

Andy Beshear
Governor

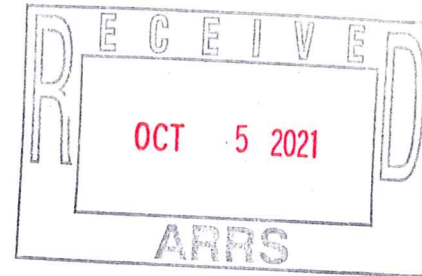


Lt. Gov. Jacqueline Coleman
Secretary
Education and Workforce
Development Cabinet

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



October 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: **16 KAR 2:180**. One (1) Year Conditional Certificate

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 2:180, the Education Professional Standards Board proposes the attached amendment to 16 KAR 2:180.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cassie L. Trueblood".

Cassie L. Trueblood
Policy Advisor and Special Counsel

Staff-suggested Amendment

9/29/2021

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

16 KAR 2:180. One (1) year conditional certificate.

Page 2

Section 2(2)(b)2.

Line 7

After "for the one", insert "(1)".

Delete "-".

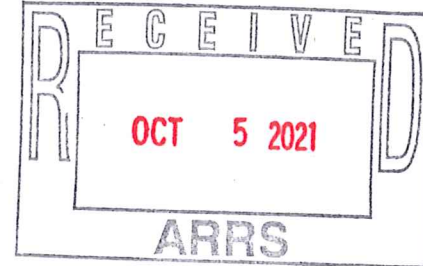
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Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 16 KAR 2:220, Emeritus Certificate

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 2:220, the Education Professional Standards Board proposes the attached amendment to 16 KAR 2:220.

Sincerely,

Cassie L. Trueblood
Policy Advisor and Special Counsel

Staff-suggested Amendment

9/15/2021

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

16 KAR 2:220. Emeritus Certificate.

Page 2

Section 3(1)

Line 11

After "eligible for one", insert "(1)".

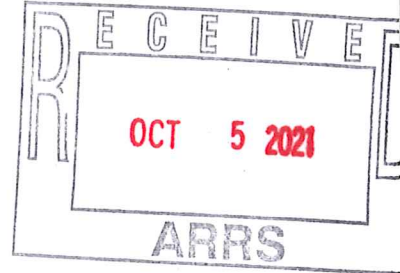
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c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 16 KAR 3:070. Endorsement for Individual Intellectual Assessment

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 3:070, the Education Professional Standards Board proposes the attached amendment to 16 KAR 3:070.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cassie L. Trueblood".

Cassie L. Trueblood
Policy Advisor and Special Counsel

Staff-suggested Amendment

9/29/2021

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

16 KAR 3:070. Endorsement for individual intellectual assessment.

Page 1

Section 1(1)

Line 18

After "Section 3(1)", insert "1".

Page 2

Section 2(1)(a) and (b)

Lines 13 and 15

After "(a)", capitalize "two".

After "(b)", capitalize "three".

Page 3

Section 3

Line 16

After "Section", insert "3".

Delete "4".

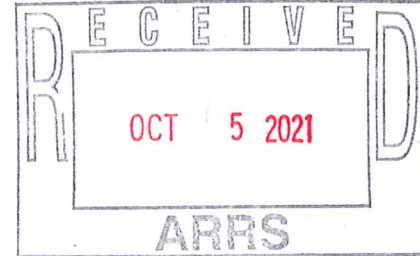
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Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 16 KAR 4:050. Dating of Certification

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 4:050, the Education Professional Standards Board proposes the attached amendment to 16 KAR 4:050.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cassie L. Trueblood".

Cassie L. Trueblood
Policy Advisor and Special Counsel

Subcommittee Substitute

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (As Amended at ARRS)

16 KAR 4:050. Dating of certification.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires professional school personnel to hold a certificate of legal qualifications for the position. **KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate.** This administrative regulation establishes the effective and expiration dates for certification.

Section 1. (1) The effective date for statements of eligibility, certificates, provisional and probationary certificates, and certificates issued for internship shall be determined in accordance with Sections 2, 3, ~~[and]~~ **4, and 5** of this administrative regulation.

(2) The calendar year of the effective date shall be the base year. The year of expiration shall be determined by adding the years of duration to the base year in accordance with the applicable certification administrative regulation in KAR Title 16.

Section 2. Statements of Eligibility. (1) **If all requirements are completed on any date from July 1 to September 1 inclusive**, a statement of eligibility shall be issued to become effective on July 1 ~~[provided all requirements are completed on any date from July 1 to September 1 inclusive]~~ and to expire on June 30 of the last year of duration.

(2) If requirements for a statement of eligibility are completed at the close of the spring semester of an academic year, the statement of eligibility shall become effective from the date all requirements are completed and **shall [to]** expire on June 30 of the last year of duration.

(3) If requirements are completed on any date after September 1 up to and including the close of the fall semester, the statement of eligibility shall become effective from the date all requirements are completed **and [The statement of eligibility]** shall expire on December 31 of the last year of duration.

(4) If requirements are completed after the beginning of the spring semester and before the close of the spring semester, the statement **of eligibility** shall become effective from the date all requirements are complete **and [The statement of eligibility]** shall expire on June 30 of the last year of duration.

Section 3. Certificates. (1) **If all requirements are completed on any date from July 1 to September 1 inclusive**, a certificate shall be issued to become effective on July 1 ~~[provided all requirements are completed on any date from July 1 to September 1 inclusive]~~ and to expire on June 30 of the last year of duration.

(2) If requirements for a certificate are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed

and ***shall [to]*** expire on June 30 of the last year of duration.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed ***and [-The certificate]*** shall expire on June 30 of the last year of duration.

Section 4. Provisional and Probationary Certificates. (1) ***If all requirements are completed on any date from July 1 to September 1 inclusive***, one (1) year provisional or probationary certificates shall be issued to become effective on July 1 ***[provided all requirements are completed on any date from July 1 to September 1 inclusive]*** and to expire on June 30 of the following year.

(2) If requirements are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and ***shall [to]*** expire on December 31 of that year.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed ***and [-The certificate]*** shall expire on June 30 of the following year.

Section 5.[Section 4.] Certificates Issued for Internship. (1) Certificates for the internship shall be issued for the fall and spring semester of the school year provided the confirmation of employment is received by[ia] the Education Professional Standards Board (EPSB)[Office of Teacher Education and Certification] in sufficient time for the applicant to complete seventy (70) days during the semester or 140 days during the school year.

(2) ***If [In the event]*** a person is employed during the fall semester but cannot complete the year of internship of 140 days, the internship may be established for one (1) semester and the certification shall become effective the date the confirmation of employment is received by[ia] the EPSB[Office of Teacher Education and Certification.]

(3) A certificate may be issued only when seventy (70) days exists to establish an internship.

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.

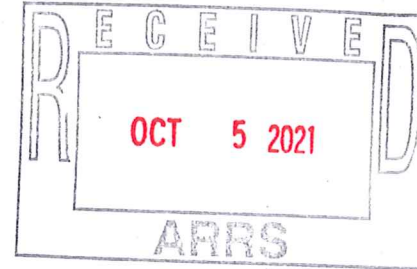
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October 5, 2021

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: 16 KAR 5:010, Standards for Accreditation of Educator Preparation Providers and
Approval of Programs

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 5:010, the Education Professional Standards Board proposes the attached amendment to 16 KAR 5:010.

Sincerely,

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

Cassie L. Trueblood
Policy Advisor and Special Counsel

Subcommittee Substitute

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS)**

16 KAR 5:010. Standards for accreditation of educator preparation providers~~[units]~~ and approval of programs.

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1022[h]

STATUTORY AUTHORITY: KRS 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. 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 standards for accreditation of an educator preparation provider~~[unit]~~ and approval of a program to prepare an educator.

Section 1. Definitions. (1) "Accreditation Reviewers" means the evaluators who review educator preparation providers as part of the accreditation process.

(2) "Advanced programs" means educator preparation programs offered at the graduate level and designed to develop additional specialized professional skills or credentials for P-12 educators who have already completed an initial certification program.

(3) "CAEP" means the Council for the Accreditation of Educator Preparation that establishes a set of national accreditation standards for educator preparation that apply to the state accreditation process.

(4) "Educator Preparation Provider" (EPP) means the accredited unit at an institution responsible for the preparation of educators.

(5) "Initial programs" means educator preparation programs offered at the undergraduate or graduate levels to prepare an individual for a first professional teaching credential. These programs are designed to prepare candidates who have not yet earned a certificate to become P-12 educators.

(6) "Institution" means a college or university. ~~[(1) "AACTE" means the American Association of Colleges for Teacher Education.~~

~~(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.~~

~~(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.~~

~~(4) "EPSB" means the Education Professional Standards Board.~~

~~(5) "NCATE" means the National Council for Accreditation of Teacher Education.~~

~~(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.]~~

(7) "National Specialized Professional Association" means the association that defines the content-area standards for specialized programs. EPSB approved National Specialized Professional Associations are published on the EPSB website.

(8)[(7)] "State accreditation" means recognition by the EPSB that an EPP[institution] has[-a professional education unit that has] met accreditation standards as a result of review, including an on-site team review.

(9) "Technical visit" means an on-campus, in-person visit by EPSB staff to an institution or EPP to advise for program and accreditation reviews.

(10) "Unit" means the college, school, or department of education that is seeking a first-time EPSB accreditation.

(11) "Institutional accreditation" means the accreditation that is granted to an entire institution. This may be earned through a regional accreditor or national accreditor that is recognized by the U.S. Department of Education.

Section 2. General Accreditation Requirements. (1) A Kentucky[An] institution offering an educator preparation[certification] program shall have[or a program leading to a rank change]:

(a) National accreditation by an educator preparation accreditor approved by the EPSB; or

(b) State accreditation by the EPSB.[

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE.]

(2) State accreditation shall be based[:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based] on the EPSB-approved national accreditation standards aligned to the components[which include the program standards] enumerated in KRS 161.028(1)(b), and that[which] are [set out in the "Professional Standards for the Accreditation of Teacher Preparation Institutions"]established by CAEP.[NCATE. The accreditation standards shall include:]

(a) The 2022 CAEP Initial-Level Standards shall be the accreditation standards for EPPs offering initial teacher certification programs.

(b) The CAEP Standards for Accreditation at the Advanced Level shall be the accreditation standards for EPPs offering advanced educator preparation programs.[

1. Standard 1 – Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 – Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 – Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 – Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary

to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 – Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 – Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.]

(3)[(4)] All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946, 164.947, and 13 KAR 1:020 shall be approved by:

(a) ~~Be accredited by the state through~~ the EPSB under this administrative regulation as a condition of offering an educator preparation[~~certification~~] program or a program leading to rank change.]; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".]

(4) For continuing national or state accreditation, an EPP shall [must] submit the following evidence as part of the accreditation process:

(a) Documentation submitted to the EPSB staff for Title II compliance, indicating that the EPP's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent; and

(b) Documentation of institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status.

Section 3. Developmental Process for New Educator Preparation Institutions[~~Programs~~]. (1) Institutions[~~New educator preparation institutions~~] requesting approval from the EPSB to be recognized as a new EPP[~~develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation~~] shall follow the four (4) stage developmental process established in this Section to gain temporary authority to admit and exit candidates and operate one (1) or more educator preparation programs. The developmental process is required whether an institution intends to seek national or state accreditation.

(2) Stage One: Application.

(a) The [~~educator preparation~~] institution shall submit to the EPSB for review and acceptance an official notice of intent[~~letter~~] from the chief executive officer and the governing board of the institution [~~to the EPSB for review and acceptance by the board~~] indicating the institution's intent to begin the developmental process to become an educator preparation provider[~~establish an educator preparation program~~].

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;

2. A chart or narrative that lists all educator preparation programs to be offered by the institution, including any nontraditional and alternative programs, and shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located;

4. An organizational chart of the institution that depicts the educator preparation unit and indicates the unit's relationship to other administrative units within the college or university;

5. The name and job description of the head of the unit and an assurance that the head has the authority and responsibility for the overall administration and operation of the unit;

6. The policies and procedures that guide the operations of the unit. Required documentation shall include the cover page and table of contents for codified policies, bylaws, procedures, and student handbooks;

7. The unit's processes, including a description of the quality assurance system, to regularly monitor and evaluate its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates;

8. Program review documentation identified in Section 18 **of this administrative regulation**; and

9. The institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status. [

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11(2) of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.]

(d) Stage One documentation **shall be [is]** reviewed by EPSB staff and the Program Review Committee. The Program Review Committee shall make one **(1)** of the following recommendations:

1. Concerns identified and reported to the educator preparation unit for resolution; or

2. Recommendation to proceed to Stage Two.

(e) Following a recommendation from the Program Review Committee [review of the documentation], EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two: On-Site visit and Accreditation Audit Committee Recommendation.

(a) Nine **(9)** months prior to the scheduled on-site visit, the institution shall submit to the EPSB a written narrative self-study to describe the process and document that the unit has evaluated its practices against the EPSB approved accreditation standards. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information and shall not exceed 100 pages in length.

~~(b)~~~~(a)~~ A ~~[board of examiners]~~ team of trained reviewers identified by EPSB staff shall make a one (1) day visit to the institution to verify the self-study evidence~~[paper review]~~.

~~(c)~~~~(b)~~ The team of three (3) shall be comprised of:

1. One (1) representative from a public postsecondary institution;
2. One (1) representative from an independent postsecondary institution; and
3. One (1) representative from a P-12 organization~~[the Kentucky Education Association]~~.

~~(d)~~~~(e)~~ The team shall submit a written report of its findings to the EPSB staff.

~~(e)~~~~(d)~~ The EPSB staff shall provide a copy of the written report to the institution.

~~(f)~~~~(e)~~ 1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

~~(g)~~~~(f)~~ The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;
2. Approval with conditions; or
3. Denial of approval.
- (4) Stage Three: EPSB Ruling.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;
2. Approval with conditions; or
3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and
2. Continue the developmental process by pursuing~~[and the first]~~ accreditation ~~[process]~~ as established in this administrative regulation.

(c) An institution denied temporary authorization may reapply twelve (12) months after the EPSB's decision.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit and exit candidates;
2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
3. Provide reports~~[Report regularly]~~ to the EPSB staff on the institution's progress as requested.

(e) During the two (2) year period of temporary authorization, the EPSB staff:

1. May schedule additional technical visits; and
2. Shall monitor progress by ~~[paper]~~ review of annual reports and~~[,]~~ admission and exit data~~[, and trend data]~~.

(5) Stage Four: Initial Accreditation Visit.

(a) The institution shall pursue either national or state level accreditation ~~[host a first accreditation visit]~~ within two (2) years of the approval or approval with conditions of temporary authorization.

(b) If the institution pursues national accreditation, all[All] further accreditation activities shall be governed by Section 4[9] of this administrative regulation.

(c) If the institution pursues state accreditation, all further accreditation activities shall be governed by Section 6 of this administrative regulation.

Section 4. National Accreditation. (1) An EPP may pursue initial or continuing national accreditation, if the national accreditor has been approved by the EPSB as demonstrating the requirements of KRS 161.028.

(2) A national accreditor seeking EPSB approval shall apply to the EPSB and submit documentation of the following:

(a) Established rigorous standards for educator preparation that align with KRS 161.028(1)(b) and guide institutions in establishing and maintaining high quality programs that produce evidence of academic achievement and educator performance;

(b) Attestation that all accreditation standards be met ~~[in-order]~~ for an educator preparation provider to obtain and maintain accredited status;

(c) The scope of accreditation;

(d) The capacity for staff and resources to carry out the operations of the organization;

(e) Public dissemination of information about the accreditation status of educator preparation providers including length of a term of accreditation, reasons for awarding accreditation status, information about any deficiencies in relation to accreditation standards and policies and reasons for conditional approval or denial of accreditation;

(f) A system of quality assurance for standards, policies, and procedures that is reviewed on a cyclical basis;

(g) Policies and procedures and a governance structure that support the established accreditation and decision-making processes; and~~[L]~~

(h) Letter(s) of support and interest from a Kentucky EPP.

(3) National accreditors approved by the EPSB shall notify the EPSB in writing of any changes to the requirements of subsection (2) of this section and shall include the rationale for the changes.

(4) If an EPP pursues initial or continuing accreditation from a national accreditor approved by the EPSB, the accreditation decision of the national accreditor shall be presented for recognition by the EPSB at the next scheduled meeting following the national accreditation decision.

(5) If the EPP is denied accreditation by the national accreditor, the EPP may seek Emergency Authorization to Operate from the EPSB as outlined in Section 5 of this administrative regulation.

(6) As part of national accreditation, an EPP's programs leading to educator certification and rank change shall be reviewed through the state program review process as established in Section 17 of this administrative regulation. Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with **Section 18 ~~[the program review section]~~** of this administrative regulation.

(7) Prior to the scheduled on-site evaluation visit, EPSB staff shall participate in the pre-visit to the institution to serve as a state consultant to the national chair.

(8) At least one (1) EPSB staff member shall be assigned as support staff and liaison during the national accreditation visit and one (1) state representative trained in the standards of the national accreditor shall serve as a member of the site visit team.

(9) To maintain continuing national accreditation, the EPP shall follow the cycle and timelines established by the national accreditor.

Section 5. Emergency Authorization to Operate (EAO). (1) If a Kentucky EPP seeks initial or continuing national accreditation from a national accreditor approved by the EPSB and is denied accreditation, the EPP may apply for an EAO.

(2) An EAO **shall allow [allows]** the EPP to temporarily operate for one (1) year or two (2) academic terms.

(3) The EPP **shall not [cannot]** admit new candidates during the EAO period.

(4) The application for an EAO shall be made from the EPP to the EPSB within five (5) business days of the date of the official notification by the national accreditor that the EPP was denied national accreditation.

(5) The EPSB staff **shall [will]** conduct a technical visit to the EPP within ten (10) business days of receipt of the request for EAO.

(6) The EPP shall submit a Corrective Action Plan (CAP) addressing all identified deficiencies from their national accreditation within fifteen (15) calendar days following the technical visit.

(7) The CAP **shall [will]** be reviewed by the Accreditation Audit Committee for recommendation to the EPSB for state accreditation, state accreditation with conditions, state accreditation with probation, or denial.

(8) The EPSB shall review the recommendation from the Accreditation Audit Committee at the next EPSB meeting and make the determination to grant the EPP state accreditation, state accreditation with conditions, state accreditation with probation, or deny accreditation.

Section 6. State Accreditation. (1) EPPs seeking first or continuing state accreditation **shall be [are]** on a seven(7)[-]year review cycle.

(2) If an EPP held national accreditation prior, but now seeks state accreditation, the EPP **shall [would]** be reviewed for state accreditation in the same year as their previous national cycle.

(3) Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with Section 18 of this administrative regulation.

(4) Nine (9) months prior to the on-site visit the EPP shall submit a self-study document and supporting evidence that address the state accreditation standards.

(5) Assigned accreditation reviewers shall conduct an offsite review of the self-study and supporting evidence and produce a Formative Feedback Report to the EPP.[]

~~Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.~~

~~(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.~~

~~(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.~~

~~(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.~~

~~(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.~~

~~(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.~~

~~Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:~~

~~1. Faculty and students in each approved program;~~

~~2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and~~

~~3. Major program developments in each NCATE standard.~~

~~(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at <http://www.aacte.org>. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.~~

~~2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report online at <http://www.kyepsb.net/teacherprep/index.asp> and submit it electronically to the division contact through the EPSB Web site.~~

~~(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.~~

~~(b) The EPSB may pursue action against the unit based on data received in this report.~~

~~(3) The Accreditation Audit Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.~~

~~Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.~~

~~(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13 of this administrative regulation.~~

~~(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally recognized specialty program associations and appropriate state performance standards.~~

~~(b) A content program review committee shall examine program content and faculty expertise.~~

~~(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.~~

~~(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.~~

~~Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.~~

~~(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.~~

~~(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.~~

~~(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.~~

~~Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.~~

~~(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.~~

~~(3) For first accreditation, the Reading Committee shall:~~

~~(a) Review the preconditions documents prepared by the institution; and~~

~~(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.~~

~~(4) For continuing accreditation and program approval, the Reading Committee shall:~~

~~(a) Determine that a submitted material meets requirements;~~

~~(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;~~

~~(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or~~

~~(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.~~

~~(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.~~

~~Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.~~

~~(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:~~

~~(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:~~

~~1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;~~

~~2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:~~

~~a. The degree or award levels for each program;~~

~~b. The administrative location for each program; and~~

~~c. The structure or structures through which the unit implements its oversight of all programs;~~

~~3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located; and~~

~~4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.~~

~~(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.~~

~~(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.~~

~~(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:~~

~~1. The vision and mission of the institution and the unit;~~

~~2. The unit's philosophy, purposes, and goals;~~

~~3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;~~

~~4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and~~

~~5. A description of the system by which the candidate proficiencies described are regularly assessed.~~

~~(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.~~

~~(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:~~

~~1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or Web page) listing the basic requirements for entry to, retention in, and~~

~~completion of professional education programs offered by the institution, including any nontraditional, alternative or off-campus programs; and~~

~~2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:~~

~~a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and~~

~~b. A compilation of results on the unit's own assessments.~~

~~(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:~~

~~1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and~~

~~2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.~~

~~(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.~~

~~(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.~~

~~Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.~~

~~(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.~~

~~Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of~~

educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

- (1) The unit's conceptual framework for the preparation of school personnel which includes:
 - (a) The mission of the institution and unit;
 - (b) The unit's philosophy, purposes, professional commitments, and dispositions;
 - (c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;
 - (d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and
 - (e) The system by which candidate performance is regularly assessed;
- (2) The unit's continuous assessment plan that provides:
 - (a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;
 - (b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;
 - (c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and
 - (d) A monitoring plan for candidates from admission to exit;
- (3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:
 - (a) NCATE Unit Standards established in Section 2(2)(b) of this administrative regulation;
 - (b) Kentucky's Safety Educator Standards for Preparation and Certification;
 - (c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and
 - (d) Kentucky's Standards for Guidance Counseling Programs;
- (4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and
- (b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky Teacher Standards as established in 16 KAR 1:010;
- (5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and
- (6) A curriculum guide sheet or contract provided to each candidate before or at the time of admittance to the program.

Section 12. Teacher Leader Master's Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or

~~accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.~~

~~(a) Master's programs for initial certification shall be exempt from the requirements of this section.~~

~~(b) A master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.~~

~~(c) Candidates admitted to a master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.~~

~~(d) An institution of higher learning with a master's program or a planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.~~

~~(e) An institution may become operational beginning January 1, 2009, if the institution:~~

~~1. Submits a redesigned master's program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section; and~~

~~2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation.~~

~~(f) 1. The EPSB shall appoint a Master's Redesign Review Committee to conduct reviews of redesigned master's programs and planned fifth-year programs for Rank II submitted for approval after May 31, 2008.~~

~~2. A master's program or a planned fifth-year program for Rank II submitted for approval after May 31, 2008 shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's Redesign Review Committee.~~

~~3.a. After review of a master's program or planned fifth-year program for Rank II, the Master's Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:~~

~~(i) Approval;~~

~~(ii) Approval with conditions; or~~

~~(iii) Denial of approval.~~

~~b. The EPSB shall consider recommendations from staff and the Master's Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.~~

~~(2) Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:~~

~~(a) Program design components which shall include the following descriptions and documentation of:~~

~~1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;~~

~~2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;~~

~~3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;~~

~~4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and~~

~~5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members;~~

~~(b) Program curriculum that shall include core component courses designed to prepare candidates to:~~

~~1. Be leaders in their schools and districts;~~

~~2. Evaluate high quality research on student learning and college readiness;~~

~~3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;~~

~~4. Gain expertise in content knowledge, as applicable;~~

~~5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;~~

~~6. Support P-12 student achievement in diverse settings;~~

~~7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;~~

~~8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and~~

~~9. Design and conduct professionally relevant research projects; and~~

~~(c) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:~~

~~1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning;~~

~~2. Clinical experiences and performance activities; and~~

~~3. A description of a culminating performance-based assessment.~~

~~(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.~~

~~(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.~~

~~(c)1. An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008.~~

~~2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.~~

Section ~~Section 7[13]. Accreditation Reviewers[Board of Examiners]. (1) Accreditation Reviewers[A Board of Examiners] shall be comprised of:]:~~

~~(a) Be [recruited and appointed by the EPSB. The board shall be comprised of an equal number of] representatives from three (3) constituent groups:]~~

~~(a)[1.] Teacher educators;~~

~~(b)[2.] P-12 teachers and administrators; and~~

- ~~(c)[3.] State and local policymaker groups.]; and~~
- ~~(b) Include at least thirty-six (36) members representing the following constituencies:~~
- ~~1. Kentucky Education Association, at least ten (10) members;~~
 - ~~2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and~~
 - ~~3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:~~
- ~~a. Kentucky Association of School Administrators;~~
 - ~~b. Persons holding positions in occupational education;~~
 - ~~c. Kentucky Branch National Congress of Parents and Teachers;~~
 - ~~d. Kentucky School Boards Association;~~
 - ~~e. Kentucky Association of School Councils;~~
 - ~~f. Kentucky Board of Education;~~
 - ~~g. Kentucky affiliation of a national specialty program association;~~
 - ~~h. Prichard Committee for Academic Excellence;~~
 - ~~i. Partnership for Kentucky Schools; and~~
 - ~~j. Subject area specialists in the Kentucky Department of Education.~~
- ~~(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.~~
- ~~(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.]~~
- ~~(2) Accreditation reviewers shall be trained on the CAEP accreditation standards.~~
- ~~(3)[(4)] The EPSB staff shall select and appoint for each scheduled on-site accreditation a team of Accreditation Reviewers[examiners] giving consideration to the number and type of programs offered by the institution. [Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed[.]]~~
- ~~(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to co-chaired be by an NCATE appointed team member and a state team chair appointed by the EPSB.~~
- ~~(a) The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state – six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2).~~
- ~~(b) The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.~~
- ~~(4)[(5)] The[(6) For an institution seeking state-only accreditation, the] EPSB staff shall identify[appoint] a chair for the team. [from a pool of trained Board of Examiners members.~~
- ~~(7) For state-only accreditation, the Board of Examiners shall have six (6) members.~~
- ~~(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his or her place of employment for an accreditation visit.~~

~~Section 14. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which~~

supplement the institutional report and which may serve as further documentation. The records and files shall include:

- (1) The faculty handbook;
- (2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
- (3) Faculty vitae or resumes;
- (4) A random sample of graduates' transcripts;
- (5) Conceptual framework documents;
- (6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;
- (7) Course syllabi;
- (8) Policies, criteria, and student records related to admission and retention;
- (9) Samples of students' portfolios and other performance assessments;
- (10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
- (11) Student evaluations, including student teaching and internship performance; and
- (12) Data on performance of graduates, including results of state licensing examinations and job placement rates.]

Section 8[15]. State Accreditation Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB staff and team chair shall conduct a pre-visit to the institution to make a final review of the arrangements.[For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.]

Section 9[16]. State On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The educator preparation institution shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. [A team member representing NCATE shall be reimbursed by the educator preparation institution.]

(3) The Accreditation Reviewers[evaluation team] shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program.[The evaluation team shall make use of the analyses prepared through the preliminary review process.]

(4)(a) An off-campus site that[which] offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(b) Off-campus programs shall be:

1. Considered as part of the unit and the unit shall be accredited, not the off-campus programs; and

2. Approved in accordance with Section 23[28] of this administrative regulation.

(5) Accreditation reviewers shall recommend findings on each of the accreditation standards. [In a joint team, all Board of Examiners members shall vote on whether the educator preparation

~~institution has met the six (6) NCATE standards.] A recommendation[determination] about each standard shall be limited to the following options:~~

- ~~(a) Met;~~
- ~~(b) Met, with one (1) or more defined areas for improvement; or~~
- ~~(c) Not met.~~

~~(6)(a) The Accreditation Reviewers[Board of Examiners] shall review each program and cite the areas for improvement for each, if applicable.~~

~~(b) The Accreditation Reviewers[Board of Examiners] shall define the areas for improvement in its report.~~

~~(7) The EPP may submit within thirty (30) working days of receipt of the report a written rejoinder that may be supplemented by materials pertinent to a conclusion found in the evaluation report.~~

~~(a) The accreditation documentation shall be provided for review by the Accreditation Audit Committee and EPSB.~~

~~(b) An unmet standard or area of improvement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder.[]~~

~~(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.~~

~~(8) The on-site evaluation process shall end with a brief oral report:~~

- ~~(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or~~
- ~~(b) By the state team chair for a state-only visit.~~

~~Section 17. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as required by this subsection.~~

~~(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.~~

~~(b) The first draft shall be typed and distributed to Board of Examiners members.~~

~~(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.~~

~~(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.~~

~~(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:~~

~~1. A written correction to the factual information contained in the report; or~~

~~2. Written notification that the unit head has reviewed the draft and found no factual errors.~~

~~(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.~~

~~(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.~~

~~(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as required by this subsection.~~

~~(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.~~

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the format prescribed by NCATE for State/NCATE accreditation visits and available on its Web site at <http://www.ncate.org/boe/boeResources.asp>.

~~Section 18. Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.~~

~~(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.~~

~~(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.~~

~~(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.~~

~~(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.~~

~~(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 of this administrative regulation shall be followed.~~

~~(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.]~~

Section 10[19]. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2)[~~One (1)~~] classroom teachers[~~teacher, appointed from nominees provided by the Kentucky Education Association~~];

(c) Four (4) EPP[~~Two (2) teacher education~~] representatives, two (2)[~~one (1)~~] from a state-supported institution and two (2)[~~one (1)~~] from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) One (1)[~~Two (2)~~] school administrator. [~~administrators appointed from nominees provided by the Kentucky Association of School Administrators.~~]

(2) The chair[~~chairperson~~] of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chair[~~chairperson~~].

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.[]

~~(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.]~~

~~(4)[(5)]~~ Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the accreditation reviewers~~[evaluation team]~~, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Accreditation Reviewers~~[Board of Examiners]~~ to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be **[made]**:

1. Accreditation;
2. Provisional accreditation with conditions;
3. Provisional Accreditation with probation~~[Denial of accreditation]~~; or
4. Denial~~[Revocation]~~ of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be **[made]**:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.]

~~(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:~~

- ~~(a) Approval;~~
- ~~(b) Approval with conditions; or~~
- ~~(c) Denial of approval.]~~

~~(5) The Accreditation Reviewers~~~~[(7) The Board of Examiners]~~ Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee~~[Committee's]~~ if the Accreditation Audit Committee's~~[Committee]~~ decision differs from the Accreditation Reviewer's~~[Board of Examiners']~~ evaluation report.]

~~(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.]~~

Section 11[20]. Official State Accreditation Action by the EPSB~~[Education Professional Standards Board]~~. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the EPP~~[educator preparation unit]~~.

(3) Decision options following a first accreditation visit shall be "accreditation", "provisional accreditation with conditions", "provisional accreditation with probation", or "denial of accreditation"~~[-or "revocation of accreditation"]~~.

(a) Accreditation.

1. This accreditation decision indicates that the EPP[unit] meets each of the ~~[six (6)]~~ NCATE standards for ~~[unit]~~ accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the educator preparation~~[professional education]~~ unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled **for seven (7)** ~~[five (5)]~~ years following the semester of the visit.

(b) Provisional accreditation with conditions.

1. This accreditation decision indicates that the EPP[unit] has three (3) or more areas for improvement within one (1) standard or multiple areas for improvement across multiple standards~~[not met one (1) or more of the NCATE standards]~~. The EPP[unit] has accredited status but shall satisfy conditions~~[provisions]~~ by providing evidence of addressing each area for improvement~~[meeting each previously unmet standard]~~. The EPSB shall require submission of documentation that addresses the areas for improvement~~[unmet standard or standards]~~ within six (6) months of the accreditation decision. Following the review of the documentation, the EPSB shall decide to~~[-or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted]~~. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Accredit~~[-or]~~

b. Provisionally accredit with probation~~[-or]~~

c. Deny accreditation~~[-or]~~

b. Revoke accreditation~~[-or]~~

2. If the EPP[unit] is accredited, the next on-site visit shall be scheduled for seven (7)~~[five (5)]~~ years following the semester of the first accreditation visit.

(c) Provisional Accreditation with Probation.

1. This accreditation decision indicates that the EPP has not met one (1) or more of the accreditation standards. The EPP has accredited status but is on probation. The EPP shall schedule an on-site visit within two (2) years of the semester in which the provisional probationary decision was rendered. The EPP as part of this visit shall address the unmet standard and the identified areas for improvement. Following the on-site review, the EPSB shall decide to:

a. Accredit~~[-or]~~

b. Deny accreditation~~[-or]~~

2. If the EPP is accredited, the next on-site visit shall be scheduled for seven (7) years following the semester of the first accreditation visit.

(d)~~[-e)]~~ Denial of accreditation. This accreditation decision indicates that the EPP[unit] does not meet two (2)~~[one (1)]~~ or more of the ~~[NCATE]~~ standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates.

~~(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.]~~

(4) Decision options following a continuing accreditation visit shall be "accreditation", "accreditation with conditions", "accreditation with probation", or "revocation of accreditation".

(a) Accreditation.

1. This accreditation decision indicates that the EPP[unit] meets each of the ~~[six (6) NCATE]~~ standards for ~~[unit]~~ accreditation. Areas for improvement may be cited, indicating problems warranting the EPPs[institution's] attention. In its subsequent annual reports, the EPP[professional education unit] shall ~~[be expected to]~~ describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit.

(b) Accreditation with conditions.

1. This accreditation decision indicates that the EPP[unit] has met all standards, but has three (3) or more areas of improvement within[not met] one (1) standard or multiple areas for improvement across multiple accreditation[or more of the NCATE] standards. If the EPSB renders this decision, the EPP[unit] shall maintain its accredited status, but shall satisfy conditions by addressing each area for improvement in a written report[meeting previously unmet standards]. EPSB shall require submission of documentation that addresses the areas for improvement[unmet standard or standards] within six (6) months of the decision to accredit with conditions~~[-or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years].~~ Following the review of the documentation[focused visit], the EPSB shall decide to:

- a. Continue accreditation; ~~[or]~~
- b. Continue accreditation with probation; or
- c. ~~[b.]~~ Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred.

(c) Accreditation with probation.

1. This accreditation decision indicates that the EPP[unit] has not met one (1) or more of the accreditation[NCATE] standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The EPP[institution] shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. The EPSB Staff shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with probation decision was granted.[This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point.] Following the on-site review, the EPSB shall decide to:

- a. Continue accreditation; or

b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for seven (7)~~[five (5)]~~ years after the semester of the continuing accreditation~~[probationary]~~ visit.

(d) Revocation of accreditation. This decision follows a probationary~~[Following a comprehensive site] visit and [that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision]~~ indicates that the EPP~~[unit]~~ does not meet one (1) or more of the accreditation~~[NCATE]~~ standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets requirements of~~[preconditions to]~~ accreditation, such as loss of state program approval, national accreditation for educator preparation, or insitutional~~[regional]~~ accreditation;

2. Misrepresents its accreditation status to the public;

3. Falsely reports data or plagiarized information submitted for accreditation and program review purposes; or

4. Fails to submit annual reports or other documents required for accreditation and program review.

(5) Notification of the EPSB action to revoke continuing accreditation or deny first accreditation~~[including failure to remove conditions,]~~ shall include notice that:

(a) The EPP~~[institution]~~ shall inform candidates~~[students]~~ currently admitted to a certification or rank program of the following:

1. A candidate~~[student]~~ recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and

2. A candidate~~[student]~~ who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB~~[a state]~~ accredited EPP~~[education preparation unit]~~ [in order] to receive the certificate or advancement in rank~~;~~ and]

(b) An institution for which the EPSB has denied or revoked accreditation may~~[shall]~~ seek national or state accreditation. For state accreditation, the~~[through completion of the first accreditation process. The]~~ on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation. During this two (2) year period, candidates may not be admitted to any educator preparation program.

Section 12~~[24]~~. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises ~~[in]~~ between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may change the accreditation status of the EPP or refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the EPP~~[institution].~~

(b) Within thirty (30) days of receipt of the complaint, the EPP~~[institution]~~ shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the EPP[institution].

(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.

(5) The EPP[institution] shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the EPP's[institution's] response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the EPP[educator preparation unit]. [

~~Section 22. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.~~

~~(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.~~

~~(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.~~

~~(4) Program approval decision options shall be:~~

~~(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made;~~

~~(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:~~

- ~~1. Approval; or~~
- ~~2. Denial of approval; or~~

~~(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.~~

~~(5) The EPSB shall order a review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for:~~

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.]

Section ~~13~~[23]. Public Disclosure. (1) After an accreditation and~~[a unit or]~~ program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the EPSB~~[board]~~ for the meeting in which the official action was taken by the EPSB.].

(3) ~~Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.]~~

Section ~~14~~[24]. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A state procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Accreditation Reviewers~~[Board of Examiners]~~ who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.].

~~Section 25. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.~~

~~(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.]~~

Section 15. Interim Reports. (1) Each state accredited EPP shall report to the EPSB in the third year following its previous accreditation visit to provide data about:

(a)[1.] Progress made in addressing areas for improvement identified by its last accreditation evaluation;

(b)[2.] Changes in the institution's institutional accreditation status; and

(c)[3.] Continuous improvement efforts relating to the accreditation standards.

(2)(a)The EPSB staff shall review each EPP's interim report to monitor the progress of the EPP to continue a program of high quality.

(b) The EPSB may pursue action against the EPP based on data received in this report.

Section 16[26]. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1022f and 1022g, the EPSB shall identify an EPP[educator preparation unit] as:

(1) "At-risk of low performing" if an EPP[educator preparation program] has received a:

(a) State accreditation rating of "provisional"; [or]

(b) State accreditation rating of "accreditation with conditions"; [or]

(c) Summative Praxis II pass rate below **eighty (80) percent [80%]; or**

(d) National accreditation rating of "accreditation with stipulation"; **or**

(2) "Low performing" if an EPP[educator preparation program] has received a state or national accreditation rating of "accreditation with probation".

Section 17[27]. The Education Professional Standards Board shall maintain data reports related to the following[produce a state report card, which shall include]:

(1) Current accreditation status of all institutions with EPSB approved programs;[General information on the institution and the educator preparation unit;]

(2) Contact information for the person responsible for the EPP[educator preparation unit];

(3) [Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator preparation unit;

(5)] Year of last state accreditation visit and year of next scheduled visit;

(4)[(6)] Table of the EPP's[unit's] approved certification program or programs;

(5)[(7)] Tables relating the EPP's[unit's] total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(6)[(8)] Tables relating the EPP's[unit's] faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(7)[(9)] Table of the number of program completers (teachers and other school professionals[administrators]) for the last three (3) years;

(8)[(10)] Table relating pass rates on the required assessments;

(9)[(11)] Table relating pass rates for the Kentucky Teacher Internship Program (if applicable);

(10)[(12)] Table relating pass rates for the Kentucky Principal Internship Program (if applicable);

(11)~~[(13)]~~ Table indicating student teacher satisfaction with the preparation program;
(12)~~[(14)]~~ Table relating teacher intern satisfaction with the preparation program; and
(13)~~[(15)]~~ Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

Section 18. Program Review Components for Developmental Process. (1) ~~[In-order]~~ To operate a program leading to certification or rank change, the EPP shall have its program review documents reviewed by the EPSB for each separate program of educator preparation for which the EPP is seeking approval.

(2) The following information **shall [must]** be demonstrated in the program review documentation:

(a) An overview that includes:

1. The context and unique characteristics;
2. Description of the organizational structure;
3. The vision, mission, and goals; and
4. The shared values and beliefs for educator preparation.

(b) A description of its systematic approach for continuous improvement;

(c) A description of its clinical partnerships;

(d) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic expectations as established in 703 KAR 4:060, and relevant state performance standards in Title ~~16~~~~[XVII]~~ of the Kentucky Administrative Regulations;

(e) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(f) Identification of how the program addresses the applicable regulatory requirements of Title ~~16~~~~[XVII]~~ of the Kentucky Administrative Regulations;

(g) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(h) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;
2. Program admission criteria;
3. Program coursework;
4. Program exit requirements;
5. Certification requirements if they differ from the program exit requirements.

Section 19. New Program Approval for an Accredited EPP. (1) An accredited EPP shall submit a program proposal for each new educator preparation program.

(2) A program proposal shall demonstrate the following components:

(a) A description of its clinical partnerships relevant to the new program;

(b) A description of the application of the EPP's continuous improvement plan as it pertains to the new program;

(c) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic

expectations as established in 703 KAR 4:060, and relevant state performance standards in Title ~~16[XVII]~~ of the Kentucky Administrative Regulations;

(d) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(e) Identification of how the program addresses the applicable regulatory requirements of Title ~~16[XVII]~~ of the Kentucky Administrative Regulations;

(f) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(g) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;

2. Program admission criteria;

3. Program coursework;

4. Program exit requirements; and

5. Certification requirements if they differ from the program exit requirements.

(3) A program **shall [must]** receive EPSB approval prior to admission of students to the program. The Program approval decision options shall be:

(a) Approval with the next review scheduled during the regular accreditation cycle;

(b) Approval with conditions with a maximum of one (1) year probationary extension for correction of a specific problem to be documented through written materials or through an onsite visit. At the end of the extension, the EPSB shall decide if the documentation supports:

1. Approval; or

2. Denial.

(c) Denial **of** approval indicating that a serious problem exists which jeopardizes the quality of preparation for school personnel.

Section 20. Continuing Program Approval. (1) **An** EPP[s] that **has [have]** been granted approval for each of **its** educator preparation programs, shall submit the following for each educator preparation program for which it **[is]** seeks continuing approval:

(a) Report of any changes in the program since the last EPSB review;

(b) Summary analysis of the program assessment data to identify areas of strength and weakness relevant to the educator performance standards; **and**

(c) Description of the program's continuous improvement plan based on the program analysis.

(2) The EPSB shall order a review of an educator preparation program if it has cause to believe that the quality of the preparation is seriously jeopardized.

(a) The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference.

(b) Phase One Review shall require a written report about the identified program(s) and the continuous improvement plans.

(c) The Phase Two Review shall require an on-site review to be conducted by EPSB staff and a team of trained reviewers.

(d) The review shall result in a report to which the EPP may respond.

(e) The review report and EPP response shall be used by the Program Review Committee as the basis for a recommendation to the full EPSB for:

1. Approval;
2. Approval with conditions; or
3. Denial of approval for the program.

(f) If the EPSB denies approval of a program, the EPP shall notify each candidate currently admitted to that program of the EPSB action. The notice shall include the following information:

1. A candidate recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

2. A candidate who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB approved program to receive the certificate or advancement in rank.

Section 21. Content Review Committee. (1)(a) EPSB staff shall identify and train a content review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Program Review Committee.

(b) Nominations for the content review committees shall be solicited from the education constituent groups.

(2)(a) A content review committee shall review all new educator preparation program proposals to establish congruence of the program with standards of National Specialized Professional Association and appropriate state performance standards in Title ~~16~~**[XVII]** of the Kentucky Administrative Regulations.

(b) EPSB staff may initiate a content review committee for a continuing approval review as determined by program changes that may have occurred since the last review.

(3) A content review committee shall submit written comments to EPSB staff and the Program Review Committee for use in the program review process.

(4) A content review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 22. Program Review Committee. (1) The EPSB shall appoint and EPSB staff shall train a Program Review Committee representative of the constituent groups to the EPSB.

(2) The Program Review Committee shall conduct a preliminary review of the Development Process Stage One documentation for adequacy, timeliness, and conformity with the corresponding standards and Kentucky Administrative Regulations.

(3) The Program Review Committee shall send a Program Review Update to the Stage One applicants indicating whether the documentation satisfies the submission requirements. If a requirement has not been met, the applicant shall be asked to revise or send additional documentation.

(4) For new program approval, the Program Review Committee shall:

(a) Determine that the submitted material meets requirements;

(b) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;

(c) Make a recommendation for program approval to the EPSB; or

(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.

(5) For continuing program approval, the Program Review Committee shall:

- (a) Determine that the submitted material meets requirements;
- (b) Identify additional components of the program to be reviewed;
- (c) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;
- (d) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
- (e) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.
- (6) EPSB staff shall discuss a recommendation for termination with the EPP. The EPP may submit a written response that shall be presented with the Program Review Committee comments and program review documents to the full EPSB.

Section ~~23~~28. Approval of Off-site ~~[and]~~ **[On-line]** Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the ~~EPSB~~Education Professional Standards Board before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the ~~EPSB~~board to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the ~~EPSB~~board before the institution may begin offering courses at the location. [

~~(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.~~

~~(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.]~~

Section ~~24~~29. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "2022 CAEP Initial Level Standards", December 2020;
- (b) "CAEP Standards for Accreditation at the Advanced Level", June 2021; and
- (a) "Professional Standards for the Accreditation of Teacher Preparation Institutions", 2008 Edition, National Council for Accreditation of Teacher Education;
- (b) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;
- (c) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;]
- (c)[(d)] "Education Professional Standards Board Emergency Review of Certification Programs Procedure", 2020.[September 2003;
- (e) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;
- (f) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(g) ~~"Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.]~~

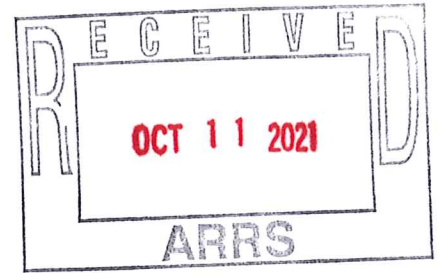
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 300 Sower Boulevard, 5th Floor,~~[Education Professional Standards Board, 100 Airport Road, 3rd Floor,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Todd Allen, 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



Commonwealth of Kentucky
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October 11, 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: 40 KAR 1:040 Standardized Open Records Request Form

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 40 KAR 1:040, the Office of Attorney General proposes the attached amendment to 40 KAR 1:040.

Sincerely,

/s/ Marc Manley

Marc Manley, Director
Open Records & Open Meetings Division
Office of Attorney General

10/1/21

SUGGESTED SUBSTITUTE

**DEPARTMENT OF LAW
Civil Division
Office of Civil and Environmental Law
Open Records and Meetings Division**

40 KAR 1:040. Standardized Open Records Request Form.

RELATES TO: KRS **61.870, 61.872**, 61.876(4)

STATUTORY AUTHORITY: KRS 61.876(4)

NECESSITY, FUNCTION, AND CONFORMITY: ~~*[This administrative regulation is necessary to comply with]*~~ KRS 61.876(4) ~~*[, which]*~~ requires the Attorney General to promulgate by **administrative** regulation a standardized form that may be used to request to inspect public records under the Kentucky Open Records Act. **This administrative regulation establishes the standardized open records request form.**

Section 1. Incorporation by Reference. (1) "**Request to Inspect Public Records[Standardized Open Records Request]** Form", OAG-1, June 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Attorney General's Web site at https://ag.ky.gov/Documents/2021_Standardized_Open_Records_Request_Form_V3.pdf.40
KAR 1:040.

CONTACT PERSON: Marc Manley, Division Director, Open Records and Meetings Division, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5478, email Marc.Manley@ky.gov.



Andy Beshear
Governor

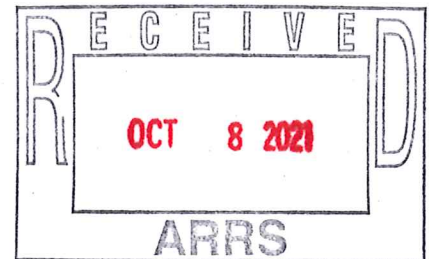
Commonwealth of Kentucky
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Holly M. Johnson
Secretary

Thomas B. Miller
Commissioner

October 6, 2021



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

RE: 103 KAR 16:320. Claim of Right Doctrine.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 16:320, the Department of Revenue proposes the attached amendment to 103 KAR 16:320.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Final, 10-4-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 134.580, 141.010, 141.039~~[(43)]~~, 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.039 determines a corporation's Kentucky net income.]~~ KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. Internal Revenue Code Section 1341, 26 U.S.C. 1341, provides for an adjustment to income tax where a taxpayer restores a substantial amount held under claim of right. This administrative regulation interprets the application of the claim of right doctrine for Kentucky corporation income tax purposes.~~[how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.]~~

Section 1. Definition. "Internal Revenue Code" is defined by/in KRS 141.010~~(21)~~~~[(45)]~~~~[(14)]~~.

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.

(1) If the year the income or deduction was originally reported or deducted remains open under the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580~~[an amendment to the Kentucky corporation income tax return]~~, the claim of right shall be made by amending the corporation's tax return for the year the income or deduction was reported. ~~[is still open under the statute of limitations, the claim of right shall be made by amending that same year's corporation income tax return.]~~

(2) If the year the income or deduction was originally reported or deducted is closed due to the expiration of the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580~~[an amendment to the Kentucky corporation income tax return]~~, ~~[as the statute of limitations has expired,]~~ the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes.

(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141.~~[KRS.]~~

(b) Example. A corporation reported claim of right income in the amount of \$1,000,000 in a prior year closed under the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580~~[an amendment to the return]~~, and apportioned twenty (20) percent of its apportionable income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000. The adjustment to the corporation's tax liability attributable to the claim of right shall not exceed \$12,000 in the taxable year in which the claim is allowed, regardless of whether the corporation's apportionable income to Kentucky in the year in which the claim is allowed exceeds twenty (20) percent of the corporation's total apportionable income. This principle shall also apply if the tax rate in the year the adjustment attributable to the claim of right differs from the year the income was originally reported, or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right. ~~[For example, if a corporation~~

~~reported claim of right income of \$1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000, then the adjustment for the claim of right shall not exceed a \$12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation's business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.]~~

Section 3. Documentation. The burden of proof shall be on the corporation to establish ~~[show]~~ that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax actually paid on the income underlying the claim. ~~[which was paid on the income.]~~ Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable for Kentucky income tax purposes. ~~[to Kentucky.]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



Andy Beshear
Governor

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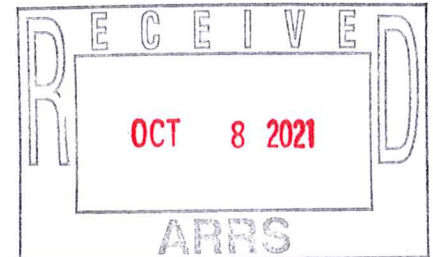
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c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
Room 029, Capital Annex
Frankfort, Kentucky 40601



RE: 103 KAR 16:352. Corporation income taxes policies and circulars.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 16:352, the Department of Revenue proposes the attached amendment to 103 KAR 16:352.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Final, 10-4-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

103 KAR 16:352. Corporation income taxes policies and circulars.

RELATES TO: KRS 131.130(1), (8), 141.010, 141.0101, 141.012, 141.039, 141.040, 141.044, 141.050, 141.120, 141.140, 141.160, 141.170, [141.200], 141.210, 141.206, 141.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. Prior to the enactment of KRS Chapter 13A, the department issued policies and circulars as guidance for the administration of Kentucky's tax laws. Since that time, changes to corporation income tax law have created conflict with these policies and circulars. [The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws.] This administrative regulation rescinds corporation income tax ~~[taxes]~~ policies and circulars.

Section 1. The following corporation income and license tax ~~[taxes]~~ policies ~~[and circulars]~~ of the department ~~[Department of Revenue]~~ are rescinded and shall be [null] ~~[void]~~, ~~and unenforceable~~:

(1) Revenue Policy 41P010 - Cooperatives. This policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.160 and 141.170.

(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.140(1).

(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.210(2).

(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy shall be ~~[is being]~~ rescinded because it is made obsolete by KRS 141.044(2)(c). ~~[restates KRS 141.990(3).]~~

(5) Revenue Policy 41P070 - Income and deductions. This policy shall be ~~[is being]~~ rescinded because it is obsolete and restates KRS 141.010, 141.039, and 141.050.

(6) Revenue Policy 41P071 - Claim of right. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:320.

(7) Revenue Policy 41P080 - Coal royalty income. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(1)(d). ~~[141.040(12)(d).]~~

(8) Revenue Policy 41P090 - Jobs Tax Credit. This policy shall be rescinded because it conflicts with KRS Chapter 13A.

(9) Revenue Policy 41P100 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. The department issued guidance pursuant to KRS 131.130(8) on the deductibility of state taxes. [103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income, provides guidance on the deductibility of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.]

~~(10)~~ Revenue Policy 41P110 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(2)(c)1. and guidance has been issued by the department pursuant to KRS 131.130(8). ~~[guidance on the deductibility of the Massachusetts cor-~~

poration excise tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]

(11)[(40)] Revenue Policy 41P120 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.

(12)[(44)] Revenue Policy 41P121 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(2)(c)1. and guidance has been issued by the department pursuant to KRS 131.130(8). ~~[guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]~~

(13)[(42)] Revenue Policy 41P125 - Windfall profit tax. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(2)(c) ~~[141.040(13)]~~ and the provision of the Internal Revenue Code referred to in the policy has been repealed.

(14)[(43)] Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy shall be ~~[is being]~~ rescinded because it restates provisions in KRS 141.010, 141.039, [KRS 141.040(12), (13), (14),] and 141.120 and the holding of a court decision.

(15)[(44)] Revenue Policy 41P140 - Subpart F Income. This policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.039(1)(b). ~~[141.040(12).]~~

(16)[(45)] Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:060.

(17)[(46)] Revenue Policy 41P160 - First-Year Net Operating Loss. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.

(18)[(47)] Revenue Policy 41P170 - Sales Factor. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Guidance on the receipts[sales] factor is provided by 103 KAR 16:270.

(19)[(48)] Revenue Policy 41P180 - Property Factor. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

(20)[(49)] Revenue Policy 41P190 - Net Rental Income. This policy shall be ~~[is being]~~ rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290, Apportionment; Property Factor.

(21)[(20)] Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.206.

(22)[(24)] Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:340.

(23)[(22)] Revenue Policy 41P220 - Separate Accounting. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.120(12) and was ~~[statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were]~~ incorporated into 103 KAR 16:330.

(24)[(23)] Revenue Policy 41P230 - Financial Organizations. This policy shall be ~~[is being]~~ rescinded because it is obsolete. ~~[was incorporated into 103 KAR 16:150.]~~

(25)[(24)] Revenue Policy 41P240 - Homeowners Associations. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.010, 141.039, and 141.040.

(26)[(25)] Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.

(27)[(26)] Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganiza-

tions. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.0101(10).

(28) Revenue Policy 41P500 – Agreement to extend statute of limitations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(29) Revenue Policy 41P520 – Capital. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(30) Revenue Policy 41P530 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(31) Revenue Policy 41P540 – Unearned leasehold income. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(32) Revenue Policy 41P550 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(33) Revenue Policy 41P560 – Outer continental shelf. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(34) Revenue Policy 41P570 – Corporation license tax apportionment factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(35) Revenue Policy 41P580 – Sales factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(36) Revenue Policy 41P590 – Homeowners associations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(37) Revenue Policy 41P600 – Real estate investment trust. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

Section 2. The following corporation income tax circulars of the department are rescinded and shall be void:

(1) Revenue Circular 40C005 – Kentucky depreciation system. This circular shall be rescinded because it restates provisions in KRS 141.0101.

(2) Revenue Circular 40C010 – Reporting requirements for nonresident partners' of S-corporation shareholders' combined Kentucky income tax return. This circular shall be rescinded because it was superseded by KRS 141.206.

(3) Revenue Circular 40C030 – Corporation and individual income tax-special reporting procedures. This circular shall be rescinded because it is obsolete.

(4)~~[(27)]~~Revenue Circular 41C020 - Safe harbor or finance leases. This circular shall be~~[is being]~~ rescinded because it is obsolete. ~~[Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance Leases.]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



Andy Beshear
Governor

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

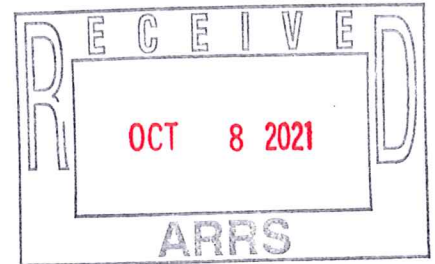
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Holly M. Johnson
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Thomas B. Miller
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October 6, 2021

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



RE: 103 KAR 18:020. Withholding return adjustment.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 18:020, the Department of Revenue proposes the attached amendment to 103 KAR 18:020.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Final, 10-4-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

103 KAR 18:020. Withholding return adjustment.

RELATES TO: KRS 141.330, 141.355

STATUTORY AUTHORITY: KRS 131.130(1), **141.050(4)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) **requires[directs]** the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation **establishes[explains]** the procedure **[which]** the employer **is required to[shall]** ~~[is to]~~ use in correcting errors in the withholding and payment of Kentucky income tax.

Section 1. General. If the amount of tax withheld by the employer exceeds or is less than the tax required to be withheld and ~~[If more or less than the correct amount of tax is withheld, for any period, or more or less than the correct amount of tax is]~~ paid to the department for any period, proper adjustment may be made on the return for a subsequent period of the same calendar year. Every return on which an adjustment for a preceding period is reported shall ~~[must]~~ include a statement explaining the adjustment and designating the period in which the error occurred. A claim for refund may be filed for any overpayment.

Section 2. Under-withholding. If less than the correct amount of the tax required to be withheld is deducted from any wage payment, the employer may ~~[is authorized to]~~ deduct the under-collection from the remuneration of the employee under his or her control. If there is no ~~[such]~~ remuneration under the control of the employer, the matter is one for settlement between the employer and the employee, but the amount under-collected shall be the liability of the employer. ~~[employer is responsible for the underwithholding.]~~

Section 3. Over-withholding. If more than the correct amount of tax required to be withheld is deducted from any wage payment, the over-collection may be repaid to the employee. The employer shall obtain and keep, as part of his or her records, the written acknowledgement of receipt of the repayment by the employee ~~[receipt of the employee]~~ showing the date and amount of the repayment. Any over-collection not repaid and receipted for by the employee shall ~~[must]~~ be reported and paid to the department ~~[Department of Revenue]~~ for the period in which the over-collection was made.

Section 4. Other Errors. Employers shall ~~[should]~~ consult the department for correction of errors in withholding which cannot be adjusted in a return for a subsequent period of the same calendar year.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



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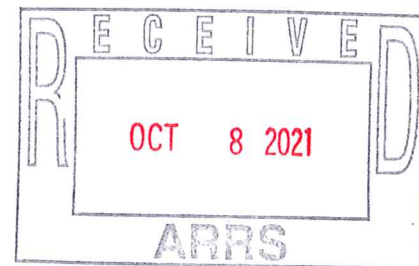
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October 6, 2021

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



RE: 103 KAR 18:090. Payroll records.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 18:090, the Department of Revenue proposes the attached amendment to 103 KAR 18:090.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Final, 10-4-2021

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

103 KAR 18:090. Payroll records.

RELATES TO: KRS 131.130, 141.050, 141.310, ~~141.315,~~ 141.325

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) ~~requires~~ **directs** the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation provides guidelines for the maintenance and retention of records relative to income tax withholding by employers.

Section 1. Maintain Records. (1)(a) Every employer required to deduct and withhold income tax upon wages ~~[the tax]~~ shall keep employee withholding exemption certificates and records showing the following:

1. The number of persons employed during the year whose wages are subject to withholding;
2. The ~~[, the]~~ periods of employment; and
3. The ~~[the]~~ amounts and dates of payment to each person. ~~[such persons.]~~

(b) No specific form for ~~[such]~~ records has been prescribed by the department.

(2) Records required by this administrative regulation shall be maintained for a period of at least four (4) years after the date the withholding return is filed or the date tax withheld by the employer is paid, whichever is later.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



Andy Beshear
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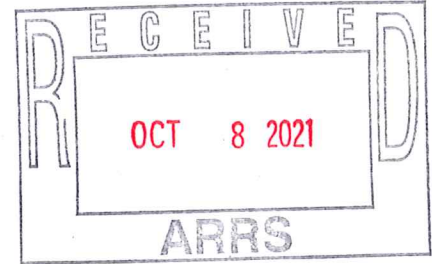
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Room 029, Capital Annex
Frankfort, Kentucky 40601



RE: 103 KAR 27:050. Florists and nurserymen.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 27:050, the Department of Revenue proposes the attached amendment to 103 KAR 27:050.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Subcommittee Substitute

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(As Amended at ARRS)

103 KAR 27:050. Sourcing of retail sales by florists.~~[Florists and nurserymen.]~~

RELATES TO: KRS 139.010, 139.105, 139.200, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1), 139.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. KRS 139.105 requires florist wire sales to be sourced in accordance with an administrative regulation promulgated by the department. This administrative regulation interprets the sales and use tax law as it applies to sales by florists~~[-and nurserymen].~~

Section 1. Sales of the following are examples of items that shall be subject to the sales and use tax:

(1) Balloons;

(2) Bouquets;

(3) Candy;

(4) Flowers;

(5) Potted plants;

(6) Shrubbery;

(7) Vases;

(8) Wreaths; and

(9) Other similar items of tangible personal property.~~[flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the sales and use tax.]~~

Section 2. Florist Transactions through a Florists' Wire Delivery Association. If a ~~[Where]~~ florist~~[s]~~ conducts transactions through a florists' wire ~~[telegraphic]~~ delivery association, the following rules ~~shall~~ will apply in the computation of tax liability:

(1) On all orders taken by a Kentucky florist and ~~sent~~ telegraphed to a second florist in Kentucky for delivery in Kentucky, the sending florist ~~shall~~ will be liable for the tax based upon gross receipts from the customer who places the order;

(2) If a ~~[In cases where a]~~ Kentucky florist receives an order and subsequently sends~~[pursuant to which he gives telegraphic]~~ instructions to a second florist located outside Kentucky for delivery of **tangible personal property [flowers]** to a point outside Kentucky, the Kentucky tax owed shall be based upon gross ~~[tax will likewise be owing with respect to the total]~~ receipts of the sending florist from the customer who places the order; and

(3) If a ~~[In cases where]~~ Kentucky florist~~[s]~~ receives ~~[telegraphic]~~ instructions from another florist ~~[other florists]~~ **[either]** within or outside of Kentucky for the delivery of **tangible personal property [flowers]**, the receiving florist ~~shall~~ will not be held liable for tax with respect to any

receipts realized~~[which he may realize]~~ from the transaction. In this instance, if the order originated in Kentucky, the tax shall ~~[will]~~ be due ~~[from]~~ and payable by the Kentucky florist who first received the order and then sent ~~[gave the telegraphic]~~ instructions to the second florist.

Section 3. Florist Transactions not through a Florists' Wire Delivery Association. If **a florist[s]** ~~conducts~~ transactions through any other means other than a florists' wire delivery association, all orders shall be sourced to the destination where the tangible personal property is delivered, pursuant to KRS 139.105. The florist shall collect and remit the sales and use tax accordingly on the retail sale of the tangible personal property. ~~[When a nurseryman or florist sells shrubbery, young trees or similar items, and as part of the transaction transplants them to the land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the sales tax.]~~

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Andy Beshear
Governor

Commonwealth of Kentucky
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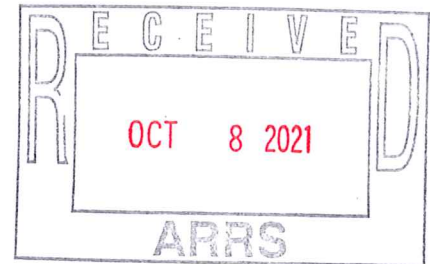
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October 6, 2021

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



RE: 103 KAR 27:150. Repairers and reconditioners of personal property.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 27:150, the Department of Revenue proposes the attached amendment to 103 KAR 27:150.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Subcommittee Substitute

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS)**

103 KAR 27:150. Repairers and reconditioners of tangible personal property.

RELATES TO: KRS 139.010, 139.200, 139.215, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the sales and use tax requirements for parts and materials used by repairers and reconditioners of tangible personal property.

Section 1. Definitions. (1) "De minimis" is defined by KRS 139.215.

(2) "Extended warranty services" is defined by KRS 139.010(13).

Section 2. (1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of taxable tangible personal property sold (including repair parts, replacement parts, and materials) along with all service, installation, and repair charges associated with installing or applying the taxable tangible personal property sold.

(2) Examples of repairers or reconditioners shall include repairers or reconditioners of:

(a) Airplanes;

(b) Bicycles;

(c) Boats;

(d) Cellular phones;

(e) Computers;

(f) Furniture;

(g) Machinery;

(h) Motor vehicles;

(i) Musical instruments;

(j) Radios; or

(k) Television sets.

Section 3. Taxable and Nontaxable Service and Installation Labor for Repairers or Reconditioners of Tangible Personal Property. (1) Charges for labor or services provided in installing or applying taxable tangible personal property, digital property, and services sold shall be subject to sales and use tax. For example, an appliance repair shop that sells and installs a new drain pump on a washing machine shall collect and remit sales tax on the sale of the drain pump and any service, installation, or labor charge associated with the installation of the drain pump. Since the drain pump sold is subject to sales and use tax, the service, installation, or labor charges associated with the installation of the drain pump also shall be subject to sales and use tax.

(2) Service, installation, or labor charges made to tangible personal property where there is no sale of taxable tangible personal property, digital property, or service shall not be subject to sales and use tax. For example, the charge for an appliance repair shop to merely reconnect a loose drain hose shall not be subject to sales and use tax. If the appliance repair shop only reconnects a loose drain hose with no sale of taxable property or services, then the service, installation, or labor charge associated with the repair shall not be subject to sales and use tax.

(3) If tangible personal property, digital property, or services sold are not subject to sales and use tax, the charges for labor or services provided in installing or applying the property or services sold also shall not be subject to sales and use tax. For example, an appliance repair shop that sells and installs a washing machine electronic control panel receives a fully completed Resale Certificate, Form 51A105, **Streamlined [Streamlined]** Sales and Use Tax Agreement—Certificate of Exemption, Form **51A260 [51A206]**, or Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate—Multijurisdictional, for the purchase of the electronic control panel. Since the electronic control panel is exempt from sales and use tax, the service, installation, or labor charge associated with the sale and installation of the electronic control panel also shall not be subject to sales and use tax.

Section 4. De Minimis Parts and Materials. [(1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of parts and materials furnished in connection with repair work in which the value of the parts and materials is substantial in relation to the total charge.

(2) Examples of a repairer or reconditioner shall include: repairers of motor vehicles, airplanes, bicycles, machinery, farm implements, musical instruments, computers, radios, television sets, boats, and furniture.

(3) The repairer or reconditioner shall segregate on the invoices to their customers and in their books and records the price of the parts and materials from the charges for labor of repair, reconditioning, installation and other services. The tax shall be applicable to the sales price of the property.

(4) If the labor and other services are not separately stated from the price of the property furnished as required by subsection (3) of this section, it shall be presumed that the entire charge represents the sale price of the property and the tax shall apply to the entire charge.

Section 2.] (1) According to the provisions of KRS 139.215, if the value of the parts and materials used in the repair or reconditioning of tangible personal property is less than ten (10) percent of the total value of the parts and materials, labor, and [charges for the labor or] other services performed and if no separate charge is made for the property, the repairer or reconditioner shall be classified as the consumer of the property, and the suppliers of parts and materials shall be classified as retailers subject to the tax with respect to the property which they sell to the repairer or reconditioner.

(2) The list in this subsection shall serve as examples of repairs or alterations in which the parts and materials used are less than ten (10) percent in relation to the charges for labor or other services performed: [;]

(a) Repairs of:

1. Clothing;

2. Dental prosthesis;

3. Eyeglass frames;

4.[2.] Fishing rods;

5.[3.] Jewelry;

6.[4.] Tires;

7.[5.] Tubes; or

8.[6.] Watches; or

(b) Alterations performed by the retailer to refit clothes and other garments for the use for which they were originally produced.

Section 5. Extended Warranty Services. (1)(a) Effective July 1, 2018, receipts from the sale of extended warranty services, including the sale of optional service, maintenance, or extended warranty contracts related to taxable tangible personal property, shall be subject to sales and use tax.

(b) The person performing repair work under the provisions of an extended warranty service agreement or contract subject to tax sold on or after July 1, 2018, may purchase the repair parts used in fulfilling the contract exempt from sales and use tax using the Resale Certificate, Form 51A105, the Streamlined Sales and Use Tax Agreement- Certificate of Exemption, Form **51A260** ~~[51A206]~~, or the Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate-Multijurisdictional pursuant to KRS 139.270.

(c) Charges by an entity to perform repair labor under the provisions of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(d) Charges by a third party to perform repair work for an extended warranty service agreement provided under the provision of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(e) Charges for repair work made outside the provisions of an existing extended warranty service agreement or contract that include taxable service, installation, or repair labor are included in gross receipts pursuant to KRS 139.010(15)(a)(6) and **shall be** subject to sales tax.

(f) Deductibles charged as part of the provision of a taxable extended warranty service contract shall be subject to sales and use tax.

(2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts sold prior to July 1, 2018, not required as part of the sale of taxable tangible personal property, shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records.

(b) The person performing the repair work under a contract described in subsection (2)(a) of this section sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of the contract.

Section 6. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

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

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

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

~~Section 7. [Section 3. If the method of repairing or reconditioning tangible personal property involves commingling property delivered to a repairer or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairer or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that delivered, tax shall apply to the entire amount charged by the repairer or reconditioner for the exchange of property, and a deduction shall not be allowed for services involved since the exchange and other acts incidental to it constitute an integral transaction. This shall apply, for example, to the exchange of a reconditioned vehicle motor for a worn motor.~~

~~Section 4. (1) Receipts from the sale of optional service, maintenance, or extended warranty contracts offered but not required as a part of the sale of taxable tangible personal property shall not be subject to sales and use tax if the retailer separately itemizes the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records. The person performing the repair work under the contract shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of optional service, maintenance, or extended warranty contracts.~~

~~(2) Receipts from the sale of service, maintenance, or extended warranty contracts that are included as part of the sale of taxable tangible personal property shall be included in the sales price subject to tax as provided in KRS 139.010.~~

~~Section 5.](1) This administrative regulation shall replace Revenue Circular 51C020 and Revenue Policy 51P190.~~

~~(2) Revenue Circular 51C020 and Revenue Policy 51P190 are hereby rescinded and shall be null, void, and unenforceable.~~

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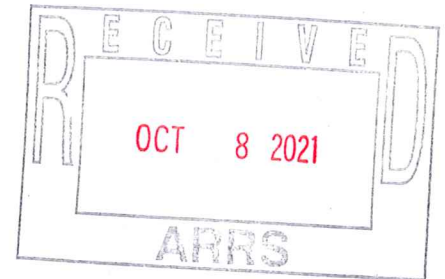
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RE: 103 KAR 30:091. Sales to farmers.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 30:091, the Department of Revenue proposes the attached amendment to 103 KAR 30:091.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Revised: 10/7/21

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET Department of Revenue

103 KAR 30:091. Sales to farmers.

RELATES TO: KRS 139.010, **139.200**, 139.260, 139.470, 139.480

STATUTORY AUTHORITY: 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~139.010~~], 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation establishes the sales and use tax requirements for sales to farmers.

Section 1. Definitions. (1) "Attachments" means tangible personal property that:

(a) Is necessary for the operation of farm machinery and is purchased primarily to improve efficiency to diversify the function which the machinery is capable of performing; and

(b) Includes replacement attachments, or repair or replacement parts for the attachments.

(2) "Crops" means plants, trees, or shrubs grown for sale, including corn, flowers, fruit, hay, sod, soybeans, straw, timber, tobacco, vegetables, and wheat[, ~~straw~~, ~~fruit~~, ~~vegetables~~, ~~timber~~, and ~~flowers~~].

(3) "Farmer" means any person that is regularly engaged in the occupation of:

(a) Tilling and cultivating the soil for the production of crops as a business;

(b) Raising livestock or poultry, if the livestock or poultry, or the products of the livestock or poultry, are for sale;

(c) Producing milk for sale; or

(d) Breeding or producing:

1. Aquatic organisms;

2. Buffalos;

3. Cervids;

4. Llamas or alpacas; or

5. Ratites. [

1. Ratites;

2. Llamas or alpacas;

3. Buffalos;

4. Aquatic organisms; or

5. Cervids.]

(4) "Farm machinery" is defined by KRS 139.480(11).

(5) "Livestock" means animals of a kind the products of which ordinarily constitute food for human consumption.

(6) "On-farm facility" means property used in the pursuits provided under KRS 139.480 as follows:

(a) Fencing or structures permanently affixed to or installed on the premises of the property;

(b) Improvements to real property such as ponds;

(c) Any materials incorporated into the construction, renovation, or repair of the fencing, structures, or improvements described in paragraph (a) or (b) **of this subsection**; and

(d) Any equipment, machinery, or attachments including repair or replacement parts for the equipment, machinery, or attachments used in the operation of the facility.

(7) "Person" is defined by KRS 139.010(26)(49).

Section 2. The examples of taxable and nontaxable items contained in this administrative regulation shall be used for illustrative purposes only and are not intended to be all inclusive.

Section 3. Farm Machinery. In addition to the more commonly recognized items that are classified as "farm machinery", the list provided in this section shall serve as examples of the items that shall qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11):

- (1) All terrain vehicles (ATV) or utility vehicles;
- (2) Automatic or portable feeding equipment including:
 - (a) Livestock creep feeders; and
 - (b) Poultry feeders;
- (3) Automatic egg gathering systems;
- (4) Automatic washers;
- (5) Automatic waterers;
- (6) Brooders;
- (7) Bulk tanks (mechanical);
- (8) Bush hogs;
- (9) Chain saws;
- (10) Cleaning machinery (mechanical);
- (11) Clippers for livestock;
- (12) Coke stoves for curing tobacco;
- (13) Cooling units or cooling fans;
- (14) Egg processing machinery;
- (15) Farm wagons;
- (16) Grain or hay elevators;
- (17) Hay mowers;
- (18) Heaters (portable);
- (19) Incubators;
- (20) Insecticide sprayers (hand-held);
- (21) Irrigation systems;
- (22) Log splitters;
- (23) Milking machines;
- (24) Posthole diggers (mechanical);
- (25) Roller mills;
- (26) Seed sowers (automatic);
- (27) Shop welders or other machinery (mechanical) used exclusively to maintain other farm machinery;
- (28) Silo unloaders (augers);
- (29) Tilt table for livestock;
- (30) Tobacco curing machinery;
- (31) Tobacco setter;
- (32) Tobacco transplant system machinery, including:
 - (a) Clipping equipment;
 - (b) Heating equipment;
 - (c) Injector systems;
 - (d) Seeding equipment; and
 - (e) Ventilation equipment; or
- (33) Tractor mounted sprayer.

Section 4. Exempt Chemicals. In addition to more commonly recognized items that are classified as "farm chemicals", the list provided in this section shall serve as examples of items that shall qualify for the farm chemical exemption as provided in KRS 139.480(8):

- (1) Adjuvant to enhance herbicide coverage of crops;
- (2) Antiseptic wipes to clean cows' udders;
- (3) Insecticidal dipping chemicals;
- (4) Insecticidal ear tags;
- (5) Lime or hydrated lime for disinfectant;
- (6) Methyl bromide gas or similar tobacco chemicals; or
- (7) Seed flow enhancers to optimize seed planting and spacing, including talc or graphite.

Section 5. Exempt Feed. The list provided in this section shall serve as examples of items that shall qualify for the feed and feed additive exemptions as provided in KRS 139.480(9):

- (1) Bag or block salt;
- (2) Dietary supplements as a feed additive;
- (3) Fish pellets, grain, corn gluten, peanut hulls, soybean hulls, or distiller's grain;
- (4) Milk replacer;
- (5) Mineral blocks;
- (6) Protein blocks;
- (7) Protein supplements; or
- (8) Special medicated feed pre-mixes.

Section 6. On-farm Facilities. The list provided in this section shall serve as examples of items the sale or purchase of which shall qualify for the exemption provided for all on-farm facilities under KRS 139.480:

- (1) Branding iron heaters or irons;
- (2) Bucket racks;
- (3) Building materials, including:
 - (a) Concrete;
 - (b) Gravel;
 - (c) Guttering;
 - (d) Insulation;
 - (e) Lumber;
 - (f) Nails;
 - (g) Paint;
 - (h) Rock;
 - (i) Roofing materials; or
 - (j) Sand;
- (4) Culvert pipe;
- (5) Drainage tile;
- (6) Erosion mats;
- (7) Farm gates;
- (8) Feeding system materials or equipment, including:
 - (a) Feed buckets;
 - (b) Feed bunks for farm wagons;
 - (c) Hoses;
 - (d) Nozzles;
 - (e) Pipelines;
 - (f) Round bale feeders;
 - (g) Salt or mineral feeders; or
 - (h) Tubes;

- (9) Fencing materials, including:
 - (a) Cattle guards;
 - (b) Fence chargers;
 - (c) Insulators or other components used in an electrical fence system;
 - (d) Planks;
 - (e) Posts;
 - (f) Staples; or
 - (g) Wire;
- (10) Handling facilities, including:
 - (a) Corral panels, chutes, or sweeps;
 - (b) Farrowing crates;
 - (c) Headgates; or
 - (d) Holding crates or hutches;
- (11) Insect control (electric);
- (12) Livestock oilers;
- (13) Manure pit for livestock;
- (14) Pond sealers;
- (15) Silos, silo covers, or silage covers;
- (16) Water hydrants or water tanks; or
- (17) Water pipe including plastic or other material.

Section 7. Packaging Materials. The list provided in this section shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax if used in the packaging of products for sale, in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(26)[(27)]:

- (1) Bags or sacks;
- (2) Baskets;
- (3) Crates;
- (4) Net Wrap [~~Shrink wrap~~]; or
- (5) Shrink Wrap [~~Net wrap~~].

Section 8. Farm Work Stock. The list provided in this section shall serve as examples of farm work stock the sale or purchase of which shall be exempt from sales and use tax as provided in KRS 139.480(6):

- (1) Donkeys or burros;
- (2) Draft horses;
- (3) Guard dogs, including the Pyrenees or Polish Tatra breeds, to protect sheep, goats, or other livestock;
- (4) Herd dogs for herding sheep, cattle, or other livestock;
- (5) Jacks; or
- (6) Mules.

Section 9. Attachments, Repair and Replacement Parts. (1) Attachments sold or purchased for use on farm machinery which are necessary to the operation of the farm machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items of sale or purchase of which shall be exempt from sales and use tax:

- (a) Dual wheel assemblies;
- (b) Hitches;
- (c) Hydraulic systems;
- (d) Water tanks; or
- (e) Weights.

(2) Repair and replacement parts sold or purchased for use on farm machinery which are necessary to the operation of the machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax:

- (a) Batteries;
- (b) Bolts;
- (c) Chain saw repair parts;
- (d) Cutting parts;
- (e) Fan belts;
- (f) Farm machinery filters;
- (g) Miscellaneous motor repair parts;
- (h) Mufflers;
- (i) Plow points;
- (j) Spark plugs;
- (k) Springs;
- (l) Tires; or
- (m) V-belts.

Section 10. Taxable Items. The list provided in this section shall serve as examples of items commonly used on farms, the sale or purchase of which shall not be exempt from the sales or use tax as provided by KRS 139.480:

(1) Hand tools or wholly hand-operated equipment, including:

- (a) Axes;
- (b) Barn brooms;
- (c) Barn forks;
- (d) Brooms;
- (e) Drench guns;
- (f) Grease guns;
- (g) Hoes;
- (h) Jacks (manual or electronic);
- (i) Ladders;
- (j) Pitchforks;
- (k) Pliers;
- (l) Post hole diggers (manual);
- (m) Rakes;
- (n) Shovels;
- (o) Tobacco balers (hand operated);
- (p) Wheelbarrows; or
- (q) Wrenches;

(2) Accessories not essential to the operation of the farm machinery except if sold as a part of an assembled unit, including:

- (a) Air conditioning units;
- (b) Cabs;
- (c) Canopies;
- (d) Cigarette lighters;
- (e) Deluxe seats;
- (f) Lubricators;
- (g) Radios;
- (h) Seat cushions or covers; or
- (i) Tool or utility boxes;

(3) Miscellaneous equipment, materials, or supplies, including:

- (a) Antifreeze, oil, grease, lubricant, hydraulic fluid, or transmission fluid;
- (b) Bedding materials including:
 - 1. Chicken bedding;
 - 2. Chicken litter;
 - 3. Straw;
 - 4. Sawdust; or
 - 5. Wood shavings;
- (c) Bird seed;
- (d) Bromo gas applicators;
- (e) Bumper hitch trailers;
- (f) Calcium chloride;
- (g) Castrators or elastrator bands or rings;
- (h) Chains;
- (i) Charcoal for cistern filtration;
- (j) Chicken transport cages;
- (k) Coke for curing tobacco;
- (l) Copper sulphate;
- (m) Dehorner;
- (n) Dog food;
- (o) Feed for work stock animals;
- (p) Identification tags;
- (q) Lawn or garden equipment, including:
 - 1. Push mowers;
 - 2. Riding lawn mowers;
 - 3. Rotor tillers;
 - 4. Weed eaters; or
 - 5. Zero turn mowers;
- (r) Livestock oil unless containing insecticide;
- (s) Milk cans, milk strainers, or milk storage tanks;
- (t) Rope;
- (u) Snaps or washers;
- (v) Tobacco canvas or other plant bed covers;
- (w) Tobacco knives, tobacco spears, or tobacco sticks;
- (x) Tobacco transplant system materials, including:
 - 1. Plastic;
 - 2. Trays; or
 - 3. Ventilation curtains.
- (y) Tractor paint;
- (z) Truck batteries and truck tires; or
- (aa) Work shoes or boots, work clothes, or safety goggles;
- (4) Items sold or purchased for use in raising, feeding, showing, exhibiting, or breeding of horses except water as provided in KRS 139.470(12);~~[(14);]~~
- (5) Items sold or purchased for use in the raising and keeping of bees;
- (6) [(5)] Medicines, vaccines, vitamins, or wormers; or [or]
- (7) [(6)] Veterinary instruments, including:
 - (a) Needles;
 - (b) Operating tables; or
 - (c) Syringes.

Section 11. Exemption Certificates. (1) A farmer shall issue a Farm Exemption Certificate, Form 51A158, ~~[Farm Exemption Certificate,]~~ or a Streamlined Sales and Use Tax Agreement –

~~Certificate of Exemption, Form 51A260, [Streamlined Sales and Use Tax Agreement—Certificate of Exemption, which are incorporated by reference in 103 KAR 3:020,] for the exempt purchase of tangible personal property other than tangible personal property referenced in subsection (2) [2] of this section. [exempted under KRS 139.480.]~~

(2)(a) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, ~~[which is incorporated by reference in 103 KAR 3:020,]~~for the exempt purchase of tangible personal property for incorporation into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(b) A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3)(a) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair, or renovation of an on-farm facility.

(b) A contractor shall not use the certificate for the purchase, rental, or lease of construction equipment, consumable supplies, or other tangible personal property that is not for incorporation into the on-farm facility.

(c) A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase.

(d) A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, or equipment required for the same project after the initial expiration date or for additional projects.

Section 12. Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime, or other tangible personal property used to perform the service.

(3) Services otherwise treated as landscaping services pursuant to KRS 139.200(2)(g), including fence clearing, mowing, spraying, and tree trimming provided to a farmer where the service is performed on land that is regularly used in the business of farming **shall [are] not be** subject to sales tax.

Section 13. Non-taxable service and installation labor. **If installing or applying property that is not subject to sales tax, charges for labor or services to install or apply the property [rendered in installing or applying property sold that is not subject to sales tax] shall also not be subject to sales tax. This treatment shall include [includes] charges for the installation or repair of tax-exempt farm machinery and any tax-exempt attachments, repair, or replacement parts thereto.**

Section 14[13]. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360 are hereby rescinded and shall be null, void, and unenforceable. ~~[103 KAR 30:091]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation,

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Andy Beshear
Governor

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Holly M. Johnson
Secretary

Thomas B. Miller
Commissioner

October 6, 2021

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



RE: 103 KAR 30:120. Machinery for new and expanded industry.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 30:120, the Department of Revenue proposes the attached amendment to 103 KAR 30:120.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Revised: 10/7/21

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET Department of Revenue

103 KAR 30:120. Machinery for new and expanded industry.

RELATES TO: KRS 139.010, **139.470**, 139.480, 241.010, 243.030, 243.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. **KRS 139.480 exempts specified property from sales and use taxes.** This administrative regulation interprets ~~[To interpret]~~ the sales and use tax law as it applies to exemption qualification for "machinery for new and expanded industry."

Section 1. Definitions. (1) "Directly used in the manufacturing or industrial processing process" is defined by KRS 139.010(12).

(2) "Industrial processing" is defined by KRS 139.010(17).

(3) "License" is defined by KRS 241.010(34).

(4) "Machinery" means machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; **such** as, the machinery of a watch. (Webster's New International Dictionary). This definition does not **require [specify that] machinery to [must]** have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.

(5) "Machinery for new and expanded industry" is defined by KRS 139.010(19).

(6) "Manufacturing" is defined by KRS 139.010(20).

(7) "Plant facility" is defined by KRS 139.010(28).

(8) "Premises" is defined by KRS 241.010(44).

(9) "Recycled materials" is defined by KRS 139.010(31).

Section 2. Requirements for Exemption. The machinery and the appurtenant equipment necessary to the completed installation of **the [such]** machinery, together with the materials directly used in the installation of **the [such]** machinery and appurtenant equipment, which are incorporated for the first time into new or existing plant facilities or licensed premises as provided in KRS 139.010(19), or which are installed in the place of existing ~~[plant]~~ machinery having a lesser productive capacity, and which are directly used in a manufacturing or industrial processing ~~[processing production]~~ operation shall be exempt from the sales and use tax. ~~[The term "processing production" shall include: the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone and natural gas.]~~ In summary, the following four (4) specific requirements **shall [must]** be met before machinery qualifies for exemption:

(1) It **shall [must]** be machinery.

(2) It **shall [must]** be used directly in the manufacturing or industrial processing process.

(3) It **shall [must]** be incorporated for the first time into:

(a) Plant [plant-] facilities established in this state; or

(b) The premises of alcohol beverage producers in this state that include a retail establishment

licensed under KRS 243.030 or KRS 243.040.

(4) It **shall [must]** not replace other machinery.

Section 3.[2.] Analysis of Requirements. (1) It **shall [must]** be machinery. ~~[The term "machinery" shall mean: machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; as, the machinery of a watch. (Webster's New International Dictionary). This definition does not specify that machinery must have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.]~~

(2) It **shall [must]** be used directly in the manufacturing or industrial processing process. Machinery **shall [must]** be intimately involved in production in order to be considered used "directly" in the manufacturing or industrial processing process. The fact that machinery is necessary for a manufacturing or industrial processing process ~~shall [does]~~ not automatically qualify it for exemption. A single manufacturer may, within its [his] primary manufacturing process, have more than one (1) production activity.

(a) Primary manufacturing process.

1. The primary manufacturing process is the production operation resulting in a finished product which will be transferred from the producing plant for distribution to customers or for further processing at another plant site. Production begins at a point where the raw material enters a process and is acted upon to change its size, shape, or composition or is transformed in some manner. Production ends when the finished goods are packaged or ready for sale. Packaging is considered complete when the product is in the container in which it is normally received by the purchaser.

2. All activities preceding the point of introduction of the raw material into the manufacturing process and following the point at which the finished product is packaged or ready for sale are not production activities and the machinery used therein shall be [is] subject to tax.

3. Storage facilities, including those provided for the storage of in-process materials which have been removed from the production line to await further processing, are not used directly in the manufacturing process and shall be [are] subject to tax. Proximity of storage facilities to the production line is immaterial.

(b) Contributory or secondary manufacturing process. This activity generally falls into one (1) of four (4) categories:

1. The manufacture of industrial tools to be used in the manufacturing process. Examples include the manufacture of dies, patterns, rolls, molds, cutters and cutter blades, and like property. The exemption for machinery used shall be [herein-is] determined by the same criteria used for determining the exemption provided in the primary manufacturing process.

2. The processing of materials which do not become an ingredient of the finished product but are consumed as industrial supplies directly in the primary manufacturing process. Examples include water cooling systems, bottle washing preparatory to filling, and chemical processes whereby the chemical is used as a catalyst directly on the product being manufactured. This machinery exemption begins at the point where the material is acted upon to condition it for use in the manufacturing process or at the point where it performs a function itself, if it is not acted upon prior to that point. The exemption ends when the material leaves the process.

3. Electrical machinery and similar equipment used directly in the operation of other machinery which is used directly in the manufacturing process.

4. Machinery used exclusively for quality control of in-process material or the efficient operation of machinery. Examples are air cooling or air conditioning systems, control panels, exhaust systems, and similar activities.

(3) It **shall [must]** be incorporated for the first time into plant facilities or licensed premises

established in this state. To meet this requirement, the machinery **shall [must]** be installed in this state for the first time and it **shall [must]** be incorporated into plant facilities or licensed premises in this state. Machinery which has been once installed into manufacturing facilities or licensed premises in this state may be subject to tax ~~[as provided in 103 KAR 30:200]~~ when subsequently sold by that manufacturer. Machinery purchased and delivered in Kentucky shall be [is-]subject to tax when the machinery is not acquired for installation in Kentucky.

(4) It **shall [must]** not replace other machinery. New machinery purchased to replace other machinery in the plant or licensed premises shall be [is-]subject to tax unless the new machinery increases the consumption of recycled materials at the plant facility or licensed premises by not less than ten percent (10%), performs a different function, manufactures a different product, or has a greater productive capacity, measured by units of production, than the machinery replaced.

(a) Modification of existing machinery may qualify for exemption if the modification is to perform a different function or manufacture a different product [qualifies for exemption]. Modification of existing machinery is not replacement machinery but maintenance of existing machinery; therefore, modifications that merely provide a greater productive capacity as measured by units of production shall not qualify for exemption.

(b) Modification of existing machinery that results in automation of non-automated functions without performance of a different function or manufacture of a different product shall not qualify for exemption.

Section 4. Pursuant to KRS 139.470(22), charges for labor or services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process shall not be subject to sales and use tax if the charges for labor or services are separately stated. Purchasers may issue a fully completed "Certificate of Exemption Labor or Services on Manufacturing Equipment," Form 51A360, or "Streamlined Sales and Use Tax Agreement—Certificate of Exemption," Revenue Form 51A206, to claim the applicable exemption for the labor or service charges on tangible personal property directly used in the manufacturing or industrial processing process.

Section 5[3]. In all cases where a question arises concerning the exemption of machinery for new and expanded industry, the burden of proof that each qualification has been met **shall be on [is-upon]** the one seeking the exemption.

Section 6. Forms. The forms referenced herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

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

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

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

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



Andy Beshear
Governor

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

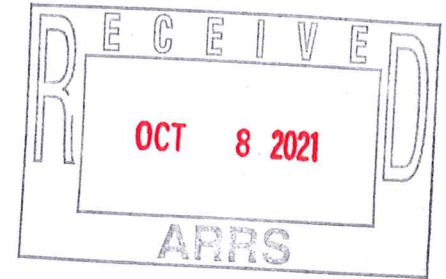
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October 6, 2021

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



RE: 103 KAR 30:190. Interstate and foreign commerce.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 30:190, the Department of Revenue proposes the attached amendment to 103 KAR 30:190.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Revised: 10/7/21

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET Department of Revenue

103 KAR 30:190. Interstate and foreign commerce.

RELATES TO: KRS 139.010, 139.105, 139.260, 139.340, 139.470, 139.486

STATUTORY AUTHORITY: KRS 131.130~~[(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets ~~[To interpret the]~~ sales and use tax law as it applies to sales in interstate and foreign commerce. The purpose of this administrative regulation is to state, generally, the application of the Commerce Clause of the Constitution of the United States of America to the sales and use tax law.

Section 1. Definitions. (1) "Consummated" means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.

(2) "Industrial machinery" is defined by KRS 139.486(1).

(3)(a) "Receive" means:

1.~~[(a)]~~ Taking possession of tangible personal property;

2.~~[(b)]~~ Making first use of services; or

3.~~[(c)]~~ Taking possession or making first use of digital products, whichever comes first.~~[(c)] and~~

~~[(b)]~~~~[(d)]~~ "Receive" does not include possession by a shipping company on behalf of the purchaser.

~~[(4)]~~~~[(3)]~~ "Seller" is defined by KRS 139.010(39).

~~[(5)]~~~~[(4)]~~ "Use" is defined by KRS 139.010(44). ~~[The purpose of this administrative regulation is to state generally the application of the Commerce Clause of the Constitution of the United States to the Sales and Use Tax Law.]~~

Section 2. Sales Tax: Transactions Consummated in Kentucky. (1) Where tangible personal property is located in this state at the time of its sale ~~[(or is subsequently produced in this state)]~~, and then delivered in this state to the purchaser, the seller ~~shall be~~ ~~[is]~~ subject to the sales tax if the sale is at retail and is consummated in Kentucky. A sale ~~shall not be~~ ~~[is not]~~ presumed to be made in interstate commerce if the purchaser or its ~~[his]~~ representative receives [physical] possession of tangible personal property, receives digital property, or makes first use of taxable services[such property] in this state. This is true notwithstanding the fact that the purchaser may, after receiving ~~[physical possession of]~~ the property in this state, transport or send the property out of the state for use outside the state or for use in the conduct of interstate commerce.

(2) (a) The sales tax ~~shall~~ ~~[does]~~ not apply to gross receipts from sales if, under the terms of its agreement with the purchaser, the seller makes delivery of tangible personal property sold from a point in this state to a point outside this state, not to be returned to a point within this state if delivery is actually made. Tangible personal property may be delivered by carrier, mail, or any other method of delivery.

(b) The sales tax shall not apply if a shipping company, on behalf of a purchaser, takes possession of the tangible personal property in this state for delivery outside this state, not to be returned to a point within this state, and delivery is actually made.

(3) The sales tax shall not apply to gross receipts from sales of tangible personal property to a common carrier under the conditions that are exempt pursuant to KRS 139.470(4).

~~(a) [in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods sold from a point in this state to a point outside this state, not to be returned to a point within this state, provided that such delivery is actually made. The tax does not apply to gross receipts from sales in which the seller, under the terms of his agreement with the purchaser, delivers the goods by carrier or by mail from a point in this state to a point outside this state not to be returned to a point within this state.]~~

~~(3) Pursuant to KRS 139.470(5), the sales tax does not apply to gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to an out-of-state destination for use by the carrier in the conduct of its business as a common carrier.]~~ Normally, when a sale by a Kentucky retailer involves a transfer of title and possession of the goods to the purchaser outside this state, the sale shall not be ~~[is not]~~ subject to Kentucky sales tax. The purpose of the exemption in KRS 139.470(4)~~[(5)]~~ is to place common carriers on the same footing as other out-of-state purchasers who take title and possession of goods outside this state ~~[out-of-state]~~ without requiring retailers to use some other common carrier to transport the goods outside this state ~~[out-of-state]~~ to the purchasing common carrier. Thus, the exemption shall apply only~~[applies]~~ to ~~[to]~~ tangible personal property shipped as cargo via the purchasing carrier. It shall ~~[does]~~ not apply to tangible personal property placed in use by the purchasing common carrier in this state.

~~(b) Examples of when the exemption shall [does] apply include:~~

~~1. Bulk [bulk] purchases of inventory items by a common carrier for immediate transport and storage outside this state;~~

~~2. Purchases [purchases] of tangible personal property by a common carrier for immediate shipment outside this state ~~[out-of-state]~~ without removal of the property from its original container within this state; and~~

~~3. Purchases [purchases] of jet fuel by a common carrier placed in a tanker vehicle in this state for immediate transport outside this state ~~[out-of-state]~~ where the fuel will be placed in the tanks of the planes which will consume it.~~

~~(c) Examples of when the exemption shall [does] not apply include:~~

~~1. Purchases [purchases] of repair parts by a common carrier for the carrier's own vehicles which are installed within this state;~~

~~2. Purchases [purchases] of components and furnishings for the common carrier's vehicles which are placed in use in this state; and~~

~~3. Purchases [purchases] of jet fuel placed in the tanks of the common carrier's plane which will consume it within this state, regardless of whether all of the fuel purchased will be consumed within this state.~~

~~(d) Mere compliance with the bill of lading requirements pursuant to KRS 139.470(4) shall not exempt a purchase [of the exemption statute does not entitle a purchase to exempt status] if the tangible personal property is placed in use before leaving this state.~~

~~(4) The sales tax shall [does] not apply to gross receipts from sales of property sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad if the property is[and] actually carried to a foreign destination, with title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property is being used or consumed in the United States.~~

~~(5) The sales tax shall [does] not apply to gross receipts from sales of industrial machinery for use out of state pursuant to KRS 139.486. [As defined by KRS 139.486 when such machinery is delivered to a manufacturer or processor, or their agent for use out of state. Industrial machinery will be presumed for sale, use, storage or consumption out of state if:~~

~~(a) Delivery is to a common carrier, whether chosen by the seller or by the purchaser, and~~

~~whether F.O.B. seller's shipping point or F.O.B. purchaser's destination, provided the shipping document indicates delivery to a location outside the state; or~~

~~(b) Delivery is made by seller's own transportation vehicles to a location outside the state.]~~

(6) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state, under the terms of an agreement with the purchaser, the seller shall [will] [be required to] retain in its [his] records documentary evidence which satisfies the department [cabinet] that there was [such] an agreement and a bona fide delivery outside this state of the property ~~[which was]~~ sold.

Section 3. Use Tax: Transactions Consummated Outside Kentucky. (1) The use tax shall apply ~~[applies]~~ to sales consummated outside Kentucky if[when] the tangible personal property sold is delivered [shipped] to the purchaser in this state or digital property is purchased for storage, use, or other consumption in this state. Examples of [such] transactions subject to use tax shall include:

(a) An order for goods [is] consummated ~~[completed and accepted (consummated)]~~ outside Kentucky and the seller's branch office or other place of business in this state is utilized in any way, such as in receiving the order, distributing the goods, ~~[and/] or billing for the merchandise; [; or]~~

(b) An order for goods [is] given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance; ~~[;]~~ or

(c) An order for goods that results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

(2) The use tax shall apply [applies] with respect to any tangible personal property or digital property purchased for storage, use, or other consumption in this state, the sale of which is exempt from sales tax under this administrative regulation, except property not subject to the sales or use tax or property held or stored in this state for sale in the regular course of business or subsequent use solely outside this state, and except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce, prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce.[]

~~(3) "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.~~

Section 4. The term "consummated" as used in this administrative regulation means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.[]

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



Andy Beshear
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Commonwealth of Kentucky
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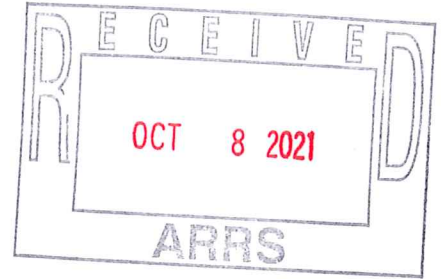
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Holly M. Johnson
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October 6, 2021

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



RE: 103 KAR 30:250. Property used in the publication of newspapers.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 103 KAR 30:250, the Department of Revenue proposes the attached amendment to 103 KAR 30:250.

Sincerely,

Gary C. Morris, Executive Director
Department of Revenue
Office of Tax Policy and Regulation
501 High Street, Station 1
Frankfort, KY 40601

Revised: 10/7/21

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET Department of Revenue

103 KAR 30:250. Property used in the publication of newspapers.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470(9)~~[(40)]~~, 139.480(10)

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for manufacturing activities relating to the publication of newspapers.

Section 1. Definitions. (1) "Manufacturing" is defined by [in] KRS 139.010(20).

(2) "Plant facility" is defined by [in] KRS 139.010(28)~~[(24)]~~.

Section 2. Requirements for Exemption. The storage, use, or other consumption of tangible personal property for use in the manufacturing process of newspaper publication shall be exempt from the sales and use tax in accordance with KRS 139.470(9), ~~[according to the provisions of KRS 139.170, 139.470(10),]~~ 139.480(10), and 103 KAR 30:120.

Section 3. Manufacturing Process. The manufacturing process within a plant facility commences with the movement of raw materials from storage into a continuous, unbroken, integrated process, and ends when the finished product is packaged and ready for sale. The manufacturing process shall include the following newspaper publication operations performed at a plant facility in a continuous, unbroken, integrated process:~~[operations flow:]~~

(1) Prepress operations:~~[-]~~

(a) Type-setting that transforms the text and images from the final preprint edit format into a design, layout, or paste-up format ready for printing whether performed electronically, digitally, by hard copy ~~[hardcopy]~~ layout, or by other printing technology now in existence or later devised; and

(b) The production of printing plates made photo mechanically or digitally;

(2) Press room and printing process:~~[-]~~

(a) Printing and collating the hard copy newspaper pages in accordance with the preprint design;

(b) Examples of conventional printing processes shall include:

1. Letterpress;
2. Flexography;
3. Lithography; or
4. Gravure; and

(3) Mail room operations, including addressing, labeling, and packaging for distribution.

Section 4. Nonmanufacturing Process. The following operations shall not constitute activities performed within the manufacturing process of newspaper publication:

(1) Photography and reporting, except for development of negatives and the production of prints at the newspaper plant facility;

(2) Newsroom activities. The list in this subsection shall serve as examples of newsroom

activities:

- (a) Monitoring of news events or related research;
- (b) Composition of news stories, opinions, or editorials for editorial review;
- (c) Editing process; or
- (d) Layout and page design by editorial staff;
- (3) Selling and design of advertisements;
- (4) Library and research, including the use of servers, computers, and other equipment to compile and index information; or
- (5) Storage and loading dock operations, including the storage of paper or other raw materials or the conveyance of packaged newspapers for storage, loading, or distribution.

Section 5. Subscription charges for wire services for the transmission of unedited text shall be considered purchases of services not subject to the sales and use tax.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C012.

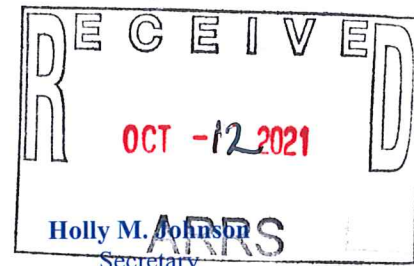
(2) Revenue Circular 51C012 is hereby rescinded and shall be null, void, and unenforceable.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.



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Andy Beshear
Governor



Brian C. Thomas
General Counsel

October 12, 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: 200 KAR 3:020, Use of State-Owned Facilities and Grounds

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 200 KAR 3:020, the Finance and Administration Cabinet proposes the attached amendment to 200 KAR 3:020, Use of State-Owned Facilities and Grounds.

Sincerely,


Cary B. Bishop, Assistant General Counsel
Office of General Counsel
Finance and Administration Cabinet
392 Capitol Annex
Frankfort, Kentucky 40601

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Department for Facilities and Support Services**

200 KAR 3:020. Use of State-Owned Facilities and Grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and Grounds, to preserve Historic Properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019(1) requires the Division of Historic Properties to oversee the management and preservation of state-owned historic properties. KRS 42.425(1)(c) entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 requires the Finance and Administration Cabinet to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) requires the Finance and Administration Cabinet to promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the commonwealth's real property.

Section 1. Definitions. (1) "Agency" means a "budget unit," as defined by KRS 48.010(9).

(2) "Applicant" means a visitor who has submitted an Application to Use State Facilities and Grounds.

(3) "Application" means the Application to Use State Facilities and Grounds form ~~[created and]~~ maintained by the Department for Facilities and Support Services, or a substantially similar agency specific application approved by the department, [Division of Historic Properties] that allows individuals, organizations, and entities to request approval [the ability] to conduct an event at a state facility or on state grounds [historic properties].

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(6) "Deadly Weapon" is defined by KRS 500.080(4).

(7)~~[(6)]~~ "Demonstration activity" means any gathering of twelve (12) or more visitors demonstrating, parading, picketing, speech making, holding vigils, sit-ins, or rallies, or conducting other activities for the purpose of demonstrating approval or disapproval of governmental policies or practices (or the lack there-of), expressing a view on public issues, or bringing into public notice any issue or other matter.

(8)~~[(7)]~~ "Department" means the Department for Facilities and Support Services.

(9)~~[(8)]~~ "Division" means the Division of Historic Properties, established by KRS 42.425(1)(d)4.

~~(10)~~~~(9)~~ "Event" means any demonstration activity, performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

~~(11)~~ **"Face covering" means material covering, consisting of at least two (2) layers of fabric, fit snugly to the face that completely covers the nose, mouth, and optionally chin of the wearer, but does not otherwise materially obscure the face, head, or neck area. "Face covering" does not mean face shields, bandanas, scarves, gaiters, or any face covering with exhalation valves, slits, or holes.**

~~(12)~~ "Firearm" is defined by KRS 237.060(2).

~~(13)~~~~(12)~~ "Handgun" is defined by KRS 527.010(5).

~~(14)~~~~(13)~~~~(10)~~ "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

~~(15)~~~~(14)~~ "Livestock" is defined by KRS 257.010(11).

~~(16)~~~~(15)~~ "Long Gun" means any firearm that is not a handgun, including **but not limited to:**

(a) Rifles;~~(1)~~

(b) Carbines;~~(1)~~ and

(c) Shotguns.

~~(17)~~~~(16)~~~~(14)~~ "Normal business hours" means:

(a) The hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth; and

(b) Any time period during which a facility hosts a legislative session, public meeting, or court session.

~~(18)~~~~(17)~~~~(12)~~ "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

~~(19)~~~~(18)~~~~(13)~~ "Public meeting" means a "meeting," as defined by KRS 61.805(1).

~~(20)~~~~(19)~~~~(14)~~ "Rally" means a gathering of twelve (12) or more visitors for the purpose of actively promoting a cause.

~~(21)~~~~(20)~~~~(15)~~ "Solicit" and "solicitation" are defined by KRS 367.650(4).

~~(22)~~~~(21)~~~~(16)~~ "Spontaneous event" means an event where twelve (12) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."

~~(23)~~~~(22)~~~~(17)~~ "State facilities" or "facilities" means any buildings owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

~~(24)~~~~(23)~~~~(18)~~ "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

~~(25)~~~~(24)~~~~(19)~~ "Tenant" means an individual or organization, except for an agency that is:

(a) Occupying land or property rented from the commonwealth; and

(b) Limited to the specific state facility or state grounds where the land or property is located.

~~(26)~~~~(25)~~ "Tenant agency" means an agency that is:

(a) Assigned commonwealth land or property; and

(b) Limited to the specific state facilities or state grounds assigned for agency use.

~~(27)~~~~(26)~~~~(20)~~ "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.

~~(28)~~~~(27)~~~~(24)~~ "Visitor" means:

(a) Any person, organization, or entity present at a State Facility or on State Grounds that is not a tenant agency, nor employed or contracted to perform work there on behalf of the commonwealth;

(b) A person or organization employed or contracted to perform work on behalf of the commonwealth if present at a state facility or on state grounds for reasons other than performing work on behalf of the commonwealth; and

(c) Persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds. (1) Each visitor seeking to hold an event at a state facility or on state grounds shall submit a completed "Application to Use State Facilities and Grounds" to the department, or delegatee, [division] at least seven (7) calendar days prior to the anticipated date of the event.

(a) Applications shall not be submitted, and an event shall not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority over applications received by the department, or delegatee, [division] on the same date as a request by an agency regarding a state-sponsored event.

(d) The department, or delegatee, [division] shall deny an application if:

1. The application is incomplete;
2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;
3. The proposed event poses a safety or security risk;
4. Applicant has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or
5. Applicant has failed to pay costs or damages due for a prior event.

(e) If an application is approved, the department, or delegatee, [division] shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;
2. The date and time period for which approval is granted;
3. Any fee or costs to be paid for use of state property or equipment;
4. The amount of any advance deposit required; ~~and~~
5. Whether proof of liability insurance shall be required for the requested use; ~~and~~ and
6. Any applicable restrictions.

(f) If an application is denied, the department, or delegatee, [division] shall issue a written denial specifying:

1. The Section 2(1)(d) provision the denial is based upon;
 2. If the application is incomplete, a description of the missing information;
 3. If the applicant has made prior misrepresentations, a description of the misrepresentation;
- and
4. If the applicant has failed to pay costs or damages for a prior event, a description of the costs or damages and the amount remaining due.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use shall not be changed without the written consent of the department, or delegatee [division].

(h) Except as provided by paragraph (i)2(f) of this subsection, the department, or delegatee, [division] may revoke prior approval to hold an event at a state facility or on state grounds [historic property] if the property is requested for a state sponsored activity. If the department, or delegatee, [division] revokes prior approval for an applicant to use state [a historic] property, it shall either:

1. Provide a refund of any fee paid for the use of the state property;~~1.1~~ or

2. Provide alternate dates that the facility is available for use.

(i) The department may delegate authority to review and approve applications for use of specific facilities and grounds to a tenant agency of the facility or grounds assigned for the tenant agency's use.

1. Delegation of review and approval authority shall be posted on the department's Web site at: <https://finance.ky.gov/department-for-facilities-and-support-services/Pages/default.aspx>.

2. The division, or its designee, shall review and approve applications for the use of historic properties.

3. The department shall post a link on its Web site to any delegated tenant agency review and approval process regarding specific facilities or grounds.

(j) Historic properties. 1. The division may relocate a previously approved event at a historic property as established in the Rules for Use of **Public Areas for the Capitol [State Facilities]** and Grounds.

2.~~(f)~~ The division shall not reschedule or relocate a previously approved event at a historic property less than three (3) days prior to the scheduled event date except as established in the Rules for Use of **Public Areas for the Capitol [State Facilities]** and Grounds.

(2) Except for spontaneous events, visitors who make use of a state facility or state grounds without written approval:

(a) May be charged a fee equal to the amount normally charged for approved uses, if applicable; and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the **department, or delegee[division]**, or with a state sponsored activity.

(3) Each visitor seeking to hold an event at a state facility or on state grounds, other than a demonstration activity, shall submit a completed Rental Application and Lease Agreement **to the department, or delegee.**

(4) The department may delegate authority to review and approve a Rental Application and Lease Agreement to a tenant agency of the facility or grounds assigned for the tenant agency's use.

(a) Delegation of review and approval authority shall be posted on the department's Web site at: <https://finance.ky.gov/department-for-facilities-and-support-services/Pages/default.aspx>.

(b) The division, or its designee, shall review and approve rental applications for the use of historic properties.

(c) The department shall post a link on its Web site to any delegated tenant agency review and approval process regarding specific facilities or grounds.

(5) An agency may adapt the Rental Application and Lease Agreement for its own use as follows:

(a) Inserting the Rental Application and Lease Agreement onto agency-specific letterhead;

(b) Altering the Rental Application and Lease Agreement to reflect contact information for the agency; and

(c) Inserting the following information regarding the areas assigned to agency use available to rent:

1. Identification of available areas;

2. Capacity of available areas;

3. Whether food or drink may be consumed in available areas;

4. Equipment available to rent; and

5. Hours when available areas may be rented.

(6)~~(5)~~ An agency that adapts the Rental Application and Lease Agreement for its own use shall enter into a written agreement with the commissioner addressing:

- (a) Which facilities and grounds are covered by the Rental Application and Lease Agreement;
- (b) The agency responsible for processing Rental Application and Lease Agreement submissions; and
- (c) Disposition of fees collected.

Section 3. Conditions Governing Use of State Facilities and Grounds. (1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) ~~[Visitors shall comply with the Rules for Use of State Facilities and Grounds.]~~

~~(b)]~~ Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual, organization, or entity. In regards to historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

~~(b)](e)]~~ An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

~~(c)](d)]~~ This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

~~(d)](e)]~~ Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 49.

~~(e)](f)]~~ Visitors shall not dig, excavate, or use metal detectors.

~~(f)](g)]~~ Visitors shall not post or affix signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

~~(g)](h)]~~ Visitors shall promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individual, organization, or entity with the costs of disposal, inclusive of use of staff time, which the individual, organization, or entity agrees to be responsible for as a condition of using the state facility or grounds.

~~(h)](i)]~~ Smoking shall not be permitted in state facilities or on state grounds.

~~(i)](j)]~~ Visitors shall not wear masks or hoods that conceal the identity of the wearer, except for:

1. Religious~~[religious]~~ dress of a generally recognized religion;~~;~~
2. Minor~~[or minor]~~ children celebrating Halloween;~~;~~ and~~[-]~~
3. ~~[Department-provided]~~ Face coverings, worn to prevent or mitigate the spread of communicable disease.

~~(j)](k)]~~ Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including any legislative session, court proceedings, or any other public business.

~~(k)](l)]~~ Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, 815 KAR 7:120~~[-]~~; the Kentucky Standards of Safety contained in 815 KAR 10:060~~[-]~~; orders of the State Fire Marshal~~[I]~~, ~~[and]~~ local fire codes, inclusive of any applicable occupancy limits~~[-]~~; and the provisions of this administrative regulation or the materials incorporated herein.

~~(l)](m)]~~ Visitors shall not congregate in, or otherwise obstruct, passageways or office entrance areas in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

~~(m)](n)]~~ Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(n)[(e)] The operation of aircraft, other than at designated landing areas, shall be prohibited.

(o)[(p)] The mass release of birds, butterflies, or other living creatures shall be prohibited.

(p)[(q)] Livestock shall be prohibited, except at facilities designated for livestock-related purposes, unless express written approval is granted by the **department, or delegate[division]**.

(q)[(r)] In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

(r)[(s)] The following items shall be prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including drones and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(s)[(t)] The following items shall not be permitted in any state facility, unless the items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(t)[(u)] Individuals openly carrying a deadly weapon may be ordered to leave state facilities and grounds when:

1. Brandishing a firearm or other deadly weapon in an unsafe manner, including **[but not limited to]**:

a.[1.] Pointing the muzzle of a firearm at another individual;[;]

b.[2.] Failing to keep the safety of a firearm in the "on" position while carrying a firearm;[;]

c.[3.] Failing to keep their finger outside of the trigger guard of a firearm;[;] or

d.[4.] Threatening another person with a firearm or other deadly weapon; and

2.[5.] Failing to fully comply with the provisions of **paragraph (v) of this subsection [Section 3(1)(w)]**, the other provisions of **this** administrative regulation, or the lawful direction of facility security personnel.

(u)[(v)] Individuals ordered to leave state facilities and grounds pursuant to **paragraph (t) of this subsection [Section 3(1)(u)]** may be subject to criminal prosecution if they refuse to leave state facilities and grounds or comply with the lawful direction of facility security personnel.

(v)[(w)] Individuals authorized to enter a state facility with one **(1)** or more firearms shall:

1. Securely maintain handguns in a holster with two **(2)** or more retention security features;
2. Securely maintain long guns behind the back using a strap slung over the shoulder, muzzle pointing up, in a manner to prevent muzzle rocking rearward during movement;

3. Be in possession of no more ammunition than can be loaded into the firearm at one **(1)** time; and

4. Possess no more than one **(1)** magazine, whether attached or detached from the firearm.

(w)[(x)] The terms of this administrative regulation shall not apply to:

1. Tourism, Arts, and Heritage Cabinet administered facilities and properties;
 2. Tenants of state facilities;
 3. Inmates and other incarcerated persons; or
 4. Other individuals in the care, custody, or control of the state.
- (2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access may be changed due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility shall be subject to search.

(e) A visitor shall not enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;
2. Attending a scheduled public meeting; or
3. Escorted by a state employee for the purpose of conducting state business.

(f) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(g) If an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(h) Visitors shall not camp or remain overnight in state facilities or on state grounds.

(i) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against the law enforcement officers and the commonwealth unless undue force is used resulting in serious physical injury as defined by KRS 500.080(15).

(3) Commercial activity.

(a) The following commercial activity shall be prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;
2. Solicitation; and
3. Advertising.

(b) The restrictions in paragraph (a) of this subsection regarding commercial activity shall not apply to:

1. State agencies;
2. State-affiliated or approved charitable fund-raising campaigns;
3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;
4. Nominal employee activity, if it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and
5. Notice boards specifically set aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and shall be subject to immediate removal from state grounds and facilities as follows:

1. If a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or
2. If a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion

of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on total number of participants, the area in which an event may be conducted, ~~and~~~~or~~ may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, ~~to~~ maintain public order, ~~and to~~ or ensure that normal public business may be conducted.

(c) This administrative regulation shall not:

1. Prohibit the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use; or

2. Limit the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties. (1) Visitors to historic properties shall comply with the additional restrictions regarding the use of the capitol grounds and state historic properties included in the Rules for Use of **Public Areas for the Capitol [State Facilities]** and Grounds.

(2) A visitor seeking to hold an event at a historic property shall comply with the requirements in the Areas Available for Governmental **Events, [and]** Business-Oriented Events and Rental Use form.

(3) ~~[A visitor seeking to hold an event at the capitol shall also submit the Capitol Event Information Form to the division.]~~

~~(4)]~~ The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums.

Section 5. Enforcement. (1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another agency, or to outside counsel.

(3) Nothing in this regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; obstruction of governmental operations~~[disruption of public business]~~; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Use State Facilities and Grounds", **October [June] 2021**~~[2019]~~;

(b) "Rental Application and Lease Agreement", **October 2021 [June 2019]**;

(c) "Rules for Use of **Public Areas for the Capitol [State Facilities]** and Grounds", June 2021~~[2019]~~; ~~and~~

(d) "Areas Available for Governmental **Events, [and]** Business-Oriented Events and Rental Use", June 2021~~[2019]~~. ~~[-and~~

(e) "Capitol Event Information Form", June 2019.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the cabinet's Web site at <https://finance.ky.gov/office-of-the-secretary/Pages/finance-forms.aspx>.

CONTACT PERSON: Cary B. Bishop, Assistant General Counsel, Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601, phone (502) 564-8627, fax (502) 564-9875. email cary.bishop@ky.gov.

APPLICATION TO USE STATE FACILITIES AND GROUNDS

Please complete the following four pages, making sure to sign where required, and return to the Department for Facilities and Support Services by email at capitol.tourdesk@ky.gov, or by mail at:

Department for Facilities and Support Services
Attn: Capitol Tour Desk
700 Capital Ave.
Frankfort, KY 40601

Upon receipt of your application, the Department for Facilities and Support Services will review and notify you of the approval or any fees associated with your event.

NOTE: If a contemplated use of state facilities and grounds is for any purpose other than demonstration activities, the applicant must also submit a "Rental Information and Lease Agreement."

Date(s) Requested:		
Section One: Applicant Contact Information		
First Name:		Last Name:
Street Address:		Apt or Suite:
City:	State:	Zip:
Primary Contact Number:		Ext:
Alternate Contact Number:		Ext:
Email:		Fax:

Section Two: Organization Information (if applicable)		
Organization Name:		
Street Address:		Apt or Suite:
City:	State:	Zip:
Organization Phone Number:		
Organization Email:		Fax:
501(c)(3) number (if applicable):		

Section Three: Event Information									
Name of Event:									
Anticipated Attendance:	Anticipated Number of Buses:								
Date(s) of Events:									
Start Time (including set-up):									
End Time (including clean-up):									
Event Web Address:									
Proposed Location/Address:									
(Additional forms may be required for use of Historic Buildings)									
Nature of Event (i.e. demonstration, rally, performance, etc):									
Please describe the proposed event in detail:									
Onsite Contact Person:									
Onsite Contact Mobile Phone:									
Are you aware of a person(s) or organization who may disrupt your event? <i>YES or NO</i>									
If yes, please explain in detail:									
Will any person(s) attending carry a firearm or weapon (either concealed or visible)? <i>YES or NO</i>									
If yes, please explain in detail:									
<table border="1"> <tbody> <tr> <td>Has any news outlet(s) reached out to you regarding your event? <i>YES or NO</i></td> </tr> <tr> <td>Has this organization/event been previously coordinated, promoted, or held in/on state facilities or grounds? <i>YES or NO</i></td> </tr> <tr> <td>If yes, please answer the following:</td> </tr> <tr> <td>Prior Event Name:</td> </tr> <tr> <td>Location:</td> </tr> <tr> <td>Date:</td> </tr> <tr> <td>Location Contact Person:</td> </tr> <tr> <td>Location Contact Primary Phone:</td> </tr> </tbody> </table>		Has any news outlet(s) reached out to you regarding your event? <i>YES or NO</i>	Has this organization/event been previously coordinated, promoted, or held in/on state facilities or grounds? <i>YES or NO</i>	If yes, please answer the following:	Prior Event Name:	Location:	Date:	Location Contact Person:	Location Contact Primary Phone:
Has any news outlet(s) reached out to you regarding your event? <i>YES or NO</i>									
Has this organization/event been previously coordinated, promoted, or held in/on state facilities or grounds? <i>YES or NO</i>									
If yes, please answer the following:									
Prior Event Name:									
Location:									
Date:									
Location Contact Person:									
Location Contact Primary Phone:									

Section Four: Event Equipment

NOTE: All equipment must be supplied by applicant/organization for outdoor events only. Please attach vendor information/insurance if necessary.

Anticipated Props and Equipment (please mark all that apply, being specific as possible):	Banners:
Chairs (Quantity):	Distribution of Literature:
Tables (Quantity):	Press Riser or Stage:
Podium:	Portable Sound System:
Podium Backdrop, or Flags:	Camera Tripod:
Trash Receptacles:	Port-a-Potty's:
Lighting Equipment:	Extension Cords:
Handheld Signs, Placards (Quantity):	Other:
Food or Drink Services:	Handheld Signs, Placards (Quantity):

Section 5: Marshalls and Clean-up

Will Event Marshalls be utilized? YES or NO	If yes, how many?
How will an individual be identifiable as an Event Marshall? Please explain in detail.	
What is your trash removal and pick-up plan? Please explain in detail.	
Volunteers or outside Refuse company? If volunteers will be utilized, how many volunteers will be available onsite for cleanup?	
Refuse company name:	
Volunteer coordinator name:	
Volunteer coordinator mobile phone number:	

INDEMNIFICATION

The applicant agrees to indemnify, defend and save harmless the Finance and Administration Cabinet and the Commonwealth of Kentucky, its employees and agents from all claims, demands, suits, actions, cost and damages of every kind and description, including attorney's fees or other litigation expenses which may be asserted or made against or incurred by the Finance and Administration Cabinet and the Commonwealth of Kentucky, its employees and agents, on account of loss of or damage to any property or for injuries to or death of any person caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, mistake, negligence or other fault of applicant, its employees, agents, representatives, members, or contractors, their employees, agents, or representatives or guests of applicant in connection with or incident to the performance of this agreement, or arising out of applicants use of the facility. Applicant's obligation under this provision shall not extend to any liability resulting from the sole negligence of the Commonwealth, any of its agencies, officers, employees, or agents.

ACCEPTANCE

I request use of the described Commonwealth facilities based on the rules set forth above and accept all terms and conditions contained herein. I certify that I am an authorized representative of the person(s), firm, group, or organization applying for permission to use the facilities; I am at least eighteen years of age, and am authorized to enter into agreements.

Name of person responsible: _____

Phone Number: _____

Email Address: _____

Signature: _____

Rental Application and Lease Agreement

Use of State-owned Facilities and Grounds is managed by the Finance and Administration Cabinet, Department for Facilities and Support Services. In order to preserve the state facilities and grounds, rules for their use must be observed. Please read this document carefully. Signing this lease agreement means you agree to abide by these rules. If you have any questions, please contact the Department for Facilities and Support Services at eventscheduling@ky.gov or at 502-564-3000. Strict enforcement of these rules will help preserve state facilities and grounds.

SPACE LIMITATIONS – RENTAL FEES - EQUIPMENT AVAILABILITY

NOTE: Rental fees do not include any equipment rental costs

❖ Room reservations can be made no more than 365 days in advance.

Space Available	Room Capacity	Food/Drink Permitted?	Rental Charge (all day)	Rental Charge (½ day)	Hours Available

EQUIPMENT RENTAL COST (per *booking date)

* A booking date constitutes any part of the day.

Laptop/ Projector	Podium w/ microphone	Monitor & HDMI cable	TV/DVD/VCR Combo	Overhead/ Slide Projector	Speakerphone	VCR	Video Conference Unit

Equipment is available on a “first-come, first-served” basis. Please request at least one week in advance. Conference phones are for local calls only. Long distance calls must be made via calling card or by using a toll free number.

Note: Reservations made by military organizations are exempt from all charges/fees.

FACILITY TERMS AND GUIDELINES FOR RENTAL USE OF STATE FACILITIES

- Rental use shall not extend beyond the hours scheduled.
- Any adjustments made to rental use must be approved by the Department for Facilities and Support Services in advance.

FACILITY TERMS AND GUIDELINES FOR USE OF THE BUILDING (cont.)

- Payment must be made prior to the meeting date via cashier's check, money order, or agency-issued check made payable to the Kentucky State Treasurer. Payments shall be forwarded to:

Event Scheduling
Department for Facilities and Support Services
403 Wapping Street
Frankfort, KY 40601

- Please consult the Department for Facilities and Support Services regarding any other payment arrangements.
- The Department for Facilities and Support Services reserves the right to decide whether a prospective Lessee's event is appropriate to be held in its facility.
- Any person given access to Commonwealth Information Technology resources is considered an Authorized User and requires acceptance of the policies we have in force.
- The cost of any damage to state property or associated property/equipment incurred during its use will be billed to the Lessee.
- **Twenty-four hour notice must be given in writing for a cancellation or the Lessee will be charged the regular meeting fee.**
- Under no circumstances will the Lessee be allowed on the premises after hours without prior arrangement.
- Please follow all safety and emergency instructions provided by the on-site staff member(s).
- Guests should not park in spaces marked "Reserved." Handicap- accessible parking is available.
- If the leased space becomes untenable because of fire, lock-outs, power failure, natural disaster, riots, insurrection, war, or other reasons of a like nature, and is not the fault of either party, or other unavoidable casualty, this Lease shall terminate. If such termination occurs before the Lease begins, the Commonwealth will refund to the Lessee any deposit heretofore paid by the Lessee. In the event such termination occurs during the term of this Lease, the Lessee will pay to the Commonwealth a pro rata portion of the rent to that time; the Commonwealth will refund any part of the rent already paid by the Lessee which exceeds such amount. In the event of such termination, the Lessee hereby waives any claim for damages or compensation, which might arise out of such termination.

SMOKING

- Pursuant to Executive Order #2014-747, government buildings and properties are smoke-free.

ELECTRICAL SERVICE

- **Electrical service on the property is may be limited.** Please check with Conference Center staff prior to the event to insure that accommodations can be provided.

EQUIPMENT & TELEPHONE AVAILABILITY

- Easels, flip-chart stands and dry erase markers may be made available for use by meeting participants at no additional charge. **No copy machine is available for use by meeting participants.**

FOOD AND BEVERAGE

- **Subject to the Department of Parks' standing right of first refusal** to provide catering services for facility events, Lessee may select a caterer of choice, but only upon prior approval by the Commonwealth.
- **The Department for Facilities and Support Services** may reserve the right to make limitations on food and drink that may be prepared or served in available spaces.
- ALL outside caterers will be required to have on file with the Department for Facilities and Support Services current and appropriate documents pertaining to certification and licensing by a Kentucky county health department and any current business licenses issued by the City of Frankfort. Caterers must also provide proof of insurance listing the Finance and Administration Cabinet as an additional insured. No Exceptions. These documents must be presented **PRIOR** to the event taking place at the facility.
- Lessee or caterer will be responsible for cleaning all surfaces and disposing of trash from all food service and preparation areas before Lessee leaves the facility.
- A surcharge of up to \$100 may be required for each area of carpet soiled by food. The decision to impose this charge rests solely with the staff of the Department for Facilities and Support Services.

DECORATIONS AND RENTED EQUIPMENT

- Posters/displays/decorations – Nothing may be hung on the walls, furniture, windows, or doors using any type of tape, fastener or adhesive. Lessees may use flipchart stands or dry erase boards located in the room. Please consult Department for Facilities and Support Services staff for safe alternatives.
- All decorations, floral arrangements, items rented from other entities, etc., must be removed from the premises immediately following the scheduled event unless alternative arrangements have been made in writing prior to the event.
- ALL externally-rented equipment (tables, chairs, linens, etc.) with Department for Facilities and Support Services staff approval must be set up after 8:00 a.m. and be taken down by the Lessee (or agents contracted by the Lessee) before 3:00 p.m. on the same day that the facility is used, unless staff has granted written approval prior to the event.
- On-site staff will assist with the placement of rental equipment, but cannot load, unload, or set up rental equipment.
- **Absolutely NO glitter or confetti may be used inside rented facilities.** This includes the use of decorative confetti and loose potpourri on tables. Please consult with Department for Facilities and Support Services staff regarding any questionable items, including candles.
- **Only flameless candles are permitted.**
- Please consult with Department for Facilities and Support Services staff regarding any questionable items.

Please make arrangements to meet with a Department for Facilities and Support Services staff member regarding your event well in advance so that we may be of assistance with any proposed set-up or arrangements, which may conflict with our guidelines.

Please make out-of-town guests and any other staff for your event or meeting aware of the guidelines for use of Commonwealth facilities. You must copy this document and give it to everyone who will be working with your event or meeting to ensure they understand our guidelines. Since you, the Lessee, are ultimately responsible for the actions of these agents, it is essential that you communicate the terms and guidelines of use of the facility to all attendants in order to assure a worry-free event.

Please sign and submit the attached lease agreement.

INDEMNIFICATION

The applicant/lessee agrees to indemnify, defend and save harmless the Commonwealth of Kentucky, its agencies, employees, and agents from all claims, demands, suits, actions, proceedings lost, cost and damages of every kind and description, including attorney's fees or other litigation expenses which may be asserted or made against or incurred by the Commonwealth of Kentucky, its agencies, employees, or agents, on account of loss of or damage to any property or for injuries to or death of any person caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, mistake, negligence or other fault of applicant/lessee, its employees, agents, representatives, members, or contractors, their employees, agents, or representatives or guests of applicant in connection with or incident to the performance of this agreement, or arising out of applicant's use of the facility.

ACCEPTANCE

I request use of the described Commonwealth facilities based on the rules set forth above. I certify that I am an authorized representative of the person(s), firm, group, or organization applying for permission to use the facilities and authorized to enter into this Lease agreement.

Name of person responsible:

Lessee Company or Agency:

Address:

Phone:

Fax:

E-mail:

Space Requested:

Date Requested:

Hours Requested:

Number Expected to Attend:

Title of Event

Set-up Preference: (i.e. conference, classroom, u-shape, hollow square)

Catering Services: Yes ☐ No ☐ (Dept. of Parks catering menu upon request)

Note: Please read applicable rules for food service on page 3 of agreement.

Equipment Rental: ☐TV/DVD/VCR ☐monitor/HDMI cable ☐projector ☐podium w/microphone
☐overhead ☐speakerphone ☐video-conference unit

Please specify if you wish to use provided equipment.

When using computer labs, the leasing agency agrees to delete any software loaded for specific training. Special needs for software or program use will need prior approval from the Conference Center supervisor. Persons given access to Commonwealth Information Technology resources are considered Authorized Users and require acceptance of the policies we have in force.

Please fax, mail, or scan and email this signed agreement to Event Scheduling, Department for Facilities and Support Services, 403 Wapping Street, Frankfort, KY 40601. If you have any questions, please contact the Division at eventscheduling@ky.gov or at 502-564-3000. Please let us know if you have special requests and/or ADA needs.

SIGNATURE: _____ DATE _____

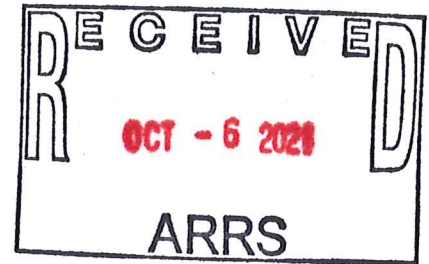
- Customer Notes:

502-429-3300
800-305-2042
Fax: 502-429-1245

KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300
Louisville, Kentucky 40222-5172
kbn.ky.gov

Andy Beshear
Governor



October 5, 2021

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

Re: 201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:057, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:057.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Prather".

Hon. Jeffrey R. Prather, General Counsel
Jeffrey.prather@ky.gov
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222

Final, 10-4-2021

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Board of Nursing

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.042, 314.091, 314.193(2), 314.195[~~314.196~~]

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314, and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. KRS ~~[Chapter]~~ 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother in-law, sister in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as a prescribing practitioner.

(5) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

- (c) Neonatal Nursing: Scope and Standards of Practice;
- (d) Nursing: Scope and Standards of Practice;
- (e) Pediatric Nursing: Scope and Standards of Practice;
- (f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;
- (g) Scope of Practice for Nurse Practitioners;
- (h) Standards of Practice for Nurse Practitioners;
- (i) Scope of Nurse Anesthesia Practice;
- (j) Standards for Nurse Anesthesia Practice;
- (k) Standards for Office Based Anesthesia Practice;
- (l) Standards for the Practice of Midwifery;
- (m) Oncology Nursing Scope and Standards of Practice;
- (n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; ***[and]***
- (o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; ***and***
- (p) Standards for Professional Nursing Practice in the Care of Women and Newborns.***

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined by KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;
2. Practice address;
3. Phone number;
4. License number of both the advanced practice registered nurse and each physician who is a party to the agreement; and
5. Population focus and area of practice of the advanced practice registered nurse.

(b) ~~[Pursuant to KRS 314.196(2),]~~ An advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certif-

icate by providing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) An APRN ~~[with a CAPA-CS]~~ shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the KASPER master account registration certificate shall be submitted to the board via the online APRN Update portal within thirty (30) days of receipt of confirmation of registration by KASPER. ~~[An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.]~~

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS ends unexpectedly for reasons outside the APRN's control **such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician,** the APRN may continue to prescribe non-scheduled legend drugs for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively. The APRN with a CAPA-CS shall cease prescribing controlled substances if the collaborative agreement unexpectedly ends, until the CAPA-CS is resumed or the APRN enters into a new CAPA-CS. ~~[If the collaborating physician's license is suspended, the APRN shall follow the procedures established in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.]~~

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, kbn.ky.gov, utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except if a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period **established[specified]** in Section 6(6), ~~subsection 6~~ of this **administrative** regulation ~~[provisions of KRS 314.196(4)(b) apply]~~.

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN'S role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An

APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health

shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves

single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall review a reverse KASPER report for the preceding six (6) months to determine if the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

(a) First contacting the reporting pharmacy;

(b) Contacting law enforcement if suspected fraudulent activity; or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may/could have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate Family and Self-prescribing or Administering Medications. (1) An APRN shall not self prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one (1) prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

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

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

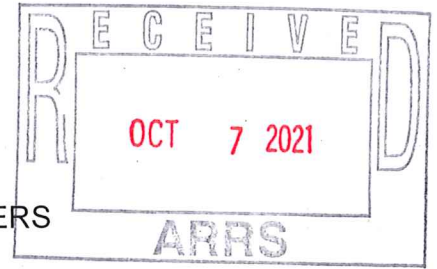
(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and
(r) "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov



KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS

Andy Beshear
Governor

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

October 7, 2021

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

Re: **201 KAR 21:035**, Seal; 201 KAR 21:054. Emergency orders.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 21:035 and 201 KAR 21:054, the Kentucky Board of Chiropractic Examiners proposes the attached amendments to 201 KAR 21:035 and 201 KAR 21:054.

Sincerely,

/s/ August Lincoln Pozgay
August Lincoln Pozgay, Attorney for the Board
Office of Legal Services
Public Protection Cabinet
500 Mero Street, 2NCWK#2
Frankfort, KY 40601
august.pozgay@ky.gov
502-782-0714 (office)

Subcommittee Substitute

BOARDS AND COMMISSIONS
Kentucky Board of Chiropractic Examiners
(As Amended at ARRS)

201 KAR 21:035. Seal.

RELATES TO: KRS 312.019

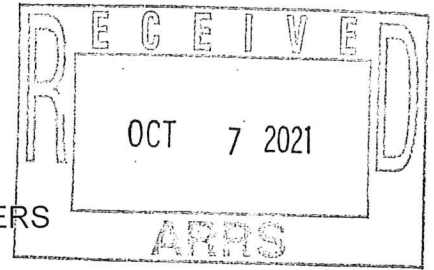
STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(4) requires ~~[provides that]~~ the board to [shall] adopt a seal which shall be affixed to all licenses, certifications, and registrations issued by the board and to such other documents as the board deems necessary. This administrative regulation adopts the seal that shall be used by the Kentucky Board of Chiropractic Examiners.

Section 1. The official seal of the board shall consist of two (2) concentric circles with the words "[The]Kentucky [State]Board of Chiropractic Examiners" between the two (2) circles. The likeness of two (2) hands in the position of ~~[an]~~a chiropractic adjustment shall appear within the inner circle with the words "Utile Dulce" immediately below the likeness.

Section 2. The official seal shall be affixed to all licenses, certifications, and registrations issued by the board and to other documents the board deems necessary or appropriate.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.



KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS

Andy Beshear
Governor

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October 7, 2021

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

Re: 201 KAR 21:035. Seal; 201 KAR 21:054. Emergency orders.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 21:035 and 201 KAR 21:054, the Kentucky Board of Chiropractic Examiners proposes the attached amendments to 201 KAR 21:035 and 201 KAR 21:054.

Sincerely,

/s/ August Lincoln Pozgay
August Lincoln Pozgay, Attorney for the Board
Office of Legal Services
Public Protection Cabinet
500 Mero Street, 2NCWK#2
Frankfort, KY 40601
august.pozgay@ky.gov
502-782-0714 (office)

Staff-suggested Amendment

9/15/2021

**BOARDS AND COMMISSIONS
KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS**

201 KAR 21:054. Emergency orders.

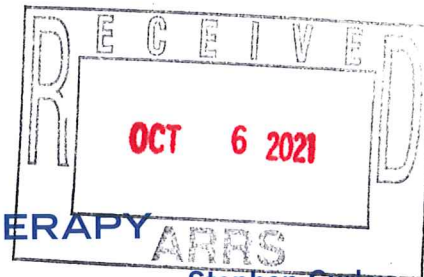
Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 8

After "Chiropractic Examiners to", insert "promulgate".

Delete "establish".



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

312 Whittington Parkway, Suite 102
Louisville, KY 40222-4925
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Stephen Curley
Executive Director

October 4, 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 22 045 Continued Competency Requirements and Procedures

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 22 045, the Kentucky Board of Physical Therapy proposes the attached amendment to 201 KAR 22 045.

Sincerely,

M. Keith Poynter
General Counsel



An Equal Opportunity Employer M/F/D

SUGGESTED SUBSTITUTE

Final Version: 9/22/2021 2:23 PM

BOARDS AND COMMISSIONS

Board of Physical Therapy

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on KRS Chapter 327 and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

(2) Category 1 continued competency shall be:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting "continued competency" as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee, **the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensure agency.** Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(e) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) certification. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A maximum of twenty-eight (28) contact hours per biennium shall be awarded;

(j) Completion of a clinical residency program or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) Engaging in the practice of "physical therapy" as defined by KRS 327.010(1) at least 1,000 hours per biennium. Five (5) contact hours [~~per biennium~~] shall be awarded per biennium;

(l) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) Election or appointment to a position ~~with~~^{of} the APTA Kentucky~~Physical Therapy Association~~, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; ~~or~~

(o) Member of a committee or task force for one (1) of the organizations in paragraph (m) or (n) of this subsection. One (1) contact hour shall be awarded per biennium; ~~or~~

(p) Completion of the APTA's PTA Advanced Proficiency Pathways Program (APP). A maximum of ten (10) contact hours shall be awarded in the biennium during which the certification or recertification of the APP is granted; or

(q) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium.

(3) Category 2 continued competency shall be:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Participation as a mentor or mentee in a mentorship program developed by APTA KY. A maximum of one~~Member of the APTA. One~~ (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of **at least**~~at least~~ three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

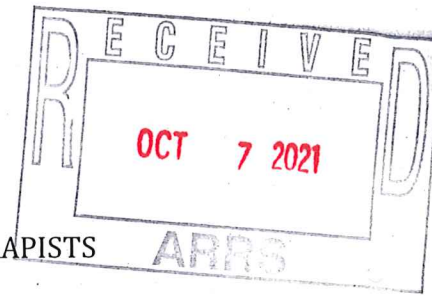
4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: M. Keith Poynter, General Counsel, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 210-7112, fax (502) 584-5055, email Martink.Poynter@ky.gov.



KENTUCKY BOARD OF LICENSURE FOR PROFESSIONAL ART THERAPISTS

Andy Beshear
Governor

P. O. Box 1360
Frankfort, Kentucky 40602
Phone (502) 892-4258
Fax (502) 696-5849
<http://pat.ky.gov>

October 7, 2021

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

RE: Kentucky Board of Licensure for Professional Art Therapists
Proposed Regulation **201 KAR 34:070**, Inactive Status.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 34:070, the Board of Licensure for Professional Art Therapists proposes the attached amendment to 201 KAR 34:070.

Sincerely,

/s/ Leah Cooper Boggs

Leah Cooper Boggs, Attorney for the Board
Department of Professional Licensing
Public Protection Cabinet
Office of Legal Service
500 Mero Street
Frankfort, Kentucky, 40601
502-782-0562 (office)
502-352-8095 (cell)
lboggs@ky.gov

Agency Amendment

BOARDS AND COMMISSIONS Board of Licensure for Professional Art Therapists

201 KAR 34:070. Inactive status.

Page 1

Section 1(2)

Line 15

After "(2)" insert the following:

If the Board grants the request for inactive status

Delete the following:

Upon the board granting the request for inactive status

Page 1

Section 1(2)

Line 15

Before "the licensee", insert the following:

the board shall notify the licensee that

Page 1

Section 1(2)

Line 15

After "the licensee", insert "is".

Delete "shall be".

Page 1

Section 1(2)

Line 17

After "licensee's license level" insert the following new subsection:

(3) If the request for inactive status is denied, the licensee shall have thirty

(30) days from the date of the denial to pay the renewal fee.

Page 1
Section 2(2)
Line 21

After "Section 3", insert "of this administrative regulation".

Page 2
Section 2(3)
Line 1

After "when the Board", insert "notifies the licensee that it has granted".

Delete "grants".

Page 2
Section 3(1)
Line 5

After "circumstance", insert comma.

Page 2
Section 3(3)
Line 14

After "period of inactive status, insert the following new subsections:

(4) If the appropriate paperwork is received timely, a two (2) year extension shall be automatically granted.

(5) If the extension is denied, the licensee shall have thirty (30) days to resubmit the request.

Page 3
Section 5(2)
Line 4

After "(2)" insert the following:

The Board will notify the licensee in writing that his or her license is
reactivated and will be effective upon the date listed in the written
correspondence

Delete the following:

If the licensee returns to active status, the licensee's renewal date shall be
the date of return to active status

Page 3
Section 6(1)
Line 9

After "licensure under", insert "201 KAR 34:025".

Delete "201 KAR 34.024".

Page 3
Section 6(3)
Line 11

After "as established by", insert the following:

KRS Chapter 309 and 201 KAR Chapter 34

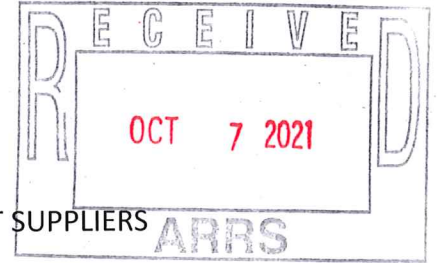
Delete the following:

statute and administrative regulation

Page 3
Section 7
Line 13

After "regulation", insert "shall".

Delete "does".



KENTUCKY BOARD OF DURABLE MEDICAL EQUIPMENT SUPPLIERS

Andy Beshear
Governor

P. O. Box 1360
Frankfort, Kentucky 40602
Phone (502) 892-4251
<http://kbdmes.ky.gov/>

October 7, 2021

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

Re: 201 KAR 47:010. Home Medical Equipment and supplier licenses, requirements, and fees; 201 KAR 47:030. Complaint and disciplinary process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 47:010 and 201 KAR 47:030, the Kentucky Board of Durable Medical Equipment Suppliers proposes the attached amendments to 201 KAR 47:010 and 201 KAR 47:030.

Sincerely,

/s/ August Lincoln Pozgay

August Lincoln Pozgay, Attorney for the Board
Office of Legal Services
Public Protection Cabinet
500 Mero Street, 2NCWK#2
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august.pozgay@ky.gov
502-782-0714 (office)

SUGGESTED SUBSTITUTE

Final Version: 10/6/2021 11:33 AM

BOARDS AND COMMISSIONS

Board of Durable Medical Equipment Suppliers

201 KAR 47:010. Home medical equipment and supplier licenses, requirements, and fees.

RELATES TO: KRS [~~17.500, Chapter 209, 224.10-052,~~] 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 324B.030, 324B.040, Pub. L. 104-191[~~439.3401~~]

STATUTORY AUTHORITY: KRS 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 324B.030, 324B.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.404(4) and 309.406(1)(a) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment and services provider.

Section 1. License Required. Unless exempted by KRS 309.412(2), an entity [~~a person~~] engaged in providing home medical equipment and services in the commonwealth shall hold a license.

Section 2. Initial License. (1) An applicant for licensure that does not currently hold or that has not previously held a license in the commonwealth shall submit:

(a) Form 1, [An-]Application for Licensure[~~Home Medical Equipment License~~] or Renewal; and

(b) [~~A license fee of \$350; and~~

~~(c)]~~ Evidence of the ability to comply with KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. To demonstrate the ability to comply with those provisions, the applicant shall:

1. At the time of application, submit proof of accreditation or exemption by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment; or

2. Within sixty (60) days of application, submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. The board shall not consider a license application, a license shall not be issued, and the applicant shall not engage in the business of providing home medical equipment or services until the board is provided a final report from the inspector demonstrating the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(2)(a) An applicant issued a license based on proof of accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services shall maintain accreditation during the license period.

1. Each licensee shall advise the board in writing of any change in accreditation, including if the accreditation is revoked, suspended, not renewed, or expires.

2. If the accreditation is revoked, suspended, not renewed, or expires, the licensee shall request and submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(b) An applicant that does not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services and is issued a license based upon an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47 shall submit to an annual inspection by the board.

Section 3. License Renewals. A licensee seeking to renew a license shall submit:

- (1) Form 1, [An] Application for ~~Licensure~~[Home Medical Equipment License] or Renewal; and
- (2) The evidence required by Section 2(1)(b)[e] of this administrative regulation; and
- (3) A license renewal fee of \$350].

Section 4. Reciprocal Licenses. An applicant seeking licensure pursuant to KRS 309.420 on the basis of reciprocity shall submit:

- (1) Form 1, [An] Application for ~~Licensure~~[Home Medical Equipment License] or Renewal;
- (2) A certified copy of the applicant's license issued in a contiguous state ~~that~~[which] grants reciprocity to Kentucky licensees[another state];
- (3) A copy of the applicant's discipline history certified by the licensing authority that issued the license referenced in subsection (2) of this section; and
- (4) The evidence required by Section 2(1)(b) of this administrative regulation; and
- (4) A reciprocal license fee of \$350].

Section 5. ~~[License Fee Refunds. If an applicant's license is denied or remains incomplete for more than sixty (60) days following submission, \$150 of the license fee shall be refunded to the applicant.~~

~~Section 6.](1) Annual Training Requirement. Licensees[Licenses] shall provide to employees and persons engaged in the provision of home medical equipment and services operating under its license at least six (6) hours of annual training related to providing home medical equipment and services, which may be provided in-house by the licensee.~~

- (2) The training shall include programs in:
 - (a) Infection control and blood borne pathogens;
 - (b) Occupation Safety and Health Administration (OSHA)[OSHA] and safety issues to include fire safety, disaster preparedness, and office security;
 - (c) Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (HIPAA)[HIPAA], privacy and security; and
 - (d) Any new home medical equipment or services the licensee plans to provide.

Section 6 ~~[7]~~. Safety Requirements. Each licensee shall:

- (1) Refrain from modifying home medical equipment in a way that might reasonably cause harm to its user;

(2) Maintain electrical components on licensed premises in a manner to prevent fire or shock hazard;

(3) Provide adequate lighting for the licensed premises;

(4) Provide adequate ventilation for the licensed premises;

(5) If essential to maintain life or if the lack of service might reasonably cause harm to the user, provide services twenty-four (24) hours daily if contracted for by supplier and user;

(6) Ensure that all home medical equipment is free of defects and operates within the manufacturer's specifications;

(7) Document the chain of custody and possession of home medical equipment;

(8) Establish, maintain, and adhere to a protocol for retrieving home medical equipment if a recall is initiated;

(9) Ensure that home medical equipment bears the appropriate labels, including:

(a) Warning labels and tags; and

(b) A label that contains the licensee's name, [address,] and telephone number;

(10) Maintain in a secure location all home medical equipment stored on the licensed premises;

(11) Establish, maintain, and adhere to procedures for accurately and precisely tracking records of all home medical equipment shipped or received that includes the home medical equipment purchased or the services rendered in each transaction, the date of the transaction, the quantity of the transaction, and an itemized description of the home medical equipment and services rendered; and

(12) Establish, maintain, and adhere to procedures that **establish[set forth]** a detailed description of how the operation **shall[will]** comply with applicable federal, state, or local laws or administrative regulations.

Section 7[8]. Sanitation Requirements. A home medical equipment supplier shall:

(1) Instruct users of the home medical equipment on proper cleaning techniques as specified by the manufacturer;

(2) Repair and clean all components of home medical equipment in a confined and properly ventilated area;

(3) Maintain and store home medical equipment to ensure proper lighting, ventilation, temperature, humidity control, sanitation, space, and security; and

(4) Establish, maintain, and adhere to a protocol for cleaning and disinfecting home medical equipment that addresses both aerobic and anaerobic pathogens. The protocol shall include:

(a) **Maintaining[Maintain]** segregated areas on the licensed premises and in delivery vehicles for clean, dirty, and contaminated home medical equipment; and

(b) Cleaning and disinfecting home medical equipment according to manufacturer specifications.

Section 8[9]. Record Retention and Inspection. (1) Licensees shall maintain the following records for a period of at least three (3) years:

(a) Invoices and receipts for all home medical equipment and services provided;

(b) A complete and accurate list that includes the following information for the licensee's employees:

1. Names;
2. Addresses;
3. Telephone numbers;
4. Criminal history, if any; and
5. Dates of employment;

(c) Records of training required by Section 5[6] of this administrative regulation, which shall include:

1. The names of the persons attending the training;
2. The date of attendance;
3. The title of the course;
4. The entity offering the course; and
5. A certificate of completion or similar document;

(d) Documentation of home medical equipment and services that includes:

1. The types of home medical equipment;
2. The manufacturer;
3. The model number;
4. The serial number;
5. Date of repair;
6. Specific repair made; and
7. The name of the person performing the repair;

(e) Documentation of any complaints received and how the complaint was resolved;

(f) Documentation of a function and safety check of home medical equipment that was performed prior to delivery of the home medical equipment and that the user of the home medical equipment is provided instruction on its proper use, safety, and maintenance; and

(g) A [material]safety data sheet (SDS)[(MSDS)] documenting the solutions, products, and procedures used in cleaning and disinfecting home medical equipment.

(2) A licensee shall provide the records required by subsection (1) of this section to the board for inspection within three (3) business days of a request by the board. The board shall **state[specify]** the location to which the records shall be delivered and if the board shall require electronic or hard copies of the records.

Section 9.[10. Other fees. Pursuant to KRS 309.406(1)(f), the board shall charge the following fees for services:] Fees. (1) License fees. An applicant for licensure shall pay[the following licensing fees]:

- (a) An initial license fee of **[three hundred and fifty dollars-(\$350)]**;
- (b) A renewal license fee of **[three hundred and fifty dollars-(\$350)]**; **or[and]**
- (c) A reciprocal license fee of **[three hundred and fifty dollars-(\$350)]**.

(2) Inspection fees. An applicant for licensure shall pay the **[following]inspection fees established in paragraphs (a) through (c) of this subsection.[:]**

(a) If an inspection is required within the Commonwealth, the fee for **the[such]** inspection shall be **[three hundred and fifty dollars-(\$350.):]**

(b) If an inspection is required outside of the Commonwealth, the fee for **the[such]** inspection shall be the cost of the inspection, including inspector's hourly rate, mileage, and travel expenses.**[;and]**

(c) For any inspection, the sum of ~~[three hundred and fifty dollars-]~~ \$350 ~~shall be[is]~~ due before the inspection occurs. Any remaining balance ~~shall be[is]~~ payable before the license is issued.

(3) Other fees.[:]

(a) Duplicate License fee ~~shall be[of]~~ twenty-five (25) dollars. ~~[(25);]~~

(b) License verification fee ~~shall be[of]~~ ten (10) dollars. ~~[(10);]~~

(c) Mailing list fee for a noncommercial purpose ~~shall be[of]~~ fifteen (15) dollars. ~~[(15); and]~~

(d) Mailing list fee for a commercial purpose ~~shall be[of]~~ seventy-five (75) dollars ~~[(75);]~~.

Service	Fee
Duplicate li- cense	\$15
Discipline history	\$15
Paper copies of docu- ments	\$.10 per page if for a non- commercial purpose; or \$.25 per page if for a com- mercial purpose
Disks	\$2.00 per disk if for a non- commercial purpose; or \$10.00 per disk if for a com- mercial purpose
Mailing lists	\$15.00 per list if for a non- commercial purpose; or \$75.00 per list if for a com- mercial purpose

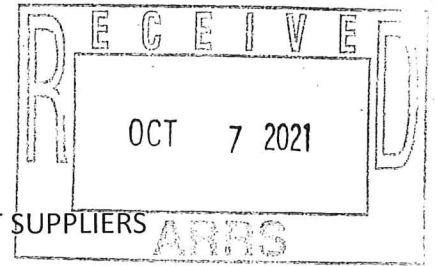
]

Section 10[44]. Department of Professional Licensing. Pursuant to KRS 309.404, 324B.030, and 324B.040[224.10-052], the Department of Professional Licensing may accept payments, employ inspectors, receive complaints, and receive appeals on behalf of the board.

Section 11[42]. Incorporation by Reference. (1) Form 1, "Application for Licensure[Home Medical Equipment License] or Renewal", June 2021[December 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, 23SC32, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and is available at <http://kbdmes.ky.gov/>.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email august.pozgay@ky.gov.



KENTUCKY BOARD OF DURABLE MEDICAL EQUIPMENT SUPPLIERS

Andy Beshear
Governor

P. O. Box 1360
Frankfort, Kentucky 40602
Phone (502) 892-4251
<http://kbdmes.ky.gov/>

October 7, 2021

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

Re: 201 KAR 47:010. Home Medical Equipment and supplier licenses, requirements, and fees; 201 KAR 47:030. Complaint and disciplinary process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 47:010 and 201 KAR 47:030, the Kentucky Board of Durable Medical Equipment Suppliers proposes the attached amendments to 201 KAR 47:010 and 201 KAR 47:030.

Sincerely,

/s/ August Lincoln Pozgay
August Lincoln Pozgay, Attorney for the Board
Office of Legal Services
Public Protection Cabinet
500 Mero Street, 2NCWK#2
Frankfort, KY 40601
august.pozgay@ky.gov
502-782-0714 (office)

SUGGESTED SUBSTITUTE

Final Version: 10/6/2021 2:43 PM

BOARDS AND COMMISSIONS

Board of Durable Medical Equipment Suppliers

201 KAR 47:030. Complaint and disciplinary process.

RELATES TO: KRS 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

STATUTORY AUTHORITY: KRS 309.406, 309.418

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.406(1)(d) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. KRS 309.406(1)(d) authorizes the board to investigate complaints or violations of the home medical equipment laws and the administrative regulations. This administrative regulation establishes[details] the process by which the board investigates complaints and violations.

Section 1. Definitions. (1) "Board" is defined by KRS 309.402.

(2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 309.400 through 309.422 or 201 KAR Chapter 47.

(3) "Complaint" means a written complaint alleging a violation of KRS 309.400 through 309.422 and 201 KAR Chapter 47.

(4) "Complainant" means a person who files a complaint pursuant to this administrative regulation.

(5) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(6) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that establishes[sets forth] charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(7) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license. **A certified copy of a court record for a misdemeanor or felony conviction constitutes a valid initiating complaint.**

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

(9) "Respondent" means the individual or entity against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) An initiating complaint may be initiated by the board, an individual, an organization, an entity, or a governmental agency. ~~**A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.**~~

(2) **An** initiating **complaint[complaints]** shall:

(a) Be in writing;

(b) Clearly identify the individual or entity against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify the individual or entity making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) An initiating complaint may be submitted to the board in any manner.

(4) Upon receipt of an initiating complaint, a copy of the initiating complaint shall be mailed to the respondent along with a request for a response to the complaint within twenty (20) days of the date on which the initiating complaint was received, unless an extension is granted by the board **upon written request from the respondent and for good cause.**

(5) Upon receipt of the written response of the respondent, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board, unless an extension is granted by the board **upon written request from the complainant and for good cause.**

(6) Complaint Committee.

(a) The complaint committee shall consist of two (2) board members appointed by the chair of the board.

(b) The complaint committee shall[to]:

1. Review initiating complaints, responses, replies, investigative reports, and any other relevant material;

2. Participate in informal proceedings to resolve formal complaints; and

3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

~~[(b) The complaint committee may be assisted by the board staff and counsel to the board.]~~

Section 3. Initial Review. (1) At the next regularly scheduled meeting of the board or as soon thereafter as practicable, the board, upon recommendation of the complaint committee, shall determine the proper disposition of the complaint.

(2) If the board determines before formal investigation that the facts alleged in the initiating complaint do not constitute a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and respondent that no further action shall be taken.

(3) If the board determines that more investigation is warranted, the board shall appoint an agent or representative of the board to investigate the initiating complaint.

(4) If the board determines that there is a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a prima facie violation of KRS 309.422 and the respondent is not a licensee, the board may take **one (1) or more of** the following actions:

(a) Issue a cease and desist;

(b) File an injunction; and

(c) Seek criminal prosecution pursuant to KRS 309.422.

Section 4. Final Review. (1) Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(2) Based on consideration of the complaint and, if any, the response, reply, investigative report, and other relevant evidence, ~~[response, reply, the investigative report, if any, and any other relevant evidence]~~ the board shall determine if there has been a prima facie violation of KRS 309.400 through 309.422.

(3) If the board determines that the facts alleged in the initiating complaint do not constitute a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and the respondent that no further action shall be taken.

(4) If the board determines that there is a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a violation of KRS 309.422 and the respondent is not a licensee, the board may take one (1) or more of the following actions:

- (i) Issue a cease and desist;
- (ii) File an injunction; and
- (iii) Seek criminal prosecution pursuant to KRS 309.422.

Section 5. Settlement by Informal Proceedings. (1) The board, at any time during this process, may enter into informal proceedings with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the respondent.

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

(4) The board may, at any time during this process, issue a letter of admonishment to the respondent as a means of resolving the complaint.

1. Within thirty (30) day of the date of the letter, the respondent shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the file.

2.a. The respondent shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint.

b. If this appeal is requested, the board shall immediately file a formal complaint in regard to this matter and set a date for hearing.

Section 6. Formal Complaint. (1) If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

(2) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations established[set forth] in the notice of administrative hearing.

(3) Allegations not timely[properly] responded to shall be deemed admitted.

(4) The board shall upon written request and for~~[may, if there is]~~ good cause, allow[permit] the late filing of a response.

Section 7. Composition of the Hearing Panel. Disciplinary actions shall be heard by:

- (1) The full board or a quorum of the board;
- (2) A hearing panel consisting of at least one (1) board member appointed by the board; or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

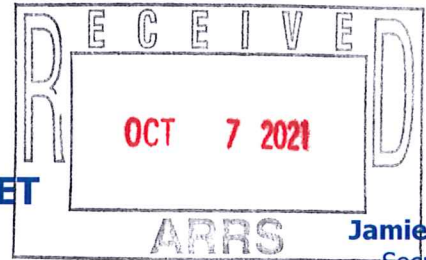
Section 8. Notification. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the complainant and the respondent of the outcome of the action in writing, **including any appeal rights pursuant to KRS Chapter 13B.**

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email august.pozgay@ky.gov.



KENTUCKY LABOR CABINET

Mayo-Underwood Building
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Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 564-5387



Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

October 7, 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 1:010 Application for employer account; reports

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:010, the Labor Cabinet proposes the attached amendment to 787 KAR 1:010.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Final, 10-5-2021

SUGGESTED SUBSTITUTE

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.070, 341.190, 341.243, 341.250, 341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[454B.020]~~, 341.115, 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the office~~[division]~~.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall use the Unemployment Insurance Self-Service Web Portal located at <https://ui.kewes.ky.gov> to complete and electronically file with the Office~~[Division]~~ of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall use the Unemployment Insurance Self-Service Web Portal located at <https://ui.kewes.ky.gov> to complete and electronically file with the Of~~ice~~~~[Division]~~ of Unemployment Insurance the following electronic reports as required in accordance with the instructions contained on Unemployment Insurance Self-Service Web Portal ~~[the forms]~~:

(1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;[

~~(2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;]~~

~~(2)~~~~[(3)]~~ UI-3.2, Account Status Information; and

~~(3)~~~~[(4)]~~ UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part.];

~~(5) UI-35, Termination of Coverage;~~

~~(6) UI-74, Application for Partial Payment Agreement;~~

~~(7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and~~

~~(8) UI-203, Overpayment and Fraud Detection.]~~

Section 3. Each employing unit shall complete and file with the Office of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;

(2) UI-74, Application for Partial Payment **Agreement**~~[Application];~~

(3) UI-203, Overpayment and Fraud Detection; and

(4) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits.

Section (4)[3]. If an employing unit elects to submit the information required in any report listed in Section 3[4—~~or~~—2] of this administrative regulation through the Web site at <https://kewes.ky.gov> provided by the Office[Division] of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 5[4]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 2021;

(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 2021

~~[(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 3/05;~~

~~(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11];~~

(c)[(a)](e) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 11/20[7/18];

(d) UI-3.2, "Account Status Information", Rev. 2021;

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 2021;

~~(f) [(d) UI-3.2, "Account Status Information", Rev. 7/18;~~

~~(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 3/05;~~

~~(f) UI-35, "Termination of Coverage", Rev. 5/11;]~~

~~[(b)](g) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;~~

~~(g)[(c)](h) UI-203, "Overpayment and Fraud Detection", Rev. 01/2021[9/11]; and~~

~~(h)[(d)](i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 09/18[9/11].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[275 E. Main Street, 2E], Frankfort, Kentucky 40601[40621], Monday through Friday, 8 a.m. to 4:30 p.m. **and is also available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.**

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested amendment, the agency needs to file one (1) clean copy of each of the following forms that includes the series of Web screen shots from the Web Portal and updates the edition date to 2021:

- **UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 2021**
- **UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 2021**
- **UI-3.2, "Account Status Information", Rev. 2021**
- **UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 2021**

UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 2021



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Employer Account Registration

Welcome to the Kentucky Unemployment Tax registration process. In order to proceed with the registration process, you will need the following:

- Federal Employer Identification Number (FEIN)
- The date the business hired the first Kentucky employee
- All owner, partner, or officer information, including social security number, residence address, phone number and email address.
- The current physical address or location address of the business being registered.

*Enter your FEIN

*Re-enter FEIN (for verification)

Note: If you do not have a FEIN, you may visit the IRS website at www.irs.gov to apply for one.

* denotes required field

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Password and Security Questions Setup

Passwords must adhere to the following rules:

At least one lowercase letter (a to z) and one uppercase letter (A to Z)
At least one digit (0 to 9) and at least one special character (!, @, #, \$, %, ^, &, *)
Password length must be between 8 (minimum) and 20 (maximum) characters as described above

Remember that the password created here will be used in the future in reference to this business for any other functions performed through this website, including but not limited to: address changes, refund requests, and quarterly filing and payments.

*Enter your Password

Password

*Verify your Password

Re-enter Password

Please select security questions and answers

*Security Question #1

Please Select Question.....

*Security Answer #1

Security Answer #1

*Security Answer #1

Verify Answer #1

*Security Question #2

Please Select Question.....

*Security Answer #2

Security Answer #2

*Security Answer #2

Verify Answer #2

*Security Question #3

Please Select Question.....

*Security Answer #3

Security Answer #3

*Security Answer #3

Verify Answer #3

* denotes required field

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Employer Account Registration

- While completing the registration process, you may use the previous and next buttons to view or change the information you have entered.
- If you close the window to exit the application, all information will be lost and will not be saved.
- You will have the opportunity to print or save a PDF version of this registration at the end of the process.
- If you have any questions during the registration process or need assistance, please contact the **Unemployment Insurance Tax Status Department** at 502-564-2272 between the hours of 8:00 am and 4:00 pm EST.

Please select from the following options to proceed

- I am a brand new business in Kentucky. I did not purchase or acquire all or part of an existing business.

[->> New Business Registration](#)

- I am a brand new business in Kentucky. I have purchased or acquired all or part of an existing business.

[->> New Business Registration as a Successor](#)

- I already have an inactive Kentucky Employer Identification Number (KEIN) and I have now resumed employment and need to reinstate my account.

[->> Registration to Reinstate your account](#)

- I am applying to determine liability for an unemployment reserve account in order to obtain a letter of good standing for the Kentucky Secretary of State's office.

[->> Registration for Letter of Good Standing](#)

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New Employer Registration

- **Regular Business** - Services performed in a for profit business. Most new businesses fall within this category.
- **Domestic Business** - Services performed in a private home such as a caregiver, housekeeper, cook or other household employment.
- **Agricultural Business** - Services performed on a farm in connection with raising or harvesting an agricultural or horticultural commodity. Please Note: Horse racing is a Regular Business type and does not fall under Agricultural Business type.
- **Governmental Business** - Services performed by a state agency, college, university, hospital, local county or city governments and their agencies. Please Note: Governmental contractors are Regular Business type and do not fall under Governmental Business type.
- **Non-Profit 501(c)(3) Business** - Services performed for a not for profit 501(c)(3) organization such as a charitable, religious, educational, scientific, literary or other organization. You will be asked to provide a copy of your IRS status and exemption letter before we can finalize your registration. Please Note: Kentucky Unemployment Insurance only recognizes 501(c)(3) organizations as Non-Profit. If you do not have the (C)(3) status, please apply as a Regular Business type.

Please select your **Business type** from the drop down menu below and click the "Next" button to proceed.

*Business Type REGULAR 

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Account Registration - Employer Liability Information

Regular Employer Business Type

*Prior to beginning employment in Kentucky, were you subject in the current or preceding year under the unemployment compensation laws of another state, U.S., territory, or Canadian province?

☐ Yes ☐ No

In order to apply for an employer reserve account, you must have begun employment in Kentucky and met liability. Enter the dates of your first employment and payroll in Kentucky below and then the date in which you first met the liability test(s).

*Date you first employed a worker in Kentucky

*Date you first paid wages in Kentucky

LIABILITY TESTS

*Did you or do you expect to have a gross payroll of \$1,500 or more in any calendar quarter during the current or prior year?

☐ Yes ☐ No

*Have you employed at least one worker for 20 weeks during a calendar year? (Weeks do not have to be consecutive and cannot cross over calendar years. Must be 20 weeks within a single calendar year.)

☐ Yes ☐ No

* denotes required field

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Business Information

Federal Employer Identification Number (FEIN)

Legal Entity Name

Trade Name or Doing Business As

Business Mailing Address

*Address Line 1
Address Line 2
Country
*Zip Code
*City
*State
*Phone
*Email
Fax Number

☒ I elect to enroll in electronic benefit claim notifications, and acknowledge future notifications will be sent to the email address provided.

Business Contact Representative

*Full Name
*Title
*Phone
*Email

* denotes required field

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Employer Locations

*How many Kentucky locations do you operate?

Location Information [Location #1]

Physical Location must be in Kentucky (Valid Kentucky address, no P.O. boxes please)

Enter Phone number only if different from main location

*Address Line 1

Address Line 2

*Zip Code

*City

*State

Phone

*Number of Employees at this location

* denotes required field

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Business Description

*Business Industry Code

Please type a description of your business activity or service that you perform in Kentucky

If you know your NAICS Industry Code, please enter it below. If not, please visit the [United States Department of Labor Bureau of Labor Statistics](#) website and locate your 6-digit NAICS Industry code.

NAICS Industry Code

NAICS Code

*Is your business involved in the contract construction industry?

☐ Yes ☐ No

How is your business structure established with the IRS?

Please visit <https://www.irs.gov/startup-business/choose-your-business-structure> for more details on business structures.

*Business Structure Type

* denotes required field

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Employer Owners/Officers

*How many Owners/Officers are registered with the business that have controlling, financial and decision making interest? 1

Owner/Officer Information [Officer #1 out of 1]

*Social Security #	999-99-9999
*First Name	First Name
Middle Initial	
*Last Name	Last Name
*Title	Title
*Address Line 1	Address Line 1
Address Line 2	Address Line 2
Country	United States
*Zip Code	Zip Code
*City	City
*State	Please Select
Email	Email address

*Does this business share substantially common ownership, management or control (including a common parent company) with any other business currently or previously operating in Kentucky?

☐ Yes ☐ No

* denotes required field

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Statement of Acknowledgement

Please read each statement and check the acknowledgement box to proceed.

- ☐ I agree to notify the Kentucky Office of Unemployment Insurance if I close, cancel, sell, transfer, or restructure my business or have new ownership. (The Office does monitor payroll shifts from one business to another. Penalties may be imposed for a business who tries to manipulate their unemployment tax rate.)
- ☐ I understand that I must file and pay quarterly unemployment tax reports and if my business reports 10 or more employees, I must file and pay electronically. (Electronic filing and payments are strongly encouraged to avoid lost mail or pages from your report that can become separated during processing.)
- ☐ I agree that I will be filing quarterly reports under my assigned KEIN for my employees only and I am not an employee/leasing company filing for multiple employers under one tax number. (Kentucky Unemployment Insurance prevents "employee leasing" and "payrolling". Each employer is required to maintain their own individual experience rating. A combined or blended rate for a group of employers is not permitted.)
- ☐ Failure to file quarterly reports will result in a \$25 late fee if the report is filed within 30 days or less from the original due date and a \$75 late fee if a report is filed over 30 days late. An additional \$100 penalty will be added if multiple reports are late in the same calendar year. (A report is considered to be incomplete and not filed if it is missing an employee wage listing or does not have the entire wage listings reported. Electronic filing is strongly encouraged to prevent missing wage listings.)

ELECTRONIC SIGNATURE

(The Statement of Acknowledgment must be accepted to submit the application and complete the registration.)

I agree, under the penalties of perjury, that the statements and information entered in this registration application have been examined by me and to the best of my knowledge are true, correct, and complete. I also acknowledge that I am authorized to execute this transaction on behalf of the employing unit.

☐ I Agree

* FIRST NAME

MI

* LAST NAME

First Name

Last Name

* TITLE

Title

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UI-15, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 2021

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Account Registration - Employer Liability Information

Non-Profit Employer Business Type

*Prior to beginning employment in Kentucky, were you subject in the current or preceding year under the unemployment compensation laws of another state, U.S. territory, or Canadian province?

☐ Yes ☐ No

In order to apply for an employer reserve account, you must have begun employment in Kentucky and met liability. Enter the dates of your first employment and payroll in Kentucky below and then the date in which you first met the liability test(s).

*Date you first employed a worker in Kentucky

*Date you first paid wages in Kentucky

LIABILITY TESTS

*Have you or do you expect to employ at least four workers in 20 weeks? (Weeks do not have to be consecutive, but should be in a single calendar year. At least one worker must perform services in Kentucky.)

☐ Yes ☐ No

Election of Coverage

- ☐ Contributory Coverage – You are assigned a tax rate and pay quarterly taxes based on the established taxable wage base per employee
- ☐ Reimbursing Coverage – You will be issued a Billing/Charge statement for employees whom have received unemployment benefits. You will be responsible for reimbursing the Office back the amount of benefits that were paid out, plus Trust Fund Interest (TFI). You are still responsible for filing quarterly reports.

* denotes required field

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Business Information

Federal Employer Identification Number (FEIN)

*Legal Entity Name

*Trade Name or Doing Business As

Business Mailing Address

*Address Line 1

Address Line 2

Country

*Zip Code

*City

*State

*Phone

*Email

Fax Number

☒ I elect to enroll in electronic benefit claim notifications, and acknowledge future notifications will be sent to the email address provided.

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*Full Name

*Title

*Phone

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Employer Locations

*How many Kentucky locations do you operate?

Location Information [Location #1]

Physical Location must be in Kentucky (Valid Kentucky address, no P.O. boxes please)

Enter Phone number only (if different from main location)

*Address Line 1

Address Line 2

*Zip Code

*City

*State

Phone

*Number of Employees at this location

*denotes required field

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*Business Industry Code

*Business Description Please type a description of your business activity or service that you perform in Kentucky

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*Is your business involved in the contract construction industry? ☐ Yes ☐ No

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Employer Owners/Officers

*How many Owners/Officers are registered with the business that have controlling, financial and decision making interest? 1

Owner/Officer Information [Officer #1 out of 1]

*Social Security # 309-914-2070
*First Name Legal Name
Middle Initial
*Last Name Last Name
*Title Title
*Address Line 1 Address Line 1
Address Line 2 Address Line 2
Country United States
*Zip Code Zip Code
City City
*State Please Select
Email Email address

*Does this business share substantially common ownership, management or control (including a common parent company) with any other business currently or previously operating in Kentucky?

☐ Yes ☐ No

* denotes required field

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Service Provider Information

*Do you have workers who perform services for your business whom you consider to be self-employed or independent contractors?

☐ Yes ☐ No

*Do you have workers who receive 1099 forms, instead of W-2 forms?

☐ Yes ☐ No

*How will you be filing your Quarterly Tax and Wage Reports?

- ☐ Electronic Filing on website (Required if you are reporting 10 or more employees)
☐ Paper Filing (The Office will mail you a UJ3 form. Electronic filing is encouraged)
☐ File through a third party administrator – CPA, Payroll Provider

SERVICE PROVIDER ADDRESS

Service Providers are third-party providers such as CPAs, Bookkeepers, Accounting Firms or other entities you allow to file your Quarterly Tax and Wage Reports (Form UJ-3) on behalf of your business.

*Do you wish to authorize a service provider to discuss or receive information regarding your account?

☐ Yes ☐ No

* denotes required field

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Statement of Acknowledgement

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- ☐ I agree to notify the Kentucky Office of Unemployment Insurance if I close, cancel, sell, transfer, or restructure my business or have new ownership. (The Office does monitor payroll splits from one business to another. Penalties may be imposed for a business who tries to manipulate their unemployment tax rate.)
- ☐ I understand that I must file and pay quarterly unemployment tax reports and if my business reports 10 or more employees, I must file and pay electronically. (Electronic filing and payments are strongly encouraged to avoid lost mail or papers from your report that can become separated during processing.)
- ☐ I agree that I will be filing quarterly reports under my assigned KEIN for my employees only and I am not an employee leasing company filing for multiple employers under one tax number. (Kentucky Unemployment Insurance prevents "employee leasing" and "payrolling". Each employer is required to maintain their own individual experience rating. A combined or blended rate for a group of employers is not permitted.)
- ☐ Failure to file quarterly reports will result in a \$25 late fee if the report is filed within 30 days or less from the original due date and a \$75 late fee if a report is filed over 30 days late. An additional \$100 penalty will be added if multiple reports are late in the same calendar year. (A report is considered to be incomplete and not filed if it is missing an employee wage listing or does not have the entire wage listings reported. Electronic filing is strongly encouraged to prevent missing wage listings.)

ELECTRONIC SIGNATURE

(The Statement of Acknowledgment must be accepted to submit the application and complete the registration.)

I agree, under the penalties of perjury, that the statements and information entered in this registration application have been examined by me and to the best of my knowledge are true, correct, and complete. I also acknowledge that I am authorized to execute this transaction on behalf of the employing unit.

☐ I Agree

* FIRST NAME	MI	* LAST NAME	* TITLE
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<small>First Name Last Name</small>			

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Business Name

TEST ACCOUNT

Reason for closing your account

Business remains open, but has no employees

Please indicate date the business closed, transferred, or ceased to have employees. (You may need to file a final report for the quarter, if employment occurred during any portion of the quarter before the closing date).

*Date Business Closed

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Close User Account

STATEMENT OF ACKNOWLEDGEMENT

Please read each statement and check the acknowledgement box to proceed.

- ☐ I agree to notify the Kentucky Office of Unemployment Insurance if I resume business or employment in Kentucky. **(The Office will require me to complete an application for reinstatement.)**
- ☐ I agree to file all final quarterly reports that are due.
- ☐ *Closing my account does not relieve me of any delinquency or past due amounts owed to the Office. **(The Office will pursue all efforts necessary to collect past due debts.)**
- ☐ I am not closing my account for the sole purpose of obtaining a new account. **(The Office monitors payroll shifts, tax manipulation schemes and other fraudulent activity.)**

ELECTRONIC SIGNATURE

(The Statement of Acknowledgment must be accepted to submit the application and complete the registration.)

I agree, under the penalties of perjury, that the statements and information entered in this registration application have been examined by me and to the best of my knowledge are true, correct, and complete. I also acknowledge that I am authorized to execute this transaction on behalf of the employing unit.

☐ * I Agree

* FIRST NAME * LAST NAME * TITLE
First Name Last Name Title

Wednesday, September 29, 2021

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LABOR CABINET
OFFICE OF UNEMPLOYMENT INSURANCE

NOTICE TO ALL USERS

You are attempting to access a Commonwealth of Kentucky governmental information system. The Kentucky Office of Unemployment Insurance monitors all usage of this site in order to prevent any fraudulent or unauthorized activities.

Any unauthorized use of this system or schemes to establish fictitious employer accounts, file fictitious employer reports, or fraudulently claim unemployment benefits will be referred to local, state and federal authorities and may result in prosecution by the Office of Inspector General.

For security purposes, we have obtained your login information.

 I acknowledge that I am authorized to execute this transaction on behalf of the employing unit and the statements and information entered into this information system will be true, correct, and complete to the best of my knowledge.

Continue

Cancel

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Account Login

*KEIN or TPA number
*Password

☐ I'm not a robot

[Log In](#)

[Forgot your password?](#) or [Change your password](#)

Note: please enter the 8 or 9 digit Kentucky Employer Identification Number (KEIN) or Third Party Administrator Number (TPA) as shown on your report without spaces. [KEIN Examples](#)

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Close User Account

Business Name **TEST ACCOUNT**

*Reason for closing your account

Please indicate date the business closed, transferred, or ceased to have employees. (You may need to file a final report for the quarter, if employment occurred during any portion of the quarter before the closing date).

*Date Business Closed

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Close User Account

Business Name **TEST ACCOUNT**

Reason for closing your account: Business sold or transferred to new ownership

Please indicate date the business closed, transferred, or ceased to have employees. (You may need to file a final report for the quarter, if employment occurred during any portion of the quarter before the closing date).

* Date Business Closed 09/01/2021

Acquiring Party Information

Please provide the following information regarding the purchase or transfer of your business.

* Business Name

* FEIN

* Contact Name

* Title

* Address Line 1

Address Line 2

Country

* Zip Code

* City

* State

* Phone

Email

* Was the business sold in entirety or was any portion retained? ☐ Entirely (100%) ☐ Partial (retained a portion)

Did the new ownership retain your employees? ☐ Yes ☐ No

Did the new ownership acquire any work contract or commitments from your former business? ☐ Yes ☐ No

* Will the new ownership operate business in the same location? ☐ Yes ☐ No

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STATEMENT OF ACKNOWLEDGEMENT

Please read each statement and check the acknowledgement box to proceed.

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☐ I Agree

FIRST NAME MI LAST NAME TITLE
Last Name

Friday, October 01, 2021

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Employer Account Registration

Welcome to the Kentucky Unemployment Tax registration process. In order to proceed with the registration process, you will need the following:

- Federal Employer Identification Number (FEIN)
- The date the business hired the first Kentucky employee
- All owner, partner, or officer information, including social security number, residence address, phone number and email address.
- The current physical address or location address of the business being registered.

Enter your FEIN

*Re-enter FEIN (for verification)

Note: If you do not have a FEIN, you may visit the IRS website at www.irs.gov to apply for one.

* denotes required field

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Password and Security Questions Setup

Passwords must adhere to the following rules:
At least one lowercase letter (a to z) and one uppercase letter (A to Z)
At least one digit (0 to 9) and at least one special character (!, @, #, \$, %, ^, &, *)
Password length must be between 8 (minimum) and 20 (maximum) characters as described above
Remember that the password created here will be used in the future in reference to this business for any other functions performed through this website, including but not limited to address changes, refund requests, and quarterly filing and payments.

Enter your Password
 Verify your Password

Please select security questions and answers

*Security Question #1
 *Security Answer #1
 *Security Question #2
 *Security Answer #2
 *Security Question #3
 *Security Answer #3
 *Security Answer #3
* denotes required field

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Employer Account Registration

- While completing the registration process, you may use the previous and next buttons to view or change the information you have entered.
- If you close the window to exit the application, all information will be lost and will not be saved.
- You will have the opportunity to print or save a PDF version of this registration at the end of the process.
- If you have any questions during the registration process or need assistance, please contact the **Unemployment Insurance Tax Status** Department at 502-564-2272 between the hours of 8:00 am and 4:00 pm EST.

Please select from the following options to proceed

- I am a brand new business in Kentucky. I did not purchase or acquire all or part of an existing business.

>> New Business Registration

- I am a brand new business in Kentucky. I have purchased or acquired all or part of an existing business.

>> New Business Registration as a Successor

- I already have an inactive Kentucky Employer Identification Number (KEIN) and I have now resumed employment and need to reinstate my account.

>> Registration to Reinstate your account

- I am applying to determine liability for an unemployment reserve account in order to obtain a letter of good standing for the Kentucky Secretary of State's office.

>> Registration for Letter of Good Standing

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Successor Employer Business Type

You have indicated that you have acquired or merged with another business in whole or part, or have made changes to your existing business. Please select one of the following that best describes your situation:

- ☐ Purchased or acquired an existing business in entirety
 - ☐ Purchased or acquired an existing business in part
 - ☐ Restructured prior business structure with no FEIN change
 - ☐ Restructured prior business structure with FEIN change
 - ☐ Leased existing business
 - ☐ Lease reversion (control of the business is reverting back to your company)
- * denotes required field

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*On what date did you purchase, acquire or make a change to your business?

Was the previous business in operation at the time you acquired or changed the structure?

Will you operate the same type of business as the previous employer?

Will you be operating your business in the same location as the previous employer?

How many employees did the previous or acquired business employ?

How many employees of the previous or acquired business will now be employed with your business?

Did you acquire work contracts or commitments from the previous business?

Details of Acquired Business and Previous Ownership

*Legal Name

*DBA Name

*EIN

*Address Line 1

*Address Line 2

*Country

*Zip Code

*City

*State

*Phone

*Previous Owners or Officers of Business

*1 Owner / Officer

*2 Owner / Officer

*3 Owner / Officer

*4 Owner / Officer

*Does the previous owner continue to have employees?

☐ Yes

☐ No

☐ Not Sure

* denotes required field

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New Employer Registration

- **Regular Business** - Services performed in a for profit business. Most new businesses fall within this category.
- **Domestic Business** - Services performed in a private home such as a caregiver, housekeeper, cook or other household employment.
- **Agricultural Business** - Services performed on a farm in connection with raising or harvesting an agricultural or horticultural commodity.
Please Note: Horse racing is a Regular Business type and does not fall under Agricultural Business type.
- **Governmental Business** - Services performed by a state agency, college, university, hospital, local county or city governments and their agencies.
Please Note: Governmental contractors are Regular Business type and do not fall under Governmental Business type.
- **Non-Profit 501(c)(3) Business** - Services performed for a not for profit 501(c)(3) organization such as a charitable, religious, educational, scientific, literary or other organization. You will be asked to provide a copy of your IRS status and exemption letter before we can finalize your registration.
Please Note: Kentucky Unemployment Insurance only recognizes 501(c)(3) organizations as Non-Profit. If you do not have the (C)(3) status, please apply as a Regular Business type.

Please select your **Business type** from the drop down menu below and click the "Next" button to proceed.

*Business Type

REGULAR

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Account Registration - Employer Liability Information

Regular Employer Business Type

*Prior to beginning employment in Kentucky, were you subject in the current or preceding year under the unemployment compensation laws of another state, U.S., territory, or Canadian province?

☐ Yes ☐ No

In order to apply for an employer reserve account, you must have begun employment in Kentucky and met liability. Enter the dates of your first employment and payroll in Kentucky below and then the date in which you first met the liability test(s).

*Date you first employed a worker in Kentucky

*Date you first paid wages in Kentucky

LIABILITY TESTS

*Did you or do you expect to have a gross payroll of \$1,500 or more in any calendar quarter during the current or prior year?

☐ Yes ☐ No

*Have you employed at least one worker for 20 weeks during a calendar year? (Weeks do not have to be consecutive and cannot cross over calendar years. Must be 20 weeks within a single calendar year.)

☐ Yes ☐ No

* denotes required field

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Business Information

Federal Employer Identification Number (FEIN)

*Legal Entity Name

*Trade Name or Doing Business As

Business Mailing Address

*Address Line 1

Address Line 2

Country

*Zip Code

*City

*State

*Phone

*Email

Fax Number

☒ I elect to enroll in electronic benefit claim notifications, and acknowledge future notifications will be sent to the email address provided.

Business Contact Representative

*Full Name

*Title

*Phone

*Email

* denotes required field

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Employer Locations

*How many Kentucky locations do you operate?

Location Information [Location #1]

Physical Location must be in Kentucky (Valid Kentucky address, no P.O. boxes please)

Enter Phone number only (if different from main location)

*Address Line 1

Address Line 2

Zip Code

*City

*State

Phone

*Number of Employees at this location

* denotes required field

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Business Description

*Business Industry Code

*Business Description Please type a description of your business activity or service that you perform in Kentucky

If you know your NAICS Industry Code, please enter it below. If not, please visit the [United States Department of Labor Bureau of Labor Statistics](#) website and locate your 6-digit NAICS Industry code

NAICS Industry Code

NAICS Code

*Is your business involved in the contract construction industry?

☐ Yes ☐ No

How is your business structure established with the IRS?

Please visit <https://www.irs.gov/startup-business/choose-your-business-structure> for more details on business structures.

*Business Structure Type

* denotes required field

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Employer Owners/Officers

*How many Owners/Officers are registered with the business that have controlling, financial and decision making interest?

Owner/Officer Information [Officer #1 out of 1]

*Social Security #
*First Name
Middle Initial
*Last Name
*Title
*Address Line 1
Address Line 2
Country
*Zip Code
*City
*State
Email

*Does this business share substantially common ownership, management or control (including a common parent company) with any other business currently or previously operating in Kentucky?

☐ Yes ☐ No

* denotes required field

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Service Provider Information

*Do you have workers who perform services for your business whom you consider to be self-employed or independent contractors?

☐ Yes ☐ No

*Do you have workers who receive 1099 forms, instead of W-2 forms?

☐ Yes ☐ No

*How will you be filing your Quarterly Tax and Wage Reports?

- ☐ Electronic Filing on website (Required if you are reporting 10 or more employees)
☐ Paper Filing (The Office will mail you a UI3 form. Electronic filing is encouraged)
☐ File through a third party administrator – CPA, Payroll Provider

SERVICE PROVIDER ADDRESS

Service Providers are third-party providers such as CPAs, Bookkeepers, Accounting Firms or other entities you allow to file your Quarterly Tax and Wage Reports (Form UI-3) on behalf of your business.

*Do you wish to authorize a service provider to discuss or receive information regarding your account?

☐ Yes ☐ No

* denotes required field

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Statement of Acknowledgement

Please read each statement and check the acknowledgement box to proceed.

- ☐ I agree to notify the Kentucky Office of Unemployment Insurance if I close, cancel, sell, transfer, or restructure my business or have new ownership. (The Office does monitor payroll shifts from one business to another. Penalties may be imposed for a business who tries to manipulate their unemployment tax rate.)
- ☐ I understand that I must file and pay quarterly unemployment tax reports and if my business reports 10 or more employees, I must file and pay electronically. (Electronic filing and payments are strongly encouraged to avoid lost mail or pages from your report that can become separated during processing.)
- ☐ I agree that I will be filing quarterly reports under my assigned KEN for my employees only and I am not an employee leasing company filing for multiple employers under one tax number. (Kentucky Unemployment Insurance prevents "employee leasing" and "payrolling". Each employer is required to maintain their own individual experience rating. A combined or blended rate for a group of employers is not permitted.)
- ☐ Failure to file quarterly reports will result in a \$25 late fee if the report is filed within 30 days or less from the original due date and a \$75 late fee if a report is filed over 30 days late. An additional \$100 penalty will be added if multiple reports are late in the same calendar year. A report is considered to be incomplete and not filed if it is missing an employee wage listing or does not have the entire wage listings reported. Electronic filing is strongly encouraged to prevent missing wage listings.)

ELECTRONIC SIGNATURE

(The Statement of Acknowledgment must be accepted to submit the application and complete the registration.)

I agree, under the penalties of perjury, that the statements and information entered in this registration application have been examined by me and to the best of my knowledge are true, correct, and complete. I also acknowledge that I am authorized to execute this transaction on behalf of the employing unit.

☐ I Agree

* FIRST NAME MI * LAST NAME * TITLE
First Name Last Name Title

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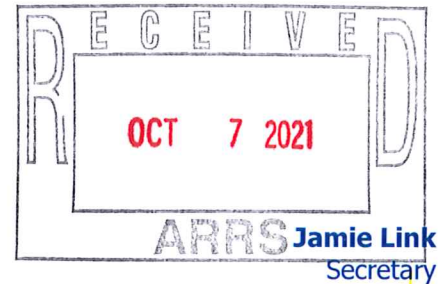


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KENTUCKY LABOR CABINET

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070
Fax: (502) 564-5387



Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

Vickie L. Wise
Deputy Secretary

October 7, 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 1:020 Change of status; discontinuance of business

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:020, the Labor Cabinet proposes the attached amendment to 787 KAR 1:020.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Final, 10-5-2021

SUGGESTED SUBSTITUTE

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:020. Change of status; discontinuance of business.

RELATES TO: KRS 341.070, 341.115, 341.190(2)

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020], 341.115, 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified working records and authorizes the secretary to require additional reports. This administrative regulation establishes the requirement for subject employers to notify the office[division] of any change of ownership or control of their business.

Section 1. A subject employer shall notify the Office[Division] of Unemployment Insurance within fifteen (15) days of any change in ownership or control of his or her business, whether in whole or in part, or of the discontinuance of the business by submitting an electronic **UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or in Part as incorporated by reference in 787 KAR 1:010, and submitted** via the Unemployment Insurance Self Service Web Portal located at https://~~W~~kewes.ky.gov.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

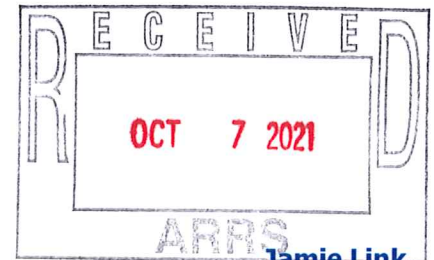


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Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

October 7, 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 1:060 Separation for cause; reports

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:060, the Labor Cabinet proposes the attached amendment to 787 KAR 1:060.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Final, 10-5-2021

SUGGESTED SUBSTITUTE

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:060. Separation for cause; reports.

RELATES TO: KRS 341.190, 341.360, 341.370, 341.530

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[451B.020]~~, 341.115(1), 2021 Ky Acts ch. 169 Part 1(I)(7)

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. This administrative regulation establishes requirements for employer notification of a claim for benefits, and information the employer shall provide to the Office~~[Division]~~ of Unemployment Insurance.

Section 1. Notice to Employers. (1) If an initial claim for benefits is filed by a claimant or if a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Office~~[Division]~~ of Unemployment Insurance shall immediately notify the claimant's most recent employer in writing of the filing.

(2) If the claimant has worked for his or her most recent employer ~~for~~in less than ten (10) weeks, the office~~[division]~~ shall also notify his or her next most recent employer in writing of the claim filing.

(3) If the claimant ~~did not work for either~~worked for neither his or her most recent ~~or~~nor next most recent employer ~~for at least~~in each of ten (10) weeks each, the most recent employer for whom the claimant worked ~~for at least~~in each of ten (10) weeks each shall be notified in writing of the filing.

Section 2. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall notify the office~~[division]~~ at its central office in writing of the reason for separation, within the time frame specified in the notice provided pursuant to Section 1 of this administrative regulation. The employer may use the UI-412A, incorporated by reference in 787 KAR 1:010, to provide this notification to the office~~[division]~~ or by providing notice at <https://uidataexchange.org/sew-s/views/login>.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

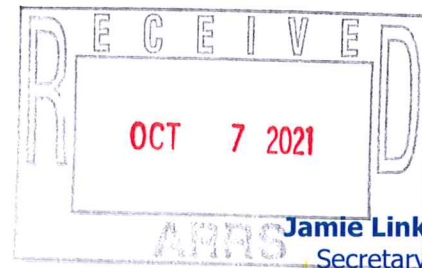


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Vickie L. Wise
Deputy Secretary

October 7, 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 1:090 Unemployed worker's reporting requirements

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:090, the Labor Cabinet proposes the attached amendment to 787 KAR 1:090.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Final, 10-5-2021

SUGGESTED SUBSTITUTE

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements.

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050[154B.020], 341.115(1), 2021 Ky Acts ch. 169 Part 1(I)(7)[341.425(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations **[deemed]** necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker **is required to[shall]** meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he **or she** is eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he **or she** shall be assigned a group classification code A or B based upon his **or her** reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his **or her** last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he **or she** has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his **or her** reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he **or she** shall complete the Initial Claim **process[Application]**~~[, Form 401,]~~ by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at uiclaimsportal.ky.gov~~[https://uiclaims.des.ky.gov/ebenefit/]~~;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall:

(a) Provide picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Present all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later. **Examples of good cause may include illness, availability issues beyond the claimant's control, or lack of access to internet or phone necessary for claim filing.**

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall notify the office in writing~~[file a UI-480, Lost or Stolen Check Statement, to initiate the process to issue a new check].~~

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, **the unemployed worker[he]** shall claim his **or her** benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (c) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his **or her** benefits during the calendar week following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his **or her** benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his **or her** benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late. **Examples of good cause may include illness, availability issues beyond the claimant's control, lack of access to internet or phone necessary for claim filing, or unemployment insurance system outages.**

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at uiclaimsportal.ky.gov~~[https://uiclaims.des.ky.gov/benefit/]~~, with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;
2. Unavailability of those options due to technical problems; or
3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;
(b) The employer has a workforce of at least 100 workers at the time of the layoff;
(c) The employer submits the claim information in the required electronic format using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and the E-claim – Template~~[Mass Electronic Filing Cell Data and Formatting Guide]~~; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Office of Unemployment Insurance ~~[Division]~~ that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

- (1) The worker's classification as established in Section 1(2) of this administrative regulation;
- (2) The worker's individual employment and earning history; and
- (3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

- (a) The employer's failure to comply with 787 KAR Chapter 1;
 - (b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim;
- or
- (c) Failure by the Office of Unemployment Insurance~~[Division's]~~ personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

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

(a) Directions for Submitting an Employer Mass Electronic Claim (E-claim) File, 03/20 ~~[Initial claim application, "Form 401", 8/10]~~; **[and]**

(b) E-Claim – Template, 03/20; **and**

(c) **"Continued Claim Form", Rev. 2021.**~~[UI-480, "Lost or Stolen Check Statement", 06/13;~~

(c) "Continued Claim Form", 10/95; and

(d) "Mass Electronic Filing Cell Data and Formatting Guide", 03/07.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office[Division] of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[275 East Main Street, 2 CD], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m. **and is available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.**

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested amendment, the agency needs to file one (1) clean copy of the following form that includes the series of Web screen shots from the Web Portal and updates the edition date to 2021:

- **"Continued Claim Form", Rev. 2021**

Benefit Weeks



You will be claiming benefits for the following weeks:

Week No. 1 : 05/02/2021 (Sunday) to 05/08/2021 (Saturday)

Return to Full-Time Work

Required fields are indicated with an asterisk *

* Did you return to full-time work during
5/2/2021 to 05/08/2021?:

<< Previous

Next >>

School or Training

Required fields are indicated with an asterisk *

* Did you go to school or training during
5/2/2021 to 05/08/2021?

<< Previous

Next >>

Job Contacts

For the week: 04/18/2021 (Sunday) to 04/24/2021 (Saturday)

You are required to answer all data fields on this screen marked with an asterisk
if you contacted any Employer *

If you did not contact any employers this week, answer the first question No and click the Next button to
continue. You will be asked about this later. *

* Did you contact any employer this week?

* Name Of Employer/Company :

* Position applied for:

* Contact Method (How did you get in touch) :

* Name and Title of the person contacted:

<< Previous

Next >>

Job Contacts

For the week: 04/18/2021 (Sunday) to 04/24/2021 (Saturday)

You are required to answer all data fields on this screen marked with an asterisk if you contacted any Employer *

If you did not contact any employers this week, answer the first question No and click the Next button to continue. You will be asked about this later. *

* Did you contact any employer this week?

* Name Of Employer/Company :

* Position applied for:

* Contact Method (How did you get in touch) :

* Name and Title of the person contacted:

<< Previous

Next >>

Union Find Job

Required fields are indicated with an asterisk *

* Does union find job for you ?

* Will you return to work with your most recent employer before 07/19/2021?

* Are you unemployed because of a labor dispute with your prior employer?

<< Previous

Next >>

Income For The Week

Required fields are indicated with an asterisk *

For the week: 05/02/2021 (Sunday) to 05/08/2021 (Saturday)

* During this week, did you perform any work for which you were paid or will be paid.....

OR

Did you receive any income including: Wages and Tips, Holiday Pay, Self-employment, Commission Pay, Odd jobs, National Guard/Reserve Pay, Bonus or Vacation Pay?

This excludes Unemployment Benefits, Federal Stimulus Payments, and the \$600 Cares Act funds.

<< Previous

Next >>

Please DO NOT use "BACK" or "FORWARD" button on the Browser Menu for Navigation, Instead use the Application "Previous or Next" button at the bottom of screen.

Eligibility Questions

Required fields are indicated with an asterisk *

For the week: 08/29/2021 (Sunday) to 09/04/2021 (Saturday)

- * Did you refuse a job?
- * You gave 08/24/2020 as your last day worked when you last filed a claim. Since that date have you had any work from which you were fired or that you quit?
- * Were you available for full-time work?
- * Were you physically & mentally able to perform full-time work?
- * Did you begin receiving or did you have a change in the amount of your retirement benefits, exclude social security benefits?

<< Previous

Next >>



Please click here for Help

Certification

Required fields are indicated with an asterisk *

Penalties are imposed by law, on falsification of and or for failure to disclose a material fact in order to obtain Benefits.

NOTE: To change or to ensure accuracy of the information you provided, please press previous button to navigate to appropriate screen.

* Do you certify that your answers were complete and truthful?

Confirmation



Your request for claiming weeks has been filed and is being processed.

Return to this website to claim your next eligible weeks between **5/23/2021 (Sunday) to 5/28/2021 (Friday)**.

OR

Confirmation



Your Status has changed

Based on the information provided, you are required to seek full-time work and register with a state employment office to continue receiving Unemployment Insurance

Once this review is complete, please make sure you register for work. You may register online at <https://focuscareer.ky.gov/careerexplorer>

If you live outside of KY, please register with your state of residence. You can find state specific sites by <https://www.careeronestop.org>

If you need help registering, please call 502-564-2900

Because you are no longer connected to your most recent employer or get work through a union hiring hall, you must return to <https://kcc.ky.gov> to request your benefit payment. You can no longer use the phone system.

Your request for claiming weeks has been filed and is being processed.

Return to this website to claim your next eligible weeks between 5/16/2021 (Sunday) to 5/21/2021 (Friday).



[Please click here for Main](#)

[Print This Page](#)

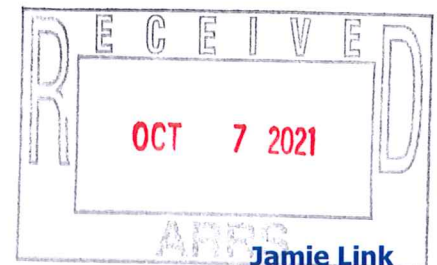


KENTUCKY LABOR CABINET

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Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

October 7, 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 1:110 Appeals

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:110, the Labor Cabinet proposes the attached amendment to 787 KAR 1:110.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Final, 10-4-2021

SUGGESTED SUBSTITUTE

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:110. Appeals.

RELATES TO: KRS 131.570(1), 341.420(2), (4), 341.430(2), 341.440, 341.450

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020(3)(e)4], 341.115(1), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

Section 1./:/ Definition. "Interested party" means a claimant or employer identified in a notice of determination.

Section 2[4]. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a determination issued pursuant to KRS 131.570(1) or 341.420(2) shall file with the Office[Division] of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal to a referee shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, the Office[Division] of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The office[division] shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;
2. Medical emergency;
3. Death of a family member; or
4. Acts of God.

(3) Disqualification of referees.

(a) A referee shall not participate in the hearing of an appeal in which the referee has an interest.

(b) Challenges to the interest of any referee shall be heard and decided by the commission.

(4)(a) Hearing of appeals.

1. The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and witnesses.

2. The referee shall, if necessary to secure full information on the issues, examine each party who appears and witnesses.

3. The referee may take any additional evidence that is necessary.
4. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.
 - (b)1. The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing.
 2. The referee shall:
 - a. Decide the appeal on the basis of the stipulation; or
 - b. Schedule a hearing and take further evidence.
 - (c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.
 - (d) The hearing shall be scheduled via teleconference if an in-person hearing would:
 1. Create undue expense for any party;
 2. Require any party to travel more than fifty (50) miles;
 3. Put either party or the referee at personal risk; or
 4. Create a security risk for the public or office[~~division~~] staff.
 - (e) The referee may grant a continuance of a hearing in order to secure necessary evidence.
 - (f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing.
 2. Failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.
- (5) Decisions.
 - (a)1. After the hearing is concluded, the referee shall set forth in writing the referee's finding of facts on the issues involved, the decision, and the reasons for the decision.
 2. If the appellant fails to appear and prosecute an appeal, the referee shall summarily affirm the determination.
 - (b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the office's[~~division's~~] files.
 - (c)1. The recording of the hearing shall be retained in the office's[~~division's~~] files pending further appeal.
 2. If an appeal is not initiated, the recording may be deleted ninety (90) days from the date the final administrative decision is mailed.
 - (d)1. Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.
 2. The corrected decision shall have the same appeal rights as the decision that it amends or corrects.
 - (e) If the decision is to deny previously awarded benefits either retroactively or forthwith, a stop payment directive shall be issued to the office[~~division~~] by the referee on the date the decision is mailed to the claimant.

Section 3[2]. Appeals to the Commission From a Referee Decision. (1) Presentation of an appeal to the commission.

- (a)1. Any interested party wishing to appeal to the commission from a decision of a referee shall give notice in writing to the commission, the office[~~division~~], or the office's[~~division's~~] authorized representative in any form that clearly indicates the party's intention to appeal.
2. The appeal shall be mailed by the office[~~division~~] to other interested parties.
- (b) An appeal, based on the conformity of the appeal with the requirements of KRS 341.420(4), shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.
- (c) The commission shall:
 1. Grant or deny the application for leave to appeal without a hearing; or

2. Notify the parties to appear at a specified place and time for appeal on the application.

(2) Hearing of appeals.

(a)1. Except if the commission orders cases removed to it from a referee, all appeals to the commission shall be heard upon the records of the office~~[division]~~ and the evidence and exhibits introduced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and present oral arguments.

3.a. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file a written argument.

b. The appellee shall have seven (7) days thereafter within which to file response.

4. Written argument shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

5. The commission may extend the time for filing written argument upon a showing of good cause, in accordance with the examples listed in Section 4[3](2)(c)1₂ through 4₂ of this administrative regulation. by either party to the appeal.

(b)1. The commission may direct the taking of additional evidence before it, if needed, in order to determine the appeal.

2. If additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c)1. The commission may return any case or issue to a referee for the taking of additional evidence.

2. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

(3) Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 4[3] of this administrative regulation.

(4) The determination of appeals before the commission.

(a)1. Following the conclusion of a hearing, the commission shall issue a written decision, which shall affirm the decision of the referee or present a separate finding of facts, decision, and reasons.

2. The decision shall be signed by members of the commission who heard the appeal.

3.a. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

(i) Is a matter of first impression;

(ii) Clarifies or defines the application of statutory language;

(iii) Reverses a previous precedential commission decision; or

(iv) Adopts a court decision.

b. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, request in writing a reconsideration of the commission's decision.

1. The commission shall grant or deny the request for reconsideration based on the conformity of the request to this paragraph.

2. A request for reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

(6) Precedent decision process and digest.

(a) The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid.

(b) Individual decisions shall be available on request without charge.

Section 4[3]. Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission.

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 131.570(1) or 341.430(2) shall do so by filing with the commission, the office[division], or the office's[division's] authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely; or

2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Appointment of commission representative.

(a) The commission may direct that any hearing be conducted on its behalf by an authorized representative.

(b) A representative shall not participate in the hearing of an appeal in which the representative has an interest.

(c) Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and witnesses.

1. The commission shall, if it finds[deems] it necessary to secure full information on the issues, examine each party who appears and witnesses.

2.a. The commission may take any additional evidence which is necessary.

b. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b)1. The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing.

2. The commission shall:

a. Decide the appeal on the basis of the stipulation; or

b. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or office~~[division]~~ staff.

(e) The commission may grant a continuance of a hearing in order to secure necessary evidence.

(f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing shall provide copies of the documents to the commission and to the opposing party prior to the hearing.

2. Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. Following the conclusion of a hearing, the commission shall set forth in writing its finding of the facts, its decision, and its reasons for the decision.

2. If the appellant fails to appear and prosecute an appeal, the commission shall summarily affirm the administrative determination from which the appeal was made.

3. The decision shall be signed by the members of the commission who considered the appeal.

4. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedential commission decision; or

d. Adopts a court decision.

5. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e)1. Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file a request in writing for reconsideration of the commission's decision.

1. The commission shall grant or deny the reconsideration based on the conformity of the request to this paragraph.

2. A reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

Section 5[4]. General Rules for Referee and Commission Appeals. (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance setting forth the substance of the anticipated proof to be obtained and the need for the proof.

(2) Appeal record.

(a) All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the office[~~division~~] that have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(b) Pursuant to KRS 341.440, a digital recording shall be made of any hearing conducted by the office[~~division~~] or commission.

(3) Supplying information from the records of the Office[~~Division~~] of Unemployment Insurance.

(a) Information from the records of the office[~~division~~] shall be furnished to an interested party or representative to the extent necessary for the proper presentation of the party's case, only upon written request.

(b) All requests for information shall state, as clearly as possible, the nature of the information desired.

(c) An interested party or representative may examine a record in the possession of a referee, the commission, or its authorized representative at a hearing.

(4) Conduct of hearings.

(a) All hearings shall be conducted informally without regard to common law, statutory or technical rules, or procedure and in a manner as to determine the substantial rights of the parties.

(b) The parties and their witnesses shall testify under oath or affirmation.

(c) All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date, request a rehearing.

(b) The request shall:

1. Be granted if the party has shown good cause, in accordance with the examples listed in Section 4[~~3~~](2)(c)1₂ through 4₂ of this administrative regulation, for failure to appear;

2. Be in writing;

3. Set forth the reasons for the failure to attend the scheduled hearing; and

4. Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Of-
ice[~~Division~~] of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a digital recording of testimony to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing. To request a duplicate, the party or authorized representative shall:

1. Contact the Kentucky Unemployment Insurance Commission at the address listed on the decision; and

2. Include with the request a CD-R, CD-RW, or USB flash drive, with the appropriately stamped return envelope.

(b) There shall not be a charge for this service, if the party included with the request a CD-R, CD-RW, or USB flash drive and appropriately stamped return envelope.

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

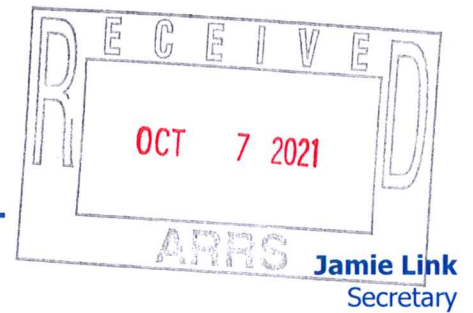
Section 6[5]. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601~~[Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40624]~~, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.



KENTUCKY LABOR CABINET

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Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

October 7, 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 1:150. Interstate claimants.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:150, the Labor Cabinet proposes the attached amendment to 787 KAR 1:150.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

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**LABOR CABINET
Office of Unemployment Insurance**

787 KAR 1:150. Interstate claimants.

RELATES TO: KRS 341.145, 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020], 341.115, 2021 Ky Acts ch. 169

Part[§] 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.145(1) ~~authorizes[provides that]~~ the secretary ~~to[may]~~ enter into arrangements with other states for the provision of services to unemployed workers. KRS 341.380(1) ~~requires benefits to be[provides that benefits shall]~~ be paid in accordance with administrative regulations promulgated by the secretary. This administrative regulation ~~establishes requirements for[governs]~~ the ~~office[division]~~ in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. Definitions. (1) "Agent state" means a state from which an individual files a claim for benefits payable by another state.

(2) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of a state.

(3) "Interstate benefit payment plan" means the plan approved by the National Association of State Workforce Agencies under which benefits ~~are[shall]~~ be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant":

(a) Means an individual, including an interstate combined wage claimant, who claims benefits under the unemployment insurance law of one (1) or more liable states from an agent state; and

(b) Does not mean[shall not include] an individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that:

(a) Kentucky is the liable state; and

(b) The individual is not seeking employment in Kentucky.

(5) "Liable state" means a state against which an individual files a claim for benefits if filed from another state.

(6) "State" means one (1) of the fifty (50) states in the United States of America~~[,]~~ or Canada, the Virgin Islands, Puerto Rico, or the District of Columbia.

Section 2. The secretary shall apply the terms of the interstate benefit payment plan in ~~[his]~~ administrative cooperation with other states that have similar administrative provisions in effect for the payment of benefits to interstate claimants.

Section 3. Kentucky as Liable State. An interstate claimant filing against Kentucky as the liable state shall follow the procedures for filing a claim and for claiming benefits as established in 787 KAR 1:090, Sections 2 and 3.

Section 4. Registration for Work. Each interstate claimant filing against Kentucky as the liable state shall be registered for work~~[,]~~ through any Kentucky Career Center~~[public employment office]~~ in the agent state ~~[when and]~~ as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of KRS 341.350(2) if proof of registration in the agent state is provided by the interstate claimant.

Section 5. Benefit Rights of Interstate Claimants. (1) If a claimant files a claim against a state~~[,]~~ and the claimant has available benefit credits in that state, ~~the claim~~claims shall be filed only against that state ~~if~~as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) Benefit credits shall be deemed to be unavailable if benefits have been exhausted, terminated, or postponed for an indefinite period, ~~or~~ for the entire period in which benefits would otherwise be payable, or if benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of an interstate claimant established by this administrative regulation shall apply only with respect to a new claim (notice of unemployment).

Section 6. Appellate Procedure. (1) If Kentucky is the agent state, it shall afford all reasonable cooperation in taking of evidence in connection with appealed interstate benefit claims on behalf of the liable state.

(2) With respect to the time limits imposed by KRS 341.420(2) upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Kentucky on the date it is received by the agent state.

Section 7. Failure to Comply with Administrative Regulations. The provisions of 787 KAR 1:090, Section 6, shall apply to interstate claimants.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email Buddy.Hoskinson@ky.gov.

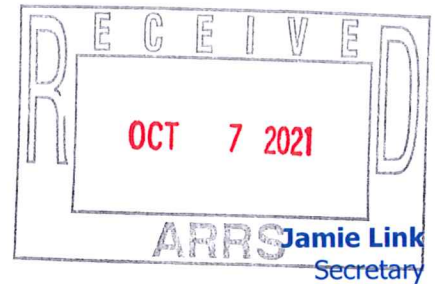


KENTUCKY LABOR CABINET

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Andy Beshear
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Jacqueline Coleman
Lieutenant Governor



Vickie L. Wise
Deputy Secretary

October 7, 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 1:210. Employer contribution rates.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:210, the Labor Cabinet proposes the attached amendment to 787 KAR 1:210.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
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LABOR CABINET Office of Unemployment Insurance

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270, 341.272

STATUTORY AUTHORITY: KRS ~~336.015~~[336.115], 336.050~~[151B.020]~~, 341.115, 341.270(3), ~~[to]~~2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.270(3) requires the secretary~~[Secretary of the Education and Workforce Development Cabinet]~~ to determine the rate schedule for employer contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice. (1) On or before December 15 of each year, the Office~~[Division]~~ of Unemployment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for the next calendar year a ~~["]~~Notice of Contribution Rate~~["]~~.

(2) The notice shall:

(a) ~~State~~Set forth the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for the next calendar year;

(b) Inform each employer of the:

1. ~~[The]~~Rate applicable to the employer's account for the next calendar year;
2. ~~[The]~~Tax, wage, and benefit charge information regarding the employer's account; and
3. ~~[The]~~Statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and

(c) Be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate", UI-29, September 2011, is incorporated by reference.

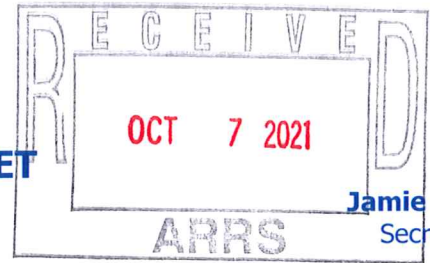
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office~~[Division]~~ of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street~~[275 E. Main Street, 2E]~~, Frankfort, Kentucky 40601~~[40621]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: Buddy.Hoskinson@ky.gov.



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Lieutenant Governor

October 7, 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 1:220. Required reports and due dates.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:220, the Labor Cabinet proposes the attached amendment to 787 KAR 1:220.

Sincerely,

Erin M. Bravo
Deputy General Counsel
Labor Cabinet
Mayo-Underwood Building
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Final Version: 9/29/2021 3:19 PM

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:220. Required reports and due dates.

RELATES TO: KRS 341.070, 341.190, 341.250(2), ~~[341.190,]~~341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[154B.020]~~, 341.115(1), 341.190(2), 2021 Ky Acts ch. 169 Part 1(l)(7)

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. KRS 341.190(2) authorizes the secretary~~[Secretary of the Education Cabinet]~~ to require an employing unit to furnish information and records concerning wages paid, employment, and other related matters. This administrative regulation establishes the required filing options, information, and reporting due dates.

Section 1. Definition. "Required report" means the Employer's Quarterly Unemployment Wage and Tax Report (UI-3), which is incorporated by reference in 787 KAR 1:010 and may be filed electronically.

Section 2. (1) Except as **established[provided]** in subsection (2) of this section, an employer shall file the report required in Section 1 of this administrative regulation by submitting an electronic report via the Internet at <https://kewes.ky.gov>:

(a) Submitting a paper form UI-3; or

(b) Submitting an electronic report via the Internet at <https://kewes.ky.gov>.

(2) An employer with fewer than ten (10) ~~[or more]~~ workers performing service in covered employment during any month within a quarter being reported and who is unable to file the report electronically, may submit a paper form UI-3~~[shall submit an electronic report via the Internet at <https://kewes.ky.gov>]~~.

Section 3. Due Dates. (1) Except as **established[provided]** in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2)(a) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer.

(b) An employing unit shall not be considered newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state.~~[; however,]~~ It shall be considered newly subject if all wages paid in covered employment in Kentucky were reported to another

state unemployment compensation program by the due date **established[specified]** by that state; or

2. It has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2),

(c) If an employing unit has failed to file a required report due to willful intent to evade filing, the provisions of subsection (1) of this section shall apply.

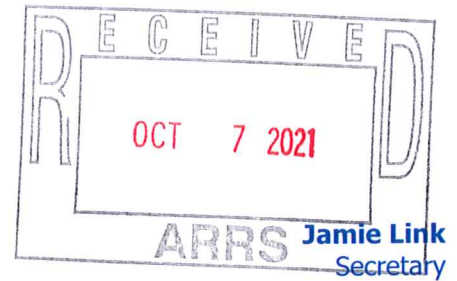
Section 4. Reports shall be considered received by the department as established in 787 KAR 1:230.

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October 7, 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 1:260. Voluntary election of coverage.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:260, the Labor Cabinet proposes the attached amendment to 787 KAR 1:260.

Sincerely,

Erin M. Bravo
Deputy General Counsel
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LABOR CABINET
Office of Unemployment

787 KAR 1:260. Voluntary election of coverage.

RELATES TO: KRS 341.070(9), 341.250(3)

STATUTORY AUTHORITY: KRS 336.015, 336.050[451B.020], 341.115, 2021 Ky Acts ch. 169
Part[§] 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.250(3) **authorizes employees to**~~**provides that an employer may**~~ voluntarily elect to cover employment not otherwise covered by the chapter, subject to approval by the secretary. This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election ~~**the following information**~~:

(1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material; and

(b) A list of all employees along with gross salaries paid; and

(2) Projections for the two (2) calendar years following the date of election, including:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections; and

(b) The number of workers anticipated~~**;**~~ and projected salaries for each position.

Section 2. Except as **established**~~**provided**~~ in Section 3 of this administrative regulation, a voluntary election of coverage shall be approved if the information submitted in accordance with Section 1 of this administrative regulation indicates that the number of employees and the total amount of funding are projected to remain the same or increase over the time period covered by the information.

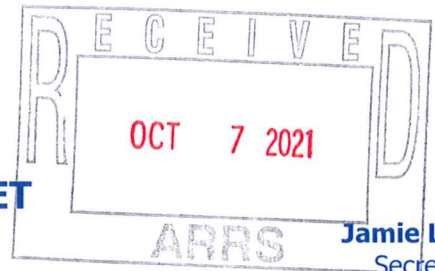
Section 3. An employing unit shall not be granted for voluntary election in any calendar year if, in the preceding calendar year, the employer contributions deposited to the Unemployment Trust Fund were less than the total benefits paid.

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Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Committee
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Re: 787 KAR 1:300. Successorship.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:300, the Labor Cabinet proposes the attached amendment to 787 KAR 1:300.

Sincerely,

Erin M. Bravo
Deputy General Counsel
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LABOR CABINET Office of Unemployment Insurance

787 KAR 1:300. Successorship.

RELATES TO: KRS 341.070, 341.540

STATUTORY AUTHORITY: KRS 336.015, 36.050[454B.020], 341.115, 341.540(2), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.540(2) **requires[provides]** that the basis for successorship, other than transfers between employing units with common ownership, shall be determined in accordance with administrative regulations promulgated by the secretary. This administrative regulation establishes the conditions under which an employing unit shall be found to be successor to another.

Section 1. Definitions. (1) "Domestic employing unit" means an employing unit for which service is provided as **established[described]** in KRS 341.050(1)(g).

(2) "Going concern" means an employing unit that is providing goods or services, maintaining a staff, or meeting payroll.

(3) "Negotiation" means dealings conducted between two (2) or more parties for the purpose of reaching an understanding.

Section 2. Except as **established[provided]** in Section 3 of this administrative regulation, successorship shall be deemed to have occurred between two (2) employing units if:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary; and

(2) At least two (2) of the conditions established in **this[the]** subsection are met, except this requirement shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The employing unit was a going concern at the time negotiations for the transfer began;

(b) The subsequent owner or operator continued or resumed basically the same type of employing unit in the same location;

(c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment;

(d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment; or

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

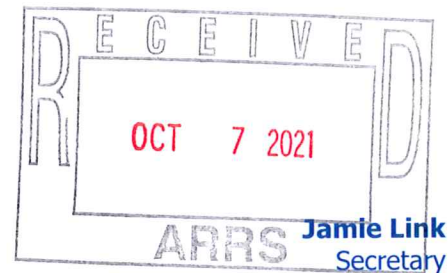
Section 3. Successorship for a domestic employing unit shall be deemed to have occurred if two (2) of the conditions established under Section 2(2)(a) through (e) of this administrative regulation exist.

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October 7, 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 1:310. Claimant profiling.

Dear Co-Chairs West and Hale:

After discussion with the Administrative Regulation Review Committee staff of the issues raised by 787 KAR 1:310, the Labor Cabinet proposes the attached amendment to 787 KAR 1:310.

Sincerely,

Erin M. Bravo
Deputy General Counsel
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SUGGESTED SUBSTITUTE
Final Version: 10/4/2021 4:14 PM

LABOR CABINET
Office of Unemployment Insurance

787 KAR 1:310. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2), 42 U.S.C. 503(a)(10), (j)

STATUTORY AUTHORITY: KRS 336.015, 336.050[151B.020], 341.115, 341.350(2)(b), 2021 Ky Acts ch. 169 Part 1(l)(7), 42 U.S.C. 503(a)(10), (j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulation necessary to administer KRS Chapter 341. 42 U.S.C. 503(a)(10) and **[503](j)** require states to establish profiling systems to identify unemployment claimants who are likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2)(b) ***requires[provides that]*** the ~~secretary~~~~[Secretary of the Education Cabinet]~~ ***to[shall]*** establish a profiling system. This administrative regulation establishes conditions, consistent with the provisions of 42 U.S.C. 503(a)(10) and (j), under which a claimant shall participate in reemployment services as a condition of receiving benefits.

Section 1. Definition. "Profiling" means a method by which the secretary shall determine if an unemployment claimant is likely to exhaust benefits.

Section 2. Profiling System. (1) Except as ***established[provided]*** in subsection (2) of this section, all unemployment claimants shall be subject to profiling as a condition of receiving benefits.

(2) A claimant shall be exempted from profiling if the claimant:

(a) Is applying for extended benefits or special federal program benefits including Trade Adjustment Assistance and Disaster Unemployment Assistance;

(b) Is classified as a "Group B" claimant as established in 787 KAR 1:090, Section 1(2)(b);

(c) Is in approved training as ***established[provided]*** in KRS 341.350(6);

(d) Has weekly pension deductions in excess of the benefit amount; or

(e) Is receiving reemployment services through a union hiring hall.

(3) The secretary shall utilize a statistical model of worker profiling as the basis for the identification of claimants for referral for reemployment services. The profiling system shall identify a claimant as unlikely to return to his previous industry or occupation through the consideration of employment related variables. These variables shall not include the claimant's age, gender, race, ethnicity, or national origin.

(4) A claimant shall be profiled ***if[when]*** issued a first benefit payment, including a zero amount due to excessive earnings or other reason.

(5) A claimant identified by the profiling system as likely to exhaust benefits shall be referred for reemployment services from the Office of Unemployment Insurance~~[Office of Employment~~

and Training] based on the availability of services. A claimant who is not referred for services within four (4) weeks after identification by the profiling system shall not be referred and shall be considered to have satisfied the requirements of KRS 341.350(2)(b) for the receipt of benefits.

Section 3. Eligible dislocated worker. A claimant determined to be an "eligible dislocated worker" under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3102 et seq. ~~[Workforce Investment Act, 29 U.S.C. 2801 et seq.]~~, may participate in the profiling system.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: Buddy.Hoskinson@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Kimberlee C. Perry

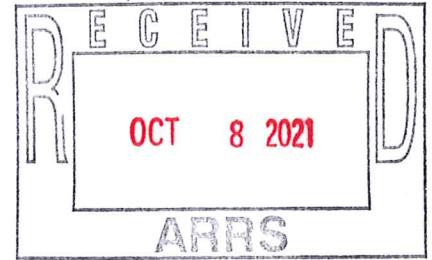
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October 8, 2021

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

Re: 803 KAR 2:325. General industry standards.

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:325, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:325.

Sincerely,

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

Revised: 10/08/21

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 2:325. General industry standards.

RELATES TO: KRS Chapter 338, **29 C.F.R. 1910.333, 49 C.F.R. Part 571**

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 authorize]~~ the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health ~~[rules, administrative]~~ regulations ~~[, and standards]~~ and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in general industry ~~[Consistent with this authority the following administrative regulations contain 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 general industry. 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) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 339.015(2).

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

Section 2. Batteries. Changing and charging storage batteries ~~[(for automotive-type battery charging installations, in-vehicle charging of batteries, and battery jump starting of vehicles)].~~

(1)(a) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries.

(b) An adequate water supply shall be within twenty-five (25) feet of the work area.

(2)(a) ~~A/No~~ battery shall **not** be charged or discharged within a closed or unvented container.

(b) The batteries shall be charged:

1. ~~[(a)]~~ In the open; ~~[or]~~

2. ~~[(b)]~~ In a mechanically-ventilated space; or

3. ~~[(c)]~~ In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

(3)(a) A face shield or goggles shall be provided and available at each charging unit.

(b) The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.

(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, or ~~[and]~~ while handling electrolyte.

(5) Employees shall be instructed to:

(a) Turn off the battery charger to connect or disconnect the battery;

(b) Wash acid spills immediately; and

(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

Section 3 [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 to nonutility electrical workers who are engaged in electrical construction or maintenance of electrical conductors and equipment rated at 600 volts and above.~~

(3) ~~Energized conductors and equipment.~~

(a) ~~Only qualified employees shall work on or near high voltage conductors or equipment;~~

(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;~~

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"

(c) ~~No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.~~

(4) ~~Deenergized conductor or equipment.~~

(a) ~~Existing conditions shall be determined before starting work on electrical conductor and/or equipment;~~

(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. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. 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. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;~~

(c) ~~Conductors shall be short circuited and grounded wherever possible;~~

(d) ~~Capacitors may be components of apparatus of the disconnected electrical system. Before~~

employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;

(e) 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. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of deenergized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.

Section 3. Safety Belts, Lanyards and Life Lines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stock shelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

Section 4. Off-highway Motor Vehicles and Equipment. (1) General requirements.

(a) Heavy machinery, equipment, or parts [thereof, which are] suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them.

(b) 1. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use.

2. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(c) [(b)] Whenever the equipment is parked, the parking brake shall be set.

(d) Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(e) [(e)] All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this section [subpart].

(f) [(d)] All equipment covered by this section [subpart] shall comply with the requirements of 29 C.F.R. 1910.333 [1910.180(j)(1)] when working or being moved in the vicinity of power lines or energized transmitters.

(2) Motor vehicles.

(a) Coverage. Motor vehicles [as] covered by this section [part] are those vehicles that operate within an off-highway job site not open to public traffic. The requirements of this section do not apply to equipment [for which rules are prescribed] in subsection (3) of this section.

(b) General requirements.

1. All vehicles shall have a service brake system, an emergency brake system, and a parking

brake system.

2. These systems may use common components, and shall be maintained in operable condition.

(c) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) Motor vehicle equipment ~~[No employer]~~ shall not be used ~~[use any motor vehicle equipment]~~ having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or

2. The vehicle is backed ~~[up]~~ only when an observer signals that it is safe to do so.

(g) 1. All vehicles with cabs shall be equipped with windshields and powered wipers.

2. Cracked and broken glass shall be replaced.

3. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) All haulage vehicles ~~[whose pay load is]~~ loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield or ~~[and/or]~~ canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees ~~[to be]~~ carried.

(k) The employer shall ~~[will]~~ provide and insure the use of seat belts and anchorages meeting the requirements of 49 C.F.R. Part 571, ~~[(Department of Transportation, Federal Motor Vehicle Safety Standards)]~~.

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device that prevents ~~[which will prevent]~~ accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o) 1. Each employer shall assure ~~[that]~~ the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use:

a. Service ~~[service]~~ brakes, including trailer brake connections;

b. Parking ~~[parking]~~ system brake ~~[(hand brake)]~~;

c. Brakes ~~[emergency stopping system (brakes)]~~;

d. Tires ~~[tires]~~;

e. Horn ~~[horn]~~;

f. Steering ~~[steering]~~ mechanism;

g. Coupling ~~[coupling]~~ devices;

h. Seat ~~[seat]~~ belts;

i. Operating ~~[operating]~~ controls; and

j. Safety ~~[safety]~~ devices.

2. All defects shall be corrected before the vehicle is placed in service.

3. These requirements **shall** also apply to equipment such as lights, reflectors, windshield wipers, defrosters, and fire extinguishers~~[, etc., where such equipment is necessary]~~.

(3) Material handling equipment.

(a) ~~General [Equipment; general]. The requirements of this subsection [These rules] shall apply to [the following types of equipment:] scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment[. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed].~~

(b) Seating and seat belts.

1. Each employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, **Operator Restraint Systems for Off-road Work Machines [Seat Belts for Construction Equipment]**.

2. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, **Rollover Protective Structures (ROPS) for Wheeled Agricultural Tractors [Operator Protection for Agricultural and Light Industrial Tractors]**.

(c) Seat belts need not be provided for equipment [which is] designed only for stand-up operation.

(d) Seat belts need not be provided for equipment that [which] does not have rollover protective structure [(ROPS)] or adequate canopy protection.

(e) **[Brakes.**

1. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986.

2. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices. [:]

<u>Self-propelled Scrapers</u>	<u>SAE J319B, Society of Automotive Engineers Handbook, 1986.</u>
<u>Self-propelled Graders</u>	<u>SAE J236, Society of Automotive Engineers Handbook, 1986.</u>
<u>Trucks and Wagons</u>	<u>SAE J166, Society of Automotive Engineers Handbook, 1986.</u>
<u>Front-end Loaders and Dozers</u>	<u>SAE J237, Society of Automotive Engineers Handbook, 1986.</u>

~~(f) [Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.~~

(g) Audible alarms.

1.a. All bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction.

b. The horn shall be maintained in an operative condition.

2. Material [No employer shall permit material] handling equipment or compacting equipment that [which] has an obstructed view to the rear shall not ~~to~~ be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise

level or an employee signals that it is safe to do so.

~~(f)~~~~(g)~~ [(h)] Scissor points. Scissor points on all front-end loaders[,] ~~that~~~~which~~ constitute a hazard to the operator during normal operation[,] shall be guarded.

Section ~~4~~ [5]. ~~Rollover Protective Structures; Overhead Protection.~~ (1) ~~Rollover protective structure (ROPS) for material handling equipment.~~

(a) ~~Coverage.~~ This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This requirement does not apply to sideboom pipe-laying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) ~~Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.~~

(d) ~~Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.~~

(e) ~~Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.~~

(f) ~~The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.~~

(g) ~~The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.~~

(h) ~~Remounting.~~ ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) ~~Labeling.~~ Each ROPS shall have the following information permanently affixed to the structure:

- ~~1. Manufacturer or fabricator's name and address;~~
- ~~2. ROPS model number, if any;~~
- ~~3. Machine make, model, or series number that the structure is designed to fit.~~

(j) ~~Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:~~

~~1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, sec. 6312, state of California.~~

~~2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).~~

~~3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1974).~~

(2) ~~Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.~~

(a) ~~General.~~ This section prescribes minimum, performance criteria for rollover protective

structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus.

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1	
Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall

be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the administrative regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the requirements of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler-type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-

type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests: provided, that it does not contribute to the strength of the protective frame. If such an overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures - general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. ~~Vehicle weight.~~ The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. ~~Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.~~

3. ~~Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than the weights established in subparagraph 1 of this paragraph.~~

4. ~~The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The path of travel of the vehicle shall be $12^{\circ} \pm 2^{\circ}$ to the top edge of the bank.~~

5. ~~The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.~~

6. ~~The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.~~

7. ~~Vehicle overturn test - sideways and rearward.~~

a. ~~The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) mph (16 km./hr.) or maximum vehicle speed if under ten (10) mph (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.~~

b. ~~Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 mph (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.~~

(f) ~~Other test procedures. When the field upset test is not used to determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.~~

(g) ~~Static test.~~

1. ~~Test conditions.~~

a. ~~The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.~~

b. ~~The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.~~

c. ~~The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load-deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.~~

2. ~~Test procedure.~~

a. ~~The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:~~

- (i) The strain energy absorbed by the frame is equal to the required input energy (E_{is}); or
 - (ii) Deflection of the frame exceeds the allowable deflection; or
 - (iii) The frame load limit occurs before the allowable deflection is reached in the side load.
- b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.
- c. The modified L_m - D_m diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. the strain energy absorbed by the frame (E_u) shall then be determined.
- d. E_{is} , FER, and FSB shall be calculated.
- e. The test procedure shall be repeated on the same frame utilizing L (rear input; see Figure W-18) and E_{ir} . Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.
- (h) Dynamic test.
1. Test conditions.
- a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.
- b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently and safely adjustable for height. (See Figure W-21).
- c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a 15°-30° angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).
- d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of 25°-40° to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)
- e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.
- f. No repair or adjustments may be carried out during the test.
- g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.
2. Test procedure.
- a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall

be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

(i) Performance requirements.

1. General.

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.

E = 30 in. (762 mm.).

F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.

G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

(j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this administrative regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

E_{is} = Energy input to be absorbed during side loading.

$E'_{is} = 723 + 0.4 W$ ft.-lb. ($E'_{is} = 100 + 0.12W'$, m.-kg.).

E_{ir} = Energy input to be absorbed during rear loading.

$E_{ir} = 0.47 W$ ft.-lb. ($E'_{ir} = 0.14 W'$, m.-kg.).

W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. (W' , kg.). L = Static load, lb. (kg.).

D = Deflection under L , in. (mm.).

L - D = Static load-deflection diagram.

$L_m D_m$ = Modified static load-deflection diagram (Figure W-20). To account for increase in strength due to increase in strain rate, raise L in plastic range to $L \times K$.

K = Increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.

L_{max} = Maximum observed static load.

Load = Point on L - D curve where observed static load is Limit $0.8 L_{max}$ (refer to Figure W-19).

E_u = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under $L_m D_m$ curve.

FER = Factor of energy ratio, $FER = E_u/E_{is}$ also $= E_u/E_{ir}$

P_b = Maximum observed force in mounting connection under static load, L , lb. (kg.).

FSB = Design margin for mounting connection $FSB = (P_u/P_b) - 1$.

H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H' , mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows: $H = 4.92 + 0.00190 W$ or ($H' = 125 + 0.107 W'$) (Figure W-24).

~~(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.~~

~~(4) Overhead protection for operators of agricultural and industrial tractors.~~

~~(a) General.~~

~~1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial~~

tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures—general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch² (1,032 cm.²) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch² (1,032 cm.²) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

~~(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.~~

~~Section 6.] Fire Apparatus and Fire Department Facilities. (1) Scope. This section shall apply to industrial fire departments and private, public or contractual type fire departments. This section shall not apply to volunteer fire departments.~~

~~(2) Persons riding on fire apparatus. A [Beginning September 1, 1991, a] person riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses when the vehicle is in motion.~~

~~(3) Inspection, maintenance, and repair of vehicles. [Beginning January 1, 1992:]~~

~~(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions.~~

~~(b) A fire department vehicle found to be unsafe shall be placed out of service until repaired.~~

~~(c) After being repaired, the vehicle shall be inspected prior to being placed back in service.~~

~~(d) [(e)] The inspection shall include:~~

~~1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;~~

~~2. Starting the apparatus, and verification of the operation of pumps and other equipment; and~~

~~3. Inspection of the safety equipment carried on fire department vehicles.~~

~~(e) [(d)] A fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.~~

~~(4) Facility safety. [Beginning July 1, 1993:]~~

~~(a) Sleeping areas in fire stations shall:~~

~~1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or~~

~~2. Have operable fire suppression or operable smoke detection systems.~~

~~(b) A fire station shall have a system capable of ventilating.~~

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

(a) J386, Society of Automotive Engineers Handbook, "Operator Restraint Systems for Off-road Work Machines", 1986; and

(b) J1194, Society of Automotive Engineers Handbook, "Rollover Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1986.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Mayo-Underwood Building, 3rd Floor, Frankfort, KY 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. EST. The Labor Cabinet Web site is www.labor.ky.gov.

(3) The Society of Automotive Engineers Web site is SAE.org. [

(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

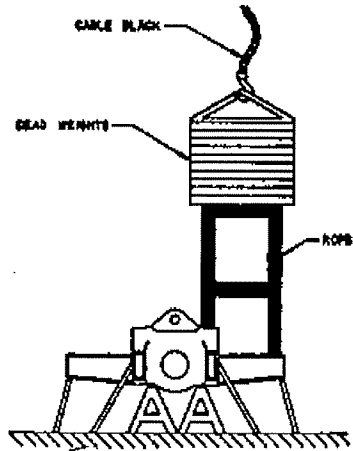


Figure W-1-Vertical loading setup
for all types of equipment described
in Subsection (2)(a).

Incremental loading shall be continued until the ROPS
has absorbed the amount of energy and the minimum applied
load specified under paragraph (E) of this Subsection has
been reached or surpassed.

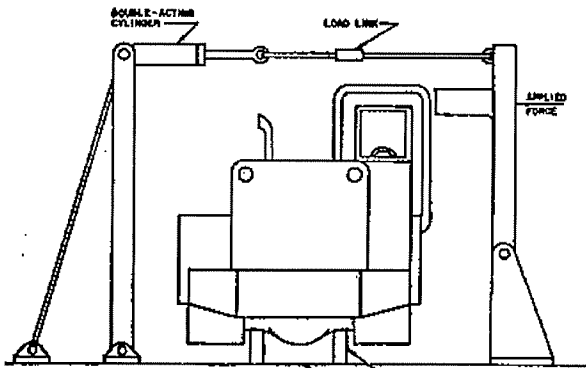


FIGURE W-2—Test setup for rubber-tired self-propelled scrapers.

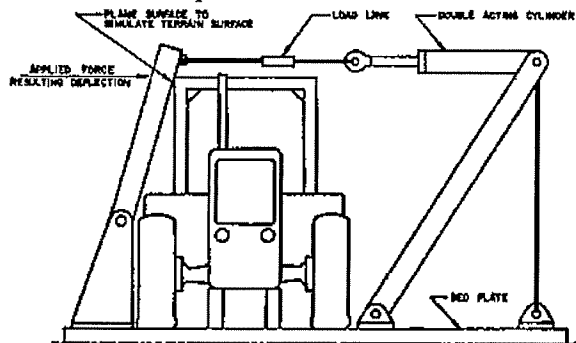


FIGURE W-3—Test setup for rubber-tired front-end loaders, rubber-tired dozers, and motor graders.

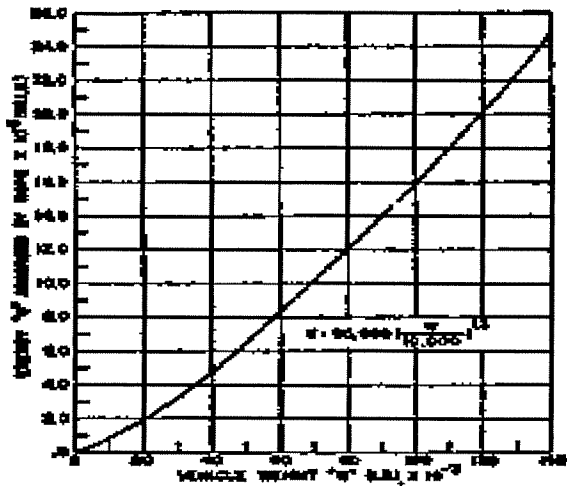


FIGURE W-6—Energy absorbed versus vehicle weight.

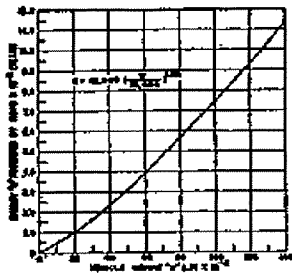


FIGURE W-7—Energy absorbed versus vehicle weight.

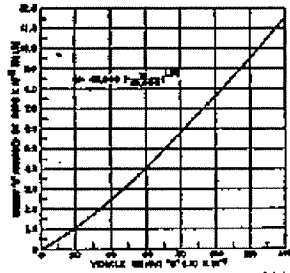


FIGURE W-8—Energy absorbed versus vehicle weight.

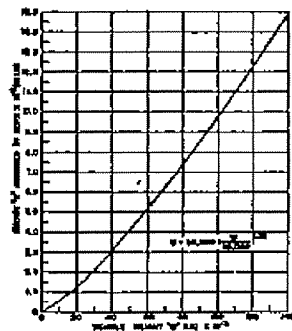


FIGURE W-9—Energy absorbed versus vehicle weight.

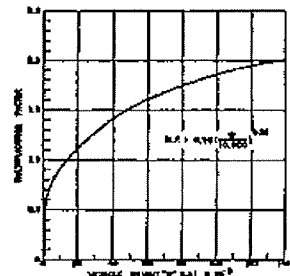


FIGURE W-10—Minimum horizontal load factor for self-propelled sweepers.

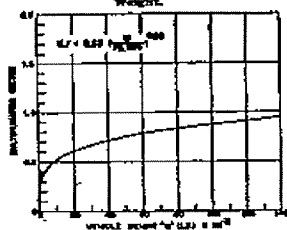


FIGURE W-11—Minimum horizontal load factor for rubber-tired loaders and dozers.

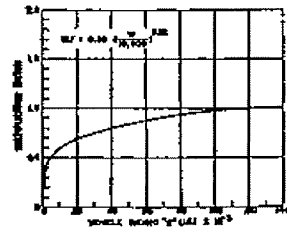


FIGURE W-12—Minimum horizontal load factor for crawler tractors and crawler-type loaders.

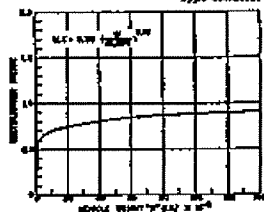


FIGURE W-13—Minimum horizontal load factor for motor graders.

17

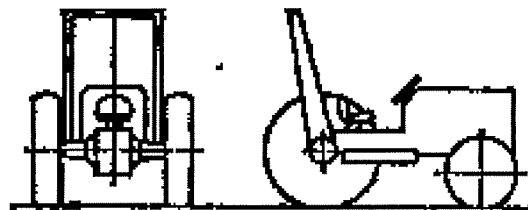


FIGURE W-14—Typical frame configuration.

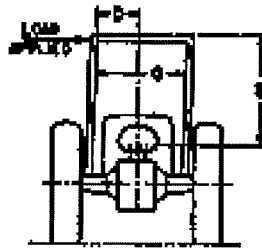


FIGURE W-16—Side load application.

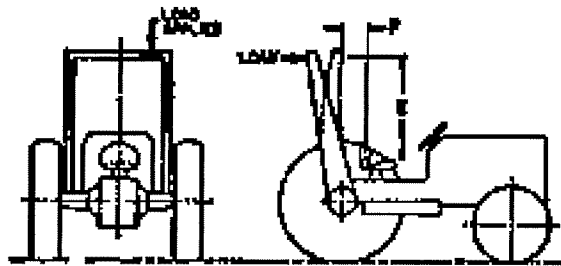


FIGURE W-17—Rear load application.

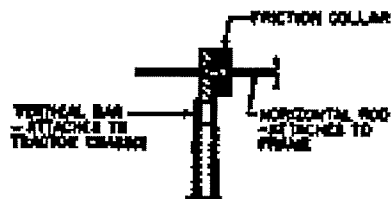


FIGURE W-18—Method of determining instantaneous deflection.

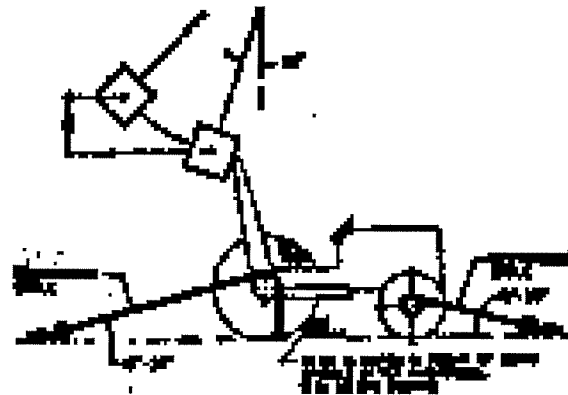


FIGURE W-22—Method of impact from rear.

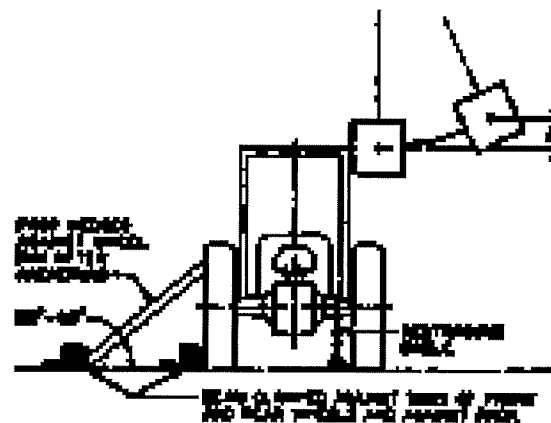
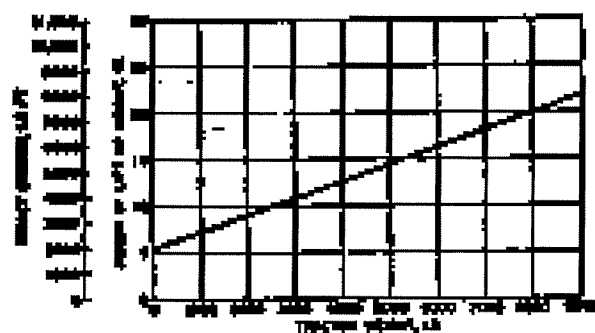


FIGURE W-23—Method of impact from side.



Equation of Figure W-24:
 $E = 1.12 \times W$ where E is ft-lb and W is lb
 or $E = 1.12 \times W$ where E is joules and W is kg
 2100 Joules (or ft-lb)

FIGURE W-24—Impact energy and corresponding lift height of 4.610 lb. (2.090 kg.) weight.

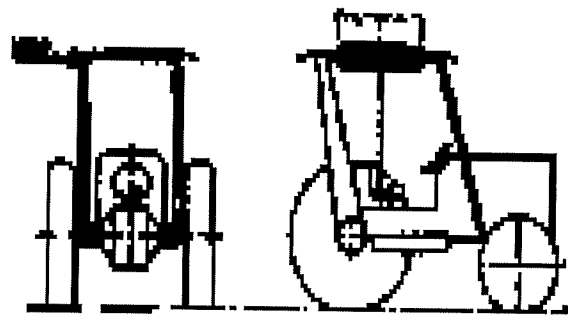


FIGURE W-26—Location for side load.

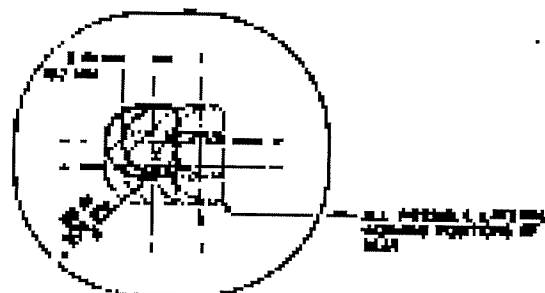


FIGURE W-28—Zone of protection for drop test.

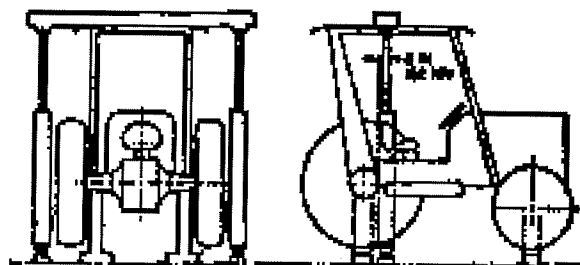


FIGURE W-27—Method of load application for crush test.

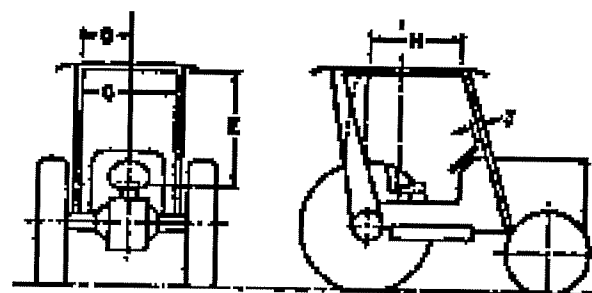
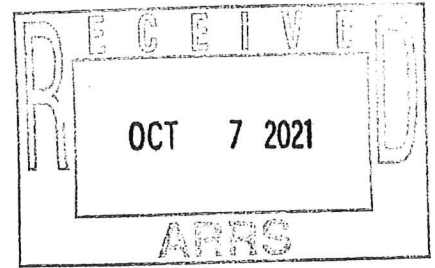


FIGURE W-25—Protected zone during crush and drop tests.

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

October 7, 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 25:165, the Department of Workers' Claims proposes the attached agency amendment to 803 KAR 25:190.

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

Version: Amended After Comments

LABOR CABINET

Department of Workers' Claims

**803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of
Utilization Review Decisions. (Amended After Comments version)**

Page 18

Section 13(1)(c)

Line 8

After "cumulatively exceed" delete "\$1,000", insert "\$3,000".

Page 18

Section 13(1)(d)

Line 9

After "cumulatively exceed" delete "fifteen (15)", insert "thirty (30)".

Page 22

Section 16(1)

Line 9

Before "(1)" insert the following:

(1) Within the Department there shall be a medical director. The medical director shall be a licensed physician in good standing with the Kentucky Board of Medical Licensure.

(2) The Secretary shall appoint the medical director, upon consultation with the Commissioner to a term of four (4) years. A medical director may serve more than one term of four (4) years.

(3) If a vacancy occurs during a four (4) year term, the Secretary shall appoint a licensed physician in good standing with the Kentucky Board of Medical Licensure as medical director for the unexpired term. Nothing in this regulation shall prevent the Secretary from appointing a licensed physician in good standing with the Kentucky Board of Medical Licensure to fill an unexpired term and to serve a subsequent term.

(4) After consultation with the Commissioner, the Secretary may remove the medical director for good cause, the grounds for which shall be expressed in writing.

(5) The medical director shall:

(a) process appeals of utilization review decisions pursuant to this regulation, and

(b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.

Delete subsections (1) and (2) in their entirety.

Page 23
Section 16(3)
Line 1

Delete the following:

"(3) The medical director may, if [when] appropriate, seek the assistance of other physicians to assist or perform ant tasks outlined within this administrative regulation.",

Insert the following:

"(6) If the treatment is outside of the medical director's certification or specialty, the medical director may seek the assistance of other physicians with the appropriate certification or specialty to assist or perform any tasks outlined within this administrative regulation; the other physicians shall not be the physician whose treatment or recommended treatment is under review or the physicians who issued or upheld the utilization review denial."

Page 23
Section 16(4)
Line 5

Before "(4)", insert "(7)".
Delete "(4)".

Page 24
Section 17(2)

Line 8

After "medication is being denied shall have", insert "thirty (30)".

Delete "forty-five (45)".

Page 24

Section 17(2)

Line 10

After "The medical director may extend the time to appeal", insert "upon request and for cause.".

Delete "for good cause".

Page 24

Section 17(5)

Line 17

After "charge a fee of", insert "\$200.00".

Delete ""\$400.00".

Page 24

Section 17(5)

Line 18

After "The fee shall be paid by the medical payment obligor no later than", insert "twenty-one (21)".

Delete "fifteen (15)".

Page 25

Section 17(7)(a)

Line 14

After "The medical director shall conduct the utilization review appeal", insert the following:

"in keeping with the treatment guidelines and pharmaceutical formulary created or adopted by the commissioner"

Page 25

Section 17(7)(b)

Line 15

After "(b)", insert the following:

"The medical director shall consider the opinion of the medical provider whose treatment, recommended treatment, or prescribed medication is being denied.

(c)"

Page 27

Section 17(7)(h)

Line 8

After "the medical director shall request the commissioner or administrative law judge to impose", insert "the appropriate penalties, fines, or".

Page 28

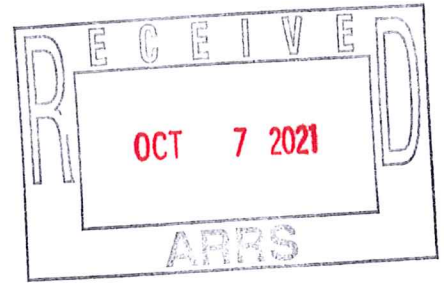
Section 17(12)

Line 5

After "Form 112, Medical Dispute, within", insert "thirty (30)".
Delete "fourteen (14)".



KENTUCKY LABOR CABINET
Department of Workers' Claims



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October 7, 2021

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Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

REVISED:
9/9/2021 9:57 AM
SUGGESTED SUBSTITUTE
Amended After Comments

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

**803 KAR 25:190. Utilization review -- Medical Bill Audit -- Medical Director --
Appeal of Utilization Review Decisions.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5) and (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department [~~Office~~] of Workers' Claims, and the commissioner [~~executive director~~] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner [~~executive director~~] the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner [~~executive director~~] to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) ~~[(2)]~~ "Commissioner~~[Executive director]~~" is defined by KRS 342.0011(9).

(5) ~~[(3)]~~ "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication ~~[or service]~~ under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" is defined by KRS 342.0011(8) [means the Kentucky Department of Workers' Claims].

(7) ~~[(4)]~~ "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(8) "Medical Director" means the Medical Director of the Department of Workers' Claims appointed by the Secretary.

(9) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

1. In accordance with generally accepted standards of medical practice;

2. Clinically appropriate, in terms of type, frequency, extent, site and duration; and

3. Considered effective for the patient's illness, injury, or disease. [is defined in 803 KAR 25:260(12)].

(10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license [is defined in 803 KAR 25:260 Section 1(11)].

(11) "Physician" is defined by KRS 342.0011(32).

(12) ~~[(5)]~~ "Preauthorization" ~~[is defined in 803 KAR 25:260(14).]~~ means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

(14) ~~[(6)]~~ "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(15) ~~[(7)]~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner [executive director] by each carrier describing the procedures governing utilization review and medical bill audit activities.

(16) ~~[(8)]~~ "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Implementation. (1) The requirements established in Sections 3 through 9 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted before ~~June~~ **January** 1, 2022.

(2) The requirements established in Sections 10 through 18 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted on or after ~~June~~ **January** 1, 2022.

Section 3 [2]. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;
(b) Treatment rendered to an injured worker is medically necessary and appropriate;
and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and **803 KAR Chapter 25**~~[applicable administrative regulations]~~;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 4 [3]. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner ~~[executive-director]~~ a written plan describing the utilization re-view and medical bill audit program. The commissioner ~~[executive-director]~~ shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner ~~[executive-director]~~ for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner ~~[executive-director]~~.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner ~~[executive-director]~~ of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years ~~[, or until December 31, 2000, whichever is later]~~.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner ~~[executive director]~~ shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 5 [4]. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner ~~[executive director]~~ shall include the following elements:

(1) A description of the process, policies, and procedures for making [whereby] decisions ~~[shall be made]~~;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner ~~[executive director]~~, or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the

reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making. ~~[An assurance that the acute low back pain practice parameter adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.]~~

Section 6 [5]. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;
(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$3000;

(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.

(a) The following requirements shall apply if preauthorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business ~~[working]~~ days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business ~~[working]~~ days.

2. The requested information shall be submitted~~[tendered]~~ by the medical provider within ten (10) business ~~[working]~~ days.

3. The initial utilization review decision shall be rendered within two (2) business ~~[working]~~ days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) calendar days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business ~~[working]~~ days.

2. The requested information shall be submitted~~[tendered]~~ by the medical provider within ten (10) business ~~[working]~~ days.

3. The initial utilization review decision shall be rendered within two (2) business [working] days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 7 [6]. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. The following professionals shall issue an initial utilization review approval:

(a) A physician; [;]

(b) A registered nurse; [;]

(c) A licensed practical nurse; [;]

(d) A medical records technician; [;] or

(e) Other personnel whose ~~[, who through]~~ training and experience qualify them ~~[is qualified]~~ to issue decisions on medical necessity or appropriateness ~~[, shall issue the initial utilization review approval]~~.

(2) Only a physician may ~~[shall]~~ issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 8 [7]. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) calendar days from the initiation of the utilization review process;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;
2. The name, state of licensure and medical license number of the reviewer; and
3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 9 [8]. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095, has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or
2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 10. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy **comply [complies]** with KRS Chapter 342 and **803 KAR Chapter 25[applicable administrative regulations]**;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 11. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A carrier, who contracts with an approved vendor for utilization review services, shall provide annually to the commissioner summaries of the number of **utilization** ~~[utilizations]~~ reviews, waivers per KRS 342.035(5)(c), utilization review approvals for treatment, utilization review denials for treatment and appeals to the medical director. ~~These~~~~[Such]~~ annual reports of the approved vendor shall be filed with the Department by August 1 for the preceding fiscal year ending June 30.

Section 12. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures **for making** ~~[whereby]~~ decisions ~~[shall be made]~~;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the:

(a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and

(b) The manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making.

Section 13. Claim Selection Criteria and Process.

(1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$1000; or

(d) The total lost work days cumulatively exceed fifteen (15) days.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of ~~the~~ *[such]* notice. Failure by the medical payment obligor to waive and communicate its waiver to the employee and medical provider or initiate its utilization review process within two (2) business days shall result in the medical payment obligor paying for the subject medical services pursuant to the appropriate fee schedules, ***in accordance with 803 KAR Chapter 25.***

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee, **and the employee's attorney if represented**, within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, ~~[tender of]~~ a single request shall be made within two (2) additional business days.

2. The requested information shall be **submitted [tendered]** by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee, **and the employee's attorney if represented**, within five (5) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, ~~[tender of]~~ a single request shall be made within two (2) additional business days.

2. The requested information shall be **submitted** ~~[tendered]~~ by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules, **in accordance with 803 KAR Chapter 25**;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 14. Utilization Review and Medical Bill Audit Personnel Qualifications.

(1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) **Only** a physician **may** ~~[shall]~~ issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 15. Written Notice of Denial.

(1) Following utilization review, a written notice of denial shall:

- (a) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and
(b) Contain:
1. A statement of the medical reasons for denial;
 2. The name, state of licensure, and medical license number of the reviewer; and
 3. An explanation of utilization appeal rights with instructions on how to proceed with an appeal.
- (2) The Department shall develop and provide a form on its website that a medical payment obligor may use to comply with Section 15 (1) above.
- (3) A copy of the written notice of denial along with the mailing address, telephone number, and, if known, the email address of the employee, the employee's attorney if represented, and medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall be sent by electronic mail to the medical director on the same day that the notice of denial is rendered and communicated to that medical provider and employee. The medical director shall then immediately notify the employee, the employee's attorney if represented, and that medical provider of the actions required to appeal the utilization review denial at no cost to the employee.
- (4) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 16. Medical Director.

- (1) After consultation with the Commissioner, the [The] Secretary shall appoint a medical director to:
- (a) process appeals of utilization review decisions and medical bill audit decisions rendered pursuant to this **administrative** regulation; [;] and
 - (b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.
- (2) The medical director shall be a Kentucky licensed physician in good standing with the Kentucky Board of Medical Licensure.
- (3) The medical director may, **if [when]** appropriate, seek the assistance of other physicians to assist or perform any tasks outlined within this **administrative** regulation. **If [When] the treatment under appeal is chiropractic treatment, the medical director shall seek the assistance of a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.**
- (4) The medical director shall chair a Workers' Compensation Medical Advisory Committee to provide advice on issues related to the medical treatment of injured workers. The medical director may request the committee to advise on the medical aspects of the Department's various programs in advancing the goal of ensuring that all

injured employees receive superior quality and cost efficient treatment to facilitate recovery from injury and a swift, safe return to the workforce.

(a) In addition to the medical director serving as chair, the commissioner shall serve on the Workers' Compensation Medical Advisory Committee and may appoint the following to the Workers' Compensation Medical Advisory Committee:

1. Deputy commissioner; [x] and

2. A representative for:

a. Employers; [x]

b. Employees; [x]

c. Labor unions; [x]

d. Insurance; [x]

e. Self-insured employers; [x]

f. Occupational medicine; [x]

g. Chiropractic; [x]

h. Orthopedics; [x]

i. Neurosurgery; [x]

j. Psychiatry [psychiatric] ; [x]

k. Pain management rehabilitation; [x]

l. Pain management; [x]

m. Emergency medicine; [x]

n. Hospitals, [a hospital representative] ; [x] and

o. Pharmacies [a pharmacy representative].

(b) No less than annually, the Workers' Compensation Medical Advisory Committee shall provide the commissioner and Secretary with a report concerning the activity, effectiveness and impact of the medical director and the utilization review programs on the delivery of payment of medical services to injured employees.

Section 17. Appeals of Utilization Review Decisions.

(1) Upon receipt of a written notice of denial of treatment subject to utilization review, the employee or medical provider whose treatment, recommended treatment, or prescribed medication, is being denied may appeal the utilization review decision to the medical director.

(2) The employee or medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall have **forty-five (45) [thirty (30)]** calendar days from receipt of the written notice of denial to appeal the utilization review decision to the medical director. The medical director may extend the time to appeal for good cause.

(3) Failure to appeal to the medical director shall result in the utilization review decision having preclusive effect as to the reasonableness and necessity of the treatment.

(4) An appeal to the medical director shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period to pay the approved medical expenses shall commence on the date of the medical director's written determination or the date on which the parties reach agreement regarding disputed treatment.

(5) The Department shall charge a fee of \$400.00 for each appeal submitted to the medical director. The fee shall be paid by the medical payment obligor no later than fifteen (15) calendar days following the date of the appeal to the medical director. Failure to pay the fee shall constitute a failure to complete a necessary step in the administrative review process. ***This failure shall[and]*** be construed as an admission by the employer that the denial was in error, and the medical director ***shall [should]*** find accordingly. Failure to pay the fee may also result in assessment of a civil penalty pursuant to KRS 342.990(7)(e).

(6) ***(a) The appeal shall be dismissed if,*** within five (5) calendar days of the appeal to the medical director, the medical payment obligor ***provides [may cause the appeal to be dismissed by providing]*** notice of dismissal to the:

1. Medical director; [i]

2. Medical provider whose treatment, recommended treatment, or prescribed medication is being denied; [i] and

3. Employee.

(b) With ***this [such a]*** dismissal, the medical payment obligor shall authorize the payment of the questioned services pursuant to the appropriate fee schedule, ***in accordance with 803 KAR Chapter 25.*** If the ***[such]*** dismissal occurs, ***a [no]*** fee as required by this ***administrative*** regulation shall ***not*** be due, or if paid, the fee shall be refunded to the medical payment obligor.

(7) Upon receipt of an appeal request by an employee or medical provider whose treatment or recommended treatment is being denied:

(a) The medical director shall conduct the utilization review appeal.

(b) The medical director may contact the medical provider whose treatment, recommended treatment, or prescribed medication is being denied for the purpose of obtaining any necessary missing information. ***Necessary information shall be considered missing until the medical director has obtained:***

1. All of the records reviewed by the physician that issued the utilization review denial; and

2. All medical treatment records from the date of the injury or for the two year period preceding the date of the utilization review, whichever is shorter, for the injury or occupational disease giving rise to the treatment, recommended treatment, or prescribed medication for which the utilization review denial was issued.

(c) **Within seven (7) calendar days from receipt of the appeal, the [The]** medical director shall set a date on which all relevant information shall be due to the medical director.

(d) The medical director shall determine the medical necessity of the treatment, recommended treatment, or prescribed medication within fourteen (14) calendar days after receipt of all necessary information by the medical director.

(e) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is reasonable and necessary, the medical director shall plainly state the reasons for each approval in a written determination.

(f) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is not reasonable and necessary, the medical director shall plainly state the reasons for each denial in a written determination.

(g) **No later than two (2) days after the medical director has made a determination, the [The]** medical director shall transmit the written determination to the medical provider whose treatment, recommended treatment, or prescribed medication, is being denied; ~~[/] the employee; [/] the employee's attorney if represented; [/] the employer;~~ and the medical payment obligor by facsimile, electronic mail, or the United States Postal Service **[within fourteen (14) calendar days after receipt of all necessary information by the medical director]**.

(h) ~~If [Additionally, upon a determination by]~~ the medical director *determines* that there was no reasonable basis upon which to deny the treatment, recommended treatment, or prescribed medication, or that the medical payment obligor failed to follow the required utilization review procedure, *then* the medical director shall request **the commissioner or the administrative law judge to impose [that]** sanctions ~~[be imposed]~~ on the medical payment obligor by directing *that* the employee's or physician's costs of the appeal, including reasonable attorney's fees, be paid by the medical payment obligor. ~~[Whether or not to impose the these [aforementioned] sanctions is within the discretion of the commissioner or administrative law judge to whom the request for sanctions was addressed.]~~

(i) If at any time during the appeal with the medical director, the medical payment obligor raises work relatedness, causation or non-compensability issues, the parties shall be advised by the medical director that resolution of these issues requires a filing of an application for adjustment of claim or Form 112, Medical Dispute, whichever is appropriate. The medical director, however, shall continue with the appeal and issue a written determination of the reasonableness and necessity of the proposed medical treatment consistent with this regulation.

(8) A determination by the medical director of the reasonableness and necessity of the treatment, recommended treatment, or prescribed medication shall remain effective for six (6) months from the date of the written determination of the medical director, unless a change in condition is shown by objective medical findings.

(9) If the medical director's determination is to approve the medical treatment, the medical payment obligor shall pay for the treatment, recommended treatment, or prescribed medication within the thirty (30) day time period set forth in KRS 342.020(4) unless a Form 112, Medical Dispute, is timely filed.

(10) If a party disagrees with the medical director's written determination, the aggrieved party may file a Form 112, Medical Dispute, and proceed in accordance with 803 KAR 25:012.

(11) The filing of a Form 112, Medical Dispute, shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4) until such time as the reasonableness and necessity of the proposed medical treatment is decided by an administrative law judge.

(12) Failure to file a Form 112, Medical Dispute, within fourteen (14) calendar days shall result in the written determination of the medical director having preclusive effect as to the reasonableness and necessity of the treatment that is the subject of the medical director's determination.

Section 18. Reconsideration and Appeals of Medical Bill Audit Decisions. A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

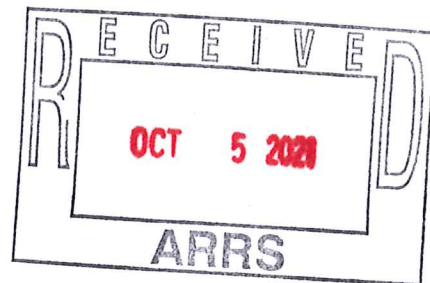
(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).[

~~(e) Any party may appeal the "MEDICAL BILL AUDIT RECONSIDERATION DECISION" to the medical director pursuant to Section 17 of this regulation.]~~



Andy Beshear
Governor

PUBLIC PROTECTION CABINET
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Ray A. Perry
Secretary

Sharon P. Clark
Commissioner

October 4, 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 17:240. Data reporting requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:240, the Department of Insurance proposes the attached amendment to 806 KAR 17:240.

Sincerely,

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort, KY 40601

Final, 9-9-2021

SUGGESTED SUBSTITUTE

**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care**

806 KAR 17:240. Data reporting requirements.

RELATES TO: KRS 304.17A-005, 304.17A-320, 304.17A-330, 304.17A-750

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[executive director]~~ to promulgate reasonable 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-330 authorizes the commissioner ~~[executive director]~~ to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation establishes the data elements and the format for submitting annual reports to the Department ~~[Office]~~ of Insurance.

Section 1. Definitions. (1) "Association" is defined by ~~[in]~~ KRS 304.17A-005(1).

(2) ~~["Covered person" is defined by in KRS 304.17A-500(3).~~

~~(3) "Electronic format" means an electronic copy of a Microsoft Excel Spreadsheet. [the use of any of the following mechanisms for the submission of data to the Office of Insurance:~~

~~(a) A three and one-half (3.5) inch diskette; or~~

~~(b) CD-ROM in a Microsoft Excel spreadsheet.]~~

~~(3) [(4)] "Health benefit plan" means a health benefit plan as defined by ~~in~~ KRS 304.17A-005(22) and issued within Kentucky to a Kentucky resident.~~

~~(4) [(5)] "Insurance purchasing outlet" is defined by in KRS 304.17A-750(4).~~

~~(5) [(6)] "Insurer" is defined by in KRS 304.17A-005(29) ~~[304.17A-005(27)]~~.~~

~~(6) [(7)] "Market segment" means the portion of the market covering one (1) of the following:~~

~~(a) Individual;~~

~~(b) Small group;~~

~~(c) Large group;~~

~~(d) Group association;~~

~~(e) Individual association;~~

~~(f) Self-insured employer-organized association; or~~

~~(g) Insurance purchasing outlet.~~

~~(7) [(8)] "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.~~

~~(8) [(9)] "Member" means a covered person, as defined by KRS 304.17A-500(3).~~

~~(9) [(10)] "Member month" means a period of time that represents each month that a member or subscriber, depending upon the data request, is enrolled in a health benefit plan.~~

~~(10) [(11)] "Self-insured employer-organized association" means an association that holds a certificate of filing pursuant to KRS 304.17A-320.~~

~~(11) [(12)] "Subscriber" means the following:~~

~~(a) In the individual market, the number of health benefit plan policyholders; or~~

~~(b) In the small group, large group, individual association, group association, self-insured employer-organized association, or insurance purchasing outlet market, the number of health benefit plan certificate holders.~~

~~(12)~~~~(13)~~ "Total unduplicated covered persons" means the total number of subscribers and their dependents covered by a health benefit plan at any time during the reporting year.

Section 2. Data Reporting Requirements. (1) Beginning with the report due by July 31, 2004, and within the time frame prescribed by KRS 304.17A-330, an insurer authorized to write health insurance in this state, a self-insured employer-organized association, and an insurance purchasing outlet shall submit the following reports regarding health benefit plans to the Department ~~[Office]~~ of Insurance:

- (a) Annual Report 1 - Insurer Information Report;
- (b) Annual Report 2 - Premium and Enrollment Report as Member Months;
- (c) Annual Report 3 - Demographic Report as Member Months;
- (d) Annual Report 4 - Billed Charge and Paid Claim Report;
- (e) Annual Report 5 - Medical Service Cost Report by Market Segment;
- (f) Annual Report 6 - Medical Service Cost Report by Product Type; ~~and~~
- (g) Annual Report 7 - Policy Discontinuance Reason Report; ~~and~~
- (h) Annual Report 8 - Mental Health Parity Report by Market Segment; and
- (i) Annual Report 9 - Mental Health Parity Report by Product Type.

(2) An entity described in subsection (1) of this section with more than 500 total unduplicated covered persons shall submit all of the reports listed in subsection (1)(a) through ~~(i)~~~~(g)~~ of this section.

(3) An entity described in subsection (1) of this section with 500 or less total unduplicated covered persons shall submit only the report listed in subsection (1)(a) of this section.

(4) An insurer, a self-insured employer-organized association, or an insurance purchasing outlet, who ceases operations in Kentucky shall submit the reports required by subsection (1) of this section to the Department ~~[Office]~~ of Insurance within 120 days after cessation.

(5) The reports required pursuant to subsection (1) of this section are contained in the ~~[""]~~ Data Reporting Manual, HIPMC-DR-1 ~~[(09/20)]~~ [HIPMC-DR-1 (06/03)], and the reports shall:

- (a) Be submitted in an electronic format; and
- (b) Contain the prescribed data elements and information in the order prescribed by the Data Reporting Manual.

Section 3. Incorporated by Reference. (1) "Data Reporting Manual", HIPMC-DR-1, 09/21~~[(09/20)]~~ [HIPMC-DR-1 (06/03)]~~[""]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department ~~[Office]~~ of Insurance, 500 Mero Street ~~[245 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 ~~[office's]~~ internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>~~[http://insurance.ky.gov/ppc]~~ ~~[http://doi.ppr.ky.gov]~~.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abi-gall.gall@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested amendment the agency needs to file one (1) clean updated copy of the Data Reporting Manual that includes the following changes:

- Update the edition date to the 2021 Edition, 09/2021

- Update the manual so its definitions are consistent with the administrative regulation, including not to request the data from multiple-employer welfare arrangements (MEWAs)
- Page 2
 - Change title of Annual Report 8 to (Mental Health Parity Report by Market)
 - Change title of Annual Report 9 to (Mental Health Parity Report by Product Type)
- Page 31
 - On Annual Report 8 page, at the top change to (Mental Health Parity Report by Market Segment)
- Page 34
 - On Annual Report 9 Page, at the top change to (Mental Health Parity Report by Product Type)

Data Reporting Manual

Department of Insurance

Division of Health, Life Insurance and Managed Care

2021 Edition

HIPMC-DR-1 (09/2021)

HIPMC-DR-1 (09/2021)

Page 1 of 35

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Page 33 - 35	Annual Report 9 (Mental Health Parity Report by Product Type)

NARRATIVE

Pursuant to KRS 304.17A-330, insurers authorized to write health insurance in the state, employer-organized associations that are self insured, and Insurance Purchasing Outlets are required to provide data to the Department of Insurance each year identifying premium, enrollment, claims, services, cost of services, and policy cancellation information for the previous calendar year. This data relates to Kentucky Health Benefit Plans issued to Kentucky residents.

This data specification manual has been developed to identify all information that is required to be reported by an insurer, self-insured employer-organized association, or Insurance Purchasing Outlet and to prescribe the reporting format and data elements. The Data Reporting Manual includes:

- File specifications;
- Record counts and control totals; and
- Transmission requirements.

Insurers, self-insured employer-organized associations, or Insurance Purchasing Outlets with more than 500 "Total Unduplicated Covered Persons (subscribers plus dependents)" as indicated on Annual Report 1 (File 1, sheet 1) in Column "P" are required to complete Annual Reports 1 through 2 [7]. Insurers self-insured employer-organized associations or Insurance Purchasing Outlets with 500 or less "Total Unduplicated Covered Persons (subscribers plus dependents)" as indicated on Annual Report 1 (File 1, sheet 1) in Column "P" are required to complete only Annual Report 1.

The Department of Insurance has developed a database to store the information reported in accordance with this Data Reporting Manual. The database is comprised of all files submitted by insurers, self-insured employer-organized associations, and Insurance Purchasing Outlets and is designed to permit the generation of any report related to the submitted data. Once the data is received from the insurers authorized to write health insurance in this state, the employer-organized associations that self-insure, and the Insurance Purchasing Outlets, the Department intends to produce an annual report based on the data collected pursuant to this Data Reporting Manual.

COMPLETION NOTES

The data reported in accordance with this Data Reporting Manual shall comply with the following reporting rules:

- Numeric fields shall not be left blank. If there is no data to report for a specific numeric field, zeros shall be used.
- If a percentage is required, the percentage shall be expressed by utilizing the percentage sign (%).
- If a dollar amount is required, the dollar amount shall be expressed by using a decimal (.).

DEFINITIONS

- (1) "Association" is defined by KRS 304.17A-005(1).
- (2) "Billed charges" means the amount that the insurer is billed for a service.
- (3) "Capitation" means a stipulated dollar amount established to cover the cost of health care delivered to a person.
- (4) "Covered person" is defined by KRS 304.17A-500(3).
- (5) "Electronic format" means an electronic copy of a Microsoft Excel Spreadsheet.
- (6) "Health benefit plan" means a health benefit plan as defined by KRS 304.17A-005(22) and issued within Kentucky to a Kentucky resident.
- (7) "Health care provider" is defined by KRS 304.17A-005(23).
- (8) "Insured" means a covered person.
- (9) "Insurer" is defined by KRS 304.17A-005(29).
- (10) "Market segment" as used in this manual means: Individual, Small Group, Large Group, Group Association, Individual Association, Self-Insured Employer Organized Association, and Insurance Purchasing Outlet.
- (11) "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.
- (12) "Member" means a covered person.

(13) "Member month" means a period of time that represents each month that a member or subscriber, depending upon the information request, is enrolled in a health benefit plan.

(14) "Paid claim amount" means the amount paid by an insurer for a claim, excluding the following:

- (a) Member deductible;**
- (b) Member co-pay; and**
- (c) Member co-insurance.**

(15) "Product type" means a health benefit plan that is one of the following:

- (a) Fee-for-service or FFS;**
- (b) Preferred provider organization or PPO;**
- (c) Point-of-service or POS; or**
- (d) Health maintenance organization or HMO.**

(16) "Self-Insured Employer Organized Association" means an association that holds a certificate of filing according to KRS304-17A-320.

(17) "Subscriber" means the following:

- (a) In the individual market, the number of health benefit plan policyholders; or**

(b) In the small group, large group, individual association, group association, self-insured employer organized association or the Insurance Purchasing Outlet market, the number of health benefit plan certificate holders.

Annual Report 1

Insurer Information Report

This report provides basic identifying information regarding the insurer who is submitting the report and control totals for total premiums, subscribers, and covered persons. This report shall be submitted as File 1, sheet 1 of the EXCEL spreadsheet and shall include 33 columns. Row 1 shall contain the field descriptions and row 2 shall contain the data submitted by the insurer.

Row/ Column	Field Description	Valid Values
2/A	Company Name	Alpha-numeric, maximum 150 characters
2/B	DBA Name	Alpha-numeric, maximum 150 characters
2/C	Contact person	Alpha-numeric, maximum 150 characters
2/D	Insurer's telephone number	Must be 10 digits numeric (do not include dashes, etc)
2/E	First line of mailing address	Alpha-numeric, maximum 150 characters
2/F	Second line of mailing address	Alpha-numeric, maximum 150 characters
2/G	City	Alpha-numeric, maximum 150 characters
2/H	State	Must be 2 digits alphabetic
2/I	Zip code	Must be 5 or 9 digits numeric (do not include dashes, etc.)
2/J	NAIC number	Must be 5 digits numeric
2/K	NAIC Group number	Must be 4 digits numeric
2/L	Federal tax ID number	Must be 9 digits numeric (do not include dashes, etc.)
2/M	Total Premium earned	Must be numeric representing dollars and cents. This is the total dollar amount of premiums earned from the sale of health benefit plans during the reporting year. This amount shall be expressed using a decimal.
2/N	Total subscribers (as member months)	Must be numeric. This is the total number of subscribers during the reporting year. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months. $2 \times 12 = 24$ member months. The entry would be 24.
2/O	Total covered persons (subscribers plus dependents) (as member months)	Must be numeric. This is the total number of subscribers plus their dependents during the reporting year. This should be expressed as member months. Example: Two subscribers with each having 1 dependent were insured for the entire 12 months. $4 \times 12 = 48$ member months. The entry would be 48.
2/P	Total unduplicated covered persons (subscribers plus dependents).	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan at any time during the reporting year.

Row/ Column	Field Description	Valid Values
2/Q	Total actual covered persons (subscribers plus dependents) during January of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during January of the reporting year.
2/R	Total actual covered persons (subscribers plus dependents) during February of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during February of the reporting year.
2/S	Total actual covered persons (subscribers plus dependents) during March of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during March of the reporting year.
2/T	Total actual covered persons (subscribers plus dependents) during April of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during April of the reporting year.
2/U	Total actual covered persons (subscribers plus dependents) during May of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during May of the reporting year.
2/V	Total actual covered persons (subscribers plus dependents) during June of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during June of the reporting year.
2/W	Total actual covered persons (subscribers plus dependents) during July of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during July of the reporting year.
2/X	Total actual covered persons (subscribers plus dependents) during August of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during August of the reporting year.
2/Y	Total actual covered persons (subscribers plus dependents) during September of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during September of the reporting year.
2/Z	Total actual covered persons (subscribers plus dependents) during October of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during October of the reporting year.
2/AA	Total actual covered persons (subscribers plus dependents) during November of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during November of the reporting year.

2/AB	Total actual covered persons (subscribers plus dependents) during December of the reporting year.	Must be numeric. This is the total number of subscribers plus their dependents covered by a health benefit plan during December of the reporting year.
2/AC	Total costs of Billed Charges of Claims	Must be numeric representing dollars and cents. This is the total dollar amount of billed charges of claims submitted for all health benefit plans during the reporting year. This amount shall be expressed by using a decimal.
2/AD	Total costs paid by insurer (this is total paid claims)	Must be numeric representing dollars and cents. This is the total amount of claims costs paid by the insurer during the reporting year. This amount shall be expressed by using a decimal.
2/AE	Total costs paid by insured	Must be numeric representing dollars and cents. This is the total amount of claims costs paid by the insured during the reporting year. This amount shall be expressed by using a decimal.
2/AF	Total number of insureds receiving services during the reporting year.	Must be numeric. This is the number of insureds receiving services during the reporting year. This is the unduplicated number of insureds that received any service during the reporting year.
2/AG	Total number of policies (for individual market segment) or certificates (for all other market segments) cancelled or discontinued.	Must be 6 digits numeric.

Premium and Enrollment Report as Member Months

This report provides information regarding an insurer's total number of members (stated as member months) and premiums collected by market segment and product type for a calendar year. This report shall be submitted as File 1, sheet 2. Row 1 and Column A shall contain field descriptions and row 2 through row 29, columns B through D shall contain the data submitted by the insurer.

- Row 2 represents data for Individual/Fee-for Service.
- Row 3 represents data for Individual/PPO.
- Row 4 represents data for Individual/HMO.
- Row 5 represents data for Individual/POS.
- Row 6 represents data for Small Group/Fee-for Service.
- Row 7 represents data for Small Group/PPO.
- Row 8 represents data for Small Group/HMO.
- Row 9 represents data for Small Group/POS.
- Row 10 represents data for Large Group/Fee-for Service.
- Row 11 represents data for Large Group/PPO.
- Row 12 represents data for Large Group/HMO.
- Row 13 represents data for Large Group/POS.
- Row 14 represents data for Group Association/Fee-for Service.
- Row 15 represents data for Group Association/PPO.
- Row 16 represents data for Group Association/HMO.
- Row 17 represents data for Group Association POS.
- Row 18 represents data for Individual Association/Fee-for Service.
- Row 19 represents data for Individual Association/PPO.
- Row 20 represents data for Individual Association/HMO.
- Row 21 represents data for Individual Association/POS.
- Row 22 represents data for Self-Insured Employer Organized Association/Fee-for Service.
- Row 23 represents data for Self-Insured Employer Organized Association/PPO.
- Row 24 represents data for Self-Insured Employer Organized Association/HMO.
- Row 25 represents data for Self-Insured Employer Organized Association/POS.
- Row 26 represents data for Insurance Purchasing Outlet/Fee-for Service.
- Row 27 represents data for Insurance Purchasing Outlet /PPO.
- Row 28 represents data for Insurance Purchasing Outlet /HMO.
- Row 29 represents data for Insurance Purchasing Outlet /POS.

Column	Field Description	Valid Values
B	Number of subscribers during the reporting year (as member months)	Must be numeric. This is the total number of subscribers during the reporting year with a health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months. $2 \times 12 = 24$ member months. The entry would be 24.
C	Number of covered persons during the reporting year (as member months)	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$
D	Total Premium	Must be numeric. This is the total dollar amount of premiums earned from the sale of plans during the reporting year. This amount shall be expressed by using a decimal.

Demographic Report as Member Months

Annual Report 3 provided information regarding an insurer's total number of members (stated as member months) by market segment and product type for a calendar year. This report further provides information regarding members (stated as member months) receiving a health benefit plan from an insurer by county for a calendar year. This report shall be submitted as File 1, sheet 3 of the EXCEL spreadsheet and shall contain 121 rows. Row 1 and column A shall contain field descriptions. Rows 2 through 121 and columns B through AC shall represent data for the specific county as indicated in column A. See attachment A for a list of the 120 Kentucky counties.

Row/ Column	Field Description	Valid Values
2 to 121/ B	Number of Individual/Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual/Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ C	Number of Individual/PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual/PPO. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ D	Number of Individual/HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual/HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.

2 to 121/ E	Number of Individual/POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual/POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ F	Number of Small Group/Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Small Group/Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ G	Number of Small Group/PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Small Group/PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ H	Number of Small Group/HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Small Group/HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ I	Number of Small Group/POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Small Group/POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ J	Number of Large Group/Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Large Group/Fee-for-Service/ health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.

2 to 121/ K	Number of Large Group/PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Large Group/PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ L	Number of Large Group/HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Large Group/HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ M	Number of Large Group/POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Large Group/POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ N	Number of Group Association /Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Group Association /Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ O	Number of Group Association /PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Group Association /PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ P	Number of Group Association /HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Group Association /HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.

2 to 121/ Q	Number of Group Association /POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Group Association /POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ R	Number of Individual Association /Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual Association /Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ S	Number of Individual Association /PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual Association /PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ T	Number of Individual Association /HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual Association /HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ U	Number of Individual Association /POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Individual Association /POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ V	Number of Self-Insured Employer Organized Association/Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Self-Insured Employer Organized Association/Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.

2 to 121/ W	Number of Self-Insured Employer Organized Association/PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Self-Insured Employer Organized Association/PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ X	Number of Self-Insured Employer Organized Association Group /HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Self-Insured Employer Organized Association/HMO health benefit plan. This should be expressed as member months. Example Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ Y	Number of Self-Insured Employer Organized Association Group /POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with a Self-Insured Employer Organized Association/POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ Z	Number of Insurance Purchasing Outlet/Fee-for-Service covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Insurance Purchasing Outlet /Fee-for-Service health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ AA	Number of Insurance Purchasing Outlet/PPO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Insurance Purchasing Outlet /PPO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
2 to 121/ AB	Number of Insurance Purchasing Outlet/HMO covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Insurance Purchasing Outlet/HMO health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.

2 to 121/ AC	Number of Insurance Purchasing Outlet/POS covered persons during the reporting year (as member months).	Must be numeric. This is the total number of subscribers plus any dependents during the reporting year with an Insurance Purchasing Outlet/POS health benefit plan. This should be expressed as member months. Example: Two subscribers were insured for the entire 12 months with 3 dependents each. $8 \times 12 = 96$ member months. The entry would be 96.
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Attachment A

Commonwealth of
Kentucky

Listing

Name	Row	Name	Row	Name	Row
Adair	2	Grant	42	Mason	82
Allen	3	Graves	43	Meade	83
Anderson	4	Grayson	44	Menifee	84
Ballard	5	Green	45	Mercer	85
Barren	6	Greenup	46	Metcalfe	86
Bath	7	Hancock	47	Monroe	87
Bell	8	Hardin	48	Montgomery	88
Boone	9	Harlan	49	Morgan	89
Bourbon	10	Harrison	50	Muhlenberg	90
Boyd	11	Hart	51	Nelson	91
Boyle	12	Henderson	52	Nicholas	92
Bracken	13	Henry	53	Ohio	93
Breathitt	14	Hickman	54	Oldham	94
Breckinridge	15	Hopkins	55	Owen	95
Bullitt	16	Jackson	56	Owsley	96
Butler	17	Jefferson	57	Pendleton	97
Caldwell	18	Jessamine	58	Perry	98
Calloway	19	Johnson	59	Pike	99
Campbell	20	Kenton	60	Powell	100
Carlisle	21	Knott	61	Pulaski	101
Carroll	22	Knox	62	Robertson	102
Carter	23	LaRue	63	Rockcastle	103
Casey	24	Laurel	64	Rowan	104
Christian	25	Lawrence	65	Russell	105
Clark	26	Lee	66	Scott	106
Clay	27	Leslie	67	Shelby	107
Clinton	28	Letcher	68	Simpson	108
Crittenden	29	Lewis	69	Spencer	109
Cumberland	30	Lincoln	70	Taylor	110
Daviess	31	Livingston	71	Todd	111
Edmonson	32	Logan	72	Trigg	112
Elliott	33	Lyon	73	Trimble	113
Estill	34	McCracken	74	Union	114

Fayette	35	McCreary	75	Warren	115
Fleming	36	McLean	76	Washington	116
Floyd	37	Madison	77	Wayne	117
Franklin	38	Magoffin	78	Webster	118
Fulton	39	Marion	79	Whitley	119
Gallatin	40	Marshall	80	Wolfe	120
Garrard	41	Martin	81	Woodford	121

Billed Charge and Paid Claim Report

This report provides information regarding the total billed charge amounts, the total paid claim amounts, and capitation payments by market type and product type. This report shall be submitted as File 1, sheet 4 of the EXCEL spreadsheet and shall include columns B through E and Rows 1 through 29. Row 1 and column A shall contain the field descriptions and rows 2 through 29 and columns A through E shall contain the data submitted by the insurer.

- Row 2 represents data for Individual/Fee-for Service.
- Row 3 represents data for Individual/PPO.
- Row 4 represents data for Individual/HMO.
- Row 5 represents data for Individual/ POS.
- Row 6 represents data for Small Group/Fee-for Service.
- Row 7 represents data for Small Group/PPO.
- Row 8 represents data for Small Group/HMO.
- Row 9 represents data for Small Group/ POS.
- Row 10 represents data for Large Group/Fee-for Service.
- Row 11 represents data for Large Group/PPO.
- Row 12 represents data for Large Group/HMO.
- Row 13 represents data for Large Group/ POS.
- Row 14 represents data for Group Association/Fee-for Service.
- Row 15 represents data for Group Association/PPO.
- Row 16 represents data for Group Association/HMO.
- Row 17 represents data for Group Association/ POS.
- Row 18 represents data for Individual Association/Fee-for Service.
- Row 19 represents data for Individual Association/PPO.
- Row 20 represents data for Individual Association/HMO.
- Row 21 represents data for Individual Association/ POS.
- Row 22 represents data for Self-Insured Employer Organized Association/Fee-for Service.
- Row 23 represents data for Self-Insured Employer Organized Association/PPO.
- Row 24 represents data for Self-Insured Employer Organized Association/HMO.
- Row 25 represents data for Self-Insured Employer Organized Association/POS.
- Row 26 represents data for Insurance Purchasing Outlet/Fee-for Service.
- Row 27 represents data for Insurance Purchasing Outlet /PPO.
- Row 28 represents data for Insurance Purchasing Outlet /HMO.
- Row 29 represents data for Insurance Purchasing Outlet /POS.

Column	Field Description	Valid Values
B	Cost of billed charges of claims submitted during the reporting year.	Must be numeric. This is the total dollar amount of billed charges of claims submitted in health benefit plans during the reporting year. This amount shall be expressed by using a decimal.
C	Cost of claims paid by the <u>insurer</u> during the reporting year.	Must be numeric. This is the total dollar amount of claims paid by the <u>insurer</u> in health benefit plans during the reporting year. The amount shall be expressed by using a decimal. Must be numeric. This is the total dollar amount of the claims.
D	Cost of claims paid by the <u>insured</u> during the reporting year.	Must be numeric. This is the total dollar amount of claims paid by the <u>insured</u> in health benefit plans during the reporting year. The amount shall be expressed by using a decimal.
E	Amount of capitation payments paid during the reporting year.	Must be numeric. This is the total dollar amount of capitation payments paid during the reporting year. This amount shall be expressed by using a decimal.

Medical Service Cost Report by Market Segment

This report provides information regarding the type of service and the paid cost of the services by Market Segment (Individual, Small Group, Large Group, Group Association, Individual Association, Self-Insured Employer Organized Association or Insurance Purchasing Outlet) for a calendar year. This report shall be submitted as File 1, sheet 5. Row 1 and column A contain field descriptions. Rows 2 through 45 and columns B through H shall represent data for the specific information as indicated. Rows 16 and 31 will be blank.

Column B represents data for Individual.
 Column C represents data for Small Group.
 Column D represents data for Large Group.
 Column E represents data for Group Association.
 Column F represents data for Individual Association.
 Column G represents data for Self-Insured Employer Organized Association
 Column H represents data for Insurance Purchasing Outlets.

Rows 2 through 15 represent costs paid by INSURER during the reporting year. This must be numeric representing dollars and cents. This is the total amount of claims costs paid by the INSURER during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 17 through 30 represent costs paid by INSURED during the reporting year. This must be numeric representing dollars and cents. This is the total amount of claims costs paid by the INSURED during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 32 through 45 represent the unduplicated number of insureds receiving services during the reporting year. This must be numeric.

Specified Services for costs paid by the INSURER for rows 2 through 15:

Row	Service
2	Inpatient hospital - costs paid by insurer during the reporting year
3	Outpatient hospital - costs paid by insurer during the reporting year
4	Physician Services - costs paid by insurer during the reporting year
5	Pharmacy Services - costs paid by insurer during the reporting year
6	Behavioral Health Services (Excluding Autism Services) - costs paid by insurer during the reporting year
7	Home Health Care Services - costs paid by insurer during the reporting year
8	Ambulatory Surgical Services - costs paid by insurer during the reporting year

9	Laboratory Services - costs paid by insurer during the reporting year .
10	X-Ray Services - costs paid by insurer during the reporting year
11	Durable Medical Equipment - costs paid by insurer during the reporting year
12	Autism Services - costs paid by insurer during the reporting year
13	Emergency Department Services - costs paid by insurer during the reporting year
14	Chiropractic Services - costs paid by insurer during the reporting year
15	All Other Services - costs paid by insurer during the reporting year

Specified Services for costs paid by the INSURED for rows 17 through 30:

Row Service

17	Inpatient hospital - costs paid by insured during the reporting year
18	Outpatient hospital - costs paid by insured during the reporting year
19	Physician Services - costs paid by insured during the reporting year
20	Pharmacy Services - costs paid by insured during the reporting year
21	Behavioral Health Services (Excluding Autism Services) - costs paid by insured during the reporting year
22	Home Health Care Services - costs paid by insured during the reporting year
23	Ambulatory Surgical Services - costs paid by insured during the reporting year
24	Laboratory Services - costs paid by insured during the reporting year
25	X-Ray Services - costs paid by insured during the reporting year
26	Durable Medical Equipment - costs paid by insured during the reporting year
27	Autism Services - costs paid by insured during the reporting year
28	Emergency Department Services - costs paid by insured during the reporting year
29	Chiropractic Services - costs paid by insured during the reporting year
30	All Other Services - costs paid by insured during the reporting year

Specified Services for Unduplicated number of insureds receiving services for rows 32 through 45:

Row Services

32	Inpatient hospital - unduplicated number of insureds receiving services during the reporting year
33	Outpatient hospital - unduplicated number of insureds receiving services during the reporting year
34	Physician Services - unduplicated number of insureds receiving services during the reporting year
35	Pharmacy Services - unduplicated number of insureds receiving services during the reporting year
36	Behavioral Health Services (Excluding Autism Services) - unduplicated number of insureds receiving services during the reporting year
37	Home Health Care Services - unduplicated number of insureds receiving services during the reporting year

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38	Ambulatory Surgical Services - unduplicated number of insureds receiving services during the reporting year
39	Laboratory Services - unduplicated number of insureds receiving services during the reporting year
40	X-Ray Services - unduplicated number of insureds receiving services during the reporting year
41	Durable Medical Equipment - unduplicated number of insureds receiving services during the reporting year
42	Autism Services - unduplicated number of insureds receiving services during the reporting year
43	Emergency Department Services - unduplicated number of insureds receiving services during the reporting year
44	Chiropractic Services - unduplicated number of insureds receiving services during the reporting year.
45	All Other Services - unduplicated number of insureds receiving services during the reporting year

Medical Service Cost Report by Product Type

This report provides information regarding the type of service and the paid cost of the services by Product Type (Fee for Service, PPO, HMO, or POS) for a calendar year. This report shall be submitted as File 1, sheet 6. Row 1 and column A contain field descriptions. Rows 2 through 45 and columns B through E shall represent data for the specific information as indicated. Rows 16 and 31 will be blank.

Column B represents data for Fee for Service.

Column C represents data for PPO.

Column D represents data for HMO.

Column E represents data for POS.

Rows 2 through 15 represent costs paid by INSURER during the reporting year. This must be numeric representing dollars and cents. This is the total amount of claims costs paid by the INSURER during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 17 through 30 represent costs paid by INSURED during the reporting year. This must be numeric representing dollars and cents. This is the total amount of claims costs paid by the INSURED during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 32 through 45 represent the unduplicated number of insureds receiving services during the reporting year. This must be numeric.

Specified Services for costs paid by the INSURER for rows 2 through 15:

Row Service

2	Inpatient hospital - costs paid by insurer during the reporting year
3	Outpatient hospital - costs paid by insurer during the reporting year
4	Physician Services - costs paid by insurer during the reporting year
5	Pharmacy Services (Excluding Autism Services) - costs paid by insurer during the reporting year
6	Behavioral Health Services - costs paid by insurer during the reporting year
7	Home Health Care Services - costs paid by insurer during the reporting year
8	Ambulatory Surgical Services - costs paid by insurer during the reporting year
9	Laboratory Services - costs paid by insurer during the reporting year
10	X-Ray Services - costs paid by insurer during the reporting year
11	Durable Medical Equipment - costs paid by insurer during the reporting year
12	Autism Services - costs paid by insurer during the reporting year
13	Emergency Department Services - costs paid by insurer during the reporting year
14	Chiropractic Services – costs paid by insurer during the reporting year.
15	All Other Services - costs paid by insurer during the reporting year

Specified Services for costs paid by the INSURED for rows 17 through 30:

Row	Service
17	Inpatient hospital - costs paid by insured during the reporting year
18	Outpatient hospital - costs paid by insured during the reporting year
19	Physician Services - costs paid by insured during the reporting year
20	Pharmacy Services (Excluding Autism Services) - costs paid by insured during the reporting year
21	Behavioral Health Services - costs paid by insured during the reporting year
22	Home Health Care Services - costs paid by insured during the reporting year
23	Ambulatory Surgical Services - costs paid by insured during the reporting year
24	Laboratory Services - costs paid by insured during the reporting year
25	X-Ray Services - costs paid by insured during the reporting year
26	Durable Medical Equipment - costs paid by insured during the reporting year
27	Autism Services - costs paid by insured during the reporting year
28	Emergency Department Services - costs paid by insured during the reporting year
29	Chiropractic Services – costs paid by insured during the reporting year.
30	All Other Services - costs paid by insured during the reporting year

Specified Services for Unduplicated number of insureds receiving services for rows 32 through 45:

Row	Services
32	Inpatient hospital - unduplicated number of insureds receiving services during the reporting year
33	Outpatient hospital - unduplicated number of insureds receiving services during the reporting year
34	Physician Services - unduplicated number of insureds receiving services during the reporting year
35	Pharmacy Services - unduplicated number of insureds receiving services during the reporting year
36	Behavioral Health Services (Excluding Autism Services) - unduplicated number of insureds receiving services during the reporting year
37	Home Health Care Services - unduplicated number of insureds receiving services during the reporting year
38	Ambulatory Surgical Services - unduplicated number of insureds receiving services during the reporting year
39	Laboratory Services - unduplicated number of insureds receiving services during the reporting year
40	X-Ray Services - unduplicated number of insureds receiving services during the reporting year
41	Durable Medical Equipment - unduplicated number of insureds receiving services during the reporting year
42	Autism Services - unduplicated number of insureds receiving services during the reporting year
43	Emergency Department Services - unduplicated number of insureds receiving services during the reporting year

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44	Chiropractic Services - unduplicated number of insureds receiving services during the reporting year.
45	All Other Services - unduplicated number of insureds receiving services during the reporting year

Policy Discontinuance and Denial Reason Report

This report provides information regarding the type of policy and the reason the policy was discontinued for a calendar year. This report shall be submitted as File 1, sheet 7 of the EXCEL spreadsheet. Row 1 shall contain the field descriptions and row 2, columns A through J shall contain the data submitted by the insurer.

Row/ Column	Field Description	Valid Values
2/A	Number of policies (for individuals) or certificates cancelled or discontinued due to death of subscriber	Must be numeric. This is the number of policies or certificates discontinued due to the death of the subscriber.
2/B	Number of policies (for individuals) or certificates cancelled or discontinued due to subscriber moved out of state	Must be numeric. This is the number of policies or certificates discontinued due to the subscriber moving out of state.
2/C	Number of policies (for individuals) or certificates cancelled or discontinued due to subscriber moved out of service area	Must be numeric. This is the number of policies or certificates discontinued due to the subscriber moving out of service area.
2/D	Number of policies (for individuals) or certificates cancelled or discontinued due to subscriber selected another product from existing carrier	Must be numeric. This is the number of policies or certificates discontinued due to the subscriber selecting another product from the existing carrier.
2/E	Number of policies (for individuals) or certificates cancelled or discontinued due to subscriber request	Must be numeric. This is the number of policies or certificates discontinued due to the request of the subscriber.
2/F	Number of policies (for individuals) or certificates cancelled or discontinued due to subscriber non-payment of premiums	Must be numeric. This is the number of policies or certificates discontinued due to non-payment of premiums by the subscriber.

Row/ Colu	Field Description	Valid Values
2/G	Number of policies (for individuals) or certificates cancelled or discontinued due to fraud or intentional misrepresentation of material facts under the terms of the coverage.	Must be numeric. This is the number of policies or certificates discontinued due to fraud or intentional misrepresentation of material facts under the terms of the coverage.
2/H	Number of policies (for individuals) or certificates cancelled or discontinued due to intentional and abusive non-compliance with material provisions of the health benefit plan.	Must be numeric. This is the number of policies or certificates discontinued due to intentional and abusive non-compliance with material provisions of the health benefit plan.
2/I	Number of policies (for individuals) or certificates cancelled or discontinued due to discontinuance of a product.	Must be numeric. This is the number of policies or certificates discontinued due to discontinuance of a product.
2/J	Number of policies (for individuals) or certificates cancelled or discontinued due to other or unknown reasons.	Must be numeric. This is the number of policies or certificates discontinued due to other or unknown reasons.

Mental Health Parity Report by Market Segment

This report provides information regarding the type of service and the paid cost of the services by Market Segment (Individual, Small Group, Large Group, Group Association, Individual Association, Self-Insured Employer Organized Association or Insurance Purchasing Outlet) for a calendar year. This report shall be submitted as File 1, sheet 8. Row 1 and column A contain field descriptions. Rows 2 through 22 and columns B through H shall represent data for the specific information as indicated. Row 12 will be blank.

Column B represents data for Individual.

Column C represents data for Small Group.

Column D represents data for Large Group.

Column E represents data for Group Association.

Column F represents data for Individual Association.

Column G represents data for Self-Insured Employer Organized Association

Column H represents data for Insurance Purchasing Outlets.

Rows 2 through 11 represent costs paid by the insurer for in-network services during the reporting year. This must be numeric representing dollars and cents. This is the total amount of in-network claims costs paid by the insurer during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 13 through 22 represent costs paid by the insurer for out of network services during the reporting year. This must be numeric representing dollars and cents. This is the total amount of out of network claims costs paid by the insurer during the reporting year for specified services. This amount shall be expressed by using a decimal.

Specified Services for costs paid In-Network for rows 2 through 11:

Row	Service
2	Total claims paid inpatient for medical/surgical in-network services
3	Total claims paid for inpatient mental health/substance use disorder in-network services
4	Total claims paid for outpatient office visits for medical/surgical in-network services
5	Total claims paid for outpatient office visits for mental health/substance use disorder in-network services
6	Total claims paid for outpatient other services for medical/surgical in-network services
7	Total claims paid for outpatient other services for mental health/substance use disorder in-network services
8	Total claims paid for emergency care for medical/surgical in-network services
9	Total claims paid for emergency care for mental health/substance use disorder in-network services
10	Total claims paid for pharmacy for medical/surgical in-network services
11	Total claims paid for pharmacy for mental health/substance use disorder in-network services

Specified Services for costs paid Out of Network for rows 13 through 22:

Row	Service
13	Total claims paid inpatient for medical/surgical out of network services
14	Total claims paid for inpatient mental health/substance use disorder out of network services
15	Total claims paid for outpatient office visits for medical/surgical out of network services
16	Total claims paid for outpatient office visits for mental health/substance use disorder out of network services
17	Total claims paid for outpatient other services for medical/surgical out of network services

18	Total claims paid for outpatient other services for mental health/substance use disorder out of network services
19	Total claims paid for emergency care for medical/surgical out of network services
20	Total claims paid for emergency care for mental health/substance use disorder out of network services
21	Total claims paid for pharmacy for medical/surgical out of network services
22	Total claims paid for pharmacy for mental health/substance use disorder out of network services

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Mental Health Parity Report by Product Type

This report provides information regarding the type of service and the paid cost of the services by Product Type (Fee for Service, PPO, HMO, or POS) for a calendar year. This report shall be submitted as File 1, sheet 9. Row 1 and column A contain field descriptions. Rows 2 through 22 and columns B through E shall represent data for the specific information as indicated. Row 12 will be blank.

Column B represents data for Fee for Service.

Column C represents data for PPO.

Column D represents data for HMO.

Column E represents data for POS.

Rows 2 through 11 represent costs paid by the insurer for in-network services during the reporting year. This must be numeric representing dollars and cents. This is the total amount of in-network claims costs paid by the insurer during the reporting year for specified services. This amount shall be expressed by using a decimal.

Rows 13 through 22 represent costs paid by the insurer for out of network services during the reporting year. This must be numeric representing dollars and cents. This is the total amount of out of network claims costs paid by the insurer during the reporting year for specified services. This amount shall be expressed by using a decimal.

Specified Services for costs paid In-Network for rows 2 through 11:

Row Service

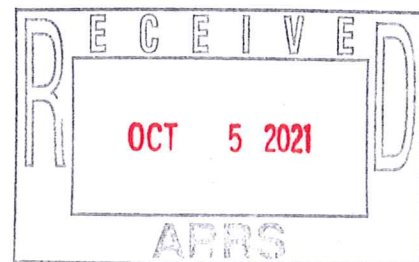
2	Total claims paid inpatient for medical/surgical in-network services
3	Total claims paid for inpatient mental health/substance use disorder in-network services
4	Total claims paid for outpatient office visits for medical/surgical in-network services
5	Total claims paid for outpatient office visits for mental health/substance use disorder in-network services

6	Total claims paid for outpatient other services for medical/surgical in-network services
7	Total claims paid for outpatient other services for mental health/substance use disorder in-network services
8	Total claims paid for emergency care for medical/surgical in-network services
9	Total claims paid for emergency care for mental health/substance use disorder in-network services
10	Total claims paid for pharmacy for medical/surgical in-network services
11	Total claims paid for pharmacy for mental health/substance use disorder in-network services

Specified Services for costs paid Out of Network for rows 13 through 22:

Row	Service
13	Total claims paid inpatient for medical/surgical out of network services
14	Total claims paid for inpatient mental health/substance use disorder out of network services
15	Total claims paid for outpatient office visits for medical/surgical out of network services
16	Total claims paid for outpatient office visits for mental health/substance use disorder out of network services
17	Total claims paid for outpatient other services for medical/surgical out of network services
18	Total claims paid for outpatient other services for mental health/substance use disorder out of network services
19	Total claims paid for emergency care for medical/surgical out of network services
20	Total claims paid for emergency care for mental health/substance use disorder out of network services

21	Total claims paid for pharmacy for medical/surgical out of network services
22	Total claims paid for pharmacy for mental health/substance use disorder out of network services



Andy Beshear
Governor

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Sharon P. Clark
Commissioner

October 4, 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 17:270. Telehealth claim forms and records.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:270, the Department of Insurance proposes the attached amendment to 806 KAR 17:270.

Sincerely,

Abigail Gall, Regulations Coordinator
Department of Insurance
500 Mero Street
Frankfort, KY 40601

Final, 9-3-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life Insurance and Managed Care

806 KAR 17:270. Telehealth claim forms and records.

RELATES TO: KRS 304.17A-005, 304.17A-138, 304.17A-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-138~~[(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes ~~[provides that]~~ the commissioner to ~~[executive director may]~~ promulgate reasonable 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-138~~[(4)]~~ requires that the department ~~[office]~~ promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims. ***This administrative regulation establishes requirements for telehealth claim forms and records.***

Section 1. Definitions. (1) "ADA" means American Dental Association.

(2) "Electronic" or "electronically" is defined by KRS 304.17A-700(7).

(3) "HCFA" means Health Care Financing Administration.

(4) "Health benefit plan" is defined by KRS 304.17A-005(22).

(5) "Health care provider" or "provider" is defined by KRS 304.17A-005(23).

(6) ~~["Health insurer" or]~~ "Insurer" is defined by KRS 304.17A-005(29) ~~[KRS 304.17A-005(27)]~~.

(7) ~~["Kentucky Uniform Billing Committee (KUBC)" is defined by KRS 304.17A-700(13).~~

~~—(8)]~~ "National Uniform Billing Committee (NUBC)" is defined by KRS 304.17A-700(14).

~~(8) [(9)]~~ "Telehealth" is defined by KRS 311.550(17).

~~[(10) "UB" means uniform billing.]~~

Section 2. Application. This administrative regulation shall apply to health benefit plans delivered, issued, or renewed on or after July 15, 2001.

Section 3. Claim Forms. The following claim forms shall be used for reimbursement of telehealth consultations:

(1) A claim form for dentists shall consist of the ADA Dental Claim Form - J430 ~~[ADA Form--J588]~~ approved by the American Dental Association effective at the time the service was billed; and

(2) A claim form for all other health care providers shall consist of the ***Health Insurance Claim Form, Form*** HCFA - 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee effective at the time the service was billed.

Section 4. Retention of Records. A provider shall, upon request, provide a copy of the following to an insurer as support for a claim for reimbursement of a telehealth consultation:

(1) Written record that ~~[which]~~ substantiates the request by the referring provider for the telehealth consultation by the primary care provider; and

(2) Written record of the telehealth consultation.

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

(a) "ADA Dental Claim Form - J430", 5/2019 [ADA Form J588, "Dental Claim Form" (1999 version 2000)]; and

(b) Form HCFA - 1500, "Health Insurance Claim Form", 2/2012 [(12-90 Edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [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 internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>[<http://insurance.ky.gov/ppc/>].

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

At the time that the agency files this staff suggested amendment it needs to file (1) updated copy of an RIA that provides answers to Questions 7 and 8.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:270
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 This administrative regulation designates the claim forms and records required to be maintained for telehealth claims.
- (b) The necessity of this administrative regulation: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 through KRS 304.99-154. KRS 304.17A-138(4) requires that the Department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17 A-138(4).

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are technical in nature. Forms incorporated in this administrative regulation have been amended by the third parties, whom own the rights to these documents, and thus, the Department is incorporating the most recent editions of the reporting forms.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are to create efficiency and uniformity in drafting of all administrative regulations and to be sure the most relevant forms are incorporated for entities to report properly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A sets forth the formatting and drafting requirements for administrative regulations. The amendments to this regulations abide by those requirements.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.17A-138(4) requires that the Department promulgate an administrative

regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims. The amendments ensure the administrative regulation conform to the requirements set forth in KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers issuing health benefit plans in the state of Kentucky, all health care providers and dentists submitting telehealth claims to insurers issuing health benefit plans.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to use the incorporated forms to report claims in regards to telehealth records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no expected cost associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities: The regulated entities will have properly recorded claims and meet the requirements set forth in this administrative regulation and the authorizing statutes.

(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: No, this administrative regulation does not require an increase in fees or funding.

(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 any fees directly or indirectly.

(9) TIERING: Is tiering applied? Explain why or why not. There is not tiering applied because this administrative regulation applies to all insurers issuing health benefit plans in the state of Kentucky, all health care providers, and dentist submitting telehealth records for reimbursement.



PUBLIC PROTECTION CABINET

Department of Insurance

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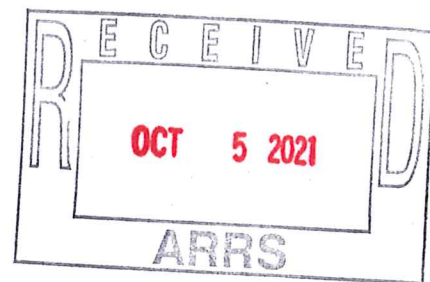
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October 4, 2021

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

Re: 806 KAR 17:280. Registration, utilization review, and internal appeal.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:280, the Department of Insurance proposes the attached amendment to 806 KAR 17:280.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601

Final, 9-21-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life Insurance and Managed Care

806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 217.211, 304.2-140, 304.2-310, 304.17-412, 304.17A-005, 304.17A.167, 304.17A-600 -304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 304.47-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner ~~[executive director]~~ to promulgate reasonable 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-609 requires the ~~department~~ ~~[office]~~ to promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the ~~department~~ ~~[office]~~ to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. ~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.]~~ This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined ~~by~~ ~~[in]~~ KRS 304.17A-600(1).

(2) "Authorized person" is defined ~~by~~ ~~[in]~~ KRS 304.17A-600(2).

(3) "Board" means one (1) of the following governing bodies:

(a) The American Board of Medical Specialties;

(b) The American Osteopathic Association; or

(c) The American Board of Podiatric Surgery.

(4) "Coverage denial" is defined ~~by~~ ~~[in]~~ KRS 304.17A-617(1).

(5) "Department" means Department of Insurance.

(6) "Enrollee" is defined ~~by~~ ~~[in]~~ KRS 304.17C-010(2).

(7) "Health benefit plan" is defined by KRS 304.17A-005(22).

(8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as required under 806 KAR 17:580.

~~(9) "Insurer" is defined by [in] KRS KRS 304.17A-005(29)[304.17A-600(8)].~~

~~[(8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as permitted under KRS Chapter 315 and 806 KAR 17:580.]~~

~~(10)[(9)] [(8)] "Limited health service benefit plan" is defined by [in] KRS 304.17C-010(5).~~

~~(11)[(40)] [(9)] "Nationally recognized accreditation organization" is defined by [in] KRS 304.17A-600(10).~~

~~(12)[(44)] [(40)] "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial[as defined by KRS 304.17A-617(4)].~~

~~(13)[(42)] [(44)] "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a utilization review program.~~

~~(14)[(43)] [(42)] "Private review agent" is defined by [in] KRS 304.17A-600(11).[~~

~~(13) "Provider" is defined in KRS 304.17A-600(13).]~~

~~(15)[(44)] "Registration" is defined by[in] KRS 304.17A-600(14)[(45)].~~

~~(16)[(45)] "Utilization review" is defined by[in] KRS 304.17A-600(17)[(48)].~~

~~(17)~~~~(16)~~ "Utilization review plan" is defined ~~by~~~~in~~ KRS 304.17A-600~~(18)~~~~(19)~~.

Section 2. Registration Required. (1) The department shall issue a registration to an applicant that has met the requirements of KRS 304.17A-600 through 304.17A-619 and KRS 304.17A-623 ~~[304.17A-623]~~, if applicable, and Sections 2 through 11 of this administrative regulation.

(2) An applicant seeking registration to provide or perform utilization review shall:

(a) Submit an application to the department as required by Section 4 of this administrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) ~~[An application shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.]~~

~~(4)~~ If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees. (1) An application for registration shall be accompanied by a fee of \$1,000.

(2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process. (1) An applicant for registration shall complete and submit to the department an application, HIPMC-UR-1 and HIPMC-MD-1 ~~[as incorporated by reference in 806 KAR 17:005]~~, and except as provided in subsection (3) of this Section, documentation to support compliance with KRS 304.17A-600 through 304.17A-623, as applicable, including:

(a) A utilization review plan;

(b) The identification of criteria used for all services requiring utilization review ~~[utilization review criteria, including criteria for review of inpatient and outpatient services];~~

(c) Types and qualifications of personnel, employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607~~[(1)(a)]~~, including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required:

1. By KRS 304.17A-167 ~~[By KRS 304.17A-609(4); and];~~

2. By KRS 304.17A-603 ~~[To ensure availability to conduct utilization review, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f)];~~

3. By KRS 304.17A-607, and including the policies and procedures required by KRS 304.17A-607(1)(f) and (i); and

4. By KRS 304.17A-609(4); and

~~5. By KRS 304.17A-607(1)(f) and KRS 304.17A-607(1)(i);]~~

(f) A copy of the policies and procedures by which:

1. A limited health service benefit plan provides a notice of review decision which complies with KRS 304.17A-607(1)(h) to (j)], 304.17A-607(1)(i) and 304.17A-607(i)] and includes:

a. Date of service or preservice request date ~~[Date of the review decision; and];~~

b. Date of the review decision; and ~~[Instructions for filing an internal appeal; or]~~

c. Instructions for filing an internal appeal; or

2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) to (j) [, 304.17A-607(1)(i), [and] 304.17A-607(1)(j)] and 806 KAR 17:230, and includes:

a. Date of service or preservice request date [Date of the review decision];
b. Date of the review decision [Instructions for filing an internal appeal, including information concerning];

c. Instructions for filing an internal appeal, including information concerning:

(i) The availability of an expedited internal appeal and a concurrent expedited external review; [and]

(ii) For an adverse determination, the right to request that the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

(iii) The insurer's contact information for conducting appeals including a telephone number and address; and

d. [e.] Information relating to the availability of:

(i) A review of a coverage denial by the department following completion of the internal appeal process; or

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If a part of the utilization review process is delegated, a description of the:

1. Delegated function;

2. Entity to whom the function was delegated, including name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph (f) of this subsection;

(h) A sample copy of an electronic or written notice of review decision, which com-
plies[complies] with paragraph (f) of this subsection;

(i) A copy of the policies and procedures by which a covered person, authorized person, or provider may request an appeal of an adverse determination or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

a. An oral request followed by a brief written request, or a written request for an expedited internal appeal;

b. A written request for a nonexpedited internal appeal; and

c. If applicable, the completion of a specific form, including a medical records release consent form with instructions for obtaining the required release form;

2. Time frames for:

a. Conducting a review of an initial decision; and

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision in accordance with KRS 304.17A-617(2)(c);

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

a. Title and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;

b. Clear, detailed decision; and

c. Availability of an expedited external review of an adverse determination; and

6. A sample copy of the internal appeal determination in compliance with paragraph(i)5 of this subsection; and

(j) A copy of the policies and procedures, which:

1. Address and ensure the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, ~~806 KAR 3:220,~~ and 806 KAR 3:230;

2. Comply with requirements of KRS 304.17A-615 if the insurer or private review agent fails to:

a. Provide a timely utilization review decision; or
b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

(i) Electronic transmission records; or

(ii) Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for all services requiring utilization review ~~[inpatient and outpatient services in review decisions]~~; and

5. Comply with requirements of KRS 304.17A-607(1)(k), as applicable.

(2) Upon review of an application for registration, or submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), the department shall:

(a) Inform the applicant if supplemental information is needed;

(b) Identify and request that supplemental information be submitted to the department within thirty (30) days;

(c) If requested information is not provided to the department within the timeline established in paragraph (b) of this subsection:

1. Deny the application for registration or proposed changes to utilization review policies and procedures; and

2. Not refund the application or filing fee; and

(d) Approve or deny registration or proposed changes to utilization review policies and procedures.

(3) In order to be registered to perform utilization review in Kentucky, an applicant which holds accreditation or certification in utilization review by a nationally recognized accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department:

(a) 1. Evidence of current accreditation or certification in utilization review, including an expiration date; and

~~2. [(b)]~~ Documentation to demonstrate compliance with requirements of KRS 304.17A-613(10) and that the standards of the accreditation organization sufficiently meet the minimum requirements in subsection (1) of this Section.

(b) If the national accreditation standard does not meet all the requirements as established in subsection (1) of this Section, then the applicant shall submit the additional information required under subsection (1) of this Section.

Section 5. Denial or Revocation Hearing Procedure. Upon denial of an application for registration, or suspension or revocation of an existing registration, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or registration holder that if dissatisfied, a hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review. (1) A written complaint regarding utilization review shall be reviewed by the department in accordance with KRS 304.17A-613(8).

(2) Upon receiving a copy of the complaint, an insurer or private review agent shall provide a response in accordance with KRS 304.17A-613(8)(a), including:

(a) Any information relating to the complaint; ~~[and]~~

(b) All correspondence or communication related to the denial between any of the parties, including the insurer, the member, provider, and private review agent [Corrective actions to address the complaint, if applicable, including a timeframe for each action]; and

(c) Corrective actions to address the complaint, if applicable, including a timeframe for each action.

(3) Within thirty (30) days of implementation of a corrective action, as identified in subsection (2) of this section, an insurer or private review agent shall notify the department in writing of the implementation of the corrective action.

(4) If an insurer or private review agent[entity] fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) The number, recurrence, and type of complaints, as identified in subsection (1) of this section, shall be considered by the department in reviewing an application for registration pursuant to KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person to request an internal appeal at least sixty (60) days following receipt of a denial letter;

(2) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal; ~~and~~

(d) Date of service or preservice request date; and ~~[Date on which the decision was rendered]~~

(e) Date ~~off~~on which the internal appeal decision ~~[-was rendered];~~

(3) Maintain written records of an internal appeal, including the:

(a) Reason for the internal appeal;

(b) Date that the internal appeal was received by the insurer or private review agent, including the date any necessary or required authorizations were received;

(c) Date of the internal appeal decision;

(d) Internal appeal decision; and

(e) Information required by Section 4(1)(i)5 of this administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan. (1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and

(b) Include provisions, which:

1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within at least sixty (60) days of receipt of a notice of adverse determination or coverage denial; and

2. Require the limited health service benefit plan to provide a written internal appeal determination within thirty (30) days following receipt of a request for an internal appeal.

(2) A notice of adverse determination or coverage denial shall include a disclosure of the availability of the internal appeals process.

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall complete and submit to the department a HIPMC-UR-2, [~~as incorporated by reference in 806 KAR 17:005~~], for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including:

- (1) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;
- (2) Information relating to the availability of physician consultation;
- (3) Information which supports that based on call volume, the insurer or private review agent has sufficient staff to return calls in a timely manner;
- (4) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;
- (5) Telephone call abandonment rate; and
- (6) Proof of the response time of insurer or private review agent for returned phone calls to a provider if a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review. (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department thirty (30) days or as soon as practicable prior to ceasing operations:

- (a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and
 - (b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.
- (2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department within thirty (30) calendar days of ceasing operations.

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

- (a) Form HIPMC-UR-1, "Utilization Review Registration Application", 09/2020 edition;
- (b) Form HIPMC-UR-2, "Annual Utilization Review (UR) Report Form", 09/2020 edition; and
- (c) Form HIPMC-MD-1, "Medical Director Report Form", 09/2020 edition.

(2) This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's 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

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OCT 5 2021

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Ray A. Perry

Secretary

Sharon P. Clark

Commissioner

October 4, 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 17:470. Data reporting to an employer-organized association health benefit plan.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:470, the Department of Insurance proposes the attached amendment to 806 KAR 17:470.

Sincerely,

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601

Final, 9-7-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life Insurance and Managed Care

806 KAR 17:470. Data reporting to an employer-organized association health benefit plan.

RELATES TO: KRS 304.1-050, 304.2-110(1), 304.17A-005, 304.17A-700(7), 304.17A-846(1), 45 C.F.R. 160, 45 C.F.R. 164

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-846

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[executive director]~~ to promulgate reasonable 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-846 requires the department ~~[office]~~ to promulgate an administrative regulation to implement its provisions and define the extent that health benefit plan information shall be provided to an employer-organized association. This administrative regulation establishes requirements for the provision of health benefit plan information to an employer-organized association by an insurer offering a health benefit plan.

Section 1. Definitions. (1) "Aggregate claims experience" means the total dollar amount paid to health care providers of medical and pharmacy services for persons covered under an employer-organized association health benefit plan.

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Complete request" means a written request for employer-organized association health benefit plan information, including:

(a) A certification by a designated representative of the employer-organized association stating the:

1. Employer-organized association health benefit plan has adopted safeguards and standards for the treatment of health information pursuant to 45 C.F.R. 164.504(f); and

2. Information requested is the minimum amount necessary to accomplish the intended purpose of the use or disclosure pursuant to 45 C.F.R. 164.502(b) and 164.514(d); and

(b) Specific and sufficient details relating to the requested health benefit plan information.

(4) "Department" is defined by KRS 304.1-050(2).

~~(5) [(3)]~~ "Electronically" is defined by ~~[in]~~ KRS 304.17A-700(7).

~~(6) [(4)]~~ "Employer-organized association" is defined by KRS 304.17A-005(12).

~~(7) [(5)]~~ "Employer-organized association health benefit plan" means a health benefit plan issued to an employer-organized association or trust established by one (1) or more employer-organized associations.

~~(8) [(6)]~~ "Commissioner" is defined by 304.1-050(1).1 ~~["Executive director" means the Executive Director of the Office of Insurance.~~

~~(7)]~~ "Health benefit plan" is defined by ~~[in]~~ KRS 304.17A-005(22).

~~(9) [(8)]~~ "HIPAA" means Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191.

~~[(9)]~~ "Department" is defined by KRS 304.1-050(2)] ~~["Office" means the Office of Insurance.]~~

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

- At the time that it files this staff suggested amendment the agency needs to file one (1) updated copy of its RIA that corrects its response to Question 8.

FISCAL NOTE

- At the time that it files this staff suggested amendment the agency needs to file one (1) copy of a corrected Fiscal Note that includes the correct regulation number at the top.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 17:470

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 requirements relating to an insurer's provision of health benefit plan information to an employer-organized association to the extent the release of this information is allowed under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17 A-846, which requires the Commissioner of the Department of Insurance to implement its provisions and specify the health benefit plan information to be provided, including information to verify eligibility and participation of groups and detailed claims information to employer-organized associations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner may make reasonable rules and 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-846 requires the Commissioner to promulgate administrative regulations to implement its provisions and specify the health benefit plan information to be provided by an insurer offering a health benefit plan to an employer-organized association.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing guidelines for the provision of health benefit plan information to an employer-organized association which may request information regarding its health benefit plans to the extent allowed under the Health Insurance Portability and Accountability Act (HIP AA) and as required under KRS 304.17 A-846.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are technical in nature and ensure the drafting requirements set forth in Chapter 13A are met.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR17:470
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-846
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no fiscal impact known to be associated with this administrative regulation.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.
 - (c) How much will it cost to administer this program for the first year? No cost is expected.
 - (d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

- (4) Revenues (+/-): Neutral
- (5) Expenditures (+/-): Neutral
- (6) Other Explanation:

Andy Beshear
Governor

Rebecca W. Goodman
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
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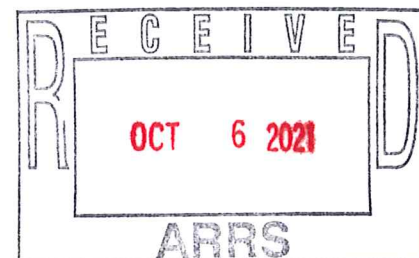
Kent A. Chandler
Chairman

Amy D. Cubbage
Vice Chairman

Marianne Butler
Commissioner

October 6, 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: 807 KAR 5:015: Access and attachments to utility poles and facilities.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 807 KAR 5:015, the Public Service Commission proposes the attached amendment to 807 KAR 5:015.

Sincerely,

A handwritten signature in blue ink, appearing to read "J.E.B. Pinney".

J.E.B. Pinney, Executive Advisor
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 10/6/2021 9:18 AM

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission**

807 KAR 5:015. Access and attachments to utility poles and facilities.

RELATES TO: KRS Chapter 278, 47 ~~U.S.C.~~~~[U.S.C.A.]~~ 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), ~~278.5464[278.040(3), HB 320 (2021)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. ~~KRS 278.5464[House Bill 320 from the 2021 Regular Session of the General Assembly]~~ requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. ~~[§]~~224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments,~~[§]~~ and addresses complaints~~[complaint's]~~ regarding pole attachments within 360 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

Section 1. Definitions. (1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and

(b) Does not mean[- The term "broadband internet provider" does not include] a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(3) "~~Communications~~~~[Communication]~~ space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing

wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Red tagged pole" means a pole that a utility that owns or controls the pole ***that***:

(a) ***is*** designated for replacement based on the ***pole's[poles]*** non-compliance with an applicable safety standard;

(b) ***is*** designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or

(c) Would have needed to ***be replaced[replace]*** at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; ***and***

(b) Does not mean[. The term "telecommunications carrier" does not include] a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to Provide Access to Utility Poles and Facilities. (1) Except as established in paragraphs (a) ***through[, (b), and]*** (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis ***if[where]*** there is insufficient capacity or for reasons of safety, reliability, ***or[and]*** generally applicable engineering purposes.***[:]***

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting.***[:and]***

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, **terms[charges]**, or conditions for access not contained in its tariff:

(a) The rates, **terms[charges]**, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole Attachment Tariff Required. (1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or **generally applicable** engineering standards.

(5) **Overlashing.** ~~[The tariff shall not prohibit overlashing except if doing so is justified by lack of capacity, safety or reliability concerns, or applicable engineering standards.]~~

(a) A utility shall not require prior approval for:

1. An existing attacher that overlashes its existing wires on a pole; or

2. A[for] third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) 1. A utility shall[may] not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation.

2. A utility shall[may] not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher, unless failing to fix the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c) 1. A utility shall not[may] require [no]more than thirty (30) days' advance notice of planned overlashing.

2. If a utility requires advance notice for overlashing, then the utility shall[must] include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attacher.

3. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it ~~shall~~**[must]** provide specific documentation of the issue to the party seeking to overlash within the thirty (30) day advance notice period and the party seeking to overlash ~~shall~~**[must]** address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

(d)1. A party that engages in overlashing ~~shall be~~**[is]** responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

2. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party ~~shall be~~**[is]** responsible at its expense for any necessary repairs.

(e) An overlashing party shall notify the affected utility within fifteen (15) days of completion of the overlash on a particular pole.

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash.

2. The utility ~~shall have~~**[has]** fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash.

3. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations.

4. The utility ~~shall~~**[may]** either:

a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations; or

b. Require the overlashing party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

(6) Signed standard contracts or licenses for attachments ~~allowed~~**[permitted]** by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(7) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022.

Section 4. Procedure for New Attachers to Request Utility Pole Attachments. (1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attacher's pole attachment application if the application is incomplete.

2. A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

3. If the utility notifies a new attacher that its attachment application is not complete, then **the utility shall state[~~it must specify~~]** all reasons for finding it incomplete.

4. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (10)(~~b~~**[e]**) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(~~b~~**[e]**), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within ~~sixty~~ **(60)[60]** days in the case of larger orders as described in subsection (7) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness~~;~~**[,]** before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as established in subsection (7) of this section);

3. State that any entity with an existing attachment may modify the attachment. **Modification shall be** consistent with the specified make-ready before the date established for completion;

4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, **which shall be completed as** specified pursuant to subparagraph 1. of this paragraph; and

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established in subsection (7) of this section).

3. State that any entity with an existing attachment may modify the attachment. **Modification shall be** consistent with the specified make-ready before the date established for completion;

4. State that the utility may assert the utility's right to **up to** fifteen (15) additional days to complete make-ready;

5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, **which shall be completed as** specified pursuant to subparagraph 1. of this paragraph; and

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) Final invoice.

(a) Within a reasonable period, not to exceed **120[ninety (90)]** days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.

3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

(7) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or zero and five-tenths (0.5) percent of the utility's poles in the state;

(b) A utility may add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky;[.]

(c) A utility may add up to forty-five (45) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky;[~~7~~]

(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky;[~~7~~]

(e) A utility may treat multiple requests from a single new attacher as one (1) request if the requests are submitted within thirty (30) days of one another; and

(f) As soon as reasonably practicable, but no less than sixty (60) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a high volume request.

(8) Deviations from make-ready timeline.

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice **specified[described]** in subsection (4) of this section **as[is]** sent by the utility (or up to 105 days in the case of larger orders **specified[described]** in subsection **(6)(b)[6(b)]** and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

(9) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, **which shall be completed** as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, **which shall be completed** as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(10) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this

section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex~~[z]~~ **and the new attacher shall~~[may]~~ not proceed with the affected proposed one-touch make-ready.**

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved **by the pole owner** and if the attacher has provided **at least** fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready. **The new attacher shall use~~[using]~~ a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.**

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

Section 5. Contractors for Survey and Make-ready. (1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher ***shall[must]*** use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines.

(b) The contractor has acknowledged that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of ~~a~~**[an electric]** utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Section 6. Notice of Changes to Existing Attachers. (1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection shall be considered unless requested or authorized by the commission.

(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a devia-

tion shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments **and the transfer shall be** at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

- (a) The full name and post office address of the complainant;
- (b) The full name and post office address of the defendant;
- (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and
- (d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) How filed.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8; **and** [.]

(b) **[Notwithstanding 807 KAR 5:001, Section 8(3),]** The filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may

require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant has the burden of establishing it is entitled to the relief sought.

(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:

1. There is a dispute regarding the condition of the pole at the time it was replaced; and
2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint **regarding the rates, terms, or conditions for**~~[alleging that a person or entity was unlawfully denied]~~ access to a utility's pole, duct, conduit, or right-of-way within 180 days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 360 days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 360 days upon agreement of the complainant and defendant and approval of the commission.

CONTACT PERSON: John E.B. Pinney, executive advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email Jeb.Pinney@ky.gov.



Andy Beshear
Governor

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Deputy Secretary

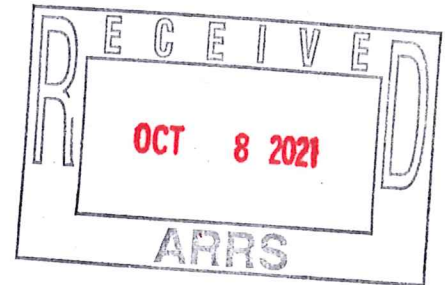
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October 8, 2021



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

Re: 810 KAR 4:040

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the administrative regulation 810 KAR 4:040, the Kentucky Horse Racing Commission proposes the attached suggested substitute to this administrative regulation.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Jennifer Wolsing
General Counsel

TEAM
KENTUCKY

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SUGGESTED SUBSTITUTE

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission**

810 KAR 4:040. Running of the race.

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in paddock not to be touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier; ~~or~~
- (9) Outrider; or
- (10) Jockey.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post, and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

- (1) All horses shall parade and carry their declared weight from the paddock to the starting post.

- (a) The parade shall pass the stewards' stand.
- (b) After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post.
- (c) With the permission of the stewards, a horse may be excused from parading with the other horses.

(2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.

- (3) If a jockey is thrown on the way to the post:

- (a) The jockey shall remount at the point at which thrown; or
- (b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

- (1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.

- (2) The starter shall unload the horses in the gate when instructed by the stewards if:

- (a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and

- (b) The horse is not immediately taken in hand by the outrider and brought back for reloading.

- (3) The starter shall reload the horses in their proper order upon order of the stewards.

- (4) The starter shall report all causes of delay to the stewards.

- (5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

- (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

- (a) Immediately post the "inquiry" sign;

- (b) Advise the public to hold all pari-mutuel tickets; and

- (c) Determine, after consulting with the starter and viewing the race replay, whether or not the horse was precluded from obtaining a fair start.

- (2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a pari-mutuel entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.

- (3) Stakes fees for a ruled nonstarter shall be refunded to the owner.

- (4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the

post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

Section 12. Fouls.

- (1) A leading horse if clear is entitled to any part of the track.
- (2) If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul.
- (3) If a jockey strikes another horse or jockey, it is a foul.
- (4) If, in the opinion of the stewards, a foul alters the finish of a race, an offending horse may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding.

- (1) A jockey shall make a best effort to control and guide his or her mount in such a way as not to cause a foul.
- (2) The stewards shall take cognizance of riding that results in a foul, irrespective of whether or not an objection is lodged.
- (3) If, in the opinion of the stewards, a foul is committed as a result of a jockey not making a best effort to control and guide his or her mount to avoid a foul, whether or not intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out.

- (1) Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time, while in compliance with Section 15 of this administrative regulation.
- (2) A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money.
- (3) A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards.
- (4) Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse.
- (5) If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Riding Crops.

- (1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.
- (2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.
- (3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.
- (4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

(5) Allowable Uses of a Riding Crop. **[include the following:]**

(a) The riding crop may ~~[shall only]~~ be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race.**[:]**

(b) If necessary during a race, a riding crop may be used in a backhanded or underhanded fashion from the 3/8 pole to the finish line. This use **shall[will]** not be counted toward the use of the crop six (6) times in the overhand fashion, as allowed in **subsection (6) of this section [15(6)]**. **[At no point shall]** The use of the crop **shall not** rise above the rider's helmet **at any point**.~~[for safety, correction, and encouragement.~~

~~(6) A rider who uses a riding crop[:]~~

(c) **A riding crop may also be used if:**

1. [Tapping][shall:

(a) Show] The horse **is tapped** on the shoulder with the crop in the down position while both hands are holding onto the reins~~[riding crop]~~ and **both hands are touching the neck of**~~[give]~~ the horse; and

2. [(d) Showing or waving] The crop **is shown or waved** without contact with the horse and **[giving]** the horse **is given** time to respond before **[striking]** the horse **is struck**.**[:]**

(6) [Use of]

~~(b) Having used] [the] A~~ riding crop **may be used** to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse **[is allowed]**, with the following exceptions:

(a) Use of the crop in any manner, other than underhanded or backhanded as **established[set forth]** in **subsection [Section 15](5)(b) of this section**, or tapping on the shoulder as **established[set forth]** in **subsection [Section 15](5)(c) of this section**, resulting in more than six (6) times in the overhand manner;

(b) Use of the crop and making contact with the horse more than two (2) successive strikes without allowing~~[give]~~ the horse a chance to respond~~[:][before using it again; and]~~

(c) Use of the crop with the rider's wrist above helmet height;

(d) Use of the crop [

(e) Use the riding crop in rhythm with the horse's stride.]

(7) A riding crop shall not be used to strike a horse:

(a) on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;

(e) Use of the crop ~~[hind quarters except if necessary to control a horse;~~

(b) during the post parade or after the finish of the race except if necessary to control the horse;

(f) Excessive or brutal use of the crop causing injury to the horse [

(c) Excessively or brutally];

(g) Use of the crop [

(d) causing welts or breaks in the skin;

(h) Use of the crop [

(e) if the horse is clearly out of the race or has obtained its maximum placing; and

(i) Use of the crop [

(f) Persistently] even though the horse is showing no response ~~[under the riding crop]~~.

(7) ~~[(8)]~~ A riding crop shall not be used to strike another person.

(8) ~~[(9)]~~ After the race, a horse **shall** ~~[may]~~ be subject to inspection by a racing official or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.

(9) ~~[(10)]~~ **A [Use of the] crop may be used** during workouts **if the [shall be permitted so long as such]** use does not violate **subsection (6)[section 6](c) through (i) of this section**.

~~(10)~~~~(11)~~ The giving of instructions by any licensee that, if obeyed, would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.

~~(11)~~~~(12)~~ Only padded/shock absorbing riding crops ~~that~~~~which~~ have not been modified in any way may be carried in a race.

~~(12)~~~~(13)~~ During a race, if a jockey rides in a manner contrary to this rule, the stewards shall impose a minimum fine of \$500, a minimum suspension of three (3) days, or both, if in the opinion of the stewards, the violation is egregious or intentional. Factors in determining whether a violation is egregious **shall** include at least the following:

(a) Recent history of similar violations;

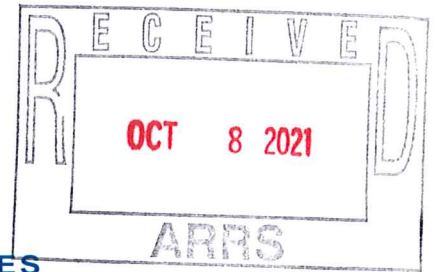
(b) Number of uses over the total and consecutive limits described in this section; and

(c) Using the crop in the overhanded position more than six (6) times.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel~~[Parimutuel]~~ Payoff. Once satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and KAR Title 810~~[Titles 810 and 811]~~, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel~~[parimutuel]~~ wagering purposes shall be final, and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel~~[parimutuel]~~ wagering.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax: +1 (859) 246-2039, email jennifer.wolsing@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES

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Eric C. Friedlander
Secretary

October 8, 2021

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

Re: 921 KAR 1:400

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 1:400, the Department for Income Support proposes the attached LRC suggested substitute. If you have any questions, please feel free to contact Mary Sparrow at MarySparrow@ky.gov.

Sincerely,

Krista Quarles
Policy Specialist
Office of Legislative and Regulatory Affairs

Enclosure



SUGGESTED SUBSTITUTE – ORDINARY ONLY

Final Version: 10/6/2021 3:03 PM

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Income Support

Division of Child Support Enforcement

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710-~~205.802~~[~~205.800~~], 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and [necessary] to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate **[and adopt]** administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

- (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; ~~[or]~~
- (b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other **child support obligation** form incorporated by **reference in an administrative[a]** regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430, and 454.220.

(5) In addition to the deductions **established[specified]** in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as **established[specified]** in KRS 403.212(2)(h[g])3, shall be calculated by using:

- (a) That parent's portion of the total support obligation as indicated on the worksheet, if:
 - 1. There is a support order; and
 - 2. A copy of the child support obligation worksheet is obtained; or
- (b) 100 percent of the income of the parent with whom the prior born child resides, if:
 - 1. There is no support order;
 - 2. There is a support order, but no support obligation worksheet; or
 - 3. A worksheet cannot be obtained.
- (6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a non-custodial parent, or obligor, the cabinet shall:
 - (a) Complete service of process; or
 - (b) Document an unsuccessful attempt to serve process.
- (7) If service of process has been completed, the cabinet shall, if necessary:
 - (a) Establish paternity;
 - (b) Establish a child support or medical support obligation; or
 - (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.
- (8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
 - (b) There is no existing order of support for the child;
 - (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
 - (d) The noncustodial parent's, or obligor's, address is known.
- (2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:
- (a) Send to the custodial parent or nonparent custodian forms:
 - 1. CS-133, Custodial Parent Information Request;
 - 2. CS-132, Child Care Expense Verification; and
 - 3. CS-136, Health Insurance Information Request;
 - (b) Send to the custodial parent the CS-65, Statement of Income and Resources;
 - (c) Send to the noncustodial parent forms:
 - 1. CS-64, Noncustodial Parent Appointment Letter;
 - 2. CS-65, Statement of Income and Resources;
 - 3. CS-132, Child Care Expense Verification; and
 - 4. CS-136, Health Insurance Information Request;
 - (d) Send a CS-130, Income Information Request, to the employer of the:
 - 1. Custodial parent; or
 - 2. Noncustodial parent, or obligor; and
 - (e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.
- (3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall **establish[set]** the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to re-request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine **that[the]** circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as **established[defined]** in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

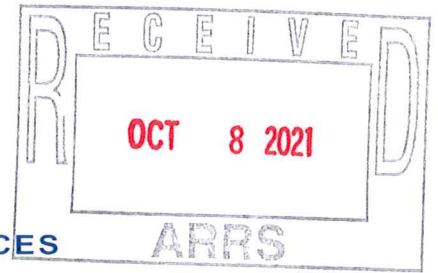
Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", 6/2021 [42/45];
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
- (d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", 6/2021 [3/40];
- (e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", 6/2021 [3/40];
- (f) "CS-79, Notification of Review Determination", 3/10;

- (g) "CS-84, Administrative Subpoena", 8/18;
- (h) "CS-130, Income Information Request", 3/10;
- (i) "CS-132, Child Care Expense Verification", 3/10;
- (j) "CS-133, Custodial Parent Information Request", 3/10; and
- (k) "CS-136, Health Insurance Information Request", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/regs.aspx> [<https://chfs.ky.gov/agencies/debs/Pages/default.aspx>].

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES

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Eric C. Friedlander
Secretary

October 8, 2021

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

Re: 921 KAR 2:015 suggested amendment and 922 KAR 1:380 suggested substitute

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 2:015 and 922 KAR 1:380, the Department for Community Based Services proposes the attached LRC suggested amendment and suggested substitute. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Enclosure

10/8/21

SUGGESTED AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services**

921 KAR 2:015. Supplemental program for persons who are aged, blind, or have a disability.

Page 1

RELATES TO

Line 9

After "42 U.S.C.", insert "415(i)".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 14

After "and maintain the", insert "health".

Delete "welfare".

Page 22

Section 17(2)

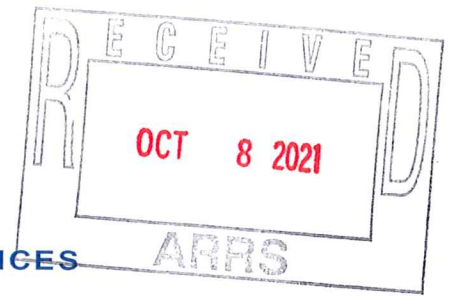
Line 18

After "4:30 p.m.", insert the following:

This material may also be viewed on the department's Web site at:
<https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.



CABINET FOR HEALTH AND FAMILY SERVICES



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Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 922 KAR 1:300 agency amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:300, the Department for Community Based Services proposes the attached agency amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Enclosure

Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Protection and Permanency

922 KAR 1:300. Standards for child-caring facilities.

Page 13

Section 3(6)(b)

Line 10

After "of age" insert the following:

unless the agency has an agreement with a college or university to
employ students

Page 14

Section 3(6)(i)2.a.

Lines 11 - 13

After "investigation", delete the following:

or, if an investigation has exceeded forty-five (45) days, when the
originating Service Region Administrator and director of the Division of
Protection and Permanency consent in writing

Page 23

Section 5(1)(d)3.a.

Line 20

After "to the", insert "professional".

Delete "physician".

Page 24

Section 5(1)(f)

Line 8

After "physician", insert the following:

, or other licensed qualified health professional,

Page 25

Section 5(1)(j)

Line 6

After "physician", insert the following:

, or other licensed qualified health professional,

Page 26

Section 5(1)(r)

Line 15

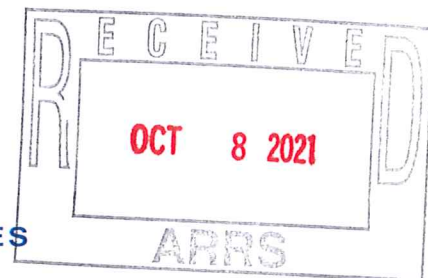
After "shall be", insert the following:
stored in a manner that is



CABINET FOR HEALTH AND FAMILY SERVICES

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Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 921 KAR 2:015 suggested amendment and 922 KAR 1:380 suggested substitute

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 2:015 and 922 KAR 1:380, the Department for Community Based Services proposes the attached LRC suggested amendment and suggested substitute. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Sarah A. Cooper
Staff Assistant
Office of Legislative and Regulatory Affairs

Enclosure

10/8/21

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

RELATES TO: KRS 2.015, 199.011, 199.640, 199.645-199.670, 214.034~~(5)~~~~(4)~~, 600.020, 610.110, 620.140 ~~[615.040, 615.030, 615.040]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)~~[-199.645, 615.050]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640~~[-](5)~~ requires the Cabinet for Health and Family Services to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for emergency **shelter** ~~[service]~~ child-caring facilities.

Section 1. Definitions. (1) "Child" is defined by ~~[at]~~ KRS 199.011(4) and~~;~~ 600.020(9)~~(8)~~, and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person who meets the exceptions to the age of majority in accordance with KRS 2.015 [610.110(6)].

(2) "Crisis intervention unit" means a unit operated to serve a child in need of short-term intensive treatment and to avoid risk of placement to a higher level of care.

(3) "Emergency shelter" means a group home or similar homelike facility that provides temporary or emergency care for children and has adequate staff and services to meet the needs of each resident child.

(4) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving ~~[his]~~ emotional conflict or a behavioral disorder.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for an emergency **shelter** child-caring facility shall be administered as established in 922 KAR 1:305.

(2) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:300, except for the following:

- (a) Section 5(1)(d)2;
- (b) Section 5(1)(i)1, 3, and 4;
- (c) Section 5(1)(k);
- (d) Section 5(1)(n);
- (e) Section 5(1)(o);
- (f) Section 7(1)(e);
- (g) Section 7(2)(a);
- (h) Section 7(2)(b)3 and 4;
- (i) Section 7(2)(c);
- (j) Section 7(3);
- (k) Section 7(4)(a);

- (l) Section 7(5); and
- (m) Section 7(6)(c), (d), (e), and (g).

Section 3. Emergency Shelter Child-caring Facility Services. (1) An emergency shelter child-caring facility that is part of a program offering a treatment service shall maintain ~~be in~~ compliance with 922 KAR 1:390, Section 4.

(2) If an emergency shelter care program is part of a larger organization providing other child-caring or child-placing services in accordance with 922 KAR 1:310, there shall be a person designated to serve as coordinator of the emergency shelter child-caring facility.

(3) **(a) Except as provided by paragraph (b) of this subsection,** the facility shall obtain the following information from a child's custodian during intake:

1. (a) Commitment order, temporary custody order, or signed voluntary admission form; **and**

2. (b) Basic identifying information on the child including:

a. (1) Name and birthdate;

b. (2) Address, and name and address of parent or guardian;

c. (3) Last school attended and grade level; and

d. (4) Medical information, if known; **and**

(b) (c) If a child is a walk-in to the program and no custodian is available, a facility shall obtain a placement agreement with the custodian within seventy-two (72) hours.

(4) Discharge.

(a) The facility shall have written policy and procedure describing conditions under which a child may be discharged.

(b) Discharge planning shall begin immediately upon admission of a child.

(c) The facility shall prepare a written discharge summary within five (5) days following the date of discharge. A copy shall be provided to the legal custodian.

Section 4. Crisis Intervention Unit. An emergency service in a crisis intervention unit shall be provided as established in 922 KAR 1:390, Section 5.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.