

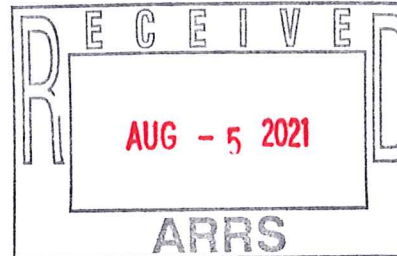
Andy Beshear
Governor



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

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

KENTUCKY DEPARTMENT OF EDUCATION
300 Sower Boulevard • Frankfort, Kentucky 40601
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August 5, 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: **16 KAR 3:060**. School counselor, provisional and standard certificates, all grades.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 3:060 the Education Professional Standards Board proposes the attached amendment to 16 KAR 3:060.

Sincerely,

A handwritten signature in black ink that reads "Cassie L. Trueblood".

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

SUGGESTED SUBSTITUTE

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

16 KAR 3:060. School[Guidance] counselor, provisional and standard certificates, all grades.

RELATES TO: KRS 156.101, 156.160, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[board]. This administrative regulation establishes the preparation and certification program for school[guidance] counselors, at all grade levels.

Section 1. Conditions and Prerequisites. (1) The provisional and standard certificate for school[guidance] counselor shall be issued in accordance with KRS Chapter 161 and 16 KAR Chapters 3 and 6 to an applicant who has completed the approved program of preparation which corresponds to the certificate at an educator preparation[a teacher education] institution approved in accordance with 16 KAR 5:010.

(2) The school[guidance] counseling program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the Kentucky Standards of Preparation for School Counselors[~~Kentucky Standards For Guidance Counselor Programs, incorporated by reference in 16 KAR 5:010.~~].

(3) The provisional and standard certificate for school[guidance] counselor established under this administrative regulation shall be valid for the position of school[guidance] counselor for all grade levels, primary through grade twelve.

Section 2. (1) The provisional certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1), and has completed [~~upon completion of~~] an approved master's level program in school[guidance] counseling.

(2) The provisional certificate for school[guidance] counselor shall be issued for a period of five (5) years and may be renewed upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [~~using the "Form TC-2, Application for Certificate Renewal Duplicate," incorporated by reference in 16 KAR 2:090,~~] and submission of proof of the completion of a minimum of three (3) [~~nine (9)~~] semester hours of graduate credit in the areas of counseling or school[guidance] counseling.

[3] [(2)] An applicant with a valid Kentucky teaching certificate who has completed the coursework for the standard certificate for school counselor, but has not met the employment requirements of Section 3 of this administrative regulation, may renew the provisional school counselor certificate upon meeting the requirements of 16 KAR 4:060 for the renewal of the applicant's teaching certificate.

[(4)] [(3)] If there is a lapse of a provisional certificate for school [guidance] counselor for lack of meeting the renewal requirements, certification may be reissued at a later date upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [~~using the "Form TC-2, Application for Certificate Renewal/Duplicate," incorporated by reference in 16 KAR 2:090,~~] and

the submission of proof of the completion of a minimum of ~~six (6)~~~~[nine (9)]~~ semester hours of graduate credit ~~[for each five (5) year period of validity or period of lapse of the guidance counselor certificate. The graduate credit shall be]~~ in the areas of counseling or school[guidance] counseling.

Section 3. (1) The standard certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1) and one (1) of the following qualification options:

(a) Option I:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program;~~[-]~~

3. One (1) year of full time employment as a provisionally- certified school[guidance] counselor in a public school or nonpublic school that[which] meets the state performance standards as established in KRS 156.160 or that[which] has been accredited by a regional or national accrediting association;

4. A valid Kentucky Professional teaching certificate; and

5. A minimum of one (1) year of full time classroom teaching experience on a Professional Teaching Certificate in a public school or a nonpublic school that[which] meets the state performance standards as established in KRS 156.160 or that[which] has been accredited by a regional or national accrediting association; or

(b) Option II:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program; and

3. A minimum of two (2) years of ~~full-time[successful]~~ employment as a provisionally ~~[full-time]~~ certified school[guidance] counselor.

(2) The standard certificate for school[guidance] counselor shall be issued for a period of five (5) years and shall be renewed subsequently for five (5) year periods upon application to the EPSC, compliance with 16 KAR 2:010, Section 3(1), and completion of~~[-, by September 1 of the year of expiration, the Effective Instructional Leadership Act (EILA) hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.]~~

(a) Two (2) years of experience as a certified school counselor;

(b) Three (3) semester hours of additional graduate credit in counseling or school counseling;

or

(c) The Effective Instructional Leadership Act hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the school counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.

(3) If there is a lapse in the standard certificate for school[guidance] counselor for lack of meeting renewal requirements, the certificate may be reissued at a later date upon application to the EPSC, compliance with 16 KAR 2:010, Section 3(1), and completion of ~~[by first completing]~~ twelve (12) clock hours of counselor role specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or ~~six[nine (9)]~~ semester hours of additional graduate credit appropriate to position of school[guidance] counselor.

Section 4. Implementation Dates. ~~(1) The provisions for the issuance of the provisional and~~

~~standard certificate for guidance counselor, all grades, shall apply to a student admitted to a program of preparation beginning September 1, 2003.~~

~~(2)(a) A candidate admitted by September 1, 2003 to an approved preparation program for guidance counselor shall complete the program by December 31, 2006.~~

~~(b) A candidate formally admitted by September 1, 2003, to an approved preparation program for guidance counselor shall be eligible for the guidance counselor certificate, all grades upon:~~

- ~~1. Completion of the program in which the candidate is enrolled as identified in this subsection;~~
- ~~2. Successful completion of an approved additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and which provides the candidate with knowledge relevant to counseling all grades;~~

~~and~~

~~3. A recommendation from the institution of higher education for the appropriate certificate.~~

~~(3) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard guidance counselor certificate, all grades, upon application and proof of the following:~~

~~(a) Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not already addressed and for the grade range sought by the extension; and~~

~~(b) Recommendation from the institution of higher education for the appropriate certificate.]~~

Section 4[Section 5]. Validity of Prior Certificates. (1) A valid Provisional or Standard Certificate for Guidance Counselor grades K-8, 5-12, or 7-12 issued prior to August 5, 2005 shall be valid for the position of school[guidance] counselor for any[grades K-8 and also for any other] school configurations containing[having] at least one (1) grade level listed on the certificate.[sequential combination of the grades K-12 that includes any grade K-8.]

(2) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard school counselor certificate, all grades, upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and proof of the following:

(a) Successful completion of a minimum three (3) credit hours from an approved graduate level counseling or school counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and that[which] provides the candidate with knowledge relevant to counseling all grades; and

(b) A recommendation from the institution of higher education for the appropriate certificate. [

(2) A valid Provisional or Standard Certificate for Guidance Counselor grades 5-12 issued prior to August 5, 2005 shall be valid for the position of guidance counselor for grades 5-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 5-12.

(3) A valid Provisional or Standard Certificate for Guidance Counselor grades 7-12 issued prior to August 5, 2005 shall be valid for the position of guidance counselor for grades 7-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 7-12.]

Section 5. Incorporation by Reference. (1) "Kentucky Standards of Preparation for School Counselors", 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the EPSB's Web site at <http://www.epsb.ky.gov/course/view.php?=2>.

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

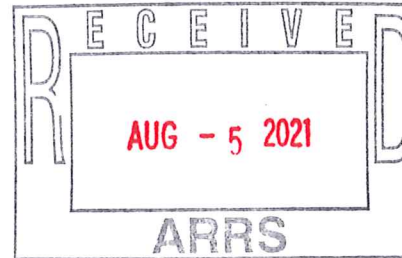
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August 5, 2021

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: 16 KAR 5:020. Standards for admission to educator preparation.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 5:020 the Education Professional Standards Board proposes the attached amendment to 16 KAR 5:020.

Sincerely,

A handwritten signature in black ink that reads "Cassie L. Trueblood".

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

SUGGESTED SUBSTITUTE

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that the Education Professional Standards Board (EPSB) promulgate administrative regulations setting standards for educator preparation programs. KRS 161.030(1) requires that the EPSB promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

Section 1. Selection and Admission to Educator Preparation Programs. (1) Each accredited provider of an approved program of educator preparation shall adhere to minimum standards for admission to its certification educator preparation programs, including those programs established pursuant to KRS 161.048, in accordance with this section.

(2)(a) Admission to an approved undergraduate initial certification education preparation program[, including those programs established pursuant to KRS 161.048(2), 161.048(3), 161.048(6), and 161.048(8),] shall require the following:

~~[(a)]~~ 1. ~~a.~~ A cumulative grade point average of 2.75 on a 4.0 scale; or

~~b.[2.]~~ A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, in accordance with the following:

~~(i)[a.]~~ Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed; and

~~(ii)[b.]~~ If it is necessary to go back further than two (2) semesters, then the courses in the third semester included in the calculation shall be chosen based on the highest grades earned during that third semester; and

~~2.[(b)]~~ Successful completion of one (1) of the following [pre-professional skills] assessments of basic knowledge; [administered by the Educational Testing Service with the corresponding minimum score]:

~~a.[1.]~~ The ACT with a composite score of 22 or the corresponding minimum scores:

~~(i)[a.]~~ Reading-20;

~~(ii)[b.]~~ Writing-18; and

~~(iii)[c.]~~ Math-19; or

~~b.[2.]~~ The pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum scores:

~~(i)[a.]~~ [4-] "Praxis Core Academic Skills for Educators (CASE): Reading (5713)" – 156;

~~(ii)[b.]~~ [2-] "Praxis Core Academic Skills for Educators (CASE): Writing (5723)" – 162; and

~~(iii)[c.]~~ [3-] "Praxis Core Academic Skills for Educators (CASE): Mathematics (5733)" – 150.

~~(b)[e.]~~ An applicant ~~may~~~~can~~ use a combination of ACT and CASE minimum scores to meet the requirements of paragraph (a)2.[(b)] of this subsection.

~~(c)[d.]~~ If an applicant has a minimum cumulative grade point average of 3.0 on a 4.0 scale, the educator preparation provider may admit the applicant to an approved undergraduate initial certification education preparation program if the applicant is within five points of one or more of

the corresponding minimum scores on the pre-professional skills assessments listed in paragraph (a)2.b.(b)2. of this subsection.

(3) Admission to an approved graduate level initial certification educator preparation program shall require the following:

(a) [1.] A bachelor's degree or advanced degree awarded by a regionally or nationally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

(b)[2.] A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.[-; and]

(4)[(b)] Admission to an Option 7 program established in accordance with KRS 161.048(8) shall also require successful completion of one of the following:

(a)[1.] The[Successful completion of the pre-professional skills] assessments in subsection (2)(a)2.b.(b)2. of this section; or

(b)[2.] The[Successful completion of the] Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding minimum scores on the corresponding sections:

1.[a.] Verbal reasoning – 150;

2.[b.] Quantitative Reasoning – 143; and

3.[c.] Analytical Writing – 4.0.

(5)[(4)] Admission to an advanced certification educator preparation program shall require the following:

(a)1. A statement of eligibility or an initial certificate earned by completion of an approved program through an approved educator preparation provider in Kentucky; or

2. For out-of-state applicants, a statement of eligibility or an initial certificate issued by EPSB and earned by completion of a program through an approved educator preparation provider; **[and]**

(b)1. A cumulative grade point average of 2.75 on a 4.0 scale; or
2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(c)1. Completion of requirements for the administrative certificate as established in 16 KAR Chapter 3; or

2. Completion of requirements for the certificate as established in [16 KAR 2:060,] 16 KAR 2:070[-] and 16 KAR 2:090.

(6)[(5)] Each accredited provider of an approved program of educator preparation shall have a formal application procedure for admission that shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;

2. Communication;

3. Creativity; and

4. Collaboration;

(b) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(7)[(6)] The educator preparation program shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(8)[(7)] The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.

Section 2. Selection and Admission to an Approved Educator Preparation Program for Occupation-Based Career and Technical Education. (1) Admission to an approved program of preparation for occupation-based career and technical education that results in certification pursuant to 16 KAR 2:020 shall require:

- (a) A minimum of a high school diploma or equivalency exam;
- (b) Four (4) years of successful and appropriate occupational experience in the area to be taught, which shall include:
 - 1. At least two (2) years of occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved program of preparation for the occupation to be taught; and
 - 2. The occupational experience confirmed by the Kentucky Department of Education, Office of Career and Technical Education;
- (c) The assessment provisions established in 16 KAR 6:020; and
- (d) An offer of employment from a state or local technology center, or a school district.
- (2) Each provider of an approved occupation-based educator preparation program shall have a formal application procedure for admission that shall include the following:
 - (a) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and
 - (b) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.
- (3) The educator preparation provider shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.
- (4) The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.
- (5) A provider of approved educator preparation programs shall provide notice to the EPSB of which candidates it has admitted to an approved program of educator preparation within six (6) months of the candidate's admission.
- (6) Failure of an approved educator preparation provider to provide EPSB with notice of each candidate it admitted to an approved program of preparation in accordance with this section may result in action against the provider's accreditation status.

Section 3. Assessment Recency. A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date.

Section 4. Annual Report. (1) Each educator preparation provider shall submit an electronic report annually to the EPSB that includes the following program data on each candidate admitted to educator preparation programs:

- (a) EPSB Person Identifier;
- (b) Student School Identification number;
- (c) Social Security number;
- (d) Full name;
- (e) Birth date;
- (f) Reported ethnicity;
- (g) Reported gender;
- (h) Email address;
- (i) Present home mailing address;
- (j) Permanent home mailing address;
- (k) Phone number;
- (l) Admission date;
- (m) Total number of credit hours prior to admission to the provider's educator preparation program;
- (n) Total number of credit hours in educator preparation courses completed prior to admission to the provider's educator preparation program;
- (o) Grade point average at admission;

- (p) Current program enrollment status;
 - (q) Program completion date;
 - (r) Grade point average at program completion;
 - (s) Academic major at program completion; and
 - (t) Academic minor or minors at program completion, if applicable.
- (2) The report shall be submitted in the following manner:
- (a) The provider shall electronically submit all data identified in subsection (1) to the EPSB;
- and
- (b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the EPSB that all required information has been entered.
- (3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last twelve (12) months.
- (4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status.

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

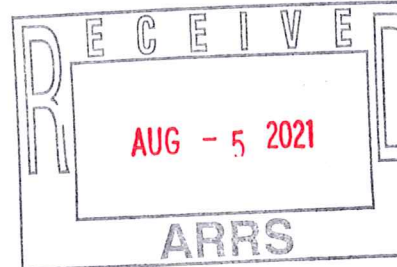
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August 5, 2021

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: **16 KAR 9:090**. University based alternative certification program for teachers of world languages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 9:090 the Education Professional Standards Board proposes the attached amendment to 16 KAR 9:090.

Sincerely,

A handwritten signature in black ink that reads "Cassie L. Trueblood".

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

SUGGESTED SUBSTITUTE

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

16 KAR 9:090. University-based alternative certification program for teachers of world languages.

RELATES TO: KRS 160.345(2)(h), 161.020, 161.028, 161.030, 161.048, 161.1221
STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 authorize the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards to approve and evaluate educator preparation programs. KRS 161.048(7) authorizes the EPSB~~Education Professional Standards Board~~ to approve alternative programs that enroll students in postbaccalaureate educator preparation programs concurrently with employment as a teacher in a local school district. This administrative regulation establishes the program requirements and candidate qualifications for the university-based alternative certification program for teachers of world languages and the requirements for issuance of a temporary provisional certificate to teach world languages.

Section 1. Definitions. (1) "University-based alternative certification program" means a postbaccalaureate educator preparation program that enrolls a teacher candidate concurrently with employment as a teacher in a local school district.

(2) "World language" means any currently spoken and written language other than English.

Section 2. An accredited college or university, or a consortium of institutions, may apply to the EPSB~~Education Professional Standards Board~~ for approval to provide a university-based alternative certification program for teachers of world languages if the college, university, or consortium meets the requirements established in Section 4(1) of this administrative regulation.

Section 3. Admission Requirements. To be admitted to a postbaccalaureate educator preparation program that enrolls a candidate concurrently with employment as a teacher of world language, the individual shall have:

(1) A bachelor's degree from an accredited college or university with a minimum cumulative grade point average of 2.75 on a 4.0 scale or a 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework~~[the required cumulative grade point average]~~; and

(2) Successful completion of the program's approved assessments to measure proficiency for program admission as established in Section 4(1)(a) of this administrative regulation.

Section 4. University Requirements. (1) In addition to the standards for program approval established in 16 KAR 5:010, the university-based alternative certification program for teachers of world languages shall:

(a) Select assessments to measure proficiency for program admission, which shall include:

1. A nationally recognized assessment for written and oral proficiency in the world language area in which the candidate is seeking certification; and
2. A nationally recognized assessment for oral and written proficiency in English language usage;

(b) Establish a protocol to assess a candidate's educational background to develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grades that correspond with the candidate's school placement;

(c) Design coursework and mentoring to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of three (3) years;

(d) Develop an agreement to provide, in collaboration with the administration of a candidate's employing school, mentoring to the candidate in the employment setting, which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. An acknowledgement by the employing school district that the school district shall be responsible for all costs associated with providing school district mentors for the teacher;

4. The name, contact person, and role for the collaborating educator preparation institution mentor; and

5. The names and roles of the school district mentor teachers;

(e) Require the candidate to begin course work no later than ninety (90) days from the date the eligibility notice is issued; and

(f) Establish a process to maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement.

(2) Student teaching shall not be required for program completion.

Section 5. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university-based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.

(3) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).~~7~~

(4) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(5) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation with a grade point average from a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES®).

(5) The educator preparation institution shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

(6) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university-based alternative certification program as required by Section 4(1)(d) of this administrative regulation.

Section 6.~~[Section 5.]~~ Temporary Provisional Certificate for World Language. (1) The temporary provisional certificate for world language shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional certificate for world language may be renewed a maximum of two (2) times.

(3) The temporary provisional certificate for world language shall be:

(a) Issued in accordance with a grade level and specialization as recommended by the educator preparation institution pursuant to Section 5(5) of this administrative regulation ~~on Form TC-WL~~; and

(b) Valid for the world language and all grades listed on the face of the certificate.

(4) The temporary provisional certificate for world language shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.[]

~~Section 6. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).~~

~~(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.~~

~~(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.~~

~~(4) All transcripts from institutions outside of the United States shall be accompanied by a course by course evaluation from the American Association of Collegiate Registrars and Admissions Officers or a member of NACES®.~~

~~(5) The employing school district shall submit with Form TC-WL a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 4(1)(d) of this administrative regulation.~~

Section 7. Requirements for renewal of the temporary provisional certificate for world language. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate; and

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; ~~and~~

~~(c) Completion of Form TC-WL.~~

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) The required assessments as established in 16 KAR 6:010; ~~and~~

~~(d) Completion of Form TC-WL.~~

Section 8. (1) Upon completion of all program requirements of the university-based alternative certification program for teachers of world languages ~~including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010,~~ the candidate may apply to the EPSB for the professional certificate. ~~[make application to the Education Professional Standards Board for the professional certificate on the form TC-1 which is incorporated by reference in 16 KAR 2:010.]~~

(2) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB ~~[Education Professional Standards Board]~~ shall issue a professional certificate.[]

~~Section 9. Incorporation by Reference. (1) "Application for World Language Temporary Provisional Certification," Form TC-WL, September 2011, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

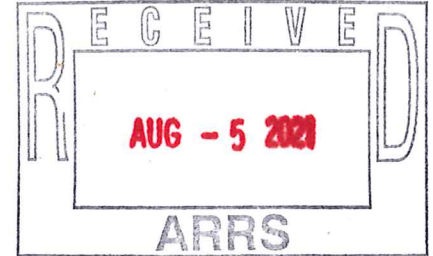
1260 Louisville Road • Frankfort, Kentucky 40601
kyret.ky.gov • Phone: 502-696-8800 • Fax: 502-696-8822



Kentucky Public
Pensions Authority

August 5, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Ms. Emily Caudill, Regulations Complier
Administrative Regulation Review Subcommittee
029, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601



Re: Amendment to 105 KAR 1:270, Federal tax withholding or direct rollover of funds for eligible distributions.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 105 KAR 1:270, the Kentucky Public Pensions Authority proposes the attached amendment to 105 KAR 1:270.

Sincerely,

A handwritten signature in blue ink that reads "Carrie Bass".

Carrie Bass
Staff Attorney Supervisor
Kentucky Public Pensions Authority

Subcommittee Substitute

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

(As Amended at ARRS)

105 KAR 1:270. [Special federal income tax withholding]Federal tax withholding or direct rollover of funds for eligible distributions.

RELATES TO: KRS ~~16.505, 16.578, 16.645,~~ 61.505(1)(f), 61.510, 61.625, 61.635, 61.640, 61.690, [61.645(9)(g)], [~~16.505, 16.578, 16.645,~~]78.510, 78.545, [2] 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.505(1)(f)[61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 61.505(1)(f)[KRS 61.645(9)(g)]~~ authorizes the Kentucky Public Pensions Authority~~[Board of Trustees of Kentucky Retirement Systems]~~ to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~[necessary to carry out the provisions of]~~ KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file~~[return]~~ the form required for federal income tax purposes at the retirement office within a reasonable time, and a procedure in [for] the event that an alternate payee cannot be located.

Section 1. Definitions. (1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this ***administrative*** regulation.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pensions Authority, which is authorized ***to*** carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means the following methods for delivering or submitting a form to the retirement office: mail, fax, secure email, in-person delivery, and upload via Self Service on the Web site maintained by the agency (if available). ***[A form shall not be deemed filed until it has been received at the retirement office.]***

(4) "Provide" means the following methods for the agency to make a form available to a member, beneficiary, or alternate payee: mail, fax, secure email, and upload via Self Service on the Web site maintained by the agency (if available).

Section 2. Application for Refund of Accumulated Account Balance.

(1)(a) ~~[In order]~~ To receive a refund of ~~an [his or her]~~ accumulated account balance in accordance with KRS 61.625 and 78.545, a member shall apply for ~~[such]~~ a refund on a Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection.

(b) Upon ~~[receipt of a]~~ request ~~by [for refund of member contributions from]~~ the member, ~~the agency [the retirement office]~~ shall ~~provide [mail]~~ the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, to the member ~~[requesting payment]~~.

(c) Additionally, the agency may make the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The member shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and ~~file [return]~~ it ~~at [to]~~ the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the ~~applicable section [back]~~ of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, ~~[the form]~~ certifying that the rollover will be accepted.

(c) The employer(s) participating in the agency from which the member has terminated employment may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.

(3)(a) The refund of contributions shall not be processed ~~unless [until]~~ the member is eligible to receive a refund pursuant to KRS 61.625 and 78.545 and the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is ~~filed [returned]~~ by the member ~~at [to]~~ the retirement office.

(b) The refund of contributions shall **not** be processed ~~[no]~~ earlier than forty-five (45) days from the date of the member's termination of employment with the participating employer(s) that previously employed the member.

Section 3[2]. Required Form following Member Selection of an Actuarial Refund Retirement Payment Option, Lump-sum Refund of Contributions, or Partial Lump-sum Retirement Payment Option.

(1)(a) Along with each blank ~~[Upon receipt of a completed]~~ Form 6010, Estimated Retirement Allowance, ~~the agency [on which the member has selected the actuarial refund or partial lump sum option, the retirement office]~~ shall ~~provide [mail to the member]~~ the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~[or a Spouse Beneficiary of]~~ an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the member.

(b) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) If the member completes the Form 6010, Estimated Retirement Allowance, and selects an actuarial refund retirement payment option, lump-sum refund of contributions, or partial lump-sum retirement payment option, ~~the [The]~~ member shall also complete the Form 6025, Direct

Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, and file both completed forms at~~return it to~~ the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section~~back~~ of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution,~~the form~~ certifying that the rollover will be accepted.

(3) The payment option selected by the member on the completed and filed Form 6010, Estimated Retirement Allowance, shall not be processed unless~~until~~ the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, is filed at~~is returned to~~ the retirement office.

Section 4[3]. Required Form following Beneficiary Selection of Lump-sum Payment Option or Sixty (60) Months Certain Payment Option, or if Beneficiary Eligible for Lump-sum Refund of Contributions Only.

(1)(a) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary ~~[who is the surviving spouse]~~ of the deceased member has selected the lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, the agency~~retirement office~~ shall provide~~mail to the beneficiary who is the surviving spouse of the deceased member~~ the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The beneficiary ~~[who is the surviving spouse]~~ of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, and file~~return~~ it at~~to~~ the retirement office.

(b) If the beneficiary ~~[who is the surviving spouse]~~ of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary ~~[who is the surviving spouse]~~ of the deceased member shall have the trustee or institution complete the applicable section~~back~~ of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution,~~form~~ certifying that the rollover will be accepted.

(3)(a) The payment options selected by the beneficiary ~~[who is the surviving spouse]~~ of the deceased member on a Form 6010, Estimated Retirement Allowance shall not be processed

~~unless[until]~~ the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding~~[or a Spouse Beneficiary of]~~ an Eligible Rollover Distribution, is filed at~~[returned to]~~ the retirement office.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, payment to the beneficiary of the deceased member shall not be processed unless the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed at the retirement office.

Section 5. Required Form for Alternate Payee who is Eligible for Actuarial Refund or Partial Lump-sum Payment Option, or Eligible for a Portion of the Lump-sum Refund, Partial Lump-sum, or Actuarial Refund Retirement Payment Option selected by the Member.

~~Section 4. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.~~

~~(2)(a) The beneficiary who is not the surviving spouse of the deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.~~

~~(b) If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.~~

~~(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.~~

Section 5.] (1)(a) If the alternate payee is eligible for a lump-sum portion of the member's accumulated contributions,[contribution account] actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution[4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection], along with the Special Tax Notice Regarding Payments[shall be mailed to the alternate payee], to the alternate payee.

(b) If the alternate payee is eligible for[to select a payment option and selects] an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order; the agency shall provide a Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of] an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the alternate payee[shall be mailed to the alternate payee].

(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The alternate payee shall complete the [Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[~~or a Spouse Beneficiary of~~] an Eligible Rollover Distribution, and file[return] it at[to] the retirement office.

(b) If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the applicable section[back] of the [Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or] Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[~~of Spouse Beneficiary of~~] an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3)[(a)] The payment to an alternate payee of an actuarial refund or lump-sum refund, or a portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option,[partial lump-sum] pursuant to the qualified domestic relations order shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[~~or a Spouse Beneficiary of~~] an Eligible Rollover Distribution, is filed at[returned to] the retirement office.

(4)(a)[(b)] If the [payment is a portion of the member's contribution account and the] alternate payee does not file at the retirement office[return] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution[4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection], within thirty (30) days of receipt of the form and the Special Tax Notice Regarding Payments, the alternate payee's payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or other plan[form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds].

(b) The agency shall hold the amount payable to the alternate payee under this section for at least 180 days after the payment becomes payable.

1. The agency shall make all reasonable efforts to locate the alternate payee during the 180 days and shall make payment to the alternate payee if he or she is located within that period.

2. If the alternate payee has not been located within 180 days after the alternate payee's payment becomes payable and the agency has exhausted all reasonable efforts to locate the alternate payee, the agency shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. **[No]** Interest shall **not** accrue on this lump-sum payment during the 180 day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

Section 6. Optional Form for Qualified Public Safety Employee electing to receive an Actuarial Refund Retirement Payment Option, Lump-sum Refund, Partial Lump-sum Refund, or Ten (10) Year Certain Retirement Payment Option.

(1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), shall/will not be subject to the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option if the member files the following completed forms at the retirement office:~~[may file a]~~

(a) The Form 4527, Certification by a "Qualified Public Safety ~~Employee~~[Employees]" and Request for an Exception to the ~~[ten-(10%)]percent~~ Early Distribution Penalty in IRC 72(t):~~[/]~~ and~~[to avoid the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option.]~~

(b) The Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2)(a) Upon request by the member, the agency shall provide the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), to the member.

(b) Additionally, the agency may make the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), available on its Web site.~~[The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the 10 percent Early Distribution Penalty in IRC 72(t), with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.]~~

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

(a) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", February 2021~~[May 2008]~~;

(b) "Special Tax Notice Regarding Payments", February 2021~~[May 2008]~~;

(c) Form 6010, "Estimated Retirement Allowance", February 2021~~[July 2004]~~;

(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding~~[or a Spouse Beneficiary of]~~ an Eligible Rollover Distribution", February 2021~~[May 2008]~~; and

(e) ~~[Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", May 2008; and~~

~~[(f)]~~ Form 4527, "Certification by a "Qualified Public Safety ~~Employee~~[Employees]" and Request for an Exception to the 10% ~~[percent-]~~Early Distribution Penalty in IRC 72(t)", February 2021~~[May 2008]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority~~[Retirement Systems]~~, ~~[Perimeter Park West]~~ 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

CONTACT PERSON: Katherine Rupinen, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8615 email Legal.Non-Advocacy@kyret.ky.gov.

Staff-suggested Amendment

7/14/2021

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

105 KAR 1:270. Federal tax withholding of direct rollover of funds for eligible distributions.

Material Incorporated by Reference

Special Tax Notice

Page 2

First set of bullet points, first bullet point

After the bullet point, insert "A period certain or".

Delete "Certain".

Material Incorporated by Reference

Special Tax Notice

Page 3

First paragraph after the bullet points

After "Upon request,", insert "Kentucky Public Pensions Authority".

Delete "Kentucky Retirement Systems".

After "is available on", insert "Kentucky Public Pensions Authority's".

Delete "Kentucky Retirements Systems".

Material Incorporated by Reference

Special Tax Notice

Page 4

First paragraph

After "certain circumstances, you may", insert a space between "claim" and "eligibility".

Material Incorporated by Reference

Special Tax Notice

Page 5

Fifth paragraph

"If you are a surviving beneficiary other than a spouse." is an incomplete sentence and should likely be revised or deleted.



KENTUCKY PUBLIC PENSIONS AUTHORITY
1260 Louisville Road • Frankfort, KY 40601
Phone: (502) 696-8800 • Fax: (502) 696-8822 • kyret.ky.gov

Special Tax Notice

Application for Direct Rollover or Direct Payment

You are receiving this notice because all or a portion of a payment you are receiving from the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System (the "Plan") is eligible to be rolled over to an IRA or an employer plan. This notice is intended to help you decide whether to do such a rollover. If you have additional questions after reading this notice, you can contact your Plan Administrator at 1-502-696-8800 or 1-800-928-4646.

Rules that apply to most payments from a plan are described in the "General Information About Rollovers" section. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section.

General Information About Rollovers

How can a rollover affect my taxes?

You will be taxed on a payment from the Plan if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (generally, distributions made before age 59½), unless an exception applies. However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception to the 10% additional income tax applies).

What types of retirement accounts and plans may accept my rollover?

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan. Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Plan will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. Generally, you will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Plan is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld.

If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59 ½ (unless an exception applies).

How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Plan is eligible for rollover, except:

- A period certain of at least 10 years or over your life or life expectancy (or the joint lives or joint life expectancies of you and your beneficiary);
- Required minimum distributions after age 70½ (if you were born before July 1, 1949), after age 72 (if you were born after June 30, 1949), or after death; and
- Corrective distributions of contributions that exceed tax law limitations.

KPPA can tell you what portion of a payment is eligible for rollover.

If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Plan (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax applies to the part of the distribution that you must include in income and is in addition to the regular income tax on the payment not rolled over.

The 10% additional income tax does not apply to the following payments from the Plan:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation;
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the joint lives or joint life expectancies of you and your beneficiary);
- Payments from a governmental plan made after you separate from service if you are a qualified public safety employee and you will be at least age 50 in the year of the separation;
- Payments made due to disability;
- Payments after your death;
- Corrective distributions of contributions that exceed tax law limitations;
- Payments made directly to the government to satisfy a federal tax levy;
- Payments made under a qualified domestic relations order (QDRO);
- Payments up to the amount of your deductible medical expenses (without regard to whether you itemize deductions for the taxable year); and
- Payments excepted from the additional income tax by federal legislation relating to certain emergencies and disasters.

If I do a rollover to an IRA, will the 10% additional income tax apply to early distributions from the IRA?

If you receive a payment from an IRA when you are under age 59 ½, you will have to pay the 10% additional income tax on early distributions on the part of the distribution that you must include in income, unless an exception applies. In general, the exceptions to the 10% additional income tax for early distributions from an IRA are the same as the exceptions listed above for early distributions from a plan. However, there are a few differences for payments from an IRA, including:

- The exception for payments made after you separate from service if you will be at least age 55 in the year of the separation (or age 50 for qualified public safety employees) does not apply;
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to an IRA of a spouse or former spouse); and
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.

If you are a "qualified public safety employee," in order not to be subject to the additional 10% early distribution tax on this payment, you must submit a fully completed "Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the ten (10) percent Early Distribution Penalty in IRC 72(t)" to the retirement office. Upon request, Kentucky Public Pensions Authority can provide a copy of the Form 4527 to you. The Form 4527 is also available on KPPA's website, kyret.ky.gov.

Additional exceptions apply for payments from an IRA, including:

- Payments for qualified higher education expenses;
- Payments up to \$10,000 used in a qualified first-time home purchase; and
- Payments for health insurance premiums after you have received unemployment compensation for 12 consecutive weeks (or would have been eligible to receive unemployment compensation but for self-employed status).

Will I owe State income taxes?

This notice does not address any State or local income tax rules (including withholding rules).

Special Rules and Options

If your payment includes after-tax contributions

After-tax contributions included in a payment are not taxed. If you receive a partial payment of your total benefit, an allocable portion of your after-tax contributions is included in the payment, so you cannot take a payment of only after-tax contributions. However, if you have pre-1987 after-tax contributions maintained in a separate account, a special rule may apply to determine whether the after-tax contributions are included in the payment. In addition, special rules apply when you do a rollover, as described below.

You may roll over to an IRA a payment that includes after-tax contributions through either a direct rollover or a 60-day rollover. You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs (in order to determine your taxable income for later payments from the IRAs). Using the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, you will elect how your after-tax contributions will be distributed separately from how your pre-tax contributions will be distributed. The Plan will distribute your after-tax contributions and pre-tax contributions in accordance with your elections for each.

You may roll over to an employer plan all of a payment that includes after-tax contributions, but only through a direct rollover (and only if the receiving plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan). You can do a 60-day rollover to an employer plan of part of a payment that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

If you miss the 60-day rollover deadline

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. Under certain circumstances, you may claim eligibility for a waiver of the 60-day rollover deadline by making a written self-certification. Otherwise, to apply for a waiver from the IRS, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs).

If you were born on or before January 1, 1936

If you were born on or before January 1, 1936 and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, *Pension and Annuity Income*.

If you are an eligible retired public safety officer and your payment is used to pay for health coverage or qualified long-term care insurance

If the Plan is a governmental plan, you retired as a public safety officer, and your retirement was by reason of disability or was after normal retirement age, you can exclude from your taxable income Plan payments paid directly as premiums to an accident or health plan (or a qualified long-term care insurance contract) that your employer maintains for you, your spouse, or your dependents, up to a maximum of \$3,000 annually. For this purpose, a public safety officer is a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew.

If you want to take advantage of this exclusion, you must report the amount claimed on Form 1040. The instructions to Form 1040 explain that the taxable amount received from the Plan, reduced by the amount of qualified premiums deducted and paid by the Plan (not to exceed \$3,000), must be entered on line 16b of the Form 1040. Next to the entry, in the margin, you must write the letters "PSO." This is an annual election—you will need to report the exclusion for each year in which you want to claim the exclusion. Note: The Form 1099-R that you receive from the Plan Administrator will report this amount as taxable.

If you roll over your payment to a Roth IRA

If you roll over a payment from the Plan to a Roth IRA, a special rule applies under which the amount of the payment rolled over (reduced by any after-tax amounts) will be taxed. In general, the 10% additional income tax on early distributions will not apply. However, if you take the amount rolled over out of the Roth IRA within the 5-year period that begins on January 1 of the year of the rollover, the 10% additional income tax will apply (unless an exception applies).

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime.

For more IRS information, see IRS Publication 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, and Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*.

If you are not a Plan member

Payments after death of the member. If you receive a distribution after the member's death that you do not roll over, the distribution generally will be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions and the special rules for public safety officers do not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the deceased member was born on or before January 1, 1936.

If you are a surviving spouse

If you receive a payment from the Plan as the surviving spouse of a deceased member, you have the same rollover options that the member would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½ (if you were born before July 1, 1949) or age 72 (if you were born after June 30, 1949).

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the member had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the member had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the member would have been age 70½ (if the member was born before July 1, 1949) or age 72 (if the member was born after June 30, 1949).

If you receive a payment from the Plan because of the member's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

Payments under a QDRO

If you are the spouse or former spouse of the member who receives a lump-sum payment from the Plan under a QDRO ("alternate payee"), you generally have the same options and the same tax treatment that the member would have (for example, you may roll over the payment to your own IRA or an eligible employer plan that will accept it). However, payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

If the alternate payee does not return the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, within thirty (30) days of receipt of the form and this notice, the lump-sum payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or an eligible employer plan.

In the event that the Plan cannot locate an alternate payee when a lump-sum payment from the Plan pursuant to a QDRO becomes payable, the Plan shall hold the amount payable to the alternate payee and shall make payment to the alternate payee if he or she is located within one hundred eighty (180) days after the payment becomes payable. If the alternate payee has not been located within one hundred eighty (180) days after the alternate payee's payment becomes payable, the Plan shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. No interest shall accrue on this lump-sum payment during the one hundred and eighty (180) day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

If you are a nonresident alien

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Plan is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, *U.S. Tax Guide for Aliens*, and IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Other Special Rules

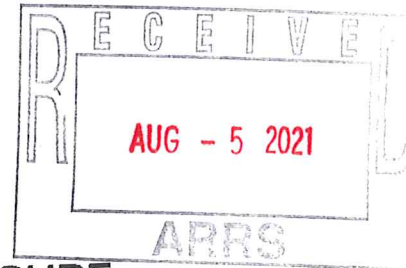
If a payment is one in a series of payments for less than 10 years, your choice whether to do a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Plan is not required to allow you to do a direct rollover. However, you may do a 60-day rollover.

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information on special rollover rights related to the U.S. Armed Forces, see IRS Publication 3, *Armed Forces' Tax Guide*. You also may have special rollover rights if you were affected by a federally declared disaster (or similar event), or if you received a distribution on account of a disaster. For more information on special rollover rights related to disaster relief, see the IRS website at www.irs.gov.

For More Information

You may wish to consult with the Plan administrator or payor, or a professional tax advisor, before taking a payment from the Plan. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, *Pension and Annuity Income*; IRS Publication 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*; IRS Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*; and IRS Publication 571, **Tax-Sheltered Annuity Plans (403(b) Plans)**. These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.



KENTUCKY BOARD OF MEDICAL LICENSURE

Andy Beshear
Governor

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(502) 429-7150

August 5, 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: **201 KAR 9:290**. Interpretation and application of 311.901(1) and 311.903(2).

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 9:290, the Kentucky Board of Medical Licensure proposes the attached amendments to 201 KAR 9:290.

Sincerely,


Leanne K. Diakov
General Counsel

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure

201 KAR 9:290. **Athletic trainers**; interpretation and application of KRS 311.901(1) and 311.903(2)(4).

RELATES TO: KRS **Chapter 13B, 311.591-311.593, 311.599, 311.900, 311.901(1), [and KRS] 311.903(2), 311.905, 311.911(4)**

STATUTORY AUTHORITY: KRS 311.901(1), ~~[and KRS] 311.903(2)(4)~~

NECESSITY, FUNCTION & CONFORMITY: KRS 311.901(1) and ~~[KRS] 311.903(2)(4)~~ require that the Kentucky Board of Medical Licensure promulgate administrative regulations relating to **the licensure and regulation of athletic trainers, including** procedures for eligibility and credentialing, procedures for license renewal and reinstatement, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures of licensure renewal and reinstatement of active duty military individuals, procedures for documentation standards, requirements for foreign-trained athletic trainers, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures. This administrative regulation establishes the procedures for eligibility and credentialing of US-trained and foreign-trained athletic trainers, procedures for license renewal and reinstatement including for active duty military individuals, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures for documentation standards, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures.

Section 1. Definitions. (1) "Athletic injury" **is defined by KRS 311.900(2). [means: (a) An injury or condition, excluding medical conditions such as internal infections, internal injuries, fractures, and spinal cord injuries except in an acute situation sustained by an athlete that affects the individual's participation or performance in sports, games, or recreation; or**

(b) An injury or condition that is within the scope of practice of an athletic trainer identified by a physician licensed under KRS Chapter 311, a physical therapist licensed under KRS Chapter 327, an occupational therapist licensed under KRS Chapter 319A, or a chiropractor licensed under KRS Chapter 312 that is likely to benefit from athletic training services that have been approved by a physician supervising the athletic trainer;]

(2) "BLS" means basic life support.

(3) "Board" means the Kentucky Board of Medical Licensure.

(4) "BOC" means National Athletic Trainers Association Board of Certification, Inc.

(5) ~~["CAATE" means the Commission on Accreditation of Athletic Training Education.~~

(6) "Dry needling" **or is also known as** "intramuscular manual therapy" ~~[and]~~ means the insertion of a dry solid filiform needle, without medication, into a trigger point with the goal of releasing or inactivating the trigger points for the treatment of myofascial or musculoskeletal pain or soft tissue dysfunction.

~~(6)(7)~~ "IM" means intramuscular.

~~(7)(8)~~ "IV" means intravenous.

~~(8)~~~~(9)~~ "Legend drug" or "legend medication" means any drug, except for Schedule II, III, IV, or V drugs as defined in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq., approved by the U.S. Food and Drug Administration that can be dispensed to the public only with a prescription from a medical doctor or other licensed practitioner.

~~(9)~~~~(10)~~ ~~"NATA" means the National Athletic Trainers Association.~~

~~(11)~~ "OTC" means an over-the-counter medication and is any medicine sold directly to a consumer without a requirement for a prescription from a healthcare professional.

~~(10)~~~~(12)~~ "SubQ" means subcutaneous.

~~(11)~~~~(13)~~ "Supervising physician" is defined by KRS 311.900(6)~~[means a medical or osteopathic physician licensed by the Board].~~

~~(12)~~~~(14)~~ "Supervision" is defined by KRS 311.900(7)~~[means advising, consenting to, or directing the activities of an athletic trainer through written or oral orders by a physician licensed by the Board, including pre-existing written protocols].~~

Section 2. Eligibility and Credentialing for US-trained and Foreign-Trained Athletic Trainers. In order to be eligible for licensure as an athletic trainer in the Commonwealth of Kentucky, regardless of whether trained in the United States or abroad, an applicant shall satisfy the requirements established in KRS 311.905.

Section 3. Renewal and Reinstatement. The procedures for renewal and reinstatement shall be as~~are those~~ established in KRS 311.905 and 201 KAR 9:305 and 9:307.

Section 4. Procedures for complaints and disciplinary actions. All grievances, complaints and disciplinary proceedings against an athletic trainer shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593,~~[i]~~ 311.599, and 311.911; KRS Chapter 13B; and any related administrative regulations in 201 KAR Chapter 9 that~~[promulgated under KRS Chapter 311 which]~~ apply to physicians shall also apply to athletic trainers.

Section 5. Ethical Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to the National Athletic Trainers' Association's Code of Ethics (March 2018).

Section 6. Standards of Practice. The standards of practice of an athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to BOC Standards of Professional Practice (October 2017), unless otherwise excluded by Kentucky statute or administrative regulation including those under 201 KAR Chapter 9.

Section 7. Objectives of Athletic Training. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall practice with the intent of preventing, recognizing, evaluating, managing, disposing, treating, reconditioning, or rehabilitating athletic injuries.

Section 8. Name and Contact Information Changes.

(1) Any person licensed to practice as an athletic trainer in the Commonwealth of Kentucky shall report, in writing, to the Board:

(a) His or her full and official name, maiden name, and any aliases;

(b) The primary address or addresses~~[address(es)]~~ at which he or she maintains an office or practices athletic training and may be served correspondence from the Board;

(c) The electronic email address or addresses~~[address(es)]~~ at which he or she may receive correspondence from the Board; and

(d) His or her supervising physician or physicians~~[physician(s)]~~.

(2) If unknown at the time of initial licensure, any new licensee shall make the report required in subsection (1) of this section within thirty (30) days after commencing the practice of athletic training within this state.

(3) Every athletic trainer who, after notifying the Board of the information required in subsections (1) and (2) of this section, moves, changes, or obtains a new name, address, electronic address, or supervising physician, shall notify the Board, in writing, within ten (10) business days thereof.

Section 9. Documentation Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall maintain an appropriate and reasonable medical record of patients receiving athletic training services, which may include:

- (1) Record of the athletic trainer's evaluation of the patient;
- (2) Inclusion of pertinent medical history;
- (3) Record of oral orders from a referring or supervising physician;
- (4) A description of services provided by the athletic trainer;
- (5) A plan of care including referral to other medical providers;
- (6) Record of follow up care and/or ongoing treatment; and
- (7) Documentation of significant changes in patient status, if any.

Section 10. Formulary of Legend Medications that/which may be Obtained, Transported, Provided, and Administered iff/when Providing Athletic Training Services.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer the following legend drugs:

- (a) Albuterol for administration via meter dose inhaler;
- (b) Albuterol Nebule for administration via small volume nebulizer or oxygen-driven nebulizer prepackaged;
- (c) Atrovent Nebule for administration via small volume nebulizer or oxygen-driven duonebulizer prepackaged;
- (d) Oxygen;
- (e) Nitroglycerin for administration via spray or tab;
- (f) Epinephrine 1:1000 for administration via IM or Epi-Pen for treatment of anaphylaxis;
- (g) The following fluids for IV administration:
 1. Normal Saline; and
 2. Lactated Ringers;
- (h) Naloxone for IM or nasal administration;
- (i) Glucagon for IM administration in the event of a diabetic emergency;
- (j) D50-Dextrose 50% and D25- Dextrose 25% for IV administration in the event of a diabetic emergency;
- (k) Flu Vaccine to any person nine (9) years of age or older;
- (l) Lidocaine (1% or 2%) for administration via injection, with or without Epinephrine;
- (m) Bupivacaine (.5%) for administration via injection, with or without Epinephrine;
- (n) Lidocaine Topical; and
- (o) Dermabond tissue adhesive.

(2) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer OTC medications in accordance with the manufacturer's recommendations or upon order of a supervising physician.

(3) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not administer a legend drug

or an OTC medication to a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 11. Invasive Procedures.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, perform the following invasive procedures:

- (a) Rectal thermometry;
- (b) IM, IV or SubQ medication administration injections;
- (c) Airway adjuncts, if in conformity with BLS protocols and instruments;
- (d) Dry needling, if:

1. The athletic trainer has completed at least fifty-four (54) classroom hours of BOC-approved dry needling training, which includes instruction in the clinical application of dry needling;

2. The procedure is ordered by a supervising physician; and

3. The treatment is administered in a designated room or facility separate from a gymnasium, locker room, sports field, or sideline;

(e) Phlebotomy;

(f) Capillary finger sticks for purpose of testing blood glucose levels;

(g) Repair or closure of superficial lacerations involving only skin or subcutaneous tissues, if performed in a designated room or facility separate from a gymnasium, locker room, sports field, or sideline; and

(h) Draining of blisters.

(2) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not perform an invasive procedure on a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

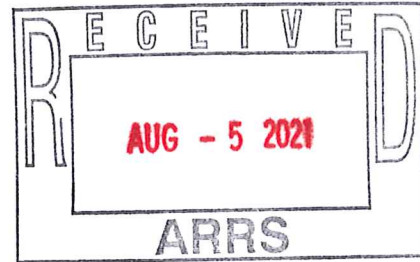
(a) The "National Athletic Trainers' Association's Code of Ethics", March 2018; and

(b) "BOC Standards of Professional Practice", October 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at kbml.ky.gov.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7943, fax (502) 429-7118, email Leanne.Diakov@ky.gov.



August 4, 2021

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

Re: 202 KAR 7:601. Training, education, and continuing education.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 202 KAR 7:601, the Kentucky Board of Emergency Medical Services proposes the attached amendment to 202 KAR 7:601.

Sincerely,

A handwritten signature in black ink that reads "Philip Dietz".

Philip Dietz, Chairman
Kentucky Board of Emergency Medical Services



Kentucky Board of Emergency Medical Services
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Final 8-3-2021

SUGGESTED SUBSTITUTE

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services

202 KAR 7:601. Training, education, and continuing education.

RELATES TO: KRS [~~Chapter 271, KRS~~] 311A.050, [~~311A.110, 311A.115,~~] 311A.120, 311A.130, KRS Chapter 362, [~~and~~] Chapter 365

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, [~~311A.110, 311A.115,~~] 311A.120, 311A.125, [~~and~~] 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~311A.110, 311A.115,~~] 311A.120[,] and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services[EMS] educators and providers.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the Commonwealth [~~state~~] of Kentucky. The Education Committee shall consist of:

(a) One (1) voting member of the board;

(b) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI

4:[]

(c) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI

3:[]

(d) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI

2:[]

(e) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI

CE; ~~and~~;

(f) Two (2) EMS educators at large affiliated with a board-certified EMS-TEI. [~~At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.~~]

(3) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.

(4) The purpose and charge of the Education Committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the [~~state of Kentucky~~] Commonwealth of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth of Kentucky; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education and EMS provider certification in the Commonwealth of Kentucky.

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI

may ~~[shall be authorized to]~~ conduct training and education programs in the Commonwealth of Kentucky that lead to certification or licensure by the board ~~[Kentucky Board of Emergency Medical Services (KBEMS)]~~. Training shall include:

(a) In person, online, or hybrid; and

(b) Online or hybrid; and

(b) [(e)] Laboratory, clinical, or field internship if required by this administrative regulation.

(2) An applicant for certification as an EMS-TEI in the Commonwealth of Kentucky may be certified at the following levels:

(a) EMS-TEI 1, which includes EMR and continuing education;

(b) EMS-TEI 2, which includes EMR, [and] EMT, and continuing education;

(c) EMS-TEI 3, which includes EMR, EMT, [and] AEMT, and continuing education;

(d) EMS-TEI 4, which includes [include] EMR, EMT, AEMT, [and EMT-P,] Paramedic, and continuing education; or

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) [or multiple] level [levels] of certification during the two (2) year certification term. A single applicant, ~~[agency, or business]~~ shall not hold more than one (1) identical TEI certification simultaneously.

(4) An applicant for a level of EMS-TEI certification shall meet all requirements [of] for that level.

(5) An applicant for certification as an EMS-TEI shall electronically submit a completed Training and Educational Institution (TEI) Application, the appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only), and upload all required documentation listed in the EMS-TEI pre-inspection worksheet to the EMS-TEI KEMSIS account. [An applicant for certification at a level of EMS-TEI shall submit a completed Training and Educational Institution (TEI), KBEMS E14, with the Kentucky Board of Emergency Medical Services (KBEMS).]

(6) An applicant shall submit a nonrefundable fee pursuant to 202 KAR 7:030 with the Training and Education Institution (TEI) Application. [An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS E14.]

(7) An applicant applying for an EMS-TEI certification shall meet all requirements for that level within sixty (60) days of submitting the Training and Education Institution (TEI) Application for certification. An applicant that exceeds the sixty (60) day requirement shall reapply and re-submit all required fees.

(8) An Emergency Medical Services (EMS) training and educational entity not residing in the Commonwealth of Kentucky, but seeking to do business in Kentucky as an EMS-TEI, shall obtain EMS-TEI certification with the board before teaching any EMS courses that lead to certification or licensure by the board.

(a) These [Such] courses include:

1. [(a)] Initial EMS certification or licensure courses; and

2. [(b)] EMS continuing education courses.

(b) [4.] This does not include continuing education courses covered in Section 13(1) of this administrative regulation.

(9) An EMS-TEI that had its certification revoked shall be eligible to apply for certification as an EMS-TEI two (2) years after the date of revocation. This shall ~~[will]~~ be enforced by name of entity holding the EMS-TEI certification and name of owner or operator listed on the TEI Application and official business license or licenses ~~[license(s)]~~ filed by the entity, owner or operator with local, county and state officials.

(10) An EMS-TEI may surrender its certification prior to the end of a certification period by notifying the board in writing of the intent to do so thirty (30) days prior to the intended effective date of the surrender.

(a) An EMS-TEI surrendering its certification while classes are underway shall notify the stu-

dents impacted by the closure in writing at least thirty (30) days prior to the intended effective date of closure.

(b) An EMS-TEI surrendering its certification while courses are underway shall complete the courses underway before surrendering its EMS-TEI certification or fully refund all tuition and fees paid by the students in the courses underway that are impacted by the EMS-TEI closure.

(11) An EMS-TEI that does not comply with **subsection [Section 2](10)** of this **section [administrative regulation]** shall not be eligible to reapply for EMS-TEI certification for a period of five (5) years from the date of closure. This administrative regulation shall not preclude civil action against the TEI Owner, Director, or business.

Section 3. ~~[Initial]~~ Certification Requirements for EMS-TEIs. (1) If an applicant ~~[is organized as a business entity and]~~ is required ~~[pursuant to KRS Chapters 271, 362, and 365]~~ to file ~~as a business entity~~ with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State to the board that the EMS-TEI is legally able to conduct business in the Commonwealth of ~~[state]~~ Kentucky. The applicant shall provide documentation of exemption status if not registered with the Kentucky Secretary of State and proof of registration with local, county, or state officials as an individual operator or a Doing Business As (DBA).

(2) If an applicant is required to notify, obtain permission, or obtain a license from another regulatory entity in the Commonwealth of Kentucky to operate as an educational entity, it shall be the responsibility of the applicant to make the appropriate notifications, obtain permission, or obtain license to legally operate in the Commonwealth of Kentucky. ~~[~~

~~(a)]~~ An EMS-TEI that fails to comply with **subsection (1) of this section or this subsection [Section 3(1) or (2) of this administrative regulation]** shall be subject to disciplinary action by the board pursuant to KRS Chapter 311A.

(3) Facilities. ~~[~~

~~(a)]~~ Facilities where EMS-TEI courses are conducted shall be:

~~(a) Maintained [maintained]~~ and operated in compliance with the safety and health requirements pursuant to local, city, and county ordinances and federal and state laws;

~~(b) [and~~

~~1.]~~ Sponsored or approved by a sponsoring agency;

~~(c) Offered with an enrollment that [2. Enrollment]~~ shall not exceed the design characteristics of the facilities;

~~(d) Offered in a controlled[~~

~~3. Controlled]~~ environment, including:

1. ~~[a.]~~ Temperature;

2. ~~[b.]~~ Humidity; and

3. ~~[c.]~~ Lighting; and

~~(e) Offered with instruction [~~

~~4. Adequate and appropriate for instruction]~~ in classrooms and laboratories **that shall:**

1. ~~[(b)]~~ Provide appropriate space for students to participate in classroom activities, kinematic learning, and practice activities;

2. ~~[(e)]~~ Provide appropriate space for instructor preparation; and

3. **Provide adequate[**

(d) Adequate] and secure storage for instructional materials.

(4) ~~[(2)]~~ An applicant shall provide the board with an organizational chart indicating, at a minimum:

(a) The names, contact information, and addresses of the owner, operator, chief administrative officer, and other personnel necessary for operation of the entity as an EMS-TEI;

(b) The name[names] and [addresses] contact information of the EMS-TEI's [designated agent for receiving service] director;

(c) The name and ~~[address]~~ contact information of the EMS-TEI's medical director;
(d) ~~Proof~~ [proof] that the medical director is qualified pursuant to 202 KAR 7:801;
(e) ~~A Memorandum~~ [and a] ~~[document]~~ [memorandum] of understanding or contract executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI. The memorandum of understanding or contract shall include at a minimum that:

1. The medical director shall be responsible for medical oversight of the program;
2. The medical director shall review and approve the educational content of the program curriculum;
3. The medical director shall review and approve the instruments and processes used to evaluate students in didactic, laboratory, clinical, and field internship;
4. The medical director shall review the progress of each student throughout the program, and assist in the determination of appropriate corrective measures, if [when] necessary;
5. The medical director shall engage in cooperative involvement with the program director;

and
6. The medical director's interaction shall be in a variety of settings, such as lecture, laboratory, clinical, field internship. Interaction may be by synchronous electronic methods.

(f) ~~[(d)]~~ The name and ~~[address]~~ contact information of the EMS-TEI's program coordinator[-]; and

(g) ~~[(e)]~~ The names and contact information of all EMS-TEI Instructors.

(5) EMS training courses that require accreditation by the National Registry of EMT's (NREMT) shall submit current accreditation to the board upon request. [

(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation.]

(a) An accreditation letter of review is acceptable in the interim for newly formed EMS-TEIs that are required by the NREMT to obtain accreditation for testing purposes. This does not apply to out of state applicants. Out of state applicants that are required by the NREMT to obtain accreditation for testing purposes shall [must] provide documentation of full accreditation prior to receiving EMS-TEI certification by the board.

(b) Continuous accreditation status shall [must] be maintained by the EMS-TEI as required by this administrative regulation. Failure to maintain continuous accreditation status by the TEI shall be grounds for summary revocation of the TEI certification.

(6) EMS-TEIs shall obtain and maintain professional liability malpractice insurance of a minimum of \$1 million. The EMS-TEI shall provide proof of professional liability malpractice insurance upon initial certification, certification renewal, and upon application for certification upgrade.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the board: [Kentucky Board of Emergency Medical Services]

(a) In a prominent place in the EMS-TEI's business;

(b) In the classroom if classes are being conducted away from the primary business location;

and

(c) Provided electronically to the student if the classes are being conducted online.

(2) Certification of an EMS-TEI shall be valid for a period of two (2) years unless limited by disciplinary action.

(3) Prior to expiration of the two (2) years certification period, an EMS-TEI may apply for recertification for a subsequent two (2) year period.

(4) Upon application for recertification, an applicant shall electronically [re]submit;

(a) A [an] [a] Training and Educational Institution (TEI), [KBEMS-E44] Certification Renewal Application through the EMS-TEI KEMSIS account with the board;[-] [and:]

(b) [(a)] The appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only); and
(c) Upload [upload] all required documentation listed in the EMS-TEI pre-inspection work-
sheet (Level 1-4 or CE Only) to the EMS-TEI KEMSIS account.[]

(5) An EMS-TEI seeking certification renewal [recertification] shall pay all applicable nonre-
fundable fees upon application. Failure to pay fees or subsequent rejection of a payment meth-
od shall result in denial of the Training and Educational Institution (TEI) Application[.]-[KBEMS-
E14].

(6) An applicant for EMS-TEI renewal shall meet all renewal requirements prior to the expira-
tion date of the TEI certification.

(a) A TEI that does not comply with all renewal requirements prior to the certification expira-
tion date shall expire.

(b) A TEI that allows the TEI certification to expire shall be required to apply as an initial EMS
TEI.

(7) [(6)] An [A newly-certified] EMS-TEI applying for initial or certification upgrade shall un-
dergo an inspection prior to offering [the EMS-TEI's first] classes. The type of inspection, on-site
or virtual, shall be determined by the office of the board and the EMS-TEI shall be responsible
for establishing the virtual connection at their facility if necessary. [Failure to submit to the in-
spection shall result in immediate revocation of the certification.]

(8) [(7)] Each inspection shall ensure that the EMS-TEI has met all applicable requirements
[in Section 5] of this administrative regulation. If the board's inspection finds that the EMS-TEI
has failed to meet a requirement, the EMS-TEI shall correct all deficiencies prior to offering a
class and receiving subsequent certification as an EMS-TEI. [

(8) The board shall inspect an EMS-TEI upon submission of the EMS-TEI's notice of intent to
upgrade the level of courses offered.]

(9) The board may conduct inspections of EMS-TEIs for initial, renewal, certification upgrade,
or to monitor compliance with statutory and regulatory requirements for TEIs. Inspections may
be scheduled or unscheduled. [The board may inspect an EMS-TEI upon submission of the
Training and Educational Institution (TEI), KBEMS-E14, to renew certification as an EMS-TEI.]

(10) The office of the board shall conduct an application review of required documentation
and inspection of the EMS-TEI applicant no later than sixty (60) days following the submission
of the Training and Educational Institution (TEI) Application by the EMS-TEI applicant for initial
certification and upgrades. [The board shall conduct the inspection of an EMS-TEI no more than
ninety (90) days following KBEMS' receipt of notice of intent to upgrade.]

(11) Approval of notice of intent to upgrade shall not extend the two (2) year EMS-TEI certi-
fication period.

(12) An EMS-TEI requesting a name change or change in ownership shall notify the board in
KEMSIS no later than thirty (30) days prior to the name change or change in ownership by
completing:

(a) A new Training and Educational Institution (TEI) Application electronically through the
EMS-TEI KEMSIS account;

(b) Legal documentation reflecting the legal name or ownership change, or registration with
the Kentucky Secretary of State Office reflecting the change which shall be uploaded with the
TEI application in KEMSIS; and

(c) Payment of the application fee pursuant to 202 KAR 7:030 in KEMSIS.

Section 5. EMS-TEI Operating Requirements.

(1) Each EMS-TEI shall maintain files for a period of three (3) [seven-(7)] years beyond the
end date of each EMS Course program that contains[contain] the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have
met the accrediting agency's standards, policies, and guidelines;

(b) A copy of the last accreditation self-study and letter of accreditation;

- (c) [(b)] The student attendance sign-in sheets for each course taught, including:
1. Lectures;
 2. Practical skills lessons; and
 3. Clinical and field rotations;
- (d) [(e)] A master copy of each set of [written] examinations administered and answer keys for the exams;
- (e) [(d)] A master copy of practical skills examination forms;
- (f) [(e)] A master copy of each course syllabus;
- (g) [(f)] Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;
- (h) [(g)] Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;
- (i) [(h)] Records of all disciplinary actions taken against a student, if applicable. Records shall include notification to students of the complaint; responses, if applicable, made by or on behalf of the student; and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;
- (j) [(i)] For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and [if] the success or failure of remediation;
- (k) [(j)] A master file of the objectives and competencies to be achieved by students during each educational program; and
- (l) [(k)] Documentation of other [another] requirements that the EMS-TEI has established as part of the offered courses.
- (2) Failure of an EMS-TEI to maintain records required by the board shall result in disciplinary action against an EMS-TEI.
- (3) The board [KBEMS] shall require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report electronically through the EMS-TEI's KEMSIS account if accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered course.
- (4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards. The participants involved with the annual review shall include:
- (a) The program director;
 - (b) Course [Program] coordinator;
 - (c) Medical director;
 - (d) An instructor or a faculty member that was actively involved in teaching courses during the preceding twelve (12) months of the annual review; and
 - (e) A student that successfully completed a course offered through the EMS-TEI during the preceding twelve (12) months of the annual review.
- (5) An EMS-TEI shall document in writing the required annual review and updates resulting from the annual assessment.
- (6) Documentation of the annual review shall be in writing, signed by the program director, [owner or] program coordinator, and medical director. The annual review shall be maintained in the course or TEI program files and submitted to the board electronically with the [annual] TEI renewal application.
- (7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice areas, notices of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be:
- (a) Available at each class session where skills are taught or practiced;
 - (b) Adequate in number to allow for practice by students enrolled; and
 - (c) In good working order and well-maintained.

(8) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9) The EMS-TEI shall be responsible for knowing and following all federal and state laws ~~[and requirements established in 202 KAR Chapter 7]~~ relevant to safeguarding privacy of records, including educational and health records.

(10) The EMS-TEI shall develop and make available to all prospective students a clearly defined admissions policy ~~[and procedure]~~.

(11) An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. The admission policy shall be provided to the student at the start of the course and a verified receipt by signature shall be kept in the student's file including any changes to the admission policy while the student is enrolled in the course. Admissions policies ~~[and procedures]~~ shall include at a minimum:

- (a) Tuition rates and fees associated with the training and education program;
- (b) Fees and other costs associated with remediation;
- (c) A descriptive synopsis of the curriculum for each type of course taught;
- (d) Course educational objectives;
- (e) Classroom lecture and skills practice schedules;
- (f) Clinical or field rotation locations with ~~[tentative]~~ beginning and ending dates;
- (g) Participation requirements for each clinical or field rotation site;
- (h) Continued course competency and course completion requirements; and
- (i) ~~[(h)]~~ Citations to and language of prohibited actions pursuant to KRS ~~[Chapter]~~ 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12) EMS-TEIs shall establish written policies that provide for:

- (a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;
- (b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;
- (c) A procedure for a student to withdraw from a course and a clear statement of refund policies and the steps necessary for a student to obtain a refund of tuition or fees already paid;
- (d) Faculty to acquire or develop examinations for each course offered;
- (e) The establishment of and adherence to examination procedures and policies;
- (f) The requirements for a student to take and pass examinations in courses the EMS-TEI offers including requirements that shall be met during the course for the student to be eligible to take the National Registry of EMTs certification exam; and
- (g) Public disclosure, using [both in print and] Web-based materials, concerning the EMS-TEI student cumulative pass rate on the NREMT certification exam for the calendar year. The disclosure shall be updated by January 31 of each year and shall include at a minimum:

1. All provider levels tested;
 2. Date range for which the report was calculated;
 3. EMS-TEI name, number, and physical address;
 4. Number of students that took the exam; and
 5. Cumulative pass rate calculated by percentage.
- ~~[Notification to all students and prospective students of their right to ask for and obtain the pass — fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass — fail rate shall be calculated for courses given within the last two (2) years.]~~

(13) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified as a student ~~[and by first and last name]~~. Identification shall be accomplished by use of:

(a) ~~[A]~~ Nameplate;

(b) A uniform; or

(c) Other publicly apparent means.

(14) A student or a faculty member shall maintain proper personal and professional conduct during classroom, clinical, and field internship activities.

(15) ~~[(14)]~~ EMS-TEIs shall ~~have~~ ~~[include]~~ a program director ~~[chief administrative officer (CAO) or designee]~~ who shall be responsible for:

(a) All aspects of the program, including administration, organization, and supervision of the educational program ~~[Administer and oversee the EMS-TEI];~~

(b) ~~Assuring~~ ~~[Assure]~~ the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into the EMS-TEI's programs or courses;

(c) ~~Assuring~~ ~~[Assure]~~ the security of examination results and materials;

(d) ~~Monitoring~~ ~~[Monitor]~~ the activities of the EMS-TEI's faculty and students; ~~[and]~~

(e) ~~Maintaining~~ ~~[Maintain]~~ records and documents and submit reports~~[-]~~;

(f) Continuously reviewing the quality and improvement of the educational program;

(g) Long range planning and ongoing development of the program;

(h) The orientation, training, and supervision of clinical and field internship preceptors; and

(i) The effectiveness and quality of fulfillment of responsibilities delegated to another qualified individual.

(16) ~~[(15)]~~ EMS-TEIs shall include faculty and instructional staff who shall be responsible for:

(a) Didactic, clinical instruction, or supervised practice in each location where students are assigned; and

(b) Coordination, supervision, and frequent assessment of the students' progress in achieving acceptable program requirements. ~~[If applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.]~~

(17) ~~[(16)]~~ A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum ~~[annual]~~ pass rate for each level of instruction of ~~seventy (70) [fifty (50)]~~ percent calculated ~~[based]~~ upon a ~~[third attempt]~~ cumulative ~~[measurement]~~ pass rate of students who have taken the National Registry of EMTs and other board-approved exam(s) ~~[for the first time]~~ within the ~~twenty-four (24) [twelve (12)]~~ ~~[twenty-four (24)]~~ months immediately preceding the EMS-TEI's renewal date.

(a) The minimum ~~[annual]~~ pass rate shall be calculated, and compliance determined by, the office of the board.

(b) An EMS-TEI that fails to maintain a seventy (70) percent pass rate for each level of instruction as required by this subsection ~~[section]~~ shall notify all students enrolled in courses offered by the EMS-TEI that the EMS-TEI is not in compliance with testing standards.

~~(17) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7. and the EMS-TEI's process for remediating students who take but fail to pass the board-approved test.]~~

(18) If an EMS-TEI fails to meet an ongoing level of competence determined according to this administrative regulation and demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 ~~[section]~~, the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.

~~(19) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS Chapter 311A.~~

(19) If requested by the office of the board, the EMS-TEI shall submit graduate data to the Kentucky Center for Education and Workforce Statistics including:

(a) Student's name;

(b) Date of birth;

(c) Social Security number;

(d) Gender;
(e) Ethnicity;
(f) Residency at point of graduation; and
(g) The Classification of Instructional Programs (CIP) code, if applicable.
(20) The EMS-TEI director shall keep the EMS-TEI KEMSIS account information updated,
including:

(a) The EMS-TEI demographics;
(b) The EMS-TEI personnel roster; and
(c) The EMS-TEI policy and procedures required by this administrative regulation.
(21)(a) The program director of EMS-TEIs offering initial certification courses shall create and maintain, with current information, a National Registry of EMTs educational program account.
(b) The EMS education program name, director name, address, and contact information listed with NREMT shall match the EMS-TEI program information listed in KEMSIS. [An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.]

Section 6. Disciplinary Action. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS Chapter 311A.

(2) Discipline of an EMS-TEI as a certified entity shall not prevent the board from taking disciplinary action against a certified or licensed individual associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit electronically to the board [KBEMS] the documents as required by [subsection (2) of] this section for all EMS courses or psychomotor testing that lead to certification by The National Registry of EMTs [licensure] or certification or licensure by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

(a) Course Notification Application [form] submitted no less than fourteen (14) days prior to the course start date; and

1. An EMS-TEI shall notify the board within **fourteen (14) [seven (7)]** days of any changes to a board approved class or psychomotor testing start and end date using Course Change Notification Application. [

2. The start and end date shall only be changed once and cannot exceed ninety (90) days from the original start and end date.]

2. [3.] A course or psychomotor test shall have a start date within the twelve (12) months from the date on [in the same calendar year in] which the course or psychomotor testing number is issued.

(b) **An** Initial Educational [Institution] Course Roster[s form] submitted within **[no less than]** fourteen (14) days of **[prior to]** the course start date listed on the Course Notification Application;

(c) If applicable, the Comprehensive Skills Evaluation Report within thirty (30) days of the course completion date listed on the Course Notification Application;

(d) **A** Final Educational Course Roster within thirty (30) days of course completion date listed on the Course Notification Application;

(e)1. **A** Psychomotor Exam Application submitted no less than fourteen (14) days prior to the psychomotor exam start date; and [

2. Psychomotor examinations leading to board certification or licensure shall be conducted using board approved psychomotor examination procedures.

(3) Upon submission of all documents required by [subsection (2) of] this section for courses or psychomotor testing that lead to certification by The National Registry of EMTs and licensure

or certification by ~~the office of~~ the board, the TEI shall ~~be assigned~~assign a course or psychomotor testing number or other identifier ~~to the course~~.

(4) An EMS-TEI that fails to provide documents as required by subsection (2) of this section shall be subject to disciplinary action pursuant to KRS Chapter 311A up to and including revocation of the TEI. ~~[An EMS-TEI shall notify the board office thirty (30) days prior to the start of a course. Failure to notify KBEMS shall violate this section of this administrative regulation may subject the EMS-TEI to disciplinary action under KRS 311A.]~~

(5) A course ~~[class]~~ or psychomotor testing shall not commence until the EMS-TEI has obtained an identification code and notified the board as required in this section.

(6) A course or psychomotor testing that does not meet all requirements of this administrative regulation ~~may~~ shall not lead to certification or licensure for the EMS students enrolled in the course or psychomotor testing.

(7) An EMS-TEI shall notify the board within seven (7) days of any changes to the lead instructor of an initial course that leads to certification or licensure by the board.

(8)(a) An EMS-TEI shall notify the board within seven (7) days of cancellation of an initial certification or licensure course.

(b) An EMS-TEI that cancels an initial certification or licensure course that is underway or planned shall fully refund all tuition and fees paid by the students in the course that are impacted by the course cancellation.

Section 8. Requirements for All Training and Education Courses. (1) All EMS educational programs in Kentucky that lead to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) and certification or licensure by the board shall: [All EMS training and education courses that lead to certification or licensure by KBEMS shall:]

(a) Comply with this administrative regulation;

(b) Not begin ~~[commence]~~ until the EMS-TEI has filed all documents required pursuant to Section 7 ~~[(2)]~~ of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to 202 KAR 7:030;

(d) Use the National Emergency Medical Services Education Standards ~~[Instructional Guidelines]~~ that are appropriate for the level of EMS provider course being offered;

(e) Teach students the Kentucky and National EMS Scope of Practice Models;

(f) Meet the course administrative and faculty requirements in this administrative regulation, if applicable, [and] as established by the NREMT [board] approved accrediting agency; and

(g) Use educators [lead instructors] certified by the board [KBEMS] as EMS educators who are minimally certified or licensed at the level of the offered course.

(h)1. An EMS-TEI shall ensure that all student course work including lectures, practical skills lessons, and clinical or field rotations for courses that lead to certification by the National Registry of EMTs and certification and licensure by the board be completed within sixty (60) [thirty (30)] days of the course completion date listed on the Course Notification Application.

2. [2.] The board shall not accept any changes made to course completion documents listed in Section 7 of this administrative regulation if submitted more than sixty (60) days after [less than thirty (30) days of] the course completion date as listed on the Course Notification Application.

3. In exceptional circumstances, as determined by the board in instances such as if there is an emergent medical condition or a death in the immediate family, the EMS-TEI may submit a Final Course Roster of students approved by the EMS-TEI program director and medical director for course work extension required in Section 5 of this administrative regulation.

(i) The EMS-TEI director shall approve all students to test with the National Registry of EMTs within seven (7) days of successful completion of an initial certification course and completion of all necessary documents and applications by the student.

(2) The EMS-TEI may use an assistant instructor who is not a board-certified educator to in-

struct no more than twenty-five (25) percent of the classroom education time [adjunct faculty] for initial certification or licensure courses, [if the adjunct faculty:

(a) Meets one (1) of the requirements established in Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.]

(3) The EMS-TEI shall maintain an instructor to student ratio of no more than 1:15 for [shall have additional skills educators for] classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first fifteen (15) [ten (10)] students; and

(b) An additional educator or adjunct faculty for each one (1) to fifteen (15) [ten (10)] additional students. Additional adjunct faculty used shall:

1. Not be required to be certified as an EMS educator, but shall be certified by the board as an EMS provider at or above the level for the course being taught; or

2. Be a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(4) The EMS-TEI program director and medical director shall approve any assistant instructor or adjunct faculty before the individual may assist in instruction. [and shall meet at least one (1) requirement established in Section 13 of this administrative regulation.]

(5) [(4)] The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall:

(a) Be employed by or under memorandum of understanding or a written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the applicable accrediting agency standards, policies, and guidelines;

(e) Provide medical consultation and guidance to the course faculty; and

(f) Certify[Certifies] the skills of all [of the] EMS-TEI[EMS-TEI's] students who are enrolled in courses leading to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) or certification or licensure by the board.

(6) [(5)] An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of understanding [agreement] with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(7) [(6)] An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical or field internship setting.

(8) The EMS-TEI shall provide clinical or field preceptor training to all clinical or field preceptors overseeing students during clinical or field internship rotations.

Section 9. Emergency Medical Responder Training and Education Course Requirements. [Each Emergency Medical Responder (EMR) training and education course shall follow:]

(1) Each Emergency Medical Responder (EMR) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, 202 KAR 7:201, and 202 KAR 7:701;

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Responder Instructional Guidelines for the duration of course including individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an EMR, a student shall also receive instruction covering the National and Kentucky EMS Scope of Practice for an EMR.

(3) EMR candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:201.~~[All training and education requirements established in KRS Chapter 314A and 202 KAR 7:201; and~~

~~(2) The National Emergency Medical Services Education Standards — Instructional Guidelines for duration of course and individual class segments.]~~

Section 10. Emergency Medical Technician Training and Education Course Requirements.
(1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 314A, [and] 202 KAR 7:301, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards — Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an EMT[EMTs], a student shall receive instruction covering the National and Kentucky EMS Scope of Practice for an EMT.

(3) Each student shall complete [a] clinical [or] and field rotation that meets the requirements for EMT education as determined by this administrative regulation, [and] including the National and Kentucky EMS Scope of Practice for an EMT student as approved by the applicable accrediting agency's minimum requirements.

(4) ~~[(3)]~~ The minimum requirements of clinical or field rotations for EMTs shall include [minimally]:

(a) ~~[A] Clinical [or] and field rotations [consisting of at least twenty-four (24) hours] conducted at a [in a hospital emergency department, public health department, urgent treatment center, physician's office,] licensed ambulance service or other licensed health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;~~

(b) Interviews and assessments [or] on a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording the patient history and [completing] assessment on a [prehospital] care report form for each of the ten (10) patients required in paragraph (b) of this subsection.

(5) ~~[(4)]~~ If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMT education program, the EMS-TEI [CAO Officer or] program director and medical director shall require the student to repeat the failed portion of the EMT education program. [a clinical or field rotation experience.]

(6) ~~[(5)]~~ If a student is required to repeat a portion of the EMT education program, [a clinical or field rotation experience,] the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues;

~~[and]~~

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[-]; and

(d) The notification to the student shall be in writing and signed by:

1. The student;

2. The TEI Administrator;

3. The Medical Director; and

4. The Course Coordinator [and dated by all witnesses].

~~(6) If additional time is required, the notification to the student shall be signed and dated by the student.~~

(7) EMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:301.

(8) EMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs.

(1) Advanced-Emergency Medical Technician (A[-]EMT) training and education course requirements. Each AEMT training and education course shall:

(a) Include all training and education [as required] pursuant to KRS Chapter 311A, 202 KAR 7:330, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards – Advanced Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and [Follow the National Emergency Medical Services Education Standards – Instructional Guidelines.]

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an A[-]EMT[s], a student shall complete a clinical and [or] field rotation that meets the requirements for A[-]EMT education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for an A[-]EMT student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical and [or] field rotations for A[-]EMTs shall include:

(a) Clinicals or field rotations [that shall be] conducted at a licensed [occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support] ambulance service, or other licensed [advanced] health care facility[;] selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments on [of] a minimum of twenty (20) [thirty-five (35)] patients, including at least ten (10) [fifteen (15)] interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a [prehospital] care report form for each of the twenty (20) [thirty-five (35)] patients required in paragraph (b) of this subsection.

(4) If a student fails to achieve the [a] goals[goal] established by the EMS-TEI for the A[-]EMT education program, the EMS-TEI [chief administrative officer or] program director and medical director shall require the student to repeat the failed portion of the AEMT education program. [a clinical or field rotation experience.]

(5) If a student is required to repeat a portion of the AEMT education program, [a clinical or field rotation experience,] the [GAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues;

[and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[-]; and

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;

2. TEI Administrator;

3. Medical Director; and

4. Course Coordinator.

(6) AEMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:330. [If the EMS-TEI requires the student to complete additional ride time, the EMS-TEI shall give the student written notification for the student to sign and date.]

(7) AEMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, 202 KAR 7:401, 202 KAR 7:701, and any other Kentucky statutes or administrative regulations that place mandates upon paramedic students; ~~and~~

(b) Use the National Emergency Medical Services Education Standards – Paramedic Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation ~~and~~ including the National and Kentucky EMS Scope of Practice for a Paramedic student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations ~~[that shall be]~~ conducted at [in] a [hospital emergency department, public health department, urgent treatment center, physician's office,] licensed [advanced life support] ambulance service[,], or other licensed [advanced] health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) ~~[Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and~~

(c) ~~Record of patient history and assessment on a prehospital care report form for each of the [seventy-five (75)] patients required in [subsection (3)(b) of] this section.~~

(4) If a student fails to achieve the ~~[a] goals[goal]~~ established by [for] the EMS-TEI for the EMS education program, the EMS-TEI [chief administrative officer or] program director and medical director shall require the student to repeat the failed portion of the paramedic education program. [a clinical or field rotation experience.]

(5) If a student is required to repeat a portion of the paramedic education program [a clinical or field rotation experience], the ~~[CAO or]~~ program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues;

~~and~~

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues~~[-]; and~~

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;

2. TEI Administrator;

3. Medical Director; and

4. Course Coordinator.

(6) Paramedic candidates shall meet all student eligibility requirements pursuant to 202 KAR

~~7:401. [If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.]~~

(7) Paramedic students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 13. Continuing Education. (1) Training and education courses provided to individuals ~~[outside the roster of a licensed service and]~~ that fulfill the continuing education requirements necessary to receive ~~[recertify or renew]~~ a certification or licensure from the board shall be provided by:

- (a) An entity certified by the board [KBEMS] as an EMS-TEI;
- (b) An agency or department having contractual agreements with a board [KBEMS] certified EMS-TEI that is in good standing and not subject to disciplinary action;
- (c) A board [KBEMS] approved symposia, state, national, or international school;
- (d) A board [KBEMS] approved or nationally accredited online [on-line] or distance education provider, but which shall not provide more than ninety (90) [fifty (50)] percent of the total continuing education hours to fulfill the continuing education [CE] requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or
- (e) One (1) or more of the approved continuing education entities listed below:
 - 1. The Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE);
 - 2. Kentucky Board of Nursing;
 - 3. Kentucky Board of Medical Licensure;
 - 4. Kentucky Board of Respiratory Care;
 - 5. Department of Homeland Security and all department components;
 - 6. U.S. Fire Administration and all department components;
 - 7. Kentucky Department of Criminal Justice (DOCJT);
 - 8. Kentucky Cabinet for Health and Family Services; or
 - 9. Courses approved by any State EMS Office that are offered and or completed outside the Commonwealth of Kentucky. [

~~(e) A course that has been accredited by the board --approved accrediting agency for continuing education.]~~

(2) Continuing education courses shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

(3) EMS-TEIs that provide continuing education shall provide course completion documentation by hardcopy or electronically to all participants that successfully complete the continuing education course. The course completion documentation shall contain at a minimum the following items:

(a) Official name of the EMS-TEI as listed in the EMS-TEI KEMSIS account and certification number of the EMS-TEI issued by the board;

(b) Name of primary instructor and state EMS office EMS provider number;

(c) Name of course;

(d) Breakdown of completed hours and subject categories instructed that meet the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, and 202 KAR 7:401; and

(e) Signature of one (1) of the following EMS-TEI representatives:

1. Director;

2. Course coordinator; or

3. Course instructor.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the board [KBEMS]:

(a) An EMS provider ~~[paramedic licensed by the board or]~~ licensed or certified by the board that holds a CE Educator [continuing education educator] credential [in another state];

(b) A physician (DO or MD) or Physician Assistant (PA) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse (RN) or Advanced Practice Registered Nurse (APRN) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following and who shall be limited to teaching the specific subject approved by the EMS-TEI director and medical director:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards ~~[-Instructional Guidelines]~~ and National and Kentucky EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other board [KBEMS] approved entity; or

4. A presenter approved by an EMS medical director who has specific expertise in an area of a prehospital discipline. ~~[as uniquely qualified by experience or education; or~~

5. ~~A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.]~~

(2) The EMS-TEI or other approved contractual department or agency providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of three (3) ~~[seven (7)]~~ years beyond the end date of each EMS course [Course]; ~~[and]~~

(b) Maintain all documentation to have met the applicable accreditation agency standards, policies, and guidelines established in this administrative regulation; and [-]

(c) Meet the requirements of this administrative regulation.

(3) If requested by the board, the EMS-TEI shall submit to the board [KBEMS] the required documents for EMS continuing education courses taught within the preceding three (3) ~~[seven (7)]~~ years that lead to re-certification or re-licensure by the board [KBEMS], including:

(a) Contractual agreements;

(b) The continuing education instructor ~~[educator's]~~ curriculum vitae or resume that includes at a minimum the educator's name, address, phone number, email address, education history, and employment history documenting the qualifications listed in subsection (1) of this section [Section 14(1)] have been met;

(c) A completed Continuing Education ~~[at Institution]~~ Course Student Roster. The course roster shall include the participants name, signature or digital equivalent, participant KEMSIS number, and board EMS credential held. If rosters are created or stored electronically, there shall be a verification of attendance component that may [can] be verified by the board if requested; and

(d) Objectives, syllabi ~~[and]~~, outline, and a list of instructor resources used for each continuing education course.

Section 15. Pilot Programs. (1) A board certified TEI that is in good standing may apply for an Educational Pilot Program. ~~[A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.]~~

(2) A pilot program shall involve specialized training and education, as well as associated procedures not otherwise provided for in 202 KAR Chapter 7.

(3) Educational Pilot Programs shall be subject to the provisions of 202 KAR 7:1-1565. [A licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.

(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board established requirements for the pilot program.

(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6) The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. Specific and defined event;

2. Disaster; or

3. Designated directive.

(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.]

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) EMR Educator, which certifies the individual to teach EMR initial certification and continuing education courses [Level I — EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education];

(b) EMT Educator, which certifies the individual to teach EMR and EMT initial certification and continuing education courses; [Level II — EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or]

(c) AEMT Educator, which certifies the individual to teach EMR, EMT, and AEMT initial certification and continuing education courses; [Level III — Advanced Educator, which certifies the individual to teach EMR, EMT, A EMT, and paramedic courses or continuing education.]

(d) Paramedic Educator, which certifies the individual to teach EMR, EMT, AEMT, and Paramedic initial certification and continuing education courses; or [Level IIIR — Registered nurses and physicians who are not currently certified as an EMT, A EMT, or paramedic shall only be certified as Level III instructors who teach A EMTs or paramedics.]

(e) CE Educator, which certifies the individual to teach continuing education courses at or below the level of EMS provider certification or license issued by the board.

(2) Depending on the level of certification sought, an applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (AEMT), or a paramedic; or

(b)1. Hold a license in Kentucky or another state as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA);

2. A Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) shall be considered an advanced EMS provider at the paramedic level only for the purpose of credentialing the individual as an EMS educator;

(c) [(b)] Not be issued a certificate as an EMS educator for a level of instruction higher than his or her [their] EMS provider certification or license;[-]

(d) [(e)] Have successfully completed:[-]

1. The National Association of EMS Educators Emergency Medical Services Education Standards [- **Instructional Guidelines**] **[for Educating EMS Instructors]** [educators] [course;]

1. A board-approved [

2. An [KBEMS] **[approved]** EMS educator course that meets the objectives of the [National Highway Traffic Safety Administration (NHTSA)] National Highway Traffic Safety Administration National Guidelines for Educating EMS Instructors and the National Emergency Medical Services Education Standards which [and] is designed to represent a common core for teaching knowledge and skills to assist in the education of adult learners; or [or]

3. One of the following EMS educator courses: [A Bachelor's Degree or higher in education]

a. International Fire Service Training Association (IFSTA) Fire Instructor Course;

b. Eastern Kentucky University's EMC 440 EMS Instruction Course;

c. An instructor course that is equivalent to the EMS educator course objectives found in the U.S. Department of Transportation/National Highway Traffic Safety; or]

2. [4.] Holds an unrestricted and current license or certification as a teacher or educator through a state board of education in the United States;

(e) [(d)] Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;[-]

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7.

(f) Provide documentation using the KBEMS Lecture and Skill Verification Form that the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision of a board-certified EMS educator through a board-certified EMS-TEI with the approval of the program director and medical director [who attests using the board-approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter 311A within the past thirty-six (36) months]; and

3. The courses in which the applicant may [can] [will] assist to meet the requirements of subsection (3) of this section shall be in a board-approved initial course at or below the level of educator the applicant is seeking. [is at the same level of EMS educator the applicant is seeking;]

4. Continuing education courses shall not be accepted to meet the requirements of this section;[-]

(g) Provide evidence of completion of a board-sponsored orientation program;]

(f) [(h)] Submit a completed: [EMS Responder Application and pay all established fees]

1. CE Educator Initial Application;

2. EMR Educator Initial Application;

3. EMT Educator Initial Application;

4. AEMT Educator Initial Application; or

5. Paramedic Educator Initial Application;

(g) Pay all fees pursuant to 202 KAR 7:030; and

(h) Undergo a background check pursuant to KRS 311A.050 and 311A.100.

1. The background check shall be:

a. National in scope for an applicant not currently certified or licensed at any level in Ken-

tucky;

b. Statewide in scope for an applicant with current certification or licensure in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

d. Provided by a vendor that has been contracted through the board.

2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(3) ~~[If applying to become a Level I or II]~~ Applicants applying for EMR, EMT, AEMT, or Paramedic Educator certification shall:

(a) ~~Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;~~

(b) ~~Submit documented proof on the Lecture and Skills Verification Form that the applicant:~~

(a) ~~[1.] Completed a minimum of five (5) presentations meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors. [Instructional Guidelines and EMS Scope of Practice Model National education [for EMT or EMR] as applicable for level of certification]; and~~

(b) ~~[2.] Demonstrated skills from at least five (5) subjects meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors. [Instructional Guidelines and EMS Scope of Practice Model National education for EMT EMT or EMR as applicable for level of certification];~~

3. ~~Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and~~

4. ~~Attended a minimum of fifty (50) percent of clock hours of the course; and]~~

(4) Applicants applying for CE [If applying to become a Level III] Educator shall **present** [:

(a) ~~[Be certified as a paramedic or higher; and~~

(b) ~~[**Present**] documented proof of completing a nationally recognized or EMS-TEI instructor course. [instruction in [a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries,] meeting the objectives of the National Emergency Medical Services Education Standards Instructional Guidelines and EMS Scope of Practice Model for paramedic education.]~~

(5) The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter 311A and 202 KAR Chapter 7.

(6) ~~Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form.]~~

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as an EMS provider or as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Retains [Has submitted to the board written] evidence of completing [completion of] all training and education pursuant to [as required by] KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained [a minimum of fifty two (52) contact hours that include] at least four (4) [eight (8)] hours [contact hours] on topics related to methods of instruction (MOI); [The eight (8) relevant to MOI:

1. ~~May include a board approved and required educator update; and~~

2. ~~The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;]~~

- (d) Is not subject to discipline pursuant to KRS Chapter 311A;
- (e) Has paid fees pursuant to ~~[required by]~~ 202 KAR 7:030; and
- (f) Has submitted to the board a completed Educator Renewal ~~[and signed EMS Responder]~~ Application.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for three (3) ~~[four (4)]~~ years from the date of completion.

(3) The board ~~[KBEMS]~~ office may audit an EMS educator's continuing education and EMS provider continuing education records.

Section 18. EMS Educator reinstatement. ~~[(4)]~~ An EMS Educator whose certification has lapsed ~~[for a period not exceeding five (5) years]~~ may reinstate ~~[his certificate]~~. To reinstate a certificate, the EMS educator shall ~~[submit]~~:

- (1) ~~[(a)]~~ Submit a ~~[A]~~ completed: [EMS Responder Application];
 - (a) Application for CE Educator Reinstatement [Application];
 - (b) Application for EMR Educator Reinstatement [Application];
 - (c) Application for EMT Educator Reinstatement [Application];
 - (d) Application for AEMT Educator Reinstatement [Application]; or
 - (e) Application for Paramedic Educator Reinstatement [Application];
- ~~(2) [(b)]~~ Submit evidence of at least four (4) ~~[sixteen (16)]~~ hours of training in methodology of instruction (MOI);
- ~~(3) [(c)]~~ Written evidence of completion of a board sponsored EMS Educator orientation course; and
- ~~(d)]~~ Pay ~~[Payment of]~~ the reinstatement fee pursuant to ~~[as established in]~~ 202 KAR 7:030; ~~[-]~~
- (4) Submit evidence of previous certification as an EMS Educator in Kentucky; and
- (5) Undergo a background check pursuant to KRS 311A.050 and 311A.100.
 - (a) The background check shall be:
 - 1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;
 - 2. Statewide in scope for an applicant with current certification or licensure in Kentucky;
 - 3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and
 - 4. Provided by a vendor that has been contracted through the board.
 - (b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.
- ~~(2) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.]~~

Section 19. Transition for Currently Certified Educators. An educator certified prior to the effective date of this administrative regulation ~~[after October 2012]~~ shall be transitioned as follows:

- (1) Level I Educator shall be certified as an EMR Educator ~~[EMS instructors shall be certified as Level I educators];~~
- (2) Level II Educator shall be certified as an EMT Educator or AEMT Educator ~~[Instructors shall be certified as Level II Educators];~~
- (3) Level III Educator shall be certified as a Paramedic Educator; and ~~[Currently certified Level III Instructors shall be certified as Level III educators];~~
- (4) [Level I and Level II shall be certified as Level I and Level II educators]; ~~[-; and]~~
- (5) Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and
- (6) Level IIIR Educator shall be certified as a Paramedic [Level III] Educator. ~~[III instructors currently licensed as RNs or physicians shall be certified as Level IIIR educators.]~~

Section 20. EMS Educator Reciprocity. ~~[(1)]~~ A person certified as an EMS Educator ~~[instructor]~~ in another state or United States [US] territory shall be eligible for Kentucky EMS Educator ~~[instructor]~~ certification upon ~~[demonstrating]:~~

~~(1) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;~~

~~(2) Proof of four (4) years' educational experience in another state or territory;~~

~~(3) (1) Submission of a completed: [EMS Responder Application;]~~

~~(a) Application for CE Educator Reciprocity [Application];~~

~~(b) Application for EMR Educator Reciprocity [Application];~~

~~(c) Application for EMT Educator Reciprocity [Application];~~

~~(d) Application for AEMT Educator Reciprocity [Application]; or~~

~~(e) Application for Paramedic Educator Reciprocity [Application];~~

~~(4) Evidence of at least sixteen (16) board-approved hours of training in methodology of instruction (MOI);~~

~~(5) Written evidence of completion of a board-sponsored EMS Educator orientation course; and]~~

~~(2) [(6)] Payment of the educator fee pursuant to [as established in] 202 KAR 7:030;~~

~~(3)(a) Submission of proof that the applicant is certified as an EMS educator or certified as a teacher or educator through a state board of education in another state or United States territory;~~

~~(b) The applicant may only apply for educator certification at the same level of Educator certification currently held in another state or **United States [U.S.]** territory;~~

~~(4) Submission of certification or license by the board as an EMS provider or license as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and~~

~~(5) Submission to a background check pursuant to KRS 311A.050 and 311A.100.~~

~~(a) The background check shall be:~~

~~1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;~~

~~2. Statewide in scope for an applicant with current certification or licensure in Kentucky;~~

~~3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and~~

~~4. Provided by a vendor that has been contracted through the board.~~

~~(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.~~

Section 21. EMS Educator Temporary Certification.

~~(1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder Application.~~

~~(2) A temporary card shall not be valid for more than one (1) year.~~

~~(3) At the end of one (1) year, an applicant for reciprocity who has not completed the requirements established in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.~~

~~(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.~~

~~Section 22. EMS Evaluator.~~

~~(1) An applicant for certification as an EMS evaluator shall:~~

~~(a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or~~

~~2. Hold current unrestricted licensure in a state as a physician;~~

~~(b) Have completed a board-approved evaluator training program;~~

~~(c) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;~~

~~(d) Submit a completed EMS Responder Application; and~~

~~(e) Have paid all fees required by 202 KAR 7:030.~~

~~(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.~~

~~(3) An EMS evaluator shall be certified as:~~

~~(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;~~

~~(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification;~~

~~or~~

~~(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an AEMT may evaluate AEMTs, EMTs, and EMRs.~~

~~(4) An individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.~~

~~Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:~~

~~(1) Maintains current state certification or licensure as a provider;~~

~~(2) During the certification period, participates in a minimum of two (2) separate evaluations [on two (2) separate dates] or attends a board-sponsored evaluator class;~~

~~(3) Is not subject to discipline pursuant to KRS Chapter 311A;~~

~~(4) Submits to the board a completed EMS Responder Application; and~~

~~(5) Pays all fees required by 202 KAR 7:030.]~~

~~Section 21 [24]. Educator [and Evaluator] Oversight. The board [KBEMS] may conduct unscheduled [or, if part of an official investigation, unscheduled] visits to an EMS educator's classroom or to an EMS psychomotor examination [evaluation] site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7, instructional quality, and evaluative standards required by[in] this administrative regulation.~~

~~Section 22 [25]. Incorporation by reference. (1) The following material is incorporated by reference:~~

~~(a) "Training and Educational Institution (TEI) Application in KEMSIS", 2019 [KBEMS-E14,] July [2012];~~

~~(b) "Course Notification Application in KEMSIS", July 2019 [KBEMS-E22, September 2012];~~

~~(c) "Initial Educational [Institution] Course Roster", September 2012 [July 2019] [KBEMS-E23, September 2012];~~

~~(d) "National Emergency Medical Services Education Standards [Instructional Guidelines]", National Highway Traffic Safety Administration [Association], DOT HS 811 077A, January 2009;~~

~~1. "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009;~~

~~2. "National Emergency Medical Services Education Standards-Emergency Medical Techni-~~

cian Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009;

3. "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009;

4. "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009.

(e) "National EMS Scope of Practice Model **2007**", National Highway Traffic Safety Administration [Association], DOT HS 810 657, February 2007;

(f) "National EMS Scope of Practice Model **2019**", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019 ["EMS Responder Application", KBEMS-E1, September 2012];

(g) "**2002** National Guidelines for Educating EMS Instructors", National Highway Traffic Safety Administration, August 2002 ["Certified Educator", KBEMS-E24, September 2012]; [and]

(h) CoAEMSP Interpretations of the **CAAHEP 2015** Standards and Guidelines for the Accreditation of Educational Programs in the EMS Professions", February 2019 ["Educator Practical Requirements", KBEMS-E20, July 2012.];

(i) "Lecture and Skills Verification Form", July 2019;

(j) "Final Educational Course Roster", **September 2012 [July 2019]**;

(k) "Continuing Education Course Student Roster", **September 2012 [July 2019]**;

(l) "Course Change Notification Application" in KEMSIS, July 2019;

(m) "Psychomotor Exam Application" in KEMSIS, July 2019;

(n) "Comprehensive Skill Evaluation Report", July 2019;

(o) "CE Educator Initial Application" in KEMSIS, **February 2013 [July 2019]**;

(p) "EMR Educator Initial Application" in KEMSIS, July 2019;

(q) "EMT Educator Initial Application" in KEMSIS, July 2019;

(r) "AEMT Educator Initial Application" in KEMSIS, July 2019;

(s) "Paramedic Educator Initial Application" in KEMSIS, July 2019;

(t) "**Application for CE Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(u) "**Application for EMR Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(v) "**Application for EMT Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(w) "**Application for AEMT Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(x) "**Application for Paramedic Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(y) "**Application for CE Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(z) "**Application for EMR Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(aa) "**Application for EMT Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(bb) "**Application for AEMT Educator Reinstatement [Application]**" in KEMSIS, July 2019;

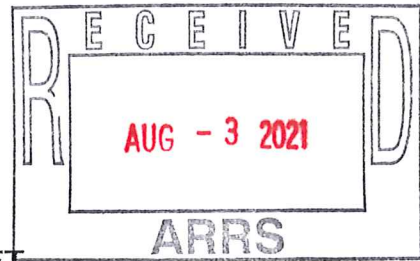
(cc) "**Application for Paramedic Educator Reinstatement [Application]**" in KEMSIS, July 2019; and

(dd) "**Application for Educator Renewal [Application]**" in KEMSIS, July 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Kentucky Community and Technical College,] Office for[ef] the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment [300 North Main Street, Versailles, Kentucky 40383], Monday through Friday, 8:00[8:30] a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at: <https://kbems.kctcs.edu>.

CONTACT PERSON: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Andy Beshear
Governor

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
Fax (502) 564-0506

Mike Berry
Secretary

Rich Storm
Commissioner

August 3, 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: **301 KAR 1:201**. Taking of fish by traditional fishing methods.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 1:201, the Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 1:201.

Sincerely,

Beth Frazee

Beth Frazee, Program Coordinator
Kentucky Fish and Wildlife Resources
1 Sportsmen's Lane, Frankfort, KY 40601



Staff-suggested Amendment

8/3/2021

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources**

301 KAR 1:201. Taking of fish by traditional fishing methods.

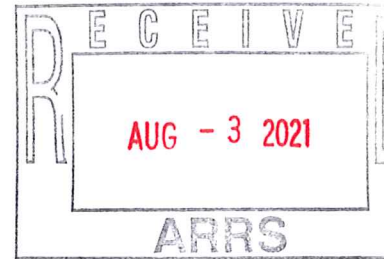
Page 11

Section 3(19)

Line 2

After "in subsections" insert "(36) and (37)".

Delete "(34) and (35)".



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Andy Beshear
Governor

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Mike Berry
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Commissioner

August 3, 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: **301 KAR 2:132**. Elk hunting seasons, permits, zones, and requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:132, the Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:132.

Sincerely,

Beth Frazee

Beth Frazee, Program Coordinator
Kentucky Fish and Wildlife Resources
1 Sportsmen's Lane, Frankfort, KY 40601



Staff-suggested Amendment

8/3/2021

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources**

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

Pages 3 and 4

Section 1(15)

Lines 20 and 1

After "(15)", delete the following:

"Spike" means an elk having one (1) or two (2) antler points on each side.
(16)

Renumber subsequent subsections accordingly.

Page 8

Section 5(2)

Line 4

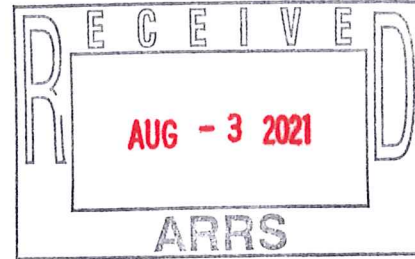
After "to Section 1", insert "(17)".
Delete "(18)".

Page 10

Section 7(3)

Line 3

After "kills any elk", delete ", then".



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Andy Beshear
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Mike Berry
Secretary

Rich Storm
Commissioner

August 3, 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: **301 KAR 2:251**. Hunting and trapping seasons and limits for furbearers.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:251, the Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:251.

Sincerely,

Beth Frazee

Beth Frazee, Program Coordinator
Kentucky Fish and Wildlife Resources
1 Sportsmen's Lane, Frankfort, KY 40601



Staff-suggested Amendment

8/3/2021

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources**

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

Page 6

Section 7(8)(f)

Line 20

After "crossbow", insert " 1".

Page 10

Section 11(3)(a)

Line 4

After "jaws submitted", insert " 1".

Delete ";".

Page 10

Section 11(3)(b)

Line 6

After "with a gun", insert " 1".

Delete ";".

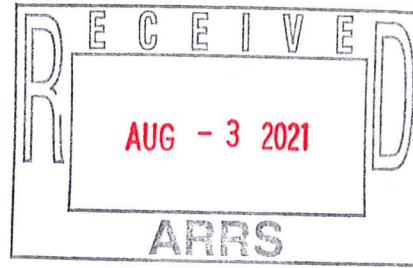
Page 10

Section 11(3)(c)

Line 7

After "Hunters and trappers", insert "shall".

Delete "must".



**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Andy Beshear
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Mike Berry
Secretary

Rich Storm
Commissioner

August 3, 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: 301 KAR 2:300. Black bear season and requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:300, the Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:300.

Sincerely,

Beth Frazee

Beth Frazee, Program Coordinator
Kentucky Fish and Wildlife Resources
1 Sportsmen's Lane, Frankfort, KY 40601



Staff-suggested Amendment

8/3/2021

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources**

301 KAR 2:300. Black bear seasons and requirements.

Page 10

Section 9(3)(h)

Line 11

After "(2) female bears;" , delete "and".

Page 10

Section 10(1)

Line 17

After "a bear using" , delete "a".

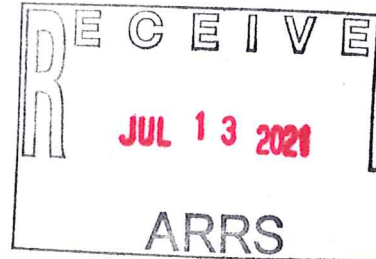
Andy Beshear
Governor



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

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

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



July 12, 2021

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

Re: **701 KAR 5:100**. School-based decision-making guidelines.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 701 KAR 5:100, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

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

Todd G. Allen
General Counsel

SUGGESTED SUBSTITUTE

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

701 KAR 5:100. ~~[Guidelines for alternative models for]~~ School-based decision making guidelines.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The State Board for Elementary and Secondary Education is directed by]~~ KRS 160.345(7) **authorizes[grants]** the Kentucky Board of Education (KBE) **to make** final ~~[authority]~~ ~~[to review]~~ **[for]** approval of applications for alternative models for school-based decision making (SBDM). **KRS 160.345(5) requires the KBE**~~[This administrative regulation establishes the application process, as well as approval guidelines for alternative models for school-based decision making. Additionally, the KBE is required]~~ to exempt, upon request, a school that meets the requirements of KRS 160.345(5) from implementing SBDM. ~~[This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). Further,]~~ KRS 160.345(6) requires new and experienced SBDM members **to** complete professional development activities provided by the Kentucky Department of Education (department) through providers that have been endorsed by the department. ~~[This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. Finally,]~~ KRS 160.345(6) requires the department **to** collect the names and addresses for each SBDM member. This administrative regulation establishes the SBDM database and associated reporting requirements, **the application process and approval criteria for alternative models for SBDM, exemption requirements, training requirements for SBDM members, and the provider-training requirements for department endorsement.**

Section 1. Definitions. (1) ~~[“Classified employee” shall have the same meaning as defined in KRS 161.011(1)(a).~~

~~(2)]~~ “Parent” **is defined by KRS 160.345(1)(d)**~~[shall have the same meaning as defined in KRS 160.345].~~

~~(2)]~~ ~~(3)]~~ “Teacher” **is defined by KRS 160.345(1)(c)**~~[shall have the same meaning as defined in KRS 160.345].~~ [The membership of school councils shall be maintained at the 3-2-1 ratio set forth in KRS 160.345(2) so that parental membership shall not fall below one-third (1/3) of voting members. Any representation of classified staff or of students on the school council shall either be as nonvoting members of the council or on committees advisory to the council, whichever the council itself shall decide.]

Section 2. Alternative Models for School-Based Decision Making. (1) On or after January 1 and prior to March 1 of each calendar year, a school choosing to develop an alternative model for school-based decision making (SBDM) pursuant to KRS 160.345(7) shall submit a completed Alternative School-Based Decision Making Application through **the school's[its]** local board of education to the Commissioner of Education (Commissioner) for consideration by the Kentucky Board of Education (KBE).

(2) The Kentucky Department of Education (department) shall provide technical assistance, upon request, to districts prior to submission of the Alternative School-Based Decision Making Application to help ensure minimum compliance with the required components **established[set forth]** in KRS 160.345(7).

(3) Within thirty (30) days from receipt of a completed Alternative School-Based Decision Making Application, the commissioner **or the commissioner's designee[, or his designee,]** shall review and recommend **that** the KBE approve or deny the Alternative School-Based Decision Making Application, **based on the requirements established in this administrative regulation.**

(4) At the next regularly scheduled meeting of the KBE following the receipt of the recommendation from the commissioner **or the commissioner's designee[, or his designee,]** pursuant to subsection (3) of this section, the KBE shall approve or deny the Alternative School-Based Decision Making Application.

(5) Implementation of an approved Alternative School-Based Decision Making Application shall begin on July 1 unless otherwise **stated[specified]** in the Alternative School-Based Decision Making Application submitted to and approved by the KBE **pursuant to this administrative regulation.**

(6) An alternative SBDM model approved by the KBE **shall undergo annual[is subject to on-going]** review **by the department** but shall be valid until the earlier of the following occurs:

(a) The school implements a traditional SBDM that complies with KRS 160.345 following a majority vote by the existing SBDM to do so and evidence of the council's majority vote to reinstate the traditional SBDM model is communicated in writing to the department;

(b) The school qualifies for and is granted, **as[where]** applicable, an SBDM exemption under Section **3[(3)]** of this administrative regulation;

(c) The school is identified for comprehensive support and improvement and has its SBDM authority transferred to the superintendent pursuant to KRS 160.346; or

(d) The KBE revokes approval for the alternative SBDM model.

(7) The department shall maintain a record of all schools that apply for an alternative SBDM model and a record of all approved alternative SBDM models.

(8) An Alternative School-Based Decision Making Application shall not be necessary for changes to an SBDM that maintain the parent, teacher, and administrator voting membership ratio **established[prescribed]** in KRS 160.345. An SBDM may add one **(1)** or more non-voting members upon a majority vote of the existing SBDM without submission of an Alternative School-Based Decision Making Application.

[(1) If a school can demonstrate that it had in operation prior to July 13, 1990, a successful school-based decision-making model composed of a different membership than specified in KRS 160.345(2), it may apply to the State Board for Elementary and Secondary Education for approval of its model under KRS 160.345(7) regarding alternative models. Priority for approval of

alternative models shall be given to those preexisting models which add parents in numbers sufficient to meet the 3-2-1 statutory configuration.

(2) ~~To demonstrate that a school had a formal, operational, decision-making entity in place before July 13, 1990, it shall submit written evidence of decisions and actions taken by the decision-making body and implemented in the school. Groups that were informal and advisory in that they were dealing with peripheral issues not covered in the Kentucky Education Reform Act of 1990 shall not qualify for alternative model approval.~~

(3) ~~In the case of requests for approval of alternative models which were in operation prior to July 13, 1990, the school shall show evidence that the model in existence has been subjected to review, evaluation, and recommendation regarding its continuation by representatives of the parents, students, certified personnel, and the administrators of the school, and that two-thirds (2/3) of the faculty (all certified members of the school including any itinerant teacher assigned to the school for payroll purposes) have agreed to apply for the continued use of that model for school-based decision making.]~~

Section 3. Exemptions from School-Based Decision Making. (1) On or after January 1 and prior to March 1 of each calendar year, a school required to implement school-based decision making pursuant to KRS 160.345 may seek an SBDM exemption. **A request for exemption shall be made** by submitting a written request to the commissioner for consideration by the KBE.

(2) The department shall provide technical assistance, upon request, to districts prior to submission of the written request to help ensure minimum compliance with the required components **established[set forth]** in KRS 160.345(5).

(3) Within thirty (30) days from receipt of the written request, the commissioner **or the commissioner's designee**~~[, or his designee,]~~ shall review and verify **that** the school meets the requirements **established[set forth]** in KRS 160.345(5).

(4) Once the commissioner **or the commissioner's designee**~~[, or his designee,]~~ has verified **that** the school meets the requirements **established[set forth]** in KRS 160.345(5), the school's written request shall be submitted to the KBE for final approval pursuant to KRS 160.345(5). If the commissioner **or the commissioner's designee is**~~[, or his designee, are]~~ unable to verify **that** the school has met the **requirements[reequipments]** for exemption **established[set forth]** in KRS 160.345(5), the commissioner **or the commissioner's designee** shall recommend that the KBE deny the exemption request.

(5) Implementation of an approved school-based decision making exemption shall begin on July 1 unless otherwise **stated[specified]** in the written request submitted to and approved by the KBE.

(6) An SBDM exemption approved by the KBE shall be valid for one (1) school year.~~[; however,]~~ A school may annually re-apply for an SBDM exemption if it meets the requirements **established[set forth]** in KRS 160.345(5).

(7) The department shall maintain a record of all schools that apply for an SBDM exemption and a record of all approved SBDM exemptions.~~[Each application for alternative models from schools which began school-based decision making after July 13, 1990, shall be based on the 3-2-1 statutory configuration so that parental membership shall not fall below one-third (1/3) of voting members, shall have no more than two (2) year terms of office, and shall show any student or classified staff representation as nonvoting or advisory. The other requests shall be ap-~~

~~proved or rejected after a case-by-case review by the board and recommendation by the Department of Education.]~~

Section 4. Training for School-Based Decision Making Members. (1) SBDM members shall satisfy training required under KRS 160.345 by completing ~~department-provided~~***department provided*** training or training provided by individuals that have been endorsed by the department to provide ~~[such]~~ training.

(2) To be endorsed by the department to provide SBDM member training, an individual shall successfully complete a training program ~~administered~~***as required*** by the department, on an annual basis. ***This training shall include modules on effective training and the duties, authority, and responsibilities of SBDM members and councils as authorized by KRS 160.345.***

(3) The department shall maintain a record of individuals that it has endorsed to provide training to SBDM members.

(4) Individuals the department has endorsed to provide training to SBDM members shall use training modules developed or approved by the department ***pursuant to subsection (6) of this section. Training modules shall provide professional development to SBDM members on the duties, authority, and responsibilities of SBDM members and councils as authorized by KRS 160.345.***

(5) If an individual the department has endorsed to provide training to SBDM members would like to use non-department training modules to meet the requirements of KRS 160.345(6), ~~the[such]~~ training modules shall be approved in advance by the department ***pursuant to subsection (6) of this section.***

(6) To have a training module approved by the department, an individual or entity shall submit ~~[the following]~~ in writing to the department for review:

- (a) The title of module;
- (b) The number of training hours the module provides;
- (c) The intended audience of the module;
- (d) An overview of the module, including topics addressed and anticipated outcomes for attendees; and

(e) ***All materials to be presented as part of the training, including written, audio, and video materials***~~[Other evidence deemed necessary by the department].~~

(7) The department shall maintain a record of non-department trainings that have ***complied with***~~[been approved to meet the requirements of]~~ KRS 160.345(6). ~~[KRS 160.345(7) stipulates that the school shall submit its application for an alternative model "through" the local board to the Commissioner of Education and the State Board for Elementary and Secondary Education for approval. The state board interprets that provision to mean that the local board shall transmit the request to the state as quickly as possible. In exercising this function, the local board is serving as transmittal agent and shall not have the right to delay or deny a school's request for an alternative model.]~~

Section 5. Database of School-Based Decision Making Members. (1) By November 1 of each year, each school shall provide~~[, in a format acceptable to the department,]~~ the following information to the department:

(a) The names and addresses of each SBDM member; and
(b) Verification that each SBDM member has completed the training required by KRS 160.345(6).

(2) The department shall maintain a database of all SBDM members, including training verifications for SBDM members.

~~All alternative models approved by the state board pursuant to any provision contained in this administrative regulation shall be valid for an indefinite period, subject to continuous review by the state board. This approval for an indefinite period, subject to continuous review by the state board, shall apply to all alternative models approved prior to and subsequent to the date of enactment of this administrative regulation.]~~

Section 6. Incorporation by Reference. (1) "Alternative School-Based Decision Making Application," February 2021 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [The Kentucky Department of Education shall keep records of all schools which apply for, and all schools which are granted, an alternative model for school-based decision making.]

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

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

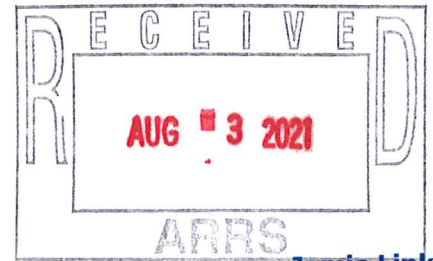


KENTUCKY LABOR CABINET

Mayo-Underwood Building
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Frankfort, KY 40601
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Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor



Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

August 3, 2021

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

Re: 787 KAR 1:360 Overpayment Waivers

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:360, the Labor Cabinet proposes the attached amendment to 787 KAR 1:360.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

SUGGESTED SUBSTITUTE – ORDINARY ONLY

**LABOR CABINET
Office of Unemployment Insurance**

787 KAR 1:360. Overpayment waivers.

RELATES TO: **Ky. Acts ch. 16, sec.2[2021 SB 7, Section 2]**

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims between January 27, 2020 and December 31, 2020, **Ky. Acts ch. 16, sec.2 authorizes[2021 SB 7, Section 2 allows]** the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, **[the secretary]** finds the overpayment was made **[(a)]** without fault on the part of the recipient **and if[, and (b)]** recovery of would be contrary to equity and good conscience. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341 and **Ky. Acts ch. 16, sec[2021 SB 7, Section] 2.**

Section 1. Definitions. (1) "Benefits" means benefits as defined **by[in]** KRS 341.020(4).

(2) "Financial hardship" means:

(a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; **or**

(b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

(b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;

(c) Payment beyond the expiration of the benefit year;

(d) Payment in excess of the maximum benefit amount;

(e) Payment under an incorrect program;

(f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud **is[shall]** not **[be]** considered "office error";

(g) Monetary redeterminations;

(h) Payment during a period of disqualification;

(i) Payment to a wrong claimant; or

(j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a request for waiver of a determined overpayment within thirty (30) days of the ~~date~~secretary's mailing of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if the secretary~~he or she~~ determines ~~that~~the following:

(1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and

(2) Recovery would be contrary to equity and good conscience as established in Section 5 of this administrative regulation.

Section 4. ~~No-fault~~No-Fault Determination. For ~~purposes~~purpose of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient ~~if~~when the overpayment of benefits resulted from~~the following~~:

(1) "Office error" as defined by~~in~~ Section 1 of this administrative regulation~~and 787 KAR 1:190, Section 1~~; or

(2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience ~~if~~when an individual demonstrates ~~that~~any of the following:

(1) Recovery would cause financial hardship to the person from whom it is sought;~~An individual demonstrates financial hardship where he or she can show that, as a result of the recovery, is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.]~~

(2) The alleged overpayment recipient can show, regardless of the the individual's~~his or her~~ financial circumstances, that due to the notice that the~~such~~ payment would be made or because of the incorrect payment, the individual~~either he or she~~ has relinquished a valuable right or changed positions for the worse. This may~~can~~ be shown ~~if~~where the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits;or~~.~~

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

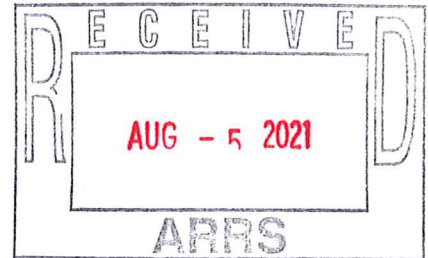
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August 5, 2021

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 2:060.** Employer responsibility to post notice.
803 KAR 2:062. Employer responsibility when employee is exposed to toxic or harmful physical agents.
803 KAR 2:070. Inspections.
803 KAR 2:110. Employer and employee representatives.
803 KAR 2:122. Abatement.
803 KAR 2:125. Posting of citation.
803 KAR 2:127. Failure to correct violation.
803 KAR 2:130. Informal conference.
803 KAR 2:140. Contest of citation.
803 KAR 2:170. Variance and interim order.
803 KAR 2:220. Refusal to work when dangerous conditions exist.
803 KAR 2:250. Discrimination.
803 KAR 2:435. Supply lines in excess of 600 volts.
803 KAR 2:440. Cranes and derricks in construction.

SUGGESTED SUBSTITUTE

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

803 KAR 2:060. Employer responsibility to post notice~~[Employers' responsibilities]~~.

RELATES TO: KRS 338.051, 29 C.F.R. Part 1903

STATUTORY AUTHORITY: KRS 338.051, 338.061

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~~[by KRS 338.051 to adopt administrative]~~ regulations and authorizes the chairman to reference federal standards 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 employers' responsibility to post notices provided by the Labor Cabinet and availability of safety and health administrative regulations~~[required by federal law, this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. 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 338.014)].~~

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

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

(3) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed such as a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. ["Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Division of Occupational Safety and Health Compliance during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;
2. The date approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or
3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or
 2. The date computed by adding the period allowed in the citation for abatement to the final order date;
 3. The date established by a formal settlement agreement.
- (3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.
- (4) "Final order date" means:
- (a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

- (b) For a contested citation item:
1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or
 2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or
 3. The date on which an appeals court issues a decision affirming the violation in a case in which a final order of KOSHRC has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Division of Occupational Safety and Health Compliance. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Posting. [Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Division of Occupational Safety and Health Compliance is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

~~Section 3. Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards.]~~ (1) Each employer shall post and keep posted a notice or notices created ~~[to be furnished]~~ by the Labor Cabinet ~~[Division of Occupational Safety and Health Compliance, Labor Cabinet,]~~ informing employees of the protections and obligations established ~~[provided for]~~ in KRS Chapter 338 including information that ~~[, and that for assistance and information, including health standards,]~~ employees may ~~[should]~~ contact the employer or the Labor Cabinet for occupational safety and health assistance and information ~~[Division of Occupational Safety and Health Compliance].~~

(2) The notice created by the Labor Cabinet **shall be[is]** available on the Labor Cabinet Web site **at Labor.ky.gov.**

(3) The ~~[Such]~~ notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

(4) **If[Where]** distinctly separate activities are performed at a single physical location, such as construction activities at the same physical location, each activity shall be treated as a separate physical establishment and a separate notice or notices shall be posted in each ~~[such]~~ establishment.

(5) **If[Where]** employers are engaged in activities **that[which]** are physically dispersed, such as agriculture, construction, gas and sanitary services, transportation, communications, and electric services, the notice or notices shall be posted at the location to which employees report each day.

(6) **If[Where]** employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, and engineers, the notice or notices shall be posted at the location where employees operate to carry out their activities.

(7) In all cases, ~~[such]~~ notice or notices shall be posted in accordance with the requirements of this administrative regulation.

(8) Each employer shall take steps to ensure the notice or ~~[that such]~~ notices are not altered, defaced, or obscured ~~[covered by other material that obscures the poster].~~

~~Section 3. Availability of Administrative Regulations. (1) All applicable occupational safety and health administrative regulations shall be[are]~~ available on the Labor Cabinet Web site **at Labor.ky.gov** ~~[(2) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards, Labor Cabinet].~~

(2) If an employer has ~~[obtained]~~ copies of these materials, **the employer[she or he]** shall make **the copies[them]** available upon request to any employee or ~~[his]~~ authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or ~~[his]~~ authorized employee representative and the employer ~~[;]~~

(3) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

~~Section 4. Abatement Verification. (1) Purpose. Inspections by the Division of Occupational Safety and Health Compliance are intended to result in the abatement of violations of KRS~~

~~Chapter 338. This section sets forth the procedures the Division of Occupational Safety and Health Compliance will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.~~

~~(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.~~

~~(3) Abatement certification.~~

~~(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Division of Occupational Safety and Health Compliance (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.~~

~~(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:~~

~~1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and~~

~~2. Notes in the citation that abatement has occurred.~~

~~(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.~~

~~(4) Abatement documentation.~~

~~(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.~~

~~(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.~~

~~(5) Abatement plans.~~

~~(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other than serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.~~

~~(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Note to this subsection: Appendix B (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement plan form.~~

~~(6) Progress reports.~~

~~(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:~~

~~1. That periodic progress reports are required and the citation items for which they are required;~~

~~2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;~~

~~3. Whether additional progress reports are required; and~~

~~4. The date(s) on which additional progress reports must be submitted.~~

~~(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated reference by Section 5 of this administrative regulation) contains a sample progress report form.~~

~~(7) Employee notification:~~

~~(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.~~

~~(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:~~

~~1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or~~

~~2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.~~

~~(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.~~

~~1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.~~

~~2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.~~

~~(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:~~

~~1. Not altered, defaced, or covered by other material; and~~

~~2. Remain posted for three (3) working days after submission to the agency.~~

~~(8) Transmitting abatement documents.~~

~~(a) The employer must include, in each submission required by this section, the following information:~~

~~1. The employer's name and address;~~

~~2. The inspection number to which the submission relates;~~

~~3. The citation and item numbers to which the submission relates;~~

~~4. A statement that the information submitted is accurate; and~~

~~5. The signature of the employer or the employer's authorized representative.~~

~~(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.~~

~~(9) Movable equipment.~~

~~(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Division of Occupational Safety and Health Compliance to meet the tagging requirement of paragraph (a) of this subsection as well as the posting requirement of 803 KAR 2:125.~~

~~(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.~~

~~(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:~~

- ~~1. For hand-held equipment, immediately after the employer receives the citation; or~~
- ~~2. For nonhand-held equipment, prior to moving the equipment within or between worksites.~~

~~(d) For the construction industry, a tag that is designed and used in accordance with 29 C.F.R. 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 C.F.R. 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.~~

~~(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.~~

~~(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:~~

- ~~1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;~~
- ~~2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or~~
- ~~3. The commission issues a final order vacating the citation.~~

~~Section 5. Incorporation by Reference. (1) The appendices to 29 C.F.R. 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.~~

~~(2) This material may be inspected, obtained, and copied at the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday].~~

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SUGGESTED SUBSTITUTE

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

803 KAR 2:062. Employer[Employers'] responsibility for an[when employee is][where employees are] exposed to toxic substances or harmful physical agents.

RELATES TO: KRS Chapter 338

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] 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. This [and standards. The purpose and function of the following] administrative regulation establishes [is to provide that all employers] employer responsibility for an employee[when employees are] exposed to toxic substances or harmful physical agents [monitor areas and maintain accurate records of such monitoring where their employees are exposed to potentially toxic substances and to make available to those employees the records of such monitoring].

Section 1. Definitions. (1) "Board" is defined by KRS 338.015(6).

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

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

(4) "Occupational safety and health standard" is defined by KRS 338.015(3).

Section 2. General Requirements. (1) Employers shall monitor areas where employees are exposed to potentially toxic substances or harmful physical agents that [which] are required to be monitored or measured pursuant to [those] standards [as] adopted by the board pursuant to KRS Chapter 338[Kentucky Occupational Safety and Health Standards Board].

(2) Employers shall provide employees or their representatives an opportunity to observe [such] monitoring or measuring.

(3)(a) Each employer shall promptly notify every [any] employee [or employees] who was or is [have been or are being] exposed to toxic materials or harmful physical agents in concentrations or [at] levels that [which] exceed those established[prescribed] by [those] applicable [occupational safety and health] standards adopted by the board pursuant to KRS Chapter 338[Kentucky Occupational Safety and Health Standards Board].

(b) If[Where] [pursuant to those applicable occupational safety and health standards adopted and promulgated by the Kentucky Occupational Safety and Health Standards Board] it is required that exposure to certain toxic substances or agents is [be] limited or prohibited, each employer shall;

(1) Notify ~~[notify his]~~ employees who are subject to **[such]** exposure; ~~and~~

(2) Inform employees ~~[inform them]~~ of the corrective action required, if any; ~~and~~

(3) Notify employees ~~[notify them]~~ when **[such]** action will be, or was, ~~[has been]~~ taken.

(4)(a) Each employer shall make and maintain records of all monitoring activity required by this administrative regulation and make appropriate provisions whereby each employee, former employee, or a representative of either, has ~~[may have]~~ access to **[such]** records that ~~[which will]~~ indicate the levels ~~[to which]~~ the ~~[particular]~~ employee or former employee was ~~[has been]~~ exposed.

(b) Each employee, former employee, or representative of either, ~~[Said person]~~ shall ~~[also]~~ be **allowed[permitted]** to copy ~~[these]~~ records pertaining to her or his exposure levels or the exposure levels of the employee or former employee she or he is representing.

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SUGGESTED SUBSTITUTE

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

803 KAR 2:070. Inspections~~[Inspection; procedure]~~.

RELATES TO: KRS 338.101

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 standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following rules and administrative regulations are adopted, governing the authority to conduct inspections. The function of the] This administrative regulation establishes the [is to identify this] authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

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 and investigations.

(3) "Compulsory process" means the institution of any appropriate action, including ex parte application for an inspection, ~~[or]~~ investigation, or warrant or its equivalent.

(4) "Director" means Director, Division of Occupational Safety and Health Compliance.

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

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

Section 2. Authority for Inspections. (1) Compliance ~~safety and health officers~~ [Safety and Health Officers of the Division of Occupational Safety and Health Compliance] shall be[are] authorized to conduct inspections pursuant to KRS 338.101 [enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and administrative regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection].

(2) Prior to inspecting areas containing information ~~[which is]~~ classified by an agency of the United States Government ~~[,]~~ in the interest of national security, compliance safety and health officers shall obtain ~~[have obtained]~~ the appropriate security clearance.

Section 3 [2]. Objection to Inspection. (1) ~~If an employer refuses [Upon a refusal]~~ to permit a compliance safety and health officer ~~[, in the exercise of his official duties,]~~ to enter without delay and at reasonable times any place of employment ~~[or any place therein,]~~ to inspect; ~~[,]~~ ~~[to]~~ review records; ~~[,]~~ ~~[or to]~~ question any employer, owner, operator, agent, or employee; ~~[,]~~ ~~[in accordance with this administrative regulation,]~~ or ~~[to]~~ permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace ~~[in accordance with 803 KAR 2:110],~~ the compliance safety and health officer shall terminate the inspection or confine the inspection to ~~[either]~~ areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised.

(2) The compliance safety and health officer shall endeavor to ascertain the reason for the ~~[such]~~ refusal and ~~[, and he shall]~~ immediately report the refusal and ~~[the]~~ reason ~~[therefore]~~ to the commissioner ~~[Commissioner of the Department of Workplace Standards].~~

(3) The commissioner shall promptly take appropriate action including compulsory process ~~[,]~~ if necessary.

(4)(a) Compulsory process may be sought in advance of an inspection if, in the judgment of the commissioner, circumstances exist **that make a** ~~[which make such]~~ pre-inspection process desirable or necessary.

(b) It may be desirable or necessary to seek compulsory process in advance of an attempt to inspect **if** ~~[when]~~:

1. The employer's past practice implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

2. Procuring a warrant prior to conducting the inspection would avoid, in case of refusal, the expenditure of significant time and resources to obtain a warrant and return to the establishment or worksite; or

3. An inspection includes the use of special equipment or the presence of an expert, or experts, is needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the difficulties or costs encountered in coordinating the availability of ~~[such]~~ equipment or **an** expert.

(5) With the approval of the commissioner **as established in this section,** the director or other designee may obtain compulsory process.

(6) Ex parte inspection warrants shall be the preferred form of compulsory process **if** ~~[when]~~ compulsory process is relied upon.

Section 4 [3]. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty pursuant to ~~[under]~~ KRS Chapter 338 ~~[Compliance safety and health officers are not authorized to grant any such waiver].~~

Section 5 [4]. Conduct of Inspections. (1) Inspections ~~[Subject to the provisions herein, in-~~

spections] shall take place at [such] times and [in such] places [of employment] as the commissioner or designee ~~[Commissioner of the Department of Workplace Standards or the compliance safety and health officer]~~ **directs**~~[may direct]~~.

(2) At the beginning of an inspection, or as soon as practical, ~~[the compliance safety and health officer shall:]~~~~[officers shall]~~

(a) Present ~~[present]~~ her or his ~~[their]~~ credentials to the owner, operator, or agent in charge at the establishment or worksite~~;~~~~[:]~~

(b) Explain ~~[explain]~~ the nature and purpose of the inspection~~;~~~~[:]~~ ~~[and]~~

(c) Indicate ~~[indicate]~~ generally the scope of the inspection and the records she or he wishes ~~[specified herein which they wish]~~ to review. **The**~~[Such]~~ ~~[However, such]~~ designation of records shall not preclude access to additional records~~;~~~~[specified herein]~~~~[-]~~

~~(2) Compliance safety and health officers shall]~~

(d) Have ~~[have]~~ authority to take environmental samples, ~~[and to take or obtain]~~ photographs, videos, oral recordings, and statements~~;~~ **and**~~;~~~~[:]~~ ~~[related to the purpose of the inspection,]~~

(e) Employ ~~[employ]~~ other reasonable investigative techniques, such as ~~[and question privately any employer, owner, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to,]~~ the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that ~~[such]~~ actions with flash, spark-producing, or other equipment **shall not be**~~[is not]~~ ~~[would not be]~~ hazardous.

(4) Compliance safety and health officers shall comply with ~~[all]~~ employer safety and health rules and practices at the establishment or worksite ~~[being inspected,]~~ and ~~[they shall]~~ wear, as well as use, appropriate personal protective equipment ~~[and use appropriate protective clothing and equipment]~~.

(5) ~~[(4)]~~ The conduct of an inspection shall ~~[be such as to]~~ preclude unreasonable disruption of ~~[the]~~ operations at ~~[of]~~ the employer's establishment or worksite.

(6)(a) ~~[(5)]~~ At the conclusion of an inspection, the compliance safety and health officer shall offer conference ~~[confer]~~ with the employer ~~[or his representative]~~ and informally advise her or him of ~~[any]~~ apparent ~~[safety and health]~~ violations ~~[disclosed by the inspection]~~.

(b) ~~The~~ ~~[During such conference, the]~~ employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.~~]~~

~~(6) Inspection shall be conducted in accordance with the requirements of this section.]~~

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SUGGESTED SUBSTITUTE

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

803 KAR 2:110. Employer and employee representatives.

RELATES TO: ~~[KRS 338.054]~~ KRS 338.111

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~~ ~~[by KRS 338.051, the following 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.~~ This administrative regulation ~~establishes employer and employee representation during an inspection~~ ~~[are adopted concerning the employer and employee representatives who may accompany compliance safety and health officers during the course of the inspection].~~

Section 1. Definitions. (1) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections or investigations.

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

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

Section 2. Representatives of Employers and Employees. (1) ~~The compliance~~ ~~[Compliance]~~ safety and health ~~officer~~~~[officers]~~ shall be in charge of the inspection ~~[inspections]~~ and questioning of persons.

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him ~~if~~~~[when]~~ she or he ~~[where he]~~ determines it aids ~~[that such additional representatives will further aid]~~ the inspection.

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if it does ~~[this will]~~ not interfere with the conduct of the inspection.

(5) ~~[(2)]~~ The compliance ~~[Compliance]~~ safety and health ~~officer~~~~[officers]~~ shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees ~~[for the purpose of this section].~~

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the [such] representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(7) ~~[(3)]~~ The ~~representative~~representative(s) or representatives authorized by employees shall be an ~~employee~~employee(s) of the employer.

(8) If, ~~[However, if]~~ in the judgment of the compliance safety and health officer, good cause is ~~[has been]~~ shown why accompaniment by a third party, such as a safety professional or industrial hygienist, who is not an employee of the employer ~~[(such as an industrial hygienist or a safety engineer)]~~ is reasonably necessary to ~~[the]~~ conduct ~~[of]~~ an effective and thorough ~~[physical]~~ inspection ~~[of the workplace]~~, the [such] third party may accompany the compliance safety and health officer during the inspection.

(9) A compliance ~~[(4) Compliance]~~ safety and health ~~officer~~officers may consult with employees concerning matters of occupational safety and health ~~[to the extent they deem]~~ necessary for ~~[the conduct of]~~ an effective and thorough inspection.

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 that[which] she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance ~~[(5) Compliance]~~ safety and health ~~officer~~ shall be/is~~[officers are]~~ authorized to deny ~~[the right of]~~ accompaniment ~~[under this section]~~ to any person whose conduct interferes with the ~~[a fair and orderly]~~ inspection.

(12) Accompaniment ~~[The right of accompaniment]~~ in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to ~~[With regard to]~~ information classified by an agency of the United States Government ~~[in the interest of national security, only persons authorized to have access to such information]~~ may accompany a compliance safety and health officer in areas containing [such] information.

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LABOR CABINET
Department of Workplace Standards
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803 KAR 2:122. Abatement~~[Application for extension of abatement]~~.

RELATES TO: KRS 338.141

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. [The Commissioner of the Department of Workplace Standards is empowered to extend abatement periods established pursuant to KRS 338.141(2) and 803 KAR 2:120. The function of this] This administrative regulation establishes ~~[is to detail]~~ the form of the application for extension of abatement, steps necessary to make application, content of the application, form and timing for the ruling of the Commissioner of the Department of Workplace Standards on the application, and, appeal available to the parties adversely affected by the decision on the application.

Section 1. (1) "Abatement" means action by an employer to comply with a cited regulation, standard, statute, or order to eliminate a hazard identified by the Division of Occupational Safety and Health Compliance.

(2) "Abatement date" means **as established in paragraphs (a) and (b) of this subsection.**~~[:]~~

(a) For an uncontested citation item, **"abatement date" means the later of the date:**

1. **[The date]** ~~In the citation for abatement of the violation;~~~~[or]~~

2. **[The date]** ~~Approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or~~

3. **[The date]** ~~Established in a citation by an informal settlement agreement.~~

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, **"abatement date" means the later of the date:**

1. ~~[The date]~~ Identified in the final order for abatement; ~~[or]~~
2. ~~[The date]~~ Computed by adding the period allowed in the citation for abatement to the final order date; ~~or~~
3. ~~[The date]~~ Established by a formal settlement agreement.
- (3) "Affected employees" means employees who exposed to a hazard identified as violation in a citation.
- (4) "C.F.R." means Code of Federal Regulations.
- (5) "Commissioner" is defined by 803 KRS 338.015(7).
- (6) "Compliance officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.
- (7) "Employee" is defined by KRS 338.015(2).
- (8) "Employer" is defined by KRS 338.015(1).
- (9) "Final order date" means ***as established in paragraphs (a) and (b) of this subsection.***
- (a) For an uncontested citation item, ***"final order date" means*** the 15th working day after the employer's receipt of the citation. ~~[;]~~
- (b) For a contested citation item, ***"final order date" means:***
 1. The 30th day after the date a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; ~~[or]~~
 2. ***If [When]*** review has been directed, the date the commission issues its decision or order disposing of all or pertinent part of a case; ~~or~~
 3. The date an appeals court issues a decision affirming the violation in a case ***if [when]*** a final order of the review commission has been stayed.
- (10) "Movable equipment" means a hand held or non-hand held machine or device, powered or unpowered, used to do work and moved within a worksite or between worksites.
- (11) "Review commission" is defined by KRS 338.015(8).
- (12) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, ***and [as well as]*** the day of receipt of notice.

Section 2. Extension or Modification of Abatement. (1) An employer may apply for an ~~[make application for]~~ extension ~~or modification~~ of abatement ~~[date]~~ with the ~~commis-~~ sioner or designee ~~[Commissioner of the Department of Workplace Standards or his de-~~ signee the Director of Compliance,] ***after [when]*** the employer ~~[has]~~ made a good faith effort to comply with the abatement requirements ~~[of a citation,]~~ but abatement is ~~not~~ ~~[has not been]~~ completed due to factors reasonably beyond the employer's ~~[his]~~ control.

(2) The ~~[Where]~~ application for extension ~~or modification~~ of abatement, ***as estab-*** lished in subsection (7) of this section, ~~[is made, said application]~~ shall be ~~made no~~

~~[filed not]~~ later than 4:30 p.m. Eastern Time on ~~[the close of]~~ the day ~~[on which]~~ abatement is required ~~[was originally required]~~.

(3) A later filed petition shall be accompanied by the employer's written statement of exceptional circumstances explaining the delay.

(4) The application for extension or modification of abatement shall be posted for ten (10) working days in a conspicuous location where all affected employees have notice or near the location where the violation occurred.

(5) [

Section 2.] An application for extension or modification of abatement shall ~~[may]~~ be in writing or may be made orally ~~if [when]~~ ~~[where]~~ time does not permit a written application ~~[writing]~~.

(6) ~~If [When]~~ ~~an~~ ~~[Where]~~ application for extension or modification of abatement is made orally, a written application shall follow the ~~[said]~~ oral request within three (3) working days.

(7) Every ~~[The]~~ application for extension or modification of abatement shall include ~~[the following information]:~~

(a) ~~[(1)]~~ All steps taken by the employer, and the dates of ~~[such]~~ action, in an effort to achieve compliance during the established ~~[prescribed]~~ abatement period; ~~[-]~~

(b) ~~[(2)]~~ The specific additional ~~[abatement]~~ time or modification necessary ~~[in order]~~ to achieve compliance; ~~[-]~~

(c) ~~[(3)]~~ The reason ~~[reasons such]~~ additional time or modification is necessary, ~~[-]~~ including the unavailability of professional and technical personnel or materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date; ~~[-]~~

(d) ~~[(4)]~~ All ~~[available]~~ interim steps implemented ~~[being taken]~~ to safeguard ~~[the]~~ employees against the ~~[cited]~~ hazard ~~[during the abatement period]; and~~ ~~[-]~~

(e) Certification the application for extension or modification of abatement was posted for ten (10) working days and, if appropriate, provided to the authorized representative of affected employees including the date the posting and service were made.

(8)(a) Affected employees or their representatives may file a written objection to the application with the commissioner within ten (10) working days of the date of posting of the ~~[such]~~ petition or service upon an authorized representative.

(b) Failure to file an objection within ten (10) working days of the date of posting of the ~~[such]~~ petition or service upon an authorized representative, shall constitute a waiver of any further right to object to the application.

(9) [

Section 3.] The commissioner or designee ~~[Commissioner of the Department of Workplace Standards or his designated representative, the Director of Compliance,]~~ shall

rule on the application for extension or modification of abatement within three (3) work-
ing days of receipt of the application [same].

~~(10) [(1) Where extension is granted, amended citation shall issue and the employer shall post the amended citation at or near the same location as the original citation as under 803 KAR 2:125. Adversely affected employees may appeal an extension or modification of abatement pursuant to KRS 338.141[(1) and rules of the KOSHRG].~~

~~(11) **If/When** an application for extension or modification of abatement [(2) Where extension] is denied, the employer may [adversely affected employers shall have right of] appeal pursuant to [as under] KRS 338.141[(1) and rules of the KOSHRG].~~

Section 3. Abatement Certification. (1) Within ten (10) calendar days after the abate-
ment date, the employer shall certify to the commissioner that each cited violation is
abated, except as **established/provided** in subsection/paragraph (2) of this section.

(2) The employer **shall/is** not **be** required to certify abatement if the compliance of-
ficer, during the on-site portion of the inspection:

(a) Observes, within twenty-four (24) hours after a violation is identified, that abate-
ment occurred; and

(b) The citation states that abatement occurred.

(3) The employer's certification that abatement is complete shall include, for each cit-
ed violation, in addition to the information required by this administrative regulation,
the date and method of abatement and a statement that affected employees and their
representatives have been informed of the abatement.

Section 4. Abatement Documentation. (1) The employer shall submit documents
demonstrating that abatement is complete for each cited violation.

(2) Documents demonstrating that abatement is complete may include evidence of
the purchase or repair of equipment, photographic or video evidence of abatement, or
other written records.

Section 5. Abatement Plan. (1) The commissioner may require an employer to submit
an abatement plan **if/when** the time permitted for abatement is more than ninety (90)
calendar days.

(2) The citation shall state that an abatement plan **shall be/is** required.

(3)(a) The employer shall submit an abatement plan for each cited violation within
twenty-five (25) calendar days from the final order date **if/when** the citation indicates
that **[such]** a plan **shall be/is** required.

(b) The abatement plan shall identify the violation and the steps to be taken to
achieve abatement including a schedule for completing abatement and, where neces-
sary, how employees will be protected from exposure to the hazard or violative condi-
tion until abatement is complete.

(3) Progress reports.

(a) An employer required to submit an abatement plan may be required to submit periodic progress reports for each cited violation.

(b) If an employer is required to submit periodic progress reports, the citation shall indicate:

1. That periodic progress reports **shall be[are]** required and the citation items for which they **shall be[are]** required;

2. The date the initial progress report shall be submitted, which **shall[may]** be no sooner than thirty (30)

calendar days after submission of an abatement plan;

3. Additional progress reports that **shall be[are]** required; and

4. The dates additional progress reports shall be submitted.

(c) For each violation, the progress report shall identify the action taken to achieve abatement and the date the action was taken.

Section 6. Employee Notification. (1) The employer shall inform affected employees and their representative about abatement activities by posting a copy of each document submitted to the commissioner or a summary of the document near the place where the violation occurred.

(2) **If[When]** posting does not effectively inform employees and their representatives about abatement activities, the employer shall:

(a) Post each document or a summary of the document in a location where it is readily observable by affected employees and their representatives; or

(b) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3)(a) The employer **shall[must]** inform employees and their representatives of their right to examine and copy all abatement documents submitted to the commissioner.

(b) An employee or an employee representative **shall[must]** submit a request to the employer to examine and copy abatement documents within three (3) working days of receiving notice that documents were submitted to the commissioner.

(c) The employer shall comply with an employee or employee representative request to examine and copy abatement documents within five (5) working days of receiving the request.

(4)(a) The employer shall ensure that notice to employees and employee representatives **shall be[is]** provided at the same time or before the information is provided to the commissioner.

(b) The employer shall ensure that abatement documents **[are]**:

1. **Shall not be[Not]** altered, defaced, or covered by other material; and

2. Remain posted for **at least** three (3) working days after submission to the commissioner.

Section 7. Transmitting Abatement Documents. (1) The employer shall include in each submission:

- (a) The employer's name and address;
- (b) The inspection number;
- (c) The citation and item number;
- (d) A statement that information submitted is accurate; and
- (e) The signature of the employer or the employer's authorized representative.
- (2) The postmark date **shall be[is]** the date of submission for mailed documents.
- (3) For documents transmitted by other means, the date the commissioner receives the document **shall be[is]** the date of submission.

Section 8. Moveable Equipment. (1) The employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment moved within the worksite or between worksites.

(2) Attaching a copy of the citation meets the tagging requirement of this administrative regulation as well as the posting requirement established in 803 KAR 2:125.

(3) The employer shall attach a warning tag that:

(a) Properly warns employees about the nature of the violation involving the equipment; and

(b) Identifies the location of the citation issued.

(4)(a) If the violation is not abated, a warning tag or copy of the citation **shall be[must]** be attached to hand held equipment immediately after the employer receives the citation.

(b) If the violation is not abated, a warning tag or copy of the citation **shall be[must]** be attached to non-hand held equipment prior to moving the equipment within or between worksites.

(5) For the construction industry, a tag designed and used in accordance with 29 C.F.R. 1926.20(b)(3) and 29 C.F.R. 1926.200(h) meets the requirements of this section **if[when]** the information required by this section is included on the tag.

(6) The employer **shall[must]** ensure the tag or copy of the citation attached to movable equipment **shall not be[is not]** altered, defaced, or covered, or obscured by other material.

(7) The employer shall ensure the tag or copy of the citation attached to movable equipment **shall remain[remains]** attached until:

(a) The violation is abated and all abatement verification documents required by this administrative regulation are submitted to the commissioner;**[or]**

(b) The cited equipment is permanently removed from service or is no longer in the employer's control; or

(c) The review commission issues a final order vacating the citation.

Section 9. The commissioner shall assume authority to modify abatement pursuant to KRS 338.141(2) ~~if~~**[when]** review commission jurisdiction expires.

Section 10. **Nonmandatory examples of abatement-related forms that apply to 29 C.F.R. 1903.19 appendices shall include:**

- (a) Appendix A, Sample Abatement Certification Letter;**
- (b) Appendix B, Sample Abatement Plan or Progress Report; and**
- (c) Appendix C, Sample Warning Tag.**

Section 11. Incorporation by Reference. (1) The following nonmandatory appendices to 29 C.F.R. 1903.19 are incorporated by reference:

- (a) Appendix A, Sample Abatement Certification Letter;
- (b) Appendix B, Sample Abatement Plan or Progress Report; and
- (c) Appendix C, Sample Warning Tag.]

~~Section 4. Where jurisdiction of the Review Commission has expired, the Commissioner of the Department of Workplace Standards shall again assume authority to modify abatement under KRS 338.141(2).]~~

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SUGGESTED SUBSTITUTE

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

803 KAR 2:125. Posting of citation[citations].

RELATES TO: KRS 338.101 [464]

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. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes procedures for [by KRS 338.051, the following rules and administrative regulations are adopted as they pertain to] the posting of citations by the employer.

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

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

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

(4) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, **and[as well as]** the day of receipt of notice.

Section 2. Posting [of Citations]. (1) Upon receipt of any citation [under KRS Chapter 338], the employer shall immediately post the unedited [such] citation, or a copy of the unedited citation [a copy thereof, unedited], at or near each place the [an] alleged violation [referred to in the citation] occurred, except as **established in subsections (1) through (6) of this section[provided below]**.

(2) **If[Where]**, because of the nature of the employer's operations, it is not practicable to post the unedited citation, or a copy of the unedited citation, at or near each place of alleged violation, the unedited [such] citation, or a copy of the unedited citation, shall be posted [unedited] in a prominent place where it is [will be] readily observable by all affected employees such as a [For example, where employers are engaged in activities which are physically dispersed (see 803 KAR 2:060) the citation may be posted at the] location where [to which] employees report each day.

(3) The unedited citation, or a copy of the unedited citation, may be posted at the location employees carry out their activities if the employees do not primarily work at, or report to, a single location [Where employees do not primarily work at or report to a single location (see 803 KAR 2:060) the citation may be posted at the location from which the employees operate to car-

ry out their activities].

(4) The employer shall [take steps to] ensure [that] the unedited citation or copy of the unedited citation **shall not be/is not** altered, defaced, or obscured [covered by other material which would obscure the citation. Notices of de minimis violations need not be posted].

(5)(a) [(2)] Each unedited citation, or copy of the unedited citation [a copy thereof], shall remain posted until the violation is [has been] abated, or for three (3) working days, whichever is later. (b) The filing by the employer of a notice [of intention] to contest shall not affect the [his] posting responsibility [under this section] unless [and until] the review commission issues a final order vacating the citation.

(6)(a) [(3)(a)] An employer that receives [to whom] a citation shall [has been issued may] post a notice indicating the citation is contested in the same location where the unedited [such] citation, or copy of the unedited citation, is posted [indicating that the citation is being contested before the review commission, and such].

(b) The notice may explain the reason[reasons] for the [such] contest.

(c) The employer may [also] indicate specific [that specified] steps [have been] taken to abate the violation [:

(4) Any employer failing to comply with the provisions of subsections (1) and (2) of this section shall be subject to citation and penalty of \$100 per first instance per authority of KRS 338.991].

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SUGGESTED SUBSTITUTE

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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 2:127. Failure to correct violation~~[, additional penalty]~~.

RELATES TO: KRS 338.071, 338.141~~[(4)]~~, 338.991(4)

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 [The Commissioner of the Department of Workplace Standards is empowered by KRS 338.141(1) to issue a citation to an employer who has violated any requirement of KRS Chapter 338. KRS 338.991(4) empowers the Commissioner of the Department of Workplace Standards to propose penalties for any employer who fails to correct a violation for which a citation has been issued]. This administrative regulation establishes failure to correct violation procedures followed by the Department of Workplace Standards and employers [is necessary as it prescribes the procedure to be followed by the Division of Occupational Safety and Health Compliance and by cited employers who have been notified of a failure to correct a violation and permits the commissioner to propose penalties according to KRS 338.991(4) for failure to correct a violation. This administrative regulation spells out the procedures to be used by the Division of Occupational Safety and Health Compliance in notifying the employer of a failure to correct an alleged violation stating the time limits within which the employer has to contest the notification of failure to correct].

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

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

(3) "Review commission" is defined in KRS 338.015(8).

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, **and[as well as]** the day of receipt of notice.

Section 2. (1) If an inspection discloses that an employer ~~[has]~~ failed to correct an alleged violation for which a citation ~~was~~ ~~[has been]~~ issued within the period permitted for its correction, the commissioner ~~[district supervisor shall consult with the Director of Compliance who may consult with the general counsel, if appropriate, and he]~~ shall notify the employer ~~[by certified mail or by personal service by the compliance safety and health officer]~~ of the ~~[such]~~ failure and ~~[of]~~ the additional penalty proposed pursuant to ~~[under]~~ KRS 338.991(4) ~~[by reason of such failure]~~.

(2) The period for the correction of a violation ~~[for which a citation has been issued]~~ shall not begin ~~[to run]~~ until the entry of a final order of the review commission in the case of any ~~[review]~~ proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Section 3 [2]. (1) Any employer receiving a notification of failure to correct a violation and ~~[of]~~ proposed additional penalty pursuant to ~~[authorized by]~~ KRS 338.991(4) may notify the ~~commissioner or designee~~ ~~[Director of Compliance]~~ in writing that ~~she or he contests~~ ~~[intends to contest]~~ ~~such notification or proposed additional penalty before the review commission~~.

(2)(a) The ~~[Such]~~ notice of ~~[intention to]~~ contest shall be ~~transmitted~~ ~~[postmarked]~~ within fifteen (15) working days of ~~[the]~~ receipt ~~[by the employer of the notification of failure to correct a violation and of proposed additional penalty]~~.

(b) The ~~commissioner~~ shall ~~[Director of Compliance shall immediately]~~ transmit ~~the~~ ~~[such]~~ notice to the review commission in accordance with the rules of procedure prescribed by the commission ***in accordance with KRS 338.071.***

Section 4[3]. Each notification of failure to correct a violation and ~~[of]~~ proposed additional penalty shall state that it shall be ~~a~~ ~~[deemed to be the]~~ final order of the review commission and not subject to review by any court or agency, ***as established by KRS 338.141,*** unless, within fifteen (15) working days from the date of receipt of ~~the~~ ~~[such]~~ notification, the employer notifies the ~~commissioner or designee~~ ~~[Director of Compliance]~~ in writing that ~~she or he contests~~ ~~[he intends to contest]~~ the notification ~~of~~ ~~[or the]~~ proposed additional penalty before the review commission.

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SUGGESTED SUBSTITUTE

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

803 KAR 2:130. Informal conference~~[conferences]~~.

RELATES TO: KRS 338.101

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. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes procedures ~~[by KRS 338.051, the following administrative regulation is adopted, identifying the procedure]~~ to be followed in conducting informal conferences requested by the employer, employee, or representative of employees.

Section 1. Definitions. (1) Commissioner is defined ~~by~~[in] KRS 338.015.

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

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

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, ~~and~~[as well as] the day of receipt of notice.

Section 2. Informal Conference~~[Conferences]~~. (1) At the request of an affected employer, employee, or representative of employees, the commissioner or designee ~~[Division of Occupational Safety and Health Compliance]~~ may hold an informal conference for the purpose of discussing ~~[any]~~ issues raised by an inspection, investigation, citation, notice of proposed penalty, ~~[variance]~~, or notice ~~[of intention]~~ to contest ~~[. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the review commission].~~

(2) If the informal conference is requested by the employer, an affected employee~~[s]~~ or employee ~~[his]~~ representative shall~~[may]~~[shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(3) If the informal conference is requested by an employee or representative of employees, the employer shall~~[may]~~[shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(4) Any party may be represented by counsel ~~[at such conference]~~.

(5) An~~[No]~~ informal ~~[such]~~ conference or request for an informal ~~[such]~~ conference shall not serve~~[serves]~~ ~~[shall operate]~~ as a stay or extension of the ~~[any]~~ fifteen (15) working day ~~[working-day]~~ period to file ~~[for filing]~~ a notice of ~~[intention to]~~ contest pursuant to ~~[as prescribed in]~~

803 KAR 2:140.

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SUGGESTED SUBSTITUTE

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

803 KAR 2:140. Contest of citation~~[Employer and employee contests]~~.

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 ~~[by KRS 338.051, the following 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. This ~~[are adopted, governing the employer and employee contests before the review commission. The function of this]~~ administrative regulation establishes procedures ~~[is to inform the employer and employees of the proper procedure]~~ to be followed in contesting a citation or~~and/or~~ penalty issued by the Commissioner of the Department of Workplace Standards.

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

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

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

(4) "Review commission" is defined by KRS 339.015(8).

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

Section 2. [Contesting] Procedure. (1)(a) An [Any] employer that receives a citation may ~~[to whom a citation or notice or penalty has been issued may, under KRS Chapter]~~ notify the commissioner ~~[Commissioner of the Department of Workplace Standards]~~ in writing that she or he contests ~~[intends to contest]~~ the citation, proposed penalty, or both ~~[such citation, or notice of proposed penalty before the review commission].~~

(b) The [Such] notice of [intention to] contest shall be transmitted by the employer ~~[post-marked]~~ within fifteen (15) working days of [the] receipt of citation ~~[by the employer of the notice of proposed penalty].~~

(c) The [Every] notice of [intention to] contest shall specify whether it is directed to the citation, proposed penalty, or both ~~[the proposed penalty, or a variance].~~

(d) The commissioner shall immediately transmit the ~~[such]~~ notice to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071.**

(2) Any employee or representative of employees of an employer that receives ~~[to whom]~~ a citation ~~[has been issued]~~ may **notify the commissioner in writing that she or he contest the:**

(a) ~~[Notify]~~ ~~[File a written notice with]~~ ~~[the commissioner in writing that she or he contests]~~ ~~[alleging that]~~ ~~[the]~~ ~~[period of]~~ Time established ~~[fixed]~~ in the citation for the abatement of the violation ~~[is unreasonable]; or~~

(b) ~~[Notify]~~ ~~[File a written notice to]~~ ~~[the commissioner in writing that she or he contests]~~ ~~[alleging that]~~ ~~[the]~~ Citation, or proposed penalty, or both ~~[and penalties are unreasonable].~~

(3) (a) The notice ~~[Such notices]~~ shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of the citation ~~[proposed penalty or notice that no penalty is being proposed].~~

(b) The commissioner shall immediately transmit the ~~[such]~~ notice to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071.**

~~(3) If any party is adversely affected by a variance issued under KRS 338.151 he may file an appeal to the review commission.]~~

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SUGGESTED SUBSTITUTE

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

803 KAR 2:170. Variance and Interim Order~~[Variances]~~.

RELATES TO: KRS **338.081**, 338.153

STATUTORY AUTHORITY: KRS 333.051, 338.0161 [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 proceedings to grant variances and other relief pursuant to KRS Chapter 338 [338.153 authorizes the granting of temporary and general variances from occupational safety and health standards to employers who can show that they are unable to comply with such standards by their effective dates, or they are providing conditions of employment as safe and healthful for those which would result from compliance with the terms of the standards. The following administrative regulation delineates the purpose and scope of the variances and the procedure to be followed when an employer wishes to be granted a variance].

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

(2) "Employee" is defined by KRS 338.0159(2).

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

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

Section 2. (1) [Purpose and Scope. (1) This administrative regulation contains rules or practice for administrative proceedings to grant variances and other relief under the Kentucky Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(3) This [The rules of practice in this] administrative regulation ***shall[does]*** [do] not apply to variances granted pursuant to [the granting of variances under] KRS 338.153(2)(c)]:

2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Act" means KRS Chapter 338.

(2) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of

the United States or of a state.

(3) "Party" means a person admitted to participate in a hearing conducted in accordance with Sections 14 and through 24 of this administrative regulation. An applicant for relief and any affected employee shall be entitled to be named parties. The Division of Occupational Safety and Health, represented by the commissioner shall be deemed to be a party without the necessity of being named.

(4) "Affected employee" means an employee who would be affected by the grant or denial of a variance, or any of his authorized representatives, such as his collective bargaining agent.

Section 3. Petitions for Amendments to the Administrative Regulation. Any person may at any time petition the Commissioner of the Department of Workplace Standards in writing to revise, amend, or revoke any provisions of this administrative regulation. The petition shall set forth either the terms or the substance of rule desired, with concise statement of the reasons thereof and the effects thereof.

Section 4. Amendments to this Administrative Regulation. The commissioner may at any time revise, amend, or revoke any provisions of this administrative regulation].

Section 3 [5]. Effect of Variances and Interim Order. (1) All variances and interim orders granted pursuant to this administrative regulation shall have only future effect.

(2) The [In his discretion, the] commissioner may decline **until the completion of the proceeding.** [to entertain] a variance or interim order [an] application for [a variance or] a subject or issue **if[when]** [concerning which] a citation has been issued to the employer involved or a [and] proceeding on a [the] citation or [a] related issue [concerning a proposed penalty or period of abatement] is pending before the review commission, or any other court[,] [Kentucky Occupational Safety and Health Review Commission] **[until the completion of the][such][proceeding].**

Section 4 [6]. Public Notice of a Granted Variance or Interim Order. Every final action granting a variance or interim order **establishing[specifying]** the alternative to the standard the variance permits shall be posted on the Labor Cabinet Web site [under this administrative regulation shall be published in a newspaper of general circulation. Every such final action shall specify the alternative to the standard involved which the particular variance permits].

Section 5. Applications and [7. Forms of] Documents[; Subscriptions; Copies]. (1) **There shall not be a standard form for applications and documents. Information to be submitted in applications and documents shall be as established in this administrative regulation[No particular form is prescribed for applications and other documents]** [papers which may be] **[filed]** [in proceedings] **[for a variance or interim order]** [under this administrative regulation].

(2) Applications [However, any applications] and other documents [papers] shall be clearly legible. [An original and six (6) copies of any application or other papers shall be filed. The original shall be typewritten. Clean carbon copies, or printed or processed copies are acceptable copies.]

(3)(2) Each application or other document ~~[paper which is filed in proceedings under this administrative regulation]~~ shall be signed ~~[subscribed]~~ by the person filing the application or document ~~[same]~~ or by her or his attorney or other authorized representative.

Section 6 [8]. Temporary Variance ~~[Variances Under KRS 338.153(2)(a) (Temporary Variances)]~~.
(1) Application ~~[for variance]~~. Any employer requesting ~~[or class of employers, desiring]~~ a temporary variance shall ~~[from a standard, or portion thereof, authorized by KRS 338.153(2)(a), may]~~ file a written application with the commissioner ~~[containing the information specified in subsection (2) of this section with the commissioner]~~.

(2) An application ~~[filed pursuant to subsection (1) of this section]~~ shall include:

(a) The name and address of the applicant;

(b) The address of the place or places of employment involved;

(c) The specific ~~[A specification of the]~~ standard ~~[or portion thereof]~~ from which the applicant seeks a variance;

(d) A representation by the applicant supported by representations from ~~[qualified]~~ persons having firsthand knowledge of:

1. The ~~[the]~~ facts represented; ~~[;]~~

2. Inability ~~[that he is unable]~~ to comply with the standard; and ~~[or portion thereof by its effective date and]~~

3. A ~~[a]~~ detailed statement of the reasons therefore; ~~[;]~~

(e) A statement of the steps the applicant took or ~~[has taken and]~~ will take, with specific dates ~~[where appropriate]~~, to protect employees against the hazard covered by the standard;

(f) A statement of when the applicant will ~~[expects to be able to]~~ comply with the standard and steps taken ~~[of what steps he has taken and will take]~~, with specific dates ~~[where appropriate]~~, to come into compliance with the standard;

(g) A statement of the facts establishing the applicant ~~[the applicant would show to establish that]:~~

1. [The applicant] ~~[He]~~ is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel, [or] ~~[or]~~ of materials and equipment needed to come into compliance with the standard, or because necessary construction or alteration of facilities cannot be completed by the effective date;

2. [The applicant] ~~[He]~~ is taking all available steps to safeguard ~~[his]~~ employees against the hazards covered by the standard; and

3. [The applicant] ~~[He]~~ has an effective program for coming into compliance with the standard as quickly as practicable;

(h) Any request for a hearing ~~[as provided in this administrative regulation];~~

(i) A statement attesting ~~[that]~~ the applicant:

1. Informed ~~[has informed his]~~ affected employees of application by providing ~~[giving]~~ a copy of the application ~~[thereof]~~ to the employees' ~~[their]~~ authorized representative; and ~~[;]~~

2. Posted ~~[posting a statement]~~ at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including, ~~[giving a summary of the application and specifying]~~ where a copy of the full application may be examined ~~[at the place or places where notices to employees are normally posted, and by other appropriate means]; and~~

(j) A description of how affected employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing [;

(3) ~~Interim order.~~

(a) ~~Application.~~ An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) ~~Notice of denial of application.~~ If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) ~~Notice of the grant of an interim order.~~ If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance].

Section 7. Permanent Variance [9. Variances Under KRS 338.153(1) (Permanent Variances)]. (1) Application [for variance]. Any employer requesting [or class of employers desiring] a permanent variance shall [from a standard, or portion thereof, authorized by KRS 338.153(1), may] file a written application with the commissioner [containing the information specified in subsection (2) of this section with the commissioner].

(2) Contents. An application [filed pursuant to subsection (1) of this section] shall include:

(a) The name and address of the applicant;

(b) The address of the place or places of employment involved;

(c) A description of the condition, practice, means, method, operation or process [conditions, practices, means, methods, operations, or processes used or] proposed [to be used] by the applicant;

(d) A statement showing how the condition, practice, means, method, operation or process [conditions, practices, means, methods, operations, or processes used or] proposed [to be used would] provide employment and places of employment to employees that [which] are as safe and healthful as [these] required by the standard [from which a variation is sought];

(e) Certification [A certification that] the applicant [has] informed all [his] employees of the [his] application that includes:

1. Providing [Giving] a copy of the application [thereof] to the employees' [their] authorized representative; and

2. Posting at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including where a copy of the full application may be examined [a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

3. By other appropriate means];

(f) Any request for a hearing [; as provided in this administrative regulation]; and

(g) A description of how employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing.].

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.]

Section 8. Interim Order. (1) Application. An application may be made for an interim order in lieu of a variance or an order to be effective until a decision on a temporary or permanent variance application is rendered.

(a) An application made for an interim order in lieu of a temporary or permanent variance shall include the information required in **Section 7(2) of** this administrative regulation for a permanent variance.

(b) An application made for an interim order to be effective until a decision on a temporary or permanent variance application is rendered shall include statements of fact why the interim order should be granted.

(c) The commissioner may rule ex parte upon any application for an interim order.

(2) Denial of application. If an interim order application is denied, the commissioner shall provide written notice to the applicant accompanied by a statement of the grounds therefore.

(3) Grant of an interim order.

(a) If an interim order is granted, a copy of the order shall be provided to the applicant and, if necessary, other affected parties.

(b) The applicant shall provide notice within five (5) working days to affected employees by the same means used to inform them of the application.

(c) The interim order shall be published on the Labor Cabinet's Web site until it expires.

Section 9 [10]. Modification, Revocation, and Renewal of a Variance or Interim Order [Rules or Orders]. (1) Modification or revocation. An affected employer or an affected employee may apply in writing to the commissioner for a modification or revocation of a variance [rule] or interim order issued pursuant to [under] KRS 338.153. The application shall contain:

(a) The name and address of the applicant;

(b) A description of the relief [which is] sought;

(c) A statement **[setting forth]** with **detailed[particularity the]** grounds for relief;

(d) If the applicant is an employer, [a] certification [that] the applicant [has] informed [his] affected employees of the application by:

1. Giving a copy [thereof] to the employees' [their] authorized representative; **and**

2. Posting at the place or places where notices to employees are normally posted, and by

other appropriate means, a summary of the application including where a copy of the full application may be examined or posting the application in lieu of the summary; ~~Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and~~

3. Other appropriate means ~~]~~;

(e) If the applicant is an affected employee, [a] certification that a copy of the application ~~was~~ ~~[has been]~~ **provided**~~[furnished]~~ to the employer; and

(f) Any request for a hearing ~~[as provided in this administrative regulation]~~.

(2)(a) The commissioner may ~~[on his own motion proceed to]~~ modify or revoke a variance ~~[rule]~~ or interim order **in accordance with this administrative regulation**~~[issued under KRS 338.153]~~.

(b) ~~The~~ ~~[In such event, the]~~ commissioner shall:

1. Publish a notice on the Labor Cabinet Web site ~~[cause to be published in a newspaper of general circulation a notice]~~ of her or his intention, which affords ~~[affording]~~ interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and

2. Take ~~[shall taken such]~~ other appropriate action ~~[as may be appropriate]~~ to provide ~~[give actual]~~ notice to affected employees.

(c) Any request for a hearing shall include a short and plain statement of:

1. ~~[(a)]~~ How the proposed modification or revocation affects ~~[would affect]~~ the requesting party; and

2. ~~[(b)]~~ What the requesting party seeks ~~[would seek]~~ to show on the subject ~~[subjects]~~ or issue ~~[issues]~~ involved.

(3) Renewal. Any variance ~~[final rule]~~ or interim order issued pursuant to ~~[under]~~ KRS 338.153 may be renewed or extended ~~[as permitted by the applicable section and in the manner prescribed for its issuance]~~.

Section 10 [11]. Action on Applications. (1) Defective applications.

(a) If an application ~~[filed pursuant to this administrative regulation]~~ does not conform to this administrative regulation ~~[the applicable section]~~, the commissioner **shall**~~[may]~~ deny the application.

(b) The commissioner shall give the applicant prompt written~~[Prompt]~~ notice of the denial ~~[of an application shall be given to the applicant]~~.

(c) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(d) A denial of an application ~~[pursuant to this subsection]~~ shall not prejudice ~~[be without prejudice to]~~ the filing of another application.

(2) Adequate applications.

(a) If an application is not ~~[has not been]~~ denied ~~[pursuant to subsection (1) of this section]~~, the commissioner shall publish notice of the application on the Labor Cabinet's Web site ~~[cause to be published in a newspaper of general circulation a notice of the filing of the application]~~.

(b) The ~~[A]~~ notice ~~[of the filing of an application]~~ shall include:

1. The terms, or an accurate summary, of the application;

2. An invitation to ~~[interested persons to]~~ submit ~~[within a stated period of time]~~ written data, views, or arguments regarding the application; and
3. Information to ~~[affected employers and employees of any right to]~~ request a hearing on the application.

Section 11 [12]. Requests for a Hearing on an Application ~~[Hearings on Applications]~~. (1) Request for hearing. Within the time established in the notice of the ~~[allowed by a notice of the filing of an]~~ application, any affected employer or affected employee may file ~~[with the commissioner, in quadruplicate,]~~ a request for a hearing on the application with the commissioner.

(2) Contents of a request for a hearing. A request for a hearing ~~[filed pursuant to subsection (1) of this section]~~ shall include:

- (a) A concise statement of facts showing how the employer or employee is ~~[would be]~~ affected by the relief applied for;
- (b) A specification of any statement or representation in the **denied** application **[which is denied,]** and a concise summary of the evidence that would be adduced in support of each denial; and
- (c) Any views or arguments on any issue of fact or law presented.

Section 12 [13]. Consolidation of Proceedings. The commissioner ~~[on his own motion or that of any party]~~ may consolidate or contemporaneously consider two (2) or more proceedings involving ~~[which involve]~~ the same or closely related issues.

Section 13 [14]. Notice of Hearing. (1) Service. Upon request for a hearing ~~[as provided in this administrative regulation, or upon his own initiative]~~, the commissioner shall serve a ~~[, or cause to be served, a reasonable]~~ notice of hearing.

(2) Contents. A notice of hearing ~~[served under subsection (1) of this section]~~ shall include:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority under which the hearing is to be held;
- (c) A specification of issues of fact and law; and
- (d) A designation of a hearing examiner as an authorized representative of the commissioner if ~~[is]~~ the commissioner is not conducting ~~[going to conduct]~~ the hearing.

(3) Referral to hearing examiner. A copy of the hearing notice ~~[a notice of hearing served pursuant to subsection (1) of this section]~~ shall be provided ~~[referred]~~ to the hearing examiner ~~[designated therein, together]~~ with a copy of the original application and a copy of any written request for a hearing ~~[thereon filed pursuant to this administrative regulation]~~.

Section 14 [15]. Manner of Service. (1) Service of any document upon any party **shall** ~~[may]~~ be made by personal delivery, mail, or other means ~~[of, or by mailing, a copy of the document to the last known address of the party]~~.

(2) If service is by personal delivery, the ~~[The]~~ person serving the document shall certify ~~[to]~~ the manner and ~~[the]~~ date of ~~[the]~~ service.

Section 15 [16]. Hearing Examiners ~~[;]~~ Powers and Duties. (1) Powers. In accordance with

KRS 338.081, the commissioner or [a] hearing examiner ~~[designated by the commissioner to preside over a hearing]~~ shall have all powers necessary ~~[or appropriate]~~ to conduct a fair, full, and impartial hearing, including the authority to [following]:

- (a) Administer ~~[To administer]~~ oaths and affirmations;
- (b) Rule ~~[To rule]~~ upon offers of proof and receive relevant evidence;
- (c) Provide ~~[To provide]~~ for discovery and ~~[to]~~ determine its scope;
- (d) Regulate ~~[To regulate]~~ the course of the hearing and ~~[the]~~ conduct of the parties and their counsel ~~[therein]~~;
- (e) Consider ~~[To consider]~~ and rule upon procedural requests;
- (f) Hold ~~[To hold]~~ conferences for ~~[the]~~ settlement or simplification of the issues by consent of the parties;
- (g) Make ~~[To make]~~, or to cause to be made, an inspection of the employment or place of employment involved;
- (h) Make ~~[To make]~~ decisions in accordance with KRS Chapter 338; and
- (i) Take ~~[To take]~~ any other appropriate action authorized by KRS Chapter 338 or **803 KAR**

Chapter 2 [any administrative regulation issued pursuant thereto].

(2) Private consultation. Except to the extent required for the disposition of ex parte matters, a hearing examiner **shall[may]** not consult a person or party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(3) Disqualification.

(a) **If[When]** a hearing examiner deems herself or himself disqualified to preside over a particular hearing, she or he shall withdraw therefrom by notice on the record directed to the commissioner.

(b) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file ~~[with the commissioner]~~ a motion with the commissioner to disqualify and remove the hearing examiner supported ~~[such motion to be supported]~~ by **an affidavit stating[affidavits setting forth]** all alleged grounds for disqualification.

(c) The commissioner shall rule upon the motion.

(4) Contumacious conduct; failure or refusal to appear or obey the rulings of the ~~[a-presiding]~~ hearing examiner.

(a) Contumacious conduct at any hearing before the hearing examiner shall be grounds for conclusion of the hearing.

(b) If a witness or a party refuses to answer a question ~~[after being directed to do so][,]~~ or refuses to obey an order to provide or permit discovery, the hearing examiner may **rule[make such orders]** with regard to the refusal~~[as are just and appropriate]~~, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(c) Referral to Kentucky Rules of Civil Procedure. On any procedural question not regulated by this administrative regulation, the ~~[a]~~ hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Kentucky Rules of Civil Procedure.

Section 16 [47]. Prehearing Conferences. (1) Convening a conference. Upon her or his own motion or ~~[the]~~ motion of a party, the hearing examiner may direct the parties or their counsel to meet ~~[with him]~~ for a conference to consider:

- (a) Simplification of the issues;
- (b) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
- (c) Stipulations, admissions of fact, and ~~[of]~~ contents and authenticity of documents;
- (d) Limitation of the number of parties or ~~[and of]~~ expert witnesses; and
- (e) Other matters ~~[Such other matters as may tend]~~ to expedite the disposition of the proceeding, and ~~[to]~~ assure a just conclusion ~~[thereof]~~.

(2) Record of conference.

(a) The hearing examiner shall make an order **that[which]** recites the:

1. Action ~~[action]~~ taken at the conference;

2. Amendments ~~[the amendments]~~ allowed to any documents **that[which]** have been filed ~~[,]~~ and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. ~~[,]~~

(b) **An entered order shall control[Such]** ~~[and such]~~ **[order, when entered, controls]** the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Section 17 ~~[48]~~. Consent Findings and ~~[Rules or]~~ Orders. (1) General.

(a) At any time before the reception of evidence in any hearing~~[s]~~, or during any hearing, a reasonable opportunity **shall[may]** be afforded to permit negotiation by the parties of an agreement containing consent findings and an ~~[a rule or]~~ order disposing of the whole or any part of the proceeding.

(b) The allowance of **this[such]** opportunity and the duration thereof shall be in the discretion of the ~~[presiding]~~ hearing examiner ~~[,]~~ after considering ~~[consideration of]~~ the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement **that[which]** will result in a just disposition of the issues involved.

(2) Contents. Any agreement containing consent findings ~~[and rule]~~ or order disposing of a proceeding shall include ~~[also provide]~~:

(a) That the finding ~~[rule]~~ or order shall have the same force and effect as if made after a full hearing;

(b) That the entire record on which any finding ~~[rule]~~ or order may be based shall consist solely of the application and the agreement;

(c) A waiver of any further procedural steps before the hearing examiner and the commissioner; and

(d) A waiver of any right to challenge or contest the validity of the finding ~~[findings and of the rule]~~ or order made in accordance with the agreement.

(3) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(a) Submit the proposed agreement to the ~~[presiding]~~ hearing examiner for her or his consideration; or

(b) Inform the ~~[presiding]~~ hearing examiner that agreement cannot be reached.

(4) Disposition. In the event an agreement containing consent findings ~~[and rule]~~ or order is submitted within the time allowed ~~[therefore]~~, the ~~[presiding]~~ hearing examiner may accept **the[such]** agreement by issuing her or his decision based upon the agreed findings.

Section 18 [49]. Discovery. (1) Depositions.

(a) 1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition.

2. Depositions may be taken orally or upon written interrogatories before any person designated by the [presiding] hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness shall [may] make application in writing to the [presiding] hearing examiner, **stating[setting forth]:**

1. The reasons the [why-such] deposition should be taken;

2. The date, time [when], [the] place [where], [and the] name, and [post-office] address of the person before whom the deposition is to be taken;

3. The name and [of] address of each witness; and

4. The subject matter concerning which each witness is expected to testify.

(c) Notice. **[Such]** Notice as the [presiding] hearing examiner may order shall be given by the party taking the deposition to every other party.

(d) Taking and receiving in evidence.

1. Each witness testifying upon deposition shall have the right to cross-examine her or him.

2. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken.

3. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the [presiding] hearing examiner.

4. Subject to **[such]** objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, **the[such]** deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition or who had due notice thereof.

(e) No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(2) Other discovery. **If[Whenever]** appropriate to a just disposition of any issue in a hearing, the [presiding] hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Section 19 [20]. Hearings. (1) Order of proceeding. Except as **[may-be]** ordered otherwise by the [presiding] hearing examiner, the party applicant for relief shall proceed first at a hearing.

(2) Burden of proof. The party applicant shall have the burden of proof.

(3) Evidence.

(a) Admissibility.

1. A party shall be entitled to present its [his] case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as **[may-be]** required for a full and true disclosure of the facts.

2. Any oral or documentary evidence may be received, but the hearing [a-presiding] examiner shall exclude evidence that [which] is irrelevant, immaterial, or unduly repetitious.

(b) Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the [presiding] hearing examiner.

(c) Objections.

1.a. If a party objects to the admission or rejection of any evidence, ~~[or]~~to the limitation of the scope of any examination or cross-examination, or to the failure to limit the[such] scope, ~~it~~ [he] shall state briefly the grounds for the[such] objection.

b. Rulings on all objections shall appear in the record.

2. Only objections made before the [presiding] hearing examiner shall[may] be relied upon subsequently in a proceeding.

(d) Exceptions. Formal exception to an adverse ruling shall not be[is-not] required.

(4) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Division of Occupational Safety and Health Compliance by reason of its functions is presumed to be expert[;] if[provided] ~~that~~ the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(5) Transcript.

(a) Hearings shall be [stenographically-reported]transcribed.

(b) Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

Section 20 [24]. Decisions of Hearing Examiner [Examiners]. (1) Proposed findings of fact, conclusions, and ~~rules or~~ orders.

(a) Within ten (10) calendar days after receipt of notice that the transcript of the testimony has been filed or such additional time as the [presiding] hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, ~~and rule~~ or order, together with a supporting brief expressing the reasons for the[such] proposals.

(b) The[Such] proposals and briefs shall be served on all ~~other~~ parties[;] and shall cite ~~refer~~ to all portions of the record and to all authorities relied upon in support of each proposal.

(2) Decision of the hearing examiner. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and ~~rule or~~ order, the [presiding] hearing examiner shall make and serve ~~upon each party~~ her or his decision upon each party, which shall become final on ~~upon~~ the 20th calendar day after service thereof, unless exceptions are filed thereto, as established[provided] in ~~[Section 22 of]~~ this administrative regulation. The decision of the hearing examiner shall include:

(a) A statement of findings and conclusions, with reasons and bases therefore, upon each material issue of fact, law, or discretion presented on the record; and

(b) The appropriate ~~rule,~~ order, relief, or denial thereof.

(3) The decision of the hearing examiner shall be based upon a consideration of the whole record, ~~and shall~~ state all facts officially noticed and relied upon, and based on ~~It shall be made on the basis of~~ a preponderance of reliable and probative evidence.

Section 21 [22]. Exceptions. (1) Within twenty (20) days after service of the hearing examiner's

decision ~~[a decision of a presiding hearing examiner]~~, any party may file with the hearing examiner written exceptions thereto with supporting reasons.

(2) **[Such]** Exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the ~~[rule or]~~ order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings ~~of~~ ~~[or]~~ fact, conclusions of law, or terms of the ~~[rule or]~~ order.

(3) Upon receipt of any exceptions, the hearing examiner shall establish ~~[fix]~~ a time for filing any objections to the exceptions and any supporting reasons.

Section 22 ~~[23]~~. Transmission of Record. (1) If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the commissioner for review.

(2) The record shall include:

(a) The ~~[the]~~ application;~~;~~

(b) Any ~~[any]~~ request for hearing thereon;~~;~~

(c) Motions ~~[motions]~~ and requests filed in written form;~~;~~

(d) Rulings~~[rulings]~~ ~~[thereon]~~;~~;~~

(e) The ~~[the]~~ transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence;~~;~~

(f) All ~~[any]~~ documents or papers filed in connection with prehearing conference;~~;~~

(g) Proposed ~~[such proposed]~~ findings of fact, conclusions of law, ~~[rules]~~ ~~[or]~~ orders, and supporting reasons~~[-as may have been filed]; and,~~

(h) The ~~[the]~~ hearing examiner's decision, and **[such]** exceptions, statements of objections, and briefs in support thereof~~[-as may have been filed in the proceeding]~~.

Section 23 ~~[24]~~. Decision of the Commissioner. (1) ~~[Commissioner of the Department of Workplace Standards.]~~ If exceptions to a decision of a hearing examiner are taken pursuant to ~~[Section 22 of]~~ this administrative regulation, the commissioner shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make her or his decision.

(2) The decision **shall[may]** affirm, modify, or set aside, in whole or part, the findings, conclusions, and the ~~[rule or]~~ order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

Section 24 ~~[25]~~. Motion for Summary Decision.

(1)(a) Any party may, at least twenty (20) days before the date established ~~[fixed]~~ for any hearing pursuant to ~~[under Sections 14 through 24 of]~~ this administrative regulation, move with or without supporting affidavits for a summary decision in his **or her** favor on all or any part of the proceeding.

(b) Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision.

(c) The presiding examiner may, in her or his discretion, set the matter for argument and call for the submission of briefs.

(2) The filing of any documents pursuant to ~~[under subsection (1) of]~~ this section shall be with the hearing examiner, and copies of any **[such]** documents shall be served in accordance with

[Section 15 of] this administrative regulation.

(3)(a) The hearing examiner ***shall grant the***~~[may grant such]~~ motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(b) The hearing examiner may deny ***a motion if***~~[such motion whenever]~~ the moving party denies access to information by means of discovery to a party opposing the motion.

(4)(a) Affidavits shall ***state***~~[set forth such]~~ facts as would be admissible in evidence in a Kentucky court of law and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(b) ***If***~~[When]~~ a motion for summary decision is made and supported as provided in this section, a party opposing the motion ***shall***~~[may]~~ not rest upon the mere allegations or denials of this pleading; her or his response ***shall state***~~[must set forth]~~ specific facts showing that there is genuine issue of fact for the hearing.

(5) ***If the affidavits of a party opposing the motion cannot present facts essential to justify the party's opposition, the hearing examiner may deny the motion for summary decision, order a continuance to allow affidavits to be obtained or discovery to be had, [Should it appear from the affidavits of a party opposing the motion that she or he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had]*** or make other order as is just.

(6) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the commissioner unless the hearing examiner certified in writing that:

(a) The ~~[That the]~~ ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(b) An ~~[That an]~~ immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(7) The allowance of ***[such]***an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the commissioner shall so order.

Section 25 [26]. Summary Decision. (1) No genuine issue of material fact.

(a) ***If***~~[Where]~~ no genuine issue of [a] material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty (20) days after service thereof, unless, within ***that***~~[such]~~ period of time any party files ~~[has filed]~~ written exceptions to the decision.

(b) If any timely exception is filed, the hearing examiner shall fix a time for filing any supporting reasons.

(c) Thereafter, the commissioner, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(d) ~~[(b)]~~ An initial decision and a final decision ~~[made under this subsection]~~ shall include a statement of:

1. Findings and conclusions, and the reasons or bases thereof, on all issues presented; and

2. The terms and conditions of the ~~[rule or]~~ order made.

(2) Hearings on issues of fact, ~~if~~**[where]** a genuine material question of fact is raised, the hearing examiner shall, and in any other case ~~[he]~~ may, set the case for an evidentiary hearing in accordance with ~~[Sections 14 through 24 of]~~ this administrative regulation.

Section 26 ~~[27]~~. Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision ~~[under this administrative regulation]~~ shall not be final ~~[operative]~~ pending a decision on appeal by the commissioner.

Section 27 ~~[28]~~. Finality for Purposes of Judicial Review. A ~~[Only a]~~ decision by the commissioner shall be deemed final agency action for purposes of judicial review.

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SUGGESTED SUBSTITUTE

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

803 KAR 2:220. Refusal [~~Employees' refusal~~] to work when dangerous condition[~~conditions~~] exist.

RELATES TO: KRS 338.121(3)(a)

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 requirements regarding employee refusal to work when a dangerous condition exists [~~The Commissioner of the Department of Workplace Standards has the authority and responsibility for promulgating administrative regulations necessary to accomplish the purposes of this chapter. The function of this administrative regulation is to afford employees the right to refuse to be exposed to dangerous conditions without subsequent employer discrimination.~~].

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

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

Section 2. Employee Refusal to Work. (1) ~~If~~[When] [~~Where~~] an employee is confronted with a choice between not performing assigned tasks or being subjected to death, ~~or~~ serious injury, or illness arising from a dangerous condition at the workplace, the [~~such~~] employee may refuse in good faith to expose herself or himself [~~himself/herself~~] to the dangerous condition.

(2) The condition causing the employee's apprehension of death, serious injury, or serious illness [~~or injury~~] shall[~~must~~] be of [such] a nature that a reasonable person under the same or similar circumstances [~~then~~] confronting the employee would conclude [~~that~~] there is a real danger of death, serious injury, or serious illness [~~or serious injury~~] and [~~that~~] there is insufficient time, due to the urgency of the situation, to eliminate the danger through [~~resort to~~] regular statutory enforcement channels.

(3) Additionally, [~~In addition in such circumstances,~~] the employee, ~~if~~[where] possible, shall[~~must~~] [~~also~~] have sought corrective action from her or his [~~his/her~~] employer [~~and~~] was [~~been~~] unable to obtain [~~a~~] correction of the dangerous condition.

(4) [(2)] ~~If~~[When] an employee in good faith refuses to expose herself or himself [~~himself/herself~~] to a dangerous condition at the workplace, the employee [~~he/she~~] shall not be subjected to subsequent discrimination by the employer.

(5) The ~~[(3) Provided, however, that the]~~ provisions of this administrative regulation shall not apply if an ~~[it is found that the]~~ employee acted unreasonably or in bad faith.

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SUGGESTED SUBSTITUTE

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

803 KAR 2:250. Discrimination.

RELATES TO: KRS 338.015~~(7)~~, **338.071**, 338.121, **338.141**, 338.991

STATUTORY AUTHORITY: KRS 338.051, **338.061**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051~~(3)~~ requires the 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 the procedure for discrimination complaints pursuant to KRS 338.121.

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

(2) "Complainant" means any person who makes a "complaint" as defined by subsection (3) of this section.

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency, or made to the commissioner or the commissioner's designee.

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

(5) ~~[(4)]~~ "Secretary" is defined by KRS 338.015(12).

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

Section 2. Complaint ~~[Procedure for Complaint to the Commissioner; Recipient of; Time for Filing; Form of Complaints]~~. (1) An employee or former employee may file an oral or written complaint with the commissioner or commissioner's designee alleging discrimination ~~[with the commissioner or the commissioner's designee]~~.

(2) A complaint shall be filed no more than 120 days from the occurrence of the alleged discriminatory activity.

(3) A complaint shall provide ~~[state]~~ the name and address of the complainant, name and address of employer, and description of alleged discrimination.

(4) The commissioner or commissioner's designee shall provide the employer notification of the complaint upon initiation of an investigation ~~[Notification shall be given to the employer of the receipt by the commissioner of a complaint within five (5) working days]~~.

Section 3. Settlement. (1) Settlement ~~shall be~~**[is]** encouraged at any stage of the proceedings if the settlement is consistent with ~~[the provisions and objectives of]~~ KRS Chapter 338.

(2) Primary consideration shall be the reinstatement of a complainant to his or her former position with back pay and assurance of the future protection of the rights of all employees pursuant to ~~[under]~~ KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner. (1) A request by the complainant to withdraw a complaint filed with the commissioner shall be given careful consideration and substantial weight.

(2) The commissioner or commissioner's designee shall make the final determination if a complaint and subsequent investigation will be **withdrawn and** terminated.

Section 5. Arbitration or Other Agency Proceedings. (1) A complainant may pursue grievance arbitration proceedings in collective bargaining agreements while requesting relief from other agencies such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to determine if discrimination ~~[has]~~ occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner or commissioner's designee may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If a complainant is pursuing remedies other than those **established**~~[provided]~~ by KRS 338.121, the commissioner's determination ~~[and deferral to the results of the proceedings]~~ **shall**~~[may]~~ be postponed.

Section 6. ~~[Investigation of Complaint to the Commissioner; Issuance of Citation; Notice to Parties; Right of Review.]~~ (1) Investigation.

(a) Upon receipt of a complaint ~~[under Section 2 of this administrative regulation]~~, the commissioner or commissioner's designee shall initiate ~~[cause]~~ an investigation ~~[to be instituted]~~.

(b) The investigation shall be completed and the commissioner's determination issued within ninety (90) days, absent extenuating circumstances.

(2) Citation.

(a) ~~[(2)]~~ If the commissioner finds a violation of KRS 338.121, he or she shall issue a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS 338.991.

(b) The citation shall include a determination by the commissioner as to the merits of the alleged violation.

(c) The commissioner or commissioner's designee shall provide notice of the determination to all affected parties.

(d) The citation shall state that it shall be deemed the final order of the review commission and not subject to review by any court or agency, as established by KRS 338.141, unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the commissioner in writing that the employer intends to contest the citation before the review commission.

(e) The commissioner shall immediately transmit a notice to contest to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071.**

(3) Penalty.

(a) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the:

1. Size of the business of the employer being charged,
2. Gravity of the violation,
3. Good faith of the employer, and
4. History of previous violations.

(b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.

(3) Notice of the determination shall be given to all affected parties.

(4)(a) If the commissioner determines there has not been discriminatory action, the complainant shall be notified of his or her rights of review [of the determination].

(b)[(a)] 1. The complainant may petition the secretary for a review of the determination.

2. The petition shall be in writing and state reasons why the review is requested.

(c)[(b)] The secretary shall affirm the determination or remand it to the commissioner for further investigation.

~~Section 7. Employer Contest. A citation and notice of proposed penalty shall state that it shall be deemed the final order of the Review Commission and not be subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that the employer intends to contest the citation and notification of proposed penalty before the Review Commission. Within seven (7) days of receipt of contest, the commissioner shall forward copies of the citation and proposed penalty and notice of contest to the Review Commission.~~

~~Section 8. Proposed Penalties. (1) If a citation is issued, the commissioner shall notify the employer by certified mail of the proposed penalty established in KRS 338.991.~~

~~(2) The commissioner shall determine the amount of a proposed penalty, based on 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.~~

~~(3) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.~~

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SUGGESTED SUBSTITUTE

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

803 KAR 2:435. Supply lines in excess of 600 volts [~~Construction industry standards~~].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051(3), ~~[KRS] 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. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in construction. [, and contains those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following administrative regulations applicable to the construction industry.]

Section 1. Definitions. (1) "Disconnected" means disconnected from any electrical source or supply.

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

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

(4) "Guarded" means protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects but does not include insulated wires not otherwise protected.

(5) "Hold cards" or "hold tags" means a card or tag-type device, usually having a predominant color of white or red that warns against or cautions against the operation of a particular switch, device, circuit, tool, machine, or other piece of equipment.

(6) "Near" means a distance no closer than shown in the table in Section 2 of this administrative regulation.

(7) "Qualified person" means a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

Section 2. Safety and Testing [of Supply Lines in Excess of 600 Volts]. (1) [Definitions:

(a) Disconnected means disconnected from any electrical source of supply.

(b) Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: wires, which are insulated but not otherwise protected, are not considered as guarded.)

(c) Hold cards: (also called "hold tags") a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.

(d) Near: a distance no closer than that shown in the table in subsection (3)(c) of this section.

~~(e) Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.~~

~~(2) Purpose.~~

~~(a) The intent and purpose of this administrative regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage.~~

~~(b)] This administrative regulation shall apply/applies [shall apply] to nonutility electrical employees [workers who are] engaged in electrical construction [and/or maintenance] of electrical conductors and equipment rated at 600 volts and above.~~

~~(2)(2)] [(3)] Energized conductors and equipment.~~

~~(a)(4)] [(a)] Only qualified employees shall work on or near high voltage conductors or equipment.~~

~~(b)(2)] [(b)] Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors, or equipment.~~

~~(3)(a) [(e)] An/No employee shall not approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the Minimum Clear Distance From Live Parts table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the energized part [live parts].~~

~~(b) Rubber gloves, and sleeves if necessary, [(sleeves if necessary)] rated for the voltage involved shall be considered effective insulation of the employee from the energized part.~~

Minimum Clear Distance From Live Parts	
Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

Section 3. [(4)] Deenergized conductor or equipment.

~~(1) [(a)] Existing conditions shall be determined before starting work on an electrical conductor or [and/or] equipment.~~

~~(2) [(b)] Before any work is performed, all electrical switches, breakers, and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge.~~

~~(3) Employees shall be trained and thoroughly instructed in the tagging procedure.~~

~~(4) One (1) qualified person such as the [, for example:] foreman, general foreman, or first class electrician [,] of each crew shall be responsible for attaching hold tags or [and/or] hold cards to the disconnecting means.~~

~~(5) If/When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment.~~

~~(6) The use of such tags shall [must] be respected.~~

~~(7) Equipment or items so tagged shall [must] not be activated or used without full and proper authority of the [a] responsible person whose signature appears on the tag.~~

~~(8) [(e)] Conductors shall be short-circuited and grounded wherever possible.~~

~~(9) [(d)] Capacitors may be components of apparatus of the disconnected electrical system.~~

~~(10) Before employees are allowed to work, the capacitors shall be discharged, short-circuited,~~

and grounded.

(11) [(e)] ***iff/When*** deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work.

(12) An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device.

(13) The test device shall ~~[must]~~ be handled and used while wearing or using approved protective equipment during the test.

(14) [(f)] All conductors and equipment shall be treated as energized until tested, short-circuited and effectively grounded except ***iff/when*** the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed.

(15) [(g)] The voltage condition of deenergized conductors and ~~[and/or]~~ equipment shall be determined with testing equipment designed for the applicable voltage.

(16) [(h)] Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under her or his jurisdiction are clear and that all protective short-circuit and grounding lines are removed.

(17) The qualified ***person/person(s)*** shall then remove her or his hold ***tag/tag(s)***.

(18) Only at this time shall conductors and equipment be reenergized.

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

SUGGESTED SUBSTITUTE

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

803 KAR 2:440. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. ~~[Part]~~ 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061~~[-E.O. 2018-586]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 authorize]~~ the Kentucky Occupational Safety and Health Standards Board to 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 ~~[standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal administrative regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet].~~ This administrative regulation establishes the 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) "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) ~~["Established federal standard" is defined by KRS 338.015(10).~~

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

~~(5) [(6)]~~ "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified ~~[established]~~ by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart CC, Cranes and Derricks in Construction ~~[the following established federal standards]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [:

(1) ~~29 C.F.R. 1926.1400-1926.1441, effective July 1, 2018; and~~

(2) ~~The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2018 Federal Register, Volume 83, Number 218].~~

Section 3. Fall Protection. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(e)(1)(iii) [shall be replaced with: "On horizontal lattice booms where the fall distance is ten (10) feet or more."].

(b) On horizontal lattice booms where the fall distance is ten (10) feet or more.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(f) [shall be replaced with: "For assembly — disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking — working surface with an unprotected side or edge more than ten (10) feet above a lower level,

~~except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."].~~

(b) For assembly/disassembly work, the employer **shall/must** provide and ensure the use of fall protection equipment for any employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

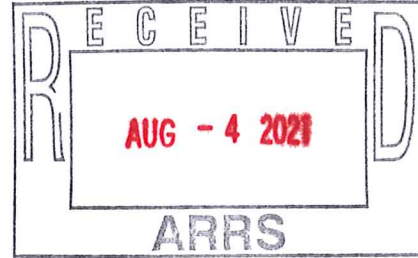
(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(h)(2) [shall be replaced with: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking — working surface with an unprotected side or edge more than ten (10) feet above a lower level."].

(b) For erecting, climbing, and dismantling work, the employer **shall/must** provide and ensure the use of fall protection equipment for any employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, 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 Workers' Claims



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Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

August 3, 2021

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:021, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:021.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

REVISED:
8/4/2021 1:40 PM

SUGGESTED SUBSTITUTE

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS ~~13B.140~~, 342.0011, ~~342.267~~, 342.340, 342.342, 342.345, 342.347, 342.920
STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner ~~[Executive Director]~~ of the Department ~~[Office]~~ of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner ~~[executive director]~~ to establish requirements for individual self-insured employers ~~[self-insurers]~~. This administrative regulation establishes minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of ~~[self-insures]~~ workers' compensation ~~[liability]~~.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday, or any day which is a legal holiday. ["Employer" means an employer subject to KRS Chapter 342.]

(2) "Calendar day" means all days in a month, including Saturday, Sunday, and any day which is a legal holiday.

(3) ~~[(2)]~~ "Commissioner"~~[Executive director]~~ is defined by KRS 342.0011(9).

(4) "Employer" means an employer subject to KRS Chapter 342.

(5) ~~[(3)]~~ "Guarantor" means a parent entity: [company whose financial statement is used by the applicant to obtain self-insurance status].

(a) That agrees it is responsible for and shall meet any and all workers' compensation obligations of the subsidiary when the subsidiary fails to meet its responsibilities as a self-insured employer; and

(b) Whose financial condition and affairs related to workers' compensation are the basis upon which the subsidiary is authorized to self-insure.

(6) "Lapsed" means there is no possibility of compensation under KRS Chapter 342 because the claim is barred by time or otherwise.

(7) "Loss Statement," or "loss run" means a statement of all claims stemming from a self-insured employer's entire period of self-insurance in the form required by the Department of Workers' Claims of:

(a) All past known liabilities and amounts paid at a given point in time; ~~[and]~~

(b) Reserve estimates for all future liabilities; and

(c) Known liabilities and amounts paid or amounts anticipated to be paid for the immediate prior calendar year.

(8) "Paid" means there is no possibility of further compensation under KRS Chapter 342 because

the employee and any eligible dependent of the employee has been provided all compensation awarded or that could possibly be awarded under KRS Chapter 342 with respect to a compensable claim.

(9) "Period of self-insurance" means the period an employer was authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342 in the amount, manner, and when due.

(10) "Reserve" means an estimate by the employer of the undiscounted total compensation to be paid over the entire life of a claim, ~~which[- A reserve]~~ may be limited to a specific portion of the entire compensation when so designated; a medical reserve would refer to the medical compensation to be paid through the entire life of the claim.

(11) "Security" means a required deposit by an employer authorized to self-insure, acceptable to the commissioner and in the amount he directs, that provides the commissioner immediate access to security proceeds sufficient to make direct payment of compensation in claims arising from the employer's period of self-insurance until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(12) "Security proceeds" means:

(a) Security in the form of cash money paid by an issuer of security from its own property in response to the commissioner's call or demand; or

(b) Cash money deposited directly with the commissioner in a financial institution's account.

(13) "Self-Insurance" or "Self-Insure" means the nontransferable status of an employer:

(a) That secured its liability for workers' compensation by depositing with the commissioner acceptable security, in the amount directed by the commissioner, to secure the payment of compensation provided by KRS Chapter 342 until every claim for compensation has been fully paid, fully settled, or lapsed, so that there is no possibility of further liability; and

(b) That has been authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342, in the amount, manner, and when due, rather than the employer insuring and keeping insured his liability for compensation in an entity authorized to transact the business of workers' compensation insurance in this state;

(14) "Self-Insured Employer" means an employer currently authorized by the commissioner to self-insure and is synonymous with the term "self-insurer" as that term is defined in KRS 342.0011.

(15) ~~[(4)]~~ "Service organization" or "third party administrator," means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss statements, preparation of any other required self-insurance report, and other services that may be required by a self-insured employer.

(16) "Settled" means there is no possibility of future compensation arising from an injury because the employee has bargained for and received money for all compensation the employee and any eligible dependent could be awarded under KRS Chapter 342 for that injury and the bargain has been approved by an administrative law judge.

(17) ~~[or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.~~

(5)] "Specific excess insurance" means a contract or policy of insurance whereby a self-insured employer is indemnified for amounts paid in excess of a specific dollar amount stemming from one (1) injury or exposure for which compensation is provided in this chapter. ~~[an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees~~

or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.]

Section 2. Certification. (1) A person, party, or employer shall not act as or hold itself out as an [approved] individual self-insured employer [self-insurer] unless the employer has been approved by the commissioner [executive director] in accordance with this administrative regulation.

(2) An employer authorized [A certification issued] by the commissioner [executive director] to self-insure shall be self-insured until voluntary surrender by the employer pursuant to Section 10 of this administrative regulation or revocation [revoked or modified] by the commissioner [executive director] pursuant to Section 11 [40] of this administrative regulation.

(3) A self-insured employer shall adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. An employer shall hire only those persons [duty] licensed under Kentucky law to administer and adjust workers' compensation claims.

(a) A self-insured employer may contract with an individual, service organization, or third party administrator, to adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. The employees and agents of the contracted individual, service organization, or third party administrator, shall be [duty] licensed under Kentucky law to administer and adjust workers' compensation claims.

(b) If [Where] an employer has contracted with an individual, service organization, or third party administrator, to perform these functions: [;]

1. The actions of the individual, service organization, or third party administrator, shall be [are] subject to the standards set forth in KRS 342.267 and 803 KAR 25:240; and

2. The self-insured employer for whom the individual, service organization, or third party administrator, is acting shall be [is] subject to any penalties which may be assessed for failure to meet those standards.

Section 3. Application Process. (1) In order to be certified as an individual self-insured employer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000.

(2) [(4)] An initial application for individual self-insurance shall be submitted to the commissioner [executive director] on Form SI-02, Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, and shall include:

(a) 1. The Employer's name; [;]

2. The location of its principal office; [;]

3. The date of organization; [;]

4. The identification of its immediate parent organization, if any, and its ultimate parent;

5. [;] The Percentage of shareholder ownership of its immediate parent organization; and

6. An [;] identification of its fiscal year and federal identification number; [;]

(b) Disclosure and full identification of [The applicant shall disclose and fully identify] the relationship with all subsidiaries [;] [A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully];

(c) [(b)] A statement of the principal business activities engaged in Kentucky by the applicant, [including] a list of site locations, and the number of employees at each site; and

(d) [(c)] 1. A certified audit report of the applicant's financial status for three (3) years

immediately preceding the application, prepared and executed by a certified public accountant;
or

2.[,] If the applicant is a subsidiary desiring its parent to be a Guarantor, a certified audit report of the parent's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant.

(3) The department shall review the applicant's Form SI-02 and certified audit reports and notify the applicant within sixty (60) days after receipt of the Form SI-02 and certified audit reports whether its application has been rejected or whether the applicant may continue with the application process.

(4) Within fifteen (15) days of notification by the department that the applicant may proceed with the application process, the applicant shall provide:

(a) Loss Statements in the required electronic format of all claim payments for the five (5) years immediately preceding the application;

(b) An estimate of annual payroll;

(c) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(d) Any other states in which the employer is authorized to self-insure.

(5) The department shall:

(a) Review the applicant's Loss Statements, estimate of annual payroll, any OSHA violations, and any other states in which the employer is authorized to self-insure; and

(b) Notify the applicant within sixty (60) days after receipt of **this [the applicant's]** information that:

1. **The[whether its]** application has been rejected; or

2. **[whether]** The applicant may continue with the application process.

(6) Upon notification the applicant may continue **with the application process**, the applicant shall provide:

(a) The proposed specimen specific excess insurance policy, identifying the insurance company, retention level and limits of liability; and

(b) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim:

1. A statement to the commissioner attesting to the individual or organization's qualifications to administer and adjust a workers' compensation claim; and

2. A statement from the service organization and self-insured employer that any contract between the employer and service organization shall include one (1) of the following provisions:

a.[(a)] The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

b.[(b)] The service organization shall adjust each claim for a period of sixty (60) days following an order from the commissioner finding the self-insured employer in default unless a substitute service organization has been procured.

(7) The department shall:

(a) Review the applicant's proposed specimen specific excess insurance policy, statement attesting to the qualifications of the proposed service organization, and statement from the proposed service organization; [,] and

(b) Notify the applicant within thirty (30) days after receipt **that:**

1. ~~[whether]~~ The ~~[applicant's]~~ application has been rejected; or

2. ~~[whether]~~ The applicant may continue with the application process. If the applicant may continue with the application process, the department **shall** ~~[will]~~ notify the applicant of the amount of required security.

(8) Upon notification that the applicant may continue **the application process**, the applicant shall provide:

(a) A copy of the proposed letter of credit, bond, or security deposit instrument required by Section 5 of this administrative regulation;

(b) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure; **and**

(c) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent on Form SI-01, Self-Insurers' Guarantee Agreement. ~~./~~

(9) The commissioner shall consider all relevant factors, the prospect of increased losses due to the employer's cessation of operations, and the information supplied by the applicant during the application process when evaluating whether an applicant may be authorized to directly pay its workers' compensation liabilities as incurred. The information submitted during the application process shall accurately reflect:

(a) The financial strength of the applicant or guarantor;

(b) The experience of the proposed service organization;

(c) **1.a.** The applicant's ratio of current assets to current liabilities;

b. ~~./~~ The applicant's ratio of long-term debt to net worth; ~~./~~ and

c. Shareholder equity; ~~./~~ or

2. If ~~[When]~~ applicable:

a. ~~./~~ The guarantor's ratio of current assets to current liabilities;

b. ~~./~~ The guarantor's ratio of long-term debt to net worth; ~~./~~ and

c. Shareholder equity;

(d) The profit and loss history of the applicant or guarantor;

(e) The workers' compensation loss history of the applicant or guarantor;

(f) The number of employees and degree of hazard to which employees are exposed;

(g) Any functioning safety programs;

~~(h) ~~(f)~~~~ Whether the applicant uses an approved managed care plan for treatment of injured workers;

~~(i) ~~(k)~~~~ Any Occupation Safety and Health Administration ("OSHA") violations for **the preceding** five (5) years; and

~~(j) ~~(l)~~~~ Any other states in which the employer is authorized to self-insure.

(10) The commissioner shall render a decision regarding whether the applicant is authorized to self-insure within thirty (30) days of completion of the application process and submission of all required documents.

(a) The commissioner's decision shall state the date upon which the applicant is authorized to self-insure. ~~./~~

(b) The security to be deposited by the applicant with the commissioner shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure. ~~./~~

(c) A copy of the specific excess insurance policy obtained by the applicant shall be received

by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure.

(11) Variation from the requirements of this section may be sought by application to the commissioner;[;] variation may be granted by the commissioner for good cause shown.[(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the executive director at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the executive director prior to certification of self-insurance;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on Form SI-01, Self-Insurers' Guarantee Agreement;

(j) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim, satisfactory evidence submitted to the executive director as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance.

(4) Upon receipt of a complete application and all required documents, the executive director shall approve or reject status as a self-insurer within thirty (30) days.

(5) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the executive director finding the self-insured employer in default unless a substitute service organization has been procured.

(6) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director.

Section 4. Approval. (1) In determining if an applicant is eligible for self-insurance and in

establishing the amount of surety required, the executive director shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
 - (b) The excess insurance policy and retention level;
 - (c) The experience of the service organization;
 - (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
 - (e) Profit and loss history;
 - (f) Workers' compensation loss history of the applicant;
 - (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
 - (h) The number of employees and degree of hazard to which employees are exposed;
 - (i) Safety programs; and
 - (j) Use of an approved managed care plan for treatment of injured workers.
- (2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.
- (3) Approval shall be granted if the executive director:
- (a) Finds the applicant has complied with all sections of this administrative regulation; and
 - (b) Is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.]

Section 4[5]. Specific Excess Insurance [and Surety Requirements]. (1) Specific excess insurance shall be purchased with:

- (a) A coverage limit of at least \$10,000,000 per occurrence in excess of the retention level; and
- (b) A maximum retention level of \$1,000,000 per occurrence unless a different retention level is specifically approved by the commissioner; upon approval of a retention level in excess of \$1,000,000, additional security may be required [executive director].

(2)(a) To be eligible to write specific excess insurance for an individual self-insured employer [self-insurer] in Kentucky, a casualty insurance company, admitted to do business in the Commonwealth of Kentucky, on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000.

(b) The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

Section 5. Security. (1) [(3)] Except as provided in subsection (4) of this section, each employer authorized to self-insure [who qualifies for a self-insurance certificate] shall[, prior to the certificate being issued,] provide [primary] security in the form of a continuous surety bond on Form SI-03, Continuous Bond, or by irrevocable letter of credit on Form SI-04, Letter of Credit, in the [an] amount specified by the commissioner in accordance with subsection (2) of this section [executive director], but not less than \$500,000.

(2) In fixing the amount of security, the commissioner [executive director] shall consider all relevant factors which may include the following:

(a) Liability associated with the cessation of operations by the individual self-insured employer;
(b) Examination of injury claims reported to the Department of Workers' Claims;
(c) Examination of the loss history associated with injury claims reported to the Department of Workers' Claims;

(d) Examination of the financial condition of the employer;

(e) Examination of the service organization, if any;

(f) Examination of the financial condition and assets of the issuer of the security;

(g) Additional factors found pertinent by the commissioner; and

(h) The experience of the Department of Workers' Claims.

(3) The amount of security maintained with or under the commissioner's control shall be the amount determined by the commissioner to be necessary to secure the payment of all compensation liabilities incurred by a self-insured employer until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability. The failure to challenge the commissioner's determination as provided in section 13 of this administrative regulation shall constitute an admission by the employer that the determined amount is necessary to pay all incurred claims until fully paid, fully settled, or lapsed, so there is no possibility of further liability to the employer and a waiver of any future challenge by the employer of the determined security amount.

(4) Only upon approval by the commissioner, in lieu of a bond or letter of credit, may an employer deposit cash or securities in an amount specified by the commissioner and in a financial institution approved by the commissioner, but not less than \$5,000,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies. The deposited cash or securities shall be maintained directly with the commissioner or be in the commissioner's control, and a perfected security interest shall be granted to the commissioner in the deposited cash or securities. [including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of Form SI-05, Deposit Contract, in an amount specified by the executive director, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

(5) If an employer is no longer self-insured, the amount of surety shall be set by the executive director in accordance with the minimum amounts established in this subsection:

(a) A minimum surety of \$250,000 shall be maintained for a period of ten (10) years.

(b) A minimum surety of \$100,000 shall be maintained for the eleventh to twentieth year after the employer's departure from self-insured status.]

Section 6. Coverage of Subsidiary or Related Corporations. (1) A corporation having a wholly-owned subsidiary may submit one (1) joint application to the commissioner [executive director], if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate from [of] the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty

(30) days written notice to the commissioner ~~[executive director]~~.

(2) Any employer currently authorized to self-insure shall immediately notify the commissioner and fully identify any and all subsidiaries obtained during the employer's period of self-insurance and shall execute a Form SI-01, **Self Insurer's** Guaranty Agreement.

Section 7. Examination and Review of Filings. A certified public accountant or one or more other qualified individuals ~~[individual]~~ may be employed by the Department ~~[Office]~~ of Workers' Claims for the purpose of:

(1) Reviewing and analyzing the annual filings of individual self-insured employers [self-insurers] and applicants for self-insurance; [;] and

(2) ~~[For]~~ Making recommendations based on that review.

Section 8. Annual Filings. (1) Annually, the department shall by facsimile, electronic mail, or the United States Postal Service, deliver to every employer authorized by the commissioner to self-insure a letter stating the requirements to maintain [the employer's] certification to self-insure. The letter shall include a request for:

(a) A completed Employers Application for Recertification, Form SI-02R;

(b) A certified version of the most current audited financial statements;

(c) The amount and form of the security to be deposited with the commissioner;

(d) Information related to the employer's required specification excess insurance; and

(e) Information related to any service organization used by the employer. [; and]

(2) The letter ~~[(f)]~~ may include a request for the completion of a Self-Insurer's Guarantee Agreement, SI-01, if ~~[when]~~ applicable, or any other information ~~[the commissioner may deem]~~ necessary in order to determine the employer has the financial ability to directly pay the compensation provided in KRS Chapter 342.

(3) ~~[(2)]~~ Annually, the department shall by facsimile, electronic mail, or the United States Postal Service, deliver to every employer authorized by the commissioner to self-insure a letter instructing self-insured employers to file the following no later than the third Monday in February of each year:

(a) A loss statement;

(b) A statement furnishing the premium specified in KRS 342.0011(28) and its calculation;

(c) A statement of the total payroll for the prior calendar year by quarter;

(d) A certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(e) Any other reasonable information requested by the commissioner, including relevant claim data.

(4) ~~[(3)]~~ In order to maintain its certification to self-insure, an employer shall timely complete and provide all information and documentation requested in the annual letters. [;] Failure to do so may subject the employer's self-insurance certification to revocation, in accordance with KRS 342.345. ~~[(1) An individual self-insured employer shall file with the executive director on or before 120 days from the end of the self-insured's fiscal year:~~

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the executive director, including relevant claim

data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the executive director.

(3) An individual self-insured employer shall file loss data reports which shall:

(a) Include a surety loss report;

(b) Include a premium loss report;

(c) Include a certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(d) Be filed no later than the third Monday in February of each year.

(4) If the annual required filings are not timely made, the self-insurance certificate shall be subject to modification or revocation.]

Section 9. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) ~~If [When]~~ [If] there is a change in majority ownership of a self-insured employer or ~~its~~ [a] parent company, the individual self-insured employer [self-insurer] shall notify the commissioner [executive director] within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) ~~If [When]~~ [If] another [an] employer is added to, merged, [acquired,] or otherwise acquired by an employer currently authorized to self-insure [brought within the self-insurance coverage], the individual self-insured employer shall notify the commissioner [executive director] within thirty (30) days. The commissioner shall review[and] the adequacy of the employer's premium and security [surety bond] [shall be reviewed] and shall increase the premium and security[be increased] if the review determines an increase is necessary. [accordingly if necessary to remain adequate.]

(3) ~~If [When]~~ there is a change in majority ownership of a formerly self-insured employer or its parent company, the individual self-insured employer shall notify the commissioner within thirty (30) days of that change. [If the payroll of the individual self-insurer during a quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the executive director and the surety bond requirements may be reviewed and the bond shall be increased accordingly.]

Section 10. Voluntary Surrender of Certificate.

(1) An employer shall voluntarily surrender[surrenders] its Certificate to self-insure upon:

(a) [Upon] Written notice to the commissioner that the employer no longer desires to be self-insured, including the date and time when[at which] the employer intends to cease to be self-insured; [or]

(b) [Upon] The effective date of a policy of workers' compensation insurance securing the employers' liability for the compensation provided in this chapter; [or]

(c) [Upon] Notification to the commissioner the employer shall cease to pay directly the compensation provided in this chapter; [or]

(d) [Upon] The failure to deposit adequate security in the amount required by the

commissioner; or

(e) ~~[Upon]~~ Filing an action in bankruptcy, unless the employer notifies the commissioner of its intent to continue to pay the compensation provided in this chapter, and the commissioner agrees to authorize the continued direct payment.

(2) An employer that intends to secure its liability for compensation by obtaining a policy of workers' compensation insurance shall notify the commissioner of the:

(a) Name of the insurance carrier whose policy shall become effective; and

(b) The date and time ~~the[such]~~ coverage shall become effective.

(3) A formerly self-insured employer shall not be relieved of the compensation obligations incurred during its period of self-insurance until every claim has been fully paid, fully settled, or lapsed, so ~~that~~ there is no possibility of further liability.

(4) (a) ~~If[When]~~ the employer is no longer self-insured due to the voluntary surrender of its certificate, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured. ~~A[- no]~~ request for reduction shall ~~not~~ be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction ~~[thereafter]~~ shall ~~not~~ be considered ~~[no]~~ more frequently than every thirty (30) months following the conclusion of the prior request, if any.

(b) The formerly self-insured employer ~~shall bear [bears]~~ the burden to persuade the commissioner ~~that~~ the amount and form of the security, as last determined by the commissioner, is excessive and ~~that~~ a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(5) ~~If [When]~~ the employer is no longer self-insured due to the voluntary surrender of its certificate, the security required by the commissioner shall not be less than:

(a) \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured; and

(b) ~~[shall not be less than]~~ \$100,000 for the eleventh ~~year~~ through, and including, the twentieth ~~year [years]~~ following the date on which the employer ceased to be self-insured.

Section 11[40]. Revocation ~~[or Modification]~~ of Certification. (1) A self-insured employer's certification may be revoked by the commissioner after a hearing is held, **in accordance with subsection (2) of this section.**

(a) The hearing order shall set forth the grounds for revocation and set a hearing date no sooner than ten (10) business days from the date of the order.

(b) The hearing shall be conducted pursuant to Section 13 of this administrative regulation. Upon a prima facie showing by the Department of Workers' Claims of one (1) or more of the grounds set forth in subsection (2)[2] of this section, ~~[there shall exist]~~ a rebuttable presumption **shall exist** that the employer's authorization should be revoked.[

(1) If the executive director receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a hearing order shall be issued to

~~the individual self-insurer detailing the purported deficiency and setting a time and place for a hearing.]~~

(2) The commissioner ~~[executive director]~~ may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insured employer ~~[self-insurer]~~ is operating in:

1. Contravention of its submitted application; or
2. In material violation of this administrative regulation;

(b) The individual self-insured employer ~~[self-insurer]~~ or its parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of workers' compensation benefits; ~~[or]~~

(c) The self-insured employer ~~[insurer]~~ has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity; ~~[:]~~

(d) The self-insured employer failed to pay an assessment by the appropriate guaranty fund;

or

(e) The self-insured employer failed to pay compensation provided in **KRS Chapter 342** ~~[this chapter]~~.

(3) **If**[When] ~~[If]~~ the commissioner ~~[executive director]~~ revokes an individual self-insured employer's ~~[self-insurer's]~~ certification, the commissioner ~~[executive director]~~ shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund. ~~[~~

~~(4) Self-insurance certification may be revoked by the executive director after a hearing is held.~~

~~(a) The hearing order shall set the grounds of revocation and set a hearing date in not less than ten (10) days.~~

~~(b) The hearing shall be conducted pursuant to Section 11 of this administrative regulation.]~~

~~(4) [(c)] During the pendency of a hearing or appeal, the commissioner shall call the entirety of the security deposited [executive director may utilize the surety deposit provided] by the individual self-insured employer **if**:~~

~~(a) **[When]** The commissioner has received information indicating the deposited security will not be maintained or timely replaced with other acceptable security; ~~[:]~~ or~~

~~(b) **[When]** Compensation is due but has not been paid by the self-insured employer. [self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.]~~

~~(5)(a) **If**[When] the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured. **A** ~~[; no]~~ request for reduction shall **not** be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction ~~[thereafter]~~ shall **not** be considered ~~[no]~~ more frequently than every thirty (30) months following the conclusion of the prior request.~~

~~(b) The formerly self-insured employer **shall bear** ~~[bears]~~ the burden to persuade the commissioner **that** the amount and form of the security, as last determined by the commissioner, is excessive and **that** a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds~~

relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(6) ~~If [When]~~ the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the security required by the commissioner shall not be less than: (a) \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured; and

(b) ~~[shall not be less than]~~ \$100,000 for the eleventh ~~year~~ through, and including, the twentieth ~~year [years]~~ following the date ~~[on which]~~ the employer ceased to be self-insured.

Section 12. Default. (1) ~~If [When]~~ a self-insured employer or a formerly self-insured employer fails to meet an obligation as a self-insured employer, including the obligation to deposit acceptable security in the amount required by the commissioner, ~~fails [the failure]~~ to timely pay a compensation obligation to an employee injured during the employer's period of self-insurance, or ~~fails [the failure]~~ to pay an assessment by a guaranty fund, the commissioner shall:

(a) ~~[(1)]~~ Call the entirety of the deposited security;

(b) ~~[(2)]~~ Retain the security proceeds in the commissioner's possession or control until each claim for workers' compensation benefits has been fully paid, fully settled, or lapsed, so there is no possibility of further liability; and

(c) ~~[(3)]~~ Use the security proceeds to pay the compensation provided in KRS Chapter 342 in claims incurred during the employer's period of self-insurance as follows:

1. ~~[(a)]~~ ~~If [Where]~~ the employer was a member of a guaranty fund, forward to the appropriate guaranty fund the security proceeds and order the guaranty fund to commence payment of the member's incurred compensation liabilities using the security proceeds; or

2. ~~[(b)]~~ ~~If [Where]~~ the employer was not a member of a guaranty fund, ~~[the commissioner shall]~~ use the security proceeds to pay the employer's incurred compensation liabilities.

(2) ~~[(4)]~~ When the commissioner determines all claims of the employer have been fully paid, fully settled, or lapsed, so there is no possibility of further liability, and the security proceeds are not exhausted, the commissioner shall pay any remaining security proceeds into the Franklin Circuit Court for determination as to whether there is an entity legally entitled to the remaining security proceeds. If no claim is made alleging entitlement to the remaining security proceeds within sixty (60) days of the payment into the court, or the court ultimately determines there is no rightful entitlement claim, the commissioner may petition the court to deposit the remaining security proceeds into the fund established pursuant to KRS 342.920.

(5) The obligations of a self-insured employer or formerly self-insured employer may be guaranteed by a parent entity by way of a fully executed form SI-01, **Self Insurer's Guarantee Agreement**. ~~[:] This [The]~~ form ~~shall [SI-01, Guarantee Agreement, does]~~ not preclude the commissioner from calling the security ~~or [nor does it]~~ preclude the commissioner from pursuing all available means to separately recover from the defaulting employer or its guarantor.

Section 13 [41]. Aggrieved Parties. (1) A person aggrieved by an action of the ~~commissioner~~ [executive director] may request a hearing by filing a written request with the ~~commissioner~~ within thirty (30) ~~[executive director setting forth the basis within sixty (60)]~~ days of the action of the ~~commissioner~~. ~~[:] The~~ request shall set forth the specific basis for the challenge to the ~~commissioner's action~~. ~~[executive director.]~~ Upon receipt of the written [a] request, the

commissioner ~~[executive director]~~ shall issue a notice of hearing within ten (10) business days of receipt of the written request. The notice of hearing shall set the date, time, and place of the hearing to be held no sooner than ten (10) **business** days after the date of the notice of hearing and no later than ninety (90) business days after the date of the notice of hearing and may provide the date, time, and place for an informal conference between the aggrieved party and the commissioner. The date and time of the hearing may be rescheduled as required upon motion by either party or upon agreement of the parties. ~~[to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.]~~

(2) The aggrieved person ***shall have[has]*** the burden to persuade the commissioner ***that the action taken by the commissioner should be amended or withdrawn.*** The aggrieved person may present evidence to support ***his or her[its]*** position and to contest evidence presented by other parties.

(3) ~~[(2)]~~ No later than thirty (30) days after the termination of the hearing, the commissioner ~~[executive director]~~ shall issue a written ruling ~~[order]~~ addressing all matters involved at the hearing and if applicable, any further basis for **the [his]** action, creating an adequate record for review. The ruling shall contain concise findings of fact and conclusions of law. The commissioner shall serve a copy of the ruling [order] upon each party. [The order shall contain a concise findings of fact and conclusions of law. The executive director's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.]

(4) ~~[(3)]~~ The ruling of the commissioner ~~[executive director]~~ may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

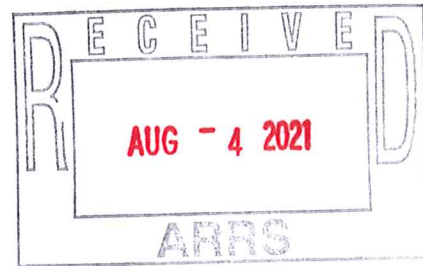
Section 14.~~[12.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Self-Insurers' Guarantee Agreement, Form SI-01", (November 2005 edition);
- (b) "Employer's ~~[Employers]~~ Application for Permission to Carry Its ~~[His]~~ Own Risk Without Insurance, Form SI-02", (January 2021 ~~[2004]~~ edition);
- (c) "Employer's Application for Recertification", Form SI-02R (January 2021 edition);
- (d)~~[(e)]~~ "Continuous Bond, Form SI-03", (January 2004 edition); and
- (e)~~[(d)]~~ "Letter of Credit, Form SI-04", (January 2004 edition). ~~[; and~~
- (e) "Deposit Contract, Form SI-05", (January 2006 edition).]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department ~~[Office]~~ of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***and may also be found at***
<https://labor.ky.gov/comp/Forms/Pages/default.aspx>



KENTUCKY LABOR CABINET
Department of Workers' Claims



Andy Beshear
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August 3, 2021

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:091, the Department of Workers' Claims proposes the attached agency amendment to 803 KAR 25:091.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

***Note to Compiler: Please engross this agency amendment
after engrossing the suggested substitute.***

Agency Amendment

Final Version: 8/3/2021 3:35 PM

**LABOR CABINET
Department of Workers' Claims**

803 KAR 25:091. Workers' compensation hospital fee schedule.

Page 2

Section 1(5) Through (7)

Lines 11 Through 18

After "first fiscal year.", delete subsections (6) and (7) in their entirety.

Page 5

Section 3(2)(b) And (c)

Lines 2 through 6

After "this subsection.", delete paragraph (c) in its entirety.

Page 7

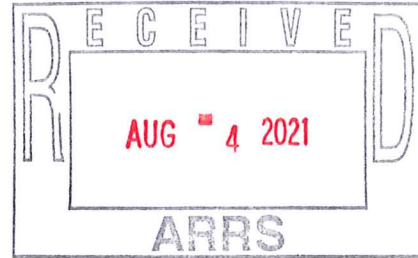
Section 5(3)(b) And (c)

Lines 11 through 15

After "this subsection.", delete paragraph (c) in its entirety.



KENTUCKY LABOR CABINET
Department of Workers' Claims



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Frankfort, KY 40601

Note to Compiler: Please engross the accompanying agency amendment after engrossing this suggested substitute.

SUGGESTED SUBSTITUTE to Amended After Comments Version

Final Version 7/29/2021 9:58 AM

**LABOR CABINET
Department of Workers' Claims**

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

- (a) Hospital based or freestanding;
- (b) Operated under the supervision of an organized medical staff; and
- (c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility; surgical center; [ø] psychiatric, [rehabilitative,] or other treatment or specialty center that is licensed pursuant to KRS 216B.105 or, if located in another state, is licensed pursuant to the laws of ~~the~~[such] other state.[;] and shall include a facility that is approved as a rehabilitation agency under the Medicare or Medicaid programs.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089, on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that has not completed its first fiscal year.

(6) "Surgical hardware" means any object that provides internal fixation but is not intended to replace or alter the part of an internal body organ and is not intended to replace all or part of the function of a permanently inoperative or malfunctioning internal body organ. Surgical hardware can be removed after a healing period."

(7) "Surgical implant" means any single-use item/object/device which replaces all or part of an internal body organ, or replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital and ambulatory surgery center fees for each hospital and ambulatory surgery center for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement.
(1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 118 [95,] plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 10 [42] and 28 [35] of Worksheet A-8, by the total patient revenues as reflected on line 28 of Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as **established[set forth]** in paragraph (d) of this subsection.

(d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's website [~~Web site~~] or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances, the commissioner shall waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)1. Except as **established[provided]** in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as **established[provided]** in paragraph (b) and (c) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the hospital's ~~[total]~~ charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, ~~[or]~~ charges for services or supplies not confirmed by the hospital records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges[listed on the invoice]. [The hospital shall provide a copy of the invoice and shall certify the actual cost of the item or items.]

Section 4. Appeal of Assigned Ratio. (1) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and the hospital notified of its proposed cost-to-charge ratio.

(2) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

(1)(a) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center;

b. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located, if an acute care hospital is not located in the county of the ambulatory surgery center; or

c. The adjusted cost-to-charge ratio of the base hospital if:

(i) The center is hospital based;

(ii) It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106; and

(iii) It is a Medicare provider based entity;

d. Except as provided in subparagraph c, an ambulatory surgical center's adjusted cost-to-charge ratio shall not exceed fifty (50) percent; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

(3)(a) Reimbursement to an ambulatory surgical center for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the ambulatory surgical center's charges by its assigned cost-to-charge ratio after removing any duplicative charges, billing errors, charges for services or supplies not confirmed by ambulatory surgical center records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges [listed on the invoice]. [The ambulatory service center shall provide a copy of the invoice and shall certify the actual cost of the item or items.]

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to 120 percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)2.b. of this administrative regulation.

(5) An out-of-state ambulatory surgical center's assigned cost-to-charge ratio shall not exceed fifty (50) percent.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

(3) ~~If~~**[When]** more than one (1) procedure is performed during a surgical session, an [An] Ambulatory Surgical Center may charge a facility fee for each procedure performed. ~~if~~**however,** For the purpose of reimbursement, the total charge for all facility fees shall not exceed 150 percent~~[one hundred fifty percent 150%]~~ of the facility fee charged for the primary procedure.~~[only one facility fee for one surgical session even though the surgical session may involve multiple procedures and CPT codes; more than one facility charge shall constitute a duplicate charge.]~~ A**[The]** physician may submit charges on form HCFA 1500 using appropriate CPT codes.

Section 9. Miscellaneous. (1) A new hospital shall file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services **established**~~[defined]~~ by 803 KAR 25:096 if billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he **or she** shall receive payment or salary directly from the employing hospital.

~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form UB-04, 10-23-06; and~~

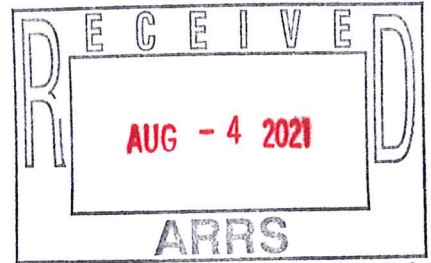
~~(b) HCFA 1500, 12-90.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.



KENTUCKY LABOR CABINET
Department of Workers' Claims



Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Robert Walker
Interim Commissioner
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-5550

Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

August 3, 2021

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

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:220, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:220.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

REVISED:
8/4/2021 12:49 PM
Suggested Amendment

Labor Cabinet
Department of Workers' Claims

803 KAR 25:220. Guaranty funds.

Page 2

Section 1(2)

Line 1

After "operation", delete the following:
by March 1, 1997

Page 3

Section 3

Line 6

After "Section", insert "2".
Delete "3".

Page 4

Section 3(1)(c)1. (Now Section 2(1)(c)1. after renumbering)

Line 1

After "1.", insert "If".
Delete "When".

Page 4

Section 3(1)(c)2. (Now Section 2(1)(c)2. after renumbering)

Line 4

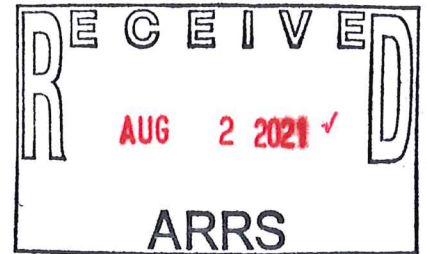
After "2.", insert "If".
Delete "When".

Page 4

Section 3(1)(f) (Now Section 2(1)(f) after renumbering)

Line 13

After "settle", insert comma.



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

PUBLIC PROTECTION CABINET
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Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

August 1, 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 12:095**, Unfair claims settlement practices for property and casualty insurance.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 12:095, the Department of Insurance proposes the attached amendment to 806 KAR 12:095.

Sincerely,

Abigail Gall

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort, KY 40601

Final 7-22-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

RELATES TO: KRS ~~304.2-100, 304.2-165, 304.2-340, 304.3-200(1)(e)~~, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 ~~to~~ 304.20-180, 342.325
STATUTORY AUTHORITY: KRS 304.2-110~~[, 304.3-200(1)(e)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner ~~[Executive Director]~~ of Insurance to make reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.

Section 1. Definitions. (1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third-party claimant, or both and includes:

(a) The ~~[the]~~ claimant's designated legal representative, including ~~[such as]~~ an administrator, executor, guardian, or similar person, and

(b) A ~~[includes a]~~ member of the insured's immediate family designated by the claimant;

(3) "Claim file" means any retrievable electronic file, paper file, or both;

(4) "Commissioner" ~~["Executive Director"]~~ is defined by KRS 304.1-050(1);

(5) "Days" means any day, Monday through Friday, except holidays;

(6) "First-party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(7) "Insurer" is defined by KRS 304.1-040;

(8) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Local market area" means a reasonable distance surrounding the area where a motor vehicle is principally garaged~~[,]~~ or the usual location of the article covered by the policy. This area does not mean~~[shall not be]~~ limited to the geographic boundaries of the Commonwealth;

(10) "Notification of claim" means any notification, whether in writing or by other means acceptable under the terms of the policy, certificate, or contract, to an insurer or its agent, by a claimant, which reasonably appraises the insurer of the facts pertinent to a claim;

(11) "Policy", ~~[or]~~ "certificate", or "contract" means any contract of insurance or indemnity, except for:

(a) Fidelity, suretyship, or boiler and machinery insurance; or

(b) A contract of workers' compensation insurance unless it satisfies the requirements of Section 2 of this administrative regulation.

(12) "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels; and

(13) "Third-party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer.

Section 2. Scope and Purpose of this Administrative Regulation.

(1) This administrative regulation establishes:

- (a) Minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts;
- (b) Procedures and practices which constitute unfair claims settlement practices; and
- (c) Standards for the commissioner in investigations, examinations, and administrative adjudication and appeals.

(2) This administrative regulation shall not cover claims involving:

(a) Fidelity, suretyship, or boiler and machinery insurance; [-]

~~[(b) Suretyship; - or]~~

~~[(c) Boiler and machinery insurance; -] or~~

~~[(b)][(d)] [- This administrative regulation shall not cover claims involving] Workers' compensation unless:~~

~~1. The claim involves a question that does not [if those questions] arise under KRS Chapter 342; or~~

~~2. The claim is [since those questions shall be resolved by workers' compensation administrative law judges or arbitrators, pursuant to KRS 342.325.]~~

~~[(3) This administrative regulation shall apply to claims] for unearned premium refunds, [under workers' compensation policies] [since workers' compensation administrative law judges or arbitrators do not have jurisdiction over those claims. This administrative regulation establishes procedures and practices which constitute unfair claims settlement practices.]~~

~~[(3)][(4)] [(2)] Statement of enforcement policy. If complaints are filed with the commissioner [executive director], the commissioner [executive director] shall note violations of this administrative regulation after the insurer or agent has been given an opportunity to pay the claim and any interest [thereon].~~

~~[(4)][(5)] [(3) This administrative regulation establishes standards for the executive director in investigations, examinations, and administrative adjudication and appeals therefrom.] A violation of this administrative regulation shall be found only by the commissioner [executive director]. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.~~

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) The insurer shall maintain documentation in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) The insurer shall note each relevant document within the claim file as to date received, date processed, or date mailed.

(4) If an insurer does not maintain hard copy files, claim files shall be accessible to examiners electronically ~~[from a computer terminal available to examiners or micrographics]~~ and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers and agents shall not misrepresent or conceal from first-party claimants any pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract if the benefits, coverages, or other provisions are pertinent to a claim, pursuant to KRS 304.12-230(1).

(2) Insurers shall not deny a claim on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(3) Insurers shall not deny a claim based upon the failure of a first-party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract and the first-party claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the first-party claimant's duty to cooperate with the insurer.

(4) Insurers shall not indicate to a first-party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless:

(a) The policy limit has been paid; or

(b) There has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(5) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from total liability.

Section 5. Failure to Acknowledge Pertinent Communications.

(1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) days, acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) If an insurer receives an inquiry from the Department of Insurance respecting a claim, the insurer shall, within fifteen (15) days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) The insurer shall make an appropriate reply within fifteen (15) days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first-party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers.

(1)(a) ~~Except as provided in this subsection~~~~[Pursuant to KRS 304.12-230(5)], an insurer shall, [pursuant to KRS 304.12-235(1), affirm or deny any liability on claims within a reasonable time and shall]~~ offer any payment due within thirty (30) calendar days of receipt of ~~[due]~~ proof of loss. If claims involve multiple coverages, payments which are not in dispute shall be tendered within thirty (30) calendar days of receipt of ~~[due]~~ proof of loss.

(b) If there is a reasonable basis, which shall be supported by specific information available for review by the commissioner, ~~[executive director]~~ that a claimant has fraudulently caused or contributed to the loss, the insurer shall:

~~1. Be relieved from the requirements of this subsection; and~~

~~2.]~~ advise the first-party claimant of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

~~(c)[(2)(a)]~~ If the insurer needs more time to determine whether a first-party claim ~~shall~~~~[should]~~ be accepted or denied, it shall ~~[se]~~ notify the first-party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed.

~~(d)[(b)]~~ If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first-party claimant a letter stating the reasons additional time is needed for investigation.

~~(2)~~~~(3)~~ Insurers shall not fail to settle first-party claims on the basis that responsibility for payment ~~shall~~~~should~~ be assumed by others except as may otherwise be provided by policy provisions.

~~(3)~~~~(4)~~ Insurers shall not continue negotiations for settlement of a claim directly with a first-party claimant who is not legally represented if the first-party claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the first-party claimant written notice of the limitation. The notice shall be given to the first-party claimant at least thirty (30) calendar days before the date on which the time limit expires.

~~(4)~~~~(5)~~ Insurers shall not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

~~(5)~~~~(6)~~ Subject to subsection (1)(a) of this section relating to first-party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. If claims involve multiple coverages, and if the payee is known, payments which are not in dispute shall be tendered within thirty (30) calendar days.

~~(6)~~~~(7)~~ Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, contract, or applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) If the policy, certificate, or contract provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle, which is an available[a] specific and comparable motor vehicle, [available] to the insured, with all applicable taxes, license fees ~~[[if these fees cannot be refunded by the Transportation Cabinet]]~~, and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer, and any rejection thereof, shall be documented in the claim file;

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle, including all applicable taxes, license fees ~~[[if these fees cannot be refunded by the Transportation Cabinet]]~~, and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The actual cost shall be determined by any one (1) of the following:

1. The cost of a comparable motor vehicle in the local market area if a comparable motor vehicle is available in the local market area;

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business located within the local market area; or

3. Any source for determining statistically valid fair market values, including nationally-recognized automobile evaluation publications that meet all of the following criteria:

a. The source shall give consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

b. The source's database~~[data base]~~ shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles;

c. The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged or a necessary expansion of parameters such as travel time and area to assure statistical validity;

4. Actual cash value as determined by the use of the source's database shall be adjusted to reflect any value of enhancements to the motor vehicle not accounted for by the database;

5. If the vehicle's condition does not meet the criteria for value used in the source's database, the actual cash value amount may be adjusted; and

6. Absent an appraisal provision in the insurance contract, if the insured demonstrates, by presenting two (2) independent appraisals~~[,]~~ based on measurable and discernable factors, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database, the local market value shall be considered when determining the actual cash value;

(c) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the settlement check~~[claim draft]~~ that the insured cannot purchase a comparable motor vehicle for fair market value, as determined under~~[defined in]~~ paragraph (b)3. of this subsection, the insurer shall reopen its claim file and comply with the following procedures:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the fair market value determined by the insurer at the time of settlement. This vehicle shall be available through licensed motor vehicle dealers;

2. The insurer shall either pay the insured the difference between the fair market value before applicable deductions and the cost of the comparable motor vehicle of like kind and quality which the insured has located~~[,]~~ or negotiate and effect the purchase of this motor vehicle for the insured; or

3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or law; or

(d) If a first-party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) or~~[and]~~ (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernable, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first-party claimant.

(2) The measure of damages in a third-party motor vehicle loss shall be the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value. The measure of damages in a first-party vehicle loss shall be governed by the policy of insurance issued to the first party and shall not include any measure of damages not specifically provided for in the policy.

(3) If liability and damages are reasonably clear, insurers shall not recommend that third-party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims under the insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle.

(5) If requested by the claimant, insurers shall include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. Deduction for expenses shall not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

Section 8. Repairs to Motor Vehicles. (1)(a) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based.

(b) The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike[worker-like] manner.

(c) If the insured subsequently claims, based upon a written estimate which the insurer obtains, that necessary repairs will exceed the written estimate and a higher estimate obtained by the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured[,], or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a workmanlike[worker-like] manner. The insurer shall maintain documentation of all of these communications.

(2) If the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(3)(a) Betterment deductions shall be allowed only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(4) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the part to be replaced in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

(5) Insurers shall not require a claimant to travel an unreasonable distance to:

(a) ~~[To]~~ Obtain a repair estimate; or

(b) ~~[To]~~ Have the motor vehicle repaired at a specific repair shop.

Section 9. Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire-and-Extended-Coverage-Type Policies with Replacement Cost Coverage.

(1) If the policy, contract, or certificate authorizes the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:

(a) If a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) If a loss requires replacement of items and the replaced items do not reasonably match in quality, color, and ~~[or]~~ size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value.

(a) If the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. If provided for in the policy, depreciation may include the costs of goods, materials, labor, equipment, overhead and profit, taxes, fees, and services necessary to replace, repair, or rebuild the damaged property. If requested by the insured, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) If the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection shall not be required. If requested by the insured, the insurer shall provide a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

The agency needs to file one (1) copy of a corrected RIA at the time that it files this staff suggested substitute that:

- Corrects an error stating that the amendments change existing regulations relating to vehicle size
- In addition to indicating that the administrative regulation affects property and casualty insurers, providing the number of the insurers affected

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 12:095
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 unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.
- (b) The necessity of this administrative regulation: The necessity of this regulation is to establish the unfair claims settlement practice regarding property and casualty insurance claims settlement practices.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commission shall promulgate necessary administrative regulations or as an aid to the effectuation of any provision of the Kentucky Insurance Code.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The responsibility of the Department is to protect consumers. This administrative regulation establishes what claims practices are unfair regarding property and casualty insurance settlement claims.

(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 industry has recommended that labor and goods cost may be included in depreciation cost, this amendments is based on the Advisory Opinion (20-01) adopted by the Department relating to the Hicks v. State Farm case. In addition, the amendments to this administrative regulation are to conform to the statutory draft requirements set forth in Chapter 13A.
- (b) The necessity of the amendment to this administrative regulation: The primary amendments are necessary to ensure practices are fair and that the regulation is updated to meet recent recommendations from industry and DOI experience with these practices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner shall promulgate regulations and thus, amend said regulations if necessary to aid in the effectuation of the Insurance Code. KRS 304.3-200(1)(e) states that the Commissioner may refuse, suspend or revoke and insurers certificate of authority, this administrative regulation and the amendments set the parameters that the commissioner may more specifically act upon property & casualty insurance claims settlements practices.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.2-110 authorizes that the Commissioner shall promulgate regulations and thus, amend said regulations if necessary to aid in the effectuation of the Insurance Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 933 Property and Casualty insurers writing business and handling settlement claims.

(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: The entities must include size in the replacement match processes and depreciation may include the costs of goods, materials, labor, and services necessary to replace, repair, or rebuild the damaged property

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Entities must retain files electronically if not hard copy, include size in consideration for replacement matches, and may now include cost of goods, materials, labor/services to replace property.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost in complying with this administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities: Entities will be meeting the requirements to ensure they are following fair claims settlement practices and avoid consequences determined by the commissioner.

(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.

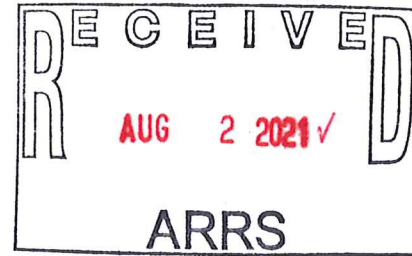
(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(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:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No this administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation applies to all property and casualty insurers writing business and processing settlement claims.



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

August 1, 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 15:090**. Notice of rights as and owner of a life insurance policy.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 806 KAR 15:090, the Department of Insurance proposes the attached amendment to 806 KAR 15:090.

Sincerely,

Abigail Gall

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort,

Final, 7-22-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

RELATES TO: KRS 304.14-120, 304.15-075

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-075(1), (3), (4)

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 provisions of the Kentucky Insurance Code. KRS 304.15-075(1) re-~~quires~~authorizes ~~[requires]~~ the commissioner to develop a notice to inform the owner of a life insurance policy ~~[policy of life insurance]~~ issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075(4) authorizes the commissioner to promulgate administrative regulations ~~that [to]~~ establish that ~~[the]~~ notice shall only be required~~[made]~~ ~~[be made only]~~ with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that shall be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

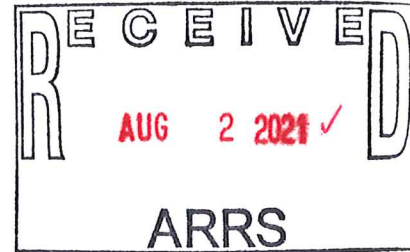
Section 1. When required by KRS 304.15-075(3), an insurer shall provide the owner of an individual life insurance policy with a net death benefit of \$100,000 or greater with either of the following:

- (1) Important Information About Your Life Insurance Policy, Notice 126 ~~[, 2/2021]~~ [, 2/2021] ~~[, 8/2010]~~; or
- (2) A notice developed by the insurer ~~that [shall]~~ [which]:
 - (a) Meets~~[Meet]~~ ~~[Meets]~~ the requirements of KRS 304.15-075(2); and
 - (b) Has been~~[Be]~~ ~~[Has been]~~ approved by the commissioner.

Section 2. Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 2/2021 ~~[8/2010]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web~~[web]~~ site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>~~[http://insurance.ky.gov]~~.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (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

August 2, 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 17:580**. Definition of Health Care Provider.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 806 KAR 17:580, the Department of Insurance proposes the attached amendment to 806 KAR 17:580.

Sincerely,

Abigail Gall

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort,

Final, 7-22-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care

806 KAR 17:580. Definition of Health Care Provider

RELATES TO: KRS 304.17A-005(23)

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-005(23)(j)

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 304.17A-005(23)(j) authorizes the Department to promulgate an administrative regulation to determine other health care practitioners to be added to the definition of "health care provider" or "provider" for use in KRS Chapter 304, Subtitle 17A. **This administrative regulation implements KRS 304.17A-005(23)(j).**

Section 1. In addition to the health care practitioners listed in KRS 304.17A-005(23)(a) – ~~(j)~~, the definition of "health care provider" or "provider" in KRS 304.17A-005(23) shall include a pharmacy licensed under the provisions of KRS Chapter 315.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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Kerry B. Harvey
Secretary

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Commissioner

August 2, 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 52:030**. Workers' compensation self-insured group rate, rule and form filings.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 52:030, the Department of Insurance proposes the attached amendment to 806 KAR 52:030.

Sincerely,

Abigail Gall

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort,

Subcommittee Substitute

**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS)**

806 KAR 52:030. Workers' compensation self-insured group rate, rule and form filings.

RELATES TO: KRS 304.4-010, 304.13-053, 304.14-120, 304.50-010, 304.50-115, 304.50-055, 304.50-065

STATUTORY AUTHORITY: KRS 304.4-010, 304.50-010(2), 304.50-115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2), **requires** ~~**authorizes**~~ the Commissioner of the Department ~~[Executive Director of the Office]~~ of Insurance to promulgate administrative regulations as necessary to govern admission certification and regulation of workers' compensation self-insured groups. KRS 304.50-115, requires workers' compensation self-insured groups to file rates, supplementary rating information, and coverage form filings with the commissioner ~~[executive director]~~. This administrative regulation establishes workers' compensation self-insured group rate, rule and form filing procedures.

Section 1. Definitions. (1) "Coverage form" is defined by ~~[in]~~ KRS 304.50-015(10).

(2) "Commissioner" is defined by KRS 304.1-050(1). ~~["Executive director" means the Executive Director of the Office of Insurance.]~~

(3) "Department" is defined by KRS 304.1-050(2). ~~["Office" means the Office of Insurance.]~~

(4) "Self-insured group" is defined by ~~[in]~~ KRS 304.50-015(29).

Section 2. General Filing Requirements. (1) Every self-insured group shall file with the commissioner ~~[executive director]~~ its coverage forms, rates, loss costs, rating plans, rating rules, underwriting rules or guidelines, statistical plans, supporting information, supplementary information, and premium payment plans accompanied by a completed and signed Form WC SIG: F-1A P&C, "Face Sheet and Verification Form for Workers Compensation Self-Insured Groups".

(2) All filings shall include two (2) full document sets on 8 1/2 in. x 11 in. white paper with three (3) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates, loss costs, and rules shall be filed separately from coverage forms.

(4) **Pursuant to** KRS 304.4-010(2), **requires** all fees and charges payable under the insurance code **shall [to]** be collected in advance. The period of time that the commissioner ~~[in which the executive director]~~ may affirmatively approve or disapprove the filing shall not begin until a complete filing and the appropriate fee, as set forth in 806 KAR 4:010, Section 1 ~~(22)~~ **(21)**, is received.

Section 3. Rate and Rule Filings. (1) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules" shall be filed with all rate or rule filings.

(2)(a) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier" shall be filed with all rate filings referencing loss costs formulated by any advisory organization.

(b) Form WC SIG: LC-2 P & C, "Expense Constant Supplement" shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used.

(3) Form WC SIG: EMA P & C, "E-Mod Affidavit" shall be filed with all rate or rule filings containing experience modification factors.

(4)(a) All rate or rule filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(b) Any application of the schedule rating plan shall be based on evidence contained in the self-insured group's file at the time it is applied. The schedule rating plan debit or credit factor(s) applied shall be made available to the member upon request.

(c) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the self-insured group, the debit may be removed when evidence of the correction is received by the group.

Section 4. Coverage Form Filings. (1) Form WC SIG: S-2 P & C, "Filing Synopsis Form" and Form WC SIG: F-2 P & C, "Forms Index" shall be filed with all coverage form filings.

(2) A coverage form shall not be used until it has been approved by the commissioner [~~executive director~~]. If the rates pertaining to a coverage form are required by law to be filed with or approved by the commissioner [~~executive director~~], the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements a coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on a coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings. (1) A self-insured group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent, or forms provider may choose to adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent by doing so in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a self-insured group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a self-insured group chooses to adopt all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commissioner [~~executive~~

~~director]~~ that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guide-lines, and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a self-insured group previously notified the commissioner ~~[executive director]~~ of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses not to adopt certain coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner ~~[executive director]~~ and shall pay the appropriate filing fee, as set forth in 806 KAR 4:010, Section 1 ~~(21)~~ **(22)**.

1. If a self-insured group previously notified the commissioner ~~[executive director]~~ of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner ~~[executive director]~~ requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner ~~[executive director]~~ ~~[7]~~ requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider.

5. If a self-insured group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider, the insurer shall submit a filing to the commissioner ~~[executive director]~~ indicating it is nonadopting.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form WC SIG: F-1A P & C, "Face Sheet and Verification Form for Workers Compensation Self Insurance Groups," March 2005, Department ~~[Office]~~ of Insurance;

(b) Form WC SIG: F-2 P & C, "Forms Index," March 2005, Department ~~[Office]~~ of Insurance;

(c) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules," March 2005, Department ~~[Office]~~ of Insurance;

(d) Form WC SIG: S-2 P & C, "Filing Synopsis Form," March 2005, Department ~~[Office]~~ of Insurance;

(e) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier," March 2005, Department ~~[Office]~~ of Insurance;

(f) Form WC SIG: LC-2 P & C, "Expense Constant Supplement," March 2005, Department ~~[Office]~~ of Insurance; and

(g) Form WC SIG: EMA P & C, "E-mod Affidavit," March 2005, Department ~~[Office]~~ of Insurance.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Insurance ~~[Office of Insurance]~~, The 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://www.insurance.ky.gov>
~~[Office of Insurance Internet Web site <http://doi.ppr.ky.gov/kentucky>].~~

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.