



Commonwealth of Kentucky
Finance and Administration Cabinet
DEPARTMENT OF REVENUE
OFFICE OF TAX POLICY AND REGULATION

501 High Street, Station 1
Frankfort, KY 40601
(502) 564-3226
Fax (502) 564-9565
www.revenue.ky.gov

Andy Beshear
Governor

Holly M. Johnson
Secretary

Thomas B. Miller
Commissioner

April 8, 2021

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: 103 KAR 1:160, Mandatory electronic filing and payment requirements.

Dear Co-Chairs West and Hale:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 1:160, the Department of Revenue proposes the attached substitute to 103 KAR 1:160.

Kind regards,

Lisa S. Swiger, Tax Policy Research Consultant II
Office of Tax Policy and Regulation
Department of Revenue
501 High Street, St 1
Frankfort, Kentucky 40601

lcs

Final, 4-8-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

103 KAR 1:160. Mandatory electronic filing and payment requirements.

RELATES TO: ~~[103 KAR 18:050, 18:150, 41:220 and]~~ KRS 65.7621, 131.010, 131.130, 131.155, 131.250, 131.990, 136.604, 136.616, 136.620, 138.135, 138.140, 138.143, 138.146, 138.195, 138.240, 138.250, 138.260, 139.200, 139.310, 141.010, 141.020, 141.040, 141.0401, 141.150, 141.201, 141.202, 141.206, 141.220; 141.310, 141.315, 141.330, 141.335, 142.115, 142.400, 142.402, 160.613, 160.614, 160.615, 224.50-868, 224.60-145, 234.320, 365.390, 446.010.

STATUTORY AUTHORITY: KRS 131.130, 131.155; 131.250

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of Kentucky tax laws. KRS 131.250(1) authorizes the department~~[of Revenue]~~ to require any tax return, report, or statement to be electronically filed to facilitate the administration of the taxes it administers. KRS 131.155(1) authorizes the department~~[of Revenue]~~ to require any tax payment to be made by electronic fund transfer to facilitate the administration, payment, or collection of the taxes. **KRS 131.155(3) requires the department to promulgate administrative regulations establishing electronic fund transfer requirements for the payment of fees and taxes administered by the department.** This administrative regulation establishes requirements for the electronic filing of tax returns, reports, and statements, and for tax payments to be made by electronic fund transfer for certain taxes administered by the department~~[of Revenue]~~.

Section 1. Definitions. (1) "Commercial mobile radio service" and "CMRS" **is defined by/has the same meaning as provided in]** KRS 65.7621(4).

(2) "Corporation" **is defined by/has the same meaning as provided in]** KRS 141.010(4).

(3) "Department" **is defined by/has the same meaning as provided in]** KRS 131.010(2).

(4) "Electronic fund transfer" **is defined by/has the same meaning as provided in]** KRS 131.010(14).

(5) "Employer" **is defined by/has the same meaning as provided in]** KRS 141.010(9).

(6) "Limited liability pass-through entity" **is defined by/has the same meaning as provided in]** KRS 141.010(16).

(7) "Pass-through entity" **is defined by/has the same meaning as provided in]** KRS 141.010(22).

(8) "Person" **is defined by/has the same meaning as provided in]** KRS 446.010(33).

(9) "Reasonable cause" **is defined by/has the same meaning as provided in]** KRS 131.010(9).

(10) "Specified tax return preparer" means, with respect to any calendar year, any tax return preparer unless the preparer reasonably expects to file ten (10) or fewer individual income tax returns during the calendar year.

(11) "Taxpayer" **is defined by/has the same meaning as provided in]** KRS 131.010(4).

Section 2. Tax Returns, Reports, Statements, and Tax Payments. (1) The tax returns, reports, schedules, and statements relating to the taxes subject to this administrative regulation shall be electronically filed with the department.

(2) The tax or fee payments relating to taxes or fees included in this administrative regulation shall be made by electronic fund transfer.

Section 3. Income Taxes. The following income tax returns, reports, schedules, statements, and payments shall be ~~[required to be]~~ submitted electronically:

(1) Individuals. Individual income tax returns, reports, statements, and related tax payments filed by a specified tax return preparer to report taxes imposed pursuant to KRS 141.020;

(2) Corporations and limited liability pass-through entities. Corporation income and limited liability entity tax returns, reports, statements, and related tax payments filed by corporations and limited liability pass-through entities in accordance with KRS 141.201(3), 141.202, and 141.0401(4) to report and pay corporation and limited liability entity taxes imposed pursuant to KRS 141.040 and 141.0401 if the corporation or limited liability pass-through entity has gross receipts in an amount equal to, or greater than, ~~[one million dollars-(\$1,000,000)]~~ on its annual federal income tax return in the current year;

(3) Pass-through entities. Pass-through entity returns, reports, statements, and related tax payments filed to report and pay taxes in accordance with the requirements under KRS 141.206 if the pass-through entity reports gross receipts in an amount equal to, or greater than, ~~[one million dollars-(\$1,000,000)]~~ on its federal income tax return; and

(4) Employers.

(a) Reports, statements, and payment requirements imposed upon employers with regard to the deduction and withholding of income taxes from wages paid pursuant to KRS 141.310 and 141.315 shall be filed and paid electronically as provided under 103 KAR 18:150; and

(b) Annual withholding statements filed pursuant to KRS 141.335 and ~~[KRS]~~ 141.150 shall be filed electronically as provided under 103 KAR 18:050.

Section 4. Sales and Excise Taxes and Fees. The following returns, reports, statements, and payments shall be ~~[required to be]~~ submitted electronically when filing, reporting, and paying sales and excise taxes and fees:

(1) Cigarettes, tobacco products, and vapor products excise taxes and license fees.

(a) License applications, license fees, excise taxes, returns and reports, stamp orders, and statements filed and paid pursuant to KRS 138.135, 138.140, 138.143, 138.146, and 138.195, as provided under 103 KAR 41.220; and

(b) Enforcement and administrative fees required to be filed and paid pursuant to KRS 365.390;

(2) Commercial mobile radio service (CMRS) fees. Returns and payments to report and pay the CMRS prepaid service charges collected and remitted to the department in accordance with KRS 142.115;

(3) Gasoline, special fuels, and liquefied petroleum gas motor fuels excise taxes and fees. Reports, excise taxes, and fees required to be filed and paid pursuant to KRS 138.240, 138.250, 138.260, 224.60-145, and 234.320;

(4) Multichannel video programming and communications services excise taxes. Returns, reports, statements, and related tax payments required to be filed and paid in accordance with KRS 136.620 to report the taxes imposed pursuant to KRS 136.604 and 136.616;

(5) Sales and use taxes. (a) Returns, reports, supplementary schedules, and related tax payments required to be filed and paid to report retail sales or services subject to the tax imposed pursuant to KRS 139.200; and

(b) Returns, reports, supplementary schedules, and related tax payments required to be filed and paid for the storage, use, or other consumption of tangible personal property, digital property, and extended warranty services subject to the tax imposed pursuant to KRS 139.310;

(6) Statewide transient room taxes. Returns, reports, statements, and related tax payments required to be filed and paid in accordance with KRS 142.402 to report the tax imposed pursuant to KRS 142.400;

(7) Tire fees. Returns, reports, and related fee payments required to be filed and paid to report sales of new motor vehicle tires and the number of waste tires received and pay fees pursuant to KRS 224.50-868; **and**

(8) Utility gross receipts license taxes. Returns, reports, statements, and related tax payments required to be filed and paid in accordance with KRS 160.615 to report the taxes imposed pursuant to KRS 160.613 and 160.614.

Section 5. Penalties for Noncompliance. Any person, taxpayer, or tax preparer who fails or refuses to comply with the requirements of this administrative regulation shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay applicable penalties as provided under KRS 131.990.

Section 6. Waiver. (1) A person, taxpayer, or tax preparer required to electronically file a return, report, or statement may contact the department to request a waiver **as authorized by KRS 131.250(2). A written request for waiver of the electronic filing requirement shall be submitted to the department via the method required for the particular tax involved.** The contact information by tax type may be found on the Department of Revenue's Web site at <http://revenue.ky.gov>.

(2) The Department may waive the electronic fund transfer requirement if a taxpayer is unable to remit funds electronically, as provided in KRS 131.155(4).

Section 7. Effective Date. The returns, reports, statements, or payments required to be submitted electronically by this administrative regulation shall be effective for tax periods beginning on or after **October/January** 1, 2021.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.



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c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 103 KAR 26:100, Industrial laundry and linen supply services.

Dear Co-Chairs West and Hale:

After discussions with the Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 26:100, the Department of Revenue proposes the attached substitute to 103 KAR 26:100.

Kind regards,

Lisa S. Swiger, Tax Policy Research Consultant II
Office of Tax Policy and Regulation
Department of Revenue
501 High Street, St 1
Frankfort, Kentucky 40601

lcs

Final, 4-7-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

103 KAR 26:100. Industrial laundry and linen supply services.~~[Towel and linen service.]~~

RELATES TO: KRS 139.010, 139.200

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets ~~[To interpret]~~ the sales and use tax law as it applies to transactions involving industrial laundry and linen supply services. ~~[towel and linen services.]~~

Section 1. (1) Industrial laundry services are subject to sales tax pursuant to KRS 139.200(2)(k). [shall include, but are not limited to:]

(2) The list in this subsection shall serve as general examples of industrial laundry services:

(a) Industrial uniform supply services;

(b)[(2)] Protective apparel supply services;

(c)[(3)] Industrial mat and rug supply services; and

(d)[(4)] Any other substantially similar industrial services.

Section 2. (1) Linen supply services are subject to the sales tax pursuant to KRS 139.200(2)(m). [shall include, but are not limited to:]

(2) The list in this subsection shall serve as general examples of linen supply services:

(a) Table and bed linen supply services;

(b)[(2)] Nonindustrial uniform supply services; and

(c)[(3)] Any other substantially similar nonindustrial linen supply services.

Section 3. (1) Industrial laundry and linen supply service providers [Persons furnishing periodic cleaning or laundering] of aprons, caps, coats, diapers, dresses, linens, mats, protective apparel, rugs, towels, uniforms, or other articles of a similar nature under an agreement for periodic cleaning or laundering [the provisions of a continuous industrial laundry or linen supply service] are consumers of the supplies and other property used in performing their services and the tax shall apply at the time these[such] items are purchased.

(2) Industrial laundry and linen supply service providers shall not claim a sale for resale exemption by issuing[issue] the "Resale Certificate" (Revenue Form 51A105), "Streamlined Sales and Use Tax Agreement – Certificate of Exemption", (Form 51A206), or "Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate – Multijurisdictional" for the purchase of the aprons, caps, coats, diapers, dresses, linens, mats, protective apparel, rugs, towels, uniforms, or other articles of a similar nature if[when] retaining title to property they provide under an agreement for continuous cleaning service. [(1) Persons furnishing periodic cleaning or laundering of coats, caps, aprons, diapers, uniforms, dresses, towels and articles of a similar nature under an agreement which provides for a continuous service to be rendered to barber shops, beauty shops, industrial plants and other establishments or to in-

~~dividuals, are consumers of the supplies and other property used in performing their services and the tax applies at the time such supplies are purchased.]~~

Section 4. Forms. The form(s) referenced in this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(3) The Department of Revenue Web site at <http://revenue.ky.gov>.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.



Nicole S. Bearse
Member
229 West Main Street, Suite 301
Frankfort, Kentucky 40601
(502) 699-2355
nbearse@goldbergsimpson.com

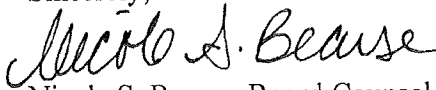
Thursday, April 8, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Ms. Emily Caudill, Regulation Compiler
Legislative Research Commission
029 Capital Annex
Frankfort, Kentucky 40601

***Re: 201 KAR 23:150 – Complaint procedure, disciplinary action, and
reconsideration – Staff Amendments***

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 23:150, the Kentucky Board of Social Work proposes the attached amendment to 201 KAR 23:150.

Sincerely,

Nicole S. Bearse, Board Counsel
Kentucky Board of Social Work

NSB/
Cc: J. Miller; A. Adcock; KBSW

Final, 4-7-2021

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Kentucky Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

RELATES TO: KRS 335.030, 335.070(1)(a), (2)-~~[(3), (4), (5), (6), (7),]~~(8), 335.150, 335.155
STATUTORY AUTHORITY: KRS 335.070(1)(a), (2), (3), ~~335.150~~, 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) ~~requires~~authorizes the board to ~~administer~~regulate the practice of social work and enforce the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(3) authorizes the board to promulgate ~~[and enforce reasonable]~~ administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(2) authorizes the board to issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating KRS 335.010 to 335.160 and 335.190.~~[and]~~ KRS 335.150 ~~authorizes~~requires the board to regulate the conduct of individuals~~[licensees]~~, including to investigate alleged violations~~[, to promote the efficient and fair conduct of disciplinary proceedings]~~[,] and take appropriate disciplinary action. KRS 335.160 authorizes the board to enjoin violations. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board in the imposition of sanctions and disciplinary action of a licensee or individual~~[applicant]~~ in violation of KRS 335.030 or KRS 335.150.

Section 1. Definitions. (1) "Board" is defined by KRS 335.020(1).

(2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 335.010 to 335.160 or 201 KAR Chapter 23.

(3) "Complaint committee" means a committee of the board that:

(a) Reviews an initiating complaint; and

(b)1. Recommends dismissal or further investigation of the complaint; or

2. Determines the existence of sufficient evidence to bring a formal complaint.

(4) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a license holder, an applicant, or an unlicensed person engaging in the practice of social work or holding himself or herself out to the public by any title regulated by the board, and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(5) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in the practice of social work, or is using the title "Certified Social Worker," "Licensed Social Worker", or "Licensed Clinical Social Worker".

(6) "Order" means the whole or part of a final disposition of a hearing.

(7) "Respondent" means the person against whom an initiating or formal complaint has been made.

Section 2. Composition of Complaint Committee. (1) The complaint committee shall consist of at least two (2) board members appointed by the board chair, one (1) of whom may be the board chair; and

(2) The complaint committee may be assisted by the board staff and counsel to the board.

Section 3. Initiating Complaint. (1) An initiating[A] complaint may be made/initiated by:

- (a) An individual;
- (b) An individual who is authorized to act on the behalf of an employer of a licensee or applicant;
- (c) A government agency; or
- (d) The board.

(2) An initiating[A] complaint shall be:

(a) Made by a complainant in writing to the board on a KY/Kentucky Board of Social Work Complaint Form along with an Authorization for Release of Medical and Hospital Records form, [(if applicable)] and describe with sufficient detail the alleged violations or violations[violation(s)] of KRS Chapter 335 or 201 KAR Chapter 23; and

(b) Received in the board office by mail, hand delivery, fax, electronic mail/email, or by an online complaint submitted through the board's Web site at https://bsw.ky.gov/website.

(3) The board may conduct an investigation and initiate any necessary complaint on its own initiative without receipt of a written complaint if the board has reasonable cause to believe that there may be a violation of KRS 335.010 to 335.160 or 201 KAR Chapter 23/the administrative regulations of the board.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint against a licensee or temporary permit holder.

(5) Redaction.

(a) Upon recommendation of the complaint committee and consent by majority vote of the board, the board may direct that an initiating[a] complaint be redacted of personal names, identification numbers, and contact information.

(b) The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file. [

~~(c) The board shall send a redacted copy of a complaint to the respondent to meet the requirements of Section (3)(1) of this administrative regulation. The original complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board but shall not be released to the respondent or the public until final disposition of the matter.]~~

Section 4.2.1 Notice to Respondent. (1)(a) The board shall notify a respondent in writing of the receipt of an initiating[a] complaint and send a copy of the initiating complaint to the respondent at his or her mailing address or electronic mail address provided to the board. [-.];/]

(b) The board shall send a redacted copy of an initiating[a] complaint to the respondent. A respondent may/Respondents shall be entitled to] inspect records related to him or her, [them] or in which he or she is mentioned by name pursuant to KRS 61.884.

(c)[(a)] The board may keep the complainant's name and contact information confidential until completion of the investigation if any.

(2)[(b)] A respondent shall file a written response to an initiating[a] complaint with the board by mail, hand delivery, fax, or electronic mail/email within twenty (20) days after receipt of notice of the initiating complaint, unless an extension is requested and granted in accordance with subsection (4)[(3)] of this section.

(3)[3.1](c)] Failure of a respondent to file a timely response to the initiating complaint shall constitute a violation of a board order and this[or] administrative regulation and shall be grounds for disciplinary action under KRS 335.150(1)(f).

(4)[4.1](2)] Request for extension of time.

(a) A respondent, or his or her legal representative may request an extension of time or additional time to file a response by submitting a written request to the board on or before the expiration of the twenty (20) day due date established in subsection (2) of this section ~~[(3)(b)]~~.

(b) The complaint committee or the board administrator may grant an extension of time if requested to obtain legal counsel, provide ample time for preparation of a detailed response, or for other good cause shown [as appropriate].

Section ~~5.3.~~ Recommendations of Complaint Committee. (1) Based on consideration and review of the initiating complaint, ~~[and]~~ the response, and any other relevant information or material available, the complaint committee may recommend that the board:

(a) ~~Dismiss the initiating~~ Recommend that [a] complaint ~~[be dismissed]~~ and find the matter closed ~~if [where]:~~

1. a. The board lacks jurisdiction over the person named in the initiating complaint;
b.2. There is insufficient evidence to support the initiating complaint;
c.3. There are no violations of laws, rules, or administrative ~~[and]~~ regulations governing the practice of social work; ~~or [or]~~

d.4. The conduct complained of does not warrant disciplinary or other remedial action. ~~;~~ ~~[-]~~

2.5. Upon reaching a decision to dismiss the initiating[a] complaint, the board shall notify the respondent and complainant of the disposition of the matter in writing, by personal service, regular mail, or electronic mail address provided to the board. ~~;~~ ~~or~~ ~~[-]~~

3.6. Dismissal of an initiating[a] complaint shall be a final board action and shall not be subject to further investigation by the board or appeal under KRS 335.155. ~~;~~ ~~[-]~~

(b) ~~Further~~ Recommend further investigation of the initiating complaint. If the board approves an investigation, the board may be assisted by board staff, an agent of the board, the Office of the Attorney General, or other appropriate local, state, or federal agency; ~~[-]~~

(c) Refer the initiating complaint to another committee of the board; ~~[-]~~

(d) Request an Authorization for Release of Medical and Hospital Records form from a party; ~~[-]~~

(e) Resolve the initiating complaint through informal proceedings pursuant to KRS 335.150(4); ~~[-]~~

1. At any time during the complaint process, the board may authorize the board attorney or executive director of the board to enter into discussions or negotiations with a respondent and his or her attorney, if any, for the purpose of settling and informally dispensing with the initiating complaint.

2. An agreed order or assurance of voluntary compliance shall be approved by a majority vote of the board and be signed by the chairperson of the board, the respondent, and the respondent's attorney, if any. Copies shall be placed in the licensee's file, and be provided to the complainant.

3. The board may employ mediation as a method of resolving the matter informally.

4. A mediated agreement shall be handled in the same manner as an agreed order in subsection (1) of this section.

(f) Issue a formal complaint and provide notice of hearing to the respondent in accordance with KRS Chapter 13B and KRS 335.155; ~~[-]~~

(g) Refer the matter to another government agency; ~~or~~ ~~[-]~~

(h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a violation in accordance with KRS 335.160.

(2) If at any time a [A] complaint committee member becomes aware of having a possible conflict of interest, the member shall disclose the existence of the conflict to the complaint committee and the member may be excused by the board.

Section **6.[4.]** Board Action upon Recommendation of Complaint Committee. (1) The board shall review the committee's recommendations and shall approve or reject by majority vote the recommendations in whole or in part.

(2) A board member having a known conflict of interest or if at any time becomes aware of a possible conflict of interest shall disclose the existence of the conflict in writing to the board and may be excused, if warranted.

(3) The board shall notify a respondent and complainant of the resolution of the complaint in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

Section **7.[5.]** Motion to Reconsider. (1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the **board within thirty (30) days of notification of final disposition, in writing, and received in the board office by mail, hand delivery, fax, or electronic mail[~~email~~].**

(2) The motion to reconsider shall provide evidence of the following:

(a) Grounds and reasons for reconsideration, modification, or reversal;

(b) Rehabilitation or restitution, if applicable; and

(c) Status of probation, parole, or supervision by any state or federal government agency or board.

(3) The complaint committee shall consider any such motion to reconsider at the next regularly scheduled committee meeting and any change in disposition shall be approved by a majority vote of the board.

(4) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

(5) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

Section 8. Formal Response. (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

(2) Allegations not properly responded to shall be deemed admitted.

(3) The board shall, if there is good cause, permit the late filing of a response.

Section 9. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

(1) The full board or a quorum of the board;

(2) A hearing panel consisting of at least one (1) board member appointed by the board; or

(3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 10. Administrative Disciplinary Fine. If the board finds against the respondent on a charge, an administrative disciplinary fine in accordance with KRS 335.150 shall be assessed against the respondent.

Section **11.[6.]** Unlicensed Practice. (1) If the complaint committee concludes that **an initiating[a]** complaint is substantiated to show that a person is practicing social work without a license, **or is holding himself or herself out to the public by any title regulated by the board, then** the committee shall prepare a letter signed by the board chair or an authorized representative, **and [to]** notify the person of the committee's belief that the person is **engaging in this behavior[practicing without a license]** and request that the person **[voluntarily]** cease

practicing[the practice] without a license, or from holding himself or herself out by utilizing a regulated title.]

~~(2) Penalty. Any person who shall be found by the board, after hearing or by agreed order, to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the total sum of \$2,500.]~~

~~(2)[(3)]~~ The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.

~~(3)[(4)]~~ The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain and enjoin violations in accordance with KRS 335.160.

Section ~~12.[7.]~~ Incapacity of Respondent. (1) If the board receives an initiating[a] complaint alleging that a licensee or an applicant has been legally declared mentally incompetent or may be mentally incapable of providing social work services in a competent, safe, ethical, or professional manner, the board shall follow the procedures established in this administrative regulation;

~~(2)[(b)]~~ The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine whether the licensee or applicant is capable of providing social work services in a competent, safe, ethical, or professional manner in accordance with KRS 335.010 to ~~335.160[335.16]~~ and ~~[the administrative regulations as established by]~~ 201 KAR Chapter 23.

~~(3)[(c)]~~ The board shall pay the cost for an examination initiated and recommended by the board. The respondent shall pay the cost of the examination if he or she seeks an independent examination.

Section ~~13.[8.]~~ Emergency Action. (1) Nothing in this administrative regulation shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

Section ~~14.[9.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KY Board of Social Work Complaint Form," ~~4/2021[12/2020]~~; and

(b) "Authorization for Release of Medical and Hospital Records," ~~4/2021[12/2020]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. ~~[, subject to COVID-10 restrictions].~~

CONTACT PERSON: Margaret Hazlette, Interim Board Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350, email Margaret.hazlette@ky.gov.

Ryan F. Quarles
Commissioner



Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

April 9, 2021

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 79:011. Motor fuel quality testing and inspection program.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 79:011 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 79:011.

Sincerely,

<Electronically signed this day>

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



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GENERAL GOVERNMENT
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302 KAR 79:011 Motor fuel quality testing and inspection program

RELATES TO: KRS 363.900 - 363.908, 42 U.S.C. 7545(o)(1)(D), 16 C.F.R. 306.12, 40 C.F.R. 80.27
STATUTORY AUTHORITY: KRS 363.902, **363.908**, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27
NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions.

(1) "Administrative Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer due to a violation not related to motor fuel quality standards and specifications.

(2) [(4)] "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five (85) percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels, other than alcohol, derived from biological materials.

(3) [(2)] "Anti-Knock Index" or "AKI" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI = (RON+MON)/2$; this value is called by a variety of names, in addition to anti-knock index, including: Octane rating, Posted octane, (R+M)/2 octane.

[(3) "ASTM International" means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services and the promotion of related knowledge.]

(4) "Automotive Fuel Rating" means the automotive fuel rating required under the amended Automotive Fuel Ratings, Certification and Posting Rule, 16 C.F.R. Part 306. The automotive fuel rating for alternative non-liquid automotive fuels is expressed in 16 C.F.R. Part 309.

(5) "Aviation gasoline" means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

(6) "Aviation turbine fuel" means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

(7) "Biodiesel" means a fuel comprised of, at least ninety-nine (99) percent by volume, mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B-100 or B-99.

(8) "Biodiesel blend" means hydrocarbon-based diesel fuel blended with between six (6) and twenty (20) percent by volume biodiesel and **can [may]** contain fuel additives.

(9) "Biomass-based diesel" means a diesel fuel substitute **produced or co-produced** from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545§ (o) (1) (D), and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

~~[(10) "Compressed Natural Gas (CNG)" means natural gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel.]~~

~~(11) "Department" means the Kentucky Department of Agriculture.~~

~~(12) "Diesel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition internal combustion engine that may contain fuel additives and up to five (5) percent by volume of biodiesel or biomass-based diesel.]~~

~~(10) [(13)]~~ "Distributor" means any carrier or supplier **that [who]** transports or stores, or causes the transportation or storage, of motor fuel without taking title to or otherwise having ownership of the motor fuel and without altering either the quality or quantity.

~~(11) [(14)]~~ "Ethanol flex fuel blends", commonly known as "Flex Fuel", means gasoline-ethanol mixtures of more than fifty-one (51) percent but not greater than eighty-three (83) percent ethanol by volume, restricted for use as fuel in vehicles equipped with flexible-fuel spark ignition engines.

~~(12) [(15)]~~ "EPA" means the United States Environmental Protection Agency.

~~[(16) "Gasoline" means a volatile mixture of liquid hydrocarbons containing small amounts of additives for use as a fuel in a spark-ignition internal combustion engine and has not been blended with oxygenates, [;] including neat, conventional, and recreational gasoline.]~~

~~(13) [(17)]~~ "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline blended with more than one (1) percent by volume oxygenate, with more than three tenths (0.3) of a percent by volume methanol; ~~[or with not more than sixteen (16) percent isobutanol;]~~ this includes gasoline-ethanol blends **containing between one (1) and fifteen (15) percent ethanol by volume.**

~~(14) [(18)]~~ "Internal combustion engine" means a device used to generate power by converting chemical energy bound in a fuel via spark-ignition or compression-ignition engine combustion into mechanical work to power a vehicle or other device.

~~(15) [(19)]~~ "License" means retail motor fuel license.

~~(16) [(20)]~~ "License holder" means the person, owner, **or** retailer or their delegated representative, that is financially responsible for the cost of fees, fines, corrective actions, and remediation of motor fuel quality, to ensure compliance with the Motor Fuel Inspection and Testing Program pursuant to KRS 363.900-908.

~~[(21) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied at negative two hundred sixty degrees Fahrenheit (-260 °F) and stored in insulated cryogenic tanks for use as a motor fuel.]~~

~~(22) "Liquefied petroleum gas" or "LPG" means a mixture of normally gaseous hydrocarbons, predominantly propane that has been liquefied by compression or cooling, or both, to facilitate storage, transport, and handling for use as a motor fuel.]~~

(17) [(23)] "Manifolded" means a piping connection between two (2) or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.

(18) [(24)] "Mid-level ethanol flex fuel blends" means gasoline-ethanol mixtures containing between sixteen (16) and fifty (50) percent ethanol by volume, restricted for use in flexible-fuel vehicles with automotive spark-ignition engines.

(19) "Motor Fuel Quality Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class, and grade.

(20) [(25)] "Oxygenate" means an oxygen-containing organic compound, such as an alcohol, like ethanol, that can be used as a fuel or fuel supplement.

(21) [(26)] "Person" means an individual, partnership, corporation, company, firm, association, or other business entity.

(22) [(27)] "Premium diesel" means diesel fuel identified on retail dispensers with an additional term incorporated directly in a product or grade name that differentiates the fuel and implies the fuel provides properties that meet or **exceed the minimum requirements of the NIST Handbook 130 Uniform Engine Fuels and Automotive Lubricants Regulation, §2.2.1 for Premium Diesel Fuel. [minimum specification limits or performance.]**

(23) [(28)] "Product transfer documentation" means a bill of lading, invoice, loading, delivery, or meter ticket, bill of sale, or any combination of product delivery documentation meeting the requirements **established [specified]** in this **administrative** regulation, that shall accompany a shipment of motor fuel.

(24) [(29)] "Racing gasoline" means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility **and [;]** has a narrower boiling range and a higher octane rating than gasoline or gasoline-oxygenate blends made for use in conventional passenger vehicles.

(25) [(29)] "Reid Vapor Pressure" or "RVP" means a measure of the volatility of gasoline and gasoline-oxygenate blends. [;] It is the property of a liquid fuel that **distinguishes [outlines]** its evaporation characteristics.

~~(30) "Retail Facility" (a) Means a licensed service station, garage, truck stop or other outlet selling from a motor fuel retail dispensing device that is compliant with 302 KAR 81:010, for the purpose of engaging in the business of selling or distributing motor fuel to the consumer; and~~

~~(b) A Retail Facility does not include an outlet using such dispensers exclusively for company and fleet use and price contract sales.~~

~~(31) "Stop-Sale Order", means when a motor fuel product(s) is removed from sale to the consumer.~~

~~(31) "Stop-Sale Order, Administrative" means, when a motor fuel product(s) is ordered removed from sale to the consumer due to a violation(s) not related to motor fuel quality standards and specifications.~~

~~(32) "Stop-Sale Order, Motor Fuel Quality" means, when a motor fuel product(s) is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class and grade.]~~

(26) [(33)] "Storage tank" means a tank located either above or below ground used to hold motor fuel intended for retail sale.

~~(27)~~ [(34)] "V/L" means vapor to liquid ratio.

Section 2. Licensing and Renewal.

(1) ~~A~~ ~~[No]~~ person shall not offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(a) Operating a retail facility without a retail motor fuel license ~~shall~~ ~~[may]~~ result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale.

(2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 of the following calendar year. [and shall be renewed annually.]

(3) After January 31, 2023, the department ~~shall~~ ~~[will]~~ provide the ability to apply for or renew retail motor fuel licenses online.

(a) Paper applications and payments ~~shall~~ ~~[will]~~ no longer be accepted after January 31, 2023.

(b) Paper applications and payments submitted after January 31, 2023 ~~shall~~ ~~[will]~~ not be processed.

(4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.

(5) ~~A~~ retail motor fuel license shall be ~~[licenses are]~~ non-transferable.

(6) A retail motor fuel license ~~shall~~ ~~[will]~~ not be issued without an application having been first submitted.

(a) An application shall ~~[Applications]~~ be complete upon submission to the department. [when submitted.] An incomplete application shall not be processed.

(b) Payment ~~shall~~ ~~[must]~~ be by ~~[in the form of a]~~ money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

(c) An application ~~[Applications]~~ without payment ~~shall~~ ~~[will]~~ not be processed.

(d) Payments received without a completed application ~~shall~~ ~~[will]~~ not be processed.

(e) The license holder shall affirm or modify the availability of each motor fuel offered for sale with each license application or renewal, including ~~[this includes]~~ any motor fuel subject to a Declaration of Non-Sale, as established ~~[provided for]~~ in Section 9(10) of this administrative regulation. [302 KAR 79:011(9)(10)].

(f) The license holder shall confirm that all retail dispensing devices used for retail sales ~~shall~~ comply ~~[are compliant]~~ with 302 KAR 81:010.

(7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program ~~shall~~ be grounds for ~~[may result in]~~ the denial of license issuance.

(8) ~~A~~ ~~[No]~~ license holder shall not offer for sale a new motor fuel, or a motor fuel not established ~~[identified]~~ in this administrative regulation or 302 KAR 79:012, without first notifying the department in writing.

(9) ~~A~~ license holder shall notify the department in writing within ten (10) consecutive days of ~~[when]~~ any of the following events ~~[occurs or is likely to occur]~~:

(a) The ~~[When the]~~ Retail Facility closes;

(b) [When] The License Holder information changes;

(c) **[When]** A license holder intends to permanently modify motor fuel products offered for sale ~~[r]~~ or storage tank allocation; **or**

(d) **[When]** A retail facility has a storage tank that has been entered into temporary closure, in accordance with any law or regulation.

Section 3. Labeling.

(1) The label showing the minimum automotive fuel rating shall meet the same specifications required in 16 C.F.R. Part 306 or 16 C.F.R. Part 309.

(2)**(a)** Retail dispensing devices shall display the octane rating certified on the product transfer documentation to the license holder of gasoline and gasoline-oxygenate blends being offered for sale to consumers.

(b) At least one (1) label on the face of the dispenser shall identify the octane rating.

(c) If two (2) or more gasolines or gasoline-oxygenate blends with different octane ratings are sold from a single dispenser, then a separate label for each octane rating shall be placed on the face of the dispenser.

(3) Labels shall be placed conspicuously on the dispenser and be in full view of consumers. Labels shall be placed as near as reasonably practical to the price.

(4) During remediation the posted automotive fuel rating may differ from that certified on the product transfer documentation; otherwise, the posted automotive fuel rating **shall [must]** meet **or exceed the certification [that which is certified]** on the product transfer documentation.

(5) **(a)** In addition to this regulation, for gasoline containing less than one (1) percent by volume oxygenate a label shall be posted that contains words such as "neat," "conventional," "recreational," "alcohol free," "contains no ethanol," or other language approved by the department.

(b) The label shall not contain the following: "100 %" or "pure gasoline."

(6) Gasoline and gasoline-oxygenate blends **shall [must]** be labeled in accordance with 302 KAR 79:012, **Section 1(5)(a) through (c).**~~[(1)-(5) (a-e)].~~

(7) Gasoline-ethanol blends **containing [with ethanol content]** greater than ten (10) percent, up to and including fifteen (15) percent, shall be labeled in accordance with the EPA dispenser labeling requirements in 40 C.F.R. **1090.1510.**

(8) **No later than January 31, 2023, the selector identifying Ethanol Flex Fuels containing at least fifty-one (51) percent and no greater than eighty-three (83) percent ethanol by volume ["E-85" products] shall [must] be labeled as either:**

(a) "Ethanol Flex Fuel";

(b) "E-85";

(c) **The numerical value representing the percentage by volume ethanol in the fuel, rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";**

(d) **The phrase, "Contains 51% - 83% Ethanol"; or**

(e) **Containing the requirements of 16 C.F.R. 306.12 (4).**

1. In addition to the requirements of paragraphs (a) through (d)[(a-d)] of this subsection, an additional label, meeting the requirements of 16 C.F.R. 306.12 (4), shall be in a prominent place, as close to the selector as practical.

2. The label shall be positioned to clearly identify which control the consumer will use to select the Ethanol Flex Fuel.

3. Illustrations of Ethanol Flex Fuel labels. Labels shall meet the specifications in this section and shall/should look like these examples, except the black print shall/should be on the appropriately colored orange background and the knock-out print within the black band shall/must be orange. [retail facilities in Kentucky not later than January 31, 2023.]

(9) Aviation gasoline shall be identified by the grade terms contained in the latest version of ASTM D6227, ["Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component, ["ASTM D7547, [" Standard Specification for Hydrocarbon Unleaded Aviation Gasoline, [" and ASTM D910, [" Standard Specification for Leaded Aviation Gasolines for the particular type and grade.

(10) Aviation turbine fuels shall be identified as grades Jet A, Jet A-1, or Jet B.

(11) A racing gasoline **label [labels]** shall display an AKI that meets **or exceeds the certification [that which is certified]** on the product transfer documentation.

(12) Diesel fuel other than No. 2-D shall be identified on the dispenser by grade.

Section 4. Retail Product Storage Identification.

(1) To facilitate retail motor fuel product storage identification, each product storage tank or vessel shall consist of a lid or access point, rim or fixed component, and collar or permanent label.

(a) Each lid or access point and rim or fixed component for any motor fuel product storage tank or vessel at the retail level shall be permanently, plainly, and vividly marked to identify the product contained inside by means of a description and color as designated in the published [" API Recommended Practice 1637; Equipment Color-Symbols System, Figures 1-3 and with a collar or permanent label.

(b) In addition to a collar or permanent label, the lid or access point, and rim or fixed component shall be identified by one of the following methods:

1. Paint the lid or access point and rim or fixed component, then place a collar or permanent label near or around the access point that states the name or description of the product such as "Regular E10"; or

2. Paint the lid or access point and rim or fixed component, then fit a collar permanent label inside the lid or access point.

(2) If a retail motor fuel product is not covered in the publication [" API Recommended Practice 1637; Figures 1-3 Equipment Color Symbols System["], **the product [it]** shall be permanently, plainly, and vividly marked to identify the product contained inside.

(3) To identify motor fuel products stored at the retail facility, a license holder shall place, in a conspicuous location, a legible chart identifying any of the following, **if [when]** applicable:

- (a) The location of each storage tank in use;
- (b) The type and grade of motor fuel in each storage tank;
- (c) Which, if any, storage tanks are manifolded;
- (d) Any dispenser displaying a single product or grade on multiple buttons;
- (e) The dispenser supplied by each storage tank; and
- (f) Any **product [product(s)]** subject to a Declaration of Non-Sale.

Section 5. Product Transfer Documentation.

(1) The requirements of this section ~~shall [are to]~~ be in addition to, and not in substitution of, other requirements established in any federal statute or regulation.

(2) Products regulated by this administrative regulation shall be accompanied by transfer documentation that detail components of the motor fuel.

(3) A legible paper copy, or digital representation, of the product transfer documentation shall be made available to the department prior to the conclusion of the inspection or upon request.

(4) With the exception of Section [302-KAR-79:011] 7(2)(b) of this administrative regulation, each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for at least the last five (5) deliveries.

(5) ~~The license holder shall make available [In addition to other product transfer documentation requirements set forth in this administrative regulation, when any person transfers motor fuel, except for transfers]~~ to the department upon request [consumer, the transferor shall provide to the transferee] product transfer documentation that shall state ~~[the following information]~~ for each type and grade of motor fuel, the:

- (a) ~~[The]~~ Type of motor fuel being transferred;
- (b) ~~[The]~~ Automotive fuel rating of the motor fuel being transferred;
- (c) ~~[The]~~ Name and address of the transferor;
- (d) ~~[The]~~ Name and address of the transferee;
- (e) ~~[The]~~ Volume of motor fuel being transferred; and
- (f) ~~[The]~~ Date of the transfer.

(6) ~~[In addition to other]~~ Product transfer documentation shall include:[requirements set forth in this section the following information, or similar, shall also be included:]

(a) For gasoline, the statement "The RVP does not exceed (fill in appropriate value) psi;"

(b) For gasoline, containing no oxygenate, the ~~[following]~~ statement, "Contains no oxygenate;[-]"

(c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel: ~~[shall also include the following information:]~~

1. For gasoline blended with less than nine (9) percent by volume ethanol, the following statement: "Contains up to X % ethanol. The RVP does not exceed (fill in appropriate value) psi." The term X refers to the maximum volume percent of ethanol present in the gasoline;[-]

2. For gasoline blended with between nine (9) and ten (10) percent, by volume ethanol, the following statement: "Contains between 9% and 10% ethanol"; and[-]

3. For gasoline blended with greater than ten (10) percent, by volume, and not more than fifteen (15) percent, by volume ethanol the following statement: "Contains between 10% and 15% ethanol"[-]; and

(d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage by volume of any oxygenate or combination of oxygenates present.

(7) ~~[In addition to other]~~ Product transfer documentation pertaining to [requirements set forth in this section, all] mid-level ethanol flex fuel and ethanol flex fuel blends, shall [must] be represented by the numerical value representing the [volume] percentage by volume [of] ethanol in the fuel, followed by the percentage sign followed by the term "Ethanol. Use Only in Flex Fuel Vehicles/May Harm Other Engines".

(a) For Mid-Level Ethanol Flex fuel blends containing more than sixteen (16) percent and no greater than fifty (50) percent ethanol by volume, the numerical value representing the ~~[volume]-percentage~~ **by volume** ~~[of]~~ ethanol in the fuel, **shall [must]** be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol."~~["-"]~~

(b) For ethanol flex fuel blends containing more than, at least, **fifty-one (51)** percent and no greater than eighty-three (83) percent ethanol by volume of **ethanol**, the numerical value representing the ~~[volume]-percentage~~ **by volume** ~~[of]~~ ethanol in the fuel, **shall [must]** be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol", or the phrase, "Contains 51% - 83% Ethanol".

(8) ~~Diesel fuel blended [In addition to other product transfer documentation requirements set forth in this section, For biomass-based diesel, biodiesel, biomass-based diesel blends]-~~with more than five (5) percent **by volume** biomass-based diesel **or [and]-**biodiesel ~~[blends with more than five (5) percent biodiesel]~~, a disclosure of the **biomass [Biomass]-**based diesel or biodiesel component, expressed as the percentage by volume ~~[shall be included]~~ in the product transfer documentation. Diesel fuel **shall [must]** also include a statement declaring the grade as either "No.1-D" or "No. 2-D."~~["-"]~~

(9) ~~[In addition to other]~~Product transfer documentation **pertaining to [requirements set forth in this section,]** premium diesel **shall be so [must be]** identified ~~[as such]~~.

(10) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the ~~[volume]-percentage~~ **by volume** of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock."

(11) **100%** ~~[In addition to other product transfer documentation requirements set forth in this section one hundred (100) percent,]~~ Biomass-Based diesel shall be identified by the phrase, "**Contains [contains]**100% Biomass-Based diesel."

(12) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Alternative fuel, with one (1) principal component, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume; such as "M-85, Minimum 85% Methanol."~~["-"]~~

(13) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Alternative fuel, with two (2) principle components, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the two (2) principle components, expressed as a minimum percentage by volume; such as "LPG, Minimum 90% Propane, 2% Butane."~~["-"]~~

Section 6. Unattended Stations. The license holder of a retail motor fuel dispensing site that is unstaffed shall comply with all motor fuel quality requirements **established [set forth]** in this administrative regulation.

Section 7. Inspection of Premises.

(1) The department's inspector shall present **agency [proper]-**identification to the license holder prior to obtaining samples.

(2) (a) The department shall have access to all distributor and retail facility records relating to the distribution or sale of retail motor fuel.

(b) If a license holder sells retail motor fuel at more than one (1) location, the product transfer documentation may be retained at a central location ~~if [provided that]~~ the product transfer documentation is made available to the inspector prior to the conclusion of the inspection ~~or upon request~~.

(3) At each retail facility, having more than one (1) dispenser per product, the license holder ~~shall [must]~~ identify and affix all dispensers with an alphabetical or numerical designation.

(4) Each retail location shall have on file a chart or other means of determining each product's volume in gallons. This information shall be supplied prior to conclusion of the inspection or upon request.

(5) The department shall have access to all motor fuel intended for retail sale for the purpose of examination, inspection, taking of samples, and investigations. A license holder shall not hinder or obstruct the department in the reasonable performance of its duties.

(a) If access is denied by the license holder, an Administrative Stop-Sale Order may be issued on the product identified by the department to be inspected until access is granted, even if the ~~product [product(s)]~~ has been removed from sale.

(b) A license holder ~~shall [may]~~ be exempt from ~~[the requirement of]~~ this section by providing proof that no motor fuel is in the tank at the time of the inspection.

(6) A receipt, either printed by a device or written in clear hand script shall be provided to the department's inspector. Failure to meet the requirements of ~~paragraphs (a) through (f) [(g)] of this subsection [(a-g)]~~ shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

(a) ~~[The]~~ Retail facility address;

(b) ~~[The]~~ Date of the transaction;

~~[(c) [The] Time of the transaction;]~~

~~(c) [(d) The] Price per gallon of the motor fuel dispensed;~~

~~(d) [(e) The] Total volume of motor fuel dispensed;~~

~~(e) [(f) The] Identity of the product [r] by name, symbol, or abbreviation; and~~

~~(f) [(g) The] Dispenser designation by either an alphabetical or numerical description.~~

(7) If the design, construction, or location of any storage tank is such as to require special equipment, accessories, or access for use or motor fuel return, the equipment, accessories, or access shall be supplied by the license holder.

Section 8. Sampling of Motor Fuel.

(1) Samples of motor fuel collected for testing shall be pumped, pulled, drawn, or otherwise procured in accordance with the most recent standard practice for the particular type, class, and grade of the motor fuel, using a standard or method detailed in one (1) of the following:

(a) ASTM D4057-19, [""] Standard Practice for Manual Sampling of Petroleum and Petroleum Products; [""]

(b) ASTM D5842-19, [""] Standard Practice for Sampling and Handling of Fuels for Volatility Measurement; [""] or

(c) ASTM D4306-20, [""] Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination.-[""]

(2) Only gasoline, gasoline-oxygenate blends, and diesel fuel ~~shall [will]~~ be subject to random sampling.

(3) Samples of not more than one (1) gallon per grade, per source, per inspection **shall [may]** be collected from any distributor or retail facility without cost to the state. **If [When]** the same type and grade of motor fuel from multiple storage tanks, which are not manifolded, is offered for sale at a retail facility a sample of each type and grade **shall [may]** be obtained.

(4) **If [Where]** a motor fuel quality Notice of Violation has been issued **because of a [,-for]** complaint **or [,-]** random **or [and]** department-initiated inspection, the department **shall [will]** pay the cost of the laboratory analysis associated with an initial inspection and the first and second follow-up inspections, if required.

(a) The license holder **shall** be responsible for payment of a percentage of the cost of each subsequent laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation. This includes a specification test that was not applicable at the time of the initial inspection but is applicable at the time of the subsequent inspection.

1. The license holder **shall [will]** be required to pay **[a fee equal to]** fifty (50[%]) percent of the cost of the laboratory analysis for the third follow-up inspection.

2. The license holder **shall [will]** be required to pay **[a fee equal to]** one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.

3. Laboratory analysis **costs shall [fees must]** be paid by the license holder to the department prior to the follow-up inspection.

4. **[a.]** Payment of **costs shall [fees must]** be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; **or debit or credit through the department's online portal.**

(b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department **shall [will]** pay the cost of the additional testing.

Section 9. Enforcement.

(1) Any license holder found by the department to be in violation of KRS 363.900 - 363.908, this **administrative** regulation, or 302 KAR 79:012, shall receive a Notice of Violation by personal service or certified mail detailing the facts constituting the citation of the violation and the assessment of a fine, if applicable.

(a) Each Notice of Violation shall state the amount of the fine. Fine amounts **shall [will]** be determined in accordance with **[“]Motor Fuel Quality Testing and Inspection Program Civil Penalty Guidelines, [“-(] Form KDA-OCEP-MF-01.[)]**

1. If a finding of the department results in the issuance of a Level 2, 3, 4, or 5 Civil Penalty, the assessed fine or order shall be afforded a case review upon written request.

2. If a finding of the department results in the issuance of any Level 1 Civil Penalty, it shall be prima facie evidence of the fact or facts found therein, and **[;]** the fine amount shall constitute a Final Agency Action and **shall not be [is therefore not]** subject to a case review.

(b) A follow-up inspection shall be conducted for every motor fuel quality violation resulting in a Level 2 Penalty and above.

(2) Operating without a retail motor fuel license **shall be [is]** a violation of KRS 363.904(1), which shall result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale. The issuance of a citation for a violation of the

statute shall be prima facie evidence of the fact or facts found therein. The Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility shall constitute a Final Agency Action and **shall not be [is therefore not]** subject to a case review.

(a) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.

(3) Remediation **options may include [may be achieved, by]** removing and replacing or upgrading the motor fuel in storage to conform to minimum specifications for the particular type, class, and grade; or otherwise addressing the cause of the violation.

(4) **If [When]** a Notice of Violation or a Follow-up Failure has been issued, the license holder, within ten (10) consecutive day's receipt of the Notice:

(a) **1.** Shall provide remediation documentation to the department describing the corrective action taken to resolve the **violation [violation(s)]** or

2. [1.] If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the **product [product(s)]** that **was [were]** the subject of the **violation [violation(s)]** **shall be subject to [may be placed under]** an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department; **or [:-]**

(b) May request a case review, as provided in **Section [302-KAR-79:011]9(1)(a)1.** of this **administrative regulation. [section]**

(5) The department shall obtain a follow-up sample from the retail facility for analysis within a period not to exceed three (3) business days, from receipt of remediation documentation as required in **Section [302-KAR-79:011]9(4)(a) of this administrative regulation.**

(a) **If [When]** the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with **Section [302-KAR-79:011]3(1) of this administrative regulation,** a follow-up sample **shall[is] not be** required.

(6) **An Administrative Stop-Sale Order or a Motor Fuel Quality Stop-Sale Order** may be included with a Notice of Violation or Follow-up Failure Notification.

(a) If a Motor Fuel Quality Stop-Sale Order is issued, the product identified in the Notice of Violation shall be removed from sale to the consumer.

(b) **A product [Product(s)]** shall remain under a **Motor Fuel Quality Stop-Sale Order** until subsequent sampling and analysis by the department verifies its compliance.

(c) The department **shall[will]** notify the license holder of its decision to remove Motor Fuel Quality Stop-Sale Order within a period not to exceed three (3) business days upon receipt of analysis indicating conformance with the minimum specification for the particular type, class, and grade of the motor fuel.

(7) **Motor fuel not in compliance with this administrative regulation shall[may] be subject to [The department may issue]-a Motor Fuel Quality Stop-Sale Order. [For any motor fuel not in compliance with this administrative regulation.]** The license holder shall be notified of the Motor Fuel Quality Stop-Sale Order.

(a) The Motor Fuel Quality Stop-Sale Order shall be in writing and contain an explanation of the **violation [violation(s)].**

(b) **The department shall notify the licensee of analytical test results not later than the first business date following the department's receipt of results from the testing laboratory.**

(c) If [When] the department has made a determination that a violation has been resolved, the Motor Fuel Quality Stop-Sale Order shall be removed.

(d)[(e)] A Motor Fuel Quality Stop-Sale Order shall apply to the product for which sample analysis indicates a violation.

(e)[(d)] The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any product placed under a Motor Fuel Quality Stop-Sale Order.

(8) Irrespective of ownership, any **Motor Fuel Quality** Stop-Sale Order shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the license holder. **A product [Such-product(s)]** shall continue to remain under a **Motor Fuel Quality** Stop-Sale Order until subsequent sampling and analysis by the department **verifies [verify]**-compliance with KRS 363.900 - 363.908 and this administrative regulation. If needed, the department may obtain a follow-up sample from the retail facility for analysis. This **requirement shall remain in effect [rule-will-survive]** if there is a change in licensure or ownership.

(9) The fine shall be paid within thirty (30) consecutive day's receipt of the Notice of Violation unless a case review is requested pursuant to **Section [302 KAR 79:011]9(1)(a)1. of this administrative regulation.** Failure to pay a fine within thirty (30) consecutive day's receipt of the violation **shall be subject to [may result in]**-an Administrative Stop-Sale Order being issued by the department.

(10) Declaration of Non-Sale. If the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may remove a non-compliant motor fuel from sale to the consumer by obtaining a Declaration of Non-Sale. A Declaration of Non-Sale shall have the effect of a Motor Fuel Quality Stop-Sale Order on any retail motor fuel product to which it applies.

(a) A retail facility shall have a maximum of two (2) motor fuels subject to a declaration of non-sale at a time.

(b) If the fine associated with a motor fuel quality **violation [violation(s)]** has been paid [;] and the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may provide a **notarized [“]** Declaration of Non-Sale[“] to the department, on Form KDA-OCEP-MF-04, stating that the retail facility **shall [will]** no longer offer for sale a specific type and grade of motor fuel.

1. A separate Declaration of Non-Sale shall be submitted for each type and grade of motor fuel.

2. Each Declaration of Non-Sale **shall [must]** be complete **upon submission[when submitted].**

3. An incomplete Declaration of Non-Sale **shall[will]** not be accepted or certified.

4. The certified Declaration of Non-Sale shall be conspicuously displayed at the retail facility.

(c) If the fine associated with a motor fuel quality **violation [violation(s)]** has not been paid[;] and the license holder made a timely request for a case review and is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may be granted a[“] Temporary Declaration of Non-Sale,[“] contingent upon payment of the fine **that [which]** is the subject of the case review.

1. A Temporary Declaration of Non-Sale is subject to the requirements established~~[specified]~~ in Section ~~[302 KAR 79:011]~~9(10)(b)1. through 4.~~[(1-4)]~~ of this administrative regulation.

2. The case review shall be conducted in accordance with Section ~~[302 KAR 79:011]~~10 of this administrative regulation.

3. After the license holder pays the fine stated in a Notice of Final Agency Action, the license holder may provide a notarized ~~[“]~~ Declaration of Non-Sale~~[“]~~ to the department, on Form KDA-OCEP-MF-04, stating that the retail facility shall ~~[will]~~ no longer offer for sale a specific type and grade of motor fuel.

4. If the license holder fails to pay a fine stated in a Notice of Final Agency Action within fifteen (15) consecutive days after the receipt of the Notice, the Temporary Declaration of Non-Sale shall ~~[will]~~ be revoked and the product shall ~~[product(s) subject to]~~ be placed under an Administrative Stop-Sale Order.

(d) Remediation. A Declaration of Non-Sale may be remediated by removing and replacing the affected motor fuel in storage and providing detailed documentation to the department of the corrective action taken.

1. The license holder under which the Declaration of Non-Sale was certified shall ~~[will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 – 363.908 and this administrative regulation.~~

a. ~~The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.~~

b. ~~The license holder will be required to pay a fee equal to 100% one hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.~~

c. ~~Remediation documentation and Laboratory analysis fees must be received by the department prior to the follow-up inspection.~~

d. ~~Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.~~

e. ~~If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.~~

2. ~~If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 through~~~~[–]~~ 363.908 and this administrative regulation.

a. The license holder shall pay fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder shall pay 100 percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and laboratory analysis costs shall be received by the department prior to the follow-up inspection.

d. Payment of costs shall be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture,

Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

e. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall pay the cost of the additional testing.

2. If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder shall be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 through[-] 363.908 and this administrative regulation.

a. The department ~~shall~~ **will** pay the cost of the laboratory analysis associated with an initial inspection of remediation.

b. The license holder ~~shall~~ **will be required to** pay ~~a fee equal to~~ fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder ~~shall~~ **will be required to** pay ~~a~~ **fee equal to** one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

d. Corrective action documentation ~~shall~~ **must** be received by the department prior to inspection of remediation. Except for the initial inspection of remediation, laboratory analysis fees ~~shall~~ **must** be received by the department prior to the follow-up inspection.

e. [i] Payment of costs shall [fees must] be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

f. [e] If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall [will] pay the cost of the additional testing.

(11) If a license holder fails to pay a fine stated in a **Notice of** Final Agency Action, within fifteen (15) consecutive day's receipt of the **Notice [notice]**, the **product [product(s)]** that ~~was~~ **were** the subject of the **violation shall [violation(s) may]** be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product ~~that~~ **which** has been placed under a Motor Fuel Quality Stop-Sale Order or ~~that~~ **which** is subject to a Declaration of Non-Sale, shall be subject to a Level 5 Civil Penalty and fine.

(13) If a license holder offers motor fuel for sale in violation of an Administrative Stop-Sale Order pursuant to a Level 5 Civil Penalty, a fine ~~shall~~ **will** be assessed for each type, class, and grade of fuel offered for sale.

(14) Each violation of **this administrative [the]** regulation shall be deemed a separate occurrence for the purpose of the Civil Penalty and Fine Assessment.

Section 10. Case Review and Appeal.

(1) A Level 1 Civil Penalty ~~shall not be~~ **is not** subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with **Section [302-KAR 79:011]11 of this administrative regulation.**

(2) A Level 6 Civil Penalty ~~shall~~ **is** not ~~be~~ subject to a case review. A Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with **Section [302-KAR 79:011]11 of this administrative regulation.**

(3) A request for a case review shall be made in writing, within ten (10) consecutive days receipt of the department's Notice of Violation.

(4) A license holder may respond to a Notice of Violation, within ten (10) consecutive days of receipt of the department's **Notice** [~~notice~~], by requesting a case review or paying the assessed civil penalty. If no request for a case review is made within the ten (10) day period, then the Notice of Violation shall be deemed to be a ~~Final~~ **Order** for the purposes of KRS Chapter 13B.

(5) Upon receipt of a request, the department **shall** [~~will~~] notify the license holder of a case review date. If the license holder is experiencing financial hardship and requests a reduction in a fine amount, prior to the date of the case review, the license holder shall submit three (3) most recent bank statements or other relevant documentation. The license holder may also submit, prior to the case review date, documentation detailing corrective action and cost incurred.

(6) Case reviews shall be heard by an administrative panel consisting of five (5) members **who** [~~which~~] shall be designated by the department.

(a) Five (5) members present shall constitute a quorum.

(b) The panel shall include at least one (1) person who is not affiliated with the motor fuel program.

(7) The members of the administrative panel shall not be required to accept or consider information or documents that were not received at least three (3) business days prior to the case review date.

(8) A license holder may appear before the administrative panel either in person or via telephonic conference. A case review **shall** [~~must~~] be requested and scheduled in advance.

(9) Using the **notarized Notice for** [~~"]~~ Designation of Proxy for Case Review, [~~"]~~ [(~~1~~) Form KDA-OCEP-MF-03, [~~"]~~] a license holder may designate a proxy to appear as its representative before the administrative panel. Although it is not required, a license holder may designate legal counsel. [~~to represent them~~] The form for proxy representation **shall** [~~must~~] be notarized and submitted at least three (3) business days prior to a case review. Nothing in this subsection **shall** [~~should~~] be construed as authorizing the unlicensed practice of law.

(10) A license holder may request to reschedule a case review for good cause.

(a) The request to reschedule **shall** [~~must~~] be submitted to the department in writing.

(b) The request to reschedule **shall** [~~must~~] be received at least seven (7) consecutive days prior to the case review date.

(11) The administrative panel may consider the degree and extent of harm caused by the **violation** [~~violation(s)~~] the cost of rectifying the noncompliance, the amount of financial benefit derived from the **violation** [~~violation(s)~~], whether the **violation** [~~violation(s)~~] was committed willfully, and the compliance record of the license holder **for** [~~when~~] determining the fine's recalculation. [(~~a~~)] The administrative panel shall document its review using the [~~"]~~ Motor Fuel Administrative Case Review Guidelines, [~~"]~~ [(~~1~~) Form KDA-OCEP-MF-02 [~~"]~~].

(12) Failure of a license holder to attend a scheduled case review **shall** [~~will~~] result in a determination by default and the department shall issue a **Notice of** Final Agency Action stating that the **violation** [~~violation(s)~~] and fine assessed remain as originally issued.

(13) If a license holder fails to pay a fine stated in a **Notice of** Final Agency Action, within fifteen (15) consecutive days after the receipt of the **Notice** [~~Final Agency Action~~], the **product** [~~product(s)~~] that **was** [~~were~~] the subject of the **violation** [~~violation(s)~~] **shall** [~~may~~] be placed under an Administrative Stop-Sale Order by the department.

(14) Within ten (10) consecutive day's receipt of **Notice of Final Agency Action** a Formal Administrative Hearing may be requested to appeal the decision **of [in]** a Final Agency Action.

Section **11 [10]**. Formal Administrative Hearing.

(1) A **Final Agency Action** shall be subject to a Formal Administrative Hearing to be conducted in accordance with KRS Chapter 13B.

(2) Upon receipt of a **Notice of** Final Agency Action, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's action.

(3) A request for a Formal Administrative Hearing shall be in writing.

(4) A request for a Formal Administrative Hearing shall state the **reason [reason(s)]** the aggrieved party believes the departments' action was erroneous.

(5) A request for a Formal Administrative Hearing shall be submitted to the Department of Agriculture, Office of Legal Services, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, within ten (10) days after the **Notice of** Final Agency Action is received.

Section 12. Civil Penalties.

Failure to comply with this administrative regulation may result in **a [the]** combination of **[any of the following]:**

- (1) **[The]** Issuance of a Notice of **Violation [violation(s)]**;
- (2) **[The]** Assessment of a fine;
- (3) **[The]** Issuance of an Administrative Stop-Sale Order;
- (4) **[The]** Issuance of a Motor Fuel Quality Stop-Sale Order; or
- (5) **[The]** Placement of an Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility.

Section 13. Consumer Motor Fuel Quality Complaints.

(1) Any person wishing to make a complaint about a deficiency in the quality of a motor fuel that was purchased within the Commonwealth shall file, not later than fourteen (14) consecutive days after the date of the complainant purchase of that motor fuel from the retail facility, a written complaint to the department **including [identifying the following information]:**

- (a) The name and contact information for the complainant;
- (b) The name and street address of the retail facility where the motor fuel was purchased and the dispenser number, if known;
- (c) The type of motor fuel that was purchased;
- (d) The grade of the motor fuel that was purchased; and
- (e) A description of the deficiency.

(2) The department shall not be required to investigate complaints meeting one (1) or more of the following:

- (a) The complaint was submitted to the department more than fourteen (14) consecutive days after the date of the complainant purchase from the retail facility;
- (b) The complainant is unable to specifically identify the retail facility **that[which]** is the source of the motor fuel that is the subject of the complaint;

(c) The department has reason to believe that repeated complaints regarding the same retail facility are intended to unduly penalize the retail facility or to disrupt the essential functions of the department;[~~r~~]

(d) The complainant is not the owner of the vehicle or equipment damaged, the person who purchased the motor fuel, or a member of that person's immediate family;

(e) The complaint is determined by the department to relate to a topic other than the quality of a motor fuel; or

(f) The motor fuel referenced in the complaint is **no longer** present [~~in the storage tank(s)~~]when the department arrives to conduct an investigation.

Section 14. Incorporated by Reference

(1) The following material is incorporated by reference:

~~(a) "16 C.F.R. 306 – Automotive Fuel Ratings, Certification and Posting", (2012);~~

~~(b) "16 C.F.R. 309 – Labeling Requirements for Alternative Fuels", (2003);~~

~~(c) "40 C.F.R. 80.41 – Reformulated Gasoline Standards and Requirements for Compliance", (2007);~~

~~(d) "40 C.F.R. 80.1501 – Labeling Requirements that Apply to Retailers and Wholesale Purchaser-Consumers of Gasoline-Ethanol Blends that Contain Greater than 10 Volume Percent Ethanol and Not More than 15 Volume Percent Ethanol", (2014);~~

~~(a) [(e)] "API Recommended Practice" 1637; 4th Edition, (April 2020), Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing Facilities and Distribution Terminals;[~~r~~]~~

~~(b) [(f)] "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);~~

~~(c) [(g)] "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);~~

~~(d) [(h)] "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);~~

~~(e) [(i)] "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (April 2021 [~~November 2020~~] Edition);~~

~~(f) [(j)] "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (April 2021 [~~November 2020~~] Edition);~~

~~(g) [(k)] "Form KDA-OCEP-MF-03, Notice of Designation of Proxy for Case Review", (April 2021 [~~November 2020~~] Edition);[and]~~

~~(h) [(l)] "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (April 2021 [~~November 2020~~] Edition); and~~

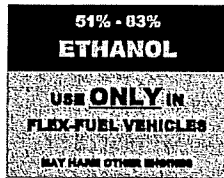
~~(i) "Form KDA-OCEP-MF-05, Application for Motor Fuel License", April 2021.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

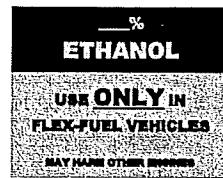
CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

302 - 79:011, Section 3(8)(e)3.

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Ryan F. Quarles
Commissioner



Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

April 9, 2021

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 79:012. Motor fuel quality standards and specifications.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 79:012 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 79:012.

Sincerely,

<Electronically signed this day>

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



SUGGESTED SUBSTITUTE
Final Version 4/6/2021 9:14 AMM

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
Suggested Substitute to Amended After Comments Version

302 KAR 79:012 Motor fuel quality standards and specifications

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes motor fuel quality standards and specifications.

Section 1. Motor Fuel Quality Standards and Specifications.

(1) **If a motor fuel quality**~~[When no]~~ standard **does not exist**, ~~[exists]~~ the department shall designate a test or specification based upon the most widely accepted scientific principles.

(2) If it is demonstrated that some impurity or imperfection exists in a motor fuel product offered for sale that renders it unfit for its intended purposes, the product **shall**~~[may]~~ be subject to a Level 4 Civil Penalty.

(3) These requirements **shall**~~[will]~~ not apply to any bulk fuel storage tanks where the product contained therein is being reconditioned and withheld from sale.

(4) Motor fuel containing less than one (1) percent by volume oxygenate, not dispensed from a dedicated hose, shall be subject to a Level 2 Civil Penalty.

(5) Gasoline and gasoline-oxygenate blends containing between zero (0) and up to fifteen (15) ~~[volume]~~percent **by volume** ethanol shall **comply with paragraphs (a) through (f) of this subsection**.~~[meet the following requirements:]~~

(a) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "premium" or "super" gasoline blends unless its AKI is greater than or equal to ninety-one (91).

(b) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless its AKI is greater than or equal to eighty-nine (89).

(c) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "regular" gasoline unless its AKI is greater than or equal to eighty-~~[seven (87)]~~~~[six (86)]~~.

(d) Pursuant to KRS 363.902(2), gasoline and gasoline-oxygenate blends offered for sale at a retail facility shall conform to the most recent version of ASTM D4814, ~~[“]~~Standard Specification for Automotive Spark Ignition Engine Fuel,~~[“]~~ with the following exceptions, as required by KRS 363.904(2):

1. For gasoline-ethanol blends containing between one (1) percent by volume and fifteen (15) percent ~~[ethanol]~~ by volume **ethanol**, the ASTM International V/L ratio specification shall be waived; and~~[“]~~

2. For gasoline-ethanol blends containing **up to**~~[between nine (9) percent and]~~ fifteen (15) percent by volume ethanol, the RVP shall be increased by one (1) pound per square inch.

(e) The maximum concentration of oxygenates permitted in gasoline-oxygenate blends shall be those permitted by the EPA [~~section 211 of the~~] under Clean Air Act, **42 U.S.C. 7545**, and applicable waivers **or with not more than sixteen (16%) Isobutanol** [~~as set forth in the published version of the NIST Handbook 130 for Gasoline and Gasoline-Oxygenate Blends and for Gasoline-Ethanol blends~~].

(f) For gasoline and gasoline-oxygenate blends the Motor Octane Number (MON) shall not be less than eighty-two (82).

(6) Mid-level ethanol flex fuel blends containing between sixteen (16) and fifty (50) percent ethanol by volume **ethanol**, shall meet the latest version of ASTM D7794, [“] Standard Practice for Blending Mid-Level Ethanol Fuel blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines. [“]; **and**

(7) Ethanol flex fuel blends containing between fifty-one (51) and eighty-three (83) percent **[ethanol]** by volume **ethanol** shall be blended, stored, and conveyed for consumption in accordance with the latest version of ASTM D5798, [“] Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines. [“]

(8) M-85 Fuel Methanol shall meet the requirements **established[set forth]** in the most recent version of ASTM D5797, [“] Standard Specification for Fuel Methanol M51-M85 for Automotive Spark-Ignition Engines. [“]

(9) Diesel fuel that contains not more than five (5) percent by volume biodiesel or biomass-Based diesel shall meet the requirements **established[set forth]** in the latest version of ASTM D975, [“] Standard Specification for Diesel Fuel. [“]

(10) All diesel fuels identified on retail dispensers and product transfer documentation with terms such as "premium," "super," "supreme," "plus," or "premier" shall meet the requirements **established[set forth]** in the published version of the NIST Handbook 130 **§2.2.1** for Premium Diesel Fuel.

(11) Diesel fuel that contains biodiesel between six (6) percent and twenty (20) percent, by volume, shall meet the requirements **established[set forth]** in the latest version of ASTM D7467, [“] Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20). [“]

(12) Biodiesel fuel blend stock intended for blending with diesel fuel shall meet the requirements **established[set forth]** in the most recent version of ASTM D6751, [“] Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels. [“]

(a) Biodiesel fuel blend stock shall be at least ninety-nine (99) percent biodiesel but no more than one (1) percent **by volume** diesel fuel **[by volume]**.

(b) Biodiesel fuel blend stock with less than ninety-nine (99) percent biodiesel shall not be used as a commercial blend stock for biodiesel blends without written **notification[approval]** from the department.

(13) Aviation turbine fuels shall meet the requirements **established[set forth]** in the most recent version of the following standards, as applicable:

(a) ASTM D1655, [“] Standard Specification for Aviation Turbine Fuels; [“]

(b) ASTM D7223, [“] Standard Specification for Aviation Certification Turbine Fuel; [“]

(c) ASTM D7566, [“] Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons; [“] and

(d) ASTM D6615, [“] Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel. [“]

(14) Aviation gasoline shall meet the most recent version of the following standards, as applicable:

- (a) ASTM D910, ~~["Standard Specification for Leaded Aviation Gasoline;["~~
 - (b) ASTM D6227, ~~["Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component;["~~ and
 - (c) ASTM D7547, ~~["Standard Specification for Unleaded Only Aviation Gasoline;["~~
- (15) Liquefied petroleum gases intended for use as motor fuel shall meet the requirements **established[set forth]** in the most recent version of ASTM D1835, ~~["Standard Specification for Liquefied Petroleum (LP) Gases;["~~

(16) Racing Gasoline shall meet the requirements **established[set forth]** in the gasoline manufacturer's product specifications. Upon the request of the department, each conveyor of racing gasoline shall provide the department with a copy of the manufacturer's product specifications.

(17) Hydrogen fuel for fuel cell vehicles shall meet the requirements **established[set forth]** in the most recent edition of SAE J2719 Hydrogen Fuel Quality for Fuel Cell Vehicles. If ASTM International develops applicable standards for Hydrogen Fuel Quality, those standards shall prevail as rule.

(18) Compressed natural gas shall meet the requirements **established[set forth]** in the most recent edition of SAE J1616, ~~["Recommended Practice for Compressed Natural Gas Vehicle Fuel. [at such time that]~~ If ASTM International develops applicable standards for compressed natural gas, those standards shall prevail as rule.

(19) LNG vehicle fuel shall meet the requirements **established[set forth]** in the most recent edition of SAE J2699 ~~["Liquefied Natural Gas Vehicle Fuel;["~~ ~~At such time that]~~ If ASTM International develops applicable standards for LNG vehicle fuels, those standards shall prevail as rule.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "ASTM Standard D910-20a, (ASTM D910), Standard Specification for Leaded Aviation Gasolines", (2020);
- (b) "ASTM Standard D975-20c, (ASTM D975), Standard Specification for Diesel Fuel", (2020);
- (c) "ASTM Standard D1655-20~~d[e]~~, (ASTM D1655), Standard Specification for Aviation Turbine Fuels", (2020);
- (d) "ASTM Standard D1835-20, (ASTM D1835), Standard Specification for Liquefied Petroleum (LP) Gases", (2020);
- (e) "ASTM Standard D4806-20, (ASTM D4806), Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel", (2020);
- (f) "ASTM Standard D4814-~~21~~**[20a]** (ASTM D4814), Standard Specification for Automotive Spark Ignition Engine Fuel", (2021);
- (g) "ASTM Standard D5797-18, (ASTM D5797), Standard Specification for Methanol Fuel Blends (M51-M85) for Methanol-Capable Automotive Spark-Ignition Engines", (2018);
- (h) "ASTM Standard D5798-20, (ASTM D5798), Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines", (2020);

- (i) "ASTM Standard D6227-18, (ASTM D6227), Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", (2018);
- (j) "ASTM Standard D6615-15a, (ASTM D6615), Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel", (2019);
- (k) "ASTM Standard D6751-20a, (ASTM D6751), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels", (2020);
- (l) "ASTM Standard D7223-17, (ASTM D7223), Standard Specification for Aviation Certification Turbine Fuel", (2017);
- (m) "ASTM Standard D7467-20a, (ASTM D7467), Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)", (2020);
- (n) "ASTM Standard D7547-18a, (ASTM D7547), Standard Specification for Hydrocarbon Unleaded Aviation Gasoline", (2018);
- (o) "ASTM Standard D7566-20**c**[**b**], (ASTM D7566), Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons", (2020);
- (p) "ASTM Standard D7794-20, (ASTM D7794), Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", (2020);
- (q) "ASTM Standard D7901-20, (ASTM D7901), Standard Specification for Dimethyl Ether for Fuel Purposes", (2020);
- (r) "National Institute of Standards and Technology Handbook 130, 2020 Edition Natl. Inst. Stand. Technol. Handb. 130, 2020 Ed., Uniform Fuels and Automotive Lubricants Regulation, IV, G, §2; (Nov. 2019)"
- (s) "SAE J1616-201703, Standard for Compressed Natural Gas Vehicle Fuel, Society of Automotive Engineers International", (2017);
- (t) "SAE J2699-201802, Liquefied Natural Gas (LNG) Vehicle Fuel, Society of Automotive Engineers International", (2018); and
- (u) "SAE J2719-202003, Hydrogen Fuel Quality for Fuel Cell Vehicles, Society of Automotive Engineers International," (2020).

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Contact Person: Clint Quarles, Staff Attorney, Phone: 502-330-6360, Email: clint.quarles@ky.gov

Andy Beshear
GOVERNOR



KENTUCKY JUSTICE &
PUBLIC SAFETY CABINET

Justice Mary C. Noble, Ret.
CABINET SECRETARY

Robyn Bender
GENERAL COUNSEL

April 8, 2021

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

Re: 501 KAR 6:070. Kentucky Correctional Institution for Women.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 501 KAR 6:070, the Justice and Public Safety Cabinet, Department of Corrections proposes the attached amendment to 501 KAR 6:070.

Sincerely,

Christen Allen
Paralegal Consultant

enclosures

SUGGESTED SUBSTITUTE

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

501 KAR 6:070. Kentucky Correctional Institution for Women

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Kentucky Correctional Institution for Women Policies and Procedures", ~~April~~**[January]** 13, 2021~~[July 10, 2018]~~, are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 03-01	01-	Communications Between Staff and Inmates (Amended 1/13/21 [2/14/13])
KCIW 08-01	01-	News Media Access (Amended 2/14/13)
KCIW 04-01	02-	Accounting Procedures (Amended 1/13/21 [2/14/13])
KCIW 05-01	02-	Inmate Canteen and Staff Canteen (Amended 5/15/18)
KCIW 01-01	05-	Outside Consultation, Research and Student Interns (Amended 1/13/21 [2/14/13])
KCIW 06-01	01-	Offender Information (Amended 1/13/21 [5/14/13])
KCIW 02-01	08-	Fire Safety Practices (Amended 1/13/21 [2/14/13])
KCIW 02-02	08-	Fire Evacuation Routes (Amended 1/13/21 [5/15/18])
KCIW 01-02	09-	Inmate Move Sheet (Amended 1/13/21 [2/14/13])

KCIW 09-06-04	Regulation of Inmate Movement (Amended 5/15/18)
KCIW 09-06-05	State Vehicles and Private Vehicles (Amended <u>1/13/21</u> [7/10/18])
KCIW 09-10-01	Pedestrian and Vehicular Traffic (Amended 11/25/[20]13)
KCIW 09-10-02	Inmate Entry and Exit Procedure (Amended <u>1/13/21</u> [5/14/13])
KCIW 09-11-01	Prohibiting Inmate Authority Over Other Inmates (Amended 2/14/13)
KCIW 09-12-01	Search Plan (Amended 12/29/[20]14)
KCIW 09-13-01	Tobacco Free Environment (Amended <u>1/13/21</u> [11/25/13])
KCIW 09-13-02	Alcohol Detection (Amended 5/14/13)
KCIW 10-01-01	Restrictive Housing Unit and <u>Lonnie Watson C-wing</u> General Operations and <u>Rules</u> [Regulations] (Amended <u>1/13/21</u> [7/10/18])
KCIW 10-01-02	Restrictive Housing Unit Status, Placement and Review (Amended 7/10/18)
KCIW 10-01-04	Death Row (Amended <u>1/13/21</u> [7/10/18])
KCIW 11-02-01	Menu Preparation and Special Diets (Amended <u>1/13/21</u> [2/14/13])
KCIW 11-03-01	Food Service Operations (Amended 5/15/18)
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area (Amended 12/29/[20]14)
KCIW 11-07-01	Special Religious Diets (Amended 7/10/18)
KCIW 12-01-01	Laundry, Clothing, and Personal Hygiene (Amended <u>1/13/21</u> [5/15/18])
KCIW 12-02-01	Pest Control (Amended <u>1/13/21</u> [12/29/14])
KCIW 12-04-04	Sanitation Plan (Amended <u>1/13/21</u> [5/15/18])
KCIW 13-01-01	Provision of Medical and Dental Care (Amended <u>1/13/21</u> [11/25/13])

KCIW 01-02	13-	Health Appraisal and Periodic Exams (Amended 1/13/21[2/14/13])
KCIW 01-03	13-	Pharmaceutical Services (Amended 11/25/13)
KCIW 02-01	13-	Family Notification (Amended 1/13/21[5/14/13])
KCIW 03-01	13-	Emergency Care (Amended 1/13/21[2/14/13])
KCIW 03-02	13-	Convalescent and Chronic Care (Amended 2/14/13)
KCIW 04-02	13-	Psychiatric and Psychological Services (Amended 1/13/21[3/10/15])
KCIW 07-01	13-	Detoxification and Alcohol or Chemical Dependency (Amended 1/13/21[2/14/13])
KCIW 09-01	13-	Suicide Prevention and Intervention Program (Amended 1/13/21[2/14/13])
KCIW 09-02	13-	Inmate Observer Program (Amended 1/13/21[2/14/13])
KCIW 13-01	13-	Health Care Records (Amended 11/25/13)
KCIW 14-01	13-	Health Services (Amended 4/13/21[1/13/21][2/14/13])
KCIW 14-02	13-	Operational Guidelines for the Mental Health Area of the Lonnie Watson Center (Amended 11/25/13)
KCIW 14-04	13-	Injury Prevention (Amended 1/13/21[2/14/13])
KCIW 02-01	14-	Access to Legal Resources and Services (Amended 5/15/18)
KCIW 06-01	15-	Restriction Guidelines (Amended 2/14/13)
KCIW 01-01	16-	Inmate Correspondence (Amended 1/13/21[7/10/18])
KCIW 02-01	16-	Access to Telephones (Amended 1/13/21[2/14/13])
KCIW 03-01	16-	Inmate Visiting (Amended 1/13/21[5/15/18])
KCIW 05-01	16-	Inmate Packages (Amended 5/15/18)

KCIW 01-01	17-	Assessment and Classification Center Operations and Programs (Amended <u>1/13/21</u> [5/15/18])
KCIW 02-01	17-	Admission Procedure (Amended <u>1/13/21</u> [2/14/13])
KCIW 05-01	17-	Inmate Personal Property (Amended <u>1/13/21</u> [7/10/18])
KCIW 01-01	18-	Inmate Classification (Amended 11/25/13)
KCIW 01-03	18-	Honor Program (Amended <u>1/13/21</u> [5/15/18])
KCIW 05-01	18-	Special Needs Inmates (Amended 4/13/21 [1/13/21][5/15/18])
KCIW 05-02	18-	Youthful Offender (Amended <u>1/13/21</u> [12/15/14])
KCIW 05-03	18-	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 5/15/18)
KCIW 01-01	19-	Inmate Work and Program Assignments (Amended <u>1/13/21</u> [5/15/18])
KCIW 02-01	19-	Governmental Services (Amended 2/14/13)
KCIW 03-01	19-	Landscape and Maintenance Work Details (Amended 2/14/13)
KCIW 04-01	19-	Correctional Industries (Amended 5/15/18)
KCIW 01-01	20-	Educational Programs (Amended <u>1/13/21</u> [7/10/18])
KCIW 01-01	21-	Library Services (Amended <u>1/13/21</u> [3/10/15])
KCIW 01-01	22-	Recreation and Inmate Activity (Amended 4/13/21 [1/13/21][11/25/13])
KCIW 01-02	22-	Arts and Crafts Program (Amended 4/13/21 [1/13/21][2/14/13])
KCIW 01-04	22-	Inmate Club Activities (Amended <u>1/13/21</u> [11/25/13])
KCIW 01-01	23-	Religious Services (Amended <u>1/13/21</u> [12/29/2014])
KCIW 01-01	24-	Social Services Program (Amended <u>1/13/21</u> [2/14/13])

KCIW 02-01	24-	Substance Abuse Program (Amended 2/14/13)
KCIW 02-01	25-	Temporary Release and Community Release (Amended 4/13/21 [1/13/21] [5/14/13])
KCIW 03-01	25-	Funeral Home Visit or Bedside Visit (Amended 2/14/13)
KCIW 01-01	26-	Volunteer Service Program (Amended 1/13/21 [2/14/13])

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

Changes to Material Incorporated by Reference:

KCIW 13-14-01

Page 1

A.3.

After "responsible healthcare", delete "care".

KCIW 18-05-01

Page 3

II.E.2.

After "Department of", insert "Community".
Delete "Child".

KCIW 22-01-01

Page 2

C.1.

After "Inmate participation", insert "shall be".
Delete "is".

KCIW 22-01-02

Page 2

B.6.


After "all left over supplies", insert "shall".
Delete "will".

KCIW 25-02-01

Page 1

Authority/References

After "25.6," delete "25.8".

 <p style="text-align: center;">KCIW Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References ACA Standards 5-ACI-5B-11, 5-ACI-6A-07, 5-ACI-6A-18M, 5-ACI-6A-37, 5-ACI-6C-06, 5-ACI-5E-10, 5-ACI-5E-11 KRS 196.035, 197.020 CPP 10.2, 18.1 KCIW 13-04-02	Subject SPECIAL NEEDS INMATES	
	KCIW 18-05-01	3
	April 13, 2021	

I. DEFINITIONS

“Special Needs” means one who exhibits the presence of a major mental disorder or has a history of mental disturbance or displays a severe and persistent impairment in the ability to reason, make appropriate judgments, or control impulsive behavior.

“Special Category” means one who has a significant history of alcohol or substance abuse, is pregnant, or has been convicted of a sex offense.

II. POLICY and PROCEDURE

A. The Kentucky Correctional Institution for Women shall provide, as much as possible, appropriate housing, programs, and work assignments for those inmates identified as Special Needs and Special Category inmates.

B. Identification and Supervision of Special Needs Inmates

1. Special Needs status may be designated by the following means:

a. The Assessment and Classification Center Classification and Treatment Officer (CTO), or other CTOs, if an inmate is no longer in the Assessment and Classification Center, shall review files and interview inmates for referral to Psychological Services for a Special Needs status designation evaluation.

b. During the intake process, the evaluating psychologist may indicate need for further evaluation or observation in order to determine the appropriateness for Special Needs designation for inmates.

2. The CTO and the intake psychologist shall encourage the inmate with a history of abuse or dependence to enroll in the appropriate treatment program.

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3. Based on the psychological evaluation, the psychologist shall make the decision about Special Needs status designation. The psychologist shall complete the appropriate documentation.
4. A mental health staff member shall distribute an updated listing of Special Needs inmates monthly to appropriate staff.
5. A Special Needs inmate shall not be subjected to a classification or disciplinary action, or a change of housing prior to consultation with a psychologist unless immediate action is required. The Classification Committee Chairperson shall contact an institutional psychologist prior to classification hearings and changes of housing of Special Needs inmates. The Adjustment Officer shall contact the psychologist prior to disciplinary hearings of Special Needs inmates.
6. If a Special Needs inmate is subjected to classification, disciplinary action, or a change of housing prior to consultation with the psychologist, the Classification Committee or Adjustment Officer shall confer with an institutional psychologist the next workday about the appropriateness of the action.
7. If a Special Needs inmate is scheduled to appear before the Adjustment Officer, a psychologist shall review the disciplinary paperwork prior to the hearing. The psychologist shall complete and forward the appropriate paperwork to the Adjustment Officer.
8. Special Needs inmates shall be given appropriate program and work assignments unless they are medically or psychologically unable to perform the assignments.

C. Identification and Treatment Referral of Alcohol and Substance Abusers

1. An inmate with a history of significant drug or alcohol use shall be identified by the following means:
 - a. The Assessment and Classification Center CTO, or other CTOs if an inmate is no longer in the Assessment and Classification Center, shall review files and conduct interviews to identify persons with histories of alcohol and substance abuse.
 - b. During the intake process, the evaluating psychologist shall review responses on the intake form to determine the appropriateness of referral to the in-house substance abuse program or other self-help group that addresses addictions.
2. The CTO and the intake psychologist shall encourage the inmate with a history of abuse or dependence to enroll in the appropriate treatment program.
3. Inmates with severe addiction problems shall be encouraged to apply for admission to the intensive in-house Substance Abuse Program. All inmates with a history of abuse shall be urged to participate in one or more of the self-help

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groups (Alcohol Anonymous, Narcotics Anonymous) or apply for the Pre-Treatment Drug and Alcohol Education class.

4. The staff of the Substance Abuse Program shall select inmates for participation in the program and the instructor, in conjunction with the Deputy Warden of Programs, shall select inmates for participation in a Pre-Treatment Drug and Alcohol Education class.


D. Sex Offenders

1. The Assessment and Classification Center CTO, or other CTOs if an inmate is no longer in the Assessment and Classification Center, shall review files to identify inmates who are serving sentences for sex offenses.
2. A memorandum shall be sent to sex offenders advising them of the Sex Offender Treatment Program and the requirements for admission.
3. It shall be the inmate's responsibility to apply to the Sex Offender Treatment Program.

E. Pregnant Inmates

1. Pregnant inmates shall be identified upon their arrival at the institution. These inmates shall be screened by the Medical Department and provided the full range of prenatal care.
2. Pregnant inmates shall be screened by the Institutional Infant Placement Coordinator and provided paperwork for possible placement of unborn child unless involvement has been initiated by the Department of Community Based Services (DCBS).
3. Pregnant inmates shall be allowed to participate in programs and shall be given work assignments as approved by the Medical Department.
4. Pregnant inmates shall be housed in Medical only if the Medical Department deems appropriate.
5. When the pregnant inmate goes into labor, she shall be transferred to an outside hospital for delivery of her baby.
6. Proper notification to the newborn's custodian or DCBS (if necessary) shall be made after the inmate is returned from the outside hospital.

- F. This policy shall be reviewed annually and revised as needed.

 <p style="text-align: center;">KCIW Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References ACA Standards 5-ACI-7C-01 through 5-ACI-7C-06 KRS 196.035, 197.020 CPP 10.2, 17.2 KCIW 10-01-01, 10-01-04, 22-01-04	KCIW 22-01-01	3
	April 13, 2021	
	Subject	
	RECREATION AND INMATE ACTIVITY	

POLICY and PROCEDURE

It shall be the policy of the Kentucky Correctional Institution for Women to provide a comprehensive program for inmate recreation and other activity designed to promote physical health and mental well-being. This program may include leisure time activity and outdoor exercise.

A. Recreation Personnel

1. The Recreation Department shall operate on a seven (7) day schedule under the supervision of the Deputy Warden of Programs, a Recreation Supervisor and staff.
2. The institution shall classify inmate Recreation Aides to assist the Recreation staff. An inmate Recreation Aide shall receive on-the-job training by Recreation staff.

B. Facilities, Program, and Equipment

1. The institution shall maintain a multipurpose recreational area.
 - a. Open recreation time may include pool, ping pong, table games, video games, video work out, exercise equipment, gym, softball, volleyball, tennis, basketball, karaoke, arts and crafts, badminton, table games and horse shoes.
 - b. Exercise classes, tournaments, and league play may be specifically scheduled.
 - c. Other activities may include all types of music (including visiting bands or other professional groups), visits by theater and other professional entertainment groups or individuals, arts and crafts night, and all female athletic teams.
2. Outdoor activities may include jogging, horseshoes, badminton, volleyball, walking, softball, tennis, pickle ball, soccer, and basketball.

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KCIW 22-01-01		2

3. Equipment

- a. An accurate inventory of recreational equipment shall be maintained by the Recreation Supervisor.
- b. The Recreation Supervisor shall submit a monthly report to the Deputy Warden of Programs.

4. Funding shall be available each year through the Inmate Canteen budget.

- a. An annual line item budget shall be prepared by the Recreation Supervisor to direct expenditures of these funds.
- b. A purchase order shall be submitted by the Recreation Supervisor to the Deputy Warden of Programs for approval by the Warden for expenditures made from this account.

C. Inmate Involvement

1. The Inmate Recreation Planning Committee shall be offered to involve inmates in recreational planning. Inmate participation shall be voluntary.
2. This committee shall be composed of several inmate members representing the inmate population and shall meet regularly with the Recreation Planning Committee Sponsor or Co-Sponsor.
3. A member shall be chosen in accordance with the bylaws of the organization.
4. The inmates selected may have different recreation interests, and shall be representative of the inmate population in terms of age, race, and ethnic groups.
5. This Committee may offer constructive ideas for the Recreation Department programs and special activity.
6. The committee may relay the ideas of the general population to the Recreation Leaders including:
 - a. Weekend games and activities;
 - b. Team sports;
 - c. Leisure time activities; and
 - d. Holiday events.
7. The committee members may assist in implementing approved, club sponsored activities under the supervision of the recreation staff.

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D. Access to Services

1. Recreation planning shall attempt to achieve appropriate levels of stability and flexibility.
 - a. Events shall be routinely available to enable an inmate to plan to attend.
 - b. Events shall be planned and scheduled on a flexible basis to provide variety and increase participation.
2. A recreation schedule shall be posted monthly in all living areas on the institutional message channel and in Recreation to provide notice to the inmate population.

E. Restrictive Housing Unit Recreation

Refer to KCIW 10-01-01 and CPP 10.2.

F. Death Row Recreation

Refer to KCIW 10-01-04.


G. Community Participation

1. The Recreation Department shall involve community resources if possible.
2. An all-female sport team from the community may participate in a game against an inmate team.
3. Special guests, guest speakers, entertainers, or special interest volunteers, may be utilized to expand the variety of activity offered.
4. The appropriate staff shall be notified by memorandum of the time and purpose of special group and entertainment visits.
5. Minor children shall not be admitted without the specific approval of the Warden, Acting Warden, or Duty Officer.
6. A Parenting graduate may qualify for a quarterly Kids Day.

H. Inmate Club Activity

Refer to KCIW 22-01-04.

- I. This policy shall be reviewed annually and revised as needed.

 <p style="text-align: center;">KCIW Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References ACA Standards 5-ACI-7C-01, 5-ACI-7C-04 through 5-ACI-7C-06 KRS 196.035, 197.020 KCIW 17-05-01	<p style="text-align: center;">KCIW 22-01-02</p> <p style="text-align: center;">April 13, 2021</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">ARTS AND CRAFTS PROGRAM</p>

POLICY and PROCEDURE

It shall be the policy of the Kentucky Correctional Institution for Women (KCIW) to encourage inmates to express their artistic abilities and pursue their interests in arts and crafts projects. This program shall be considered a privilege afforded to an inmate who follows the rules.

A. Selection and Approval of Projects

1. All arts and crafts projects regardless of the type shall have the prior approval of the Recreation Supervisor or designee.
2. An inmate shall not be involved in more than one (1) project at a time without the approval of the Recreation Supervisor. A new project shall not be started until the previous project has been mailed out.
3. The Warden or Deputy Wardens may terminate an individual program by written memorandum.
4. An inmate shall obtain written authorization from the Recreation Supervisor to participate in Arts and Crafts. This authorization shall be valid for thirty (30) days from the receipt of the material. An inmate may request a renewal of this authorization from the Recreation Supervisor before the expiration date. Renewal of a project may be denied by the Recreation Supervisor.
5. The Recreation Supervisor shall keep a copy of the authorization documentation.
6. An inmate who violates the rules of this procedure shall be subject to disciplinary action and restriction of privilege.
7. An inmate who has authorization withdrawn for any reason may lose all future privileges or may be temporarily suspended from the program depending on the seriousness of the offense.

B. Projects

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KCIW 22-01-02		2

1. An inmate may choose from a variety of handicrafts, knitting, crocheting, and drawing projects.
2. Each individual project shall be completed within thirty (30) days.
3. All projects and materials shall be stored in a locker or cabinet if the inmate lives in a dormitory or multiple occupancy room.
4. If an inmate lives in an individual cell, the project shall remain in the cell.
5. Within thirty (30) days of completion, a project shall be mailed out of the institution at the inmate's expense or shall be added to the inmate's personal property list with the rules set forth in CPP 17.1.
6. Left over supplies specific to that project shall be mailed out with the project. Supplies may be stored in Recreation with Recreation staff approval for up to 45 days. If not mailed out within 45 days all left over supplies shall be disposed of.

C. Acquisition of Materials

1. Arts and crafts materials and supplies shall only be available as provided for in this procedure.
2. The Recreation Supervisor shall provide the appropriate documents for purchase and shall approve or disapprove all requests for arts and crafts materials and supplies from an approved list and an approved vendor.
3. The appropriate documentation shall go to the vendor with a copy to the Recreation Supervisor.
 - a. An arts and crafts package shall come directly from an approved arts and crafts vendor.
 - b. A package shall not contain more items than would normally be used on the approved project.
 - c. An arts and craft package shall not weigh more than fifteen (15) pounds. Any exception shall require explicit approval by the Recreation Supervisor.
4. The package shall be searched by staff.
5. If the contents of the package are approved, the package shall be taken to the Recreation Department for the inmate to pick up.
6. A rejected package shall be returned at the inmate's expense. Refer to KCIW 17-05-01.


Policy Number	Effective Date	Page
KCIW 22-01-02		3

7. The Recreation Department shall maintain a log of all arts and crafts packages received.

D. Security

1. An inmate shall comply with all procedures set forth for an arts and crafts project.
2. All materials and projects shall be subject to search at any time and to seizure or dismantling by staff if security is jeopardized or this procedure is not followed.

E. This policy shall be reviewed annually and updated as needed.

 <p style="text-align: center;">KCIW Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References ACA Standard 5-ACI-5F-02, 5-ACI-5F-03, 5-ACI-7B-04 KRS 196.035, 197.020, 439.610, 520.030, 532.100 CPP 18.5, 19.1, 20.1, 25.4, 25.6 KCIW 19-02-01, 25-02-02	KCIW 25-02-01	2
	April 13, 2021	
	Subject TEMPORARY RELEASE AND COMMUNITY RELEASE	

POLICY and PROCEDURE

This procedure shall be established to provide eligible inmates with opportunities for graduated release through a systematic decrease of supervision and corresponding increase in responsibility by participation in furlough programs or placement in halfway houses.

A. Community Centers

1. The inmate shall meet the following criteria in order to be recommended for transfer to a community center:
 - a. Within twenty-four (24) months of her parole eligibility date;
 - b. No outstanding Statutory Good Time Loss, restorable or non restorable.
2. Placement Priorities - Refer to CPP 25.6
3. Community Center Code of Conduct

All inmates interested in placement in a community center shall agree to the following criteria in writing:

- a. Report directly to the center upon leaving the institution;
- b. Participate in counseling sessions as recommended by the center program staff;
- c. Random urine samples, random shakedowns, and other substance abuse detection methods, i.e., breathalyzer;
- d. Accept responsibility for all personal property while at the center;
- e. Work on any center work detail the staff assigns any day of the week;
- f. Abide by any rules or policies of the center; and
- g. Any other special conditions noted.

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B. Regional Jail Program (Class C or D Programs)


The purpose of the program shall be to divert inmates with short sentences to regional jails located close to their county of residence in order to enhance the inmates' reintegration. The program shall be an interdepartmental responsibility and shall be administered according to the requirements in CPP 25.6.

1. An inmate shall not be recommended for transfer to a Class D jail program if the inmate's projected release date is within sixty (60) days of transfer.
2. An inmate meeting the following criteria may be recommended for transfer to a Class C jail program:
 - a. Convicted of only Class D felony with over 5 year sentence or Class C felony regardless of sentence length or a combination of the two; and
 - b. Maintains Community Custody classification.

C. Home Incarceration Program

Refer to CPP 25.12 for eligibility.

- D. This policy shall be reviewed annually and updated as needed.

 <p style="text-align: center;">KCIW Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References ACA Standards 5-ACI-6A-12M, 5-ACI-6B-01M through 5-ACI-6B-04, 5-ACI-6B-11, 5-ACI-6B-12, 5-ACI-6D-01, 5-ACI-2A-03 CPP 13.2, 13.11 KRS 196.035, 197.020	KCIW 13-14-01	4
	April 13, 2021	
	Subject HEALTH SERVICES	

POLICY and PROCEDURE

A. Responsible Health Authority

1. The institution shall have a Health Authority designated by the Health Services Division. If the designated Health Authority is a non-physician, final clinical judgment shall rest with the collaborating physician or the Director of the Health Services Division who shall provide collaborative support and consultation to the non-physician health authority.
 2. The Health Service Administrator shall be a licensed registered nurse and shall have overall responsibility for healthcare services within the institution pursuant to a written job description.
 3. All medical, psychiatric, and dental matters involving medical judgment shall be the sole province of the responsible healthcare practitioner, respectively, and shall not be countermanded by non-clinicians.
 4. The institution Health Authority shall meet with the Warden at least quarterly. Healthcare statistics shall be reported to the Warden monthly and compiled into an annual summary of the healthcare delivery system and health environment.
 5. Each policy and procedure in the Health Services Department shall be reviewed annually by the Health Authority and the Warden and revised as needed.
 6. Programs and daily operations in the Health Services Department shall be reviewed and revised in the institution's annual planning document. Each document shall bear the date of the most recent review or revision.
 7. The institutional Health Authority shall meet regularly with the Warden, Deputy Wardens and Mental Health Authority.
- B. All healthcare staff shall provide a copy of their active licensure, certification, or registration to the Health Service Administrator.

Policy Number KCIW 13-14-01	Effective Date	Page 2
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1. Written job descriptions shall include the required professional qualifications and the individual's specific role and duties in the delivery of healthcare services and be approved by the Health Authority.
 2. A copy of each healthcare staff's license shall be maintained in the office of the Health Service Administrator.
- C. Physician services shall be as follows:
1. A physician shall be in the institution on a regular schedule and on-call twenty-four (24) hours a day for emergencies.
 2. A licensed dentist shall be in the institution on a regular schedule and on-call twenty-four (24) hours a day for emergencies.
 3. A psychiatrist shall be in the institution a minimum of one day a week. A psychologist shall be on-call twenty-four (24) hours a day for emergencies and shall be contacted by the nurse on duty as needed. The psychologist shall not take medication orders.
 4. An obstetric or gynecological physician or nurse practitioner shall be in the institution on a regular basis to provide care for pregnant inmates, gynecological services and be on-call twenty-four (24) hours a day for emergency deliveries.
 5. A provider list of healthcare specialists shall be maintained to meet the medical needs of an inmate.
- D. There shall be nursing coverage by licensed practical nurses or registered nurses twenty-four (24) hours per day, seven (7) days per week. Nurses shall be licensed with and follow practice guidelines of the Kentucky Board of Nursing.
- E. All treatment by healthcare staff other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent provider shall be performed pursuant to written standing or direct order by healthcare staff authorized by law to give these orders.
1. Nurse Practitioners may practice under the limits of applicable laws and regulations as defined by the advanced practitioner registered nurse guidelines of the Kentucky Board of Nursing.
 2. Any students or interns delivering healthcare in the institution shall work under direct staff supervision, commensurate with their level of training. There shall be a written agreement between the educational facility that covers the scope of work, length of agreement, and any legal or liability issues. Students or interns shall agree in writing to abide by all institution policies, including those relating to the security and confidentiality of information.

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- F. Mental health staff licensed in psychology shall be on staff full time and on call twenty-four (24) hours a day for emergencies.
- G. Assessment center security staff shall be trained to perform visual screenings on new intakes upon arrival to the institution to identify medical or mental health problems which require immediate attention by medical or mental health staff.
- H. An inmate may be used for familial type duties including assistance in feeding, transporting in wheelchairs, assisting with ambulation, or to meet social and companionship needs of a convalescent inmate.
 - 1. An inmate shall not be placed in a position of responsibility for the provision of healthcare.
 - 2. The inmate may function, with appropriate training and supervision, to assist a convalescent inmate in activities of daily living.
 - 3. An inmate shall not be used for the following duties:
 - a. Performance of direct patient care services;
 - b. Scheduling healthcare appointments;
 - c. Determining access of other inmates to healthcare services;
 - d. Handling or having access to surgical instruments, syringes, needles, medications, or health records; and
 - e. Operating diagnostic or therapeutic equipment.
- I. Space, equipment, supplies, and materials for health services shall be provided and maintained as determined by the Health Authority.
- J. Exposure Control Plan – Refer to 13.10
 - 1. A written Exposure Control Plan shall be available to each employee for review. The plan shall be located in:
 - a. Operations;
 - b. Health Services Department; and
 - c. Any other area that is deemed appropriate.
 - 2. The Kentucky Correctional Institution for Women Exposure Control Plan shall identify each job classification and the specific task and procedure in locations where occupational exposure to blood may occur, without regard to personal protective equipment and clothing.
 - 3. Personal protective equipment shall be made available for use if exposure to blood or other potentially infectious body fluids may occur.

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- a. Personal protective equipment shall include a gown, mask, goggles, disposable single use gloves, and micro shield. This equipment shall be made available throughout the institution and shall be the responsibility of the supervisors to assure an adequate supply is available.
 - b. Each applicable staff member shall be issued disposable gloves and a CPR shield.
4. Hepatitis B Vaccine (HBV) shall be made available to all staff.
 5. All staff shall receive training in blood-borne pathogens and the HBV vaccine.
 - a. A new employee shall receive the training during New Employee Orientation at the institution and at Corrections Training Basic Academy.
 - b. Current staff shall receive updated training during In-service.
 - c. All training shall be documented according to the requirements of the Exposure Control Plan.
 6. If a staff member is exposed to blood or other potentially infectious body fluid, the staff member shall be referred immediately to his private physician or local emergency room for treatment. Proper documentation shall be completed prior to the end of the shift.
- K. The Blood-borne Pathogens Exposure Plan shall be reviewed annually and updated as needed.
 - L. Appropriate clean-up kits and supplies shall be made available throughout the institution for use with body-fluid clean-up. All staff shall be made aware of the clean-up kits and their use.
 - M. This policy shall be reviewed annually and revised as needed.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:019. Receiving and unloading bulk hazardous liquids.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:019, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:019.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

SUGGESTED SUBSTITUTE
Final Version 4/6/2021 9:54 AM

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:019. Receiving and unloading bulk hazardous liquids.

RELATES TO: KRS 338.051, 338.061

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety requirements for employees with respect to receiving and unloading bulk hazardous liquids.] This administrative regulation establishes standards that are to be enforced by the Department of Workplace Standards in general industry [is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011)].

Section 1. Definitions[Definition]. (1) "Compliance safety and health officer" means a person authorized by the Commissioner of the Department of Workplace Standards, Labor Cabinet, to conduct occupational safety and health inspections.

(2) "Employee" is defined **by[in]** KRS 338.015(2).

(3) "Employer" is defined **by[in]** KRS 338.015(1).

(4) "Hazardous liquid" means[, for the purpose of this administrative regulation,] a chemical or mixture of chemicals that is toxic, an irritant, corrosive, a strong oxidizer, a strong sensitizer, combustible, flammable, extremely flammable, dangerously reactive or pressure generating, or **that[which]** otherwise **could[may]** cause substantial personal injury or substantial illness during, or as a direct result of, any customary or reasonably foreseeable handling or use.

Section 2. Scope. This administrative regulation establishes [will provide employers in Kentucky with] specific requirements for chemical handling procedures to control receiving and transfer to storage of bulk hazardous liquids [received via motor truck. This applies to chemicals which if inadvertently mixed or transferred to an inappropriate container could result in explosion and/or production of toxic gases] **and shall[. This administrative regulation does]** not apply to receiving gasoline, fuel oil, or liquefied petroleum gas at retail or wholesale outlets or to industrial filling stations **in which[where]** the industry standard operating procedure

requires the hauler to make connections and complete delivery. [~~This administrative regulation does not apply to agriculture.~~]

Section 3. General Requirements. (1) Signs and labels shall be posted as **established in paragraphs (a) through (c) of this subsection**[~~follows~~]. [;]

(a) At bulk chemical receiving and storage facilities[~~,-()~~] capable of unloading tank trucks or trailers, [;] signs and labels, readily legible at normal operating positions, shall indicate appropriate contents and item identification at receiving and dispensing connections, valves, tanks, and the storage area perimeter.

(b) Prominently displayed signs at critical access points shall direct tank truck drivers to plant security stations or to supervisory personnel. Signs at the unloading area shall give specific instruction to drivers not to connect truck tank hoses to chemical receiving lines.

(c) Bills of lading, freight bills, or accompanying paper work shall [~~should~~] have each hazardous chemical clearly identified by its shipping name [~~(49 C.F.R.)~~] or, if not otherwise specified, [~~if N.O.S. (not otherwise specified)~~] by its common name. Handling information clearly indicated for receiver information shall [~~should~~] be included.

(2) Receiving liquid chemicals.

(a) Receiving of bulk liquid chemicals shall be coordinated by the receiving department or persons responsible for receiving. Only those persons trained and authorized shall make the required chemical identification and perform or supervise the unloading of hazardous chemicals.

(b) Prior to unloading, the [~~authorized~~] person receiving bulk liquid chemicals shall make an inspection of the accompanying papers, check the load, and ascertain its identity.

(c) If necessary for identification, chemical testing shall be accomplished prior to acceptance.

(d) The [~~authorized~~] person authorized to receive bulk liquid chemicals shall direct the driver to the proper unloading area.

(e) The receiving area, where chemicals are unloaded, shall be secured in [~~behind~~] a locked [~~fence~~] enclosure or all receiving connections shall be under lock and key or made secure by other positive means.

(f) The [~~authorized~~] person authorized to receive bulk liquid chemicals shall be responsible for control of keys or combination to locking devices.

(g) The tank truck driver may make connection to the tank truck.

1. A [~~An authorized~~] person authorized to receive bulk liquid chemicals [~~only~~] shall make connection to company receiving connections and supervise the unloading into storage.

2. The tank truck driver may make both connections **if the**[~~provided~~][~~an authorized~~] person authorized to receive bulk liquid chemicals is present to identify, check, and supervise the connection and unloading.

3. In receiving areas where more than one (1) chemical is stored, the tank connection shall be individually keyed.

4. Connection to different chemical receiving systems shall be locked by separated keying arrangement.

5. Due caution shall be made to prevent spills and to assure [~~that~~] the receiving tank is not overfilled.

6. Prior arrangements shall be made to assure that inadvertent overflow is controlled without exposing employees. [~~It is recognized that environmental protection administrative regulations~~]

~~require storm or sewer drains also be protected.])~~

(h) Upon completion of unloading, the receiving device or the enclosure shall be locked and the key returned to its designated security location or other equivalent action ~~[be]~~ taken to secure the chemical inventory. [

~~(i) Appropriate respiratory and other emergency personal protective equipment for the body, eyes, face, etc., shall be immediately available and used in accordance with 29 C.F.R. 1910, Subpart I, as adopted by 803 KAR 2:308.]~~

(3) Training.

(a) **A person**~~[Persons]~~~~[Authorized persons]~~ responsible for the acceptance of potentially hazardous chemicals shall have an understanding of the particular hazards associated with those chemicals individually and in combination.

(b) Internal written operating procedures shall be prepared. All ~~[affected]~~ employees exposed to the hazards addressed by this **administrative** regulation shall be trained in these procedures.

(c) Written emergency evacuation plans shall be prepared ~~[;]~~ and practiced by all potentially affected employees.

(d) Copies of the operating procedures, emergency evacuation plans, and a listing of personnel authorized to receive bulk chemicals shall be on the premises and available to employees and to compliance safety and health officers. [

~~(e) Employees subject to exposure in the storage area requiring the use of respirators shall be fitted for and trained in their use, all in accordance with 29 C.F.R. 1910.134, as adopted by 803 KAR 2:308.~~

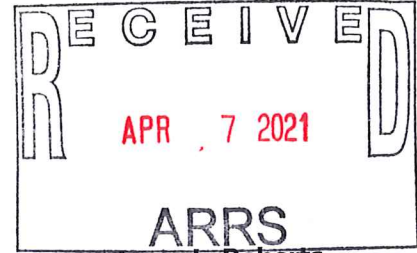
~~(f) Special first aid procedures shall be prepared for the potential injuries of the operation. First aid capability shall be in accordance with 803 KAR 2:310.]~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984



ARRS
Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

April 7, 2021

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: 803 KAR 2:050. Scope.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:050, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:050.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:050. Scope.

RELATES TO: KRS Chapter 338.021

STATUTORY AUTHORITY: KRS ~~338.051~~ ~~[338.015]~~, ~~338.061~~ ~~[338.016]~~ [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards *in general industry*. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, this administrative regulation is adopted. The function of this administrative regulation is to identify the scope of the administrative regulations pertaining to Kentucky Occupational Safety and Health under KRS Chapter 338. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).]~~

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

(2) "Employer" is defined by KRS 338.015(1).

Section 2. The [These] administrative regulations ***promulgated under 803 KAR Chapter 2*** shall apply to all employers, employees, and places of employment throughout the Commonwealth pursuant to KRS 338.021[except the following:

(1) Employees of the United States Government.

(2) Employers, employees, and places of employment over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or administrative regulations affecting occupational safety and health.

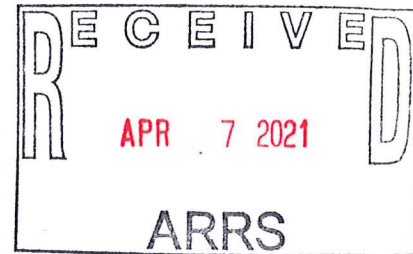
(3) Nothing in these administrative regulations shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employees, under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment].

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984



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April 7, 2021

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: 803 KAR 2:080. Advance notice of inspections.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:080, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:080.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:080. Advance notice of inspections.

RELATES TO: KRS 338.991(9)

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards enforced by the Department of Workplace Standards in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and administrative regulations are adopted, governing advance notice of inspections.]

Section 1. Definitions. (1) "Commissioner" is defined by ~~[803]~~ KRS 338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. Advance Notice of Inspection. (1) Advance notice of inspections ~~shall~~ **[may]** not be given, except [~~in the following situations~~]:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary [~~for an inspection~~];

(c) When [~~Where~~] necessary to assure the presence of representatives of the employer or [~~and~~] employees or the appropriate personnel needed to aid in the inspection; **or [and]**

(d) When [~~In other circumstances where~~] the commissioner, or designee, [~~of the Department of Workplace Standards~~] determines that [~~the giving of~~] advance notice would enhance the probability of an effective and thorough inspection.

(2)(a) Advance [~~In the situations described in subsection (1) of this section, advance notice of inspections may be given only if authorized by the Commissioner of the Department of Workplace Standards, except that in cases of apparent imminent danger, advance~~] notice may be given by the compliance safety and health officer without commissioner, or designee, [~~such~~] authorization if the commissioner, or designee, is not immediately available.

(b) When advance notice is given, it shall be employer's responsibility [~~promptly~~] to promptly notify the authorized representative of the employees of the inspection, if the identity

of **the [such]** representative is known to the employer [~~(See 803 KAR 2:110(2) as to situation where there is no authorized representative of employees.)~~].

(c) Upon the request of the employer, the compliance safety and health officer may [will] inform the authorized representative of employees of the inspection, provided [that] the employer furnishes the compliance safety and health officer the identity of **the [such]** representative and with [such other] information [as is] necessary to enable him or her promptly to inform **the [such]** representative [of the inspection].

Section 3. An employer who fails to comply with **the requirements of this administrative regulation [this requirement]** [~~his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform such representative of the inspection]~~ may be subject to citation and penalty pursuant to [~~under~~] KRS 338.991.

Section 4. [(b)] **Except in apparent imminent danger situations or other unusual circumstances,** advance notice [~~in any of the situations described in subsection (1) of this section]~~ shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted [~~, except in apparent imminent danger situations or [and in] other unusual circumstances~~].

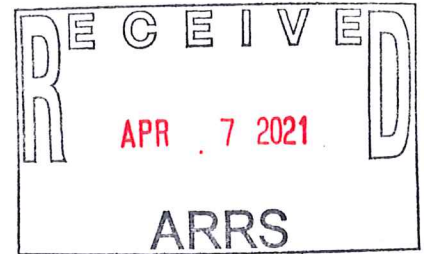
(3) KRS Chapter 338.991(9) provides that any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner, shall, upon conviction, be punished by fine of not more than \$1,000 or by imprisonment for not more than six (6) months, or by both.]

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



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Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984



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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: 803 KAR 2:090. Complaint inspections.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:090, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:090.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:090. Complaint inspections~~[Unwarranted inspections; complaint]~~.

RELATES TO: KRS 338.121

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following procedure has been formulated, which an employee is to follow in filing a complaint alleging a violation of KRS Chapter 338.] This [The function of this] administrative regulation establishes occupational safety and health complaint procedures [is to outline this procedure to be followed by the employee in filing his complaint; the administrative regulation also outlines the procedure to be followed by the Commissioner of the Department of Workplace Standards if he reviews the complaint and finds an inspection is not warranted].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) ["Employee" is defined by KRS 338.015(2).

~~(3)] "Employer" is defined by KRS 338.015(1).~~

Section 2. (1) Inspections conducted pursuant to KRS 338.121 shall not be limited to matters referred to in the complaint. [Complaints by Employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of the Department of Workplace Standards. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Commissioner of the Department of Workplace Standards.

(2) If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

~~(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of the Department of Workplace Standards in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.]~~

~~(2) If [(4) If, after an inspection based on a complaint,] a citation is issued for [covering] a violation or danger alleged [set forth] in the complaint, a copy of the citation shall [should] be sent to the complainant on or about [at] the same time it is sent to the employer.~~

Section 3. Informal Review When No Citation Warranted. ~~(1) If [(5) If, after an inspection based on a complaint,] the commissioner determines that a citation is not warranted with respect to a danger or violation alleged in the complaint, the complainant shall [must] be informed in writing of **the [such]** determination and and [-At the same time, the complainant should be notified] of her or his right [his rights] of review of the [such] determination.~~

~~(2) The complaining party may obtain review by submitting a written statement of position to the commissioner [Commissioner of the Department of Workplace Standards].]~~

~~(6) KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."~~

~~(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may present her or his views.~~

~~(4) After considering all views presented, the commissioner shall affirm, modify, or reverse her or his determination and furnish the complaining party a written notification of her or his decision and the reasons therefore.~~

~~(5) The decision of the commissioner shall be final and not subject to further review.~~

Section 4. Informal Review When Inspection Not warranted ~~[Section 2. Inspection not Warranted; Informal Review]. (1) If the commissioner [Commissioner of the Department of Workplace Standards] determines that an inspection is not warranted [because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1 of this administrative regulation], she or he shall notify the complaining party in writing of **the [such]** determination.~~

~~(2) The complaining party may obtain review of **the [such]** determination by submitting a written statement of position to the commissioner.~~

~~(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may [orally] present her or his views.~~

~~(4) After considering all [written and oral] views presented, the commissioner shall affirm, modify, or reverse her or his determination and furnish the complaining party a written notification of her or his decision and the reasons therefore.~~

~~(5) The decision of the commissioner shall be final and not subject to further review.~~

~~(6) [(2) If the commissioner determines that an inspection is not warranted [because the requirements of Section 1 of this administrative regulation have not been met, he shall notify the~~

~~complaining party in writing of such determination.]~~ ***The [such]*** determination shall be without prejudice to the filing of a new complaint pursuant **to** KRS 338.121 ~~[meeting the requirements of Section 1 of this administrative regulation].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
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Jacqueline Coleman
Lieutenant Governor

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Kimberlee C. Perry
Commissioner

April 7, 2021

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: 803 KAR 2:100. Imminent danger.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:100, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:100.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:100. Imminent danger.

RELATES TO: KRS 338.131

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health imminent danger procedures in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following administrative regulation is adopted, outlining the procedure to be followed by a compliance safety and health officer as soon as he detects an imminent danger condition.]

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

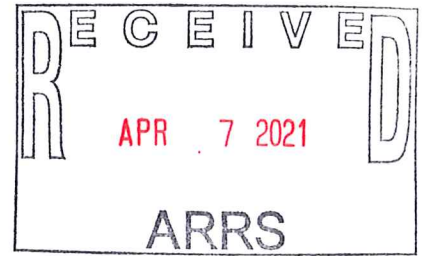
(4) "Employer" is defined by KRS 338.015(1).

Section 2. Imminent Danger. (1) When [~~Whenever and as soon as~~] a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist [~~in any place of employment~~] **that [which]** could reasonably be expected to cause death or serious physical harm immediately or before the imminence of **the [such]** danger can be eliminated through the enforcement procedures otherwise provided by KRS Chapter 338, the compliance safety and health officer [he] shall inform the affected employee and employer [employees and employers] of the danger.

(2) The compliance safety and health officer shall notify the affected employee and employer that if the imminent danger is not immediately abated, the compliance safety and health officer is recommending a civil action to restrain **the [such]** conditions or practices and for other appropriate relief pursuant to KRS 338.133 [and that if the imminent danger is not immediately abated he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of KRS 338.133].

(3) A citation [Appropriate citations and notices of proposed penalties] may be issued [with respect to an imminent danger] even though, after being informed of **the [such]** danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate **the [such]** danger.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

April 7, 2021

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: 803 KAR 2:115. Penalties.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:115, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:115.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:115. Penalties.

RELATES TO: KRS 338.141, 338.991

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 (3) requires [~~Pursuant to the authority granted~~] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [~~by KRS 338.051, the following rules and administrative regulations are adopted pertaining to the issuance of citations and the levying of penalties concurrent with the issuance of citations~~]. This administrative regulation establishes occupational safety and health penalty procedures followed by the Department of Workplace Standards.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Review commission" is defined by KRS 338.015(8).

(6) "Working days" means Monday through Friday but does not include Saturday, Sunday, ~~federal~~ or state holidays, and the day of receipt of notice.

Section 2. Proposed Penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time [~~after the termination of the inspection~~], the commissioner [~~Commissioner of the Department of Workplace Standards~~] shall notify, with delivery or receipt confirmation, the employer [~~by certified mail or by personal service by the compliance safety and health officer~~] of the proposed penalty [~~under KRS 338.994~~] or that no penalty is [~~being~~] proposed.

(2) **A [Each]** notice of proposed penalty shall state **that** the proposed penalty shall be deemed a final order of the review commission and not be subject to review by any court or agency if an employer, employee, or representative of the **employer or employee [employees]** fails to notify the commissioner in writing within fifteen (15) working days from the receipt of the proposed penalty that he or she intends to contest the proposed penalty [~~Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the review commission and not subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of such notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that he intends to contest the citation or the notification of proposed penalty before the review commission~~].

(3) [(2)] The commissioner shall determine the amount of any proposed penalty pursuant to KRS 338.991, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(4) [(3)] Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of an [such] alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, an [such] alleged violation[-]. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health].

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:120. Citations.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:120, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:120.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:120. Citations.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [~~Pursuant to the authority granted~~] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements [~~by KRS 338.051, the following rules and administrative regulations are adopted, formulating the procedure to be followed by the commissioner when a citation has been issued~~]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health citation procedures [~~The function of this administrative regulation is to spell out with clarity the procedure which must be~~] followed by the [~~compliance officers both as to form and content of the citation. Also, the administrative regulation makes clear the procedure to be followed by the Commissioner of the~~] Department of Workplace Standards [~~in reviewing the inspection conducted by the compliance officers~~].

- Section 1. Definitions. (1) "Commissioner" is defined by~~in~~ KRS 338.015.
(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.
(3) "Employee" is defined by KRS 338.015(2).
(4) "Employer" is defined by KRS 338.015(1).
(5) "Occupational safety and health standard" is defined by KRS 338.015~~(3)~~~~(4)~~.
(6) "Review commission" is defined by KRS 338.015(8).
(7) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal~~;~~ or state holidays, or~~as well as~~ the day of receipt of notice.

Section 2. Citations. (1) [~~The Commissioner of the Department of Workplace Standards shall review the inspection report of the compliance safety and health officer.~~] If [~~on the basis of the report~~] the commissioner has reason to believe that~~believes~~ an [~~that the~~] employer [~~has~~] violated a requirement of KRS Chapter 338, or any occupational safety and health standard, rule, or order promulgated pursuant [~~to~~] KRS Chapter 338, the commissioner~~he or she~~ shall issue, with delivery or receipt confirmation, [~~to~~] the employer a citation indicating the violation~~violations~~.

- (2) An appropriate citation shall be issued even if~~though~~ after being informed of an alleged

violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, ~~the[such]~~ alleged violation.

(3) Each [Any] citation shall be issued with reasonable promptness [after termination of the inspection].

Section 3 [2]. Content of Citation. (1) Each [A] citation shall describe with particularity the nature of the alleged violation, including a reference to the provision or provisions[provision(s)] of KRS Chapter 338, standard, rule, administrative regulation, or order allegedly[alleged] [~~to have been~~] violated.

(2) Each [Any] citation shall establish [also fix] a reasonable date by which the alleged violation shall be remedied[eliminated] [~~time or times for the abatement of the alleged violation~~].

(3) Each citation may propose a civil penalty.

Section 4.[~~Section 3.~~] Citations Issued for Requested Inspections. If a citation is issued for a violation alleged in request for inspection pursuant KRS 338.121 [~~under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3)~~], a copy of the citation shall [also] be sent, with delivery or receipt confirmation, to the employee or representative of employees who made ~~the[such]~~ request or notification.

Section 5[4. Informal Review of Inspection. After an inspection, if the commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), the informal review procedures prescribed in 803 KAR 2:090, Section 2, shall be applicable. After considering all views presented, the commissioner shall either affirm his determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

Section 5. Citation]. Final Order Statement. Each citation shall state the citation shall be deemed a final order of the review commission and not be subject to review by any court or agency if an employer, employee, or representative of the employees fails to notify the commissioner within fifteen (15) working days from the receipt of the citation that he or she intends to contest the citation. [~~Every citation shall state that the issuance of a citation does not constitute a finding that a violation of KRS Chapter 338, or any standard, rule, order or administrative regulation filed pursuant thereto, has occurred unless there is a failure to contest as provided for in KRS Chapter 338 or, if contested, unless the citation is affirmed by the review commission~~].

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

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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: 803 KAR 2:240. Time for filing a discrimination complaint.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:240, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:240.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Staff-suggested Amendment

Final Version 3/9/2021 11:12 a.m.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:240. Time for filing discrimination complaint.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 15

After "complaints pursuant", insert "to".

Page 1

Section 2

Line 18

After "reasonable time", insert "1".

After "KRS 338.121(3)(b)", insert "1".



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:309. General environmental controls.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:309, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:309.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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Labor Cabinet
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:309. General environmental controls.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.141-1910.147

STATUTORY AUTHORITY: KRS 338.051~~[(3)]~~, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements [to accomplish the purposes of KRS Chapter 338, 29 C.F.R. 1910.141 to 1910.147 establishes the federal requirements relating to general environmental controls]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes ~~[the general environmental controls]~~ standards that are [to be] enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) ~~["Act" means KRS Chapter 338.~~

~~(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner Department of Workplace Standards, Labor Cabinet.~~

~~(3) "C.F.R." means Code of Federal Regulations.~~

~~(2) [(4)] "Employee" is defined by[in] KRS 338.015(2).~~

~~(3) [(5)] "Employer" is defined by[in] KRS 338.015(1).[~~

~~(6) "Established federal standard" is defined in KRS 338.015(10).~~

~~(7) "National consensus standard" is defined in KRS 338.015(9).~~

~~(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.]~~

~~(4) [(9)] "Standard" means "occupational safety and health standard" as defined by defined in] KRS 338.015(3). [(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]~~

Section 2. Except as established by~~[modified by the definitions in Section 1 and the requirements in]~~ Section 3 of this administrative regulation, general industry shall comply with 29 C.F.R. 1910, Subpart J, General Environmental Controls. ~~[the following federal requirements]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[:

~~(1) 29 C.F.R. 1910.141-1910.147, revised July 1, 2013; and~~

~~(2) The amendments to 29 C.F.R. 1910.145 published in the June 13, 2014 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal~~

Register, Volume 78, Number 215].

Section 3. (1)(a) [~~Construction of Water Closets. The requirements relating to construction of water closets~~] in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).

(b) ~~Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.~~

(2)(a) Lockout. The requirements [~~relating to the utilization of lockout procedures~~] in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(ii).

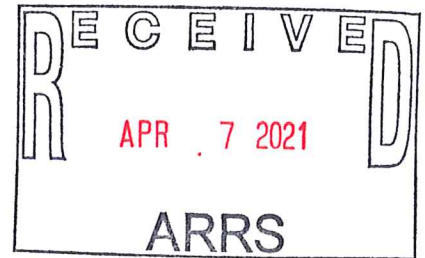
(b) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(2)(a) [(3)(a)] Full employee protection. The requirements [~~relating to tag location~~] in **paragraphs[subsection] (b) and (c)** of this **subsection[section]** shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(b) ~~If~~**[When]** a tagout device is used on an energy isolating device ~~that~~ [which] is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached~~;~~ and the employer shall demonstrate that the tagout program **shall[will]** provide a level of safety equivalent to that obtained by using a lockout program.

(c) If ~~a~~ tagout device is [devices are] used with an energy isolating device that is incapable [devices designed with the incapability] of being locked out, the tagout device [tag attachment] shall be fastened at the same point at which the lock would have been attached.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
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Lieutenant Governor

April 7, 2021

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: 803 KAR 2:314. Machinery and machine guarding.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:314, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:314.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910.211-219

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [~~29 C.F.R. Part 1910~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061~~[(2)]~~ authorizes the board to establish, modify, or repeal standards and reference federal standards [~~incorporate by reference established federal standards and national consensus standards~~]. This administrative regulation establishes [~~machinery and machine guarding~~] standards that are [~~to be~~] enforced by the Department of Workplace Standards [~~Division of Occupational Safety and Health Compliance~~] in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, Commissioner, Department of Workplace Standards, Labor Cabinet [~~the Secretary of Labor, Commonwealth of Kentucky~~].

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) [~~3~~] "Employer" of defined **by in** KRS 338.015(1).

(5) [~~4~~] "National consensus standard" is defined in KRS 338.015(9).

(6) "**Occupational safety and health standard**" or [~~5~~] "Standard" is defined **by in** KRS 338.015(3).

(7) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 and requirements in Section 3 [~~of Sections 3 and 4~~] of this administrative regulation, general industry shall comply with 29 C.F.R. 1910 Subpart O, Machinery and Machine Guarding [~~the following federal regulations~~] published by the Office of the Federal Register, National Archives and Records Administration [~~:~~ (1) 29 C.F.R. 1910.211 through 1910.219, revised as of July 1, 2013; and (2) The revisions to 29 C.F.R. 1910.217 as published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75].

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report the information to the Kentucky Labor Cabinet [~~U.S. Highway 127 South, Suite 4,~~

Frankfort, Kentucky 40601.

~~Section 4. Clutch/Brake Control. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).~~

~~(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
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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: 803 KAR 2:320. Toxic and hazardous substances.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:320, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:320.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:320. Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1910.1000 ***through[to]*** 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of ***zero and*** three-tenths (0.3) μ particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4' Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4' Methylene bis (2-chloroaniline) into regulated areas, non-regulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that ***could[may]*** result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(10) "Employee" is defined by KRS 338.015(2).

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(15) ~~"National consensus standard" is defined by KRS 338.015(9).~~

~~(16)~~ "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

~~(16)~~~~(17)~~ "Open vessel~~[Open-vessel]~~ system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

~~(17)~~~~(18)~~ "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

~~(18)~~~~(19)~~ "Regulated area" means an area where entry and exit is restricted and controlled.

(20) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, or[and] stored. Those areas shall be controlled in accordance with the requirements established in paragraphs (a) through (g) of this subsection for the [following] category or categories describing the operations involved.~~[:]~~

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.
 - a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day **and[;]** to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;
2. Decontaminated before removing the protective garments and hood; and
3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day **and[;]** to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day **and[;]** to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, non-regulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;
2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;
3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;
4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;
5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and
6. Work areas where solution **could[may]** be spilled shall be:
 - a. Covered daily or after any spill with a clean covering; and
 - b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.
2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.
3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.
4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.
2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.
3. a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.
b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as **established[provided]** in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking

materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed In this Area
Impervious Suit Including Gloves, Boots, and Air-Supplied Hood Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that **could[may]** result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be **established[prescribed]** and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain **[the following information]**:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether **or not** it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether **or not** there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for **at least** the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 **through[to]** 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment **that[which]** could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 **through[to]** 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 **through[to]** 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas~~[;]~~ and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 **through[to]** 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 **through[to]** 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall **ensure[assure]** that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time **established in subsection (2) of this section, ensure[previously specified-assure]** that either:

- (a) A copy of the record **shall be[is]** provided without cost to the employee or representative;
- (b) The necessary mechanical copying facilities (**for example[e.g.]**, photocopying) **shall be[are]** made available without cost to the employee or representative for copying the record; or
- (c) The record **shall be[is]** loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees **might[may]** have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as **established[modified]** by Sections 1 through 5 of this administrative regulation, general industry shall comply with 29 C.F.R. Subpart Z, Toxic and Hazardous Substances, [the following federal requirements] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration and the revisions to 29 C.F.R. 1910.1024 published in the July 14, 2020 Federal Register, Volume 85, Number 135]:

- ~~(1) 29 C.F.R. 1910.1000 – 1910.1450; and~~
- ~~(2) The revisions to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, 29 C.F.R. 1910.1043, and 29 C.F.R. 1910.45 as published in the May 14, 2019 Federal Register, Volume 84, Number 93].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:401. General interpretations.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:401, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:401.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:401. General interpretations~~[Adoption of 29 C.F.R. Part 1926.10-20].~~

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.10-16

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in construction. [~~KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(6) "Standard" ***means "occupational safety and health standard" as defined by***~~[is defined in]~~ KRS 338.015(3).~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.10-20 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.]~~

Section 2. Except as ***established***~~[modified by the definitions]~~ in Section 1 of this administrative regulation, the construction industry shall comply with the 29 C.F.R. 1926, Subpart B, General Interpretations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~[Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort,~~

Kentucky 40601.

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

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Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:405. Fire protection and prevention.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:405, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:405.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:405. Fire protection and prevention.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.150-159

STATUTORY AUTHORITY: KRS 338.051[~~(3)~~], 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 require]~~ the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are ~~[to be]~~ enforced by the Department of Workplace Standards in ~~[Division of Occupational Safety and Health Compliance in the area of]~~ construction.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations. ~~["Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.~~

~~(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.]~~

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.0151(1).

Section 2. Except as established~~[modified by the definitions]~~ in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart F, Fire Protection and Prevention ~~[the following federal requirements]~~ published in the Office of the Federal Register, National Archives and Records Services, General Services Administration [:

(1) 29 C.F.R. 1926.150 through 1926.159, revised July 1, 2011; and

(2) ~~The amendments to Subpart F of 29 C.F.R. 1926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:408. Tools – hand and power.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:408, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:408.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:408. Tools - hand and power.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.301-307

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[, 29 C.F.R. 1926]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards[(2) authorizes the board to incorporate by reference established federal standards and national consensus standards]. This administrative regulation establishes [~~hand and power tool~~] standards [~~to be~~] that are enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the construction industry].

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by[in] KRS 338.015(2).

(3) [(2)] "Employer" is defined by[in] KRS 338.015(1).

(4) [(3)] "Standard" ***means "occupational safety and health standard" as defined by/is defined in*** KRS 338.015(3).

Section 2. Except as ~~established~~[~~modified by the definitions~~] in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart J, Tools-Hand and Power, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation. Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1926.300-1926.307 revised as of July 1, 2004; and

(b) The revision to 29 C.F.R. 1910.268, as published in the June 8, 2004, Federal Register, Volume 69, Number 110.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.]

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

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Governor

Jacqueline Coleman
Lieutenant Governor

April 8, 2021

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: 803 KAR 2:409. Welding and cutting.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:409, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:409.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:409. Welding and cutting~~[Adoption of 29 C.F.R. Part 1926.350-354].~~

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.350-354

STATUTORY AUTHORITY: KRS 338.051(3), 338.061~~[KRS Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 authorize]~~ the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health ~~[rules, administrative]~~ regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements ~~[, and standards].~~ KRS 338.061 authorizes the board to establish, modify, or repeal federal standards and reference federal standards. ~~[Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] This administrative regulation establishes~~ ~~[contains those]~~ standards that are ~~[to be]~~ enforced by the Department of Workplace Standards in construction~~[Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926].~~

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Standard" ***means "occupational safety and health standard" as defined by***~~[is defined in] KRS 338.015(3).~~~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.350-354 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

(1) Revisions to 29 C.F.R. 1926.350, "Gas Welding and Cutting", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(2) Revision to 29 C.F.R. 1926.351(d)(5), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

(3) Revisions to 29 C.F.R. 1926.353, "Ventilation and Protection in Welding and Cutting", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.]

Section 2. Except as ***established in***~~[modified by]~~ Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart J, Welding and Cutting, published by the Office of the Federal Register, National Archives and Records Services, General

~~Services Administration~~[Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

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Secretary

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Commissioner

Andy Beshear
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Jacqueline Coleman
Lieutenant Governor

April 8, 2021

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: 803 KAR 2:410. Electrical.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:410, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:410.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:410. Electrical.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.400-449

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[, 29 C.F.R. 1926]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] This administrative regulation establishes [contains these] standards that are [to be] enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the area of construction].

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" **means "occupational safety and health standard" as defined by**[is defined in] KRS 338.015(3).

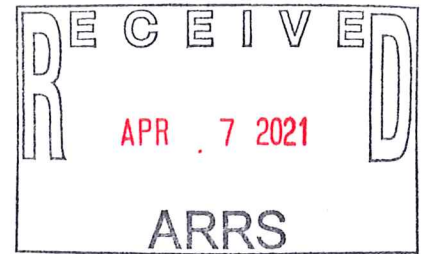
Section 2. Except as **established in**[modified by] Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart K, Electrical, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1926.400-449 revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The amendment to 29 C.F.R. 1926 Subpart K, "Electrical" as published in the Federal Register, Volume 61, Number 156, August 12, 1996 is incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday].

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

April 7, 2021

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: 803 KAR 2:413. Helicopters, hoists, elevators, and conveyors.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:413, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:413.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:413. [~~Subpart N-~~] Helicopters, hoists, elevators, and conveyors.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.550-556

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~and 338.061 require~~ the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health ~~rules,~~ administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements, ~~and standards~~. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This ~~The following~~ administrative regulation establishes ~~contains these~~ standards that are ~~to be~~ enforced by the Department of Workplace Standards in ~~Division of Occupational Safety and Health Compliance in the area of~~ construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) ~~["Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

~~[(3)]~~ "C.F.R." means Code of Federal Regulations.

~~(3)~~~~[(4)]~~ "Employee" is defined by KRS 338.015(2).

~~(4)~~~~[(5)]~~ "Employer" is defined by KRS 338.015(1).

~~[(6)]~~ "Established federal standard" is defined in KRS 338.015(10).

~~(7)~~ "National consensus standard" is defined in KRS 338.015(9).

~~(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.]~~

~~[(5)]~~~~[(9)]~~ ***["Standard" is defined in KRS 338.015(3).]***

~~[(10)]~~ "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as **modified [established]** by the definitions in Section 1 **of this administrative regulation**, the construction industry shall comply with 29 C.F.R. 1926 Subpart N, Helicopters, Hoists, Elevators, and Conveyors, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~The Construction Industry shall Comply with the Following Federal Regulations published by the Office of the Federal Register, National Archives, and Records Administration:~~

~~(1) 29 C.F.R. 1926.550 – 1926.556, revised July 1, 2010; and~~

~~(2) The revision of 29 C.F.R. 1926.550 and 553 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.~~

Section 3. ~~(1) The language in paragraph (2) of this subsection shall apply in lieu of 29~~

C.F.R. 1926.552(b)(8).

~~(2) All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:414, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:414.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.600-606

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. ~~This~~ [The following] administrative regulation establishes ~~[contains those]~~ standards that are ~~[to be]~~ enforced by the Department of Workplace Standards in ~~[Division of Occupational Safety and Health Compliance in the area of]~~ construction.

Section 1. Definitions. (1) ~~["Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

~~(2)]~~ "C.F.R." means Code of Federal Regulations.

~~(2)[(3)]~~ "Employee" is defined by KRS 338.015(2).

~~(3)[(4)]~~ "Employer" is defined by KRS 338.015(1).

~~(4)[(5)]~~ "Standard" ***means "occupational safety and health standard" as***~~[is]~~ defined by KRS 338.015(3).

Section 2. Except as established ~~[by the definitions]~~ in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations ~~[the following federal regulations]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration;

~~(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2010; and~~

~~(2) The revision of 29 C.F.R. 1926.600 as published in the August 9, 2010 Federal Register, Volume 75, Number 152].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Larry L. Roberts
Secretary

Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:415. Excavations.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:415, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:415.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:415. Excavations [Adoption of 29 C.F.R. Part 1926.650-653].

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.650-653.pag

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules and] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.] This [The following] administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in [Division of Occupational Safety and Health Compliance in the area of] construction. [The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined **by/in** KRS 338.015(2).

(3) "Employer" is defined **by/in** KRS 338.015(1) [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.650 – 1926.653 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with following additions, exceptions, and deletions:

(1) Revisions to 29 C.F.R. 1926, Subpart P, "Excavations," as published in Federal Register, Volume 54, Number 209, October 31, 1989, are incorporated by reference.

(2) The revisions to 29 C.F.R. 1926.651(1), "Specific Excavation Requirements", as published in Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference].

Section 2. Except as **established [modified by the definitions]** in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart P, Excavations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday].

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
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Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
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Kimberlee C. Perry
Commissioner

April 8, 2021

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: 803 KAR 2:416. Concrete and masonry work.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:416, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:416.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training**

803 KAR 2:416. Concrete and masonry work [~~Adoption of 29 C.F.R. Part 1926.700-706~~].

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.700-706

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules,] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1). [The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R., Part 1926.700 - 1926.706, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) Revisions to 29 C.F.R. 1926, Subpart Q, "Concrete, Concrete Forms and Shoring," (now "Concrete and Masonry Construction"), as published in Federal Register, Volume 53, Number 116, June 16, 1988, are incorporated by reference.

(2) Revisions to 29 C.F.R. 1926.700, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference.

(3) The revision to 29 C.F.R. 1926.701, "General Requirements", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(4) Revisions to Subpart Q of 1926.704(b), "Concrete and Masonry Construction Safety Standards," as published in Federal Register, Volume 54, Number 192, October 5, 1989, are incorporated by reference.

(5) Revisions to 29 C.F.R. 1926.705, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference].

Section 2. ~~Except as **established in**[**modified by**] Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart Q, Concrete and Masonry Construction, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

Andy Beshear
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April 8, 2021

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: 803 KAR 2:417. Steel erection.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:417, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:417.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:417. Steel erection.

RELATES TO: KRS 338.015(1), (2), 29 C.F.R. 1926.750-1926.761

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorize the board to establish, modify, or repeal standards and reference federal standards. ~~[29 C.F.R. 1926.750 to 1926.761 establish the federal requirements relating to steel erection.]~~ This administrative regulation establishes standards that are ~~[to be]~~ enforced by the Department of Workplace Standards in ~~[the] construction [industry relating to steel erection].~~

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. Except as **established**~~[modified by the definitions]~~ in Section 1 and the requirements in Section 3 of this administrative regulation, the ~~[The] construction industry shall comply with 29 C.F.R. 1926, Subpart R, Steel Erection, [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration,~~ ~~except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:~~

~~(1) 29 C.F.R. 1926.750 through 1926.761, and Appendices, revised July 1, 2010; and~~

~~(2) The amendment to 29 C.F.R. 1926.754 as published in the May 17, 2010 Federal Register, Volume 75, Number 94; and].~~

Section 3. Fall Hazards. (1)(a) ~~[The language in]~~ Paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(1).

(b) Each employee engaged in a steel erection activity who is on a **walking or working**~~[walking/working]~~ surface with an unprotected side or edge ten (10) feet or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems.

(2)(a) ~~[The language in]~~ Paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(3).

(b) Connectors and employees working in controlled decking zones shall be protected from fall hazards in accordance with **subsection**~~[subsections]~~ (5) ~~[and (6)]~~ of this section, respective-

ly.

(3)(a) ~~[The language in]~~ Paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(1).

(b) Each connector shall be protected in accordance with subsection (2) of this section from fall hazards of ten (10) feet or more above a lower level.

(4)(a) ~~[The language in]~~ Paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(3).

(b) Each connector shall be provided with, wear, and utilize, at heights of ten (10) feet or more above a lower level, a personal fall arrest system, positioning device system, or fall restraint system~~;~~ or be provided with other means of protection from fall hazards in accordance with subsection (1) of this section.

(5)(a) ~~[The language in]~~ Paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(c).

(b) A controlled decking zone (CDZ) may be established in that area of the structure over six (6) feet and up to ten (10) feet above a lower level if metal decking is initially being installed and forms the leading edge of a work area. In each CDZ~~;~~ ***the following shall apply:***

1. ~~[The language in]~~ Subparagraph 2 of this paragraph shall apply in lieu of 29 C.F.R. 1926.760(c)(1); ~~and~~.

2. Each employee working at the leading edge in a CDZ shall be protected from fall hazards of ten (10) feet or more above a lower level.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

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April 7, 2021

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: 803 KAR 2:420. Blasting and use of explosives.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:420, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:420.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS)

803 KAR 2:420. Blasting and use of explosives.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.900-.914

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [~~29 C.F.R. 1926~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) ~~requires~~ ~~and 338.061 authorize~~ the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [~~KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.~~] ~~This~~ ~~The following~~ administrative regulation ~~establishes~~ ~~contains these~~ standards ~~to be~~ enforced by the Department of Workplace Standards in the construction industry [~~Division of Occupational Safety and Health Compliance in the area of construction~~].

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Secretary" is defined by KRS 338.015(12).

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

~~[(6) "Standard" is defined in KRS 338.015(3).] [Precautions to be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines dust storms, or other sources of extraneous electricity.]~~

Section 2. Except as modified by **the** definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart U, Blasting and the Use of Explosives, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. [~~(1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(3)(i).~~

~~(a) 1926.900(k)(3)(i), The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any~~

alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.

~~(b) 1926.900(k)(4), Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.~~

~~(2) 29 C.F.R. 1926.900(k)(3)(i) is amended to read: The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.~~

~~(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(4).~~

~~(4) 29 C.F.R. 1926.900(k)(4) is amended to read: Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be de_energized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.~~

~~Section 2. Use of Black Powder. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(p).~~

~~(2) 29 C.F.R. 1926.900(p) is amended to read: The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.~~

~~Section 3. Electric Blast Initiation. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(r).~~

~~(2) 29 C.F.R. 1926.900(r) is amended to read: All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection. 906(a) and (r).~~

~~Section 4. Transporting of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.902(d).~~

~~(2) 29 C.F.R. 1926.902(d) is amended to read: Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 C.F.R. 177.835(g).~~

~~Section 5. Underground Transportation of Explosives. (1) The language in subsection (2) of this~~

section shall apply in lieu of 29 C.F.R. 1926.903(o).

~~(2) 29 C.F.R. 1926.903(o) is deleted.~~

~~Section 6. Loading of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.905(h).~~

~~(2) 29 C.F.R. 1926.905(h) is amended to read: Machines and all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, overburden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the lead wires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.~~

~~(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.905(i).~~

~~(4) 1926.905(i) is amended to read: No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.~~

~~(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.905(k).~~

~~(6) 29 C.F.R. 1926.905(k), Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two (2) holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.~~

~~(7) The language in subsection (8) of this section shall apply in lieu of 29 C.F.R. 1926.905(n).~~

~~(8) 29 C.F.R. 1926.905(n) is amended to read: In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.~~

~~Section 7. Initiation of Explosive Charges — Electric Blasting. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.906(p).~~

~~(2) 29 C.F.R. 1926.906(p) is amended to read: The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine except under the immediate physical and visual supervision of the blaster.~~

~~(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.906(q).~~

~~(4) 29 C.F.R. 1926.906(q) is amended to read: Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.~~

~~(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.906(s).~~

~~(6) 29 C.F.R. 1926.906(s) is amended to read: Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.~~

~~Section 8. Use of Safety Fuse. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.907(a).~~

~~(2) 29 C.F.R. 1926.907(a) is amended to read: The use of a fuse that has been hammered or injured in any way shall be forbidden.~~

~~Section 9. Inspection After Blasting. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.910(o).~~

~~(2) 29 C.F.R. 1926.910(b) is amended to read: Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation.~~

~~Section 10. Incorporation by Reference (1) The following material is incorporated by reference:~~

~~(a) The material in subparagraphs 1 through 14 of this paragraph, the Code of Federal Regulations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:~~

- ~~1. 29 C.F.R. 1926.900 through 1926.900(k)(2);~~
- ~~2. 29 C.F.R. 1926.900(k)(3)(ii);~~
- ~~3. 29 C.F.R. 1926.900(k)(5) through 1926.900(o);~~
- ~~4. 29 C.F.R. 1926.900(q);~~
- ~~5. 29 C.F.R. 1926.900(s) through 1926.902(c);~~
- ~~6. 29 C.F.R. 1926.902(e) through 1926.903(d);~~
- ~~7. 29 C.F.R. 1926.903(f) through 1926.905(g);~~
- ~~8. 29 C.F.R. 1926.905(j);~~
- ~~9. 29 C.F.R. 1926.905(l) through 1926.905(m);~~
- ~~10. 29 C.F.R. 1926.905(o) through 1926.906(o);~~
- ~~11. 29 C.F.R. 1926.906(r);~~
- ~~12. 29 C.F.R. 1926.906(t);~~
- ~~13. 29 C.F.R. 1926.907(b) through 1926.910(a);~~
- ~~14. 29 C.F.R. 1926.910(c) through 1926.914.~~

~~(b) The revision to 29 C.F.R. 1926.906, "Initiation of Explosive Charges - Electric Blasting", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, is incorporated by reference.~~

~~(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax

(502) 564-4769, email Robin.Maples@ky.gov.



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Department of Workplace Standards

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April 8, 2021

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: 803 KAR 2:424. Diving.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:424, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:424.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:424. Diving~~[Construction industry diving standards]~~.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.1071-1926.1091

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. ~~[necessary to accomplish the purposes of KRS Chapter 338, 29 C.F.R. 1926.1071-1926.1091 and Subpart S App. A establish federal requirements relating to commercial diving operations.]~~ This administrative regulation establishes ~~[the]~~ diving standards ~~[to be]~~ enforced by the Department of Workplace Standards in construction ~~[Division of Occupational Safety and Health Compliance in the area of construction].~~

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Standard" ***means "occupational safety and health standard" as defined by***~~[is defined in]~~ KRS 338.015(3).

Section 2. Except as established ~~[by the definitions]~~ in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart Y, Diving, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~[The construction industry shall comply with the requirements of 29 C.F.R. 1926.1071 through 1926.1091, and Appendices, revised as of July 1, 2006].~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

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500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 696-1984

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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: 803 KAR 2:600. Occupational safety and health standards for agriculture.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:600, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:600.

Sincerely,

A handwritten signature in black ink that reads "Robin Maples".

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

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Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:600. Occupational safety and health standards for agriculture.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1928

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. ~~[29 C.F.R. 1928.1 to 1928.1027 establishes the federal requirements relating to occupational safety and health standards for agriculture.]~~ This administrative regulation establishes ~~[the occupational safety and health]~~ standards ~~[for agriculture to be]~~ enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the agriculture industry.

Section 1. (1) "Assistant secretary" means Secretary, ~~[of the]~~ Labor Cabinet or ~~[the]~~ Commissioner, ~~[of the]~~ Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined **by/in** KRS 338.015(2).

(4) "Employer" is defined **by/in** KRS 338.015(1).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet, Mayo-Under Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601 or U.S. Department of Labor.

Section 2. Except as established ~~[by the definitions]~~ in Section 1, the ~~[The]~~ agriculture industry shall comply with 29 C.F.R. Part 1928 ~~[the following federal regulations]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, ~~except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 3 of this administrative regulation:~~

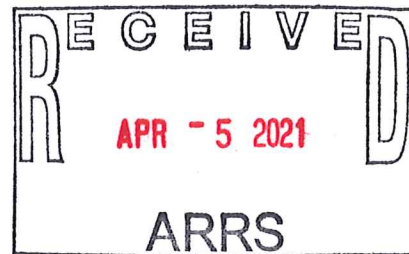
(1) ~~29 C.F.R. 1928.1 through 29 C.F.R. 1928.1027, and Appendices, revised July 1, 2010; and~~

(2) ~~The amendment to 29 C.F.R. 1928.110 published in the June 8, 2011, Federal Register, Volume 76, Number 110.~~

Section 3. ~~Scope and Application.~~ (1) The language in subsection (2) of this section shall apply in addition to 29 C.F.R. 1928.1.

~~(2) The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 C.F.R. Part 1928 to all employers, employees, and places of employment throughout the Commonwealth, except those excluded in KRS 338.021.~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



PUBLIC PROTECTION CABINET

Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 5th, 2021

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 02:060. Complaints.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 02:060, the Department of Insurance proposes the attached agency amendments to 806 KAR 02:060.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 3-31-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Consumer Protection

806 KAR 2:060. Complaints.

RELATES TO: KRS 304.2-160

STATUTORY AUTHORITY: KRS 304.2-110, **304.2-165**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. ~~[The function of]~~ This administrative regulation establishes~~[is to set forth]~~ the classification of complaints made to the Department of Insurance.

Section 1. ~~(1)~~ When a written and signed complaint is received by the Department of Insurance, the commissioner, within the jurisdiction under the laws of this Commonwealth, shall make a determination, as to the merits, of any received complaint.

(2) Upon final disposition of each complaint, the commissioner shall make a finding as to if the complaint is justifiable, unjustifiable, indeterminate, or a request for information, and record the finding in its record. In making this finding, the commissioner shall be guided by the common and accepted practice in the insurance industry and a fair and reasonable application of the duties, responsibilities, and obligations of the respective parties.

Section 2. ~~[(4)]~~ The department shall not have the authority to usurp or infringe upon the jurisdiction, prerogative, or authority of the various courts of competent jurisdiction in this Commonwealth. The ultimate decision upon questions of law and fact shall rest with the court.

~~[(2) Upon final disposition of each complaint, the commissioner shall have the duty, to make a finding as to if the complaint is justifiable, unjustifiable, indeterminate, or a request for information, and to record the findings in its record. In making this finding, the department shall be guided by the common and accepted practice in the insurance industry and a fair and reasonable application of the duties, responsibilities, and obligations of the respective parties.]~~

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

The agency needs to file one (1) corrected copy of the Regulatory Impact Analysis and Tiering Statement at the time that it files this staff suggested amendment that includes an answer to Question 9 on whether or not tiering is applied.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 2:060
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

- (1) Provide a brief summary of: This administrative regulation clarifies the Commissioner's authority to classify complaints that are received by the Department of Insurance.
 - (a) What this administrative regulation does: The function of this administrative regulation is to set forth the classification of complaints made to the Department of Insurance.
 - (b) The necessity of this administrative regulation: The necessity of this administrative regulation is to ensure all received complaints are classified by the commissioner and within the jurisdiction of the department. This is necessary in order to aid in the effectuation of the Insurance Code.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that aid in the effectuation of Insurance Code.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The classification of the complaints received by the Department determine the fate of the complaint and the following steps necessary to carry out the complaint.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities that are listed in each complaint will be affected by this administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The commissioner and the appointing department staff authorized to receive and process complaints will need to utilize any supporting documents provided to the department to determine the classification of the complaint.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no expected costs to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Complaints will be classified appropriately and the mission of the Department of Insurance will be met.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation relates to all entities filing a complaint and any type of complaint received by the department follows the same processes.



PUBLIC PROTECTION CABINET

Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602-0517
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Kerry B. Harvey
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Sharon P. Clark
Commissioner

April 5th, 2021

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 14:005. Rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 14:005, the Department of Insurance proposes the attached agency amendments to 806 KAR 14:005.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 3-31-2021

SUGGESTED AMENDMENT

**Public Protection Cabinet
Department of Insurance
Division of Health and Life Insurance and Managed Care**

806 KAR 14:005. Rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 11

After "Code", insert a comma.

Page 1

Section 1

Line 17

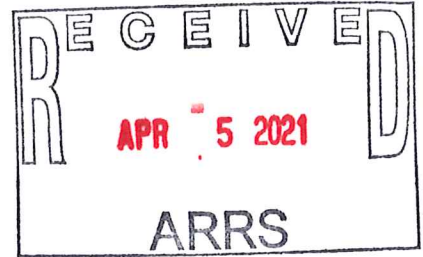
After "Definitions.", delete the following:
As used in this administrative regulation:

Page 2

Section 2

Line 8

After "insurance company.", insert "These forms or documents"
Delete "They".



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

PUBLIC PROTECTION CABINET
Department of Insurance
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Frankfort, Kentucky 40602-0517
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<http://insurance.ky.gov>

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 5th, 2021

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 14:007. Rate and form filing procedures for health insurers.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 14:007, the Department of Insurance proposes the attached agency amendments to 806 KAR 14:007.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 3-31-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Divisions of Health and Life Insurance and Managed Care

806 KAR 14:007. Rate and form filing for health insurers.

RELATES TO: KRS 304.1-010, 304.1-050, 304.3-270, 304.4-010, 304.14-120, 304.14-190, 304.17-380, 304.17A-005, 304.17A-095, 304.17A-096, 304.17C-010(5)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as defined by by [~~in~~] KRS 304.1-010. [~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. [As used in this administrative regulation:]

- (1) [~~"Basic health benefit plan" is defined in KRS 304.17A-005(4).]~~
- (2) [~~3~~] "Commissioner" means the Commissioner of Insurance as defined by KRS 304.1-050(1).
- (2) [~~3~~] "Department" means Department of Insurance as defined by KRS 304.1-050(2).
- (3) [~~4~~] "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.
- (4) [~~5~~] "Health benefit plan" is defined by [~~in~~] KRS 304.17A-005(22).
- (5) [~~6~~] "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, and for long-term care, short term nursing and Medicare Supplement products, including [~~includes~~] advertising [~~, provider agreement, or risk sharing arrangement~~].
- (6) Limited health service benefit plan is defined by KRS 304.17C-010(5).

Section 2. Filing Procedures. (1) A health insurance rate and form filing shall be accompanied by a Face Sheet and Verification Form, **Form** HIPMC-F1. [

(2) ~~A health policy form filed under policy form certification shall be accompanied by a Health Policy Forms Filing Certification Privilege Program Form, HIPMC-F2.]~~

(2) [~~3~~] An individual health insurance rate [~~form~~] filing shall be accompanied by an Individual Health Forms Actuarial Certification Form, **Form** HIPMC-R4.

(3) [~~4~~] An insurer issuing, delivering, or renewing a:

(a) health [~~Health~~] benefit plan or a limited health service benefit plan shall complete and attach to each plan filed a Health [~~Benefit Plan~~] Summary Sheet - Form Filings [~~Form~~], **Form** HL [~~HIPMC-F11~~] [~~HIPMC-F35~~]. [~~;~~]

(b) ~~Basic health benefit plan shall complete and attach to each plan filed a Basic Health Benefit Plan Summary Sheet Form and Rate Filings Form, HIPMC-RF-25; and~~

(c) ~~Limited health service benefit plan shall complete and attach to each plan filed a Limited Health Service Benefit Plan Summary Sheet Form Filings, HIPMC-F37 pursuant to 806 KAR 17:440.-]~~

(4) [~~5~~] Except for a health benefit plan rate filing pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a Rate Filing Information Form, **Form** HIPMC-R36.

(5) [~~6~~] If a rate or form filing [~~as~~] submitted by a health insurer does not contain the information necessary to review the filing [~~is not a complete filing~~], the department shall use an Addi-

tional Health Information Request **Form**, Form HIPMC-F16, to request submittal of the incomplete information.

(6) [(7)] (a) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form; and

(b) Other numbers shall not appear in close proximity to the form number.

(7) [(8)] Each submission shall be accompanied by a submittal letter [~~on the stationery of the filing entity which intends to use a form,~~] listing all forms by number ***with a brief description of each form and listing all of the forms that will be*** [~~all forms~~] ***being*** submitted together ***[with a brief description of each]***.

(8) [(9)] If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (7) [(8)] of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used; and

(b) Identify by a unique form number each alternate page or alternative benefit.

(9) [(10)] If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(10) [(11)] Except for an insert page or alternate page, each form shall contain the corporate name and address of the health insurer.

(11) [(12)] A form filed for approval by the department shall not contain advertising or marketing material.

(12) [(13)] If a new form is submitted, the filing entity shall identify the unique features of the form.

(13) [(14)] If a filing includes a form which was previously disapproved by the department, the filing entity shall assign the form a new form number. [

~~(15) A rate or form filing shall include two (2) complete sets of documents and a self-addressed stamped envelope.]~~

Section 3. Filing Entity. A filing entity may include in a filing multiple forms or documents pertaining to a single line of insurance, filed together on a particular date.

Section 4. Date of Filing. Pursuant to KRS 304.4-010(2), a fee payable under the Kentucky Insurance Code shall be collected in advance. The period of time in which the commissioner may approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the department:

(1) The rate or form filing;

(2) The appropriate fee pursuant to 806 KAR 4:010 [~~Section 1(21)~~]; and

(3) ***The[A]*** form ***or letter of explanation*** required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) A form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved [~~or certified~~] by the department, which shall occur within the sixty (60) day time frame identified in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the commissioner grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved; and

(b) If a rate for the form is required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A document subject to a filed only process, including advertisements and provider directories, ~~[provider agreements, subcontract provider agreements, or risk sharing arrangements,]~~ shall be:

- (a) Filed with the department; and
- (b) Subject to review in accordance with KRS 304.14-120.

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form[,] which has been previously filed ~~[and not disapproved]~~, it shall be accompanied by a letter of explanation from the filing entity which identifies:

- (1) All changes contained in the newly filed form;
- (2) The form being replaced;
- (3) The date the replaced form was:
 - (a) Approved;
 - (b) Disapproved;
 - (c) ~~[(b)]~~ Withdrawn; or
 - (d) ~~[(e)]~~ Submitted; and
- (4) The effect the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

- (a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;
- (b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and
- (c) Forms required by Section 2 of this administrative regulation.

(2) An appropriate fee pursuant to 806 KAR 4:010, ~~[Section 4(21)]~~, shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) A health insurer may file a rate or form electronically through the National Association of Insurance Commissioners' electronic system for rate and form filings via the Web site www.serff.com.

(2) An electronic filing as identified in subsection (1) of this section shall be in lieu of a paper filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form HIPMC-F1, "Face Sheet and Verification Form", 07/2020 ~~[07/2008]~~ edition;
- (b) Form ~~HL~~**[HIPMC]**-F11, "Health ~~[Rate]~~ Summary Sheet – Form Filings", 07/2020 edition; ~~[Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form", 07/2008 edition;]~~
- (c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", 07/2020~~[2008]~~ edition;]
- (d) ~~Form HIPMC-F35, "Health Benefit Plan Summary Sheet Form Filings", 07/2008 edition;]~~
- (d) ~~[(e)]~~ Form HIPMC-R36, "Rate Filing Information Form", 07/2020 ~~[07/2008]~~ edition; and
- (e) ~~[(f)]~~ Form HIPMC-F-16, "Additional Health Information Request Form", 07/2020~~[2008]~~ edition. ~~];]~~
- (g) ~~Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet Form and Rate Filings", 07/2008 edition; and~~
- (h) ~~Limited Health Service Benefit Plan Summary Sheet – Form Filings, HIPMC-F37, 07/2008 edition.]~~

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

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

At the time that the agency files this staff suggested substitute the agency will need to file one (1) clean copy of a corrected Regulatory Impact Analysis and Tiering Statement that:

- **Page 14 -Corrects old, inaccurate language in response to the question on the RIA: "List the actions each of the regulated entities have taken to comply with this regulation or amendment".**
- **The pagination of the RIA previously was pages 13-15, so make sure to use the correct pagination**

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 14:007
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for health insurers so the executive director will have relevant information to approve or disapprove a filing.

(b) The necessity of this administrative regulation: KRS 304.14-120 requires all policy forms to be delivered or issued in Kentucky to be filed with and approved by the executive director before being issued or delivered. KRS 304.14-130 requires the executive director to determine whether the benefits in the policy are reasonably related to the premium charged. This administrative regulation is necessary to establish the procedures for insurers to file forms and rates with the executive director in accordance with the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the executive director in the proper review of form and rate filings in accordance with the law.

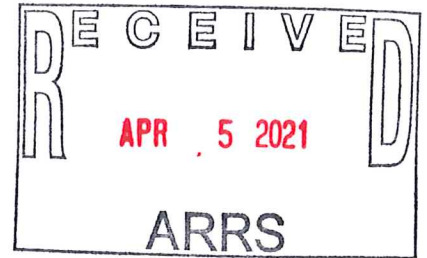
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to meet Chapter 13A drafting requirements, and to require health rate a form filings to be accompanied by a Face Sheet and a verification HIPMC-F1. This requirement would be relevant to entities filing rates and forms concerning a health benefit plan, as well as limited health benefit plans.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to meet uniform drafting rules as well as update the process of health filings. There are amendments to exclude certain filing forms as they are no longer necessary in the process established in this administrative regulation.

- (c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that and these amendments aid in the effectuation of the Insurance Code.
- (d) How the amendment will assist in the effective administration of the statutes: These amendments meet the requirements of Chapter 13A as well as setting the standards for health filings.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the 470 licensed insurers writing health insurance in the state of Kentucky.
- (4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The changes made in this administrative regulation set new requirements for health rate and form filings to be accompanied by a Face Sheet and a verification HIPMC-F1.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.
- (c) As a result of compliance, what benefits will accrue to the entities: Meeting the proper filing requirements means filings are more likely to be approved and accepted by the Commissioner.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: No cost is expected.
- (a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.
- (b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.
- (9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation applies to all insurers.



PUBLIC PROTECTION CABINET

Department of Insurance

P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
<http://insurance.ky.gov>

Andy Beshear
Governor

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Deputy Secretary

Kerry B. Harvey
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Sharon P. Clark
Commissioner

April 5th, 2021

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 14:090. Grouping for preferential treatment prohibited.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 14:090, the Department of Insurance proposes the attached agency amendments to 806 KAR 14:090.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 3-31-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty

806 KAR 14:090. Grouping for preferential treatment prohibited.

RELATES TO: ~~KRS 304.12-080 [KRS 304.14],~~ 304.13-051, 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 304.2-110** authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010 ~~[KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code].~~ **[The function of]** This ~~[This]~~ administrative regulation **prohibits/is to prohibit** ~~[prohibits]~~ the grouping of **persons or risks/risk**~~[risks]~~ for **[the]** preferential treatment in insurance rates or forms.

Section 1. A ~~[No]~~ form, plan, or policy of insurance covering any group or combination of **persons/person**~~[persons]~~ or **risks/risk**~~[persons or risks]~~, other than life or health insurance, shall not be written or delivered within or outside the Commonwealth of Kentucky to cover a Kentucky person ~~[persons]~~ or risk ~~[risks]~~ at any preferred rate or form other than that offered to ~~[persons not in such group, and]~~ the public generally, unless the ~~[such]~~ form, plan, or policy and the rate~~[rates]~~ or premium~~[premiums]~~ to be charged ~~[therefor]~~ have been submitted **to**~~[to]~~ and approved by the Commissioner ~~[Executive Director]~~ of Insurance.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



PUBLIC PROTECTION CABINET

Department of Insurance

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April 5th, 2021

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 14:110. Dividend plans; filing, participation.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 14:110, the Department of Insurance proposes the attached agency amendments to 806 KAR 14:110.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Final, 3-31-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty

806 KAR 14:110. Dividend plans; filing, participation.

RELATES TO: KRS ~~304.3-050, 304.12-010, 304.12-080-304.12-110, 304.13-031, 304.13-051, 304.13-053, 304.13-057, 304.13-058, 304.13-061, 304.13-071, 304.13-075, 304.13-169, 304.14-120, 304.15-380, 304.24-250, 304.24-310, 304.24-320, 304.24-330[, 304.24-250, 304.13-010-304.13-390, 304.14-120, 304.12-010, 304.12-080-304.12-110]~~

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. [KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.]~~ ~~[The function of]~~ This [This] administrative regulation ~~permits the/is to permit~~ [permits the] participation ~~by insureds/of the insured~~ [by insureds] in ~~writing~~ ~~dividend premium plans~~ [premiums] under ~~a~~ "participating" ~~policies/policy~~ [policies] and ~~requires/shall require~~ [requires] a filing of ~~the~~ [such] dividend ~~plans/plan~~ [plans] with the ~~commissioner~~ [executive director].

Section 1. ~~To [It having been demonstrated that improved safety measures and improved claims handling may result in savings in expenses and in losses over and above those levels anticipated, and it having also been demonstrated that it is possible, in certain cases, for an insurer to identify and group the policyholders contributing to such savings into specific classifications; to further] encourage [such] savings in the net cost of insurance protection, insurers authorized to transact [such] insurance in this state may[, after complying with the following conditions], issue a policy[-policies] allowing the insured [entitled] to participate [from time to time] in the dividend earning of the insurer [earnings of the insurer through dividends]. This administrative regulation shall not apply to dividends to shareholders in a stock company or [companies nor] to [the] general dividends to ~~policyholders/a policyholder~~ [policyholders] in a mutual company [companies].~~

Section 2. (1) An [Such] insurer shall file or refile with the ~~commissioner~~ [executive director], in ~~substantially~~ the same manner as a rate filing, every proposed dividend plan and every modification of a dividend plan ~~thereof~~, including discontinuance, which it ~~intends~~ [proposes] to use, accompanied by the information ~~that~~ [upon which the insurer] supports ~~the~~ [such] filing.

(2)(a) ~~(4)~~ A filing shall ~~not~~ [No such filing shall] propose [in this state] both a participating and nonparticipating ~~policy~~ [policies] for the same class of risk. Any classification ~~by the insurer~~ of its participating ~~policy~~ [policies] and of risks assumed ~~under that policy~~ [thereunder] which the insurer may make shall be reasonable ~~and nondiscriminatory~~. In determining the proposed eligibility requirements for a dividend plan, the underlying standard shall be the demonstrated or demonstrable success in savings in expenses or in losses ~~over and~~ above levels anticipated in previously filed rates.

(b) Any proposed dividend plan shall ~~[must]~~ be made available to all insureds meeting the eligibility requirements set forth in the dividend plan. ~~[To facilitate this and to broaden the availability of such programs,]~~

(c) An agent appointed ~~[agents licensed]~~ by one **(1)** or more companies of a group of affiliated insurers shall also be appointed ~~[licensed]~~ by the company within ~~the~~ ~~[such]~~ group authorized to write participating ~~[such]~~ insurance policies ~~[if the company for which such agent is then licensed does not write such participating policies]~~. Notice and details of the availability of the program in Kentucky shall be given to all licensed agents within the authorized group ~~[of the group's licensed agents]~~.

(3) ~~[(2)]~~ If ~~the~~ ~~[such]~~ filing is an initial filing or the facts or the laws have changed since a prior filing has been used, the filing shall contain either satisfactory evidence of proper specific charter ~~[(as defined in KRS 304.3-050)]~~, authority to issue a participating policy ~~[policies]~~, or satisfactory evidence that unless otherwise provided by its charter, the laws of its domicile provide that it may issue a policy ~~[policies]~~ entitled to participate in the earnings of the insurer through dividends.

(4) ~~[(3)]~~ ~~The~~ ~~[Such]~~ filing shall also contain proposed policy provisions or proposed policy endorsement forms for the payment of dividends which shall further provide that all ~~[such]~~ dividends ~~[must]~~ be paid by the insurer directly to the insured, and that no ~~[such]~~ dividends may be assigned to associations or others, except upon assignment of the policy for value. If the provision for the payment of dividends is made by separate endorsement rather than incorporated in the policy form, ~~the~~ ~~[such]~~ endorsement shall ~~[must]~~ be attached to each ~~[and every such]~~ policy issued.

Section 3. **(1)** Dividends to ~~[such]~~ participating policies shall be paid only out of that part of ~~[such]~~ surplus funds that derives ~~[which is derived]~~ from any realized net profits from the insurer's business. ~~An~~**No** ~~[such]~~ insurer or its agents shall **not** guarantee or promise to a policyholder or prospective policyholder the amount of ~~[of]~~ percentage of dividends to be paid. ~~A~~**No** ~~[; and no]~~ dividend, otherwise earned, shall **not** be made contingent upon payment of renewal premium on any policy, or membership in, or affiliation with, any association.

(2) All brochures and advertising material shall affirmatively and clearly set forth that dividends are not guaranteed and that all policyholders are eligible for the dividend program whether or not they are members of, or affiliated with, any association.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 7th, 2021

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 15:060. Universal life insurance.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 15:060, the Department of Insurance proposes the attached agency amendments to 806 KAR 15:060.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS)

806 KAR 15:060. Universal life insurance.

RELATES TO: KRS 304.6-120, ~~304.6-130~~, 304.6-140, ~~304.6-143~~, 304.6-145, 304.6-150, 304.14-120, ~~304.15-010~~, 304.15-040, 304.15-300, 304.15-310, 304.15-340, 304.15-342

STATUTORY AUTHORITY: KRS 304.2-110, ~~304.6-143(5)~~, ~~304.6-171(2)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code ~~[as defined in KRS 304.1-010].~~ ~~[authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304.]~~ **This [The function of this]** ~~[This]~~ administrative regulation **establishes [is to establish]** ~~[establishes]~~ requirements to ~~[supplement existing administrative regulations on life insurance policies in order to]~~ accommodate the development and issuance of universal life insurance policies.

Section 1. Definitions. ~~[As used in this administrative regulation:]~~ (1) "Cash surrender value" means the net cash surrender value plus any amounts outstanding as policy loans.

(2) "Commissioner" ~~is [means the Commissioner of the Department of Insurance as defined by KRS 304.1-050(1). ["Executive director" is defined in KRS 304.1-050(1).]~~

(3) "Fixed premium universal life insurance policy" means a universal life insurance policy other than a flexible premium universal life insurance policy.

(4) "Flexible premium universal life insurance policy" means a universal life insurance policy ~~that [which]~~ permits the policyowner to vary, independently of each other, the amount or timing of one (1) or more premium payments or the amount of insurance.

(5) "Guaranteed maturity premium for fixed premium universal life insurance policies" means the premium defined in the policy ~~that at the time of issue, [which at issue]~~ provides the minimum policy guarantees.

(6) "Guaranteed maturity premium" means ~~[that]~~ the level gross premium, that is paid at issue and periodically thereafter over the period which premiums are allowed to be paid, that [which] will mature the policy on the latest maturity date, if any, permitted under the policy, ~~or [(otherwise) at the highest age in the valuation mortality table{}],~~ for an amount which is in accordance with the policy structure.

(7) "Interest-indexed universal life insurance policy" means any universal life insurance policy in which the interest credits are linked to an external reference.

(8) "Net cash surrender value" means the maximum amount payable to the policyowner upon surrender.

(9) "Policy value" means the amount ~~that shall [to which]~~ separately identify [identified] interest credits and mortality, expense, or other charges ~~[are]~~ made under a universal life insurance policy.

(10) "Universal life insurance policy" means a life insurance policy:

(a) ~~That shall [in which]~~ separately identify [identified] interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges ~~[are]~~ made to the policy; and

(b) That may provide for other credits and charges, such as charges for the cost of benefits provided by the rider.

Section 2. Application. This administrative regulation shall apply to all individual universal life insurance policies except variable universal life insurance policies.

Section 3. Valuation. (1) Requirements:

(a) The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described in this section, and the tables and interest rates established in paragraphs (b) through (m) [specified] in this subsection.

(b) The terminal reserves for the basic policy and riders for ~~[which]~~ premiums that are not paid separately as of any policy anniversary shall be equal to the net level premium reserves ~~[calculated pursuant to paragraph (c) of this subsection]~~, minus the calculations established in [determined pursuant to] paragraphs (h) and (j) of this subsection.

(c) Reserves by the net level premium method shall be equal to the formula " $((d)-(e))r$ ", with:

1. The letter "(d)" equaling the calculation as established in [made pursuant to] paragraph (d) of this subsection;

2. The letter "(e)" equaling the calculation as established in [made pursuant to] paragraph (e) of this subsection; and

3. The letter "r" equaling the calculation as established in [made pursuant to] paragraph (f) of this subsection.

(d) The letter "(d)" shall be determined by calculating the present value of all future guaranteed benefits at the date of valuation.

(e) The letter "(e)" shall be determined by calculating the formula " $PVFB_{ax+t}/ax$ " as established in [required by] this paragraph.

1. "PVFB" shall be the present value of all benefits guaranteed at policy issue assuming future guaranteed maturity premiums are paid by the policyowner and taking into account all guarantees contained in the policy or declared by the insurer.

2. " ax " and " $ax+t$ " shall be present values of an annuity of one (1) per year payable on policy anniversaries beginning at ages " x " and " $x+t$ ", respectively, and continuing until the highest attained age that [which] a premium may be paid under the policy. The letter "x" shall be the policy issue age and the letter "t" shall be the duration of the policy.

3. The guaranteed maturity premium shall be calculated at issue based on all policy guaranteed at issue, excluding guarantees linked to an external referent. The guaranteed maturity premium for fixed premium universal life insurance policies shall be the premium defined in the policy which at policy issue shall provide [provides] the minimum policy guarantees.

(f) The letter "r" shall be:

1. Equal to one (1); or

2. If the policy is a flexible premium policy and the policy value is less than the guaranteed maturity fund, the ratio of the policy value to guaranteed maturity fund.

(g) The guaranteed maturity fund at any duration shall be that amount that [which], together with future guaranteed maturity premiums, will mature the policy based on all policy guarantees at issue.

(h) The numerical value for this paragraph shall be the quantity that results from the formula " $r((a)-(b))ax+t/ax$ ", with:

1. The letter "r" equaling the calculation made pursuant to paragraph (f) of this subsection;
2. The value "(a)-(b)" equaling the calculation made pursuant to paragraph (i) of this section;

and

3. The values for "ax+t" and "ax" established in paragraph (e)2, of this subsection.

(i) The value of "(a)-(b)" shall be as established in KRS 304.6-150(1) for the plan of insurance defined at policy issue by the guaranteed maturity premiums and all guarantees contained in the policy or declared by the insurer.

(j) The numerical value for this paragraph shall be the sum of any additional quantities analogous to paragraph (h) of this subsection which arise because of structural changes in the policy, with each quantity being determined on a basis consistent with that of paragraph (h) of this subsection using the maturity date in effect at the time of the change.

(k) The guaranteed maturity premium, the guaranteed maturity fund, and paragraph (e) of this subsection shall be recalculated to reflect any structural changes in the policy. This recalculation shall be done in a manner consistent with the requirements established in this subsection.

(l) Future guaranteed benefits shall be determined by:

1. Projecting the greater of the guaranteed maturity fund and the policy value, taking into account future guaranteed maturity premiums, if any, and using all guarantees of interest, mortality and expense deductions, contained in the policy or declared by the insurer; and
2. Taking into account any benefits guaranteed in the policy or by declaration that [which] do not depend on the policy value.

(m) All present values shall be determined using:

1. An interest rate or rates specified by KRS 304.6-145(2) for policies issued in the same year;
2. The mortality rates specified by KRS 304.6-140 for policies issued in the same year or contained in another table approved by the commissioner [~~executive director~~] for this purpose;

and

3. Any other tables needed to value supplementary benefits provided by a rider that [which] is being valued together with the policy.

(2) Alternative Minimum Reserve.

(a) If, in any policy, the guaranteed maturity premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the contract shall be the greater of:

1. The reserve calculated according to the method, the mortality table, and the rate of interest actually used; or

2. The reserve calculated according to the method actually used by using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the guaranteed maturity premium in each policy year for which the valuation net premium exceeds the guaranteed maturity premium.

(b) For universal life insurance reserves on a net level premium basis, the valuation net premium shall be "PVFB/ax", where "PVFB" and "ax" shall be determined pursuant to subsection(1)(e), (l), and (m) of this section.

(c) For reserves on a Commissioners Reserve Valuation Method, the valuation net premium shall be "PVFB/ax + (9a)-(b)/ax", where "(a)-(b)" shall be determined pursuant to subsection (1)(i) of this section.

Section 4. Nonforfeiture. (1) Minimum cash surrender values for flexible premium universal life insurance policies.

(a) Minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately.

(b) The requirements established in this paragraph shall pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

1. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to the accumulation to that date of the premiums paid minus the accumulations to that date of:

- a. The benefit charges;
- b. The averaged administrative expense charge [charges] for the first policy year and any insurance increase years;
- c. The actual [Actual] administrative expense charge [charges] for other years;
- d. An initial [Initial] and additional acquisition expense charge [charges] not exceeding the initial or additional expense allowances, respectively;
- e. The service [Service] charge [charges] actually made excluding charges for cash surrender or election of a paidup nonforfeiture benefit; and
- f. Deductions made for partial withdrawals.

2. All accumulations shall be at the actuarial rate or rates of interest at which interest credits have been made unconditionally to the policy or have been made unconditionally, but for [which] the conditions that have since been met, and minus any unamortized unused initial and additional expense allowances.

3. Interest on the premiums and on all charges referred to in subparagraph 1. of this paragraph shall be accumulated from and to dates consistent with the manner in which interest is credited in determining the policy value.

4. The benefit charge [charges] shall include the charge [charges] made for mortality and the charge [charges] made for riders or supplementary benefits for [which] premiums that are not paid separately.

5. If benefit charges are substantially level by duration and develop low or no cash values, the commissioner [executive director] shall require higher cash values unless the insurer provides justification that the cash values are appropriate in relation to the policy's other characteristics.

6. An [The] administrative expense charge [charges] shall include:

- a. A charge [Charges] per premium payment;
- b. A charge [Charges] per dollar of premium paid;
- c. A periodic charge [Periodic charges] per **\$1,000** [~~one (1) thousand dollars~~] of insurance;
- d. A periodic [Periodic] per policy charge [charges]; and

e. Any other charge [~~Other charges~~] permitted by the policy to be imposed without regard to the policyowner's request for the service of the insurer [~~services~~].

7. The averaged administrative expense charge [~~charges~~] for any year shall be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates that [~~which~~] the policy states will be imposed in policy years two (2) through twenty (20) in determining the policy value.

8. The initial acquisition expense charge [~~charges~~] shall be the excess of the expense charge [~~charges~~], other than service charge [~~charges~~], actually made in the first policy year over the averaged administrative expense charge [~~charges~~] for that year.

9. Additional acquisition expense charge [~~charges~~] shall be the excess of the expense charge [~~charges~~], other than the service charge [~~charges~~], actually made in an insurance-increase year over the averaged administrative expense charge [~~charges~~] for that year.

10. An insurance-increase year shall be the year beginning on the date of increase in the amount of insurance by policyowner request or by the terms of the policy.

11. The service charge [~~Service charges~~] shall include any charge [~~charges~~] permitted by the policy to be imposed as the result of a policyowner's request for a service by the insurer or a [~~of~~] special transaction [~~transactions~~].

12. The initial expense allowance shall be the allowance established in [~~provided by~~] KRS 304.15-342(1) for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, with level premiums paid annually until the highest attained age at which a premium may be paid under the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy.

13. If there is no maturity date in the policy, the highest age in the valuation mortality table shall be used.

14. The unused initial expense allowance shall be the excess of the initial expense allowance over the initial acquisition expense charge [~~charges~~].

15. If the amount of insurance is subsequently increased upon request of the policyowner or by the terms of the policy, an additional expense allowance and an unused additional expense allowance shall be determined on a basis consistent with this paragraph and as established in [~~with~~] KRS 304.15-342(5) using the face amount and the latest maturity date permitted at the time under the policy.

16. The unamortized unused initial expense allowance shall be:

a. Calculated during the policy year beginning on the policy anniversary at age "x+t", with "x" equaling the same issue age; and

b. The unused initial expense allowance multiplied by " $(ax + t)/ax$ ", with " $ax+t$ " and " ax " being the present values of an annuity of one (1) per year payable on the anniversary of the policy [~~anniversaries~~] beginning at ages "x+t" and "x", respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy.

17. An unamortized unused additional expense allowance shall be the unused additional expense allowance multiplied by a similar ratio of annuities, with "ax" replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

(2) The minimum [Minimum] cash surrender value [values] for a fixed premium universal life insurance policy [policies].

(a) For a fixed premium universal life insurance policy [policies], the minimum cash surrender value [values] shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately.

(b) The requirements established in paragraph (c) of this subsection shall pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

(c) The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to "(d)-(e)-(f)-(g)", with:

1. The letter "(d)" equaling the calculation made pursuant to paragraph (d) of this subsection;
2. The letter "(e)" equaling the calculation made pursuant to paragraph (e) of this subsection;
3. The letter "(f)" equaling the calculation made pursuant to paragraph (f) of this subsection;

and

4. The letter "(g)" equaling the calculation made pursuant to paragraph (g) of this subsection.

(d) The letter "(d)" shall be the present value of all future guaranteed benefits.

(e) The letter "(e)" shall be the present value of future adjusted premiums. The adjusted premiums shall be calculated as established by [described in] KRS 304.15-342. The nonforfeiture net level premium shall be equal to the quantity "PVFB divided by ax".

1. "PVFB" shall be the present value of all benefits guaranteed at policy issue assuming future premium is [premiums are] paid by the policyowner and all guarantees contained in the policy or declared by the insurer.

2. "ax" shall be the present value of an annuity of one (1) per year payable on the anniversary of the policy [policy anniversaries] beginning at age "x" and continuing until the highest attained age at which a premium may be paid under the policy.

(f) The letter "(f)" shall be the present value of any quantities analogous to the nonforfeiture net level premium which arise because of guarantees declared by the insurer after the issue date of the policy. "ax" shall be replaced by an annuity beginning on the date as of which the declaration became effective and payable until the end of the period covered by the declaration.

(g) The letter "(g)" shall be the sum of any quantities analogous to paragraph (e) which arise because of structural changes in the policy.

1. Any future [Future] guaranteed benefit [benefits] shall be determined by:

a. Projecting the policy value, taking into account the future premiums, and using all guarantees of interest, mortality, and expense deductions contained in the policy or declared by the insurer; and

b. Taking into account any benefit [benefits] guaranteed in the policy or by declaration that [which] do not depend on the policy value.

2. All present values shall be determined using:

a. An interest rate established [specified] by KRS 304.15-342(9) for policies issued in the same year; and

b. The mortality rates established [specified] by KRS 304.15-342(8) for policies issued in the same year or contained in other table that [as] may be approved by the commissioner [executive director] for this purpose.

(3) The minimum [Minimum] paid-up nonforfeiture benefit [benefits].

(a) If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it shall have a present value at least equal to the cash surrender value provided for by the policy on the effective date of the election.

(b) The present value shall be based on mortality and interest standards at least as favorable to the policyowner as:

1. In the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value; or

2. In the case of a fixed premium policy, the mortality and interest standards permitted for paid-up nonforfeiture benefits as established by KRS 304.15-342(8) and (9).

(c) In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of the death benefit [~~benefits~~], or, if applicable, a greater amount or earliest payment of the endowment benefit [~~benefits~~].

Section 5. Mandatory Policy Provisions. The policy shall provide ***[the following]:***

(1) A report which shall be sent at least annually to the policyowner to inform the policyowner of the status of the policy:***[-]***

(a) The end of the current reporting period shall not be more than three (3) months prior to the date of the mailing of the report; ***and[-]***

(b) The report shall comply with the requirements established in Section 7 of this administrative regulation;

(2) Notice that the policyholder may request an illustration of the current and future benefits and values;

(3) The guarantee [~~Guarantees~~] of minimum interest credit [~~credits~~] and the maximum mortality and expense charge [~~charges~~]:***[-]***

(a) All values and data shown in the policy shall be based on guarantees; ***and[-]***

(b) Any figure [~~Figures~~] based on nonguarantees shall not be included in the policy;

(4) A general description of the calculation of the cash surrender value [~~values~~] including ***[the following information]:***

(a) The guaranteed maximum expense charge [~~charges~~] and the load [~~loads~~];

(b) Any limitation on the crediting of additional interest. Any interest credit [~~Interest credits~~] shall not remain conditional for a period longer than twenty-four (24) months;

(c) The guaranteed minimum rate or rates of interest;

(d) The guaranteed maximum mortality charge [~~charges~~];

(e) Any other guaranteed charge [~~charges~~]; and

(f) Any surrender or partial withdrawal charge [~~charges~~];

(5)(a) If the policyowner has the right to change the basic coverage, ***that*** any limitation on the amount or timing of the change ***in basic caoverage*** shall be stated in the policy; ***and[-]***

(b) If the policyowner has the right to increase the basic coverage, ***whether [the policy shall state if]*** [~~whether~~] the additional coverage shall be subject to the same provisions as the original policy;

(6) Written notice to be sent to the policyowner's last known address at least thirty (30) days prior to termination of coverage:***[-]***

(a) A flexible premium policy shall allow [~~provide~~] for a grace period of at least thirty (30) days after lapse; **and** [.]

(b) Unless otherwise defined in the policy, lapse shall occur on that date on which the net cash surrender value is first equal to [~~equals~~] zero;

(7) If there is a misstatement of age or sex in the policy, **that** the amount of death benefit shall be that of what [~~that which~~] would be purchased by the most recent mortality charge at the correct age or sex; and

(8) If a policy provides for a maturity date, end date, or similar date, **that** the policy shall contain a statement, in close proximity to that date, that it is possible that coverage may not continue to the maturity date even if the scheduled premium is [~~premiums are~~] paid in a timely manner.

Section 6. Disclosure of information about the policy being applied for shall follow the standards established in 806 KAR 12:140.

Section 7. Periodic Disclosure to Policyowner. (1)(a) The policy shall provide that the policyowner shall be sent, without charge at least annually, a report which shall inform the policyowner of the status of the policy.

(b) The end of the current report period shall not be more than three (3) months prior to the date of the mailing of the report.

(2) The report shall include **[the following]**:

(a) The beginning and end of the current report period;

(b) The policy value at the end of the previous report period and at the end of the current report period;

(c) The total amount that has [~~amounts which have~~] been credited or debited to the policy value during the current report period, identifying each by type;

(d) The current death benefit at the end of the current report period on each life covered by the policy;

(e) The net cash surrender value of the policy as of the end of the current report period;

(f) The amount of any outstanding loan [~~loans~~], if any, as of the end of the current report period;

(g) For a fixed premium policy [~~policies~~], if applicable, a notice to the effect that based on the calculation [~~calculations~~] of the guaranteed interest, mortality, and expense load [~~loads~~] and the continued scheduled premium payment [~~payments~~], the policy's net cash surrender value is at a level that will not maintain insurance in force until the end of the next reporting period; and

(h) For a flexible premium policy [~~policies~~], if applicable, a notice to the effect that based on the guaranteed interest, mortality, and expense load [~~loads~~], the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made.

Section 8. The Interest-indexed Universal Life Insurance Policy [~~Policies~~]. (1)(a) All information received in accordance with paragraph (c) of this subsection shall be treated confidentially to the extent permitted by law.

(b) The information required by paragraph (c) of this subsection shall be submitted in addition to the requirements established by [~~of~~] KRS 304.14-120.

(c) ~~[The following information shall be submitted in connection with]~~ Any filing of an interest indexed universal life insurance policy shall include ~~[policies]:~~

1. A description of how the interest credit shall be ~~[credits are]~~ determined, including:
 - a. A description of the index;
 - b. The relationship between the value of the index and the actual interest rate to be credited;
 - c. The frequency and timing of determining the interest rate; and
 - d. The allocation of the interest credit ~~[credits]~~, if more than one (1) rate of interest shall be applied ~~[applies]~~ to different portions of the policy value;

2. The insurer's investment policy, which shall include a description of **[the following]:**

- a. How the insurer addressed the reinvestment risks;
- b. How the insurer plans to address the risk of capital loss on cash outflows;
- c. How often the insurer plans to address the risk that appropriate investments may not be available or not available in sufficient quantities;
- d. How the insurer plans to address the risk that the indexed interest rate may fall below the minimum contractual interest rate guaranteed in the policy;
- e. The amount and type of assets currently held for interest indexed policies; **and**
- f. The amount and type of assets expected to be acquired in the future;

3. If policies are linked to an index for a specified period less than to the maturity date of the policy, a description of the method used to determine interest credits upon the expiration of such period;

4. A description of any interest guarantee in addition to or in lieu of the index; and
5. A description of any maximum premium limitations and the conditions under which they apply.

(2) Reporting requirements:

(a) Annually, every insurer shall submit a Statement of Actuarial Opinion by the insurer's actuary **as established [similar to the example contained]** in subsection (3) of this section: ~~[.]~~

(b) Annually, an insurer shall submit a description of the amount and type of assets currently held by the insurer with respect to its interest-indexed policies; **and** ~~[.]~~

(c)1. Prior to implementation, a domestic insurer shall submit a description of any material change in the insurer's investment strategy or method of determining the interest credits.

2. A change shall be material if it would:

- a. Affect the form or definition of the index; or
- b. Significantly change the amount or type of assets held for interest-indexed policies.

(3) Statement of Actuarial Opinion for Interest-Indexed Universal Life Insurance Policies shall state **[as follows]:** I, _____, am (position or relationship to Insurer) for the _____ Name of Life Insurance Company (the Insurer) in the state of _____.

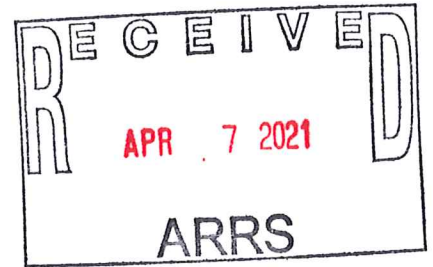
(State of Domicile of Insurer) I am a member of the American Academy of Actuaries (or if not, state other qualifications to sign annual statement actuarial options). I have examined the interest-indexed universal life insurance policies of the Insurer in force as of December 31, ____, encompassing ____ number of policies and \$____ of insurance in force. I have considered the provisions of the policies. I have considered any reinsurance agreements pertaining to the policies, the characteristics of the identified assets, and the investment policy adopted by the Insurer as they affect future insurance and investment cash flows under the policies and related assets. My examination included tests and calculations that I

considered necessary to form an opinion concerning the insurance and investment cash flows arising from the policies and related assets. I relied on the investment policy of the Insurer and on projected investment cash flows as provided by _____, Chief Investment Officer of the Insurer. The tests were conducted under various assumptions as to future interest rates, and particular attention was given to those provisions and characteristics that may cause future insurance and investment cash flows to vary with changes in the level of prevailing interest rates. In my opinion, the anticipated insurance and investment cash flows referred to above make a sufficient provision for the contractual obligations of the Insurer under these insurance policies.

_____ Signature of Actuary.[]

~~Section 9. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall take effect on January 1, 2008.]~~

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

PUBLIC PROTECTION CABINET
Department of Insurance
P.O. Box 517
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Kerry B. Harvey
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Sharon P. Clark
Commissioner

April 7th, 2021

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 15:070. Annuity nonforfeiture.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 15:070, the Department of Insurance proposes the attached agency amendments to 806 KAR 15:070.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS)

806 KAR 15:070. Annuity nonforfeiture.

RELATES TO: 304.14-120, 304.15-365

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-365(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code ~~[as defined in KRS 304.1-010]~~ [KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304]. KRS 304.15-365(7) authorizes the commissioner ~~[-executive director]~~ to promulgate administrative regulations to implement KRS 304.15-365(6) ~~[the statute]~~ and to establish ~~[provide for]~~ further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that ~~[for which]~~ the commissioner ~~[-executive director]~~ shall determine if ~~[determines]~~ adjustments are justified. ~~[The function of]~~ This ~~[This]~~ administrative regulation establishes ~~[is to establish]~~ the requirement ~~[requirements]~~ to implement the annuity nonforfeiture provisions established ~~[pertaining to annuity nonforfeiture-]~~ in KRS 304.15-365(4).

Section 1. Definitions. ~~[As used in this administrative regulation:]~~ (1) "Basis" means:

(a) If used in the context of an initial or redetermination method, the specified period over which an average is computed that shall produce ~~[produces]~~ the value of the five-year Constant Maturity Treasury (CMT) Rate; or

(b) If used in the context of the equity-indexed benefit ~~[benefits]~~, the point in time used for establishing the parameters that:

1. Are incorporated into the calculation of the value of the equity-indexed options; and

2. Include the risk free rate, dividend yield, index volatility, and prior index values if the option is path dependent.

(2) "Equity-indexed benefit ~~[benefits]~~" means a benefit that:

(a) Is in an annuity contract in which the value of the benefit is determined using an interest crediting rate based on the performance on an equity-based index and contract parameters; and

(b) Shall ~~[Does]~~ not include the variable benefit ~~[benefits]~~ of separate account variable annuities and indexed guaranteed separate account contracts purchased by an institutional buyer ~~[buyers]~~.

(3) "Commissioner" ~~is~~ ~~["Executive director"]~~ [means the Commissioner of Insurance as] ~~[is]~~ defined by ~~[in]~~ KRS 304.1-050(1).

(4) "Index term" means each period of time until the next indexed interest crediting date.

(5) "Initial method" means the basis upon which the initial nonforfeiture rate is established and the period that ~~[for which]~~ it shall apply ~~[applies]~~ and shall ~~[which may]~~ last for the entirety ~~[entire duration]~~ of the contract.

- (6) "Initial nonforfeiture rate" means the nonforfeiture rate applicable at contract issue.
- (7) "Minimum nonforfeiture amount" means the amount established by ~~[determined pursuant to]~~ KRS 304.15-365(4)(a).
- (8) "Modal period" means the period the company specifies during which the current nonforfeiture rate will remain fixed.
- (9) "Nonforfeiture rate" means the interest rate established in KRS 304.15-365(5).
- (10) "Redetermination method" means the redetermination date, basis, and period for all future redetermination nonforfeiture rates.

Section 2. Basis Applicability. The same basis shall apply to equity-indexed benefits and nonequity-indexed benefits, if any.

(1)(a) The basis may use a specified period that is determined by the level of change in the CMT rate, or another date-dependent methodology adopted by the National Association of Insurance Commissioners and in compliance with this administrative regulation.

(b) A specifically excluded method is a method that shall define the nonforfeiture rate as the lowest rate in a specified time period.

(c) A method based upon changes in CMT levels shall move up or down in an identical manner with changes in interest rates, subject to KRS 304.15-365(5).

(2) If the basis uses a specified period determined by the level of change in the CMT rate:

(a) The nonforfeiture rate applicable if this subsection is first utilized for a contract form shall be determined by a method using a specified period or a date-dependent methodology in compliance with this administrative regulation.

(b)1. A symmetrical range shall be defined that ~~shall~~ ~~[will]~~ determine if the rate ~~will~~ ~~[shall]~~ be updated.

2. The maximum allowable range shall be plus or minus fifty (50) basis points.

(c) At the beginning of each modal period, a potential nonforfeiture rate shall be calculated using the method in paragraph (a) of this subsection, without incorporating caps or floors.

(d) If the difference between the potential nonforfeiture rate and the current initial nonforfeiture rate is less than or equal to the range, the current nonforfeiture rate shall not be updated.

(e) If the difference between the potential nonforfeiture rate and the current nonforfeiture rate is more than the range, the current nonforfeiture rate shall be updated to be equal to the potential nonforfeiture rate adjusted for rounding and caps or floors.

Section 3. Initial Method. (1) The initial method shall be filed with the commissioner ~~[executive director]~~.

(2)(a) Changes to the initial method shall be allowed once per calendar year.

(b) Changes to the initial method shall be filed with the commissioner ~~[executive director]~~ in accordance with KRS 304.14-120.

(c) A change in the initial method would be applicable only to new contracts or new certificates issued subsequent to the effective date of the change in method.

(3) The initial method ~~shall~~ ~~[may]~~ ~~[shall]~~ not be required to be disclosed in the contract form.

(4) The initial nonforfeiture rate shall not be required to be disclosed in the contract form unless redetermination is used.

(5) The minimum nonforfeiture parameters shall not be required to be disclosed in the contract unless they are utilized in the calculation of the guaranteed minimum value of the contract.

Section 4. Redetermination Method. (1) If redetermination is used, the method shall be disclosed in the contract form or certificate.

(2) Changes in the redetermination method for future issues or certificates shall be filed in accordance with KRS 304.14-120.

Section 5. Nonforfeiture Rate and Minimum Nonforfeiture Amount. (1) An annuity contract or certificate without an equity-indexed benefit shall have one (1) nonforfeiture rate and one (1) minimum nonforfeiture amount applicable to the entire contract.

(2) An annuity contract or certificate with equity-indexed benefits may have more than one (1) nonforfeiture rate applicable to the contract or certificate subject to the following:

(a) If the contract has a non equity-indexed benefit, the nonforfeiture interest rate applicable to the non equity-indexed benefit shall be determined in compliance with KRS 304.15-365(5) without ~~[any]~~ consideration of any equity indexed feature.

(b) If an additional reduction is elected for equity-indexed benefits, reduced nonforfeiture interest rates may apply to each equity-indexed benefit for which the additional reduction is elected in compliance with KRS 304.15-365(6) and Section 5 of this administrative regulation.

(c) The minimum nonforfeiture amount for the contract shall be determined by calculating a nonforfeiture amount, without any reduction for indebtedness to the company on the contract including interest due and accrued on the indebtedness, for each equity-indexed and non equity-indexed benefit using the nonforfeiture interest rates described in this subsection, summing the results, and then deducting any indebtedness to the company on the contract including interest due and accrued on the indebtedness.

(d) If contract value is transferred:

1. From a benefit, the benefit's minimum nonforfeiture amount shall be reduced by the benefit's minimum nonforfeiture amount prior to the transfer and multiplied by the proportion of the benefit's contract value that is transferred;

2. To a benefit, the benefit's minimum nonforfeiture amount shall be increased by the sum of all reductions in minimum nonforfeiture amounts determined pursuant to subparagraph 1 of this paragraph, and multiplied by the proportion of total contract value that is transferred to that benefit; or

3. For the purpose ~~[purposes of the]~~ of calculations specified in subparagraphs 1 and 2 of this paragraph, the contract value shall first be reduced by any fees associated with the transfer.

(e) In the case of a withdrawal from a benefit in which the amount of withdrawal exceeds the benefit's nonforfeiture amount, the insurer shall treat the excess withdrawal in a manner at least as favorable to the contract holder as deducting the excess withdrawal from the nonforfeiture amounts of other benefits in order from lowest to highest nonforfeiture interest rate.

(f) A contract charge or premium tax paid by the company shall be allocated to a benefit's minimum nonforfeiture amount based on the percentage of that benefit's contract value to the total contract value.

Section 6. Equity-indexed Benefits. (1) If a company chooses to take the additional reduction for an equity-indexed benefit, the company shall prepare a demonstration showing compliance with KRS 304.15-365(6).

(2) To demonstrate compliance a company shall:

(a) Calculate the annualized option cost for the equity-indexed benefit in the form of basis points for the entire index term as of the beginning of the index term.

1. In making the calculation, a company shall:

- a. Use the equity-indexed benefit's guaranteed product features;
- b. Use a basis representative of the point in time at the beginning of the current index term for the option cost. The company shall not change this basis during the index term; and
- c. Calibrate the method and parameters for the option cost to capital markets based option pricing.

2. A company shall not make adjustments for persistency, death, or utilization.

(b) Be eligible to take a reduction equal to the lesser of **100 [one hundred (100)]** basis points or the annual cost basis value, if the annualized option cost for the equity-indexed benefit is twenty-five (25) basis points or more, and the equity-indexed benefit shall provide substantive participation under KRS 304.15-365(6).

(c) Prepare an actuarial certification signed by a member of the American Academy of Actuaries that the reduction complies with KRS 304.15-365(6) at the time that the contract form is filed and submitted.

(d) Annually prepare an actuarial certification in accordance with KRS 304.15-365(6) signed by a member of the American Academy of Actuaries with regard to ongoing compliance and submit it in conjunction with the filing of the annual statement.

(3) If the additional reduction of up to **100 [one hundred (100)]** basis points for equity-indexed benefits has been inappropriately taken, the commissioner [executive director] shall require the recalculation of all values for all affected policyholders without all or part of the additional reduction.[]

~~Section 7. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008.~~

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



PUBLIC PROTECTION CABINET

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

Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 7th, 2021

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 19:050. Combined health and dismemberment restrictions.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 19:050, the Department of Insurance proposes the attached agency amendments to 806 KAR 19:050.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Staff-suggested Amendment

Final Version 4/7/2021 11:16 a.m.

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care

806 KAR 19:050. Combined health and dismemberment restrictions.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 13

Before "The function of this", insert "This".

Delete "The function of this".

After "regulation", insert "prohibits".

Delete "is to prohibit".

Page 2

Section 1

Line 1

After "Subtitle 19", delete ",".

After "that", insert "z".

Page 2

Section 1

Line 5

After "unused insurance", delete ",".



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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P.O. Box 517
Frankfort, Kentucky 40602-0517
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<http://insurance.ky.gov>

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April 7th, 2021

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 19:060. Joint lives.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 19:060, the Department of Insurance proposes the attached agency amendments to 806 KAR 19:060.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

Staff-suggested Amendment

**Final Version 4/7/2021 11:18 a.m.
PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care**

806 KAR 19:060. Joint lives.

Page 1

RELATES TO paragraph

Line

After "KRS", insert "288.560, 291.480,".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 13

Before "The function of this", insert "This".

Delete "The function of this".

After "regulation", insert "prohibits".

Delete "shall be to prohibit".

Page 1

Section 1

Lines 16 through 18

After "Section 1.", insert "An".

Delete "No".

After "insurer shall", insert "not".

After "group insurance, that", insert "insures".

Delete "shall insure".



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 7th, 2021

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 39:050. Self-insurance.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 39:050, the Department of Insurance proposes the attached agency amendments to 806 KAR 39:050.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS)

806 KAR 39:050. Self-insurance.

RELATES TO: KRS ~~304.8-030, 304.8-095,~~ 304.39-020(12), 304.39-080, 304.39-140, 304.39-170, 304.39-290, ~~[304.39-170]~~

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-080, 304.39-300

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

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

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

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

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

Section 5. The applicant shall furnish security to the commissioner [~~executive director~~] to meet his continuing obligation [~~obligations~~] as agreed to in Section 2 of this administrative regulation. The security [~~se~~] furnished may be in the form of a bond, with surety [~~thereon~~], by an insurer authorized by the Department [~~Office~~] of Insurance to engage in surety insurance contracts or an irrevocable letter of credit issued by a bank chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System whose capital and surplus shall equal or exceed \$25 million [~~twenty-five million dollars (\$25,000,000)]~~ [~~or with such other surety as the executive director may approve~~].

Section 6. Security may also be furnished by depositing, with the Custodian of Insurance Securities, cash or assets of the kind that [~~which~~] may be deposited by a domestic insurer pursuant to KRS 304.8-030. **The commissioner may require assets to be deposited pursuant to KRS 304.8-095.** Where the security tendered to the commissioner [~~executive director~~] is of a kind that may [~~which tends to~~] vary in market value, including [~~(4)U.S. obligations, bonds, stocks, or real estate~~]), the commissioner [~~executive director~~] may, in his discretion, require the amount [~~se~~] tendered to have a current market value greater than the minimum required security, but not in excess of 150 percent of **the** minimum required security.

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

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

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

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

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

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

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

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

(1) "Application for Motor Vehicle Self-Insurance", 4/2021[12/2020] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the office's Web site at www.insurance.ky.gov.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
500 Mero Street
P.O. Box 517
Frankfort, KY 40602

ATTACH A \$200
FILING FEE MADE
PAYABLE TO THE KY
STATE TREASURE
PER 806 KAR 4:010

APPLICATION FOR MOTOR VEHICLE SELF-INSURANCE

Pursuant to KRS 304.39-080(7) and 806 KAR 39:050

The undersigned entity, desiring to be self-insured for the purposes of Subtitle 39 of Chapter 309 of the Kentucky Revised Statutes, submits the following application to the Commissioner of Insurance:

1. Name of Applicant _____

2. Principal Address of the Applicant _____

Number Street

City State

3. Principal Office of Applicant in Kentucky
(If different from 2 above) _____

Number Street

City State

4. The Applicant is _____

(State whether individual, partnership, limited partnership, corporation, or governmental entity.)

5. The Agent upon whom legal process should be served is _____

6. List the name and address of the owner. If a proprietorship; all partners, if a partnership, the principal officers and directors, if a corporation; officers, if a governmental entity.

7. Does this application for Self-Insurance apply to subsidiaries of the applicant if any?

Yes () No ()

If Yes, list those subsidiaries to which it applies.

8. If the Applicant is a subsidiary, give the name and address of the parent corporation.

Name

Number Street

City State Zip

9. List the number, types and identification number of all motor vehicles owned or leased by the applicant and to which self-insurance will apply. For definition of motor vehicle, see, KRS 3404.39-020(7).

(Attach schedule if additional space is needed.)

10. The security required by the Act may be in the form of:

- (a) Surety bond by an insurer authorized to do business in Kentucky and in the form prescribed by the commissioner; or
- (b) A deposit of securities or other assets of the type which may be deposited pursuant to KRS 304.8-030. The commissioner may require such assets to be deposited pursuant to KRS 304.8-095.

11. In consideration of the approval of this application, the applicant hereby agrees as follows:

(a) To furnish security required by 806 KAR 39:050, to continue in such amounts at such times as are required by the regulation; and

(b) If not a governmental entity as defined in KRS 304.39-080, to pay tort liabilities and basic reparation benefits, to participate in the Kentucky Assigned Claims Plan and the Kentucky Insurance Arbitration Association, and to perform all other obligations imposed by Subtitle 39 of KRS Chapter 304. It is assumed that liability limits of \$25,000/\$50,000/\$10,000 will be provided unless the applicant files with the Department of Insurance a written commitment to provide a single limit of \$60,000, or other limits selected by the applicant; or

(c) If a governmental entity as defined in KRS 304.39-080, to pay (check either or both)

() tort liabilities on the basis of \$25,000/\$50,000/\$10,000, unless the applicant has filed with the Department of Insurance a written commitment to provide a single limit of \$60,000 or other limits selected by the applicant.

() basic reparation benefits.

If basic reparation benefits are to be provided, the applicant further agrees to participate in the Kentucky Assigned Claims Plan and the Kentucky Insurance Arbitration Association. The applicant agrees to perform all other obligations imposed by Subtitle 39 of KRS Chapter 304.

12. Please indicate whether the applicant intends to apply a deductible to basic reparation benefits (See, KRS 304.39-140(4)) and, if so, please indicate the amount of the deductible.

13. Applicant should submit as Annex A to this application, his most current balance sheet. Annual report to shareholders will suffice, if it specifically contains all the information listed on the following page. The balance sheet so submitted should reflect whether it is audited and certified. If no audited or certified balance sheet by a certified public accountant is available, explain why and complete the financial information on page 5.

I, _____

(Name of individual, partner, or officer or agent of the corporation or governmental entity)

acknowledges that I am _____ (sole owner,

partner, or title if corporate or governmental officer) of _____

and that the foregoing application and annexes attached hereto are true to the best of my

knowledge and belief.

Name _____

Title _____

COMMONWEALTH OF _____

COUNTY OF _____

The foregoing Application for Self-Insurance was subscribed and sworn to before me this
_____ day of _____, 20____, by _____

(Name of individual, partner, or officer or agent of the corporation or governmental entity)

STATEMENT OF ASSETS AND LIABILITIES

as of last closing date _____, 20 _____

	<u>Assets</u>	
Cash	_____	\$ _____
Trade notes and accounts receivable	_____	_____
(a) Less allowance for bad debts	_____	_____
Inventories	_____	_____
Other current assets (attach schedule)	_____	_____
Loan to stockholders or partners	_____	_____
Mortgage and real estate loans	_____	_____
Other investments (attach schedule)	_____	_____
Buildings and other fixed depreciable assets	_____	_____
(a) Less accumulated depreciation	_____	_____
Depletable assets	_____	_____
(a) Less accumulated depletion	_____	_____
Land (net of any amortization)	_____	_____
Intangible assets (amortizable only)	_____	_____
(a) Less accumulated amortization	_____	_____
Other assets (attach schedule)	_____	_____
Total assets		\$ _____

Liabilities and Net Worth

Accounts payable		\$ _____
Mortgages, notes, bonds payable in less than one (1) year	_____	_____
Other current liabilities (attach schedule)		_____
Loans from stockholders or partners		_____
Mortgages, notes, bonds payable in one (1) year or more		_____
Other liabilities (attach schedule)	_____	_____

Capital stock, if any:		_____
(a) Preferred stock		
(b) Common stock	_____	
Paid-in or capital surplus, if any	_____	
Retained earnings		_____

Less cost of treasury stock		
Net worth of Corporation, or		_____
Net worth of Partnership, or		_____
Net worth of Individual, or		_____
Net worth of Governmental Entity		_____
Total liabilities and net worth		_____

*Must be less than one (1) year old.

Commissioner of Insurance
Kentucky Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602

IRREVOCABLE LETTER OF CREDIT

Dear Commissioner:

As a duly authorized officer of the _____
(Bank) _____, I hereby certify that the _____
(Address of Bank)

_____ has caused this bank to establish irrevocable credit to your account in the sum of \$200,000.00 for the sole purpose of serving as security for the obligation of the _____ to provide payment for tort liabilities or basic reparation benefits pursuant to KRS 307.39-080, 806 KAR 39:050, and all other provisions of KRS Chapter 304.39. Said credit shall be payable only upon your order certifying that the _____ has improperly denied payment for tort liabilities or basic reparations pursuant to KRS 304.39-080, 806 KAR 39:050, and all other provisions of KRS Chapter 304.39.

The aforementioned credit shall expire when it is exercised and [aid or otherwise released in accordance with your order as Commissioner or when the motor vehicle self-insurance status of the _____ is revoked or otherwise terminated, provided, however, it will not expire until thirty (30) days prior written notice has been given to the _____ and to the Commissioner.

Unless otherwise expressly stated, this credit is subject to Article 5 of the Uniform Commercial Code as set forth in KRS Chapter 355.5.

Done this _____ day of _____, 20____.

Name of Bank

BY: _____
Officer

Title

KENTUCKY NO-FAULT SELF-INSURER'S BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

As Surety, and _____

_____ as Principal, are bound in the sum of _____

The purpose of this bond is to provide security for the Principal's obligation to provide payment for tort liabilities, basic reparation benefits, or both, pursuant to KRS 304.39-080, 806 KAR 39:050, and all other provisions of KRS Chapter 304.39.

Now, therefore, the condition of this obligation is such that, if the above bound Principal shall fulfill the obligations under KRS 304.39-080, 806 KAR 30:050, self-insurance, and all other provisions of KRS Chapter 304.39, then this obligation shall be void, otherwise to remain in full force and effect, subject, however, to the following express conditions:

1. This is a continuous bond and shall remain in force and effect until terminated by the Surety, as hereinafter provided, or until the Principal's status as a self-insurer has been revoked or terminated by the Department of Insurance and in either of such events the Surety shall have no further liability except for the said obligations of the Principal.
2. This bond may be terminated by the Surety by written notice of its intention to do so to the Commonwealth of Kentucky, Department of Insurance, 500 Mero Street, P.O. Box 517, Frankfort, Kentucky 40602, and by giving written notice thereof to the Principal, in which event the Surety's liability shall terminate at the expiration of sixty(60) days from the date such notice was filed not earlier.

In witness whereof, the Principal and Surety have hereunto set their hands and seals this _____ day of _____, 20_____.

Attest:

BY: _____
(Witnesses)

BY: _____



COMMONWEALTH OF KENTUCKY
OFFICE OF INSURANCE
215 West Main Street
P.O. Box 517
Frankfort, Kentucky 40602

ATTACH \$200 FILING FEE MADE PAYABLE TO THE KY STATE TREASURER PER 806 KAR 4010

APPLICATION FOR MOTOR VEHICLE SELF-INSURANCE

Pursuant to KRS 304.39-080(7) and 806 KAR 39:050

The undersigned entity, desiring to be self-insured for the purposes of Subtitle 39 of Chapter 304 of the Kentucky Revised Statutes, submits the following application to the Commissioner of Insurance:

- 1. Name of Applicant
2. Principal Address of the Applicant
3. Principal Office of Applicant in Kentucky
4. The Applicant is
5. The Agent upon whom process should be served is
6. List the name and address of the owner, if a proprietorship; all partners, if a partnership; the principal officers and directors, if a corporation; officers, if a governmental entity.

(Attach schedule if additional space is necessary.)

7. Does this application for Self-Insurance apply to subsidiaries of the applicant if any?
Yes() No()

If Yes, list those subsidiaries to which it applies.

8. If the Applicant is a subsidiary, give the name and address of the parent corporation.

Name

Number

Street

City

State

Zip

9. List the number, types and identification number of motor vehicles owned or leased by the applicant and to which insurance laws apply. For definition of motor vehicle, see, KRS 3404.39-01.

(Attach schedule if additional space is needed.)

10. The security required by this act may be in the form of:

- (a) Surety bond by an insurer authorized to do business in Kentucky and in the form prescribed by the commissioner; or
- (b) A deposit of securities or other assets of the type which may be deposited pursuant to KRS 304.8-030. The commissioner may require such assets to be deposited pursuant to KRS 304.8-095.

11. In consideration of the approval of this application, the applicant hereby agrees as follows:

- (a) To furnish security required by 806 KAR 39:050, to continue in such amounts at such times as are required by the regulation; and

(b) If not a governmental entity as defined in KRS 304.39-080, to pay tort liabilities and basic reparation benefits, to participate in the Kentucky Assigned Claims Plan and the Kentucky Insurance Arbitration Association, and to perform all other obligations imposed by Subtitle 39 of KRS Chapter 304. It is assumed that liability limits of \$25,000/\$50,000/\$10,000 will be provided unless the applicant files with the Department of Insurance a written commitment to provide a single limit of \$60,000, or other limits selected by the applicant; or

(c) If a governmental entity is defined in KRS 304.39-080, to pay (check either or both)

tort liabilities on the basis of \$25,000/\$50,000/\$10,000, unless the applicant has filed with the Department of Insurance a written commitment to provide a single limit of \$60,000 or other limits selected by the applicant.

basic reparation benefits.

If basic reparation benefits are to be provided, the applicant further agrees to participate in the Kentucky Assigned Claims Plan and the Kentucky Insurance Arbitration Association. The applicant agrees to perform all other obligations imposed by Subtitle 39 of KRS Chapter 304.

12. Please indicate whether the applicant provides a deductible to basic reparation benefits (See, KRS 304.39-140(4)). If so, please indicate the amount of the deductible.

13. Applicant should submit as Annex A to this application, his most current balance sheet. Annual report to shareholders will be acceptable if it specifically contains all the information listed on the following page. The balance sheet so submitted should reflect whether it is audited and certified. If no audited and certified balance sheet by a certified public accountant is available, explain why and attach the financial information on page 5.

I, _____ (Name of individual, partner, or officer or agent of the corporation or governmental entity)

acknowledges that I am _____ (sole owner, partner, or title if corporate or governmental officer) of _____

and that the foregoing application and annexes attached hereto are true to the best of my knowledge and belief.

Name

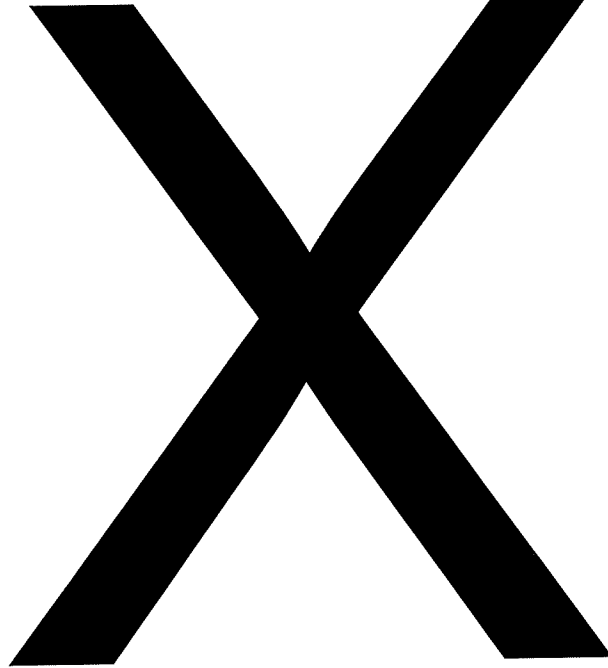
Title

COMMONWEALTH OF _____

COUNTY OF _____

The foregoing Application for Self-Insurance was subscribed and sworn to before me this ___ day of _____, 20___, by _____ (Name of individual, partner, or officer or agent of the corporation or governmental entity)

My commission expires: _____



STATEMENT OF ASSETS AND LIABILITIES

as of last closing date ----- ' 20__ --

Assets

Cash		\$	_____
Trade notes and accounts receivable	\$	_____	_____
(a) Less allowance for bad debts		_____	_____
Inventories			_____
Other current assets (attach schedule)			_____
Loan to stockholders or partners			_____
Mortgage and real estate loans			_____
Other investments (attach schedule)			_____
Buildings and other fixed depreciable assets			_____
(a) Less accumulated depreciation			_____
Depletable assets			_____
(a) Less accumulated depletion			_____
Land (net of any amortization)			_____
Intangible assets (amortizable only)			_____
(a) Less accumulated amortization			_____
Other assets (attach schedule)			_____
Total assets		\$	_____

Liabilities and Net Worth

Accounts payable		\$	_____
Mortgages, notes, bonds payable in less than one (1) year			_____
Other current liabilities (attach schedule)			_____
Loans from stockholders or partners			_____
Mortgages, notes, bonds payable in one (1) year or more			_____
Other liabilities (attach schedule)			_____
Capital stock, if any:			
(a) Preferred stock			_____
(b) Common stock			_____
Paid-in or capital surplus, if any			_____
Retained earnings			_____
Less cost of treasury stock			_____(---)____
Net worth of Corporation, or			_____
Net worth of Partnership, or			_____
Net worth of individual, or			_____
Net worth of Governmental Entity			_____
Total liabilities and net worth		\$	_____

*Must be less than one (1) year old.

Commissioner of Insurance
Kentucky Department of Insurance
P.O.Box 517
Frankfort, Kentucky 40602

IRREVOCABLE LETTER OF CREDIT

Dear Commissioner:

As a duly authorized officer of the _____
(Bank)

_____, I hereby certify that the _____
(Address of Bank)

_____ has caused this bank to establish an irrevocable credit to your account in the sum of \$200,000.00 for the sole purpose of serving as security for the obligation of the _____ wide payment for tort liabilities or basic reparation pursuant to KRS 304.21, 806 KAR 39:050, and all other provisions of KRS Chapter 304. Said credit shall be payable only upon your order certifying that the _____ has properly denied payment for tort liabilities or basic reparation benefits pursuant to KRS 304.21-080, 806 KAR 39:050, and all other provisions of KRS Chapter 304.

The aforementioned credit shall expire when the amount is received and paid or otherwise released in accordance with your order as Commissioner when the motor vehicle self-insurance status of the _____ is lapsed or otherwise terminated, provided, however, it will not expire until thirty (30) days after written notice has been given to the _____ by the Commissioner.

Unless otherwise expressly stated, this credit is subject to Article 5 of the Uniform Commercial Code as set forth in Chapter 355.5.

Done this _____ day _____

Name of Bank

BY: _____
Officer

Title

KENTUCKY NO-FAULT SELF-INSURER'S BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____

as Surety, and -----

_____ as Principal, are bound in the sum of _____

The purpose of this bond is to provide security for the Principal's obligation to provide payment for tort liabilities, basic reparation benefits, or both, pursuant to KRS 304.39-080, 806 KAR 39:050, and all other provisions of KRS Chapter 304.39.

Now, therefore, the condition of this obligation is such that the above bound Principal shall fulfill the obligations under KRS 304.39-080, 806 KAR 39:050, self-insurance, and all other provisions of KRS Chapter 304.39, then and there shall be void, otherwise to remain in full force and effect, subject, however, to the following express conditions:

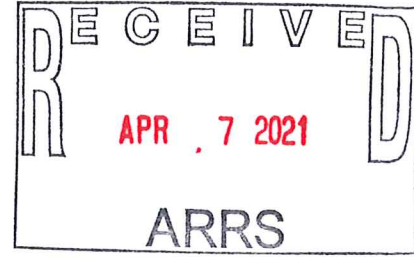
- I. This is a continuous bond and shall remain in full force and effect until terminated by the Surety, as hereinafter provided, or by the Principal's status as a self-insurer has been revoked or terminated by the Department of Insurance and in either of such events the Surety shall have no further liability except for the said obligations of the Principal.
2. This bond may be terminated by the Surety by written notice of its intention to do so to the Commissioner of Health of Kentucky, Office of Insurance, 215 West Main Street, P. O. Box 517, Frankfort, Kentucky 40602, and by giving written notice thereof to the Principal, in which event the Surety's liability shall terminate at the expiration of sixty (60) days from the date such notice was filed and not earlier.

In witness whereof, the Principal and Surety have hereunto set their hands and seals this ____ day of _____, 20 ____.

Attest:

BY: _____
(Witnesses)

BY: _____



PUBLIC PROTECTION CABINET

Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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

Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

April 7th, 2021

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 40:020. Charitable health care provider registration.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 40:020, the Department of Insurance proposes the attached agency amendments to 806 KAR 40:020.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building
500 Mero Street
Frankfort, Kentucky 40601

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS)

806 KAR 40:020. Charitable health care provider registration.

RELATES TO: KRS ~~216.941~~, 304.40-075

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.40-075(3)(b), ~~(6)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code ~~[as defined in]~~ [authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of.] ~~[KRS 304.1-010]~~ [304.010] ~~[through 304.99-154]~~ [304.99-152]. KRS 304.40-075(3)(b) ~~requires~~ ~~[authorizes]~~ [requires] the department to promulgate administrative regulations to establish reasonable guidelines for the registration of charitable health care providers. **KRS 304.40-075(6) requires the department to determine if the profits made for medical professional liability insurance risks covered by that section are consistent with reasonable loss ratio guidelines. This [As established in KRS 304.40-075, the] [This] [function of this] administrative regulation establishes [is to establish] [establishes] guidelines for the registration of charitable health care providers who seek [wish] to obtain reimbursement of paid premium [premiums paid] for medical professional liability insurance, and also establishes reporting requirements for medical professional liability insurers for the purpose of determining reasonable loss ratios.** [Pursuant to KRS 304.40-075, the office is required to establish guidelines for the registration of charitable health care providers who wish to obtain reimbursement of premiums paid for medical professional liability insurance. This administrative regulation will implement that requirement.]

Section 1. **To request reimbursement of paid premium for medical professional liability insurance,** a charitable health care provider shall supply **to the Department of Insurance** the following information ~~[to the Department [Office] of Insurance in order to request reimbursement of paid premium for medical professional liability insurance]:~~

- (1) The name [Name] and address of the provider;
- (2) The license [License] number of the provider;
- (3) The source [Source] of funding for the provider of charitable health care service;
- (4) The number [Number] of employees who render medical care without compensation or charge and without expectation of compensation or charge and who shall [will] be covered under the medical professional liability insurance [malpractice coverage];
- (5) The expected number of patients ~~who [that] may [to]~~ be provided charitable health care services in the year for which the insurer offers [will offer] malpractice coverage;
- (6) The health [Health] services provided by the charitable health care provider;
- (7) The following information [information] regarding the provider's medical professional liability insurance policy for which reimbursement is being requested:

(a) A copy [Copy] of the entire policy, including the declarations page showing:

1. The name and address of the insurer [Insurer's name and address];
2. The effective date of the policy [Policy effective dates];
3. The policy [Policy] number;
4. The total amount of premium [Premium] due; and

(b) The itemized [Itemized] billing and proof of payment of the requested reimbursement amount [being requested to be reimbursed];

(8) A copy [Copy] of the registration filed with the Cabinet for Health and Family Services **under [established by]** [under] KRS 216.941; and

(9) Acknowledgment that the provider will follow the [insurer's] risk management and loss prevention policies and procedures established by the insurer.

Section 2. If any of the information provided in Section 1 of this administrative regulation changes or is incorrect, the charitable health care provider shall provide the correct information immediately to the Department of Insurance [office].

Section 3. Any premium refund received by the charitable health care provider and remitted to the Department [Office] of Insurance, pursuant to KRS 304.40-075(3)(d), shall be accompanied by the following:

- (1) A copy of the previous request;
- (2) An explanation of the events prompting the refund; and
- (3) Copies of all documents from the insurer regarding the refund and its amount.

Section 4. (1) An insurer who [that][which] offers medical professional liability insurance shall provide information regarding the premium [premiums] paid, any expenses incurred by the insurer, and the profits [profits] made for all risk covered pursuant to KRS 304.40-075. The information required by Section 1 of this administrative regulation shall be provided to the Department of Insurance [office] by March 1 and shall include premium, expense, and profit information from the preceding calendar year and shall be submitted on Form CHP-2B P&C [07-2000].

(2) **[In order]** For the department [office] to determine reasonable loss ratio guidelines, upon request by the department [office], an insurer who [that][which] offers medical professional liability insurance shall provide premium, profit, and expense information related to the entirety of the [all of its] medical professional liability insurance business of the insurer.

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

(a) Form CHP-2A P&C [07-2000], "Commonwealth of Kentucky Department [Office] of Insurance Property and Casualty Division Medical Professional Liability Insurance Annual Call for Data Instructions", 11/2020 edition; and

(b) Form CHP-2B P&C [07-2000], "Commonwealth of Kentucky Department [Office] of Insurance Property and Casualty Division Liability Insurance Annual Call for Data", 11/2020 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department [Office] of Insurance, Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material

is also available on the office's Web site at www.insurance.ky.gov
[<http://doi.ppr.ky.gov/kentucky/>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

April 8, 2021

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: **921 KAR 3:025** and 921 KAR 3:035 - Agency Amendments

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 3:025 and 3:035, the Department for Community Based Services proposes the attached amendments to these administrative regulations. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

A handwritten signature in black ink that reads "Donna Little".

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Enclosure

Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Family Support

921 KAR 3:025. Technical requirements.

Section 3(10)

Page 8

Line 3

After "KRS 205.2005.", insert the following:

(11) Child Support Arrears.

(a) In accordance with 7 C.F.R. 273.11(q) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;

2. Is participating in a state or federally funded employment training program;

3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;

4. Is a member of a household containing a child under the age of eighteen (18);

5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or

6. Is:

a. Within twelve (12) months of incarceration for a period of at least thirty (30) days; and

b. Cooperating with the Department for Income Support, Child Support Enforcement.

(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.

(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section 5(4).



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

April 8, 2021

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: 921 KAR 3:025 and 921 KAR 3:035 - Agency Amendments

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 3:025 and 3:035, the Department for Community Based Services proposes the attached amendments to these administrative regulations. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

A handwritten signature in black ink that reads "Donna Little".

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Enclosure

Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Family Support

921 KAR 3:035. Certification process.

Section 5(4)

Page 6

Lines 1 through 3

After "number", insert the following:

, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program, in accordance with 921 KAR 3:025, Section 3(11),

(This change re-inserts language previously designated as being deleted.)



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
www.chfs.ky.gov

Eric C. Friedlander
Secretary

April 8, 2021

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: **922 KAR 2:415E** - Agency Amendments

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 2:415E, the Department for Community Based Services proposes the attached amendments to these administrative regulations. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

A handwritten signature in cursive script that reads "Donna Little".

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Enclosure

Agency Amendment

**Cabinet for Health and Family Services
Department for Community Based Services
Division of Child Care**

922 KAR 2:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency.

Section 4(3)

Page 3

Line 9

After "except that", insert ": (a)".

Line 10

After "facility", insert the following:

; and

(b) Groups may be combined at opening and close in accordance with 922 KAR 2:120 due to staffing limitations if the combining of groups is documented so as to allow for thorough contact tracing, if necessary