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Kentucky Department of Agriculture



May 7, 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: 302 KAR 22:150. Cervids

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 22:150 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 22:150.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



SUGGESTED SUBSTITUTE
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DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian

302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730 – 150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. 55, 81.4, 161.1 – 161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, KRS 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of ***privately owned***~~***privately-owned***~~ and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

(1) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA in accordance with the provisions of 9 C.F.R. 161.1 to 161.4.

(2) "Adjacent herd" means:

(a) A herd of cervids occupying premises that share a border or boundary line with premises occupied by a ***chronic wasting disease*** positive herd, ***including a heard***~~***to include herds***~~ separated by ***a road or stream; and***~~***roads or streams; or***~~

(b) A herd of cervids occupying premises that were previously occupied by a ***chronic wasting disease*** positive herd within the past five (5) years.

(3) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three ~~***3***~~~~***4***~~ being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the Administrator of the Cervid and Plant Health Inspection Service of the USDA.

(6) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(7) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(8) "Certified Chronic Wasting Disease (CWD) Herd" ***or "herd"*** means a ***group[herd]*** of cervids ***under common ownership or supervision*** that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian ***and that is on:***

(a) One (1) or more parts of any single permitted premises (lot, far, or ranch); or
(b) Two (2) or more premises that are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(9) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(10) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs:

- (a) The Chronic Wasting Disease HCP; and
- (b) The Chronic Wasting Disease HMP.

(11) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

(a) Developed by OSV in collaboration with the herd owner to address compliance issues within a HCP or HMP herd; and

(b) ***That establishes[Which sets out]*** the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CDD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(12) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(13) "Chronic Wasting Disease Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "Chronic Wasting Disease Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "Farmed cervid":

(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method;
and

(b) Does not mean [~~Farmed cervid shall exclude~~] any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a HCP or HMP.

(16) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(17) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(18) [~~"Herd" means a group of cervids that are:~~

~~(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single permitted premises (lot, farm, or ranch); or~~

~~(b) Under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.~~

~~(19)]~~ "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

~~(19)[(20)]~~ "Interstate movement" means movement from another state into Kentucky.

~~(20)[(21)]~~ "Intrastate movement" means movement solely within the boundaries of Kentucky.

~~(21)[(22)]~~ "Licensed and accredited veterinarian" means a veterinarian:

(a) Approved by the Deputy Administrator of USDA APHIS VS and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal cervid disease control and eradication programs; and

(b) Who is licensed to practice veterinary medicine in Kentucky under KRS Chapter 321.

~~(22)[(23)]~~ "Move" means to carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

~~(23)[(24)]~~ "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

~~(24)[(25)]~~ "Official identification" means a device or means of cervid identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual cervids.

~~(25)[(26)]~~ "Official Chronic Wasting Disease test" ***or "CWD test"*** means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

~~(26)[(27)]~~ "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured ***[shall]*** bear an official eartag shield. Beginning March 11,

2015, all official eartags applied to animals **[shall]** bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag **[will]** depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag **is[shall be]** tamper-resistant and **has[have]** a high retention rate in the animal.

(27)[(28)] "Official identification number" or "OID" means a nationally unique number that is permanently associated with a cervid **and complies with[that adheres to one (1) of the following systems]:**

(a)[(1)] National Uniform Eartagging System (NUES);

(b)[(2)] Animal Identification Number (AIN); **or**

(c)[(3)] Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(28)[(29)] "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture **as established** in KRS 246.030(4).

(29)[(30)] "Owner" is defined by KRS 257.010 **~~(14)[(11)] and means any person owning or leasing from another, or having in charge any cervid.~~**

(30)[(31)] "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(31)[(32)] "POL" or "Premises of Origin Location" means the land, farm, or specific parts of a farm where the cervid are physically located.

(32)[(33)] "Positive" means a cervid **[that]** has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(33)[(34)] "Premises identification number" or "PIN" means a nationally unique number assigned by a State, Tribal, **or[and/or]** federal animal health authority to a premises that is, in the judgment of the State, Tribal, **or[and/or]** federal animal health authority, a geographically distinct location from other premises. The PIN **can[may]** be used:

(a) In conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; **and**

(b) ~~It may be used~~ As a component of a **or[group/lot]** identification number (GIN).

(34)[(35)] "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(35)[(36)] "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that **complies with[meets]** the applicable International Standards Organization (ISO) standards.

(36)[(37)] "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(37)[(38)] "USDA" means the United States Department of Agriculture.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program. All ~~farmed~~~~[farm]~~ cervids ~~shall~~~~[are required to]~~ follow the Chronic Wasting Disease Program Standards from the USDA.

Section 3. Chronic Wasting Disease Herd Certification Program (HCP).

(1) A HCP permit shall be required to participate in the HCP program. A HCP permit ~~shall be~~~~[is]~~ valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit~~[the following]~~:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. A fee of \$150.

(b) The OSV shall grant a HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees ~~shall~~~~[will]~~ be returned to the applicant without approval. The OSV shall not approve any application ~~if~~~~[where]~~ the applicant owes fees or fines to the KDA.

(c) A HCP participant whose permit expires prior to renewal shall be subject to the penalties ~~established~~~~[set forth]~~ in Section ~~16~~~~[14]~~ of this administrative regulation.

(2) Annual HCP permit renewal required. Renewal applicants shall:

(a) Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year;~~[-]~~

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, ~~\$250 for herds between fifty-one (51) and 100,~~ or \$450 for herds containing more than ~~101~~~~[fifty (50)]~~ cervids, for applications submitted prior to December 1, preceding the applicable permit year;~~[-]~~

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, ~~\$275 for herds between fifty-one (51) and 100,~~ or \$500 for herds containing more than ~~101~~~~[fifty (50)]~~ cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;~~[-]~~

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, ~~\$375 for herds between fifty-one (51) and 100,~~ or \$600 for herds containing more than ~~101~~~~[fifty (50)]~~ cervids, for applications submitted late, January 1 and after of the applicable permit year; ~~and~~~~[:-]~~

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section~~[11(3)]~~ if not already on file with the OSV.

(3) HCP Requirements.

(a) Herds enrolled in this program shall **comply with**~~[meet]~~ the requirements **established**~~[set forth]~~ in this section and ~~[the requirements set forth in]~~ 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines **established** in this **administrative** regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records **required by this administrative regulation** to the OSV for the cervids~~[that are required in this administrative regulation]~~; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid ~~[six (6) months of age or older]~~ shall have at least two (2) forms of cervid identification **prior to or at the time of the annual herd inventory**, one (1) of which shall be an official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. **a.** An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, ~~[or]~~ March, **or April**.

b. Beginning **May**~~[April]~~ 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical inventory is completed for those herds not completing a physical inventory January, February, ~~[or]~~ March, **or April**.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP or from a herd in a state with a USDA-approved CWD Certification Program where chronic wasting disease has never been confirmed.

2. **[No]** New cervids shall **not** be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;**[.]**

b. For cervids taken by harvest, a report shall be submitted within seven (7) days;**[.]**

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days; **and[.]**

d. A confirmation **that[~~of no~~]** population changes have **not** occurred in the preceding calendar month if **there were** no events that required reporting ***as established in clauses a. through c. of this subparagraph[in a, b, or c above]***. This report shall be submitted to the OSV by the close of business on the first of each month for the activities of the previous calendar month.

2. The report shall include all applicable identification numbers, including the visual tag**[.]** and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected for Chronic Wasting Disease testing except **if[where]** exempted by 9 C.F.R. 55.23.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements **established[set forth]** in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements **established[set forth]** in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

- a. The OID, species, age, and sex of the cervid;
 - b. The name and address of the person from whom the cervid was purchased;
 - c. The address of the herd from which the cervid was purchased;
 - d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;
 - e. Date the purchased addition entered the herd; and
 - f. Approximate date of birth, if a natural addition;
3. A record of each cervid leaving the herd, including:
- a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; **and**
 - b. A ***cervid's death***~~***cervid deaths***~~ or harvest on the premises, including~~***;***~~ the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;
 - 4. A record of all individual CWD tests that were conducted on cervids in the herd;
 - 5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and
 - 6. All individual identification numbers (from, ***for example,*** tags ***and***~~***;***~~ electronic implants~~***,- etc.***~~) associated with each cervid.
- (j) Herd status levels.
- 1. ***Upon***~~***When***~~ a herd ***being***~~***is***~~ first enrolled in the Herd Certification Program, ***the herd***~~***it***~~ shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.
 - 2. If a herd continues to ***comply with***~~***meet***~~ the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.
 - 3. One (1) year after the date ***when*** a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as ***the herd***~~***it***~~ remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.
 - 4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements ***established***~~***set forth***~~ in this administrative regulation.
 - 5. Renewal of a Certified Cervid Herd. A herd ***shall be***~~***is***~~ certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date ***shall be [is]*** the ***latter date of [date when the latter of these two events occurred]***:

a. The physical inventory ***being [was]*** completed in accordance with ***paragraph (c) of this subsection [Section 11(3)(c) of this administrative regulation]***; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within ***seven (7) [thirty (30)]*** days of ***death and*** collection. ***If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.***

(l) USDA Chronic Wasting Disease Program Standards deficiencies may, ***based on the nature of the deficiencies,*** require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties.

Section 4. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) A HMP permit shall be required to participate in the HMP program. A HMP permit ***shall be [is]*** valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit ***[the following]***:

1. A complete ***Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or*** Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees ***shall [will]*** be returned to the applicant without approval. The OSV shall not approve any application ***if [where]*** the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section ***16 [14]*** of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed ***Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or*** Herd Monitoring Program (HMP) Application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in **subsection (4)(c) of this section**~~[11(3)]~~ if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) **A[No]** cervid shall **not** leave an HMP-enrolled herd alive.

(b) **A[No]** cervid shall **not** be moved to another HMP-enrolled herd.

(c) **A[No]** HMP herd, **or[nor]** any cervid within a HMP-enrolled herd shall **not[ever]** be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall **comply with[meet]** the requirements **established[provided]** in this section and the requirements in 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll **the[his]** herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines **established** in this **administrative** regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required:~~[-]~~

b. **Submit[Provide-any]** records to the OSV for the cervids that are required in this administrative regulation;~~and[-]~~

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid **twelve (12)[six-(6)]** months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be an official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

3. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a physical inventory to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state with an USDA-approved CWD Certification Program ***in which[where]*** CWD has never been confirmed. If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding.

(e) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag;~~and~~ the date of the death, disappearance, escape;~~and~~ and the dates ***[when]*** the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herds requirements ***established[set forth]*** in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements ***established[set forth]*** in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The OID, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including~~and~~ a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age **and[;]** sex;

d.**[and]** State-federal official individual cervid identification, date, and laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, **for example,** tags **and[;]** electronic implants**[, etc.]**) associated with each cervid.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection.

Section 5. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures **established[set forth]** in 9 C.F.R. 55.8.

(b) A diagnosis of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed **as established in paragraphs (a) and (b) of this section.[as follows:]**

(a) A premises **shall not[may]** be removed from quarantine **until** after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 6. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain ~~the following information~~:

(a) Identification of each animal recorded on the certificate;

(b) An official identification (OID) for each cervid;

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner or agent shipping the cervid;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields ~~are~~ crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV; ~~and~~

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA-accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise delivered to the OSV within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in **paragraph (a) of this** subsection ~~[(1)]~~ by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit ~~submission requirements~~ may be submitted via an importable format as allowed by USAHA AHSIS Subcommittee on Data Standards' "standard XML schema document."

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) **A[No]** person shall **not** issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA-accredited veterinarian.

Section 7. Movement Permit.

(1) **A[No]** person shall **not** move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the **Web site at[website]** www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the **Web site[website]**.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by **a[one (1) of the following]**:

(a) **[A]**Licensed and USDA-accredited veterinarian;

(b) **Designee[A representative]** of the State Veterinarian; or

(c) **Designee[A representative]** of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 8. Official Identification and Other Required Identification.

(1) Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics **that[which]** are uniquely associated with an individual cervid and **that[which]** constitute **[the following]**:

(a) Official USDA NUES; **and**

(b) An RFID if **[all the following apply]**:

1. The RFID uniquely identifies the animal **[i]** and is USDA approved;

2. The RFID is attached to or implanted in the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) RFID is placed on an animal.

(2) Use of more than one (1) official eartag.

(a) More than one (1) official eartag **may be used[is expressly permitted]** by the OSV for tagging events required by subsection (6) of this section.

(b) The person applying the additional official eartag shall record the following information about the event and maintain the record for **at least** five (5) years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the **one or ones[one(s)]** already attached to the animal.

(c) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for **at least** five (5) years.

(3) Removal or loss of official identification devices.

(a) Official identification devices **shall[are intended to]** provide permanent identification of cervids and **[to]** ensure the ability to find the source of animal disease outbreaks. Removal of these devices **shall be[is]** prohibited, except as approved by the OSV or a USDA area veterinarian in charge **if[when]** a device needs to be replaced.

(b) If a cervid loses an official identification device and needs a new one:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for **at least** five (5) years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device **shall be[is]** considered to be a retagging event~~[,]~~ and shall be noted on the Retag Form.

(4) Circumstances under which OSV may authorize replacement of an official identification device include, **for example[but are not limited to]:**

(a) Deterioration of the device **[such]**that **[loss of the device appears likely]** or the number can no longer be read;

(b) Infection at the site where the device is attached, necessitating application of a device at another location (**for example[e.g.]**, a slightly different location of an eartag in the ear);

(c) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(d) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(e) 982 tags may be replaced with RFID after written permission from the OSV has been given.

(5) Removal of OID without prior written approval of the OSV **shall be[is]** strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for **at least** five (5) years:

- (a) The date on which the previous device was removed;
- (b) Contact information for the location where the device was removed;
- (c) The official identification number (to the extent possible) on the device that was removed;
- (d) The type of device removed (**for example[e.g.]**, metal eartag **or[;]** RFID eartag);
- (e) The reason for the removal of the former device;
- (f) The new official identification number on the replacement device; and
- (g) The type of replacement device that was applied to replace the former device.

(7) Beginning July 1, 2020, RFID OID shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing OID at the time of application. Existing OID shall not be **[be]** removed.

Section 9. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the **cervids[cervid]** are to be loaded **upon[when]** seeking **a[the]** movement permit.

(2) The POL of the specific location the cervids were loaded shall include:

(a) A PIN issued by the USDA~~[;]~~ or the Animal Health Official in the state of origin or a LID; and

(2) The owner at the time of movement and that owner's address and contact information.

Section 10. Requirements for Interstate Movement into Kentucky.

(1) **An[No]** person shall **not** move a cervid into Kentucky without first obtaining a CVI and movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV.

(2) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present for the unloading of the cervids at the point of destination and shall be responsible for removing the transport seal.

(3) **An[No]** entry permit shall **not** be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. **An[No]** entry permit shall **not** be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(4) **An[No]** entry permit shall **not** be issued for a cervid that is not:

- (a) Negative to an official tuberculosis test within ninety (90) days of entry; or
- (b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 11. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) ~~A[No]~~ CVI shall **not** be required ~~if[when]~~ the movement is from the same herd to a different permitted premises within the same farm, ~~if[so long as]~~ the cervid has OID prior to the movement.

(3) Movement **shall[may]** not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present at the unloading of the cervids at the point of destination for movements to a different premises. For movements **established** in **subsection (2) of this section**, no **a designee[representative]** at time of unloading **shall not be[is]** required.

Section 12. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement **shall[may]** not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

Section 13. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit **shall[is]** not **be** required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 14. Voluntary Accreditation and Certification Programs.

(1) Cervid[1.] owners ~~[of cervids]~~ wishing to seek a voluntary herd certification for brucellosis shall follow the provisions **established[set forth]** in APHIS 91-45-16, Brucellosis in Cervidae.

(2) Cervid[2.] owners ~~[of cervids]~~ wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions **established[set forth]** in APHIS 91-45-011, Bovine Tuberculosis Eradication.

~~(3)~~~~[3.]~~ After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate~~z~~ for the respective disease~~z~~ that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 15. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least five (5) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes OIDS shall maintain distribution lists and documents for at least five (5) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least five (5) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least five (5) years.

Section 16. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if **a person**:

1. ~~[A person]~~Falsifies information on an enrollment application, ~~[or]~~falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. ~~[A person]~~Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. ~~[A person]~~Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. ~~[A person]~~Fails to comply with an instruction from a representative of OSV; or

5. ~~[A person]~~Fails to produce any document require to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder **shall[may]** be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 6, 7, 8~~z~~ or 9 of this administrative regulation.~~[:]~~

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the

Commonwealth in violation of this administrative regulation **or[and]** KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. **These[Such]** herds shall be subject to a physical herd inventory prior to permit issuance. **A[No] hunting or harvest shall not[may] take place during the quarantine period. Herds shall be re-enrolled in any program without first paying the initial fee of \$150[-] and the renewal fee as required in either the HCP or HMP program.**

(6) Removal of OID from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section **17.[16.]** Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) **"Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", February 2019;**

(b) **"Deceased Animal Report", May 2019;**

(c) **"Herd/Flock Additions", May 2019[Form];**

(d) **"Herd/Flock ~~Deletions~~", May 2019[Deletion-Form];**

(e) **"Retag Form", February 2017;[and]**

(f) **"USDA Chronic Wasting Disease Program Standards", May 2019;**

(g) **"APHIS 91-45-16, Brucellosis in Cervidae", September 2003;** and

(h) **"APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Ryan F. Quarles
Commissioner

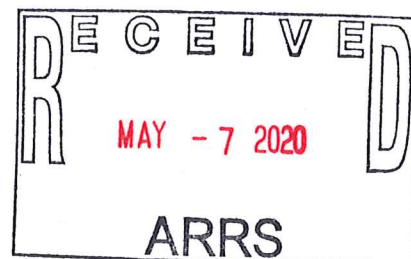


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Kentucky Department of Agriculture

May 7, 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: 302 KAR 45:010. Ginseng

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 45:010 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 45:010.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



SUGGESTED SUBSTITUTE
Final 5/5/2020 11:04 AM

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing

302 KAR 45:010. Ginseng.

RELATES TO: KRS 246.030, 246.650, 246.660, 246.990(9), 260.020, 260.030, 363.610,
50 C.F.R. Part 23

STATUTORY AUTHORITY: KRS 246.660, 260.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to administer a program for ginseng in Kentucky. This administrative regulation establishes the ginseng program including licensing and record keeping requirements for dealers, a limited harvesting season, certification procedures, administrative violations and civil penalties, and procedures for the suspension or revocation of a dealer's license.

Section 1. Definitions. (1) "Artificially propagated" means ginseng grown from seeds or rootlets that:

(a)1. Are exempt from the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as implemented by 50 C.F.R. Part 23; or

2. Were derived from cultivated parental stock; and

(b) Were woodsgrown or cultivated.

(2) "Certified ginseng" means ginseng that has been issued an American Ginseng Export Certificate by the department or other governmental certifying organization.

(3) "Cultivated" means ginseng grown under artificial shade and in tilled soil.

(4) "Dealer" means any person or agent of an entity buying ginseng for resale or export.

(5) "Department" means the Kentucky Department of Agriculture.

(6) "Dry ginseng" means ginseng roots that have been dried to remove moisture.

(7) "Export" means to transport, ship, carry, haul, take, or otherwise move ginseng collected in Kentucky outside of Kentucky.

(8) "Ginseng" is defined by KRS 246.650(2).

(9) "Green ginseng" means ginseng roots retaining moisture, not dried.

(10) "Harvest" is defined by KRS 246.650(1).

(11) "Purchase" means to take possession of ginseng in exchange for cash, cash equivalents, or barter.

(12) "Sell" means to transfer possession of ginseng to another person or entity in exchange for cash, cash equivalents, or barter.

(13) "Uncertified ginseng" means ginseng that has been harvested, but has not been

issued a certificate for export.

(14) "Wild" means:

(a) Ginseng grown with minimal interference by humans~~[,]~~ and under natural canopy in forest or woodlands; or

(b) Mature ginseng plants if they are derived from seeds of wild ginseng that were planted as required by Section 4(3) of this administrative regulation.

(15) "Wild Simulated" means ginseng grown:

(a) From seed that was not planted as required by Section 4(3) of this administrative regulation;

(b) With minimal interference by humans; and

(c) Under natural canopy.

(16) "Woodsgrown" means ginseng~~[which was]~~:

(a) Grown under natural canopy; and

(b) Purposefully managed.

Section 2. Dealer License Requirements. A person shall not purchase uncertified ginseng for resale or export unless he **or she** possesses a Kentucky ginseng dealer's license.

(1) Annual application. All persons or agents of entities purchasing uncertified ginseng in any amount at any time shall file a complete Ginseng Dealer Application for a ginseng dealer's license.

(2) Fee. An annual fee of seventy-five (75) dollars for Kentucky residents or one hundred fifty (150) dollars for non-residents shall be submitted to the department prior to issuance of a ginseng dealer's license. Residency shall be determined by the state of issuance of a driver's license or other government issued photo identification.

(3) Licensing period. A ginseng dealer's license shall be valid from September 1 until August 31 of the following calendar year. The department shall not issue a license if an applicant has outstanding penalties due under Section 9 of this administrative regulation.

(4) A dealer may only be an agent for an entity that is duly authorized to do business in the Commonwealth.

(5) All dealer purchases shall be made using a certified scale as required in KRS 363.610.

Section 3. Record Keeping. (1) Purchase of ginseng. Ginseng dealers shall document all purchases of ginseng on a Ginseng Purchase Form. The KDA shall issue twenty-five (25) forms to each dealer. For additional forms, the dealer shall execute a ~~[""]~~Ginseng Purchase Form Log~~[""]~~ and submit to the KDA prior to additional form issuance. The form shall be legible, shall be completed in its entirety by the dealer, other than the seller's signature or mark, in the presence of the seller, and shall include:

(a) Printed name, signature, or mark and address of the seller;

(b) Month purchased;

(c) Month harvested;

(d) County where harvested;

(e) Weight of purchase or sale; **[and]**

(f) Designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; **and[-]**

(g) The **seller's/sellers]** government issued photo identification number (drivers license number etc).

(2) Records of sales between dealers. (a) A ginseng dealer purchasing uncertified ginseng from another dealer shall:

1. Complete a Dealer to Dealer Transaction Form to document the purchase; and

2. Obtain from the other dealer Ginseng Purchase Forms completed by the dealer of origin.

(b) The Dealer to Dealer Transaction Form shall include:

1. The month of purchase from a dealer;

2. The weight of the ginseng purchased at the time of the transaction;

3. The signature and registration number of the dealer from whom the purchase is made;

4. The designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

5. The form identification numbers from the Ginseng Purchase Forms.

(3) Retention. A person required to maintain records under this section shall retain the forms for a period of **at least five (5)** [~~three (3)~~]-years from the end of that year's growing season.

(4) Availability. Records required to be maintained under this section shall be made available to the department upon request.

Section 4. Harvest. (1) Ginseng shall only be harvested between September 1 and December 1 of each year.

(2) Ginseng shall not be harvested **that[which]** is less than five (5) years old or has less than three (3) five (5) leafed prongs.

(3) Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 5. Sale of Ginseng. (1) Uncertified green ginseng may only be sold from September 1 of each year until March 31 of the following year.

(2) Uncertified dry ginseng may only be sold from September 15 of each year until March 31 of the following year.

(3) Ginseng dealers may obtain American Ginseng Export Certificates from the department during the ginseng selling season.

(4) A ginseng dealer may sell certified ginseng at any time.

Section 6. Unsold Ginseng. (1) Uncertified ginseng not sold by March 31 of the year after harvest shall be documented by the dealer. It shall be:

(a) Weighed[;] and issued a weight receipt by the department; or

- (b) Certified in accordance with Section 7 of this administrative regulation.
- (2) A ginseng dealer shall not possess:
 - (a) Undocumented green ginseng from April 1 through August 31; or
 - (b) Undocumented dry ginseng from April 1 through September 14.
- (3) Uncertified weighed ginseng shall not be sold until the following season's selling period.

Section 7. Certification of Ginseng. (1) Before ginseng harvested in Kentucky can be exported, it shall be certified by the department on an American Ginseng Export Certificate.

- (2) Ginseng may only be certified by a dealer holding a Kentucky dealer's license.
- (3) To obtain certification, a dealer shall:
 - (a) File with the department an American Ginseng Export Certificate form;
 - (b) File with the department associated purchase forms covering the amount of ginseng to be certified in accordance with subsection (5) of this section;
 - (c) Undergo a random sample inspection of ginseng roots by a department official; and

- (d) Pay the certification fee in accordance with subsection (7) of this section.

- (4) Export Certificate. The certificate shall include the **[following information]**:

- (a) State of origin;
 - (b) Serial number of certificate;
 - (c) Dealer's state license number;
 - (d) Dealer's shipment number for the harvest season;
 - (e) Year of harvest;
 - (f) Designation as dried or green ginseng;
 - (g) Designation as cultivated, woodsgrown, wild, or wild simulated;
 - (h) Weight of ginseng;
 - (i) Statement of state or tribal certifying official that the ginseng was obtained in that state or on those tribal lands in accordance with all relevant laws for that harvest year; and

- (j) Name and title of state or tribal certifying official.

- (5) Associated purchase forms.

- (a) For ginseng purchased from harvesters, the dealer shall file Ginseng Purchase Forms covering the amount of ginseng to be certified.

- (b) For ginseng purchased from other dealers, the dealer shall file Dealer to Dealer Transaction Forms and Ginseng Purchase Forms obtained from the dealers of origin covering the amount of ginseng to be certified.

- (c) Ginseng Purchase Forms shall be submitted to the department by April 15 of the year after harvest.

- (6) The department may obtain samples of roots in order to obtain a root count.

- (7) Certification fee. The fee for certification and processing by the department shall

be two (2) dollars per pound. Payment shall be made prior to the release of the certification of the ginseng to the dealer, and shall be tendered by check or money orders only. Cash shall not be accepted.

(8) A copy of the certificate shall be:

(a) Enclosed with the shipment ***that[which]*** is the subject of the certification;

(b) Retained for a minimum of five (5) [~~three (3)~~] years by the licensed ginseng dealer; and

(c) Retained by the certifying agent of the department for seven (7) years.

Section 8. Prohibition on Uncertified Non-Kentucky Grown Ginseng. Ginseng that is harvested outside the border of Kentucky and not certified in its state of origin shall not enter Kentucky.

Section 9. Violations and Penalties. (1) The following acts shall be considered a violation of this administrative regulation, and each violation shall carry a civil penalty of \$100 to \$1,000 dollars:

(a) Harvesting ginseng out of season;

(b) Selling uncertified ginseng out of season;

(c) Possessing underage ginseng;

(d) Seed collection, not relocating within fifty (50) feet of parent;

(e) Purchasing uncertified ginseng out of season;

(f) Falsification of a Ginseng Dealer Application, a Ginseng Purchase Form, a Dealer to Dealer Transaction Form, or an American Ginseng Export Certificate;

(g) A dealer purchasing ginseng from a harvester without accurately documenting the purchase on a Ginseng Purchase Form in accordance with Section 3(1) of this administrative regulation;

(h) A dealer purchasing uncertified ginseng from another dealer without:

1. Accurately documenting the purchase on a Dealer to Dealer Transaction Form in accordance with Section 3(2) of this administrative regulation; or

2. Obtaining from the other dealer Ginseng Purchase Forms completed by the dealer of origin;

(i) Reselling or exporting ginseng without a dealer's license;

(j) A dealer failing to certify or obtain weight receipt of ginseng at the end of the uncertified ginseng selling season;

(k) Transporting or exporting of uncertified ginseng in or out of Kentucky; [~~and~~]

(l) Possession of undocumented ginseng by a ginseng dealer out of season; [-]

(m) Acting as a dealer or agent of a dealer without a license; and

(n) Purchasing uncertified ginseng out of season.

(2) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(3) Persons who commit a third same violation within sixty (60) days of being cited for

the first violation shall be assessed up to triple the civil penalty assessed in Section 9(1) of this administrative regulation, not to exceed \$1,000.

(4) This section shall not prohibit the department from suspending or revoking a license or certificate at any time in accordance with Section 10 of this administrative regulation.

(5) A person cited with a violation may contest the violation by requesting a hearing in writing within ten (10) days of receiving the notice of violation. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 10. Ginseng Dealer License Suspension or Revocation. (1) A ginseng dealer may contest a proposed license suspension or revocation by requesting a hearing in writing within ten (10) days of receiving the notice of suspension or revocation. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke the license once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a license for up to one calendar year, or revoke a license after the provisions of subsections (1) and (2) of this section have been satisfied.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Ginseng Dealer Application", 12/2019 [7/13/2011];
- (b) "American Ginseng Export Certificate", 8-2016 [7/13/2011];
- (c) "Dealer to Dealer Transaction Form", 12/2019 [7/13/2011]; [and]
- (d) "Ginseng Purchase Form", 12/2019 [7/13/2011];
- (e) "Ginseng Purchase Form Log", 12/2019; and
- (f) "Weight Receipt", 08/2015.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Plant Marketing[~~Value Added Foods~~], 111 Corporate Drive[~~100 Fair Oaks, Suite 252~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES**

GORDON R. SLONE
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-6940
TELEFAX: 502-564-4245

April 30, 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

Re: 416 KAR 1:010, Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 416 KAR 1:010, the Department for Natural Resources proposes the attached amendments to 416 KAR 1:010.

Sincerely,

Michael S. Mullins
Regulation Coordinator

Agency Amendment

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation**

**416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality
Cost-share Fund.**

Page 15

Section 10(6)

Line 5

After "by the applicant.", insert the following:

(e) Approved applicants shall complete the practice within one (1) year from the date of approval. Upon request, the Division of Conservation shall grant a six (6) month extension per approved application. After two (2) extensions have been granted and expired, the landowner shall forfeit the right to the funds.



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES**

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Regulation Coordinator

SUGGESTED SUBSTITUTE
Final Version 4/23/2020 12:02 PM

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation

416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

RELATES TO: KRS 146.080- ~~146.115~~[146.124], 224.71-100-224.71-140, ~~[KRS]262.010 – 262.660~~ [Chapter 262]

STATUTORY AUTHORITY: KRS 146.110-~~146.115~~[146.124]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 ~~through~~**[to]** ~~146.115~~[146.124] authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund, ~~which~~**[The fund]** provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for ~~[such]~~purposes **such** as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; ~~[and]~~reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. Definitions.

(1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as~~[, but not limited to,]~~ tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" ~~is defined by KRS 224.71-100(10)[means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural production].~~

(3) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals (including any form of livestock, poultry, or fish).

This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.

(4) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(5)[(4)] "Available funds" means moneys budgeted, unobligated, and ***distributed to the commission for the purposes of KRS 146.115***~~[approved by the commission for cost-share assistance]~~.

(6)[(5)] "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission. ~~[Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.]~~

(7)[(6)] "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

~~[(7) "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agricultural production by the United States Department of Agriculture Natural Resources Conservation Service in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act.]~~

(8) "Conservation district" or "district" is defined by KRS 262.010(3) ~~[means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agricultural or silvicultural production and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs.]~~

(9) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land in accordance with the Natural Resources Conservation Service Technical Guide or developed by others in accordance with the Natural Resources Conservation Service Technical Guide and in cooperation with a conservation district.]

(9)[(10)] "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(10)[(11)] "District supervisor" means a member of the governing board of a conservation district.

~~[(12) "Ecosystem-based assistance process" means a specific application of a planning process that considers the integration of ecological, economic, and social factors to maintain and to enhance the quality of the environment to best meet current and future needs, which may include the following components:~~

(a) Inclusion of private land and public land within the watershed;

~~(b) Identification of and suggested solutions for various resource problems within the watershed;~~

~~(c) Establishment of opportunities for public participation in plan development and implementation;~~

~~(d) Inclusion of mechanisms for developing a comprehensive resource plan for the watershed and for reporting conservation accomplishments within the watershed;~~

~~(e) Identification and prioritization of local resource concerns, and inclusion of mechanisms to address these concerns within the watershed; and~~

~~(f) Development within current county conservation district boundaries with coordination of plans across county lines for protection of the watershed.]~~

~~(11)[(13)] "Eligible land" means land on which agricultural or silvicultural production is being conducted. [(14) "Eligible person" means a person eligible to apply for cost-share assistance.~~

~~(15) "Eligible practices" means those best management practices that have been approved by the commission.~~

~~(16) "Forest stewardship management plan" means a plan developed by the Environmental and Public Protection Cabinet's Division of Forestry or other cooperating entities which establishes practices for a person engaged in an agricultural or silvicultural production to manage forest lands in accordance with sound silvicultural and natural resource principles.]~~

~~(12)[(17)] "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.~~

~~(13)[(18)] **"Obligated funds" means moneys from a district's portion of the Kentucky Soil Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an applicant after final approval of the application for cost-share assistance.**~~

~~(14)[(19)] "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.~~

~~(14)[(15)][(20)] "Program year" means the period from July 1 to June 30.~~

~~(15)[(16)][(21)] "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.~~

~~(16)[(17)][(22)] "Surface water":~~

~~(a) Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; **and**~~

~~(b) **Does not mean[-]** effluent ditches and lagoons used for waste treatment **that[which]** are situated on property owned, leased, or under valid easement by a~~

permitted discharger ~~[shall not be considered to be surface waters of the Commonwealth].~~

~~(17)~~~~(18)~~~~(23)~~ "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

~~(18)~~~~(19)~~~~(24)~~ "Watershed" means all the area from which all drainage passes a given point downstream.

Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or silvicultural production ~~shall be~~~~are~~ eligible to receive cost-share assistance for best management practices if ~~[the following conditions are met]:~~

(a) The person has ~~[had]~~ prepared ~~[a conservation plan, a compliance plan, a forest management or forest stewardship plan, or]~~ an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time ~~established~~~~specified~~ by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production ~~shall not be eligible for further cost-share assistance if the applicant has:~~ ~~[who has]~~

~~(a) Failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to [under] KRS 224.71-130; or~~

~~(b) Failed to comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date. [shall lose eligibility for further cost-share assistance.]~~

Section 3. Eligible Best Management Practices. (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for ~~[the following purposes]:~~

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in ~~[the document titled "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook"]~~. ~~[entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", incorporated by reference in Section 13 of this administrative regulation.~~

~~(3) A district may request the commission's approval of best management practices not included in the commission's list of approved practices if those best management practices solve a problem unique to the requesting district and conform to one or more of the purposes listed in subsection (1) of this section. A request shall be filed in writing~~

with the commission in time for the commission to review the request and to notify the district of its decision prior to the advertisement of the program for the next program year. Conservation practices may be included in a district's list of eligible practices offered for cost-share assistance only if approved by the commission in accordance with this subsection.]

Section 4. Solicitation of Applications. **(1)** The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance.

(2) Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

Section 5. Contents and Completion of Applications. (1) Contents of *application*. An applicant shall submit to the conservation district in which the eligible land is located **the Kentucky Soil and Water Cost Share Program[an]** [the] Application [incorporated by reference in Section 13 of this administrative regulation], **found at <https://dep.gateway.ky.gov/eForms/Main/Forms.aspx>**, in order to apply for cost-share assistance. The applicant shall include with [append to] the application:

(a) An [Any conservation plan, compliance plan, forest stewardship plan, or] agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost **that[which]** the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) An applicant **[that is]** applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as **established[detailed]** in the Statewide Agriculture Water Quality Plan.

(3)(a) Completion of applications. An applicant who does not have an [a conservation plan, compliance plan, forest stewardship plan, or] agriculture water quality plan **that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110,** in effect for the eligible land **[that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110], [;]** or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs.

(b) If/When the best management practices plan has been developed and the anticipated total cost determined, the application **shall/will** be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. **(1)** Each conservation district shall review and determine the eligibility of all applications ~~[which were]~~ submitted to the district by the established deadline.

(2) The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting.

(3) A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility.

(4) The district shall forward the applications to the commission within fifteen (15) days after determining eligibility. ~~[A district may submit both individual applications for eligible lands within the district and watershed-based applications for eligible lands within the district.]~~

Section 7. Prioritization of Applications. The commission shall prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on **[the following criteria]:**

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Energy and Environment ~~[Environmental and Public Protection]~~ Cabinet as a water pollution problem; and

(b) Applicants who are members of agricultural districts; ~~and~~

~~(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem based assistance process is ongoing].~~

(2) Applications within each classification **established/identified** in subsection (1) of this section shall be prioritized based on **[the following criteria]:**

(a) **1.** Presence of water pollution, based on:

a. [1.] Notification by a local, state, or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

b. [2.] Determination of the Energy and Environment ~~[Environmental and Public Protection]~~ Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

~~c.[3.]~~ Identification by the Energy and Environment [~~Environmental and Public Protection~~] Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; **or[and]**

~~d.[4.]~~ Other documentation of water pollution, such as through a biological assessment; or

~~2.[5.]~~ Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted;[.]

(b) Types of water pollutants~~[, based on]:~~

1. Animal waste;
2. Sediment run-off;
3. Nutrient loading; or
4. Pesticide application, storage or disposal;[.]

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in a priority watershed as **established[identified]** by the Agriculture Water Quality Authority or Division of Water including a source water protection area. [~~designated water quality planning area, based on the existence of:~~

- ~~1. An ecosystem-based assistance process;~~
- ~~2. A Federal Clean Water Act Section 319 demonstration area;~~
- ~~3. A wellhead protection area; or~~
- ~~4. An agriculture water priority protection region.]~~

Section 8. Allocation of Cost-share Assistance.

(1) The available funds received by the commission for the cost-share program shall be held by the Kentucky Division of Conservation and disbursed to the conservation districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. [~~allocated to the conservation districts based on requests from districts approved by the commission prior to each program year.~~] The district shall be granted [~~receive~~] a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the Kentucky Division of Conservation based on the commission's approval of an initial district request [~~based on the objectives identified in Section 8 of this administrative regulation, and~~] in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) Any funds granted [~~allocated~~] by the commission and distributed by the Kentucky Division of Conservation to a district for a practice that results in overpayment [~~program year~~] shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant [~~obligated the funds~~] within one (1) year from receipt [~~allocation~~].

(3) The commission shall retain ten (10) percent of the annual appropriation [available funds] in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by Subchapter 71 of KRS Chapter 224[KRS 224.71].

Section 9. Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 10. Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received [receives] payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to **comply with paragraphs (a) through (d) of this subsection.**~~[meet the following requirements:]~~

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation.~~;~~

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement.~~;~~

(c) Upon completion of the approved best management practice, the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice.~~;~~**and**

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed.~~;~~

~~[(e) The applicant shall agree that if the applicant destroys the best management practice installed or voluntarily relinquishes control or title to the land on which the installed practice has been established and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the cost-share assistance, as determined by the district; and~~

~~(f) The applicant shall agree that if the applicant does not maintain the approved best management practices on the schedule provided in the plan the applicant shall forfeit the cost-share assistance, and the commission shall be authorized to recover the funds disbursed.]~~

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall

be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed. (a) The district shall ~~[may]~~ require a refund of cost-share assistance funds if the district determines: ~~[when]~~

1. An approved best management practice has not been ~~[performed or]~~ maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; ~~or[-]~~

2. a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of ~~the~~***[its specified]*** lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b)1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission ***shall***~~[may]~~ review the matter to determine whether ***or not*** to seek a refund.

4. If the commission becomes aware of a situation ***[described]*** in ***paragraphs [subparagraphs (3)](a)1. or [(3)](a)2. of this subsection,*** and the district fails to review the matter, the commission shall conduct a review of the matter and determine whether ***or not*** to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and ***that***~~[which]~~ later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has

been installed in accordance with ~~[the document titled "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook"]~~ [entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual," incorporated by reference in Section 13 of this administrative regulation.]

(6) Limitations on awards.

(a) Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of ~~[\$7,500 per year to each applicant for all practices except for the more expensive animal waste storage practices which have a maximum of]~~ \$20,000 per year ~~[for each applicant].~~

(b) An applicant shall only submit one application per program year.

(c) Cost-share assistance may be used with federal or local cost-share funds on the same practices **if [as long as]** the total cost share payment does not exceed seventy-five (75) percent of the practice cost.

(d) Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting.

(1) District reporting and accounting. A district shall ~~[conduct the following reporting and accounting procedures]:~~

(a) Maintain a control ledger showing the current approved applications ~~[request]~~ to the commission and cost share approved amounts ~~[funds obligated]~~ for approved applications, based on estimated cost;

(b) Submit a quarterly report to the commission indicating any ~~[the]~~ unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(c) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(d) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

1. The approved application for allocated funds;
2. A copy of the estimated cost sheet;
3. Certification of practice completion;
4. Applicant's vouchers, bills, or receipts;
5. Final designs for best management practices;
6. The performance and maintenance agreement;
7. Any amendments to the performance and maintenance agreement; and
8. A map locating the practices.

~~[(2) Commission reporting and accounting. The commission shall conduct the following reporting and accounting procedures:~~

~~(a) Receive and maintain reports from districts showing the unobligated balance of allocated and disbursed cost share funds as shown on each ledger; and~~

~~(b) Submit consolidated quarterly reports based on the reports from districts on the unobligated balance of the Kentucky Soil Erosion and Water Quality Cost-share Fund.]~~

Section 12. Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial **assistance[assurance]** may file a written appeal with the commission. **The appeal shall be filed** within thirty (30) days of the decision and shall **state[set forth]** the basis for the appeal.

(2) Procedure for hearing appeal.

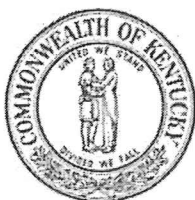
(a) The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal.

(b) The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference. (1) "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook ", October 2019 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.[The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691 Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.]



JUSTICE AND PUBLIC SAFETY CABINET

ANDY BESHEAR
GOVERNOR

125 HOLMES STREET, 2ND FLOOR
FRANKFORT, KENTUCKY 40601
(502) 564-7554

JUSTICE MARY C. NOBLE, RET.
SECRETARY

May 7, 2020

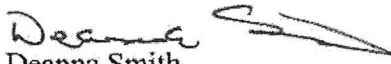
Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 501 KAR 6:020. Corrections Policies and Procedures.

Dear Co-Chairs West and Hale:

The Justice and Public Safety Cabinet, Department of Corrections requests that the attached amendments be made to 501 KAR 6:020.

Sincerely,


Deanna Smith
Paralegal Consultant

enclosure

AGENCY AMENDMENT

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

501 KAR 6:020. Corrections policies and procedures.

Page 1

Section 1(1)

Lines 15-16

After "Policies and Procedures", insert "May 12".

Delete "January 13".

Page 2

Section 1(1)

Line 8

CPP 5.1

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Page 3

Section 1(1)

Line 14

CPP 13.13

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Changes to Material Incorporated by Reference:

CPP 5.1

Page 3, II.F.

After "Commissioner for review.", insert the following:

- G. Prior to inclusion in a research study, an inmate suspected of having an intellectual disability shall be screened to determine his or her ability to understand information relevant to making an informed, voluntary decision to participate in the research including the ability to:
1. Understand relevant information;
 2. Appreciate the consequences of the information for his or her own situation;

3. Reason about the available options; and

4. Communicate a choice.

Renumber the remaining sections that have capital letters.

CPP 13.13

Page 6, II.D.3.

After "3.", insert the following:

An inmate whose current mental health situation does not permit successful placement in general population shall be assigned to the least restrictive institutional environment, which may include CPTU or PCU or a specially designed living unit for inmates that require more support.

Delete the remainder of subsection 3.

After "that require more support.", insert the following:

4. An inmate presenting with a severe mental illness shall be housed in the least restrictive environment that is deemed safe by the multidisciplinary service team, and does not adversely lead to imminent danger to the inmate, others, or the safety and security of the institution.

Renumber the remaining sections.



JUSTICE AND PUBLIC SAFETY CABINET

ANDY BESHEAR
GOVERNOR

125 HOLMES STREET, 2ND FLOOR
FRANKFORT, KENTUCKY 40601
(502) 564-7554

JUSTICE MARY C. NOBLE, RET.
SECRETARY

May 8, 2020

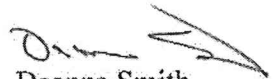
Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 501 KAR 6:020, Corrections Policies and Procedures.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:020, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendment to 501 KAR 6:020.

Sincerely,


Deanna Smith
Paralegal Consultant

enclosure

Version: 5/7/20

SUGGESTED AMENDMENT

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections**

501 KAR 6:020. Corrections policies and procedures.

Page 1

Section 1(1)

Lines 15-16

After "Policies and Procedures", insert "May 12".

Delete "January 13".

Page 2

Section 1(1)

Line 8

CPP 5.1

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Line 13

CPP 8.7

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Page 3

Section 1(1)

Line 8

CPP 13.8

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Page 4

Section 1(1)

Line 4

CPP 15.4

After "(Amended", insert "5/12/20".

Delete "1/13/20".

Line 5

CPP 15.5

After "(Amended", insert "5/12/20".
Delete "1/13/20".

Line 16

CPP 17.2

After "(Amended", insert "5/12/20".
Delete "1/13/20".

Page 5

Section 1(1)

Line 16

CPP 20.2

After "(Added", insert "5/12/20".
Delete "1/13/20".

Changes to Material Incorporated by Reference:

CPP 5.1

Page 1, Authority/References Box

Delete "900 KAR 1:080".

Page 1, I. "Institutional Review Board" definition

After "reviews", delete the comma.

Page 2, II.A.

After "and make", insert "recommendations".
Delete "recommendation".

Page 5, II.G.1.b.(15)

After "and witnessed Research", insert "Acknowledgement".
Delete "Agreement".

Page 7, II.G.2.c.(6)

After "a copy of the", insert "Employee Research Consent Form".
Delete "consent form".

Page 8, II.G.2.i.

After "Citizen Involvement", insert ", Volunteer, and Reentry Mentor Service Programs".

Delete "and Volunteer Service Program".

Attachment I, Page 1, 1st Bullet Point

After "5.1 Research", insert ", Surveys, and Data Requests".

Delete "and Survey Projects".

Attachment IV, Page 1

After "Rev.", insert "2020".

Delete "2019".

Attachment IV, Page 1, 2nd Bullet Point

After "(DOC) at:", insert "https://corrections.ky.gov/About/cpp/Pages/Chapter-5.aspx".

Delete "Corrections Policy & Procedure 5.1 Research, Surveys & Data Requests".

CPP 8.7

Page 1, I. "Contraband" definition

After "218A.010", insert "(8)".

Delete "(7)".

CPP 13.8

Page 7, II.I.1.c.c.

Renumber the second subparagraph "c." as "d.".

Page 7, II.I.1.g.

After "discharge", delete the period.

CPP 15.4

Page 4, II.B.3.a.

After "approved program", insert ":(1) Program staff shall upload".

Delete ", program staff shall: (1) Upload".

After "(2) Good time credit", insert "shall".

Delete "will".

Page 6, II.C.3.a.

After "of the program", insert ":(1) Reentry Service Center staff shall upload".

Delete ", Reentry Service Center staff shall: (1) Upload".

Page 8, II.D.1.f.

After "indicating approval", insert "shall".

Delete "will".

Page 10, II.D.4.c.

After "Good time credit", insert "shall".

Delete "will".

CPP 15.5

Page 2, III.A.2.c.c.

Renumber the second subparagraph "c." as "d.".

Renumber the remaining subparagraph accordingly.

CPP 17.2

Page 1, II., second paragraph

After "admitted directly to the", insert "Restrictive Housing".

Delete "Special Management".

Page 4.,II.C.

After "", insert the following:

A shock probation violator and court ordered returnee shall be processed by the Assessment and Classification Center. A returned escapee from the Class D, Class DE or Class C Programs shall be reviewed for program eligibility upon return from escape. A returned escapee from a Reentry Service Center shall be processed by any secure institution as determined by the Director of Population Management or designee.

Delete the remainder of Section C.

CPP 20.2

Pages 1-2, I. Definitions

Place definitions in alphabetical order.

Page 1, "Administrative Branch Manager" definition

After "apprenticeship standards", delete the comma.

Page 2, II.A.2.

After "apprenticeship hours that", insert "are".

Delete "is".

Page 5, II.E.5.

After "(30) day period", delete the period.

After "theft of materials, or becomes", insert "ineligible".

Delete "in eligible".

Page 5, II.E.E.

Renumber the second subsection "E." as "E".

Renumber the remaining subsection accordingly.

Andy Beshear
Governor

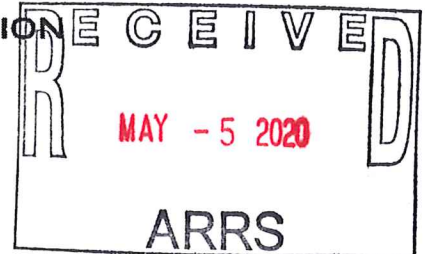


Lt. Gov. Jacqueline Coleman
Secretary
Education and Workforce
Development Cabinet

Kevin C. Brown
Interim Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

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



May 5, 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: 702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 702 KAR 5:080, the Kentucky Board of Education proposes the attached amendment to 702 KAR 5:080.

Sincerely,

A handwritten signature in black ink that reads "Todd G. Allen".

Todd G. Allen
Interim General Counsel

attachment

REVISED:
5/5/2020 4:10 PM
Suggested Amendment
Education & Workforce Development
Kentucky Board of Education

(AMENDED AFTER COMMENTS version)

702 KAR 5:080. Bus Drivers' qualifications, responsibilities, and training.

Page 1

RELATES TO

Line 6

After "189.540," insert "281A.170 – 281A.175".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 12

After "189.540 requires the", insert "board".

Delete the following:

Kentucky Board of Education

Page 2

Section 2(2)

Line 3

After "safely and", insert the following:

in accordance with the requirements of this administrative regulation.

Delete "satisfactorily;".

Page 2

Section 2(3)

Line 7

After "driver", insert period.

Delete semicolon.

Page 2

Section 2(6)

Line 13

After "report", insert "the".

Delete "said".

Page 2

Section 2(7)(a)

Line 18

After "expense", insert period.
Delete semicolon.

Page 2

Section 2(7)(b)

Line 20

After "initial employment", insert period.
Delete "; and".

Page 7

Section 4(1)(c)

Line 19

Lowercase "Section".

Page 7

Section 4(1)(e)

Line 22

After "(e)", insert "If".
Delete "In the event".

Page 8

Section 4(2)(a)

Line 11

After "instructor", insert the following:
in accordance with the Kentucky School Bus Driver Trainer Manual

Page 8

Section 4(2)(b)

Line 17

After "(b)", insert "A driver trainer".
Delete "Driver trainers".

Line 18

After "approved driver trainer", insert the following:
in accordance with the Kentucky School Bus Driver Trainer Manual

Page 10

Section 5

Line 15

After "person with", insert ": (1)".
Capitalize "a".

Line 16

After "Red Cross", insert semicolon.
Delete comma.
After "or", insert "(2)".
Capitalize "equivalent".

Page 11

Section 7(1)(a)

Line 5

After "(1)", delete "(a)".

Page 11

Section 7(1)(b)

Line 7

Before "To ensure", insert "(2)".
Delete "(b)".

Page 11

Section 7(1)(b)1.

Line 8

Before "A prohibition", insert "(a)".
Delete "1."

Line 8

After "ceremonial", insert ", except that".
Delete "; however,".

Page 11

Section 7(1)(b)2.

Line 11

Before "A prohibition", insert "(b)".
Delete "2."

Page 11

Section 7(1)(b)3.

Line 12

Before "A prohibition", insert "(c)".
Delete "3."

Page 11

Section 7(1)(b)4.

Line 14

Before "A prohibition", insert "(d)".
Delete "4."

Page 11

Section 7(1)(b)5.

Line 15

Before "A prohibition", insert "(e)".
Delete "5."

Line 16

After "the bus", insert period.
Delete semicolon.

Page 11

Section 7(1)(c)

Line 17

Before "The policy", insert "(3)".
Delete "(c)".
After "including", delete the following:
but not limited to

Page 12

Section 9(2)(b)

Line 7

After "stand", delete ": 1."
Lowercase "In".

Page 12

Section 9(2)(b)1.

Line 8

After "area", insert "if".
Delete semicolon.

Page 12

Section 9(2)(b)2.

Line 9

Before "the", insert "1".
Delete "2. If".

Capitalize "the".

Page 12

Section 9(2)(b)3.

Line 10

Before "the", insert "2.".

Delete "3. If".

Capitalize "the".

Page 12

Section 9(3)

Line 12

After "on the bus", insert the following:

as soon as practicable and in accordance with local district policies

Page 14

Section 12(3)(a)

Line 16

After "circumstances", insert period.

Delete "; and".

Page 17

Section 19(1)

Lines 1-2

After "(1) The", delete the following:

following material is incorporated by reference: (a)

Line 3

After "October 2019", insert the following:

, is incorporated by reference

Andy Beshear
Governor



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

Kevin C. Brown
Interim Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

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May 5, 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: 704 KAR 7:090. Homeless Children and Youth Education Program and ensuring educational stability of children in foster care.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 704 KAR 7:090, the Kentucky Board of Education proposes the attached suggested amendment to 704 KAR 7:090.

Sincerely,

A handwritten signature in black ink that reads "Todd G. Allen".

Todd G. Allen
Interim General Counsel

attachment

SUGGESTED SUBSTITUTE

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education**

704 KAR 7:090. Homeless Children and Youth Education Program and ensuring educational stability of children in foster care.

RELATES TO: KRS 156.029, 156.035, [156.029,] 156.160, 214.185(3), (4), 20 U.S.C 1232g, 6311(g)(1)(E), [20 U.S.C.] 6312(c)(5)(B), 42 U.S.C. 11431 et seq. [11432]

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(p)[, 156.070]

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), as amended under the Every Student Succeeds Act of 2015 (ESSA), the Kentucky Department of Education (department), when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the McKinney-Vento Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law established[set forth] in 42 U.S.C. Section 11432 shall be met. This administrative regulation [implements] aligns with the Kentucky Board of Education's duties, pursuant to KRS 156.029 and 156.035, to develop [education policy, to] administrative regulations governing activities within the department and implement [acts of Congress] Congressional action appropriating [and apportioning] funds to the state [and to provide for the proper implementation of federal law] in accordance with state and federal law and Kentucky's consolidated State plan under ESSA [the state's current plan]. Specifically, this [This] administrative regulation establishes criteria regarding residency policies[, the provision of] and provides for a free, appropriate public education [to] for homeless children and unaccompanied youth[, provides] informal procedures for resolving [resolution of] disputes regarding the educational placement of homeless children and unaccompanied youth[; provides] grants to local educational agencies (LEAs) for the enrollment, retention, and educational success of homeless children and unaccompanied youth[; and, provides for] an annual count of homeless children and unaccompanied youth. Additionally, this administrative regulation requires LEAs to have procedures for awarding credit, including partial credit, for coursework satisfactorily completed by homeless children and unaccompanied youth in another school as well as for conferring high school diplomas to homeless children and unaccompanied youth in accordance with KRS 156.160(1)(p). Consistent with 20 U.S.C 6311(g)(1)(E) and 20 U.S.C. 6312(c)(5)(B), this administrative[administrative] regulation also promotes the educational stability of children in foster care through the implementation of the foster care liaison within each LEA.

Section 1. Definitions. (1) "Foster care" shall have the same meaning as defined in KRS 620.020(5). ["Homeless child", "homeless children", and "homeless student" means a child or children who are between the ages of birth and twenty-one (21) years inclusive and who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

(a) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

- ~~(b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;~~
- ~~(c) Are living in emergency or transitional shelters;~~
- ~~(d) Are abandoned in hospitals;~~
- ~~(e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;~~
- ~~(f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and~~
- ~~(g) Migratory children who qualify as homeless because they are living in circumstances described above.]~~

(2) "Free, appropriate public education" means the educational programs and services [that are] provided to the children of a resident of a state[; and that are] consistent with state school attendance laws. These educational programs and services, for which the child meets the eligibility criteria, may include:

- (a) Magnet schools;
- (b) Charter schools;
- (c) Compensatory education programs for the disadvantaged;
- (d) Educational programs for the handicapped and students with limited English proficiency;
- (e) Programs in vocational education;
- (f) Programs for the gifted and talented;
- (g) School meals programs;
- (h) Extended school programs;
- (i) Preschool programs; and
- (j) Programs developed by the family resource and youth services centers.

(3) "Homeless child," "homeless children," and "homeless student" mean a child or children who are between the ages of birth and twenty-one (21) years, inclusive, and who lack a fixed, regular, and adequate nighttime residence. This definition includes children and youth who:

- (a) Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- (b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- (c) Are living in emergency or transitional shelters;
- (d) Are abandoned in hospitals;
- (e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- (f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- (g) Are migratory children who qualify as homeless because they are living in circumstances described in this subsection[above].

(4) "Local educational agency" or "LEA" shall have the same meaning as defined in 20 U.S.C. 7801(30).

(5) "School of origin" means the school that the homeless child or youth or foster child attended when permanently housed[;] or the school in which the homeless child or youth or foster child was last enrolled. [Consistent with McKinney Vento as reauthorized by ESSA,] This [this] shall include preschool and designated receiving schools at the grade level for all feeder schools when a student completes the final grade level served by the school of origin.

~~(6)/(5)~~ "Student attendance day" shall have the same meaning as defined in KRS 158.070(1)(e).

~~(7)/(6)~~ [(4)] "Unaccompanied youth" means a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act~~[not in the physical custody of a parent or guardian]~~~~[means a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act].~~

Section 2. Criteria for Homeless Children and Youth Education Program Implementation. (1) Homeless children and [ø] unaccompanied youth who reside within the boundaries of an LEA [a local school district] shall be provided a free, appropriate public education. ~~[Programs for homeless children and unaccompanied youth shall be provided in a timely fashion and shall be ensured by the following actions:]~~

(2) [(1)] Each LEA [local district] shall designate a person [~~in the district~~] to be a homeless child education liaison [~~liaison~~], [shall] submit the name of the person acting as liaison to the department [Kentucky Department of Education], and [shall] allocate sufficient time to the homeless child education liaison to perform the required responsibilities.

(3) The homeless child education liaison[liaison's] shall be responsible for [responsibilities shall be to]:

(a) Obtaining[Obtain] all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the LEA [school district] and immediately placing [~~place the~~] each homeless student and unaccompanied youth in appropriate programs. [~~In cases where~~] ~~[if/where]~~ educational records are not readily available, the liaison shall **personally make direct contact with** [~~make personal, direct contact to~~] the LEAs/LEA(s) [school district(s)] or schools of last attendance for verbal confirmation of essential information, including coursework that has been satisfactorily completed. The liaison shall assist the homeless student or unaccompanied youth to obtain essential records that/which are not in existence;

(b) Receiving [Receive] and resolving [~~resolve~~] any requests for resolution of disputes related to the educational placement of homeless students and [ø] unaccompanied youth within the LEA [district]. The liaison shall provide the necessary information to the department [~~Department of Education~~] for final resolution if a request~~[whenever such]~~ [a request] requests cannot be [is received and is not] resolved at the local level;

(c) Assisting [~~Assist~~] the homeless student or unaccompanied youth to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental health, and other appropriate programs and services;

(d) Developing [~~Develop~~] procedures to ensure that homeless student or unaccompanied youth records are readily available upon request by a new receiving LEA or school [district];

(e) Developing relationships [~~a relationship~~] with known homeless service providers and state agencies in the community to identify and enroll homeless students or unaccompanied youth living there;

(f) Reviewing [Review] local data indicating the prevalence of homelessness in the community and assessing [assess] needs of local homeless children and unaccompanied youth with LEA administrators based on the review of data;

(g) Ensuring [Ensure] school personnel providing McKinney-Vento services receive professional development and other support related to addressing the challenges of homelessness and supporting homeless children and unaccompanied youth, including runaway youth;

(h) Ensuring [Ensure] unaccompanied youth are enrolled and receive support to accrue credits and access higher education; and

(i) Receiving [Receive] annual department-approved training to cover at least the following topic areas:

1. The rights and services provided for homeless children and unaccompanied youth;
2. Identification of homeless children and unaccompanied youth;
3. The state dispute resolution process, data utilization, monitoring, and reporting requirements under this administrative regulation; and
4. Best practices to serve homeless children and unaccompanied youth.

(4) Consistent with KRS 156.160(1)(p), and to the extent feasible, homeless children and unaccompanied youth shall be awarded credit, including partial credit, for all coursework satisfactorily completed.

(5) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth, an LEA shall adopt written procedures addressing:

(a) The tool or methodology the LEA shall use to calculate credit, including partial credit, to be awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth;

(b) The consolidation of partial credit, where appropriate, to provide opportunities for credit accrual that eliminate academic and nonacademic barriers for homeless children and unaccompanied youth;

(c) How the LEA shall provide students experiencing homelessness access to extracurricular and summer programs, credit transfer and electronic course services, and after-school tutoring and other extended school services available in the district to the fullest extent practicable and at nominal or no costs;

(d) The ways in which the LEA shall lessen the impact of school transfers for homeless children and unaccompanied youth, which shall include:

1. Identifying systems that are in place to ease the transition of students experiencing homelessness, particularly during the first two weeks at a new school;

2. Requiring counselors to provide timely assistance and advice to improve college and career readiness for students experiencing homelessness; and

3. Granting priority placement in classes offered by the LEA that meet state minimum graduation requirements for students who change schools at least once during a school year as a result of homelessness;

(e) How and in what circumstances the LEA shall allow a student experiencing homelessness who was previously enrolled in a course required for high school graduation to complete that course at no cost before the beginning of the next school year as required by KRS 156.160(1)(p)2./~~(2)~~; and

(f) The required review of credit accrual and the personal graduation plan for each homeless student and unaccompanied youth that is not on track to receive a high school diploma before the fifth year of high school enrollment.

(6) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and youth, an LEA may adopt procedures providing for:

(a) The timely placement of a student experiencing homelessness in electives comparable to those in which the student was enrolled in or earned partial credit for the successful completion of at the previous ~~schools/school(s)~~;

(b) Engaging homeless students and unaccompanied youth by offering curricula that connect schoolwork with college and careers;

(c) Flexibility for homeless students and unaccompanied youth to complete credits, particularly those required for high school graduation, which may include flexible scheduling options, open entry and exit, extended year programming, or self-paced learning-based on competency;

(d) Small, personalized learning environments for students experiencing homelessness;

(e) Blended learning opportunities such as computer-based or digital learning options for students experiencing homelessness;

(f) Work-based learning programs, apprenticeships, or alternative education programs that allow homeless students and unaccompanied youth to recover credits or earn income while completing credits; or

(g) The integration of content standards from multiple subject areas into a single course for which students can earn simultaneous credit. Curriculum for integrated courses addresses standards across subject matters and may emphasize interdisciplinary connections from technical or academic areas.

(7) An LEA shall adopt written procedures for awarding a high school diploma to homeless children and unaccompanied youth who transfer after completion of the second year of high school and meet the requirements outlined in KRS 156.160(1)(p).

~~[(2) Each local district shall designate a person in the district to be a foster care liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the foster care liaison to perform required responsibilities. The foster care liaison may also be the homeless education liaison. The foster care liaison's responsibilities shall be to ensure that:~~

~~(a) A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;~~

~~(b) If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and~~

~~(c) That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.]~~

Section 3. Residency and Enrollment in the Homeless Children and Youth Education Program.

~~(1) [The school district of residence shall be the district in which the homeless student or unaccompanied youth physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere.] In the best interest of the homeless student or unaccompanied youth, an LEA serving a homeless student or unaccompanied youth [The school district of residence] shall ensure that:~~

~~(a) [The homeless student or unaccompanied youth is enrolled in the school attendance area in which he or she is physically located or that] The homeless student's or unaccompanied youth's education is continued in the school of origin for the duration of homelessness: [remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year;]~~

1. In any case in which the homeless child or unaccompanied youth becomes homeless between academic years or during an academic year; and

2. For the remainder of the academic year, if the homeless child or unaccompanied youth becomes permanently housed during an academic year; or

(b) The homeless student or unaccompanied youth is enrolled [enroll the child or youth] in any school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend[, whichever is in the best interest of the homeless student or unaccompanied youth].

(2) In determining the best interests of the homeless child or unaccompanied youth for purposes of making a school assignment under **subsection (1) of this section**[~~3(1) of this administrative regulation~~], an LEA serving a homeless student or unaccompanied youth shall: [consideration shall be given to a request made by the parent or unaccompanied youth regarding school selection]

(a) Presume that it is in the best interest of the homeless child or unaccompanied youth to remain in the school of origin, unless doing *so/do* is contrary to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(b) Consider student-centered factors, including the impact of mobility on achievement, education, health, and safety, giving priority to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(c) If, after conducting the best interest determination based on the presumption in paragraph (a) of this subsection and on the student-centered factors in paragraph (b) of this subsection, the LEA determines that it is not in the homeless child's or unaccompanied youth's best interest to attend the school of origin or the school requested by the unaccompanied youth or by the parent or guardian of the homeless child, provide a written determination explaining the reasons for the determination to the unaccompanied youth or the parent or guardian of the homeless child in a manner and form that is understandable. The written determination shall also contain information regarding the rights of the unaccompanied youth or the parent or guardian of the homeless child to dispute the determination pursuant to the procedures *established/set forth* in Section 4 of this administrative regulation; and

(d) In the case of an unaccompanied youth, ensure the homeless child education liaison assists in placement or enrollment decisions, gives priority to the views of the unaccompanied youth, and provides notice to *the/such* youth of the right to dispute his education placement pursuant to the procedures *established/set forth* in Section 4 of this administrative regulation.

(4) The school selected for purposes of making a school assignment under **subsection (1) of this section**[~~3(1) of this administrative regulation~~] shall immediately enroll the homeless child or unaccompanied youth, even if the student is unable to produce records normally required for enrollment, or has missed application or enrollment deadlines during any period of homelessness.

(5) [~~3~~] A homeless student or unaccompanied youth shall not be denied enrollment [in the school district of residence] due to the absence of a parent or a court-appointed guardian or custodian. *The/Such* a homeless student or unaccompanied youth shall be enrolled and provided educational services until [~~such time that~~] the LEA [school district] can substantiate that the enrollment is contrary to the best interests of the child or youth pursuant to **subsection (2) of this section**[~~3(2) of this administrative regulation~~]/[Section 1(2) of this administrative regulation].

(6) [(4)] In the absence of a parent[, and] a court-appointed custodian or guardian, any medical, dental, and other health services may be rendered to a homeless student or unaccompanied youth who is a minor of any age when, in the judgment of the school principal or other professional, [that] the risk to the minor's health is of such a nature that treatment should be given without delay

and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3) and (4).

(7) [(5)] Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. ~~[Nor shall]~~ A child shall not be classified as "homeless" to circumvent state law and administrative regulations ~~that/which~~:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident LEA [school district] or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association. (8) [(6)] LEA [School district] policy, including policies related to guardianship issues, shall not delay or deny the immediate provision of educational placement and appropriate services to the homeless student or unaccompanied youth[, ~~including policies related to guardianship issues~~].

Section 4. Resolution of Disputes Arising in the Homeless Children and Youth Education Program. (1) Disputes arising between and among more than one LEA regarding the enrollment of a homeless student or unaccompanied youth shall be resolved by the state homeless education coordinator in accordance with the procedures established in subsections/Section 4(4) through (8) of this section/administrative regulation.

(2) All other disputes [~~Disputes arising between or among the school district of residency; another school district; and the parent, youth, or person in parental relationship to the homeless student or unaccompanied youth~~] regarding [~~the school district in which the child shall attend school or the educational placement~~] eligibility, school selection, or enrollment of [~~the~~] a homeless student or unaccompanied youth shall be received and resolved by the LEA in which enrollment is sought in accordance with the procedures established in subsection (3) of this section/4(3) of this administrative regulation. [~~resolved through the following procedures:~~]

(3) Within thirty (30) student attendance days after notice of a dispute is received, the LEA in which enrollment is sought by a homeless child or unaccompanied youth shall resolve the dispute using the following procedures:

(a) [(1)] The [~~local district~~] homeless child education liaison in the LEA in which enrollment is sought shall ensure immediate enrollment and the provision of services to the homeless child or unaccompanied youth throughout the dispute resolution process;[-]

(b) [(2)] All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the [~~local district~~] homeless child education liaison in the LEA of enrollment. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth, the [~~school district's~~] homeless child education liaison in the LEA of enrollment shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and state law, including this administrative regulation;[-]

(c) [(3)] The homeless child education liaison in the LEA of enrollment shall promptly and thoroughly document all communications, determinations, and evidence. All documentation shall be subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232[(f)g];

(d) The [~~local district~~] homeless child education liaison in the LEA of enrollment shall make a determination on the dispute within a reasonable number of days [~~as to the complaint. The liaison will document this and all subsequent communications, determinations, and evidence.~~] and provide a [A] copy of that determination [shall be presented] to the complainant;[-]

(e) If the ~~[complaint]~~ dispute is not resolved, the complainant shall ~~[will]~~ be advised by the ~~[local district]~~ homeless child education liaison in the LEA of enrollment of the opportunity to present a written request for mediation and, at the request of the complainant, assist the complainant with completing ~~[-. The local district liaison shall assist the representative to complete]~~ a written request for mediation, including documenting ~~[an indication of]~~ the specific point at issue; ~~[-]~~

(f) ~~[(4)]~~ The mediation, if requested by the complainant, shall be facilitated by the homeless child education liaison in the LEA of enrollment and shall be scheduled within a reasonable number of days of the written request and on a day and time reasonably calculated to be ~~[shall be]~~ convenient to the needs of the homeless student or unaccompanied youth. The ~~[district liaison, the]~~ LEA representatives~~[district(s)]~~ [representative(s)]~~[-]~~ and the ~~[child's]~~ representatives [representative(s)] of the homeless child or unaccompanied youth shall have the opportunity to be present at the mediation; ~~[representative. The local district homeless liaison shall facilitate the mediation.]~~

(g) ~~[(5)]~~ During the mediation, the LEA representative(s) ~~[school district(s)]~~ shall discuss considerations that led to the placement decision and the specific point at ~~[in]~~ issue as determined previously and specified within the written request for mediation. The mediation may also include discussion of the ability of the LEA ~~[school district]~~ of enrollment to provide continuity in educational programs, the need of the homeless student or unaccompanied youth for special instructional programs, the amount of time and arrangements required to transport the student to the ~~[original]~~ school in which enrollment is sought ~~[district]~~, the age of the homeless student or unaccompanied youth, and the school placement of siblings to the homeless student or unaccompanied youth, and the time remaining until the end of the semester or ~~[the end of the]~~ school year; ~~[-]~~ and

(h) The homeless child education liaison in the LEA of enrollment shall document mediation ~~[Documentation regarding these]~~ proceedings and ~~[must be]~~ provide~~[d]~~ the/such documentation ~~[with any appeal]~~ to the state homeless education coordinator with any request made pursuant to subsection (4) of this section~~[(4) of this administrative regulation]~~.

(4) ~~[(6)]~~ Where an agreement cannot be reached by the parties, Any ~~[either]~~ party to the dispute may request review by the state homeless education coordinator. Upon written request, the state homeless education coordinator shall make a determination and communicate with the involved parties to discuss available alternatives and seek to resolve the dispute. Any party requesting review by the state homeless education coordinator shall/must provide reasoning for the review, including specific questions of law or fact.

(5) ~~[(7)]~~ If/Where such a request for the review ~~[assistance]~~ of the state homeless education coordinator is made, the LEA of enrollment ~~[school district of residence]~~ shall provide sufficient information as required by the department, including:

(a) A description of the situation that prompted the complaint and subsequent request for review by the state homeless education coordinator;

(b) The names~~[name(s)]~~ and ages~~[age(s)]~~ of the homeless child or children or unaccompanied youth involved;

(c) The names~~[name(s)]~~ of the involved LEA ~~[school district]~~ personnel and the LEAs~~[LEA(s)]~~ ~~[school district or districts]~~ involved; and

(d) Copies of any documentation that served as the basis ~~[used up to that point including reasoning]~~ for LEA ~~[district]~~ decisions~~[-, appropriate evidence to substantiate reasoning,]~~ and other

documentation [evidence] the LEA deems [district sees] relevant and appropriate for consideration by the state homeless education coordinator.

~~[(e) All information is subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g).]~~

~~(6) [(8)]~~ The state homeless education coordinator shall collect and review appropriate documentation [evidence, review such evidence,] and provide an initial decision to the parties to the complaint within twenty (20) student attendance days after a request for review is received by the department pursuant to subsection (4) of this section~~[4(4) of this administrative regulation].~~

~~(7) Any party [Parties] to the complaint may request that the state homeless education coordinator's decision be reviewed by a three (3) member panel, which shall be convened by the state homeless education coordinator within the department, and the [Department of Education. The] three (3) member panel shall [review the state coordinator's decision and] either adopt or reject the state homeless education coordinator's decision within a reasonable number of days after being convened [or reject it].~~

~~(8) If the three (3) member panel rejects the state homeless education coordinator's decision [rejected], the panel shall provide an alternative finding, which shall be supported with appropriate reasoning. The panel's decision shall be] a final decision and shall not be appealable. [A final decision will be rendered within a reasonable number of days after receiving a complaint.]~~

~~(9) [Students must be immediately enrolled in the school in which enrollment is being sought in the case of a dispute, including unaccompanied youth. Enrollment must continue until the final resolution of the dispute, including all available appeals.~~

~~(10) Unaccompanied youth as well as parents or guardians of homeless children shall [have the right to] receive [such] written notice[, as well as parents or guardians accompanying their children. Written explanation is required] of decisions made by the LEAs/LEA(s), state homeless education coordinator, or the three (3) member panel described in subsection (7) of this section~~[4(7) of this administrative regulation], and the[such] written notice shall be provided [school, LEA, or SEA and must be] in an understandable form.~~~~

Section 5. Annual Count for the Homeless Children and Youth Education Program. The department [Department of Education] shall annually conduct a count of all homeless children and unaccompanied youth in the state as follows:

(1) LEAs [Local school districts] shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth;[-]

(2) LEAs [Local school districts] shall report an unduplicated count by school of homeless children and unaccompanied youth via the state student information system to the department [Department of Education] according to the time lines provided;[-] and

(3) The department [Department of Education] shall develop procedures, as needed or required, to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education Agency Grants for the Education of Homeless Children and Unaccompanied Youth. (1) The department [Kentucky Department of Education] shall make grants to LEAs [local education agencies (LEA)] when the[such] funds become available through a competitive application process. Grants shall be awarded to LEAs based upon the review and rating of their applications.

(2) [(1)] Not less than fifty (50) percent of amounts provided under a grant to LEAs [~~local districts~~] shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth.

(3) [(2)] Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to LEAs [~~local districts~~] shall be used for related activities for homeless children or unaccompanied youth including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(4) [(3)] An LEA [~~A local district~~] that desires to receive a grant shall submit an application to the department [~~Kentucky Department of Education~~]. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of the[such] children, and the ability of the LEA [~~district~~] to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of the[such] services and programs (i.e., enrollment, retention, and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and unaccompanied youth;

(d) A description of policies and procedures that the LEA [~~district~~] shall implement to ensure that activities carried out by the LEA [~~district~~] shall not isolate or stigmatize homeless children and unaccompanied youth;

(e) A description of coordination with other local and state agencies that serve homeless children and unaccompanied youth; and

(f) Other criteria the department [~~Kentucky Department of Education~~] deems appropriate.

Section 7. Ensuring Educational Stability for Children in Foster Care. (1) Each LEA shall:

(a) Designate a person to be the foster care liaison;

(b) Submit the name of the foster care liaison to the department; and

(c) Allocate sufficient time to the foster care liaison to perform required responsibilities.

(2) The foster care liaison may also be the homeless child education liaison.

(3) The foster care liaison shall ensure that:

(a) A child in foster care enrolls or remains in his school of origin, unless it is determined that remaining in the school of origin is not in the child's best interest;

(b) If it is determined that it is not in the child's best interest to remain in his school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment; and

(c) The enrolling school immediately contacts the child's school of origin to obtain relevant academic and other records.

(4) LEAs shall develop and implement clear written procedures that comply with 20 U.S.C. 6312(c)(5)(B) and govern how transportation shall be provided, arranged, and funded to maintain a child in foster care in the school of origin, unless it is determined that remaining in the school of origin is not in the child's best interest.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

KEVIN C. BROWN, Interim Commissioner

DAVID KAREM, Chairperson

APPROVED BY AGENCY: April 14, 2020

FILED WITH LRC: April 14, 2020 at 10 a.m.

CONTACT PERSON: Todd G. Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.



PUBLIC PROTECTION CABINET

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May 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: 806 KAR 5:025 – Credit for Reinsurance

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 5:025, the Department of Insurance proposes the attached amendment to 806 KAR 5:025.

Sincerely,

A handwritten signature in black ink that reads "Sharon P. Clark".

Sharon P. Clark, Commissioner
Kentucky Department of Insurance
500 Mero Street, 2 SE 11
Frankfort, KY 40601

Subcommittee Substitute

PUBLIC PROTECTION CABINET
Department of Insurance
(Amended After Comments)

806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110, **304.5-140**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ***authorizes the Commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of [provides that the Commissioner [Executive Director] of Insurance may promulgate administrative regulations necessary to implement]*** the Kentucky Insurance Code, KRS Chapter 304. ***KRS 304.5-140 authorizes the commissioner to promulgate administrative regulations to implement the provisions of that section.*** This administrative regulation implements KRS 304.5-140 by establishing credit for reinsurance.

Section 1. Definitions. [As used in this section:]

(1) "Beneficiary" means:

(a) The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law; and

(b) If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary shall be the court appointed domiciliary receiver, including the conservator, rehabilitator, or liquidator.

(2) "Evergreen clause" **means** ~~means~~ a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.

(3) "Grantor" means:

(a) The entity that has established a trust for the sole benefit of the beneficiary; and

(b) If the trust is established in conjunction with a reinsurance agreement, the unlicensed, unaccredited assuming insurer.

(4) "***Liabilities***" **means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means.**

(5) "Mortgage-related security" means an obligation that is rated AA or higher, ~~[(or the equivalent,)]~~ by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that ~~[either]~~:

(a) Represents ownership of one ~~(1)~~ or more promissory notes or certificates of interest or participation in the notes, ~~[(including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation)]~~, that:

1. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

2. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing

authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Sections 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Section 1703; or

(b) Is secured by one **(1)** or more promissory notes or certificates of deposit or **participations** [~~participants~~] in the notes, [~~with or without recourse to the insurer of the notes, (1)~~] and [~~by its terms~~] provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of **paragraph [Items] (a) [(1) and (a)(2)]** of this subsection. [;]

~~(6) [(5)] [(3) "Evergreen clause" mans a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.~~

(4) "Obligations" [~~as used in Section 8(2)(11)(c) of this administrative regulation,~~] means:

(a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) Reserves for reinsured losses reported and outstanding;

(c) Reserves for reinsured losses incurred but not reported; and

(d) Reserves for allocated reinsured loss expenses and unearned premiums.

~~(7) [(6)] "Promissory note [;]" means, when used in connection with a manufactured home, [shall also include] a loan, or advance or credit sale, as evidenced by a retail installment sales contract or other instrument.~~

Section 2. Reinsurer Licensed in Kentucky. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 3. Accredited Reinsurers. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Kentucky as of the date on which statutory financial statement credit **for reinsurance** is claimed.

(1) To gain accreditation, a reinsurer shall:

(a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and authority to examine its books and records;

(b) File a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one **(1)** state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one **(1)** state;

(c) File annually a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(d) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications established by Section 3(1), the commissioner may suspend or revoke the accreditation.

(3) Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

Section 4. Reinsurer Domiciled in Another State. The commissioner shall allow ~~[a]~~ credit for reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS 304.5-140(3)(c) and files a properly executed Form AR-1.

Section 5. Reinsurers Maintaining Trust Funds. (1) The commissioner shall allow [a] credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount **in accordance with this section [prescribed below]** in a qualified U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(2) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall satisfy all requirements of KRS 304.5-140(3)(1)(d)(5) [and (6), and include that contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

(3) (a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate because it contains an amount less than the amount required by this **section, [subsection]** or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed, ~~[by]~~ and claims shall be filed with and valued, by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(4) **Liabilities [For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and,]** shall include:

(a) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

2. Reserves for losses reported and outstanding;

3. Reserves for losses incurred but not reported;

4. Reserves for allocated loss expenses; and

5. Unearned premiums.

(b) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

2. Aggregate reserves for accident and health policies;

3. Deposit funds and other liabilities without life or disability contingencies; and

4. Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to KRS 304.5-140(3)(d) and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution, as defined in KRS 304.5-140(1)(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in KRS 304.5-140(1)(a), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five **(5)** percent ~~[(5%)]~~ of total investments. No more than twenty **(20)** percent ~~[(20%)]~~ of the total of the investments in the trust **shall [may]** be foreign investments authorized under paragraphs (a)5., (c), (e)**2.**, ~~[(2)]~~ or (f) of this subsection, and no more than ten **(10)** percent ~~[(10%)]~~ of the total of the investments in the trust **shall [may]** be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of KRS 304.5-140 shall be invested only as follows:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by:

1. The United States or by any agency or instrumentality of the United States;

2. A state of the United States;

3. A territory, possession, or other governmental unit of the United States;

4. An agency or instrumentality of a governmental unit referred to in subparagraphs **2.** ~~[(2)]~~ and **3.** ~~[(3)]~~ of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non U.S. market, by a solvent U.S. institution, ~~[(A) other than an insurance company, (B)]~~ or that are assumed or guaranteed by a solvent U.S. institution, ~~[(A) other than an insurance company, (B)]~~ and that are not in default as to principal or interest if the obligations:

1. Are rated A or higher, ~~[(1) or the equivalent, (1)]~~ by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

2. Are insured by at least one **(1)** authorized insurer, ~~[(1) other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, (1)]~~ licensed to insure obligations in this state and, after considering the insurance, are rated AAA, ~~[(1) or the equivalent, (1)]~~ by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

3. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(c) Obligations issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(d) An investment made pursuant to the provisions of paragraph (a), (b), or (c) of this subsection shall be subject to the following additional limitations:

1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five **(5)** percent ~~[(5%)]~~ of the assets of the trust;

2. An investment in any one **(1)** mortgage-related security shall not exceed five **(5)** percent ~~[(5%)]~~ of the assets of the trust;

3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five **(25)** percent ~~[(25%)]~~ of the assets of the trust; and

4. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs (b) ~~1. [(1-)]~~ and (b) ~~3. [(3-)]~~ of this subsection, but shall not exceed two **(2)** percent ~~[(2%)]~~ of the assets of the trust.

(e) Equity Interests.

1. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

b. The equity interests of the institution, ~~[(1) except an insurance company, (1)]~~ are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one **(1)** percent ~~[(1%)]~~ of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

2. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

a. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

b. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

3. An investment in or loan upon any one **(1)** institution's outstanding equity interests shall not exceed one **(1)** percent ~~[(1%)]~~ of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten **(10)** percent ~~[(10%)]~~ of the assets in the trust;

(f) Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(g) Investment Companies.

1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

a. Invests at least ninety **(90)** percent [~~(90%)~~] of its assets in the types of securities that qualify as an investment under paragraph (a), (b), or (c) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (a), (b), or (c) of this subsection; or

b. Invests at least ninety **(90)** percent [~~(90%)~~] of its assets in the types of equity interests that qualify as an investment under paragraph (e)~~1.(1)~~ of this subsection;

2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

a. An investment in an investment company qualifying under subparagraph ~~1.a. (1)(a)~~ of this paragraph shall not exceed ten **(10)** percent [~~(10%)~~] of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five **(25)** percent [~~(25%)~~] of the assets in the trust; and

b. Investments in an investment company qualifying under subparagraph ~~1.b. (1)(b)~~ of this paragraph shall not exceed five **(5)** percent [~~(5%)~~] of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (e)~~1.(1)~~ of this subsection.

(h) Letters of Credit.

1. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, [~~as duly approved by the commissioner~~], to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where ~~a~~ [~~such~~] draw would be required shall be deemed to be negligence, willful misconduct, or both.

(6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section ~~7~~ [8] of this **administrative** regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 6. Certified Reinsurers. (1) The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of KRS 304.5-140(3)(e) and Sections 10, 11, ~~or~~ [~~and~~] 12 of this **administrative** regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a) Ratings Security Required:

<u>Secure – 1</u>	<u>0%;</u>
<u>Secure – 2</u>	<u>10%;</u>
<u>Secure – 3</u>	<u>20%;</u>
<u>Secure – 4</u>	<u>50%;</u>
<u>Secure – 5</u>	<u>75%; and</u>
<u>Vulnerable – 6</u>	<u>100%.</u>

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner shall require the certified reinsurer to post **100% security [one hundred percent (100%)]**, for the benefit of the ceding insurer or its estate, **[security]** upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one **(1)** year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one **(1)** year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence **shall [will]** be included in the deferral:

1. Line 1: Fire;
2. Line 2: Allied Lines;
3. Line 3: Farmowners multiple peril;
4. Line 4: Homeowners multiple peril;
5. Line 5: Commercial multiple peril;
6. Line 9: Inland Marine;
7. Line 12: Earthquake; and
8. Line 21: Auto physical damage.

(e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2) Certification process.

(a) Upon receipt of an application for certification, the commissioner shall promptly post notice at insurance.ky.gov, including instructions on how members of the public may respond to the application.

(b) No fewer than thirty (30) days after posting the notice required by **[this]** paragraph **(a) of this subsection**, the commissioner shall issue written notice **to an assuming insurer that has made application and been approved as a** [of approval to the applying] certified reinsurer, which shall include the rating assigned the certified reinsurer in accordance with subsection **(1)[7]** of this section.

(c) To be eligible for certification, the assuming insurer shall:

1. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection ~~(3)~~**(3)** of this section.

2. Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph ~~(d)8.~~**(8)** of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, ~~[(net of liabilities,)]~~ of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

3. Maintain financial strength ratings from two ~~(2)~~**(2)** or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings **shall [will]** be one ~~(1)~~**(1)** factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

a. Standard & Poor's;

b. Moody's Investors Service;

c. Fitch Ratings;

d. A.M. Best Company; or

e. Any other Nationally Recognized Statistical Rating Organization.

4. Comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors considered as part of the evaluation process **shall [may]** include:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two ~~(2)~~**(2)** financial strength ratings from acceptable rating agencies **shall [will]** result in loss of eligibility for certification; [;]

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F or Schedule S;

4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S;

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance~~[Section 2. Requirements for Trust]~~ agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph **8. of this paragraph** ~~[(8) below]~~;

8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion, ~~[(as filed with the non-U.S. jurisdiction supervisor, with a translation into English)]~~. Upon the initial application for certification, the commissioner **shall [will]** consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

11. Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under subparagraph (d)~~5. [(5)]~~ of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (d)~~1. [(1)]~~ if the commissioner finds that:

1. More than fifteen (15) percent [~~(15%)~~] of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or

2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.

(f) The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for **100% [one hundred percent (100%)]** of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(g) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers **that is** [which are] not otherwise public information subject to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

1. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing **the [such]** changes and the reasons therefore;

2. Annually, Form CR-F or CR-S, as applicable;

3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (4) **of this section [below]**;

4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, [~~as filed with the certified reinsurer's supervisor, with a translation into English~~]. Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;

5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

7. Any other **supplemental** information **related to these items [that the commissioner may reasonably require]**.

(h) Change in Rating or Revocation of Certification.

1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (d) ~~1.(4)~~.

2. The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section **7 of this administrative regulation** [44] in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 5 **of this administrative regulation**, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of **the [such]** funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer **shall [may]** not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(i) The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) Qualified Jurisdictions. (a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of **[such]** recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of **the [such]** jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include:

1. The framework under which the assuming insurer is regulated.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

6. The history of performance by assuming insurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction **shall [will]** not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

9. Other related information the commissioner requests to determine whether to recognize a qualified jurisdiction [Any other matters deemed relevant by the commissioner].

(c) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsection **(3)(b)1. to 9. of this section** [6(3)(c)(1) to (9).]

(d) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(4) Recognition of Certification Issued by an NAIC Accredited Jurisdiction. (a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR1 and **any [such]** additional **related information the commissioner requests to determine whether to defer to the rating assigned the NAIC accredited jurisdiction [information as the commissioner requires]**. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within **ten (10) [10]** days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time **by providing[, with]** written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (2)(h) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) Mandatory Funding Clause. In addition to the clauses required under Section 13 **of this administrative regulation**, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 7. (1) Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of KRS 304.5-140(3) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with **the [such]** assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in KRS 304.5-140(1)(b). This security **shall [may]** be in the form of any of the following:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets; **or**

(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in KRS 304.5-140(1)(a), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance [~~for confirmation~~] shall, notwithstanding the issuing [~~for confirming~~] institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; **or**

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 13 **of this administrative regulation** and the applicable portions of Sections 10, 11, or 12 of this **administrative regulation** have been satisfied.

Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(b)(a).

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3)(a) Except as provided by paragraph (b) of this subsection, assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(b) A bank may apply for the executive director's permission to use a foreign branch office of the bank as trustee for trust agreements. If the executive director approves the use of a foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall:

1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and

2. Not be required to give notice to the grantor;

(b) The beneficiary:

1. May be required to acknowledge receipt of withdrawn assets; and

2. Shall not be required to present other statements or documents in order to withdraw assets.

(c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement; and

(d) The agreement shall not contain references to other agreements or documents except as provided by subsection (11) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in a [such] form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days~~]~~ of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take all steps necessary to:

1. Transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary; and

2. Deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except upon:

1. Written instructions from the beneficiary; or

2. The call or maturity of a trust asset, in which case the trustee may withdraw the asset so long as the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five~~fortyfive~~ (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, [f]as duly approved by the commissioner~~], to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.~~

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

(11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this subsection, if:

1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and

2. It is customary practice to provide a trust agreement for a specific purpose.

(b) To pay or reimburse the ceding insurer for the:

1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or

2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(c) To make payment to the assuming insurer of any amounts held in the trust account that exceed **102% [102 percent]** of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(d)1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2₂ of this paragraph, if the:

a. Ceding insurer has received notification of termination of the trust account; and

b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.

2. Amounts withdrawn pursuant to subparagraph 1₂ of this paragraph shall be deposited:

a. In the name of the ceding insurer; and

b. In a qualified United States financial institution₂ as defined in KRS 304.5-140(1)₂ apart from its general assets; and

c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date.~~[2]~~

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 10[4](1)(b) of this administrative regulation, so long as the conditions required by this section are included in the trust agreement.

(13) ~~[Either]~~ The reinsurance agreement or trust agreement **shall [may]** stipulate that assets deposited in the trust account shall be valued according to their ~~[their]~~ current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code, or any combination **thereof [of the above]**, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five **(5) percent [(5%)]** of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph **shall [must]** be included in the reinsurance agreement.

Section 9[3]. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement may provide that the:

(a) Trustee may resign only if written notice of resignation is:

1. Given to the beneficiary and grantor; and

2. Effective not less than ninety (90) days after receipt of the notice.

(b) Grantor may remove the trustee if written notice is:

1. Given to the trustee and beneficiary;

2. Effective not less than ninety (90) days after receipt of the notice;

(c) Resignation or removal of the trustee shall not be effective until:

1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and

2. All assets in the trust have been duly transferred to the new trustee.

(2)(a) The grantor may have the full and unqualified right to:

1. Vote any shares of stock in the trust account; and

2. Receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.

(b) Interest or dividends shall be:

1. Forwarded promptly upon receipt to the grantor; or
2. Deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:

(a) Specifies categories of investments acceptable to the beneficiary; and

(b) Authorizes the trustee to invest funds [] and accept substitutions that the trustee determines are:

1. At least equal in market value to the assets withdrawn; and
2. Consistent with the restrictions in Section 10[4](1)(b) of this administrative regulation.

(4) The trust agreement may:

(a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and

(b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.

Section 10[4]. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3).

(1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(a) Require the assuming insurer to:

1. Enter into a trust agreement;
2. Establish a trust account for the benefit of the ceding insurer; and
3. Specify what the agreement is to cover.

(b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:

1. Be valued according to the current fair market value of the assets; and
2. Consist of:

a. Cash that is United States legal tender;

b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;

c. Investments permitted by the insurance code; or

d. A combination of the **assets [items]** specified in **clauses [subparagraphs]** a. through c. of this **subparagraph [paragraph]**;

(c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.

(d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.

(e) If a trust agreement is entered into in conjunction with a reinsurance agreement that covers risks other than life, annuities, **or [and]** accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.

(f) Require the assuming insurer, prior to depositing assets with the trustee, to:

1. Execute assignments or endorsements in blank; or

2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary.

(g) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(h)1. As provided by subparagraph 2 of this paragraph, stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement.

2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of ~~the [such]~~ company, without diminution because of insolvency on the part of the ceding insurer or the ~~assuming[as-~~suming] insurer, only for the following purposes:

a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include ~~[but not be limited to]~~ amounts for policy reserves, claims and losses incurred, ~~[f]including losses incurred but not reported[]~~, loss adjustment expenses, and unearned premium reserves; and

d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or ~~[a]~~ part of the trust assets from the trust account and transfer the withdrawn assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or

2. After withdrawal and transfer, the market value of the trust account is no less than 102% ~~[percent]~~ of the required amount.

3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(h)1~~2~~, 2~~3~~, and 3~~2~~ of this section or for payments under subsection (1)(h)4~~2~~ of this section, amounts that are subsequently determined not to be due; and

2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3.

(c) Permit the award by an arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2~~2~~ of this subsection;

2. Court ~~or [of]~~ arbitration costs;

3. Attorney's fees; and

4. Other reasonable expenses.

(3)(a) If established on or before the date of filing the financial statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized ~~assuming[assum-~~ing] insurer in financial statements that are required to be filed with the office pursuant to this administrative regulation.

(b) The amount of a reduction for the existence of an acceptable trust account:

1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and

2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:

(a) Be acceptable until January 1, 1997; and

(b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.

(5) The failure of a trust agreement to specifically identify the beneficiary shall not be construed to affect actions or rights which the commissioner~~[executive director]~~ may take or possess pursuant to the provisions of the laws of this state.

Section 11~~[5]~~. Letters of Credit Qualified under KRS 304.5-140(3). (1) A letter of credit shall:

(a) Be clean, irrevocable, and unconditional;

(b) Issued or confirmed by a qualified United States financial institution;

(c) Contain an issue date, and date of expiration;

(d) State that it is not subject to a condition or qualification not contained in the letter of credit;

(e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sight draft under the letter of credit; and

(f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.

(2) The heading of a letter of credit may include a boxed section that:

(a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and

(b) Is clearly marked to indicate that the information is only for internal identification purposes.

(3) The letter of credit shall contain a statement that the obligation of the qualified United States financial institution under the letter of credit is not contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.

(5) The letter of credit shall state:

(a) Whether it is governed by the:

1. Laws of Kentucky; ~~[or]~~

2. ~~["Publication 500", or]~~ The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600;

3. International Standby Practices of the International Chamber of Commerce Publication 590; or

4. Any successor publication; and

(b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.

(6) A letter of credit shall provide for an extension of time to draw against it if it:

(a) Is made subject to **subsection [paragraph] (5)(a)2., 3., or 4. of this section[above]** ~~["Publication 500" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce]; and~~

(b) An occurrence specified in Article 36~~[19]~~ of "Publication 600~~[500]~~" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.

(7) The letter of credit shall be issued (7) or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

(8) If a letter of credit is issued by a [qualified] United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution described in subsection (7) of this section, the following additional requirements shall be met:

(a) The issuing [qualified] United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The evergreen clause shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

(a) The reinsurance agreement for which the letter of credit is obtained may contain provisions that:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what ***shall be covered [they are to cover]***.

2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming ***insurer [insure]*** pursuant to the provisions of the reinsurance ***agreement:***

a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and

b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.

3.a. ***Require the assuming insurer*** to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of ***the [such]*** policies;

b. ***Require the assuming insurer*** to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

c. ***Require the assuming insurer*** to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement; and

d. ***Require the assuming insurer*** to pay other amounts the ceding insurer claims are due under the reinsurance agreement.

4. The provisions of ***this*** paragraph ***[(a) of this subsection]*** shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph ***(a)2. [(a)3e]*** of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the ***reasons established in paragraph (a)3.a. through 3c. of this subsection [above]*** or, in the case of paragraph (a)3.d. of this subsection, any amounts that are subsequently determined not to be due.

(c) In lieu of the stipulation permitted by paragraph (a)2. of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:

1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and

2. It is customary practice to provide a letter of credit for a specific purpose.

(10)(a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department unless an acceptable

letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.

(b) The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Section 12[6]. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 13[7]. Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

(1) Proper insolvency clause pursuant to KRS 304.5-140~~(6)~~~~(5)~~ and 304.33-350 of the Insurance Code; and

(2) Provision pursuant to KRS 304.5-140~~(3)~~~~(i)~~~~(2)~~~~(f)~~, if the assuming insurer, is an unauthorized assuming insurer, and has:

(a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;

(c) Designated an agent upon whom service of process may be effected; and

(d) Agreed to abide by the final decision of the court or panel.

Section 14[8]. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of ~~this [the]~~ administrative regulation shall conform to the requirements~~[An assuming reinsurer shall file a "Certificate of Assuming Insurer", Form AR-1;~~

~~(1) To become accredited pursuant to KRS 304.5-140; and~~

~~(2) As evidence] of KRS 304.5-140 and this administrative regulation if credit is[its submission to the jurisdiction of Kentucky and] to be given to the ceding insurer for [such] reinsurance[its authority to examine its books and records pursuant to KRS 304.5-140(2)(b)1].~~

Section 15[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Assuming Insurer," Form AR-1 December 95; [and]

(b) "Certificate of Certified Reinsurer," Form CR-1 (09/19);

(c) "Form CR-F" (09/19); and

(d) "Form CR-S" (09/19)[-is incorporated by reference].

(2) It may be inspected, copied, or obtained from the Department[Office] of Insurance, 500 Mero St.[P.O. Box 517, 215 West Main Street], Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

~~Section 10. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of the administrative regulation shall conform to the requirements of the Act and this administrative regulation if credit is to be given to the ceding insurer for such reinsurance.]~~

CONTACT PERSON: **DJ Wasson [Nancy G. Atkins]**, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email DJ.Wasson@ky.gov [**nancy.atkins@ky.gov**].



PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction

Andy Beshear
Governor

Mona Wornack
Acting Commissioner

500 Mero Street, 1st Floor
Frankfort, KY 40601
Phone: 502-573-0365
Fax: 502-573-1057
<http://dhbc.ky.gov>

Kerry B. Harvey
Secretary

Max Fuller
Deputy Commissioner

May 8, 2020

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

RE: **815 KAR 20:191**. Minimum fixture requirements

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 815 KAR 20:191, the Department of Housing, Buildings and Construction proposes the attached amendment to 815 KAR 20:191.

Sincerely,

A handwritten signature in black ink that reads "Jon Fuller".

Jonathon M. Fuller, Deputy Commissioner
Department of Housing, Buildings
and Construction
500 Mero Street, 1st Floor
Frankfort, KY 40601

**Suggested Amendment
PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing**

815 KAR 20:191. Minimum fixture requirements.

Page 3

Section 1(9)(c)

Line 13

After "exemption request.", insert the following:

(d)1. The division shall determine whether to grant or deny the exemption request based upon if the request increases the sanitation risk to the building.

2. The division's decision shall be made on a case by case basis.

3. The division shall consider factors such as:

a. If the building requires the mopping of floors, cleaning of surfaces, or is carpeted; and

b. If there are public restrooms that require mopping and cleaning on a particular floor.

Page 4

Section 3

Line 1

After "Section", insert "2".

Delete "3".

Page 4

Section 4

Line 8

After "Section", insert "3".

Delete "4".

Page 9

Section 4(4)(f)

Line 13

After "full grate", insert "or".

Delete "/".

Page 10

Section 4(6)(a)

Line 4

After "(a)", insert "1".

Line 5

After "by the division.", insert the following:

2. Examples of exceptions include buildings of non-occupancy, such as storage buildings or guard houses. These buildings shall not be required to have sanitary facilities if no one is working in the buildings. For guard houses, if the guard's normal scope of work requires him or her to enter buildings that already have sanitary facilities, then the guard house is not required to also have these facilities.

Page 11

Section 4(10)(a)3.

Line 1

After "seventy", insert "2".

Page 13

Section 4(12)(b)2.b.

Line 14

After "closets, two", insert "(2)".

After "and two", insert "(2)".

Page 14

Section 5

Line 17

After "Section", insert "4".

Delete "5".

Page 15

Section 6

Line 1

After "Section", insert "5".

Delete "6".

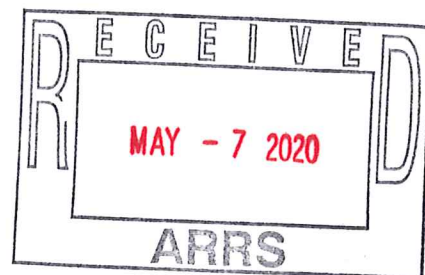
Page 16

Section 6(3)(d)

Lines 9-10

After "(15)", insert "persons".

Delete "person".



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

May 7, 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: Suggested Amendment for 902 KAR 2:065

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 2:065, the Cabinet for Health and Family Services proposes the attached amendment to 902 KAR 2:065.

If you have any questions, please contact Julie Brooks at JulieD.Brooks@ky.gov.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Suggested Amendment
Cabinet for Health and Family Services
Department for Public Health
Division of Epidemiology and Health Planning

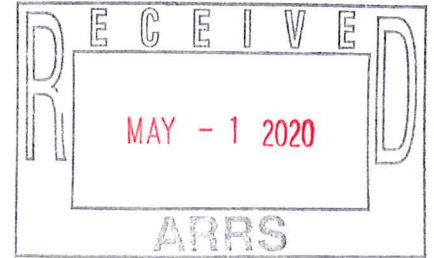
902 KAR 2:065. Immunization requirements for long-term care facilities.

Page 2

Section 1(6)(a)

Line 23

After "equivalent methods;", delete "and".



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

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Eric C. Friedlander
Acting Secretary

May 1, 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: Suggested Amendment for 922 KAR 2:100

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 922 KAR 2:100, the Department for Community Based Services requests the enclosed amendment be made.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Enclosure

Staff-suggested Amendment

**Final Version 3/11/2020 12:33 p.m.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care**

922 KAR 2:100. Certification of family child-care homes.

Page 19

Section 11

Line 19

After "Contract Substitute Staff", insert "Member".