

EDUCATION AND LABOR CABINET
Kentucky Workers' Compensation Funding Commission
(Amendment)

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1223, 342.1231, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-950

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWCF) to promulgate administrative regulations. KRS 342.1223(2)(g) requires the KWCF to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation establishes the proper calculation of assessment, establishes the procedures and forms to be used to report and remit special fund assessments, identifies audit expenses, establishes procedures for collection of assessments and expenses, and defines penalty and interest procedures.

Section 1. Definitions.

(1) "Actual physical receipt by the KWCF" means:

(a) Physical delivery to the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCF account; or

2. Prior to January 1, 2020, physical delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3) "Board" means, unless otherwise specified, the Board of Directors of the Kentucky Workers' Compensation Funding Commission.

(4) "Consideration" means premium, premium charges or premium modifications set forth on the face of a workers' compensation insurance policy, all of which are subject to the Special Fund assessment calculation.

~~(5) ~~(4)~~ "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)~~
~~(b).1~~

~~(6) ~~(5)~~ "Insurance carrier" is defined by KRS 342.0011(22).~~

~~(7) ~~(6)~~ "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.~~

~~(8) ~~(7)~~ "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).~~

~~(9) ~~(8)~~ "KWCF" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.~~

~~(10) ~~(9)~~ "Premium", for each employer carrying one's own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).~~

~~(11) ~~(10)~~ "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).~~

~~(12) ~~(11)~~ "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).~~

~~(13) ~~(12)~~ "Premiums received":~~

~~(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;~~

~~(b) For insurance companies, is defined by KRS 342.0011(25)(a).~~

(14) ~~((13))~~ "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(15) ~~((14))~~ "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(16) ~~((15))~~ "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(17) ~~((16))~~ "SIC code" is defined by KRS 342.0011(29) and is now known as the NAICS code.

(18) ~~((17))~~ "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)

(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)

(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with

KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

- (f)
1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.
 2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9)

(a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)

(a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, the assessment shall be due and payable electronically in accordance with KRS 342.122 (2)(b).

(12)

(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or

collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(9) and (10).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231(9) and (10), the excess shall be remitted to the KWCFRC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer shall be notified if proof of refund to insured has not been timely provided or escheated to the KWCFRC per KRS 342.1231.

(14) When proof of refund to insured is received late or refund to insured is not escheated to the KWCFRC timely. [~~When documentation is received by the KWCFRC providing refund to insured information~~]:

(a) Penalty and interest shall be calculated; and

(b) The assessment payer shall be notified of the additional amount due.

Section 3. Special Fund Assessment Base.

(1) The Special Fund assessment shall be calculated in accordance with KRS 342.0011(25)(a) - (e).

(2) All consideration shall be included in the Special Fund assessment base as outlined on the face of the insurance policy or other evidence of coverage.

(3) The assessment may be collected by the insurance carrier from the insured. The carrier is responsible for proper assessment calculation and remittance.

(4) Each statement from an insurance carrier presented to an insured reflecting all premium elements and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments.

Section 4. Deductible Program Adjustment.

(1) The Special Fund assessment calculation shall be conducted in accordance with the deductible program adjustment. KRS 32.0011(25)(e).

(2) All consideration of the calculated cost of coverage shall be included in the Special Fund assessment base, on a gross basis.

(3) All consideration includes but is not limited to the following elements:

(a) Expense Constant

(b) Terrorism

(c) Catastrophe (other than Certified Acts of Terrorism)

(d) Audit Non-compliance Charge

(e) All other premium elements or other company-specific modifications as identified on the face of the policy.

(4) The Special Fund assessment shall be determined independent of the regulations of any other agency or agencies, unless otherwise indicated.

(5) A visual guide on the calculation for assessment purposes is included in the Assessment Calculation Guide, or Form KWCFRC-08. This form is not exhaustive but is intended to provide calculation guidance.

(a) This guidance mirrors the Kentucky Workers Compensation Premium Algorithm framework for premium charges and credits.

(b) Standard Premium is the premium before premium discount is applied, as identified by the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual for Kentucky, effective date November 1, 2021.

(c) Premium Discount is any discount clearly identified on the face of the policy to reduce the premium. The premium discount can also be used to reduce the Special Fund assessment but shall not be modified for assessment calculation purposes.

Section 5. [~~Section 3.~~] Penalty and Interest; Late filing of Quarterly Premium Reports.

(1) The KWCFC Board ~~for its designee~~ may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) ~~A~~ A ~~The~~ designee of the KWCFC Board may waive part or all of the penalty, if under \$5,000, in the absence of the KWCFC Board of Directors.

(b) Reasonable cause guidelines for the designee's consideration of waiver of audit penalty can include, but are not limited to:

1. Whether the audit is the first such audit for the payer and covered an extended period of time;

2. Whether the penalty is reasonable in comparison to assessment owed;

3. Whether the payer provided timely and accurate information when requested;

4. Whether the payer impeded the audit process or delayed access to records that resulted in an unnecessary delay for completion of the audit;

5. Whether there have been prior waivers within the previous five (5) year period;

6. Whether payer's grounds for waiver are identical or similar to prior waiver requests;

7. Whether payer knowingly engaged in erroneous reporting;

8. Whether the payer should have known its reporting was in error; or

9. Whether there is any other unique issue or circumstance that reasonably warrants a waiver.

(c) Reasonable cause for designee's waiver of penalties on late filing of Quarterly Premium Reports include, but are not limited to the following:

1. Whether payer incurred an extraordinary event;

2. Whether KWCFC incurred an extraordinary event;

3. Whether good faith efforts were made to file in a timely fashion;

4. Whether there is a history of timely filing;

5. Whether the penalty is reasonable in comparison to assessment owed;

6. Whether there have been prior waivers within the previous five (5) year period; or

7. Whether there are any other reasonable causes to justify waiver.

~~(d) (b)~~ If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

~~(e) (c)~~ If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Office of Claims and Appeals/Board of Tax Appeals~~[Kentucky Claims Commission]~~ within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer shall receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest shall be calculated; and

(b) Notification shall be sent to the assessment payer of the additional amount due.

(3) At the time of the audit, the Funding Commission shall include a review of any penalties and interest submitted by the payer and refund amounts paid if there was an overpayment of assessment during any quarter of the audit review period.

Section 6. [~~Section 4.~~] Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)

- (a) Assessment payers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.
- (b) The assessment payer shall submit with the claim all documents required to support the claim.
- (3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 7. [~~Section 5.~~] Audits; General reimbursement of expenses.

- (1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Labor Cabinet or the Department of Revenue of all entities subject to the special fund assessments established by KRS 342.122.
- (2) Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8).
- (3) All necessary and reasonable expenses incurred by the KWCFE in conducting an audit shall be reimbursed to the KWCFE by the assessment payer audited.
- (4) Expenses to be reimbursed shall include:
 - (a) Travel Expenses:
 - 1. Meals;
 - 2. Lodging;
 - 3. Transportation;
 - 4. Parking; and
 - 5. Incidentals; and
 - (b) Labor expenses:
 - 1. Preparation for the audit;
 - 2. Travel;
 - 3. Finalizing of the audit; and
 - 4. Preparation of written reports and correspondence.
- (5) KWCFE employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.
- (6) Except for air transportation, meals, and mileage, expenses shall be reimbursed at actual cost to employees.
- (7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.
- (8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.
- (9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).
- (10) KWCFE employees conducting KWCFE official business unrelated to audits shall follow the same reimbursement guidelines as set forth in this section.

Section 8. [~~Section 6.~~] Audits; Insurance Companies.

- (1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, on Form KWCFE-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies.
- (2) Insurance companies shall make available to the Funding Commission's auditors the following items:
 - (a) Copies of quarterly premiums reports for audit period with backup documentation;
 - (b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance, incorporated by reference in 806 KAR 52:010;
 - (c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;
 2. Kentucky policies containing written premium written off as a bad debt;
 3. Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;
 4. Sample policies requested by the Funding Commission;
 5. Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;
 6. Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and
 7. Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and
- (d) All other information necessary to support reported premiums and special fund assessments.
- (3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:
- (a) A schedule identifying the assessment rates applied to these policies;
 - (b) The dates upon which these rates were first entered into the policy or premium management system;
 - (c) The dates upon which these rates became active in the policy or premium management system; and
 - (d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections information.
- (4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:
- (a) Detailed examination of records by policy;
 - (b) Use of audit sampling techniques;
 - (c) Verification and reconciliation to NAIC reports; and
 - (d) Other procedures necessary because of the unique nature of the entity being audited.
- (5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:
- (a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or
 - (b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9. [~~Section 7.~~] Audits; Group Self-insurers.

- (1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCF-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer.
- (2) Group self-insurers shall make available to the Funding Commission's auditors the following items:
 - (a) Copies of quarterly premiums reports for each audit period with backup documentation;

- (b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;
 - (c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;
 - (d) A complete list of sample policies or agreements requested by the Funding Commission; and
 - (e) All other documents necessary to support reported premiums and assessments.
- (3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:
- (a) A schedule identifying the assessment rates applied to these self-insurance years;
 - (b) The dates upon which these rates were first entered into the policy or premium management system; and
 - (c) The dates upon which these rates became active in the policy or premium management system.
- (4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:
- (a) Detailed examination of records by policy or members' account;
 - (b) Detailed examination of members' agreements;
 - (c) Use of audit sampling techniques;
 - (d) Verification and reconciliation to Department of Workers' Claims' reports; and
 - (e) Other procedures necessary because of the unique nature of the entity being audited.
- (5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:
- (a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or
 - (b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 10. [~~Section 8.~~] Audits; Individual Self-insurers.

- (1) Upon request, self-insurers shall provide the Funding Commission with the following:
- (a) Loss experience reports;
 - (b) Payroll records;
 - (c) All back up documentation request for each audit period; and
 - (d) Other information necessary because of the unique nature of the entity being audited.
- (2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:
- (a) Detailed examination of all required records;
 - (b) Use of audit sampling techniques; and
 - (c) Other procedures necessary because of the unique nature of the entity being audited.
- (3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:
- (a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or
 - (b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 11. [~~Section 9.~~] Audits; Invoice, Protest and Resolution.

- (1) The Funding Commission shall send to the assessment payer a notice of any assessment assessed by the Funding Commission.
- (2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.
- (3)
 - (a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.
 - (b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.
 - (c)
 1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.
 2. The refusal of an extension may be reviewed in the same manner as a protested assessment.
- (4) After a timely protest has been filed, the assessment payer may request a conference with the Funding Commission staff.
 - (a) The request shall be granted in writing stating the date and time set for the conference.
 - (b) The assessment payer may appear in person or by representative.
 - (c) Further conferences may be held by mutual agreement.
- (5) For those issues not resolved during the conferences described in subsection (4) of this section, the assessment payer may request a conference with the Funding Commission's Board of Directors.
 - (a) The request shall be granted in writing stating the date and time set for the conference.
 - (b) The assessment payer may appear in person or by representative.
- (6) After considering the assessment payer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. The ruling shall state:
 - (a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;
 - (b) The Funding Commission's position; and
 - (c) The procedure for appeal to the Kentucky Claims Commission in accordance with KRS 49.220 and 802 KAR 1:010.
- (7)
 - (a) The assessment payer may request in writing a final ruling any time after filing a timely protest and supporting statement.
 - (b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission.
- (8) After a final ruling has been issued, the assessment payer may appeal to the Kentucky Claims Commission pursuant to the provisions of KRS 49.220.

Section 12. [~~Section 10.~~] Reports.

- (1) Insurance companies, group self-insurers, and individual self-insurers shall file an electronic~~ly~~ Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.
 - (a) The quarterly premiums report and assessment due and payable shall be received by the KWCFB no later than thirty (30) days following the end of the calendar quarter.
 - (b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020

- actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.
- (2) Insurance companies shall file Form KWCFC-01, Quarterly Premiums Report.
 - (3) Employers carrying their own risk shall file Form KWCFC-02, Quarterly Premiums Report.
 - (4) Group self-insurers shall file Form KWCFC-03, Quarterly Premiums Report.
 - ~~[(5)] [Employers engaged in severance or processing of coal shall file KWCFC-08, Severed Coal Quarterly Assessment Report.]~~
 - ~~(5) [(6)]~~
 - (a) Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than June~~[April]~~ 30th following the end of the calendar year.
 - (b) These reports shall be submitted to the KWCFC electronically and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies; Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer; or Form KWCFC-07, Annual Audit and Collections Report, Individual Self Insurer, as applicable.
 - ~~(6) [(7)]~~ An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement) to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park, Frankfort, Kentucky 40601 no later than June~~[April]~~ 30th following the end of the calendar year.

Section 13. ~~[Section 11.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "KWCFC-01, Quarterly Premiums Report", 02/2023~~[08/2018]~~;
 - (b) "KWCFC-02, Quarterly Premiums Report", 02/2023~~[08/2018]~~;
 - (c) "KWCFC-03, Quarterly Premiums Report", 02/2023~~[08/2018]~~;
 - (d) "KWCFC-04, Nonwriter Statement", 02/2023~~[08/2018]~~;
 - (e) "KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies", 02/2023~~[08/2018]~~;
 - (f) "KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer", 02/2023~~[08/2018]~~;
 - (g) "KWCFC-07, Annual Audit and Collections Report, Individual Self-Insurer", 02/2023~~[08/2018]~~;
 - (h) "KWCFC-08, Assessment Calculation Guide~~[Severed Coal Quarterly Assessment Report]~~", 02/2023~~[08/2018]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers' Compensation Funding Commission Web site <http://www.kwfcf.ky.gov>.

This is to certify the Executive Director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

LISA GILREATH-KING, Executive Director

JUDY LONG, Chair, Board of Directors

APPROVED BY AGENCY: February 13, 2023

FILED WITH LRC: February 13, 2023 at 9:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2023, at 10:00 a.m. (EDT) at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Marcus A. Roland, General Counsel, Kentucky Workers' Compensation Funding Commission, 421 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1721, fax (502) 573-4923, email marcus.roland@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marcus A. Roland

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation defines and clarifies the statutory requirements of the Kentucky Workers' Compensation Funding Commission with regard to the calculation of premium assessment.

(b) The necessity of this administrative regulation:

Pursuant to KRS 342.1223(3)(f), KWCFE has the power to promulgate administrative regulations. The funding commission has added language to address and clarify the commission's methodology pertaining to premium assessment calculations.

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

Each amended and added section provides additional clarification to assessment payers relative to calculation of premium assessments per KRS 342.0011(25)(a)-(e), KRS 342.122 and KRS 342.1223.

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

It is imperative to have a clear explanation of the commission's methodology relative to the calculation of premium assessments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments will clarify and expand upon the commission's calculation methodology relative to premium assessments.

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

With this review the Funding Commission has added a new section relating to methodology for premium assessment calculations and updated related forms.

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

Each section provides information to assessment payers to include the proper methodology for calculation of premium assessments under KRS 342.0011(25)(a)-(e), KRS 342.122 and KRS 342.1223, et seq.

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

This amendment will expand transparency and clarify the calculation methodology for determining premium assessments.

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

This administrative regulation will impact all insurers, group self-insurers and self-insured employers, who provide workers' compensation benefits or self-insure for purposes of workers' compensation in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No new actions are required of assessment payers, who will now more easily understand the calculation methodology for determining premium assessments.

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

No new costs are being applied to assessment payers.

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

Assessment payers will benefit from greater clarity and transparency regarding the calculation of premium assessments.

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

(a) Initially:

No initial costs

(b) On a continuing basis:

No continuing costs

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

No funding will be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied?

Tiering is not applied.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Uninsured Employers Fund, the Education and Labor Cabinet and various programs of the Education and Labor Cabinet (including the Department of Workers' Claims) and KWCFE.

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

KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

As this regulation merely clarifies the premium assessment calculation methodology, no particular revenue will be generated, other than that already generated through application of KRS Chapter 342 and the previous version of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

As this regulation merely clarifies the premium assessment calculation methodology, no particular revenue will be generated, other than that already generated through application of KRS Chapter 342 and the previous version of this regulation.

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

There are no new administrative costs.

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

There are no new administrative costs. As proposed, 803 KAR 30:010E does not establish a program which requires costs to administer.

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

Revenues (+/-):n/a

Expenditures (+/-):n/a

Other Explanation:

n/a

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There will be no cost savings generated as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There will be no cost savings generated as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(c) How much will it cost the regulated entities for the first year?

There will be no costs as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

(d) How much will it cost the regulated entities for subsequent years?

There will be no costs as this regulation merely corrects any confusion or misunderstanding relative to the calculation of premium assessments.

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

Cost Savings (+/-):See above.

Expenditures (+/-):See above.

Other Explanation:

See above.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The amendment to this administrative regulation will not have a major economic impact.