year, before April 1, the mortgage loans on deposit shall be revalued so as to reflect the estimated unpaid principal balances as of the succeeding December 31.

Section 5. Home office real property shall be valued for deposit purposes at the company's book value, or at the fair market value if <u>the appraisal[such]</u> has been established by <u>a li-</u> <u>censed appraiser[an appraisal acceptable to the commissioner]</u> [executive director]. Any change in the company's book value or appraised value shall cause a revaluation of this deposit. Section 6. Incorporation by reference. (1) "Insurance Department Form 143, Detailed Listing of Securities Held Under Safekeeping Pursuant to KRS 304.8-095", (6/2020), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email <u>dj.wasson@ky.gov</u>.

MATERIAL INCORPORATED BY REFERENCE

At the time the agency files this staff suggested substitute, it needs to file <u>one (1) clean</u> <u>copy</u> of the Insurance Department Form 143 that was missing from its original filing that:

- Includes the <u>6/2020</u> edition date
- Updates Address of the Department of Insurance

S S S	OF SECURITIES HELD UNDER SAFEKEEPING 304.8-095	Kent 500 Mero St. / P.C 502-56	Kentucky Department of Insurance o St. / P.O. Box 517 Frankfort, KY 40601 502-564-6082 FAX 502-564-4604	urance fort, KY 40601 64-4604
COMPANY NAME:				
FOR QUARTER				
Cusip #		rai vaiue		
	TOTALS (should agree to Schedule E-Part 3-Special Deposits Held in KY)	d in KY)		
Signature		. Date	ſē	
Printed Name Title				
Form 143 Updated 6/2020				

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ARRS							

Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

PUBLIC PROTECTION CABINET

October 7th, 2020

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 49:020. Captive insurer application requirements.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 49:020**, the Department of Insurance proposes the attached amendment to **806 KAR 49:020**.

Sincerely,

Wasson

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601



Final 10/7/2020

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 49:020. Captive insurer application requirements.

RELATES TO: KRS 304.49-010-304.49-230[304.49]

STATUTORY AUTHORITY: KRS 304.2-110, 304.49-020(3), 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the <u>Commis-</u> <u>sioner</u> [Executive Director] of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.49-140 authorizes the <u>Commissioner</u> [Executive Director] of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS <u>304.49-010 to 304.49-230[304.49]</u>. KRS 304.49-020(3) authorizes the <u>Commissioner</u> [Executive Director] of Insurance to promulgate administrative regulations concerning the application for a certificate of authority for captive insurers. This administrative regulation establishes application requirements for the regulation of captive insurers.

Section 1. Definition. "Company" means the captive insurer.

Section 2. A captive insurer seeking to obtain a certificate of authority to engage in insurance business in Kentucky shall apply to the Kentucky <u>Department</u> [Office] of Insurance by completing and filing the following forms:

(1) Captive Application for Admission, CI-103 [(7/2004)] [(04/01)];

(2) Coverage Limits and Reinsurance, CI-105 [(04/01)];

(3) Irrevocable Letter of Credit CI-130 [(7/2004)] [(04/01)];

(4) Application for Authorization to Certify Loss Reserves and Loss Expense Reserves for Captives CI-110 [(2/2011)] [(04/01)];

(5) Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Business CI-120 [(2/2011)] [(04/01)]; and

(6) Biographical Affidavit CI-501 [(7/2004)] [(04/01)].

Section 3. All documents required by KRS 304.49-020(3)-(6) shall be submitted with a company's application seeking a certificate of authority to engage in insurance business in Kentucky or a statement describing the reason each document is not applicable.

Section 4. (1) In addition to the processing of the application, an organizational investigation or examination may be performed by the <u>department</u> [office] before an applicant <u>receives a cer-</u> tificate of authority[is licensed] as a captive insurer.

(2) The investigation or examination shall consist of a general survey of the company's corporate records, including:

- (a) Charter, bylaws, and minute books;
- (b) Verification of capital and surplus;
- (c) Verification of principal place of business;
- (d) Determination of assets and liabilities; and
- (e) A review of investment practice policy and procedures.

Section 5. A person shall not act as an insurance producer, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the <u>commissioner</u> [executive director]. Application for that authorization shall be on the Individual Application 8301 [(7/2014)][(03/01)] form, incorporated by reference in 806 KAR 9:025.

Section 6. Revocation. (1) The <u>commissioner</u> [executive director] may, subject to the provisions of this section, by order revoke the certificate of authority of the company:

(a) If the company has not commenced business according to its plan of operation within two (2) years of being licensed;

(b) If the company ceases to carry on insurance business in Kentucky;

(c) At the request of the company; or

(d) For any reason provided in KRS 304.3-190 or 304.3-200.

(2) Before the <u>commissioner</u> [executive director] revokes the certificate of authority of a company under subsection (1)(a) or (b) of this section, the <u>commissioner</u> [executive director] shall give the company notice in writing of the grounds on which he proposes to cancel the <u>certificate of authority[license]</u>, and shall afford the company an opportunity to make objection in writing within thirty (<u>30</u>) days receipt of the notice. The <u>commissioner</u> [executive director] shall take into consideration any objection timely filed and schedule an administrative hearing on the matter in accordance with KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Captive [Insurer] Application for Admission CI-103 (6/2020) [(04/01)];

(b) Coverage, Limits and Reinsurance CI-105 (4/2001)[(6/2020)] [(04/01)];

(c) Irrevocable Letter of Credit CI-130 (6/2020) [(04/01)];

(d) Application for Authorization to Certify Loss Reserves and Loss Expense Reserves for Captives CI-110 (6/2020)[(2/2011)] [(04/01)];

(e) Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Business CI-120 (6/2020)[(2/2011)] [(04/01)]; and

(f) Biographical Affidavit CI-501 (4/2001)[(6/2020)] [(04/01)][; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky <u>Department</u> [Office] of Insurance, <u>500 Mero</u> [215 West Main] Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

MATERIAL INCORPORATED BY REFERENCE:

The agency needs to <u>file (1) clean and one (1) dirty copy</u> of each of the following at the time that it files this staff suggested substitute:

- Captive Application for Admission CI-103 6/2020
- Irrevocable Letter of Credit CI-130 6/2020
- Application for Authorization to Certify Loss Reserves and Loss Expense Reserves for Captives CI-110 6/2020
- Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Business CI-120 6/2020

COMMONWEALTH OF KENTUCKY CAPTIVE APPLICATION FOR ADMISSION

(Attach separate sheets, if needed)

l.	Name of proposed captive
•	Parent or sponsor
•	Name, address, and phone number of individual to be contacted regarding this application
1.	Indicate type of proposed captive
•	Organization Form 🛛 Stock 🗖 Mutual
•	Principal place of business of proposed captive
7.	Resident registered agent and address
8.	Location of books and records
).	Capital and/or surplus of company
	(a) Initial capital \$
	Initial surplus \$
	Total \$
	(b) Location of shares of stock
0.	Name(s) and address(es) of beneficial owners Percentage of ownership
	(1)
	(2)
	(3)
	(3)
	(Use separate sheet if needed)
1.	Explain relationship among beneficial owners
12.	Enclose annual report or 10Ks of beneficial owners.
4.	Enclose annual report of Toxes of bencheral owners.

If letter(s) of credit is (are) to be u	ised		
Name and address of bank		ed in favor of	Amount \$
Name and address of managemer			
Name and address of lawyer			
Claims handler			
Name and address of certified pu	blic accountant		
Name and address of actuary			
Name and address of (re)insurance	e broker		
Biographical information for dire (List below and include biograph			
Name	Position(s) with capt	tive	Employer and position
If applicant is an industrial insure	ed captive, please answ	ver the following:	
(a) Name and address of each fu	ll-time employee actin	ng as an insurance	e manager or buyer
(b) Aggregate annual premium \$)		
(c) Number of full-time employe	ees		
Include the following with this a			
(a) Coverage/limits/reinsurance			
		• • • •	
(b) Certified copy of captive's co	_		sociation and bylaws.
(b) Certified copy of captive's ce(c) An application fee of \$600.0(d) A feasibility study by an actu	0 for domestic; \$700.0		sociation and bylaws.

- (e) Statement of benefit to Kentucky
- (f) Biographical affidavits on officers and directors (Form CI501)
- (g) If applicant is association captive, give history, purpose, size and other details of parent association
- (h) List all other providers and their responsibilities together with how fees for services rendered are to be charged.
- (i) Detailed plan of operation with supporting data including:
 - (1) Risks to be insured direct, assumed and ceded by line of business
 - (2) Fronting company if operating as a reinsurer
 - (3) Expected net annual premium income
 - (4) Maximum retained risk (per loss and annual aggregate)
 - (5) Rating program
 - (6) Reinsurance program
 - (7) Organization and responsibility for loss prevention and safety including the main procedures followed and steps taken to deal with events prior to possible claims
 - (8) Loss experience for past five years together with projections for the ensuing five years
 - (9) Organization chart
 - (10)Financial projections on an expected and worst case scenario

Items 1,3,4 and 10 above should be projected for a five-year period.

NOTE: Prepare one extra copy of all documents required by this application.

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE INFORMATION GIVEN IN THIS APPLICATION IS TRUE AND CORRECT AND THAT ALL ESTIMATES GIVEN ARE TRUE ESTIMATES BASED UPON FACTS WHICH HAVE BEEN CAREFULLY CONSIDERED AND ASSESSED.

Name	Date
Signature	
5	(Officer)

Form CI103 Updated: June 2020

COMMONWEAL TH OF KENTUCKY CAPTIVE APPLICATION FOR ADMISSION (Attach separate sheets, if needed)

Indi	icate Type	of Proposed Captiv	e		
P	ure	Association	Industrial Insured	Risk Retention	Sponsore
0		Form Stoc		utual	
Prin	ncipal Place	e of Business of Pro	posed Captive		
Resi	ident Regis	stered Agent and Ac	ldress		
Loca	ation of Bo	ooks and Records_			
Сар	ital and/or	Surplus of Compar	ıy		ang
(a)	Initial C	apital <u>\$</u>			
	Initial St	urplus \$			
	Total	\$			
(b)					f Orum auch im
		Address(es) of Bene	ficial Owners	Percentage o	fOwnership
(1) -					
(2)					
- (3) -			х сти		
-	(Use separ	ate sheet if needed)		nenne by an in the second s	
	· •	onship Among Ben	eficial Owners		

13.	If Letter(s) of Credit Is (Are) to	be Used				
	Name and Address of Bank	C	Issued in Favor Of	Amount		
		<u></u> ,		<u> </u>		
14	Name and Address of Managen	nent Firm				
15.	Name and Address of Lawyer_					
16.	Claims Handler			_		
17.	Name and Address of Certified	Public Account	rant			
18.	Name and Address of Actuary_					
19.	Name and Address of (Re)insur	ance Broker				
20.	Biographical Information for D (List below and include biograp		âcers			
	Name	Position(s) v	with Captive	Employer and Position		
			<u>An</u>			
			and a similar of the second			
	and a second	<u></u>				
		<u></u>				
21.	If Applicant is an Industrial Insu	ured Captive, pl	lease answer the following	:		
	(a) Name and address of each f	full-time employ	yee acting as an Insurance	Manager or Buyer		
	(b) Aggregate annual premium	\$				
	(c) Number of full-time employ	yees				
22.	Include the following with this application:					
	(a) Coverage/Limits/Reinsurance form attached					
	(b) Certified copy of Captive's	certificate of in	corporation, articles of ass	ociation and bylaws.		
	(c) An application fee of \$600.0	00 for domestic	; \$700.00 for foreign			
	(d) A feasibility study by an act	tuary				
	(e) Statement of benefit to Ken	tucky				
	(f) Biographical affidavits on o	officers and dire	ctors (Form CI501)			

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- (g) If applicant is Association Captive, give history, purpose, size and other details of parent association
- (h) List all other providers and their responsibilities together with how fees for services rendered are to be charged.
- (i) Detailed Plan of Operation with supporting data including:
 - (1) Risks to be insured direct, assumed and ceded by line of business
 - (2) Fronting company if operating as a reinsurer
 - (3) Expected net annual premium income
 - (4) Maximum retained risk (per loss and annual aggregate)
 - (5) Rating program
 - (6) Reinsurance program
 - (7) Organization and responsibility for loss prevention and safety including the main procedures followed and steps taken to deal with events prior to possible claims
 - (8) Loss experience for past five years together with projections for the ensuing five years
 - (9) Organization chart
 - (10)Financial projections on an expected and worst case scenario

Items 1,3,4 and 10 above should be projected for a five-year period.

NOTE: Prepare one extra copy of all documents required by this application [upon direction of this Department].

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL OF THE INFORMATION GIVEN IN THIS APPLICATION IS TRUE AND CORRECT AND THAT ALL ESTIMATES GNEN ARE TRUE ESTIMATES BASED UPON FACTS WIIICH HAVE BEEN CAREFULLY CONSIDERED AND ASSESSED.

Name	 Date	
Signature	(Officer)	

Form CI103 Updated: June 2020

COMMONWEALTH OF KENTUCKY CAPTIVE INSURANCE COMPANY IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. (00001) Date A.B.C. Bank Address City, State

Commissioner Department of Insurance Commonwealth of Kentucky Address

Commissioner:

- 1. We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of _______up to the aggregate amount of ______available by your draft(s) drawn on us, at sight, bearing the number of this IRREVOCABLE LETTER OF CREDIT No. (00001). This LETTER OF CREDIT shall expire at our Letter of Credit Department, ______, at our close of business on ______unless as hereinafter extended.
- 2. This LETTER OF CREDIT is issued pursuant to the provisions of and on behalf of the above mentioned _______ (name of captive) which is applying for a certificate of authority to engage in the insurance business in the Commonwealth of Kentucky as a captive insurance company. We understand and agree that _______ (name of captive) has no obligation to reimburse us and we have no right of set off against any funds held by us for _______ (name of captive) in the event this LETTER OF CREDIT is drawn down, in whole or in part. By issuing this LETTER OF CREDIT, we waive any common law, statutory or contractual right of reimbursement or set off against _______ (name of captive) that may arise in the event this LETTER OF CREDIT is drawn down, in whole or in part.
- 3. It is a condition of the LETTER OF CREDIT that it shall be automatically extended for additional periods, each of one year, unless at least ninety calendar days prior to the then relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this LETTER OF CREDIT.
- 4. It is a further condition of the LETTER OF CREDIT that each automatic extension shall be measured from the then relevant expiration date, even though such date is not a business day in Kentucky for this Bank. It is also a condition of this LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then relevant expiration date is a nonbusiness day for our Bank, drawing may be made not later than our next immediately following business day.
- 5. This LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument, statute, regulations or agreement referred to herein or in which this LETTER OF

CREDIT is referred to or to which this LETTER OF CREDIT relates and any such reference shall not be deemed to incorporate herein by reference any note, document, instrument, statute, regulation, or agreement.

6. Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above stated expiration date or any extension thereof as above provided. Presentation under this LETTER OF CREDIT must be made at ______ located at during normal banking hours.

Optional Provision

7. Unless otherwise expressly stated, this credit is subject to the Uniform Customs and Practices for Commercial Documentary credits fixed by the International Chamber of Commerce, ICC Publications No. 500 (1993 Rev.).

Very truly yours

Form CI130

Updated: June 2020

COMMONWEALTH OF KENTUCKY CAPTIVE INSURANCE COMPANY IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. (00001) Date

A.B.C.Bank Address City, State

Commissioner [of Insurance]

Department of Insurance

Commonwealth of Kentucky Address

Commissioner:

- I. We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of up to the aggregate amount of ______ available by your draft(s) drawn on us, at sight, bearing the number of this IRREVOCABLE LETTER OF CREDIT No. (00001). This LEITER OF CREDIT shall expire at our Letter of Credit Department, _______, at our close of business on _______ unless as hereinafter extended.
- 2. This LETTER OF CREDIT is issued pursuant to the provisions of and on behalf of the above mentioned _______ (name of captive) which is applying for a certificate of authority to engage in the insurance business in the Commonwealth of Kentucky as a captive insurance company. We understand and agree that _______ {name of captive) has no obligation to reimburse us and we have no right of set off against any funds held by us for _______ (name of captive) in the event this LETTER OF CREDIT is drawn down, in whole or in part. By issuing this LEITER OF CREDIT, we waive any common law, statutory or contractual right of reimbursement or set off against _______ (name of captive) that may arise in the event this LETTER OF CREDIT is drawn down, in whole or in part.
- 3. It is a condition of the LETTER OF CREDIT that it shall be automatically extended for additional periods, each of one year, unless at least ninety calendar days prior to the then relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this LETTER OF CREDIT.
- 4. It is a further condition of the LETTER OF CREDIT that each automatic extension shall be measured from the then relevant expiration date, even though such date is not a business day in Kentucky for this Bank. It is also a condition of this LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then relevant expiration date is a nonbusiness day for our Bank, drawing may be made not later than our next immediately following business day.
- 5. This LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument, statute, regulations or agreement referred to herein or in which this LETTER OF CREDIT is referred to or to which this LETTER OF CREDIT relates and any such reference shall

not be deemed to incorporate herein by reference any note, document, instrument, statute, regulation, or agreement.

6. Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above stated expiration date or any extension thereof as above provided. Presentation under this LETTER OF CREDIT must be made at ______ located at ______ located at _______

Optional Provision

7. Unless otherwise expressly stated, this credit is subject to the Uniform Customs and Practices for Commercial Documentary credits fixed by the International Chamber of Commerce, ICC Publications No. 500 (1993 Rev.).

Very truly yours

FormCI130 Updated: June 2020

_ _ _ _ _ _

APPLICATION FOR AUTHORIZATION TO CERTIFY LOSS RESERVES AND LOSS EXPENSE RESERVES FOR CAPTIVES

To the Commissioner, Department of Insurance, Commonwealth of Kentucky, I hereby apply for authorization to certify as to the adequacy of loss reserves and loss expense reserves as required by KRS 304.49.

INDIVIDUALS ONLY MAY APPLY

1.	Full Legal Name						
2.	Residence Address						
3.	(a) Date of Birth	(b) Social Security Number					
4.	Education and Degree						
	High School						
	Graduate or Profession	al					
5.	major concentration an	stitutions attended and addresses on additional sheet, if nece ad actuarial exams completed if not a Fellow.) al Societies or Associations (List)	-				
6.	Present Chief Occupati	ion					
	Position or Title	How long?	How long?				
	Employer's Name						
	Address						
			······				
7.	Other jobs, positions, c	lirectorates, or officerships concurrently held at present					
8.	Complete Employment	t Record for Past 20 Years					
	Dates	Employer and Address	Title				

- 9. Indicate property and casualty loss reserve and loss expense reserve experience
- 10. List the captive account(s) you will be certifying
- 11. In order to qualify to sign statements of opinion relating to loss and loss adjustment expense reserves for a captive insurance company, an applicant must qualify in one or more of the following areas. Indicate by an X which area(s) you qualify in:
 - A member of the Casualty Actuarial Society and three years of property and casualty loss and loss expense reserve experience.
 - A member in good standing of the American Academy of Actuaries and five years of property and casualty loss and loss expense reserve evaluation experience.
 - A property and casualty loss reserve specialist with at least ten years of experience, three of which shall have included responsibility for:
 - the overall reserve level or a significant portion of the overall reserve level; or
 - qualifying overall reserves or a significant portion of overall reserves; or
 - the prospective evaluation of the reasonableness of the overall reserves or a significant portion of the overall reserves.

I hereby certify that my responses to the above are true and complete, and I have read and understand all of the requirements and provisions of the Captive Insurance Statutes and Regulations and will fully comply therewith.

(NO FEE REQUIREI	D) Signed
	Dated
Subscribed and sworn to before	me this, 20
Signature of No	tary Public
NOTARY SEAL	Notary Public authorized by law of the State of
	to administer oaths.
	My commission expires on
Form CI110	
Updated: June 2020	

APPLICATION FOR AUTHORIZATION TO CERTIFY LOSS RESERVES AND LOSS EXPENSE RESERVES FOR CAPTIVES

To the Commissioner[of Insurance], Department of Insurance, Frankfort, Kentucky, I hereby apply for authorization to certify as to the adequacy of loss reserves and loss expense reserves as required by KRS 304.49.

INDIVIDUALS ONLY MAY APPLY

1	Full Legal Name
2.	Residence Address
3.	(a) Date of Birth (b) Social Security Number
4.	Education and Degree
	High School
	College
	Graduate or Professional – – – – – – – – – – – – – – – – – – –
5.	(List all educational institutions attended and addresses on additional sheet, if necessary. Indicate major concentration and actuarial exams completed if not a Fellow.) Member of Professional Societies or Associations (List)
6.	Present ChiefOccupation
	Position or Title How long?
	Employer's Name
	Address
	How long with this employer? Where?
7.	Other jobs, positions, directorates, or officerships concurrently held at present
8.	Complete Employment Record for Past 20 Years
	Dates Employer and Address Title
9.	Indicate property and casualty loss reserve and loss expense reserve experience

- 10. List the captive account(s) you will be certifying
- 11. In order to qualify to sign statements of opinion relating to loss and loss adjustment expense reserves for a captive insurance company, an applicant must qualify in one or more of the following areas. Indicate by an X which area(s) you qualify in:

A member of the Casualty Actuarial Society and three years of property and casualty loss and loss expense reserve experience.

A member in good standing of the American Academy of Actuaries and five years of property and casualty loss and loss expense reserve evaluation experience.

A property and casualty loss reserve specialist with at least ten years of experience, three of which shall have included responsibility for:

- the overall reserve level or a significant portion of the overall reserve level; or
- qualifying overall reserves or a significant portion of overall reserves; or
- the prospective evaluation of the reasonableness of the overall reserves or a significant portion of the overall reserves.

I hereby certify that my responses to the above are true and complete, and I have read and understand all of the requirements and provisions of the Captive Insurance Statutes and Regulations and will fully comply therewith.

(NO FEE REQUIRED)	Signed
	Dated
Subscribed and sworn to before r	$_{_{_{_{_{_{_{_{_{_{_{_{_{_{_{_{_{_{_{$
Signature of Not	y Public
NOTARY SEAL	otary Public authorized by law of the State of
t	administer oaths.

My commission expires on _____

FormCI110 Updated: June 2020

APPLICATION FOR AUTHORIZATION AS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR CAPTIVE INSURANCE BUSINESS

To the Commissioner [of Insurance], <u>Department of Insurance</u>, [Frankfort,] <u>Commonwealth of</u> Kentucky, I hereby apply for authorization as an independent certified public accountant for the transacting of audits for Captive Insurance Companies.

INDIVIDUALS ONLY MAY APPLY

1.	Full Legal Name							
2.	Residence Address							
3.	(a) Date of Birth (b) Social Security Number							
4.	Education and Degree							
	High School							
	College							
	Graduate or Professional							
5.	List all insurance and/or captive auditing experience for past 15 years including specific dates							
	(attach addition sheets as necessary).							
r	List the contine account(a) you will be auditing							
б.	List the captive account(s) you will be auditing.							
7.	Present Chief Occupation							
	Position or Title How Long?							
	Employer's Name							
	Address							
	How long with this employer?							
8.	Has applicant ever been arrested, or indicted for and/or convicted of any crime or offense other than							
	a traffic violation? If "yes", submit full particulars of each case and disposition thereof.							
9.	I control directly or indirectly, or own legally or beneficially the outstanding stock of the following							
	insurers:							
10.	Do you currently hold or have you held any type of insurance license?							

	(type)	(state)	(expiration date)
11.			
12. 13.	, ,	-	
	details.		
14.	Will you assign only individuals YES NO D	that have a minimum of two	years insurance auditing experience?
			nts and provisions of the Captive
	(NO FEE REQUIRED)	Signed	
Subso	cribed and sworn to before me this	day of	,20
11. Have you ever had a license or privilege refused or revoked by an Insurance Department? If so, give details. 12. Are you currently licensed as a CPA? If so, please indicate state. 13. Has your license as a CPA in this state or any state ever been suspended or revoked? If so, give details. 14. Will you assign only individuals that have a minimum of two years insurance auditing experienced YES 14. Will you assign only individuals that have a minimum of two years insurance auditing experienced YES 15. I hereby certify that I have read and understand all of the requirements and provisions of the Captive Insurance Statutes and Regulations and will fully comply therewith. (NO FEE REQUIRED) Signed			
	NOTARY SEAL	N o t a r y Public authorized	
		My commission expires on	

Form CI120 Updated: June 2020

APPLICATION FOR AUTHORIZATION AS AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR CAPTIVE INSURANCE BUSINESS

To the Commissioner, Department of Insurance, Commonwealth of Kentucky, I hereby apply for authorization as an independent certified public accountant for the transacting of audits for Captive Insurance Companies.

INDIVIDUALS ONLY MAY APPLY

1.	Full Legal Name					
2.	Residence Address					
3.	(a) Date of Birth	(b) Social Security Number				
4.	Education and Degree					
	High School					
	College					
	Graduate or Professional					
5.	List all insurance and/or captive auditing	experience for past 15 years including specific dates				
	(attach addition sheets as necessary).					
6.	List the captive account(s) you will be au	ıditing.				
7.	Present Chief Occupation					
	Position or Title	How Long?				
	Employer's Name					
	Address					
	How long with this employer?					
8.	Has applicant ever been arrested, or indicted for and/or convicted of any crime or offense other than					
	a traffic violation? If "yes", submit full particulars of each case and disposition thereof.					
9.	I control directly or indirectly, or own le	gally or beneficially the outstanding stock of the following				

10. Do you currently hold or have you held any type of insurance license?

	(type)	(state)	(expiration date)				
1.	Have you ever had a license or	privilege refused or revoked by	an Insurance Department? If so,				
	give details.						
2.	Are you currently licensed as a	CPA? If so, please indicate stat	e				
3.	Has your license as a CPA in the	nis state or any state ever been su	uspended or revoked? If so, give				
5.							

Will you assign only individuals that have a minimum of two years insurance auditing experience?
 YES NO

I hereby certify that I have read and understand all of the requirements and provisions of the Captive Insurance Statutes and Regulations and will fully comply therewith.

(NO FEE REQUIRED)	Signed
	Dated
Subscribed and sworn to before me this	day of, 20,
Signature of Notary Pub	blic
NOTARY SEAL	Notary Public authorized by law of the State of
	My commission expires on

Form CI120 Updated: June 2020

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[U]	OCT	- 1	1 2	020	IJ
	A	R	R	5	

Andy Beshear Governor

Ray A. Perry Deputy Secretary Department of Insurance P.O. Box 517 Frankfort, Kentucky 40602-0517 1-800-595-6053 <u>http://insurance.ky.gov</u>

PUBLIC PROTECTION CABINET

October 7th, 2020

Kerry B. Harvey Secretary

Sharon P. Clark Commissioner

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill, Regulation Compiler Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 806 KAR 49:030. Captive insurer reporting requirements.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 49:030**, the Department of Insurance proposes the attached amendment to **806 KAR 49:030**.

Sincerely,

vason

DJ Wasson, Deputy Commissioner Department of Insurance Mayo-Underwood Building, 500 Mero St. Frankfort, KY 40601

Final 10-6-2020

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division

806 KAR 49:030. Captive insurer reporting requirements.

RELATES TO: KRS 304.49-010-304.49-230[304.49]

STATUTORY AUTHORITY: KRS 304.2-110, 304.49-070(2), 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the <u>Commis-</u> <u>sioner</u> [Executive Director] of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.49-140 authorizes the <u>Commissioner</u> [Executive Director] of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS <u>304.49-010 to 304.49-230[304.49]</u>. KRS 304.49-070(2) requires the <u>Commissioner</u> [Executive Director] of Insurance to promulgate administrative regulations concerning the reporting requirements of captive insurers. This administrative regulation establishes financial and reporting requirements for captive insurers.

Section 1. Definition. "Company" means the captive insurer.

Section 2. <u>A consortium[(1) An association]</u> captive insurer, <u>and a pure or industrial in-</u> <u>sured captive insurer</u> engaged in insurance in Kentucky shall annually submit to the <u>commis-</u> <u>sioner</u> [executive director] a report of its financial condition, verified by oath of two (2) of its executive officers <u>on the Annual Statement Convention Blank</u>. The report shall be filed in the same format and content as required by KRS<u>304.2-205 and</u> 304.3-240.

[<u>(2)</u> A pure or industrial insured captive insurer engaged in insurance in Kentucky shall annually submit to the <u>commissioner</u> [executive director] a report of its financial condition, verified by oath of two (2) of its executive officers on the Annual Statement Convention Blank pursuant to KRS 304.2-205.]

Section 3. (1) A captive insurer shall have an annual audit by an independent certified public accountant, authorized by the <u>commissioner</u> [executive director], and shall file an audited financial report with the <u>commissioner</u> [executive director] on or before <u>July</u> [June] 1 for the year ending December 31 immediately preceding.

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it shall be filed with the <u>commissioner</u> [executive director].

(3) The annual audit shall consist of the following:

(a) [(1)] Opinion of independent certified public accountant.

<u>1. [(a)]</u> Financial statements furnished pursuant to this section shall be examined by <u>an</u> independent certified public <u>accountant</u> [accountants] in accordance with generally-accepted auditing standards as determined by the American Institute of Certified Public Accountants.

2. [(b)] The opinion of the independent certified public accountant shall cover all years pre-

3. [(c)] The opinion shall<u>:</u>

<u>a. Be</u> [be] addressed to the company on stationery of the accountant showing the address of issuance; [-]

b. Bear [shall bear] original manual signatures; and

c. Be [shall be] dated.[;]

(b) [(2)] Report of evaluation of internal controls.

<u>1. [(a)]</u> This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including the controls as the system of authorization and approval, and the separation of duties.

<u>2.</u> [(b)] The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the <u>commissioner</u> [executive director].*[f]*[-]

(c) [(3)] Accountant's letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

<u>1. [(a)]</u> That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board; [-]

<u>2.</u> [(b)] The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies; [-]

<u>3.</u> [(c)] That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this administrative regulation with the Kentucky <u>Department</u> [Office] of Insurance; [-]

<u>4.</u> [(d)] That the accountant consents to the requirements of Section 6 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the work papers as defined in Section 6 of this administrative regulation; [-]

5. [(e)] That the accountant is properly licensed by an appropriate state licensing authority; and

<u>6. That the accountant</u> [that he] is a member in good standing in the American Institute of Certified Public Accountants.[;][-]

(d) [(4)] Financial statements. The following statements are required:

1. [(a)] Balance sheet; [-]

2. [(b)] Statement of gain or loss from operations; [-]

3. [(c)] Statement of changes in financial position; [-]

<u>4.</u> [(d)] Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds or unassigned surplus; and [-]

<u>5.</u> [(e)] Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:

<u>a.</u> [4.] A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the <u>commissioner</u> [executive director]; [-]

<u>b.</u> [2-] A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and [-]

<u>c.</u> [3.] A narrative explanation of all material transactions and balances with the company.

(e) [(5)] Certification of loss reserves and loss expense reserves.

<u>1. [(a)]</u> The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

<u>2. [(b)]</u> The individual who certifies as to the adequacy of reserves shall be approved by the commissioner [executive director] and shall be:

a. A [a] Fellow of the Casualty Actuarial Society; [7]

b. A [a] member in good standing of the American Academy of Actuaries; [7] or

<u>c. An</u> [an] individual who has demonstrated his competence in loss reserve evaluation to the commissioner.*[*-*i*][executive director.]

<u>3.</u> [(c)] Certification shall be in the form as the <u>commissioner</u> [executive director] deems appropriate.[; and][-]

(f) [(6)] A filing fee for audited financial statements **<u>shall be</u>** as prescribed by 806 KAR 4:010.

Section 4. A company shall within ninety (90) days report to the <u>commissioner</u> [executive director] in writing, the name and address of the independent certified public accountant retained to conduct the annual audit established in this administrative regulation.

Section 5. A company shall require the certified public accountant to immediately notify, in writing, an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the <u>commissioner</u> [executive director] as required in KRS 304.49-070. The company shall furnish the notification to the <u>commissioner</u> [executive director] within five (5) working days of receipt.

Section 6. Work Papers. (1) Each company shall require the independent certified public accountant to make available for review and inspection by the <u>commissioner</u> [executive director] or his appointed agent the work papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(3) Any review by the <u>commissioner</u> [executive director] shall be considered a part of an examination or investigation and all working papers obtained during the course of an examination or investigation shall be confidential.

(4) The company shall require that the independent certified public accountant provide photocopies of any of the working papers the <u>Department</u> [Office] of Insurance requests and the working papers may be retained by the <u>department</u> [office].

(5) Work papers shall include:

(a) Schedules;

(b) Analyses;

(c) Reconciliations;

(d) Abstracts;

(e) Memoranda;

(f) Narratives;

(g) Flow charts;

(h) Copies of company records; or

(i) Other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

Section 7. (1) If [Whenever] the <u>commissioner</u> [executive director] deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of this state, cash or securities approved by the <u>commissioner</u> [executive director] or, to furnish the <u>commissioner</u> [executive director] a clean irrevocable letter of credit issued by a bank chartered by the State of Kentucky or a member bank of the Federal Reserve System and approved by the <u>commissioner</u> [executive director].

(2) The company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the <u>commissioner</u> [executive director].

(3) If the company discontinues business, the <u>commissioner</u> [executive director] shall return the deposit only after being satisfied that all obligations of the company have been discharged.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

<u>3.</u> [(c)] Certification shall be in the form as the <u>commissioner</u> [executive director] deems appropriate.*[; and]*[-]

(f) [(6)] A filing fee for audited financial statements shall be as prescribed by 806 KAR 4:010.

Section 4. A company shall within ninety (90) days report to the <u>commissioner</u> [executive director] in writing, the name and address of the independent certified public accountant retained to conduct the annual audit established in this administrative regulation.

Section 5. A company shall require the certified public accountant to immediately notify, in writing, an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the <u>commissioner</u> [executive director] as required in KRS 304.49-070. The company shall furnish the notification to the <u>commissioner</u> [executive director] within five (5) working days of receipt.

Section 6. Work Papers. (1) Each company shall require the independent certified public accountant to make available for review and inspection by the <u>commissioner</u> [executive director] or his appointed agent the work papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(3) Any review by the <u>commissioner</u> [executive director] shall be considered a part of an examination or investigation and all working papers obtained during the course of an examination or investigation shall be confidential.

(4) The company shall require that the independent certified public accountant provide photocopies of any of the working papers the <u>Department</u> [Office] of Insurance requests and the working papers may be retained by the <u>department</u> [office].

(5) Work papers shall include:

- (a) Schedules;
- (b) Analyses;
- (c) Reconciliations;
- (d) Abstracts;
- (e) Memoranda;
- (f) Narratives;
- (g) Flow charts;
- (h) Copies of company records; or

(i) Other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

Section 7. (1) If [Whenever] the <u>commissioner</u> [executive director] deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of this state, cash or securities approved by the <u>commissioner</u> [executive director] or, to furnish the <u>commissioner</u> [executive director] a clean irrevocable letter of credit issued by a bank chartered by the State of Kentucky or a member bank of the Federal Reserve System and approved by the <u>commissioner</u> [executive director].

(2) The company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the <u>commissioner</u> [executive director].

(3) If the company discontinues business, the <u>commissioner</u> [executive director] shall return the deposit only after being satisfied that all obligations of the company have been discharged.

CONTACT PERSON: DJ Wasson, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor 275 East Main Street, 5W-A Frankfort, KY 40621 502-564-7042 502-564-7091 www.chfs.ky.gov

Eric C. Friedlander Secretary

October 2, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: Agency amendment for 922 KAR 1:330

Dear Co-Chairs West and Hale:

After discussions with the Children's Alliance, an association of more than 36 private agencies that provide care for Kentucky's most vulnerable and at-risk children, of issues raised by 922 KAR 1:330, the Department for Community Based Services proposes the attached amendment to 922 KAR 1:330.

If you have any questions about this amendment, please contact Laura Begin at (502) 564-3703 or laura.begin@ky.gov.

Sincerely,

Donna little

Donna Little Deputy Executive Director Office of Legislative and Regulatory Affairs



Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Protection and Permanency

922 KAR 1:330. Child protective services.

Page 13 Section 3(15)(a) Line 22

After "genital mutilation", insert "; human trafficking;".



CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor 275 East Main Street, 5W-A Frankfort, KY 40621 502-564-7042 502-564-7091 www.chfs.ky.gov

Eric C. Friedlander Secretary

October 9, 2020

Senator Stephen West, Co-Chair Representative David Hale, Co-Chair c/o Emily Caudill Administrative Regulation Review Subcommittee Legislative Research Commission 029, Capitol Annex Frankfort KY 40601

Re: 902 KAR 100:012. Fee schedule.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 100:012, the Department for Public Health proposes the enclosed substitute to 902 KAR 100:012.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at (502) 564-3970, extension 4069.

Sincerely,

Donna little

Donna Little Deputy Executive Director Office of Legislative and Regulatory Affairs



An Equal Opportunity Employer M/F/D

Kentucky.gov

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840-211.852, 211.990(4), 523.100 STATUTORY AUTHORITY: KRS 194A.050(1), 211.844, 211.848(1) NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.848(1) *requires[authorizes]*[requires] the cabinet to establish a reasonable schedule of fees and charges by administrative regulation. This administrative regulation establishes a schedule of fees and charges for radioactive material licensees; radiation producing <u>machine[machines]</u> registrants; others who may receive, possess, use, transfer, or dispose of sources of radiation; and vendors, service providers, and qualified experts providing services in Kentucky.

Section 1. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule, established in subsections (1) through (4) of this section, of annual fees shall apply to radiation producing machine registrants. <u>A "Registration</u> <u>Application for Radiation Producing Machines", RPS 402, [An application for registration</u> <u>or annual renewal</u>] shall be accompanied by the appropriate fee established in subsections (1) through (4) of this section.

(1) A diagnostic x-ray <u>machine[tube; therapeutic x-ray tube capable of operating up to</u> 150 kVp] shall be <u>\$131.25[125]</u>.

(2) A therapeutic x-ray <u>machine[tube capable of operating at 150 kVp or above]</u> including particle accelerators shall be \$<u>525[500]</u>.

(3) Industrial, dental, and other x-ray <u>machines</u>[tubes] not specified in subsections (1) and (2) of this section shall be <u>\$89.25[eighty-five (85) dollars]</u>.

(4) Shielding evaluation, per room:

(a) Diagnostic facilities shall be \$600; and

(b) Linear accelerator shall be \$1,500.

Section 2. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule, established in subsections (1) through (5) of this section, shall apply to radioactive material licenses. An initial and renewal application, *incorporated by reference in 902 KAR 100:040*, shall be accompanied by the fee established in this section.

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(1) A specific radioactive material license initial and annual fee.

(a) Human use.

1. Nuclear medicine, imaging shall be \$2,205[2,100].

2. Nuclear medicine, radiopharmaceutical therapy shall be \$2,205[2,100].

3. Nuclear medicine, permanent implant shall be \$2,835[2,700].

4. Nuclear medicine, temporary implant shall be \$1,575[1,500].

5. Nuclear medicine, mobile imaging shall be \$2,625[2,500].

6. Teletherapy or Gamma Stereotactic Radiosurgery shall be \$4,200[4,000].

7. Broad scope, medical shall be \$<u>7,875[7,500].</u>

8. Other shall be \$<u>1,312.50[1,250]</u>.

(b) Industrial radiography shall be \$<u>4,200[4,000]</u>.

(c) Wireline service shall be $\frac{2,625}{2,500}$.

(d) Broad scope, academic shall be \$3,675[3,500].

(e) Nuclear laundry shall be \$7,875[7,500].

(f) Irradiator.

1. Self-contained shall be \$<u>1,837.50[1,750].</u>

2. Unshielded during irradiation shall be \$4,410[4,200].

(g) Manufacturing, processing, or distribution.

1. Industrial gauging devices shall be \$<u>4,725[4,500]</u>.

2. In vitro-In vivo kits shall be \$<u>3,780[</u>3,600].

3. Radiopharmaceuticals shall be \$<u>5,460[5,200]</u>.

4. Other shall be \$<u>3,780[3,600]</u>.

(h) Industrial gauging devices.[:]

1. Fixed shall be \$<u>1,155[</u>1,100].[; and]

2. Portable shall be \$<u>1,365</u> [1,300].

(i) In vitro, academic, environmental, or clinical laboratory shall be \$<u>1,312.50</u>[1,250].

(j) Veterinary use shall be \$<u>2,205[2,100]</u>.

(k) Services, such as leak testing shall be $\frac{1,312.50[1,200]}{1,200}$.

(I) An application for review of a [:

1.] new sealed source or device [;] or

[2-] custom device shall be \$4,600 plus the applicable fee in paragraphs (a) through (k) of this subsection.

(m) An amendment for review of a sealed source or device shall be \$1,575[1,500].

(n) A byproduct, source, or special nuclear material license or other license-authorizing decommissioning, decontamination, reclamation, or site restoration shall be \$7,875[7,500].

(o) *The fee shall be \$10,500 for* a license specifically authorizing:

<u>1.</u> The receipt of prepackaged byproduct, source material, or special nuclear material from other persons; and

<u>2</u>. [The license authorizes] The disposal of the material by transfer to a person authorized to receive or dispose of the material [, and the fee shall be \$10,500] [10,000].

(p) A license specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from a person for the purpose of storage, treatment, and packaging for transfer to a person authorized to receive or dispose of radioactive material shall be \$26,250[25,000].

(2) A general radioactive material license initial and annual fee.

(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 shall be \$1,312.50[1,250].

(b) Measuring, gauging, or a controlling device except emergency exit signs shall be 300 per device not to exceed 1,200 per use location.

(3) An application to amend an existing specific license shall be $\frac{210}{200}$.

(4) An application for initial reciprocal recognition of an out-of-state license as established by 902 KAR 100:065. The fee shall be equal to the applicable fee for an in-state licensee.

(5) A licensee required to pay an annual fee pursuant to this administrative regulation may qualify as a small entity pursuant to form RPS-526, [Certification of] Small Entity <u>Certification[Status]</u>. If a licensee qualifies as a small entity, <u>based on Kentucky</u> <u>Department of Revenue review and approval</u>, and completes and submits form RPS-526 with its annual fee payment each year, the licensee shall pay the reduced annual fee.

Section 3. Inspection Fee. (1) The cost of a routine interval inspection shall be covered in the annual licensing renewal fee.

(2) One (1) or more additional inspections shall be conducted to ensure ongoing public health and safety if any of the conditions established in paragraphs (a) through (d) exist:

(a) Willful neglect or careless disregard that has, or could lead to, a threat to public health and safety;

(b) Failure to take appropriate and timely action to correct documented violations of statutes, regulations, or conditions of the license or permit;

(c) A substantiated violation that indicates a lack of management oversight or that the radiation safety officer is not adequately performing duties; or

(d) Repeated violations from the previous inspection.

(3) The fee for each additional inspection shall be $\frac{525}{500}$.

Section 4. Shipment of Radioactive Material and Waste. The shipper or carrier shall provide full cost reimbursement within thirty (30) days of receipt of the invoice, for all escorts of shipments of radioactive material, spent nuclear fuel, transuranic waste, radioactive waste, and other radioactive material or waste through Kentucky.

Section 5. Site Investigations, Remediation Projects, and Scoping Surveys. The licensee, remediation contractor, or other responsible party shall provide full cost reimbursement for review and oversight of site investigations, remediation projects, and scoping surveys to include project evaluation and planning, sample collection, analysis, and independent validation as applicable.

Section 6. Qualified Experts, Vendors and Service Providers. The schedule established in subsections (1) and (2) of this section shall apply to any entity or individual seeking or maintaining a designation as a qualified expert, vendor, or service provider as defined in 902 KAR 100:010.

(1) Qualified experts.

(a) Initial application shall be \$<u>105[100]</u>.

(b) Annual fee shall be <u>\$52.50[fifty (50) dollars]</u>.

(2) Vendors and service providers shall be \$315[300].

Section 7. General Requirements. (1) A general radioactive material license shall expire on July 31 following the date of issuance.

(2) A radiation producing machine registration certificate shall expire on the last day of the month, one (1) year after the date of issuance.

(3) A general radioactive material license fee shall be paid on or before July 31.

(4) A specific radioactive material license shall be renewed annually based on the expiration date stated in the license.

(5) A renewal fee shall be paid within forty-five (45) days of the bill date. A payment postmarked more than forty-five (45) days of the bill date shall be subject to a \$100 late payment penalty per license, device, or x-ray <u>machine[tube]</u> in addition to the renewal fee.

(6) Payment of a fee or other charge shall be submitted to the Radiation Health Branch, Cabinet for Health and Family Services, 275 East Main Street, Mailstop HS1C A, Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer or paid online at <u>https://prd.webapps.chfs.ky.gov/rad epay/</u> [https://prd.chfs.ky.gov/rad_epay/].

(7) If a check issued for payment of the fee established in this administrative regulation is returned to the state treasurer due to insufficient funds, the payor shall resubmit payment by money order or cashier's check.

(8) A registration and licensing application fee shall be nonrefundable.

(9) Failure to submit an applicable fee established in this administrative regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

Section 8. Incorporation by Reference. (1) *The following material is incorporated by reference:*

(a)[(1)] "RPS-526, [Certification of] Small Entity Certification[Status,]" edition 6/2020; and

(b) "Registration Application for Radiation Producing Machines," RPS 402, 4/2016[12/2014][, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

INSTRUCTIONS

Kentucky Cabinet for Health and Family Services Radiation Control Regulations require the owner of radiation producing machines to register such items with the Kentucky Cabinet for Health Services within ten (10) days following the acquisition of the registrable item(s).

Facility Name

The common name used daily. In most cases, this will be the same as item 2, e.g. John J. Jones, DMD or Centerville Hospital, Inc. The facility name may be Family Dental Clinic or Radiology Associates while item 2 will be a corporate (PSC) or individual's name. The best guide is the name used when answering the telephone.

<u>Owner</u>

For the purposes of this regulation, the name of the owner must be the person, lessee, or bailee having legal title to, or legal possession of the registrable item. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this Commonwealth, any other state or political subdivision thereof, and any legal successor, representative, agent, or agency of the foregoing, other than Federal Government agencies.

Address

The address shall mean the physical location where the registrable item(s) will be used and/or stored.

Radiation Safety Officer

The owner or person in custody of the registrable item shall perform or provide for the services of a Radiation Safety Officer and with his/her advice shall establish operating rules and procedures which will provide reasonable assurances that the provisions of the Kentucky Radiation Regulations are being carried out. No person shall assume or be designated a Radiation Safety Officer unless he/she is qualified by training and experience to assume the responsibilities of informing himself/herself of all the hazards and precautions involved in the activity for which he/she is designated as Radiation Safety Officer.

Contact Person

Please designate an individual who can be contacted to schedule inspections and answer related questions. Also indicate telephone number.

FORWARD THE COMPLETED REGISTRATION APPLICATION TO:

CABINET FOR HEALTH AND FAMILY SERVICES DEPARTMENT FOR PUBLIC HEALTH RADIATION HEALTH BRANCH 275 EAST MAIN STREET, HS1C-A FRANKFORT, KY 40621 TELEPHONE NO. (502) 564-3700

Registration Does Not Imply Approval Or Disapproval And Is Not A License

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