

### EDUCATION and WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

Andy Beshear

Governor

Jacqueline Coleman

Lieutenant Governor

Office of Adult Education 500 Mero Street, 5<sup>th</sup> Floor Frankfort, KY 40601 502-573-5114 Mary Pat Regan
Acting Secretary

**Marty Hammons** 

Commissioner

December 2, 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 13 KAR 3:010, 13 KAR 3:020, 13 KAR 3:030, 13 KAR 3:040, 13 KAR 3:050, and 13 KAR 3:060, the Office of Adult Education proposes the attached suggested amendments to 13 KAR 3:010, 13 KAR 3:020, 13 KAR 3:030, 13 KAR 3:040, 13 KAR 3:050, and 13 KAR 3:060.

Sincerely,

Natalie Cummins

**GED®** Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



# Office of Adult Education (Kentucky Skills U) (Amendment)

#### 13 KAR 3:010. GED® Testing Program.

RELATES TO: KRS 151B.403 [KRS 164.0064(1)(a)]

STATUTORY AUTHORITY: KRS 151B.403 [KRS 164.0064(1)(a)], 151B.408 [164.0234]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.408 [KRS 164.0234(1)] requires the Office of Adult Education (Kentucky Skills U [Adult Education] Program) to promulgate necessary administrative regulations and administer a statewide adult education [and literacy] system. KRS 151B.403(2)[151B.408] [KRS 164.0064] requires that a high school equivalency diploma be issued upon passage of a qualifying[the]test that is aligned with the College and Career Readiness Standards for adult education, or any other standards adopted by the federal Office of Career, Technology, and Adult Education[given by the Kentucky Skills U [Adult Education] Program[Program's] approved testing centers in conformance with requirements of the GED® Testing Service] and authorizes the Office of Adult Education (Kentucky Skills U) [Adult Education] to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate score report[transcript]. This administrative regulation establishes the procedure for testing an adult for the GED® diploma.

Section 1. <u>Definitions. (1) "GED® Diploma" means the High School Equivalency</u> <u>Diploma required by this administrative regulation.</u>

(2) "Kentucky Skills U" means the adult education program within the Office of Adult Education.

**Section 2.** Test Purpose. The GED® test shall provide a valid means of measuring the educational achievement of an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates. The test shall cover:

- (1) Writing;
- (2) Social studies;
- (3) Science;
- (4) Reading; and
- (5) Mathematics.

Section 2. Test Centers. Official GED® testing centers shall be established under agreement with the GED® Testing Service. Kentucky Skills U [Adult Education] shall

authorize the location of these centers so that they provide applicants with sufficient access and are able to meet the expected testing volume.

Section 3. Test Scores. In order for an applicant to be issued a Commonwealth of Kentucky High School Equivalency Diploma and an official GED® transcript, an applicant shall achieve the minimum passing standard on the Official GED® test as set by GED® Testing Service.

Section 4. Commonwealth of Kentucky High School Equivalency Diploma. Kentucky <u>Skills U</u> [Adult Education] shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 13 KAR 3:050.

Section 5. Test Fees. (1) The GED® test shall be offered at official GED® testing centers at a fee set and collected by GED® Testing Service.

- (2) A request for a duplicate transcript or diploma from Kentucky <u>Skills U</u> [Adult Education] shall:
  - (a) Be in writing;
  - (b) Carry the signature, birth date, and Social Security number of the test-taker; and
  - (c) Be accompanied by the payment of:
- 1. A <u>fifteen (15)</u> [ten (10)] dollar processing fee assessed for the issuance of a duplicate transcript request; or
- 2. A <u>thirty (30)</u> [<del>twenty-five (25)</del>] dollar fee assessed for the issuance of a duplicate diploma, <u>to include a duplicate transcript.</u>

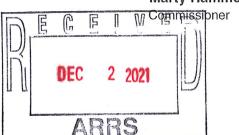


### EDUCATION and WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

Andy Beshear Governor

Jacqueline Coleman Lieutenant Governor Office of Adult Education 500 Mero Street, 5<sup>th</sup> Floor Frankfort, KY 40601 502-573-5114 Mary Pat Regan Acting Secretary

**Marty Hammons** 



December 2, 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 13 KAR 3:010, the Office of Adult Education proposes the attached agency amendment to 13 KAR 3:010.

Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



# Agency Amendment Education and Workforce Development Cabinet Office of Adult Education

#### 13 KAR 3:010. GED® Testing Program.

Page 2 Section 5(2)(c)1. Line 20

After "1. A", insert "ten (10)". Delete "fifteen (15)".

Page 2 Section 5(2)(c)2. Line 23

After "2. A", insert "twenty-five (25)". Delete "thirty (30)".



## EDUCATION and WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

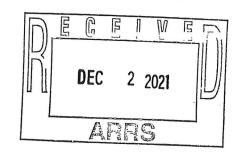
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Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



#### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

#### Office of Adult Education (Kentucky Skills U)

#### (Amendment)

13 KAR 3:020. Provision of instruction for individuals sentenced by a court to participate in educational programs.

RELATES TO: <u>KRS 151B.408</u> [<del>KRS 151B.023, 151B.110</del>], 533.200, 533.210 STATUTORY AUTHORITY: KRS **[13A.100,]** <u>151B.408</u> [<del>151B.023, 151B.110</del>], 533.210

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 533.200 allows a judge to sentence individuals without high school credentials who are convicted of a crime by a court to participate in a program designed to improve their reading, living and employment skills.] KRS 533.210 requires the Office of Adult Education to promulgate administrative regulations relating to the conduct of [delegates responsibility for administering] the program described in KRS 533.200, including the costs of participation[to the Office of Adult Education] [Department for Adult Education and Literacy]. KRS 151B.408 requires [KRS 151B.023 and 151B.110] [delegates to] the office [Education and Workforce Development Cabinet, Office of Adult Education] [Department for Adult Education and Literacy and the State Board for Adult and Technical Education] to promulgate necessary administrative regulations for administering[the responsibility for] adult education programs and services. This administrative regulation describes the method of providing services in accordance with KRS 533.200 and 533.210 [to this population], the cost of individual participation in the program, and the qualifications [manner of licensing] of teachers providing instruction.

Section 1. Instructional Program, Costs, Licensing. There shall <u>not</u> be <u>any[no]</u> costs to students ordered by the court to attend <u>a</u> [the] <u>Kentucky Skills U instructional</u> program described in KRS 533.200. The program services shall be services presently provided students enrolling in <u>Kentucky Skills U</u> [adult education] programs. [<u>Licensing and</u>]

Qualifications of instructors shall be determined by <u>Kentucky Skills U</u> [the local program providers]. <u>These minimum qualifications are:</u>

- Bachelor's degree. A degree in education or a content-related field is preferred.
- A score of NRS (National Reporting System) Level 6 or higher on at least one content area of the Test of Adult Basic Education (TABE).



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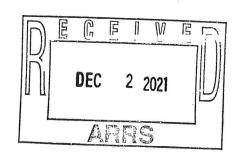
Acting Secretary

**Marty Hammons** 

Commissioner

December 2, 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 13 KAR 3:010, 13 KAR 3:020, 13 KAR 3:030, 13 KAR 3:040, 13 KAR 3:050, and 13 KAR 3:060, the Office of Adult Education proposes the attached suggested amendments to 13 KAR 3:010, 13 KAR 3:020, 13 KAR 3:030, 13 KAR 3:040, 13 KAR 3:050, and 13 KAR 3:060.

Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



#### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

#### Office of Adult Education (Kentucky Skills U)

(Amendment)

13 KAR 3:030. Qualifications for progressing satisfactorily through a GED® preparation program.

RELATES TO: KRS 151B.408 [KRS 151B.110], 151B.403 [151B.125], 161.011

STATUTORY AUTHORITY: KRS 151B.408 [KRS 151B.110], 161.011

requires [delegates to] the Office of Adult Education [State Board for Adult and Technical Education] to promulgate administrative regulations establishing requirements [the responsibility] for adult education programs and services in Kentucky. KRS 161.011 requires [authorizes] the Office of Adult Education [State Board for Adult and Technical Education] to define progressing satisfactorily through a High School Equivalency Diploma [the GED® Preparation] Program for the purposes of minimum qualifications for local school district classified employment positions. This administrative regulation establishes requirements for "progressing satisfactorily through a High School Equivalency Diploma Program." [provides the necessary definition.]

Section 1. <u>Definitions. "GED® Diploma" means the High School Equivalency</u>

<u>Diploma required by this administrative regulation.</u>

(2) "Kentucky Skills U" means the adult education program within the Office of Adult Education.

<u>Section 2.</u> Satisfactory Progress Requirement. Making progress toward obtaining a [<u>General Educational Development</u>] GED $\underline{\$}$  Diploma <u>shall require[means]</u>:

- Enrollment in <u>a Kentucky Skills U</u> [an Adult Education] program on an appropriate instructional level as determined by a reliable, commercially prepared, standardized test designed for adult students;
- **2.** Monthly verification of attendance by the local **Kentucky** Skills U [an adult education] program official; and
- 3. A [satisfactory progress rating on an annual] report documenting student hours of participation, along with their pre- and post-assessment results. The report shall[will] be submitted to the local school superintendent for determination of satisfactory progress [that is based upon periodic testing results by adult education teachers]. If the individual meets the criteria in subsections (1)-(3) of this section, the superintendent shall determine that satisfactory progress has been made.



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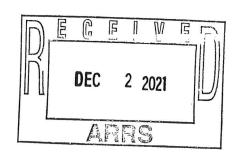
**Acting Secretary** 

**Marty Hammons** 

Commissioner

December 2, 2021

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Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



# EDUCATION AND WORKFORCE DEVELOPMENT CABINET Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:040. GED Incentives Program.

RELATES TO: KRS 151B.402, 151B.408 [KRS 151B.023(1)][, 151B.402]-[151B.127] [, 151B.408]-[151B.410]

STATUTORY AUTHORITY: KRS 151B.402 [KRS 151B.127(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.402 [KRS 151B.127] requires the Office of Adult Education [Department for Adult Education and Literacy], in conjunction with the Education and Workforce Development Cabinet [Council on Postsecondary Education], to promulgate administrative regulations for an incentive program provided to full-time employees [(and their employers)] who complete a High School Equivalency Diploma [general education development] [GED® diploma] [(GED)] within one (1) year, and their employers [, and to their employers]. This administrative regulation prescribes the policies, activities, and procedures required for participants in this incentive program.

- Section 1. <u>Definitions. "GED® Diploma" means the High School Equivalency</u> <u>Diploma required by this administrative regulation.</u>
- (2) "Kentucky Skills U" means the adult education program within the Office of Adult Education.
- **Section 2.** Learning Contract Requirement. A learning contract between an eligible employee, the employer, and the adult education instructor shall be developed, in accordance with KRS 151B.402(2)(a) [KRS 151B.127(1)(a)]. The local adult education program shall:
- (1) Ensure that  $\underline{a}$  learning contract [form KYSU-29] [DAEL-29][, incorporated by reference,] is fully completed and signed by the parties;
- (2) Retain the original learning contract **[form]** for a period of three (3) years after the employee's completion of the program;
- (3) No later than ten (10) days after the final signature is obtained on the learning contract, submit a copy to:
  - (a) The employee;
  - (b) The employer; and
  - (c) Kentucky Skills U [The Department for Adult Education and Literacy].

Section <u>3.[2.]</u> Attendance Reports. A local <u>Kentucky Skills U</u> [adult education] program official shall submit monthly attendance reports [, using form <u>KYSU-30]</u> [DAEL-30], [incorporated by reference,] to the <u>Office of Adult Education</u> [Department for Adult Education and Literacy] and the employer, in compliance with <u>KRS 151B.402(2)(b)</u> [KRS 151B.127(1)(b)]. The local <u>Skills U</u> [adult education] program shall:

- (1) Use sign-in and sign-out sheets to verify the information reported on attendance reports;
- (2) Retain copies of sign-in and sign-out sheets for three (3) years following the employee's completion of this program; and
- (3) Provide copies of sign-in and sign-out sheets to <u>Office of Adult Education</u> [Department for Adult Education and Literacy] staff upon request.

Section 4.[3.] Final Report. (1) The local Skills U [adult education] program shall:

- (a) Complete a final report[, using form <u>KYSU-31</u>] [DAEL-31], [incorporated by reference,] in compliance with <u>KRS 151B.402(2)(c)</u> [KRS 151B.127(1)(c)];
  - (b) Retain the original final report ; and
- (c) No later than ten (10) days after the final report is created, submit a copy of the final report to:
  - 1. The employee;
  - 2. The employer;
  - 3. The Kentucky Revenue Cabinet; and
  - 4. The Office of Adult Education [The Department for Adult Education and Literacy].
- (2) The employee shall provide the final report to a public postsecondary institution when applying for a tuition discount as provided in <a href="KRS 151B.402">KRS 151B.402</a> [KRS 151.127(2)(b)].
- (3) The employer shall provide the final report to the Kentucky Revenue Cabinet when applying for a tax credit as provided in <u>KRS 151B.402</u> [KRS 151B.127(3)].

[Section 4. Incorporation by Reference. (1) The following information is incorporated by reference:

- (a) "GED-Incentive Program Learning Contract (KYSU-29)] [(DAEL-29)][", 10/26/00 edition, Education and Workforce Development Cabinet] [Cabinet for Workforce Development][, Office of Adult Education] [Department for Adult Education and Literacy][;
- (b) "GED-Incentive Program Attendance Record (KYSU-30)] [, 7/10/01 edition", Education and Workforce Development Cabinet] [Cabinet for Workforce Development][, Office of Adult Education] [Department for Adult Education and Literacy][; and
- (c) "GED-Incentive Program Final Report (KYSU-31)] [(DAEL-31)] [, 7/10/01 edition", Education and Workforce Development Cabinet [Cabinet for Workforce

Development][, Office of Adult Education][Department for Adult Education and Literacy].

[(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Adult Education | [Department for Adult Education and Literacy], [Capital Plaza Tower] [, Fifth] [Third] [Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]



## EDUCATION and WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

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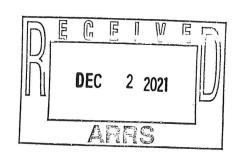
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Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education

Department for Workforce Investment

500 Mero Street

Mail Stop 5SC



#### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

Office of Adult Education (Kentucky Skills U)

(Amendment)

13 KAR 3:050. GED® eligibility requirements.

RELATES TO: KRS 158.135(1)(a), 158.143, 158.6455, <u>151B.403</u> [<del>164.0064</del>]

STATUTORY AUTHORITY: <u>KRS 151B.403</u> [<del>KRS 164.0064(1)</del>]

[that] the Office of Adult Education (Kentucky Skills U Program) [Kentucky Adult Education Program] within the Education and Workforce Development Cabinet [Council on Postsecondary Education] to promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma. KRS 151B.403(2) [KRS 164.0064(2)] requires that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education (OCTAE), which upon passing, shall entitle students to receive a high school equivalency diploma. [13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates.] This administrative regulation establishes the eligibility requirements for taking a High School Equivalency Diploma test as defined in this administrative regulation [the GED® test].

Section 1. **Definitions.** 

(1) <u>"GED® Diploma" means the High School Equivalency Diploma required by</u> this administrative regulation.

- (2) <u>"Kentucky Skills U" means the adult education program within the Office of Adult Education.</u>
- (3) "State agency children" or "state agency child" is defined by KRS 158.135(1)(a).

**Section 2.** Eligibility Requirements. The GED® test shall be administered to an applicant with a Kentucky address who:

- (1) Has reached his or her 19th birthday;
- (2)(a) Has reached his or her 18th birthday; and
- (b)1. Except as established in Section <u>3[2]</u> of this administrative regulation, has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;
  - 2. Is committed or placed in an adult correctional facility;
  - 3. Is enrolled in the Jobs Corps Program of Instruction; or
  - 4. Is enrolled in a National Guard Youth "ChalleNGe" program; or
  - (3)(a) Has reached his or her 17th birthday;
  - (b) Is considered a state agency child, as defined by KRS 158.135(1)(a); and
  - (c) Is approved for the GED® test by the local school superintendent.

Section <u>3.[2.]</u> Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides may waive the ninety (90) day school withdrawal provision of Section <u>2[1]</u>(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, family crisis, or other extenuating circumstances.

Section 4.[3.] Test Readiness. An applicant shall successfully complete and pass an official readiness test with the same passing scores required to pass the GED® test prior to taking the GED® test.



## EDUCATION and WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

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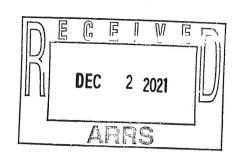
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Sincerely,

Natalie Cummins

GED® Administrator

Office of Adult Education
Department for Workforce Investment

500 Mero Street

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# EDUCATION AND WORKFORCE DEVELOPMENT CABINET Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College System institutions.

RELATES TO: KRS 151B.403 [KRS 164.0064], 151B.408 [164.0234]

STATUTORY AUTHORITY: KRS 151B.403[151B.408] [KRS 164.0064(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.403[151B.408] [KRS 164.0064(1)] requires the Office of Adult Education (Kentucky Skills U Program) [that the Kentucky Skills U] [Adult Education] [Program] within the Education and Workforce Development Cabinet to [Council on Postsecondary Education] promulgate administrative regulations to establish programs aligned with the College and Career Readiness Standards for Adult Education, or any other similar standards adopted by the federal Office of Career, Technical, and Adult Education, which upon successful completion, shall result in the issuance of a High School Equivalency Diploma. This administrative regulation establishes the criteria and conditions for the issuance of a high school equivalency diploma upon successful completion of credit hours at Kentucky Community and Technical College institutions in certain content areas.

Section 1. Definitions. (1) "Credit for prior learning" means college credit: (a) For the college-level knowledge and skills gained from non-college instructional programs or life experiences, including [but not limited to] credit awarded pursuant to 13 KAR 2:025 and KRS 164.2951(2)(e), employment, military experience, civic activities, and volunteer service; and

- **(b) That**[**. Credit**] is evaluated through nationally standardized exams in specific disciplines, challenge exams for specific courses at individual institutions, evaluations of non-college training programs, and individualized assessments.
  - (2) "Eligible candidate" means an individual that:
  - (a) Has reached his or her 19th birthday;
  - (b) Has not obtained a high school diploma or its equivalent;
  - (c) Meets the admission and placement requirements of 13 KAR 2:020; and
  - (d) Maintains a Kentucky address.
- (3) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).
- (4) "KYSU [KYAE]" means the Kentucky Skills U [Adult Education] program within the Education & Workforce Development Cabinet [Council on Postsecondary Education].

- (5) <u>"OCTAE"</u> ["OVAE"] means the U.S. Department of Education Office of <u>Career Technical</u> [Vocational] and Adult Education.
  - (6) "Successful completion" means:
- (a) Passing with a course grade greater than or equal to "C" constituting a 2.0 on a 4.0 scale; or
  - (b) Being awarded credit for prior learning as indicated on an official KCTCS transcript.
- Section 2. Course Requirements. (1) An eligible candidate shall qualify for a Commonwealth of Kentucky High School Equivalency Diploma upon successful completion of a minimum of three (3) credit hours in each of the following content areas as certified with an official KCTCS transcript:
  - (a) Written communication;
  - (b) Quantitative reasoning;
  - (c) Natural sciences; and
  - (d) Social and behavioral sciences.
- (2) KCTCS and KYSU [KYAE] shall review the competencies gained in entry-level courses in these content areas. Those entry-level courses with competencies that meet or exceed the skills demonstrated through passing the GED® exam at college ready level shall be eligible for the program and published in a list on the KYSU [KYAE's Web site] Web site.
- Section 3. Issuance of Commonwealth of Kentucky High School Equivalency Diploma. An eligible candidate shall provide the following to Kentucky <u>Skills U</u> [Adult Education] for the High School Equivalency Diploma to be issued:
- (1) Legal name, date of birth, social security number, phone number, email address, home address, list of eligible courses, and signature;
  - (2) A twenty-five (25) dollar non-refundable application and processing fee; and
- (3) An official KCTCS transcript documenting successful completion of the qualifying credit hours.

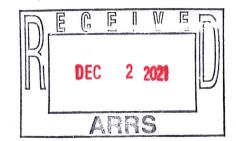


Mary Pat Regan Acting Secretary, Education and Workforce Development Cabinet

### 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



December 2, 2021

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

Re: 16 KAR 2:050. Certificates for teachers of exceptional children/communication disorders.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 2:050, the Education Professional Standards Board proposes the attached amendment to 16 KAR 2:050.

Sincerely

Cassie L. Trueblood

Policy Advisor and Special Counsel

#### **Staff-suggested Amendment**

# Final Version 11/22/2021 EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education and Professional Standards Board

16 KAR 2:050. Certificates for teachers of exceptional children/communication disorders.

Page 2

Section 1(2)

Line 19

After "completion of one", insert "(1)".

Page 4

Section 2(4)

Line 6

After "completion of one", insert "(1)".

Page 6

Section 3(5)

Line 1

After "completion of one", insert "(1)".



Mary Pat Regan
Acting 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

DEC 2 2021

December 2, 2021

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

Re: 16 KAR 4:020. Certification requirements for teachers of exceptional children.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 4:020, the Education Professional Standards Board proposes the attached amendment to 16 KAR 4:020.

Sincerely,

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 4:020. Certification requirements for teachers of exceptional children.

RELATES TO: KRS 157.200, 157.250, 161.020, 161.028(1), 161.030, [<del>161.100,</del>] 20 U.S.C. <u>1412; 34</u> C.F.R. 300.156 [<del>1221(e)</del>, <del>1400-1419</del>]

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.028 require the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate for all public\_school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

- Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) In accordance with Chapter 2 of Title 16 [XVII] of the Kentucky Administrative Regulations, the EPSB shall issue certificates for teaching exceptional children with one (1) or more of the disabilities defined in 34 C.F.R. 300.8 and 707 KAR 1:002.
- (2) A teacher holding the following certification shall be assigned to serve students with moderate and severe disabilities at any grade level: Certification for Teaching Exceptional Children Moderate and Severe Disabilities, Grades Primary through 12.
- (3) A teacher holding the following certification shall be assigned to serve students with learning and behavior disorders:
- (a) Certification for Teaching Exceptional Children Learning and Behavior Disorders, Grades 8 through 12; or
- (b) Certification for Teaching Exceptional Children Learning and Behavior Disorders, Grades Primary through 12.
- (4) A teacher holding the following certification shall be assigned to serve students with visual impairments at any grade level: Certification for Teaching Exceptional Children Visually Impaired, Grades Primary through 12.
- (5) A teacher holding the following certification shall be assigned to serve students with hearing impairments at any grade level:
- (a) Certification for Teaching Exceptional Children Hearing Impaired, Grades Primary through 12; or
- (b) Certification for Teaching Exceptional Children Hearing Impaired with Sign Proficiency, Grades Primary through 12.
- (6) A teacher holding the following certification shall be assigned to serve students with speech and language and communications disorders: Certification for Teaching Exceptional Children Communication Disorders, Grades Primary through 12.
- (7) A teacher holding the following certification shall be assigned to serve students with orientation and mobility disabilities: Certification for Teaching Exceptional Children Orientation

and Mobility Specialist.[Mild mental disability (MMD). A teacher holding the following certification shall be assigned to serve pupils with mild mental disabilities at any grade level:

- (a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or
- (b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).
  - (2) Orthopedic impairment (OI).
- (a) A teacher holding the following certification shall be assigned to serve pupils with orthopedic impairments at any grade level:
- 1. Certification for orthopedically handicapped or physically handicapped, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or
  - 2. Certification for teaching exceptional children.
- (b) A teacher possessing one (1) of the certificates identified in paragraph (a)2 of this subsection shall be assigned based on the learning characteristics and services needs of the child.
  - (3) Other health impairment (OHI).
- (a) A teacher shall be assigned to serve pupils identified as other health impaired at any grade level based upon the learning characteristics and services needs of the child; and
- (b) A teacher assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.
- (4) Specific learning disability (LD). A teacher holding the following certification shall be assigned to serve pupils with learning disabilities at any grade level:
- (a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or
- (b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).
- (5) Developmental delay (DD). A teacher holding the following certification shall be assigned to serve pupils with developmental delay at any grade level:
- (a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or
- (b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).
  - (6) Emotional-behavioral disability (EBD).
- (a) A teacher holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled at any grade level:
- 1. Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12);
- 2. Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or
  - 3. Certification for teaching exceptional children.

- (b) A teacher possessing one (1) of the certificates identified in paragraph (a)6 of this subsection shall be assigned based on the learning characteristics and services needs of the child.
- (7) Functional mental disability (FMD). A teacher holding the following certification shall be assigned to serve pupils with functional mental disabilities at any grade level:
  - (a) Certification for trainable mentally handicapped, grades K-12;
- (b) Certification for teaching the trainable mentally retarded, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);
  - (c) Certification for teaching the severely and profoundly handicapped at any grade level; or
  - (d) Certification for teaching the moderately and severely disabled, grades P-12.
  - (8) Multiple disabilities (MD).
- (a) A teacher shall be assigned to pupils at any grade level who have multiple disabilities consistent with the nature of each of the student's different disabilities and based on the learning characteristics and services needs of the child; and
- (b) A teacher assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.
  - (9) Deaf-blindness.
- (a) A teacher shall be assigned to serve pupils identified with deaf-blindness at any grade level based on the learning characteristics and services needs of the child; and
- (b) A teacher assigned to pupils identified with deaf-blindness shall possess a certificate for teaching exceptional children.
  - (10) Autism.
- (a) A teacher shall be assigned to serve pupils identified with autism at any grade level based on the learning characteristics and services needs of the child; and
- (b) A teacher assigned to pupils identified with autism shall possess a certificate for teaching exceptional children.
  - (11) Traumatic brain injury (TBI).
- (a) A teacher shall be assigned to serve pupils identified as having a traumatic brain injury at any grade level based on the learning characteristics and services needs of the child; and
- (b) A teacher assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.
- (12) Hearing impaired (HI). A teacher holding the following certification shall be assigned to serve pupils with hearing impairments at any grade level:
- (a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or
  - (b) Certification for teaching the hearing impaired, grades P-12.
- (13) Visually impaired (VI). A teacher holding the following certification shall be assigned to serve pupils with visual impairments at any grade level:
- (a) Certification for teaching the partially seeing, blind, or visually impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or
  - (b) Certification for teaching the visually impaired, grades P-12.
- (14) Communication disorders. A teacher holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders at any grade level:
  - (a) Certification for speech and hearing, grades one (1) through twelve (12);

- (b) Certification for speech and communication disorders, grades K-12; or
- (c) Certification for communication disorders, grades P-12.
- Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) A teacher holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:
- (a) Certification for interdisciplinary early childhood education offered under 16 KAR 2:140 and 16 KAR 2:040;
  - (b) Exemption identified in 16 KAR 2:040; or
  - (c) Qualifications set forth in 704 KAR 3:410, Section 7(1)(a).
- (2) A special education teacher identified in Section 1 of this administrative regulation shall not be precluded from providing services in the teacher's certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.
- Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under 16 KAR 2:160.
- (2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and 16 KAR 2:120.]
- <u>Section 2.[Section 4.]</u> Waiver Requests for Teacher Assignment. (1) Local school districts which need to assign teachers to teach <u>exceptional</u> classes or <u>students[pupils]</u>, with the exception of <u>students[pupils]</u> receiving services for communication disorders, not consistent with <u>the teacher's certification[the above criteria]</u> shall request a waiver for the teacher assignment through the Kentucky Department of <u>Education's (KDE) Office of Special Education and Early Learning[Education, Office of Special Instructional Services, Division of Exceptional Children] and be approved by the <u>EPSB[Education Professional Standards Board</u>].</u>
- (2) The <u>EPSB[Education Professional Standards Board]</u> and <u>KDE[Department of Education]</u> shall give consideration for this approval based on information provided by the local school district in its request. The request shall <u>include</u>:[
- (a) Be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15 of the school year for which a waiver is requested; and
  - (b) Include:]
- (a)[1-] The teacher's name, school assignment, certificate number, class plan assignment, and current certification;
  - (b)[2.] A listing of pupils currently served by category of exceptionality;
  - (c)[3.] A listing of pupils the district is requesting to be served by exceptionality; and
- (d)[4.] Any other relevant information which the district wishes to have considered in the decision-making process.

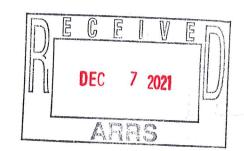
(3) Following consideration by the <u>KDE[Department of Education]</u> and approval by the <u>EPSB[Education Professional Standards Board]</u>, the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

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 OFFICE OF THE SECRETARY OF STATE MICHAEL G. ADAMS



December 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 702 Capitol Avenue Frankfort, Kentucky 40601

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff regarding the issues raised by 30 KAR 3:010 and 30 KAR 3:020, the Office of the Secretary of State proposes the attached amendment to 30 KAR 3:010 and 30 KAR 3:020.

Sincerely,

Michael R. Wilson

Director, Office of Business Services



Final Version: 12/6/2021 12:19 PM

# CABINET FOR GENERAL GOVERNMENT Department of State Office of Business Services

### 30 KAR 3:010. Application for registration of trademarks and service marks.

RELATES TO: KRS 365.571, 365.573, 365.593

STATUTORY AUTHORITY: KRS 365.571(1), 365.573(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.571(1) requires the Secretary of State to promulgate an administrative regulation establishing application requirements for registration of trademarks and service marks. This administrative regulation establishes application requirements for registration of trademarks and service marks.

Section 1. Requirements for Application for Registration of a Trademark or Service Mark. (1) Application for registration of a trademark or service mark shall be made to the Secretary of State, pursuant to KRS 365.571(1), by submitting:

- (a) A completed **and notarized** ["]Trademark/Service Mark Application["];
- (b) The registration fee required by KRS 365.571(6);[and]
- (c) The mark specimens required by KRS 365.571(5); and

(d) A drawing of the mark.

- (2) The application shall not be accepted for filing <u>unless[until]</u> the requirements of subsection (1) of this section have been met.
  - (3) The application shall be in English.

Section 2. Application <u>that[Which]</u> Includes Multiple Classes. An application may be filed <u>that[which]</u> includes goods or services falling into multiple classes if:

- (1) The goods or services are specifically identified;
- (2) An application fee of ten (10) dollars for each classification is submitted; and
- (3) The application includes the dates of use, a drawing of the mark, and three (3) specimens for each class.

Section 3. Specimens. (1) An application for registration shall comply with KRS 365.571(5).

(2)(a) A trademark specimen shall be:

- 1. A label, tag, or container bearing the trademark;
- 2. A point of sale display associated with the goods; or

3. If the nature of the goods or the nature of the mark makes the use of the mark on goods impractical, other documents related to the goods or the sale of the goods.

(b) A photocopy or photograph of a specimen <u>established[identified]</u> in paragraph (a) of this subsection may be submitted.

(3) Service mark specimens shall show the mark as actually used in the sale or advertising of the services recited in the application.

(a) A service mark specimen shall be:

1. A newspaper or magazine advertisement, other form of advertisement, brochure, or restaurant menu; or

2. Business documents such as letterhead, business cards, or invoices, if the document shows the mark and refers to the relevant services.

(b) Printer's proofs for advertisements or words typed, printed, or written on plain paper shall not be acceptable as specimens of the mark.

Section 4. Period of Response. (1) Within thirty (30) days of notice of the secretary's determination that an applicant is not entitled to registration, an applicant shall submit:

(a) A reply to the secretary's determination; or

(b) An amended application conforming to the secretary's determination.

(2) After review of an applicant's reply or amended application, the secretary shall:

(a) Make a final determination on the application; or

(b) Allow[Permit] the applicant to submit another amended application.

Section 5. Classifications. <u>(1)</u> The system of classification of goods and services <u>established[set out]</u> in 30 KAR 3:030 shall apply to trademark and service mark applications filed with the Secretary of State and to registrations issued on the basis of the applications.

(2) Renewals filed on registrations issued under a prior classification system shall be processed on the basis of the classification system in effect at the time the renewal application is filed.

Section 6. Incorporation by Reference. (1) The "Trademark/Service Mark Application", **December 2021**, [(02/20)] [January 2003] [J-1] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, Suite 152, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or may be obtained at www.sos.ky.gov [http://www.kysos.com].

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

#### COMMONWEALTH OF KENTUCKY MICHAEL G. ADAMS SECRETARY OF STATE



#### Trademark/Service Mark Application

Pu ma	rsuant to the provisions of KRS 365.567 to 365.581, ork in Kentucky and for that purpose submits the follo	the undersigned herelowing statements:	oy makes ap	plication for the registration of a	
	The undersigned applicant is ☐ an individua (Must check one) ☐ a limited liability cor	npany □ a partno	ership		
3.	. The applicant is applying for <b>(Must check one)</b> □ a trademark registration □ a service mark registration . The name of the applicant:				
4.	The business address of the applicant is: street address zip code zip code				
5.	If the applicant is a corporation or limited liability company, indicate the state of incorporation/organization:				
6.	If the applicant is a partnership, indicate the state of organization:  List the names of the general partners:  (Attach a continuation sheet, if necessary)				
7.	. If applying for a trademark, list the goods offered or sold under the mark. If applying for a service mark, list the service provided under the mark:				
8.	The manner in which the mark is used in association with the above goods or services:				
	The class comprising the goods or services: (refer to class listing on page 4)				
10	10. List the dates the mark was first used: (a) anywhere: (b) in Kentucky:				
11	. Describe the mark (words and/or design) as shown			not draw design on application)	
	Disclaimer (if applicable*): No claim is made to the apart from the mark as shown. *see instructions				
13	s. A drawing of all features of the mark for which own	ership is claimed acco	mpanies this	application.	
14	. Three specimens showing actual use of the mark a	accompany this applica	ation.		
in th	The applicant declares the following: I am the or my knowledge no other person has registered, either an identical form or in such near resemblance as to be e other person to cause confusion or mistake, or to de	federally or in this state e likely, when used on deceive.	e, or has the or in connect	right to use the mark in this state ion with the goods or services of	
l a sa	m of y that I have read the above application and know the contents th	ereof, and that the facts set	, the out therein are t	applicant herein, being first duly sworn, rue, complete and correct.	
				Signature	
St	ate of			Type or Print Name and Title	
Co	ounty of				
Sı	bscribed and sworn to before me this day of	, 20	•	·	
_	2024	· · · · · · · · · · · · · · · · · · ·		Notary Public	
ьe	cember 2021 Commission Number:	My Commissi	on Expires:		

### Trademark/Service Mark Drawing Page

Drawing instructions:
The applicant must provide a drawing of the mark in addition to the three specimens showing the actual use of the mark in trade. This drawing is intended to show only that which is claimed in the description of the mark under item 11 on the application. If the mark consists of words, letters or numerals, or any combination thereof, and if the mark is not depicted in a special form, or if this special form is not being claimed as a feature of the mark, the mark may be typed in capital letters on the drawing page. If the mark includes a design, a drawing of the entire proposed mark (in clean, uniform black lines) must be attached to the application. If color is claimed as a feature of the mark, it should be indicated where appropriate on the drawing.
Application Check List:
The original signed and notarized application
Three specimens showing actual use of the mark
Drawing page
Application processing fee of \$10 per class

### Instructions for completing the KY Trademark Service Mark Application

#### NOTE:

Application must be completed, including the notary section at the bottom.

Application must be verified and signed by the Applicant or an authorized agent of the Applicant, whose title must be declared under oath.

#### LINE-BY-LINE INSTRUCTIONS

1. Indicate entity of Applicant, if "other organization" clarify on line below.

2. Must mark only one box. If applying for both trademark and service mark, must use separate applications.

3. Print name of Applicant, must include any formal corporate ending.

- Print complete business address.
- This applies only to corporations and limited liability companies, print state of organization.

This applies only to organized partnerships, print state of organization.

State the products or services associated with the mark.

State the way the mark is used to distinguish and identify the products or services listed in item 7.

State the classification, by number, that best represents the products or services listed in item 7. Class listing is on page 4 of this application packet.

10. State the earliest date that the mark was used in trade anywhere and the date first used in Kentucky. NOTE: The mark must be in use in KY prior to registration.

11. State the mark in words exactly as it is to be registered. If the mark involves a symbol, design, or nonstandard typeface and the applicant wishes to claim these features as part of the mark, then briefly describe in words the features of design. This is the way the mark will be registered, and this is the way it should appear on the drawing page. NOTE: A single application may not be used to seek registration of variations of a term or design.

12. A disclaimer is used when there are unregistrable components of an otherwise registrable mark. Generally, elements that are descriptive or generic of the goods /services are unregistrable and should be disclaimed. You may call the office, visit our website, or consult an attorney for more information on disclaimers and disclaimed elements.

13. The applicant must include a drawing page which depicts the mark exactly as described in item 11 of the application.

Signing the application: The applicant must swear under an oath administered by a notary public that the information is true and correct and must sign the application in the presence of a notary public.

SPECIMENS OF USE: The application must be accompanied by three (3) specimens showing the mark as actually used.

A specimen must show usage in the normal course of trade in the Commonwealth of Kentucky. A trademark specimen may include the following: label, tag, a picture or impression of the mark stamped on, printed on

or otherwise applied to goods.

A service mark specimen may include the following: advertisement, brochure, flier. Note: business cards and stationery may be acceptable provided that they show a connection between the mark and the services offered.

NOTE: Names or marks typed, printed or written on plain paper are not acceptable as specimens of use of the mark. Photo-ready or computer generated print-outs are not acceptable specimens of use.

FILING FEÉS: The filing fee for Trademark/Service Mark application is \$10.00 per class.

When a single application includes goods or services falling in multiple classes, a fee of \$10.00 is required for each class. Your check should be made payable to the Secretary of State.

NUMBER OF COPIES: Submit the original signed application, no additional copies are necessary. Photocopied signatures are not accepted.

MAILING ADDRESS: Secretary of State

Trademark Division PO Box 718,

Frankfort, KY 40602-0718

Registration Period: Registration is effective for a term of five years from the date of registration. Registration can be renewed by filing for renewal within six months prior to the expiration of the registration.

#### **Contact Information:**

For further information, call (502) 564-3490

Visit our website to review trademark/service mark FAQs and to perform online searches: www.sos.ky.gov

#### International Classification of Goods and Services

#### Classification of Goods:

- Chemical products used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparation; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
- 2. Paints, varnishes, lacquer; preservatives against rust and against deterioration of wood; colorants, mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
- 3. Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, non-medicated cosmetics and toiletry preparations; non-medicated denitrifies.
- 4. Industrial oils and greases; lubricants; wax; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminates; candles, wicks.
- 5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings, material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin, fungicides, herbicides.
- 6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes, ores.
- 7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agriculture implements; incubators for eggs.
- 8. Hand tools and implements; hand operated cutlery; side arms (except firearms); razors.
- 9. Scientific research, navigation, surveying, electric photographic, cinematographic; optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; computer software and games; fire-extinguishing apparatus.
- 10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 11. Apparatus and installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 12. Vehicles; apparatus for locomotion by land, air or water.
- 13. Firearms; ammunition and projectiles; explosives, fireworks.
- 14. Precious metals and their alloys and certain goods made of precious metals or coated therewith, jewelry, precious and semi-precious stones; horological and chronometric instruments.
- 15. Musical instruments and music stands for musical instruments; conductors' batons.
- 16. Paper and cardboard; printed matter, bookbinding material; photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks.
- 17. Unprocessed and semi-processed rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes, and hoses, not of metal.
- 18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, luggage and carrying bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

- 20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
- 22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
- 23. Yarns and threads, for textile use.
- 24. Textiles and substitutes for textiles; household linens; curtains of textile or plastic.
- 25. Clothing, footwear, headgear.
- 26. Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.
- 27. Carpets rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
- 28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
- 29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruit and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oats and fats.
- 30. Coffee, tea, coca, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey treacle; yeast, baking-powder, salt, mustard, vinegar, sauces (condiments); spices; ice.
- 31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products and grains not included in other classes; live animals; raw and unprocessed grains and seeds; fresh fruits and vegetables; bulbs, seedlings and seeds for planting, natural plants and flowers; foodstuffs for animals, malt.
- 32. Beers, mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
- 33. Alcoholic beverages (except beers); alcoholic preparations for making beverages.
- 34. Tobacco and tobacco substitutes; smokers' articles; matches; electronic cigarettes and oral vaporizers for smokers.

#### **Classification of Services**

- 35. Advertising; business management; business administration; office functions; retail, wholesale, distributorship services.
- 36. Financial, monetary and banking services; insurance services; real estate affairs.
- 37. Building construction; repair, installation services.
- 38. Telecommunications.
- 39. Transport; packaging and storage of goods; travel arrangement.
- 40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services.
- 41. Education; providing of training; entertainment; sporting and cultural activities.
- 42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.
- 43. Services for providing food and drink; temporary accommodations.
- 44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
- 45. Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

# COMMONWEALTH OF KENTUCKY MICHAEL G. ADAMS[John Y. Brown III] SECRETARY OF STATE



#### Trademark/Service Mark Application

Pursuant to the provisions of KRS 365.567 to 365.581, the undersigned hereby makes application for the registration of a mark in Kentucky and for that purpose submits the following statements: ☐ other organization □ a corporation 1. The undersigned applicant is □ an individual ☐ a partnership 2. The applicant is applying for (Must check one)  $\Box$  a trademark registration  $\Box$  a service mark registration 3. The name of the applicant: 4. The business address of the applicant is: street address \_\_\_\_\_ zip code \_\_\_\_\_ city\_\_\_\_state \_\_\_\_s 5. If the applicant is a corporation or limited liability company, indicate the state of incorporation/organization: 6. If the applicant is a partnership, indicate the state of organization: List the names of the general partners: \_\_\_\_\_\_(Attach a continuation sheet, if necessary) 7. If applying for a trademark, list the goods offered or sold under the mark. If applying for a service mark, list the services provided under the mark: 8. The manner in which the mark is used in association with the above goods or services: 9. The class comprising the goods or services: (refer to class listing on page 4) 10. List the dates the mark was first used: (a) anywhere: \_\_\_\_\_ (b) in Kentucky: \_\_\_\_\_ 11. Describe the mark (words and/or design) as shown on the attached drawing page (do not draw design on application) 12. Disclaimer (if applicable\*): No claim is made to the exclusive right to use the term\_\_\_\_\_\_ apart from the mark as shown. \*see instructions 13. A drawing of all features of the mark for which ownership is claimed accompanies this application. 14. Three specimens showing actual use of the mark accompany this application. The applicant declares the following: I am the owner of the mark and it is in use in the Commonwealth of Kentucky. To my knowledge no other person has registered, either federally or in this state, or has the right to use the mark in this state in an identical form or in such near resemblance as to be likely, when used on or in connection with the goods or services of the other person to cause confusion or mistake, or to deceive. the applicant herein, being first duly sworn, say that I have read the above application and know the contents thereof, and that the facts set out therein are true, complete and correct. Type or Print Name and Title Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My Commission Expires: \_\_\_\_

December 2021[January 2003]

Commission Number:

## Trademark/Service Mark Drawing Page

Application Chock List:		
Application Check List:  The original signed and notarized application		

## Instructions for completing the KY Trademark Service Mark Application

#### NOTE:

Application must be completed, including the notary section at the bottom.

Application must be verified and signed by the Applicant or an authorized agent of the Applicant, whose title must be declared under oath.

#### LINE-BY-LINE INSTRUCTIONS

1. Indicate entity of Applicant, if "other organization" clarify on line below.

Must mark only one box. If applying for both trademark and service mark, must use separate applications.

Print name of Applicant, must include any formal corporate ending.

- 4. Print complete business address.
- This applies only to corporations and limited liability companies, print state of organization.

This applies only to organized partnerships, print state of organization.

State the products or services associated with the mark. 7.

State the way the mark is used to distinguish and identify the products or services listed in item 7.

State the classification, by number, that best represents the products or services listed in item 7. Class listing is on page 4 of this application packet.

10. State the earliest date that the mark was used in trade anywhere and the date first used in Kentucky. NOTE: The mark must be in use in KY prior to registration.

- 11. State the mark in words exactly as it is to be registered. If the mark involves a symbol, design, or nonstandard typeface and the applicant wishes to claim these features as part of the mark, then briefly describe in words the features of design. This is the way the mark will be registered, and this is the way it should appear on the drawing page. NOTE: A single application may not be used to seek registration of variations of a term or design.
- 12. A disclaimer is used when there are unregistrable components of an otherwise registrable mark. Generally, elements that are descriptive or generic of the goods /services are unregistrable and should be disclaimed. You may call the office, visit our website, or consult an attorney for more information on disclaimers and disclaimed elements.
- 13. The applicant must include a drawing page which depicts the mark exactly as described in item 11 of the application.

Signing the application: The applicant must swear under an oath administered by a notary public that the information is true and correct and must sign the application in the presence of a notary public.

SPECIMENS OF USE: The application must be accompanied by three (3) specimens showing the mark as actually used. A specimen must show usage in the normal course of trade in the Commonwealth of Kentucky.

A trademark specimen may include the following: label, tag, a picture or impression of the mark stamped on, printed on or otherwise applied to goods.

A service mark specimen may include the following: advertisement, brochure, flier. Note: business cards and stationery may be acceptable provided that they show a connection between the mark and the services offered.

NOTE: Names or marks typed, printed or written on plain paper are not acceptable as specimens of use of the mark.

Photo-ready or computer generated print-outs are not acceptable specimens of use.

FILING FEES: The filing fee for Trademark/Service Mark application is \$10.00 per class.

When a single application includes goods or services falling in multiple classes, a fee of \$10.00 is required for each class. Your check should be made payable to the Secretary of State.

NUMBER OF COPIES: Submit the original signed application, no additional copies are necessary. Photocopied signatures are not accepted.

MAILING ADDRESS: Secretary of State

Trademark Division

PO Box 718.

Frankfort, KY 40602-0718

Registration Period: Registration is effective for a term of five years from the date of registration. Registration can be renewed by filing for renewal within six months prior to the expiration of the registration.

#### **Contact Information:**

For further information, call (502) 564-3490[2848]

Visit our website to review trademark/service mark FAQs and to perform online searches: www.sos.ky[kysos].gov

## International Classification of Goods and Services

#### Classification of Goods:

1. Chemical[s] <u>products</u> used in industry, science and photography, as well as in agriculture, horticulture and forestry, unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparation; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquer; preservatives against rust and against deterioration of wood; colorants, mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, non-medicated cosmetics and toiletry preparations; non-medicated [hair lotions:]denitrifies.

4. Industrial oils and greases; lubricants; wax; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminates;

candles, wicks.

- 5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin, fungicides, herbicides.
- 6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes, ores.
- 7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agriculture implements; incubators for eggs.
- 8. Hand tools and implements; [{]hand operated[}) cutlery; side arms

(except firearms); razors.

- 9. Scientific research, navigation[nautical], surveying, electric photographic, cinematographic; optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; computer software and games; fire-extinguishing apparatus.
- 10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 11. Apparatus <u>and installations</u> for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 12. Vehicles; apparatus for locomotion by land, air or water.
- 13. Firearms; ammunition and projectiles; explosives, fireworks.
- 14. Precious metals and their alloys and certain goods made of [in]precious metals or coated therewith [not included in other classes], jewelry, precious and semi-precious stones; horological and chronometric instruments.
- 15. Musical instruments and music stands for musical instruments; conductors' batons.
- 16. Paper[,] and cardboard[and goods made from these materials, not included in other classes]; printed matter, bookbinding material; photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks.

17. <u>Unprocessed and semi-processed r[R]</u>ubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, <u>tubes</u>, and

hoses, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, luggage[trunks] and carrying[travelling] bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

- 19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.
- 20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone[ivery], whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and substitutes for textiles; household linens; curtains of textile or plastic[goods not included in other classes; bed and table covers]

25. Clothing, footwear, headgear.

- 26. Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.
- 27. Carpets rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
- 28. Games, toys and playthings; video game apparatus; gymnastic[s] and sporting articles not included in other classes; decorations for Christmas trees.
- 29. Meat, fish, poultry and game; meat extracts; preserved, <u>frozen</u>, dried and cooked fruit and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oats and fats.
- 30. Coffee, tea, coca, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey treacle; yeast, baking-powder, salt, mustard, vinegar, sauces (condiments); spices; ice.
- 31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products and grains not included in other classes; live animals; raw and unprocessed grains and seeds; fresh fruits and vegetables; bulbs, seedlings and seeds for planting, natural plants and flowers; foodstuffs for animals, malt.
- 32. Beers, mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
- 33. Alcoholic beverages (except beers); alcoholic preparations for making beverages.
- 34. Tobacco <u>and tobacco substitutes</u>; smokers' articles; matches; <u>electronic cigarettes and oral vaporizers for smokers</u>.

#### Classification of Services

- 35. Advertising; business management; business administration; office functions; retail, wholesale, distributorship services.
- 36. [Insurance]F[f]inancial, monetary and banking services; insurance services[affairs]; real estate affairs.
- 37. Building construction; repair, installation services.

88. Telecommunications.

- 39. Transport; packaging and storage of goods; travel arrangement.
- 40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services.
- 41. Education; providing of training; entertainment; sporting and cultural activities.
- 42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of fer computer hardware and software [;legal services].

  43. Services for providing food and drink; temporary

accommodations.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. <u>Legal services; security services for the protection of property and individuals; [P]personal and social services rendered by others to meet he needs of individuals[security services for the protection of property and individuals].</u>



# COMMONWEALTH OF KENTUCKY OFFICE OF THE SECRETARY OF STATE MICHAEL G. ADAMS

DEC 7 2021

December 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 702 Capitol Avenue Frankfort, Kentucky 40601

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff regarding the issues raised by 30 KAR 3:010 and 30 KAR 3:020, the Office of the Secretary of State proposes the attached amendment to 30 KAR 3:010 and 30 KAR 3:020.

Sincerely,

Michael R. Wilson

Director, Office of Business Services



#### SUGGESTED SUBSTITUTE

Final Version: 11/30/2021 9:53 AM

# CABINET FOR GENERAL GOVERNMENT Department of State Office of Business Services

#### 30 KAR 3:020. Application for renewal of registration.

**RELATES TO: KRS 365.581** 

STATUTORY AUTHORITY: KRS 365.571(1), 365.581(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.581(1) requires the Secretary of State to promulgate an administrative regulation establishing the requirements for renewing registrations of trademarks or service marks. This administrative regulation establishes the requirements for renewing registrations of trademarks or service marks.

Section 1. Requirements for Application for Renewal of Registration of a Trademark or Service Mark. (1) Application for renewal of registration of a trademark or service mark shall be made to the Secretary of State, pursuant to KRS 365.581(1), by submitting:

- (a) A completed and notarized ["]Trademark/Service Mark Renewal Application["]; and
- (b) The renewal fee required by KRS 365.581(1).
- (2) The application for renewal shall:
- (a) Include the required fee for each class for which renewal is sought in the registration;
- (b) Specifically identify the particular class or classes for which renewal is sought if the registration is for multiple classes of goods or services;
  - (c) Include a verified statement that the mark has been and is still in use; and
  - (d) Provide one (1) specimen of use specific to each class of goods or services.

Section 2. Incorporation by Reference. (1) The "Trademark/Service Mark Renewal Application", *December 2021, [{02/20]*[January 2003][}-"] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at <a href="https://www.kysos.com">www.kysos.com</a>].

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

#### COMMONWEALTH OF KENTUCKY MICHAEL G. ADAMS SECRETARY OF STATE



### Trademark/Service Mark Renewal Application

Pursuant to the provisions of KRS 365.567 to KRS 365.581, the undersigned hereby makes application for the renewal of registration of a mark in Kentucky and for that purpose submits the following statements:

registration of a mark in Kentucky and for that purpose  1. The registration being renewed is □ a trademark. □			
2. The name of the applicant:			
3. The business address of the applicant:			
Address	City	State Zip	Code
4. If the applicant is a corporation or limited liability con	mpany, indicate the state of	incorporation/organization: _	
5. If the applicant is a partnership, indicate the state of	organization:		
List the names of the general partners:	(Attach a continuation sheet, if	necessary)	
6. Date of original registration:	Certificate nun	Dei.	
7. The goods or services on or in connection with which	ch the mark is used:		
8. The class comprising the goods or services (refer to	International Classification	list on page three):	
9. Name and description of the mark in words:			
9. Name and description of the mark in words.			
10. The mark has been and is still in use in Kentucky.			
11. A specimen showing actual use of the mark accor	mpanies this renewal applic	ation.	
I ambeing first duly sworn; say that I have read the above renewal a	of	the a	pplicant hereir
being first duly sworn; say that I have read the above renewal a complete and correct. I further say that the specimen filed herewith	pplication and know the contents is true and correct.	thereof, and that the facts set out	therein are true
		Signature	
		Type or Print Name and	Title
State of			
County of			
Subscribed and sworn to before me this day of	, 20	<b>⊸</b>	
	-		
	M. O	Notary Public	
Commission Number:	My Comm	ssion Expires:	

## Instructions for completing the KY Trademark/Service Mark Renewal Application

#### NOTE:

Application must be completed, signed and notarized.

Application must be verified and signed by the Applicant or an authorized agent of the Applicant, whose title must be declared under oath in the witness of a Notary Public

#### Line-by-Line Instructions:

Must check only one box. If mark is registered as both trademark and service mark, use separate renewal applications.

Print name of Applicant, including any business entity ending such as Inc., LLC, LP, etc. NOTE: The mark cannot be renewed to a name other than the owner on file with the Secretary of State unless a name change or assignment is recorded with the Secretary of State.

Print the business address of the Applicant.

This applies only to corporations or limited liability companies, print state of organization.

This applies only to organized partnerships, print state of organization.

Print the date that the mark was originally registered with the KY Secretary of State, and most recent certificate number (also known as registration number). NOTE: A single application may contain only a single mark.

If applying for a trademark renewal, list the goods offered or sold under the mark. If applying for a service mark renewal, list the services offered under the mark.

State the classification, by number, that best represents the product or service listed in item 7. Refer to the class listing on page 3. NOTE: The KY Secretary of State adopted the international trademark classification schedule as of July 15th 1994. Any mark registered prior to that date will be converted to the international classification system upon renewal. If the mark was originally registered or renewed in an inappropriate class, it may be converted to the correct classification upon renewal. The class list that follows is the international schedule of classes.

State the mark in words exactly as it is registered, including a brief description of any design element involved.

10. This is a declaration that the mark is eligible for renewal based on continued and current use in the normal course of commerce in Kentucky.

11. Provide one actual specimen of use. NOTE: If the mark has been changed significantly and is no longer in use as registered, or is no longer used in the classification in which it was originally registered, the mark cannot be renewed and a new application will be required to register the new mark.

12. Signing and verifying the application: The applicant must swear under an oath administrated by a notary public that the information is true and correct and must sign the application in the presence of a notary public.

SPECIMEN: The application must be accompanied by a specimen showing the mark as actually used. A specimen must show usage in the normal course of trade in the Commonwealth of Kentucky.

A trademark specimen may include the following: label, tag, a picture or impression of the mark stamped on, printed on or otherwise applied to the goods.

A service mark specimen may include the following: advertisement, brochure or flier. Note: business cards and stationery may be acceptable provided that they show a connection between the mark and the services offered. The specimen must clearly indicate the

NOTE: Names or marks typed, printed or written on plain paper are not acceptable as specimens of use of the mark. Photo-ready or computer generated print-outs are not acceptable as specimens of use.

FILING FEES: The filing fee for Trademark/Service Mark Renewal Application is \$5.00 per class.

When a single renewal application includes goods or services falling in multiple classes, a fee of \$5.00 is required for each class.

Your check should be made payable to the Secretary of State.

NUMBER OF COPIES: Submit the original signed and notarized application, no additional copies are necessary.

MAILING ADDRESS: Secretary of State Trademark Division PO Box 718 Frankfort, KY 40602-0718.

Renewal Period: A renewal extends the registration for an additional 5 years, based on the date of original registration with the KY Secretary of State. Registration is renewed by applying for renewal within 6 months prior to the expiration of the registration, which will always fall on an anniversary of the date of original registration.

#### **Contact Information:**

For further information call (502) 564-3490

Visit our website to review trademark/service mark FAQs and to perform online searches: www.sos.ky.gov

#### International Classification of Goods and Services

#### Classification of Goods:

- 1. Chemical products used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparation; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
- 2. Paints, varnishes, lacquer; preservatives against rust and against deterioration of wood; colorants, mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
- 3. Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, non-medicated cosmetics and toiletry preparations; non-medicated denitrifies.
- 4. Industrial oils and greases; lubricants; wax; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminates; candles, wicks.
- 5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin, fungicides, herbicides.
- 6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes, ores.
- 7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agriculture implements; incubators for eggs.
- 8. Hand tools and implements; hand operated cutlery; side arms (except firearms); razors.
- 9. Scientific research, navigation, surveying, electric photographic, cinematographic; optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; computer software and games; fire-extinguishing apparatus.
- 10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 11. Apparatus and installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 12. Vehicles; apparatus for locomotion by land, air or water.
- 13. Firearms; ammunition and projectiles; explosives, fireworks.
- 14. Precious metals and their alloys and certain goods made of precious metals or coated therewith, jewelry, precious and semi-precious stones; horological and chronometric instruments.
- 15. Musical instruments and music stands for musical instruments; conductors' batons.
- 16. Paper and cardboard; printed matter, bookbinding material; photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks.
- 17. Unprocessed and semi-processed rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes, and hoses, not of metal.
- 18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, luggage and carrying bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

- 20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
- 22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
- 23. Yarns and threads, for textile use.
- 24. Textiles and substitutes for textiles; household linens; curtains of textile or plastic.
- 25. Clothing, footwear, headgear.
- 26. Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.
- 27. Carpets rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
- 28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
- 29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruit and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oats and fats.
- 30. Coffee, tea, coca, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey treacle; yeast, baking-powder, salt, mustard, vinegar, sauces (condiments); spices; ice.
- 31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products and grains not included in other classes; live animals; raw and unprocessed grains and seeds; fresh fruits and vegetables; bulbs, seedlings and seeds for planting, natural plants and flowers; foodstuffs for animals, malt.
- 32. Beers, mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
- Alcoholic beverages (except beers); alcoholic preparations for making beverages.
- 34. Tobacco and tobacco substitutes; smokers' articles; matches; electronic cigarettes and oral vaporizers for smokers.

#### **Classification of Services**

- 35. Advertising; business management; business administration; office functions; retail, wholesale, distributorship services.
- 36. Financial, monetary and banking services; insurance services; real estate affairs.
- 37. Building construction; repair, installation services.
- 38. Telecommunications.
- 39. Transport; packaging and storage of goods; travel arrangement.
- 40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services.
- 41. Education; providing of training; entertainment; sporting and cultural activities.
- 42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.
- 43. Services for providing food and drink; temporar accommodations.
- 44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
- 45. Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

# COMMONWEALTH OF KENTUCKY MICHAEL G. ADAMS[John Y. Brown III] SECRETARY OF STATE



## Trademark/Service Mark Renewal Application

Pursuant to the provisions of KRS 365.567 to KRS 365.581, the undersigned hereby makes application for the renewal of registration of a mark in Kentucky and for that purpose submits the following statements:

registration of a mark in Kentucky and for that	purpose submits the	following stateme	nts:	
1. The registration being renewed is $\ \square$ a trade	mark. 🏻 a service r	nark. (must check o	ne)	
2. The name of the applicant:				
3. The business address of the applicant:				
Address	•			
4. If the applicant is a corporation or limited liab	oility company, indic	ate the state of inc	orporation/organi	zation:
5. If the applicant is a partnership, indicate the	state of organization	າ:		
List the names of the general partners:				
6. Date of original registration:	,	Certificate number		
7. The goods or services on or in connection w	 vith which the mark i	s used:		
7. The goods of services on of in confidence.				
8. The class comprising the goods or services	(refer to Internation	al Classification lis	t on page three):	
<ul><li>9. Name and description of the mark in words:</li></ul>				
9. Name and description of the mark in words.				
10. The mark has been and is still in use in Ke	entucky.			
11. A specimen showing actual use of the ma		renewal application	n.	
I ambeing first duly sworn; say that I have read the above r	of		f I ll. I the feet	the applicant herein
being first duly sworn; say that I have read the above r complete and correct. I further say that the specimen filed	enewal application and l d herewith is true and cor	know the contents ther rect.	eof, and that the fact	s set out therein are tide
		-		Signature
			Type or	Print Name and Title
State of				
County of				
Subscribed and sworn to before me thisday	y of	, 20		
	•		No	tary Public
Commission Number:		My Commissio	n Expires:	

## Instructions for completing the KY Trademark/Service Mark Renewal Application

#### NOTE:

Application must be completed, signed and notarized.

Application must be verified and signed by the Applicant or an authorized agent of the Applicant, whose title must be declared under oath in the witness of a Notary Public

#### Line-by-Line Instructions:

1. Must check only one box. If mark is registered as both trademark and service mark, use separate renewal applications.

2. Print name of Applicant, including any business entity ending such as Inc., LLC, LP, etc. NOTE: The mark cannot be renewed to a name other than the owner on file with the Secretary of State unless a name change or assignment is recorded with the Secretary of State.

3. Print the business address of the Applicant.

4. This applies only to corporations or limited liability companies, print state of organization.

5. This applies only to organized partnerships, print state of organization.

6. Print the date that the mark was originally registered with the KY Secretary of State, and most recent certificate number (also known as registration number). **NOTE:** A single application may contain only a single mark.

7. If applying for a trademark renewal, list the goods offered or sold under the mark. If applying for a service mark renewal, list the services offered under the mark.

8. State the classification, by number, that best represents the product or service listed in item 7. Refer to the class listing on page 3. **NOTE**: The KY Secretary of State adopted the international trademark classification schedule as of July 15<sup>th</sup> 1994. Any mark registered prior to that date will be converted to the international classification system upon renewal. If the mark was originally registered or renewed in an inappropriate class, it may be converted to the correct classification upon renewal. The class list that follows is the international schedule of classes.

9. State the mark in words exactly as it is registered, including a brief description of any design element involved.

- 10. This is a declaration that the mark is eligible for renewal based on continued and current use in the normal course of commerce in Kentucky.
- 11. Provide one actual specimen of use. **NOTE:** If the mark has been changed significantly and is no longer in use as registered, or is no longer used in the classification in which it was originally registered, the mark cannot be renewed and a new application will be required to register the new mark.
- 12. Signing and verifying the application: The applicant must swear under an oath administrated by a notary public that the information is true and correct and must sign the application in the presence of a notary public.

**SPECIMEN:** The application must be accompanied by a specimen showing the mark as actually used. A specimen must show usage in the normal course of trade in the Commonwealth of Kentucky.

A trademark specimen may include the following: label, tag, a picture or impression of the mark stamped on, printed on or otherwise applied to the goods.

A **service mark** specimen may include the following: advertisement, brochure or flier. Note: business cards and stationery may be acceptable provided that they show a connection between the mark and the services offered. The specimen must clearly indicate the services

**NOTE**: Names or marks typed, printed or written on plain paper are not acceptable as specimens of use of the mark. Photo-ready or computer generated print-outs are not acceptable as specimens of use.

FILING FEES: The filing fee for Trademark/Service Mark Renewal Application is \$5.00 per class.

When a single renewal application includes goods or services falling in multiple classes, a fee of \$5.00 is required for each class. Your check should be made payable to the Secretary of State.

NUMBER OF COPIES: Submit the original signed and notarized application, no additional copies are necessary.

MAILING ADDRESS: Secretary of State

Trademark Division
PO Box 718

Frankfort, KY 40602-0718.

**Renewal Period:** A renewal extends the registration for an additional 5 years, based on the date of original registration with the KY Secretary of State. Registration is renewed by applying for renewal within 6 months prior to the expiration of the registration, which will always fall on an anniversary of the date of original registration.

#### Contact Information:

For further information call (502) 564-3490

Visit our website to review trademark/service mark FAQs and to perform online searches: www.sos.ky.gov

#### International Classification of Goods and Services

#### Classification of Goods:

- 1. Chemical products used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparation; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
- 2. Paints, varnishes, lacquer; preservatives against rust and against deterioration of wood; colorants, mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
- 3. Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, non-medicated cosmetics and toiletry preparations; non-medicated denitrifies.
- 4. Industrial oils and greases; lubricants; wax; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminates; candles, wicks.
- 5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin, fungicides, herbicides.
- 6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes, ores.
- 7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agriculture implements; incubators for eggs.
- 8. Hand tools and implements; hand operated cutlery; side arms (except firearms); razors.
- 9. Scientific research, navigation, surveying, electric photographic, cinematographic; optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; computer software and games; fire-extinguishing apparatus.
- 10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 11. Apparatus and installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 12. Vehicles; apparatus for locomotion by land, air or water.
- 13. Firearms; ammunition and projectiles; explosives, fireworks.
- 14. Precious metals and their alloys and certain goods made of precious metals or coated therewith, jewelry, precious and semi-precious stones; horological and chronometric instruments.
- 15. Musical instruments and music stands for musical instruments; conductors' batons.
- 16. Paper and cardboard; printed matter, bookbinding material; photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks.
- 17. Unprocessed and semi-processed rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes, and hoses, not of metal.
- 18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, luggage and carrying bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

- 20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; un-worked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
- 22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
- 23. Yarns and threads, for textile use.
- 24. Textiles and substitutes for textiles; household linens; curtains of textile or plastic.
- 25. Clothing, footwear, headgear.
- 26. Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.
- 27. Carpets rugs, mates and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
- 28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
- 29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruit and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oats and fats.
- 30. Coffee, tea, coca, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey treacle; yeast, baking-powder, salt, mustard, vinegar, sauces (condiments); spices; ice.
- 31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products and grains not included in other classes; live animals; raw and unprocessed grains and seeds; fresh fruits and vegetables; bulbs, seedlings and seeds for planting, natural plants and flowers; foodstuffs for animals, malt.
- 32. Beers, mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
- 33. Alcoholic beverages (except beers); alcoholic preparations for making beverages.
- 34. Tobacco and tobacco substitutes; smokers' articles; matches; electronic cigarettes and oral vaporizers for smokers.

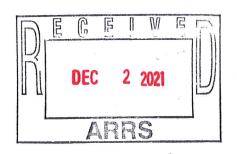
#### **Classification of Services**

- 35. Advertising; business management; business administration; office functions; retail, wholesale, distributorship services.
- 36. Financial, monetary and banking services; insurance services; real estate affairs.
- 37. Building construction; repair, installation services.
- 38. Telecommunications.
- 39. Transport; packaging and storage of goods; travel arrangement.
- 40. Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services.
- 41. Education; providing of training; entertainment; sporting and cultural activities.
- 42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.
- 43. Services for providing food and drink; temporary accommodations.
- 44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
- 45. Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.



# COMMONWEALTH OF KENTUCKY OFFICE OF THE SECRETARY OF STATE

MICHAEL G. ADAMS



December 2, 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: 30 KAR 6:011. Kentucky address confidentiality program

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 30 KAR 6:011, the Office of the Secretary of State proposes the attached amendment to 30 KAR 6:011

Sincerely,

Jennifer Scutchfield

Assistant Secretary of State

# KENTUCKY ADDRESS CONFIDENTIALITY PROGRAM PARTICIPANT

[Insert Participant Name Here]

PROGRAM IDENTIFICATION NUMBER

[Insert ID Number Here]

PARTICIPATION EXPIRATION DATE

[Insert Date Here]

Provided by the Kentucky Secretary of State
Address Confidentiality Program
700 Capital Avenue
Frankfort, KY 40601

# KENTUCKY ADDRESS CONFIDENTIALITY PROGRAM PARTICIPANT

[Insert Participant Name Here]

PROGRAM IDENTIFICATION NUMBER

[Insert ID Number Here]

PARTICIPATION EXPIRATION DATE

[Insert Date Here]

Provided by the Kentucky Secretary of State
Address Confidentiality Program
700 Capital Avenue
Frankfort, KY 40601

#### 11/30/21

#### SUGGESTED SUBSTITUTE

#### SECRETARY OF STATE

#### 30 KAR 006:011. Kentucky address confidentiality program.

RELATES TO: KRS 14.300, 14.302, 14.304, 14.306, <u>14.310</u> [13.310]

STATUTORY AUTHORITY: KRS 14.304(1), (2), (4), 14.306(3), (5), 14.318(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318(2) authorizes the Secretary of State to promulgate administrative regulations implementing KRS 14.300 to 14.310, 14.314, and 14.316. This administrative regulation implements KRS 14.300, 14.302, 14.304, 14.306, and 14.310.

Section 1. Definitions. (1) "Address" is defined by KRS 14.300(1).

(2) "Applicant" is defined by KRS 14.300(2).

(3) "Filer" means a person who is:

(a) A:

1. Parent or guardian acting on behalf of a minor;

2. Guardian acting on behalf of a person who is declared incompetent; or

3. Designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot apply independently; and

(b) Applying to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the minor, incompetent person, or applicant.

(4) "Program Participant" is defined by KRS 14.300(5).

Section 2. Requirements for Application for Certification to Participate in the Address Confidentiality Program. (1) Application for certification to participate in the address confidentiality program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in Address Confidentiality Program.

(2) The Application for Certification to Participate in Address Confidentiality shall be:

(a) Notarized; and

(b) In English.

Section 3. Certification in the Address Confidentiality Program. (1) The Secretary of State shall approve an Application for Certification to Participate in Address Confidentiality Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Address Confidentiality Program was denied or the applicant was

certified as a program participant.

(a) If an Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address to be used

for voting purposes; and

2. Issue to the program participant an Address Confidentiality Program Participant Card reflecting the participant number, designated address to be used for voting purposes, and date on which certification expires.

(3) If an applicant is certified as a program participant, participation in the address confidentiality program shall be effective as of the date of the notification of certification.

Section 4. Change of Program Participant's Name or Address.

- (1) A program participant or a filer shall notify the Secretary of State of a change in the program participant's name or address by submitting to the Office of the Secretary of State a completed Address Confidentiality Program Participant Name or Address Change form.
  - (2) The Address Confidentiality Program Participant Name or Address Change form shall:
  - (a) Be in writing;
  - (b) Be in English;

(c) Be signed by the program participant or a filer;

- (d) Include both the program participant's new information and information as certified; and
- (e) Be considered filed on the day the Address Confidentiality Program Name or Address Change form is date-stamped received by the Office of the Secretary of State.

Section 5. Withdrawal from Participation in the Address Confidentiality Program. (1) A program participant or filer wishing to withdraw from participation in the address confidentiality program shall submit to the Secretary of State a Withdrawal from Participation in Address Confidentiality Program form.

(2) The Withdrawal from Participation in Address Confidentiality Program form shall be:

- (a) In writing;
- (b) In English;

(c) Signed by the program participant or a filer; and

- (d) Notarized or signed by a representative of any office designated pursuant to KRS 14.310 as a referring agency who assisted in the completion of the Withdrawal from Participation in Address Confidentiality Program form.
- Section 6. Confirmation by the Secretary of State of a Withdrawal from Participation in the Address Confidentiality Program. (1) Upon receiving a Withdrawal from Participation in Address Confidentiality Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

(a) Of the date on which a Withdrawal from Participation in Address Confidentiality Program form was date\_stamped received by the Office of the Secretary of State; and

(b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

Section 7. Application for Renewal of Certification in the Address Confidentiality Program. (1) A program participant or filer wishing to renew certification in the address confidentiality program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Address Confidentiality Program pursuant to Section 2 of this administrative regulation.

(2) The Application for Certification to Participate in Address Confidentiality Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program

participant's certification expires.

Section 8. Review by the Secretary of State of a Renewal Application for Certification to Participate in Address Confidentiality Program. (1) The Secretary of State shall approve a renewal

Application for Certification to Participate in Address Confidentiality Program if the applicant and Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Address Confidentiality Program was denied or the program participant's certification was renewed within five (5) business days after it is datestamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the program participant or filer of the reason for

denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Address Confidentiality Program Participant Card pursuant to Section 3(2)(b)2 of this administrative regulation, and the renewal shall be effective as of the date of the notification of renewal.

Section 9. Appeal from Cancellation of Certification in Address Confidentiality Program. (1) A program participant or filer wishing to appeal from a cancellation of certification in the address confidentiality program shall submit to the Secretary of State an Appeal from Cancellation of Certification in Address Confidentiality Program form.

(2) The Appeal from Cancellation of Certification in Address Confidentiality Program shall be considered timely submitted if it is date-stamped received by the Secretary of State within thirty

(30) days of the date of the notice of certification cancellation.

- (3) The Appeal from Cancellation of Certification in Address Confidentiality Program shall:
- (a) Be in writing;

(b) Be in English;

(c) Be signed by the program participant or filer; and

(d) Include information as to why certification in the address confidentiality program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Address Confidentiality Program is not timely submitted, cancellation of certification in the address confidentiality program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 10. Review by the Assistant Secretary of State of an Appeal from Cancellation of Certification in Address Confidentiality Program. (1) The Assistant Secretary of State shall approve or deny an Appeal from Cancellation of Certification in Address Confidentiality Program within five (5) business days after it is date-stamped received by the Office of the Secretary of

(a) The Assistant Secretary of State shall approve an Appeal from Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to KRS 14.306 do not exist.

(b) The Assistant Secretary of State shall deny an Appeal from Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to KRS 14.306 exist.

(2) The Assistant Secretary of State shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Address Confidentiality Program.

(3) If an Appeal from Cancellation of Certification in Address Confidentiality Program is timely submitted and denied pursuant to this section, cancellation of certification in the address confidentiality program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the Assistant Secretary of State shall conclude the appeal procedures pursuant to KRS Chapter 14 and this administrative regulation.

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

(a) "Application for Certification to Participate in Address Confidentiality Program", <u>September</u> **2021** [June 2014]:

(b) "Address Confidentiality Program Participant Card", September 2021 [March 2014];

(c) "Address Confidentiality Program Participant Name or Address Change", <u>September 2021</u> [June 2014];

(d) "Withdrawal from Participation in Address Confidentiality Program", September 2021

[June 2014]; and

(e) "Appeal from Cancellation of Certification in Address Confidentiality Program", September

2021 [March 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <a href="http://www.sos.ky.gov">http://www.sos.ky.gov</a>.

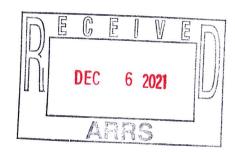
CONTACT PERSON: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email jscutchfield@ky.gov.

Karen Sellers Executive Director karen.sellers@ky.gov



December 6, 2021

Taylor Brown General Counsel taylora.brown@ky.gov



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: 31 KAR 3:010. Current address of Kentucky registered voters and distribution 4 of voter registration lists.

Dear Co-Chairs West and Hale:

After further consideration of the issues raised by raised by 31 KAR 3:010, the State Board of Elections proposes the attached agency amendment to 31 KAR 3:010.

Sincerely,

Taylor Austin Brown, General Counsel

State Board of Elections

140 Walnut Street

Frankfort, Kentucky 40601

# REQUEST FOR VOTER REGISTRATION DATA

Phone: 502-573-7100

www.elect.ky.gov

Fax: 502-573-4369 or 502-696-1952

STATE BOARD OF ELECTIONS

AGENCY USE ONLY

140 WALNUT STREET, FRANKFORT, KY 40601 Or

Order #	

## PLEASE READ BEFORE COMPLETING THIS FORM

KRS 117.025(3)(h): The State Board of Elections shall furnish at a reasonable price any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question. The State Board of Elections may also furnish the precinct lists to other persons at the board's discretion, at a reasonable price. The board shall **NOT** furnish precinct lists to persons who intend to use them for **COMMERCIAL USE**.

Commercial use as defined by 31 KAR 3:010, Section 3, means: (1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good, service, or publication (2) The transfer or sale of a voter registration list by the requester to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good, service, or publication. Pursuant to 31 KAR 3:010, Section 4, commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes: (1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes; (2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts.

Pursuant to 31 KAR 3:010, Section 1, as used herein: "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service; "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good or service to another; and "Voter Registration List" means a list of registered voters generated from the Statewide Voter Registration Database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

ALLOW 7 TO 10 RUSINESS DAVS FOR PROCESSING

	ALLOW / TO TO DO DE LE	
REQUESTER NAME:		DATE:
	[Print or type name of inativation]	
ENTITY:	90 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	TITLE:[Insert affiliation]
[Insert name	of business, company or corporation]	[Insert affiliation]
		CYMY, COLUMN O. ZID.
FAX:()	CELL PHONE:()	DAY TIME PHONE:()
PICK UP AT SBE O	FFICE (OR) MAIL-IN P	PAYMENT
PAY BY CREDIT CA	ARD (E-mail required)	[E-mail address]
REQUESTER HERE	BY STATES, UNDER OATI	H, AS FOLLOWS: I am (CHECK ONLY ONE)
Per 31 KAR 3:010 a dul nomination papers with  A Duly Authorized I Insert Name of Politic  A Duly Authorized I  OTHER - Please att the information is re-	the Office of the Secretary of State or county of Representative of a Political Paral Party Committee:  Representative of a Committee to ach in writing, signed and dated by spected, and describing how the	that Advocates or Opposes an Amendment or Public Question.  y the Requester, specific information detailing the purpose for which purpose stated by the Requester fits within the parameters of uage listed above). The State Board of Elections will determine the
I further state that I have read I for commercial use, that I will n registration lists will be used for question, or other purpose as allow By signing below, I am aware the lost may refuse any further requirements.	OATH OF KRS 117.025(3)(h) and 31 KAR 3:01 of sell or give the voter registration lists my campaign only, for a political party wed by the state board of elections.	REQUESTER:  0, (quoted above), that I do not intend to use the voter registration lists to persons who intend to use the information for commercial use, and the voter committee, for a committee that advocates or opposes an amendment or public belief or knowledge that the data I have received has been sold, stolen, or SIGNATURE OF REQUESTER
<b>Kentucky</b>		[Must be the same name as "Requester Name" above]

1. <u>SELECT the appropriate box and</u> [Contact your County Clerk for t	l complete the required info he appropriate information	rmation. needed to com	nplete Section 1.]
Statewide	Federal Con	gressional	District Number)
Countywide	State Senato	rial	District Number)
(Name of County)	State Legisla	itive	District Number)
(OR)	nwovide the county and pre	cinct code(s).	
If ordering individual precinct(s) [Contact your County Clerk for the co	the appropriate information	needed to cor	nplete Section 1.]
CountyPrecinct(s) [Example: A101; I	B101; C101]:		
2. SELECT the appropriate block		N OD BIDEI	DESIDENT STATIC
	ROUP, OR ORGANIZATIO	N, OR INDE	REFORM (F)
ALL VOTERS	CONSTITUTION (C)		SOCIALIST WORKERS (S)
DEMOCRAT (D)	GREEN (G) LIBERTARIAN (L)		INDEPENDENT STATUS (I)
REPUBLICAN (R)  OTHER (O) [does not include political party, groups, or organizations, or voters of independent status.]	suant to 31 KA		
3. SELECT the appropriate block	k for the format of the data:		
ELECTRONIC VIA EMAIL	MAILING LABELS	S	PAPER LISTS
SPREADSHEET FILE	ALPHABETICAL		ALPHABETICAL
	HOUSEHOLD BY STR		STREET ORDER
	HOUSEHOLD BY ZIP	CODE	
SPECIAL REQUESTS (See p. 3 f			
PLEASE EXPLAIN:			
ORDERS WILL N	OT BE SHIPPED UNTIL PAYMEN	Γ IN FULL IS RE	CEIVED
		FICE USE	
NUMBER OF PRECINCTS:		\$	
NUMBER OF LABELS:		\$	
NUMBER OF RECORDS:		\$	
	Postage costs (if applicable)	\$	
	<u> </u>		
DATE COMPLETED:	BY:	\$	TOTAL COST

# COST, DESCRIPTION, AND FORMAT OF VOTER REGISTRATION DATA

PAPER LIST OR		1 CHARGE \$40.00				
(All purchases exceeding \$100.00, or 10 precincts, will be charged an additional \$1.00 per precinct after)						
ALPHABETICAL Paper Lists	<b>ALPHABETICAL paper lists</b> are lists of registered voters sorted in alphabetical order by last name within a precinct. These lists have the name, address, age code, party, gender, zip code, and a five year voting history of every registered voter in the precinct.	\$ 10.00 per precinct				
STREET ORDER Paper Lists	<b>STREET ORDER paper lists</b> are lists of registered voters sorted in street order within precinct. These lists have the name, address, age code, party, gender, zip code, and a five year voting history of every registered voter in the precinct.	\$ 10.00 per precinct				
MAILING LABELS (SBE will call with final fee) MINIMUM CHARGE \$30.00						
ALPHABETICAL labels	<b>ALPHABETICAL labels</b> are individual labels of registered voters within the precinct. They are printed with one name per label and sorted in alphabetical order within precinct.					
HOUSEHOLD labels by STREET ORDER	HOUSEHOLD labels by STREET ORDER are labels that are sorted by street address within precinct. There can be as many as four (4) names per label of the voters whose last name and address are an <i>identical</i> match.	\$ 30.00 per thousand labels				
HOUSEHOLD labels by ZIP CODE ORDER	HOUSEHOLD labels by ZIP CODE ORDER are labels that are sorted by zip code within county. There can be as many as four (4) names per label of the voters whose last name and address are an <i>identical</i> match.	\$ 30.00 per thousand labels				
UPON REQUEST, ANY	UPON REQUEST, ANY OF THE ABOVE LISTS MAY BE MADE AVAILABLE IN A PASSWORD-					
PROTECTED ELECTRONIC FORMAT AT LIKE CHARGE  STATEWIDE DATA REQUESTS \$2000.00						

Special requests are not available on paper lists, but may be ordered for specific information desired, such as voters that have voted in certain elections [Examples: all voters voting 3 out of 5 of the last elections OR all voters voting 3 out of 5 of the last general elections], gender, new registered voters, etc. on labels and electronic format. <u>Precisely describe</u> the data desired on Page 2 in the section labeled "Special Requests."

- → Make check payable to KENTUCKY STATE TREASURER
- → INCORRECT OR INCOMPLETE INFORMATION COULD DELAY YOUR ORDER
- → ALL ORDERS ARE FINAL
- → ALLOW 7 TO 10 BUSINESS DAYS FOR PROCESSING

\* \* \* DETACH THIS PAGE BEFORE FAXING OR MAILING \* \* \*

#### POLITICAL PARTY, GROUP, OR ORGANIZATION, OR INDEPENDENT STATUS CODES AS INDICATED ON PAPER LISTS

D - Democrat

L - Libertarian

F - Reform

R - Republican

Inactive Voter

G - Green

S - Socialist Workers

O-Other

C - Constitution

I - Independent Status

	SBE EXTRACT FILE LAYOUT							
FIELD	DATA ELEMENT	BEG POS	END POS	SIZE				
1	County Code	1	3	3				
2	Precinct Code	4	7	4	<u>NOTE:</u>			
3	City Code	8	8	1				
4	Last Name	9	33	25				
5	First Name	34	48	15	The State Board of Elections does			
6	Middle Name	49	58	10	not endorse, sell, or provide			
7	Sex	59	59	1	instructions on your personal			
8	Party	60	60	1	software packages.			
9	Other Code	61	63	3	<b>)</b> >			
10	Residence Street Address	64	103	40	] (			
11	Residence City Address	104	123	20				
12	Residence State	124	125	2				
13	Residence Zip	126	134	9				
14	Mailing Street Address	135	174	40				
15	Mailing City Address	175	194	20				
16	Mailing State	195	196	2	1			
17	Mailing Zip	197	205	9	<b>.</b> )			
18	Year of Birth	206	209	4	<b>]</b> /			
19	Date of Registration	210	217	8				
20	*Voting History (five-year)	218	237	20				

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AGE CODES—PAPER LISTS ONLY					
CODE	1	2	3	4	5
AGE	17-24	25-34	35-49	50-61	62-over

#### **\*VOTING HISTORY EXPLANATION**

The five-year VOTING HISTORY is an UNOFFICIAL record. However, official documentation may be obtained from the county clerk in the voter's county of residence at the time of the election in which the voter voted. Each record contains the voter's five-year voting history. When a person registers to vote and is placed on the Kentucky voter registration file, a five-year voting history is established. For instance, if a person registered to vote on January 11, 2015, and has his or her information entered into the system, then the system immediately established a voting history for the voter. The voting history would appear as shown below:

#### 15001600180019002000

#### 2017 is a "NO scheduled election" year

In this example, the number "15" indicates the first election year in which the voter is eligible to vote. Each subsequent underlined number indicates years in which an election will be held. A zero represents every primary and general election. Once a voter has cast a ballot and signed the precinct roster, a "1" replaces the zero representing the election. If the voter voted in the general election of 2015, but not in the primary, his or her record would appear as follows: 15011600180019002000. NOTE: Kentucky has a "NO scheduled election year" every four years. The first "NO scheduled election year" was 1997.

#### 12/6/21

#### **AGENCY AMENDMENT**

#### STATE BOARD OF ELECTIONS

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

Page 5
Section 7(1)
Line 11
After "SBE 84,", insert "December".
Delete "May".

Page 5 Section 7(2) Line 14

After "4:30 p.m.", insert the following:

(3) This material may also be obtained on the board's Web site at https://elect.ky.gov/Candidates/Pages/Request-Voter-Registration-Data.aspx.



Andy Beshear Governor

#### KENTUCKY BOARD OF PHARMACY

125 Holmes Street, Suite 300 State Office Building Annex Frankfort KY 40601 Phone (502) 564-7910 Fax (502) 696-3806 pharmacy.ky.gov DEC -7 2021

Peter P. Cohron, R.Ph. Jody Forgy, Consumer John Fuller, R.Ph. Craig Martin, Pharm D. Ron Poole, R.Ph. Jill Rhodes, Pharm.D.

Executive Director Larry A. Hadley, R.Ph.

December 3, 2021

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

Re: 201 KAR 2:030

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:030, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:030.

Sincerely,

Larry A. Hadley, R.Ph. Executive Director

Kentucky Board of Pharmacy



Final, 12-3-2021

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#### SUGGESTED SUBSTITUTE

# BOARDS AND COMMISSIONS Board of Pharmacy

#### 201 KAR 2:030. License transfer.

RELATES TO: KRS 315.191(1)(c), (d), 315.210

STATUTORY AUTHORITY: KRS 218A.205(8)[(7)], 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 authorizes the board to establish conditions for licensure by reciprocity. KRS 218A.205(8)[(7)] requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(4)[(3)].

- (2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.
  - (3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

- (1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure when the license in the other jurisdiction was granted;
  - (2) Applicant holds in good standing, an active license to practice pharmacy;
  - (3) Applicant has:
- (a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and
  - (b) Received an NABP Official Application for Transfer of Pharmacist License;
- (4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;
  - (5) Applicant has successfully completed an examination in jurisprudence;
- (6) Applicant has submitted to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and
- (7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

- (1) Name, maiden, and other names used currently or previously;
- (2) Address, telephone number;
- (3) Date [and place] of birth[, and current age];
- (4) Social Security number;
- (5) Citizenship;
- (6) Sex [Gender];
- (7) State of original license by examination, including:
- (a) License number;
- (b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

- (c) Date degree was received; and (d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;
- (9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;
- (10) Total hours of practical experience as an intern prior to licensure as a pharmacist[, including the State Board of Pharmacy with which the hours are filed];

(11) States, dates, and results of pharmacist licensure examinations;

- (12) Pharmacist licenses currently held, including issue date, expiration date, status, and any board action taken against the licensee[license]; [obtained by:
  - (a) Score transfer; and

(b) Licensure transfer;]

(13) Practice and employment, including nonpharmacist employment, from the past three (3)

years; [initial licensure to the date of filing the application; and]

(14) Record of charges[-] or convictions of any felony or misdemeanor offense, other than traffic offenses, and whether or not a sentence was imposed or suspended[, and fines imposed, or certification that the applicant has not been convicted, fined, or disciplined, or had a license

(15) Record of any surrender of a pharmacist license or registration issued by the federal government or any state controlled substance authority;

(16) Record of any pharmacist license revocation, suspension, restriction, termination, or

other disciplinary action by any board of pharmacy or other state authority;

(17) Record of whether the pharmacist is currently under investigation or subject to disciplinary action by the licensing jurisdiction, federal Food and Drug Administration, federal Drug Enforcement Administration or any state drug enforcement authority for the violation of any state or federal pharmacy, liquor, or drug laws;

(18) Record of any condition or impairment, such as [including, but not limited to,] substance or alcohol abuse or dependency that in any way affects the pharmacist's ability to prac-

tice pharmacy in a safe and competent manner; and

(19) Record of any application for initial licensure, renewal licensure, or licensure by transfer that was denied by any licensing authority, whether in pharmacy or any other profession.

Section 4. The board shall accept [a] license transfer applications from [a jurisdiction] jurisdictions that:

(1) Are [Is] an active member of the NABP; and

(2) Grant[Grants] license transfers[transfer] to [a] pharmacists[pharmacist] pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fees[fee] specified by 201 KAR 2:050, Section 1(2)[-] and (19) [<del>(20)</del>].

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License", [3/06] April

2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at https://pharmacy.ky.gov/professionals/Pages/Reciprocal-Information.aspx.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.



Andy Beshear Governor

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**Executive Director** Larry A. Hadley, R.Ph.

December 3, 2021

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

Re: 201 KAR 2:074

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:074, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:074.

Sincerely,

Larry A. Hadley, R.Ph.

**Executive Director** 

Kentucky Board of Pharmacy



#### Final, 12-3-2021

#### SUGGESTED SUBSTITUTE

#### **BOARDS AND COMMISSIONS Board of Pharmacy**

201 KAR 2:074. Pharmacy services in hospitals [or other organized healthcare facilities].

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121 STATUTORY AUTHORITY: 315.002, 315.005, KRS 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure the safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in hospitals[-or-other organized health care facilities].

Section 1. Definitions. (1) "Automated pharmacy system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information and shall be either:

(a) A decentralized automated pharmacy system that is located outside the pharmacy department, but within the same institution, and under the supervision of a pharmacist; or

(b) A centralized automated pharmacy system from which medications are prepared for final distribution that require the approval of a pharmacist.

(2) "Institutional pharmacy" means:

- (a) A pharmacy in an acute care hospital licensed pursuant to 902 KAR 20:016; or
- (b) [A pharmacy serving an other organized health care facility; or
- (c)] An onsite pharmacy serving an infusion center where medication is administered.
- (3) "Investigational drug" means a drug that has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.
  - (4) ["Other organized health care facility" means a facility:
  - (a) With a primary purpose to provide medical care and treatment to inpatients; and
  - (b) That is:
  - 1. An intermediate care facility;
  - 2. A skilled nursing facility;
  - 3. A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;
  - 4. A licensed personal care home;
  - 5. A licensed family care home;
  - 6. A nursing home;
  - 7. A nursing facility;
  - 8. An intermediate care facility for mental retardation; or
  - 9. An Alzheimer's nursing home.
- (5)] "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form to the patient care area as the doses are needed.
- (5) "Within the same institution" means a location that is not separated from the primary hospital facility by other commercial or residential property.

Section 2. Pharmacy Administration. (1) General.

(a) The pharmacy, organized as a separate department or service, shall be directed by a pharmacist, who shall be thoroughly knowledgeable about institutional pharmacy practice and management.

(b) The director of pharmacy services shall be responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution and shall be responsible to the chief executive officer of the institution or the chief executive officer's designee.

(c) If the director of pharmacy services is not employed full time, the institution shall establish an ongoing arrangement in writing with a pharmacist to provide services required by this admin-

istrative regulation and KRS 315.020(1).

(d) If a hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director of pharmacy services.

(2) Pharmacy personnel.

- (a) The institutional pharmacy shall maintain additional pharmacists in cooperation with the institution's administration, either full time or part time, as required to operate safely and effectively to meet the needs of the patients.
- (b) If nonpharmacist personnel are employed, nonpharmacist personnel shall perform all duties under the supervision of a pharmacist and shall not be assigned and shall not perform duties that are to be performed only by a pharmacist.

(3) Responsibilities.

- (a)1. Lines of authority and areas of responsibility within the pharmacy shall be clearly defined.
- 2. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.
- (b)1. There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient.
  - 2. Provision for procurement of drugs in an emergency situation shall be provided for.

(4) Supportive personnel.

- (a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.
- (b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(5) Availability.

- (a) The services of a pharmacist shall be available continuously. If around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis, and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.
- (b) A hospital not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one (1) container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.
- Section 3. Physical Facility. (1) The institutional pharmacy shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and proper management of the department.
- (2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by authorized pharmacy personnel only.

- (3)(a) A currently licensed hospital shall be exempt from the provisions of subsection (2) of this section if it:
- 1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and

2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall permit access by authorized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each

nursing unit or service area.

- (5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090. References related to the following subjects shall also be available:
  - (a) Drug identification;
  - (b) Toxicology;

(c) Drug interactions;

- (d) Parenteral drug compatibility; and
- (e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy shall be responsible for the procurement, distribution, and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital, or infusion center, [or other organized health care facility] staff (for example, nurses) and committees (for example, pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed

medical practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order.

- (4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law.
- (5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in an emergency situation.

(6) Labeling and packaging.

- (a) Each licensee shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging.
  - (b) Labeling and packaging of medications used for outpatients shall meet the requirements

of state and federal law.

- (7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if feasible. If the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.
- (8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration.

- (a) Drugs shall be administered only upon order of a licensed medical practitioner.
- (b) The institutional pharmacy shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital, infusion center, or other health care facility personnel and shall include personnel authorized to schedule, prepare, and administer medications.

(10)(a) Unused medication. The institutional pharmacy shall establish policies and procedures for the disposition of patients' unused medications.

(b) Medication in unit dose form may be reissued if package integrity has been maintained

and the product has not expired.

(11) Hospital floor stocks.

(a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock.

(b) A pharmacist shall review all orders distributed through floor stock.

(c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (for example, emergency room, surgery, critical care, or medical or surgical wards).

(d) All drug storage areas within the hospital shall be routinely inspected by pharmacy per-

sonnel at least monthly, and documentation shall be maintained to ensure that:

1. Unusable items shall not be present; and

2. All stock items shall be properly labeled and stored.

(e) [This subsection shall not apply to other organized health care facilities.

(f)] This subsection shall apply to infusion centers where medications are administered with an onsite pharmacy.

(12) Drug recall. There shall be a system for removing from use a drug that has been re-

called.

(13) Sample medications. The institutional pharmacy shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs.

(a) The institutional pharmacy shall establish policies and procedures for supplying emer-

- (b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies.
- (c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs.

(a) Policies and procedures controlling the use of investigational drugs (if used in the institu-

tion) shall be developed and followed.

(b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date), and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws re-

garding controlled substances.

(17) Compounding. Compounding at a location that is not within the same institution shall require a separate pharmacy permit.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to ensure that patients receive adequate information about the drugs they receive. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Responsibility. The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system shall be responsible for:

(1) An initial validation of system accuracy prior to use for distribution to patients;

(2) Ensuring the system:

(a) Is properly maintained;

(b) Is in good working order;

- (c) Accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and
- (d) Complies with the recordkeeping, access, and security safeguards pursuant to all applicable state and federal laws:

(3) Assuring medications are reviewed prior to loading into an automated pharmacy system and distribution;

(4) Implementing an ongoing quality assurance program that monitors performance of the pharmacy compounding robotics, which is evidenced by written policies and procedures and requires a continued documented validation of doses distributed on a routine basis and annual review of the quality assurance program;

(5) Establishing policies and procedures if there is a system failure of an automated pharmacy system:

(6) Providing the board with prior written notice of installation or removal of an automated pharmacy system. This notification shall include the:

(a) Name and address of the pharmacy; and

(b) Initial location of the automated pharmacy system;

(7) Oversight for assigning, discontinuing, or changing personnel access to the system, including establishment of written policies and procedures for security and control;

(8) Reviewing personnel access on at least an annual basis;

(9) Assuring that the decentralized automated pharmacy system stock is checked at least monthly in accordance with established policies and procedures, including checking for:

(a) Accuracy;

(b) Integrity of packaging; and

(c) Expiration dates;

(10) Maintaining in the pharmacy the following documentation relating to an automated pharmacy system:

(a) The name and address of the pharmacy or inpatient health care facility where the system is being used:

(b) The automated pharmacy system manufacturer's name, model, serial number, and software version;

(c) A description of how the system is used;

- (d) Written quality assurance procedures and accompanying documentation of use to determine continued appropriate use of the system as established in subsections (7) and (8) of this section: and
- (e) Written policies and procedures for system operation, safety, security, accuracy, emergency medication access, access, and malfunction which includes clearly defined down time and procedures; [and]

(11) Maintaining adequate security systems and procedures, evidenced by written policies and procedures to:

- (a) Prevent unauthorized access;
- (b) Maintain patient confidentiality;
- (c) Allow user access modification; and

(d) Comply with federal and state laws; and[-]

(12) Maintaining in the pharmacy a current list of all locations where automated pharmacy systems are located and providing the list to the board upon request.

Section 7. Standards. (1)(a) All events involving the contents of the automated pharmacy system shall be recorded electronically.

(b) Records shall be maintained by the pharmacy and be available to the board and shall in-

clude the following:

1. The date, time, and location of the system accessed;

2. Identification of the individual accessing the system;

3. Type of transaction;

4. Name, strength, dosage form, and quantity of drug accessed; and

5. Name of the patient for whom the drug was ordered, if applicable.

(2)(a) All medications to be stocked into the centralized automated pharmacy system shall:

1. Have been previously validated by a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, and safety; [for bar code accuracy] and

2. Be utilized by a pharmacist, pharmacist intern, or certified pharmacy technician.

(b) Integrity and accuracy shall be validated by a pharmacist.

 $\overline{(3)}$  The stocking of medications in a decentralized automated pharmacy system utilizing  $\underline{a}$ machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, and safety [bar code technology] shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician.

(4) The stocking of medications in a decentralized automated pharmacy system without <u>a</u> machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, and safety [bar code technology] shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician. Integrity and accuracy shall be validated

by a pharmacist.

- (5) If a hospital licensed pursuant to 902 KAR 20:016 utilizes technology that validates appropriate drug, dose, dosage form, route of administration, time of administration, and patient at the exact time of medication administration, the stocking of the decentralized automated pharmacy system shall be done by a pharmacist, pharmacist intern, or certified pharmacy techni-
- (6) A record of medications stocked in an automated pharmacy system shall be maintained for at least five (5) years and shall include:

(a) The name of the person repacking the medications; and

(b) Documentation of the pharmacist checking the medications.

(7) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.

(8) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.

(9) All medications initially received in the pharmacy for use in an automated pharmacy system shall be quarantined until validation by a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, safety, [of bar code and] accuracy, and existence of the item in the database powering automated pharmacy system by a certified pharmacy technician, pharmacist intern, or pharmacist.

(10) If a medication needs to be repackaged:

(a) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

- 1. Perform the repackaging and validate the presence of an accurate machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, and safety [bar code] on the unit dose packaging; and
  - 2. Document the repackaging process including:
  - a. Manufacturer;

- b. Date and time of repackaging;
- c. The person repackaging;
- d. The lot number or batch number;
- e. The expiration date; and
- f. The quantity repackaged; and
- (b) A pharmacist shall:
- 1. Validate for accuracy and integrity prior to the addition to the automated pharmacy system; and
  - 2. Document the validation including:
  - a. The date and time of the validation;
  - b. The name of the pharmacist validating;
  - c. The lot number or batch number;
  - d. The expiration date; and
  - e. The quantity validated.
- (11) A medication returned to the pharmacy from a patient care area shall follow the processes established pursuant to Section 4(10) of this administrative regulation.
- (12) A medication distributed by the centralized automated pharmacy system shall be distributed in the delivery device utilized by that system.
- (13) A medication distributed by an automated pharmacy system shall be accessed and administered by a professional licensed to administer medications.
  - (14) A medication distributed by an automated pharmacy system shall not be dispensed.
- (15) Board inspectors may[are authorized to] inspect and investigate complaints regarding an automated pharmacy system on all premises owned by the hospital where an automated pharmacy system is located and supplied with medications purchased under the hospital's pharmacy permit.
- (16) All transfers of medications to automated pharmacy systems shall be in accordance with federal and state laws.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, Phone (502) 564-7910, Fax (502) 696-3806, email Larry.Hadley@ky.gov.

502-429-3300 800-305-2042 Fax: 502-429-1245

# KENTUCKY BOARD OF NURSING

Andy Beshear Governor

312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222-5172 kbn.ky.gov

November 30, 2021

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



Re: 201 KAR 20:215. Continuing Competency Requirements.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:215, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:215.

Sincerely,

Jeffrey R. Prather, General Counsel

Kentucky Board of Nursing

312 Whittington Parkway, Suite 300

Louisville, KY 40222

#### Final, 11-29-2021

#### SUGGESTED SUBSTITUTE

# **BOARDS AND COMMISSIONS Board of Nursing**

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 194A.540, 218A.205(3)(i), 314.011(12), 314.073, 314.991(1)-(3), 620.020(8)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

- (2) A licensee shall maintain the documentation of the method chosen.
- (3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation as established in subsection (1) through (4) of this section shall be [as follows]:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

- (c) Include the continuing education required by Section 5 of this administrative regulation;
- (2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or

(c) Have been recertified during the earning period;

- (3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:
  - (a) Completion of a research project that is nursing-related:
  - 1. As principal investigator, coinvestigator, or project director;
  - 2. That is qualitative or quantitative in nature;
  - 3. That utilizes a research methodology;
  - 4. That increases knowledge, causes an improved outcome, or changes behavior; and
  - 5. That is evidenced by an abstract of the project, which includes a summary of the findings;
  - (b) Publication of an article in a peer-reviewed health-related journal; or

(c) Participation as a preceptor for at least one (1) nursing student or new employee:[-]

1. That has a [The] preceptorship that shall be for at least 120 hours:[-]

2. Requires[There shall be] a one (1) to one (1) relationship between the preceptor and the student or employee;[-]

3. Authorizes the preceptor to[may] train more than one (1) student or employee and

to[may] combine the hours to total 120 hours; and[-]

4. Includes that the preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by [written documentation from] the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

- (b) A nursing employment evaluation that is satisfactory for continued employment. The nurse shall submit the Nursing Continuing Education Employment[Employer] Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period. [
  - 1. The evaluation, which shall:
  - a. Cover a period of at least six (6) months during the earning period;
  - b. Be signed by the nurse's supervisor; and
  - c. Include the name, address, and telephone number of the employer; and
  - 2. The Nursing Employment Evaluation Form.]
- (5) Contact hours of continuing education earned for the methods of continued competency validation as established in subsection (1) or (4) of this section may earned by:
  - (a) 1. A nursing continuing education presentation that is:
  - a. Designed and developed by the presenter;
  - b. Presented to nurses or other health professionals;
- c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and
  - d. Offered by a provider approved pursuant to 201 KAR 20:220.
- 2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or
- (b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.
  - 1. Contact hours shall be calculated as follows:
- a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or
  - b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.
  - 2. The following courses shall be relevant to nursing practice:
- a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or
- b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.
- 3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.
- 4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.
- Section 4. (1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

- (2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.
- Section 5. (1)(a) Advanced practice registered nurses who do not have a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) or a waiver and registration issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine for the treatment of opioid use disorder shall earn a minimum of five (5) contact hours in pharmacology.
- (b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) who do not have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn a minimum of five (5) contact hours in pharmacology, including at least one and one-half (1.5) contact hours on the dual subjects of pharmacology and either [, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system,] pain management[,] or addiction disorders.

(c) Advanced practice registered nurses who have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn:

1. A minimum of five (5) contact hours annually in pharmacology, of which one and one-half (1.5) pharmacology hours shall[must] be on the dual subjects of addiction disorders and pharmacology; and

2. An[and] additional two and one-half (2.5) contact hours annually on addiction disorders.

(d)[(e)] To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.

(e)[(d)] Objectives for the contact hours related to pharmacology shall be identified. Casual

mention of medications or medical treatments shall not qualify.

(2) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(3) Registered nurses and licensed practical nurses [licensed after July 15, 2010] shall earn, within three (3) years of licensure, a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6), and a minimum of three (3) contact hours on domestic violence, and elder abuse, neglect, and exploitation as required by KRS 194A.540[ within three (3) years of licensure].

(4) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency re-

quirement in subsection (6) of this section on or before July 1, 2023.

(5) Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement, or reinstatement after July 1, 2022, shall satisfy the continuing competency requirements in subsection (6) of this section within three (3) years of licensure.

(6)(a) Nurses shall earn a minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1)

contact hour that addresses:

- 1. Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;
- 2. A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;
- 3. Systems of care, evidence-informed approaches, and best practices to reduce suicide
  - 4. Ethical legal considerations of caring for patients and Inurses who are suicidal.

(b) Nurses shall earn a minimum of one and one-half (1.5) contact hours in implicit bias that addresses:

1. The impact of historical racism and other forms of invidious discrimination on the provision

of healthcare;

2. Methods of evaluating the presence and extent of implicit bias; and

3. Measures that may[can] be taken to reduce implicit bias.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure peri-

od.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via https://cebroker.com.

(b) Copies shall be furnished within twenty (20) days of the date a written request is sent

[mailed by first class] to the last known email address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the

noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business [thirty (30)] days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to

practice nursing. (4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing

education activities that will meet the criteria for acceptable continuing education.

- (6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.
- Section 7. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be found[deemed] to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2005; [and]

(b) "Nursing Continuing Education Employment Evaluation Form", 6/2021[2016]; and

(c) "Preceptor Continuing Education Verification Form", 6/2021.

(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 40222-5172, 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

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# KENTUCKY BOARD OF NURSING

Andy Beshear Governor

312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222-5172 kbn.ky.gov

NOV 3 0 2021

ARRS

November 30, 2021

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

Re: 201 KAR 20:320. Standards for Curriculum of Prelicensure Registered Nurse and Practical Nurse Programs.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:320, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:320.

Sincerely,

Seffrey R. Prather, General Counsel

Kentucky Board of Nursing

312 Whittington Parkway, Suite 300

Louisville, KY 40222

#### Final, 11-29-2021

#### SUGGESTED SUBSTITUTE

# **BOARDS AND COMMISSIONS Board of Nursing**

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS <u>194A.540(11)</u>, 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2), [194A.540(11),] 620.020(8)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student

and faculty are in separate physical locations.

(3) "External examination" means [an examination, quiz, or quiz questions, not produced by the program of nursing or its faculty] a standardized or norm-referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing.

(4) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the

(5)[(4)] "Program of nursing" means the educational unit that prepares a person for licensure

as a registered or licensed practical nurse.

(6)[(5)] "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(7)[(6)] "Remediation" means the process by which a student improves or corrects a knowledge deficit through external examinations, other assignments, or activities , and which may result in an upward adjustment to a student's final course grade in accordance with Section 4 of this regulation].

(8)[(7)] "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

- (a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.
  - (b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those re-

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills,

and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

- (a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.
- (b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.
- (c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

- (a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.
  - (b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.
- (c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.
- (d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.
  - 1. Each course shall be implemented in accordance with the established course syllabus.
- 2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.
- (e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.
- (f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing. [This subparagraph shall be implemented by January 1, 2020.]

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in ac-

cordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

- (a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.
  - 1. A request for curriculum revision shall include the present plan and the proposed change

with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

- (a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.
- (b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total

clinical hours required for graduation.

(2)(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

- (b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:
  - 1. Attendance at simulation conferences:

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and

debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of nursing's course objectives and

the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

Section 4. Use of External Examinations. (1) [An] External examinations may be used to assist in the remediation of a student or as a part of the final course grade. Iff used as a part of the final course grade, the combined weight of all external examinations, external quizzes and remediation shall not count for more than ten (10) percent of the final course grade] [is a standardized or norm referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing].

(2) [With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, a] A program of nursing shall not use an external

examination as the sole basis to determine a student's progression or graduation.

(3) A curriculum change that includes the implementation of an external examination shall include consideration of multiple evaluation criteria, and shall not be based solely on external examination test results. [

(4)][(3)][An external examination may be used to assist in the remediation of a stu-

dent.][The examination shall not be the sole remediation strategy][.]

(4)[(5)][(4)] A program of nursing that utilizes [an] external examinations as [the basis for] a component of [requiring] student remediation shall ensure that completion of remediation occurs

within the same semester or quarter.

(5)[(5)] The academic progression policy of the program of nursing and course syllabi shall clearly outline the role of [the] an external examination, including the frequency of and schedule for the[such] testing, and the weight to be applied to results when calculating the final course grade. A course syllabus that references an external examination shall include information needed to calculate the impact of test results in any given external examination on the final course grade [in remediation]. If a course syllabus requires [require] a specific average test score on all exams as a condition for passing the course, student results on external exams shall be excluded from that calculation.

(6)[(7) With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, and the option of requiring all students in a course to take external examinations, [(6)] a] A program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070.

Section 5. Curriculum [Statutory] Additions. (1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about:

(a) Pediatric abusive head trauma as it is defined in KRS 620.020(8);

(b) Suicide prevention and wellness topics listed in subsection (3) of this section by August 15, 2022; and

(c) Implicit bias topics listed in subsection (4) of this section by August 15, 2022.

(3) Suicide prevention and wellness topics shall include:

(a) Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

(b) A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;

(c) Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

(d) Ethical legal considerations of caring for patients and[/] nurses who are suicidal.

(4) Implicit bias topics shall include:

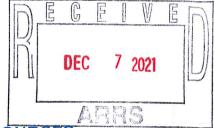
(a) The impact of historical racism and other forms of invidious discrimination on the provisions of healthcare;

(b) Methods of evaluation the presence and extent of implicit bias; and

(c) Measures that may[can] be taken to reduce implicit bias.

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.





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

Andy Beshear Governor #1 Sportsman's Lane Frankfort, Kentucky 40601 Phone (502) 564-3400 Fax (502) 564-0506 Mike Berry Secretary

Rich Storm Commissioner

December 7, 2021

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

Re:

301 KAR 6:001. Definitions for 301 KAR Chapter 6.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 6:001, Definitions for 301 KAR Chapter 6, proposes the attached amendment to 301 KAR 6:001.

Sincerely,

Beth Frazee

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



#### SUGGESTED SUBSTITUTE

Final Version: 12/6/2021 4:06 PM

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

## 301 KAR 6:001. Definitions for 301 KAR Chapter 6.

**RELATES TO: KRS Chapter 235** 

STATUTORY AUTHORITY: KRS 235.280[320]

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 235.280 requires the department to promulgate administrative regulations. This administrative regulation establishes definitions for [To define the]</u> terms used in 301 KAR Chapter 6.[This amendment is necessary to add definitions for "Type V personal flotation device" and "manually propelled racing vessels".]

Section 1. Definitions. (1) "Adequate ventilation" means ventilation <u>that[which]</u> met Boating Industry Association and U.S. Coast Guard requirements at the time the vessel was manufactured.

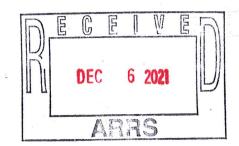
- (2) "Airborne device" means a kite, parachute, or similar device <u>that[which]</u> holds a person aloft *while[when]* towed behind a moving vessel.
  - (3) "Class A" means vessels less than sixteen (16) feet in length.
- (4) "Class 1" means vessels sixteen (16) feet or over and less than twenty-six (26) feet in length.
  - (5) "Class 2" means vessels twenty-six (26) feet or over and less than forty (40) feet in length.
  - (6) "Class 3" means vessels forty (40) feet or more in length.
- (7) "Crossing" means a situation in which a vessel approaches another from an angle of 112.5 degrees or less from either side of the bow.
- (8) "Documented by the federal government" means a vessel <a href="mailto:that">that</a>[which] has been registered with, and issued official registration documents by, the United States Coast Guard.
- (9) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.
- (10) "International diving flag" means a red flag with a white stripe running diagonally from an upper corner to the opposite lower corner.
  - (11) "Length":
- (a) Means the longest dimension of a boat measured along the centerline from the bow to the stern; and
- (b) Does not mean the length[, but not] including outboard motors, swim platforms, or similar attachments.
- (12) "Manually propelled racing vessel" means a racing shell, rowing scull, racing canoe, or racing kayak recognized by national or international racing associations **for[or]** use in competitive racing, and not **carrying or having been designed to carry equipment**, **except that which is[designed to carry or not carrying equipment not]** solely for competitive racing.
- (13) "Overtaking" means a situation in which a faster vessel approaches a slower vessel from an angle of more than 112.5 degrees from either side of the bow of the slower vessel.

- (14) "Passing" means a situation in which vessels approach and pass each other from head on or nearly so.
  - (15) "Type I" means a personal flotation device:
- (a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and
  - (b) Having more than twenty (20) pounds of buoyancy.
  - (16) "Type II" means a personal flotation device:
- (a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and
  - (b) Having at least fifteen and one-half (15.5) pounds of buoyancy.
  - (17) "Type III" means a personal flotation device:
  - (a) Designed to keep a conscious person in a vertical or slightly backward position; and
  - (b) Having at least fifteen and one-half (15.5) pounds of buoyancy.
  - (18) "Type IV" means a personal flotation device:
  - (a) Designed to be thrown to a person in the water and not worn; and
  - (b) Having at least sixteen and one-half (16.5) pounds of buoyancy.
- (19) "Type V" means a special use personal flotation device intended and approved by the U.S. Coast Guard for specific activities.
- (20) "Water skis" means rigid or inflatable skis, kneeboards, tubes, wakeboards, or similar devices. [upon or in which a person is towed behind a moving vessel.]
  - (21) "Water skiing" means:
- (a) The act of riding in or upon water skis while being towed behind a moving vessel or propelled by a boat's wake or while riding **on or in[en/in]** a boat's wake directly behind a vessel that is underway; or
  - (b) Barefoot skiing.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.



December 6, 2021



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

Re: Kentucky State Fair Board

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

cc: David Beck, President and CEO Tony Schreck, CFO

# Suggested Amendment Tourism, Arts and Heritage Cabinet Kentucky State Fair Board

303 KAR 1:005. Vehicle speed.

Page 1
STATUTORY AUTHORITY
Line 7

After "KRS", insert "247.145,".

Page 1
NECESSITY, FUNCTION, & CONFORMITY
Line 8

After "CONFORMITY:", insert the following:

KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. KRS 247.153 authorizes the board to establish by resolution speed limits governing the operation of motor vehicles on state fairgrounds property. This administrative regulation establishes requirements for regulating the speed of vehicles on state fairgrounds.

Delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

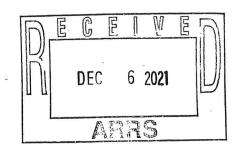
Page 1 Section 1 Line 10

> After "1.", insert "An". Delete "No".

After "shall", insert "not".



December 6, 2021



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

Re: Kentucky State Fair Board

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

cc: David Beck, President and CEO Tony Schreck, CFO

# Suggested Amendment Tourism, Arts and Heritage Cabinet Kentucky State Fair Board

303 KAR 1:010. Vehicle parking.

# Page 1 NECESSITY, FUNCTION, & CONFORMITY Line 8

After "CONFORMITY:", insert the following:

KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. KRS 247.154 authorizes the board to promulgate administrative regulations establishing requirements for traffic control and parking of vehicles on state fairgrounds. This administrative regulation establishes requirements for regulating parked vehicles on state fairgrounds.

Delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

# Page 1 Section 1 Line 10

After "1.", insert "<u>A</u>".

Delete "No".

After "shall", insert "not".

#### Line 13

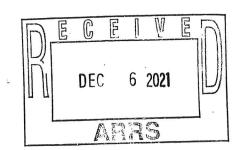
After "lane in which", insert "it is". After "operator", delete "thereof".

#### Line 14

After "impounding of", insert "the". Delete "said".



December 6, 2021



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

> Kentucky State Fair Board Re:

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

David Beck, President and CEO cc: Tony Schreck, CFO

# Suggested Amendment Tourism, Arts and Heritage Cabinet Kentucky State Fair Board

303 KAR 1:015. Traffic flow.

Page 1
STATUTORY AUTHORITY
Line 7

After "KRS", insert "247.145,".

Page 1
NECESSITY, FUNCTION, & CONFORMITY
Line 8

After "CONFORMITY:", insert the following:

KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. KRS 247.154 authorizes the board to promulgate administrative regulations establishing requirements for traffic control and parking of vehicles on state fairgrounds. This administrative regulation establishes requirements for regulating traffic flow within state fairgrounds.

Delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

Page 1 Section 1 Line 10

After "1.", insert "<u>A</u>".

Delete "No".

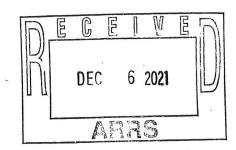
After "shall", insert "not".

Line 11

After "flow signs", delete comma.



December 6, 2021



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

Re: Kentucky State Fair Board

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

cc: David Beck, President and CEO Tony Schreck, CFO

# Suggested Amendment Tourism, Arts and Heritage Cabinet Kentucky State Fair Board

303 KAR 1:075. Conduct and operation of concessions and exhibits.

# Page 1

# **NECESSITY, FUNCTION, & CONFORMITY**

#### Line 8

After "CONFORMITY:", insert the following:

KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control.

#### Line 10

After "center.", delete "The purpose of". Capitalize "this".

#### Lines 10-11

After "regulation", insert "<u>establishes requirements</u>". Delete "is".

#### Line 12

After "conducting them.", delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

## Page 1

#### Section 1

#### Line 15

After "1.", insert "A". Delete "No".

#### Line 16

After "shall", insert "not". After "maintain", insert semicolon. Delete comma.

#### Line 17

After "display", insert comma.

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Line 18
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After "any of the", delete "foregoing".

#### Line 19

After "apparatus on", insert "the".

Delete "such".

## Page 2

#### Section 2

#### Line 1

After "2.", insert "A". Delete "No".

#### Line 2

After "shall", insert "not".

# Page 2

# Section 3(1)

#### Line 4

After "(1)", insert "<u>A</u>". Delete "No".

After "shall", insert "not".

#### Line 5

After "Board", insert period. Delete semicolon.

# Page 2

## Section 3(2)

#### Line 6

After "(2)", insert "A".

Delete "No".

After "shall", insert "not".

After "distribute", insert comma.

After "circulars", insert comma.

# Page 2

**Section 4** 

#### Line 9

After "(2)", insert "A".

Delete "No".

After "person", insert "shall not be".

Delete "is".

#### Line 11

After "regulation", insert comma.

After "unless", insert "the".

Delete "such".

#### Line 12

After "Board for", insert "the".

Delete "such".

#### Page 2

**Section 5** 

Line 13

After "5.", insert "(1)".

#### Line 14

After "regulation", insert "shall be".

Delete "is hereby".

#### Line 15

After "Board", insert the following:

. (2) This authority

Delete "and".

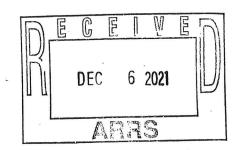
## Line 17

After "sponsoring", insert "the event".

Delete "such events".



December 6, 2021



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

> Kentucky State Fair Board Re:

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

David Beck, President and CEO cc:

Tony Schreck, CFO

#### **REVISED:**

#### 12/3/2021 10:25 AM

# SUGGESTED SUBSTITUTE TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:080. Exposition Center, grounds; dissemination of material; demonstrations.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 247.145</u> authorizes the <u>Kentucky</u> State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. This administrative regulation establishes requirements relating to [To regulate] dissemination of material and demonstrations on the Kentucky <u>State</u> Fair and Exposition Center grounds.

Section 1. (1) <u>The following shall be permitted on the grounds of the Kentucky Fair and Exposition Center at the locations designated on a diagram of the Kentucky Fair and Exposition Center and in accordance with the requirements of this section:</u>

- (a) The peaceful noncommercial distribution of leaflets;
- (b) [7] The setting up of tables;
- (c) [and,] The peaceful holding of discussions with patrons of the Kentucky Fair and Exposition Center to aid in [that] distribution; [,] and
- (d) The peaceful carrying of placards. [shall be permitted on the grounds of the Kentucky Fair and Exposition Center in the following manner at the locations designated on a diagram of the Kentucky Fair and Exposition Center, a copy of which is filed herein by reference. Copies may be obtained from the Kentucky State Fair Board, P. O. Box 21179, Louisville, Kentucky 40221.]
- (2) The following areas shall be designated for the activities referenced in subsection (1) of this section:
  - (a) Main Entrance to the Freedom Hall: Areas 1, 2
  - (b) Main entrance to East Hall: Area 3
  - (c) Main entrance North Wing: Areas 4, 5
  - (d) Main Entrance South Wing A: Area 6
  - (e) Main Entrance South Wing B: Area 7
  - (f) Main entrance South Wing C: Area 8

- (g) Main Entrance to West Hall/Wing: Area 9
- (h) Main Entrance to Broadbent Arena: Area 10
- (i) Pavilion: Area 11, and
- (j) New Market Hall: Area 12.
- (a) Main Entrance to the Coliseum: Areas A, B, C and D.
- (b) Inside the Coliseum Building: Areas E and F.
- (c) Main entrance to East Hall: Areas G and H.
- (d) Inside East Hall Entrance: Areas J and K.
- (e) Main Entrance to East Wing: Areas L and M.
- (f) Inside Entrance to East Wing: Areas N and O.
- (g) Main Entrance to West Hall: Areas P and Q.
- (h) Inside Entrance to West Hall: Areas R and S.
- (i) Main Entrance to West Wing: areas T and U.
- (i) Inside Entrance to West Wing: Areas V and W.
- (k) Main Entrance to Broadbent Arena: Areas X and Y.
- (I) Inside Entrance to Broadbent Arena: Areas Z and Z-1.
- (m) Entrance to Stadium: Areas AA through OO.
- (n) Pavilion: Area Z-2.
- (o) New Market Hall: Areas Z-3 and Z-4.
- (p) [In the event that functions are scheduled on the grounds of the Kentucky Fair and Exposition Center at locations with respect to which no areas for distributions and demonstrations have been above designated, the executive director shall designate such additional areas for such activities as he may deem appropriate.
- (q)] One (1) table may be set up at all areas, other than Areas E and F, in order to aid distribution activities.
  - (a)[(r)] Placards shall be permitted at all areas other than Areas E and F.
- (r)[(s)] Areas E and F shall be unavailable when control gates for admission charges, [and/or] registration for an event, or both, are set up at the main entrance to the Coliseum.
- (3) The executive director may designate additional areas for activities listed in subsection (1) if functions are scheduled on the grounds of the Kentucky Fair and Exposition Center at locations that have not been designated for the activities in subsection (1).
- (4)[(2)] Any person or group who wishes to conduct any of the above activities at the locations specified shall apply to the Executive Director of the Kentucky <u>Fair[fair]</u> and Exposition Center. [on forms provided by him for this purpose.] Application shall be made not less than seventy-two (72[1]) hours nor more than two (2) weeks before commencement of the activities. The application shall set forth the type of activities to be conducted: [7] the expected number of participants in <u>the[such]</u> activities: [7] the time, location, and duration of the activities: [7] and the name, address, and telephone number

of the person making the application. For[ in the case of] a group, it shall be sufficient to supply the name, address, and telephone number of one (1) person who can be contacted if problems arise concerning the grant of the application.

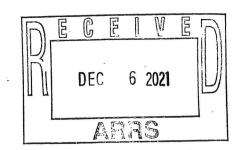
- (a) A deposit of twenty-five (25) dollars cash or money order shall be submitted with the application [7] and shall be returned to the applicant within twenty-four (24) hours after the termination of the activities if there has been no extra cleanup time required by the Kentucky Fair and Exposition Center staff as a result of the litter created by the [aforesaid] activities.
- (b) The executive director shall grant each application to engage in the activities permitted <u>by this administrative regulation[hereunder]</u>, unless he and the President of the Kentucky State Fair Board determine that the proposed number of participants contained in <u>an [and]</u> application will unreasonable and substantially interfere with either:
  - 1. The safety of patrons attending the Kentucky Fair and Exposition Center;
- 2. The orderly movement of vehicle and pedestrian traffic on the grounds of the Kentucky Fair and Exposition Center; or
  - 3. The normal functions of the Kentucky Fair and Exposition Center.
- (c) If[4. In the event that] the executive director and the president of the board [Kentucky State Fair Board] find that the proposed number of participants will create [such] unreasonable and substantial interference, the executive director, after consultation with the President of the board [Kentucky State Fair Board], shall grant the application subject to a reduced number of participants in the proposed activities, and shall notify the applicant in writing of the grounds for reducing the number of participants.

  1. If there are [In the event of] multiple applications for any given times and locations, the executive director may allocate [shall have discretion to]:
  - a. <u>The [Allocate such]</u> locations, on a proportional basis, among the various applicants;
- b. [Allocate] Times, on a proportional basis, during which the various applicants may conduct their activities; or
- c. [Allocate] Any given period of time or location, on a proportional basis, among the various applicants.[;]
- **2. [d-]** In exercising **this [such]** discretion, the executive director shall try, to the maximum extent possible, to accommodate the location and time requests of all applicants.
- (d)[(e)] The grant of the application by the executive director shall be in the form of a permit, which shall set forth the number of persons covered by the permit, the activities **that[which]** are permitted, the permitted time and duration of those activities, and the location at which the activities may be conducted.
- (e)[(d)] The duration of each permit issued shall not be in excess of two (2) days. Any person or group may renew a permit for successive two (2) day periods. Renewal applications shall be made on the same form as new applications and shall be processed as if they were new applications.

- (5)[(3) No] Signs, leaflets, placards, or other material shall <u>not</u> be affixed to the building facilities. [N[n]o] Leaflets or other material shall <u>not</u> be distributed by leaving them unattended throughout the Kentucky Fair and Exposition Center.
- (6)[(4) No] Voice amplification equipment of any kind shall <u>not</u> be used by any person or group to aid in the conducting of any of the activities permitted <u>by this administrative</u> <u>regulation[hereunder]</u>.
- (7)[(5) No] Signs, leaflets, placards or other material distributed shall <u>not</u> contain any obscene, subversive, salacious, or libelous material.
- (8) (a) [(6)] The executive director may suspend any permit already granted if [in the event that] the conduct of the applicant or any of his agents or associates unreasonably and substantially interferes with either:
  - 1.[(a)] The safety of patrons attending the Kentucky Fair and Exposition Center;
- **2.[(b)]** The orderly movement of vehicle and pedestrian traffic on the grounds of the Kentucky Fair and Exposition Center; or
  - $3.[(\epsilon)]$  The normal functions of the Kentucky Fair and Exposition Center.[i]
- (b) If[(d) Or in the event of the failure of] the applicant or any of his agents or associates fail to comply with any of the provisions set forth in this section.[-] the executive director shall suspend the permit by providing written notice [in writing] to the applicant. This[; and such] notice shall state the grounds for the suspension.
- (9) A[(7) No] person shall <u>not</u> engage in the activities permitted <u>by this administrative</u> <u>regulation[hereunder]</u> without first securing a permit pursuant to the provisions of this section.
- <u>Section 2. The provisions of this administrative regulation shall not apply to the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair. Section 3. Incorporation by Reference.</u>
  - (1) The following material is incorporated by reference:
    - (a) "Kentucky State Fair and Exposition Center Diagram", November 2021; and
    - (b) "Kentucky State Fair and Exposition Center Activity Permit Application", November 2021.
  - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209, Monday through Friday, 8:00 a.m. to 4:30 p.m. It may also be obtained at (URL).



December 6, 2021



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

Re: Kentucky State Fair Board

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

cc: David Beck, President and CEO Tony Schreck, CFO

# SUGGESTED SUBSTITUTE TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:090. Exhibit Center, dissemination of material; demonstrations.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. This administrative regulation establishes requirements relating to the [To regulate] dissemination of material and demonstrations at the Exhibition Center.

Section 1. (1) The peaceful noncommercial distribution of leaflets, the setting up of tables and the peaceful holding of discussions with patrons of the Exhibition Center to aid in this distribution, and the peaceful carrying of placards shall be permitted in **accordance with this section[the following manner]** at the **following** locations:

(a)[of] The main entrances to the lobby at the corners of Jefferson and Fourth, Market and Fourth and the entrance on Fourth:[-] and

(b) Inside the Lobby designated on a diagram of the Exhibition Center [, a copy of which is herein filed by reference. Copies may be obtained from the Kentucky State Fair Board, P. O. Box 21179, Louisville, Kentucky 40221].

(2)[(a)] Main Entrance to the Lobby.

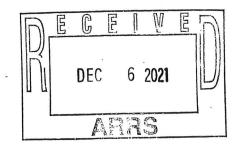
- (a) 1. Area A. Two (2) persons shall be permitted to peacefully:
- <u>a.</u> Distribute leaflets:[and/or]
- b. Carry placards: and[and/or]
- c. Hold discussions with patrons of the Exhibition Center.
- 2. A[No] table shall <u>not</u> be permitted in this area.
  - (b)[2.] Area B. Two (2) persons shall be permitted to peacefully:
- 1. a. Distribute leaflets; [and/or]
- **b.** Carry placards: and[and/or]
- **c.** Hold discussions with patrons of the Exhibition Center.
- 2. A[No] table shall not be permitted in this area.
- (c)[3.] Area C. Two (2) persons shall be permitted to peacefully:
- 1. a. Distribute leaflets:[and/or]
- **b.** Carry placards: and[and/or]

- c. Hold discussions with patrons of the Exhibition Center.
- **2.** Additionally, these persons may set up one (1) table at this location to aid in **this [such]** distribution.
  - (d)[4.] Area D. Two (2) persons shall be permitted to peacefully:
- 1. a. Distribute leaflets; [and/or]
- **b.** Carry placards: and[and/or]
- c. Hold discussions with patrons of the Exhibition Center.
- **2.** Additionally, these persons may set up one (1) table at this location to aid in **this [such]** distribution.
- (3)[(b)] Inside the Lobby.
- (a)[1-] Area E. 1. One (1) person shall be permitted to distribute leaflets and hold discussions with patrons.
- **2.** [No]-Placards and tables shall not be permitted [nor shall a table be permitted] in this area.
- <u>3.</u> This area shall be unavailable when control gates for admission charges, [and/or] registration for an event, or both, are set up in the Lobby.
- (b)[2.] Area F. 1. One (1) person shall be permitted to distribute leaflets and hold discussions with patrons.
- **2.** [No]-Placards and tables shall not be permitted [nor shall a table be permitted] in this area.
- **3.** This area shall be unavailable when control gates for admission charges, [and/or] registration for an event, or both, are set up in the Lobby.
- (4)[(2)] Any person or group who wishes to conduct any of the above activities at the locations specified shall apply to the Manager of the Exhibition Center on forms provided by **the board**. Application shall be made not less than seventy- two (72) hours nor more than two (2) weeks before commencement of the activities. The application shall set forth the type of activities to be conducted:[-] the time, location, and duration of the activities:[-] and the name, address, and telephone number of the person making the application. For [In case of] a group, it shall be sufficient to supply the name, address, and telephone number of one (1) person who can be contacted if problems arise concerning the grant of the application.
- (a) A deposit of five (5) dollars cash or money order shall be submitted with the application [,] and shall be returned to the applicant within twenty-four (24) hours after the termination of the activities if there has been no extra cleanup time required by the Exhibition Center staff as a result of the litter created by the [aforesaid] activities.
- (b) The manager shall grant all **such** applications on a first come, first served basis so long as the number of persons:[-] the activities; and the time, duration, and location applied for are in compliance with the provisions set forth in paragraph (a) of this subsection.

- (c) The grant of the application by the manager shall be in the form of a permit, which shall set forth the number of persons covered by the permit, the activities which are permitted, the permitted time and duration of those activities, and the location at which the activities may be conducted.
- (d) The duration of each permit issued shall not be in excess of two (2) days. Any person or group may renew a permit for successive two (2) day periods. Renewal applications shall be processed as if they were new applications.
- (5) [(3) No] Signs, leaflets, placards or other material shall <u>not</u> be affixed to the building facilities. [No] Leaflets or other material shall <u>not</u> be distributed by leaving them unattached throughout the Exhibition Center.
- (6) [(4) No] Voice amplification equipment of any kind shall <u>not</u> be used by any person or group to aid in the conducting of any of the above activities.
- (7) [(5) No] Signs, leaflets, placards, or other material distributed shall <u>not</u> contain any obscene, subversive, salacious, or libelous material.
- (8) [(6)] The manager may suspend any permit already granted if there is: (a) [ in the event of] Violence caused by the applicant or his agents or associates; [, or]
- (b) [in the event of] Any emergency that affects[which renders] the traffic flow in any of the areas covered by the permit in a way[such] that conduct of the activities would create a dangerous condition or substantially interfere with traffic at the Exhibition Center; or
- (c) [in the event of the] Failure of the applicant to comply with [or] any of the provisions set forth in this administrative regulation.



December 6, 2021



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

Re: Kentucky State Fair Board

303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075,

303 KAR 1.080, 303 KAR 1.090, 303 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee Staff of the issues raised by 303 KAR 1.005, 303 KAR 1.010, 303 KAR 1.015, 303 KAR 1.075, 303 KAR 1.080, 303 KAR 1.090, or 303 KAR 1:100, the Kentucky State Fair Board proposes the attached:

- 303 KAR 1.005 Suggested Amendment
- 303 KAR 1.010 Suggested Amendment
- 303 KAR 1.015 Suggested Amendment
- 303 KAR 1.075 Suggested Amendment
- 303 KAR 1.080 Suggested Substitute
- 303 KAR 1.090 Suggested Substitute
- 303 KAR 1:100 Suggested Substitute

Sincerely,

Carrie Bauer

General Counsel

cc: David

David Beck, President and CEO

Tony Schreck, CFO

# SUGGESTED SUBSTITUTE TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:100. Exposition Center grounds; sales and dissemination of real property, fixtures and goods, solicitation of contribution or sales during annual State Fair; rental of space; use of sound amplification equipment.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.145 authorizes the Kentucky State Fair Board to promulgate administrative regulations as are necessary to maintain decency and good order; protect the peace or safety of the general public; protect the public interest, convenience, or necessity; or govern the operation, maintenance, or use of property under its custody and control. This administrative regulation establishes requirements relating to the[To regulate] sale and dissemination of real property, fixtures and goods, solicitation of contributions and sales, and use of sound amplification equipment on the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair in order to insure orderly movement of crowds, insure[and] the safety and convenience of state fair patrons, and provide exhibitors with equal and adequate access.

Section 1. Administrative Regulation 303 KAR 1:080 **shall[will]** not apply to the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair.

Section 2. During the annual Kentucky State Fair, <u>a[ne]</u> person shall <u>not</u> make sales or distribution of real property, fixtures or goods, including [but not limited to] all printed or written material:[-] solicit for either contributions or sale:[-] make sales promotions or sales demonstrations:[-] carry placards:[-] or post, distribute, or display signs or any other printed or written materials, except from within the confines of a booth or fixed location rented from the: (1) [Kentucky State Fair] Board; or

(2) The[, in the case of locations in the carnival midway area, from the Fair] board's lessee of the carnival midway area.

Section 3. A rental <u>shall[will]</u> be charged for each booth or fixed location assigned and leased from the [Fair] board in accordance with this administrative regulation, and <u>the[such]</u> rental shall be set according to the size;[,] location;[,] and use, <u>such as</u> [{] sales, nonsales commercial, or nonprofit,[)] of the space assigned.

Section 4. The spaces available from the **[Fair]** board for booths or fixed locations **shall[will]** be assigned on a first come, first served basis after May 1 of each year, except that:

(1) <u>(a)</u> The sponsor of an event during the state fair may be authorized by his contract with the **[Fair]** board to sell or distribute **[his]** goods specified in the contract from locations in the area of the event **that[which]** are specified in the contract;

(b)[(2)] The [Fair] board <u>may[reserves the right to]</u> limit the assignment of booths and locations in designated "theme" areas of the state fair: 1. To applicants whose proposed design and use of the booths or locations conform to the [Fair] board's specifications and theme for the respective theme areas; [,] and

**2.** For[, in the case of] the Made in Kentucky Showcase, to applicants displaying goods of the required origin; and

(c)[(3)] The [Fair] board may[reserves the right to] limit to the civic midway area the number and location of vendors who will sell items that are substantially the same.

[items;]

(2)[(4)] In order to attract and maintain high-quality concessions and exhibits, the executive vice president may annually, at a time on or before April 30 of each year, extend to the renters of space from the prior year's state fair the opportunity to renew their space rental contracts for the next state fair. This renewal shall be on the basis of a renewal for the same space, purpose, and ownership as in the prior year. If Even when renewals are [so] offered to renters from the prior year, the [Fair] board shall not be required [reserves the right not] to renew any space rental contract with a [where the] renter who has violated any administrative regulation of the [Fair] board or any state or federal law in previous use of the booth.

Section 5. **[No]** Sales or distribution of food or drink shall <u>not</u> be made from booths or fixed locations rented from the **[Fair]** board under this administrative regulation, unless the rental contract specifically allows <u>these types of [such]</u> sales or distribution.

Section 6. Unless specifically authorized by the **[Fair]** board, **a[no]** person shall **not** use **[on the grounds of the Kentucky Fair and Exposition Center during the state fair]** any sound amplification equipment or any device with a speaker emitting loud sound **on the grounds of the Kentucky Fair and Exposition Center during the state fair**.

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

December 7, 2021

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



Re: 502 KAR 12:010. Sexual assault forensic-medical examination protocol.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 12:010, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 12:010.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee



# REVISED: 12/6/2021 1:45 PM

# Suggested Amendment Justice and Public Safety Cabinet Department of State Police

502 KAR 12:010. Sexual assault forensic-medical examination protocol.

# Page 1 NECESSITY, FUNCTION, & CONFORMITY Line 11

After "15A.160", insert the following:

<u>authorizes the Justice and Public Safety Cabinet to promulgate</u>

<u>administrative regulations for the administration of all laws and functions</u>

<u>which are vested in the cabinet, except laws and functions vested in the Department of Public Advocacy. KRS</u>

Delete "and".

#### Line 12

After "216B.400", insert "requires". Delete "authorize".

## Page 1 Section 1(1) Line 17

After "sexual offenses", insert comma.

# Page 2 Section 1(6)(c)1. Line 17

After "531.310;" delete "or".

## Page 2 Section 2 Line 23

After "following", insert "requirements.". Delete colon.

Page 3 Section 2(1) Line 1

# After "Advocate.", insert "The examination facility staff shall:".

# Page 3 Section 2(1)(b)

Line 5

After "consultation", insert period. Delete semicolon.

# Page 3 Section 2(2)(a)

Line 7

After "years old", insert the following: , the examination facility staff shall

# Page 3 Section 2(2)(a)1.

Line 9

After "600.020.", insert "<u>If</u>". Delete "In cases of suspected" After "dependency", insert "<u>is suspected</u>".

### Line 11

After "Family Services", insert comma.

Delete semicolon.

After "enforcement agency", insert comma.

Delete semicolon.

# Page 3

Section 2(2)(a)2.

Line 15

After "of the child", insert period. Delete "; and".

# Page 3

Section 2(2)(b)

Line 16

After "or older", insert the following:
, the examination facility staff shall:

# Page 3

Section 2(2)(b)1.

```
Line 17
```

After "1.", delete the following:

The examination facility shall
Capitalize "not".

### Line 18

After "authorization", insert period. Delete semicolon.

### Page 4

**Section 2(2)(b)2.** 

Line 3

After "of the report", insert period. Delete semicolon.

### Page 4

Section 2(3)

Line 4

After "Enforcement.", insert "The examination facility staff shall:".

### Page 4

Section 2(3)(c)

**Lines 10-11** 

After "enforcement," insert "keep".

After the first occurrence of "samples", insert "from release".

Delete the following:

shall not be released

### Line 12

After the second occurrence of "samples", insert period.

### Page 4

Section 2(5)

Line 18

After "(5)", insert "Examination facility staff shall: (a)".

### Page 4

Section 2(6)

Line 21

Before "(6)", insert "(b)". Delete "(6)".

Line 22

After the second occurrence of "examination", insert comma.

```
Page 5
Section 2(7)
Line 1
       Before "(7)", insert "(c)".
       Delete "(7)".
Page 5
Section 2(8)
Line 4
       Before "(8)", insert "(d)".
       Delete "(8)".
Page 5
Section 2(9)
Line 7
       Before "(9)", insert "(e)".
       Delete "(9)".
Page 5
Section 2(10)
Line 9
       Before "(10)", insert "(f)".
        Delete "(10)".
Line 11
        After "problems", insert comma.
 Page 5
 Section 2(11)
 Line 12
        Before "(11)", insert "(g)".
        Delete "(11)".
 Page 5
 Section 2(12)
 Line 14
        Before "(12)", insert "(h)".
        Delete "(12)".
```

### Page 5

### Section 3(2)

### Line 19

After ""is a child,", insert "examination facility staff shall".

## Page 7

## Section 3(9)

### Line 13

After "examination", insert comma.

After "samples", insert "processed".

Delete "process".

### Line 14

After "coroner's designee", insert period.

Delete semicolon.

## Page 10

## Section 5(10)

### Line 15

After "compliance with this", lowercase "Section".

After "ensure", insert "that".

## Page 11

## Section 5(12)

### Line 3

After "enforcement agency", inset comma.

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

December 7, 2021

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



Re: 502 KAR 14:010. Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 14:010, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 14:010.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee



# REVISED: 12/6/2021 1:45 PM

# Suggested Amendment Justice and Public Safety Cabinet Department of State Police

502 KAR 14:010. Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers; submission of fingerprints by jailers to the Kentucky State Police.

# Page 1 NECESSITY, FUNCTION, & CONFORMITY Line 12

After "441.046 requires", insert the following:

the department to promulgate administrative regulations establishing fingerprint submission requirements for jailers. This administrative regulation establishes requirements for the use of LiveScan fingerprint capture devices and for fingerprint submissions to the department.

Delete the remainder of the NECESSITY, FUNCTION, & CONFORMITY paragraph in its entirety.

Page 2 Section 2(2) Line 15

After "devices", insert comma. Delete parenthesis.

Line 16

After "lines", delete ") deemed".

Page 2 Section 2(3)

Line 18

After "factors", insert comma.

Page 4
Section 3(3)
Line 9

After "(EBTS),", insert the following:

# <u>in effect at the time of transmission that may be located on the FBI's biometric specification Web site.</u>

Delete the remainder of subsection (3) in its entirety.

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Page 4
Section 4
```

Line 14

After "sent", delete comma.

Page 5

**Section 6** 

Line 2

After "foreign substances", insert comma.

Line 4

After "draw equipment", insert comma.

Page 5

Section 7(1)

Line 9

After "(1)", delete the following:

The following material is incorporated by reference:

(a)

Line 11

After "FD-249, 5/11/99" insert the following: , is incorporated by reference.

Delete the remainder of subsection (1) in its entirety.

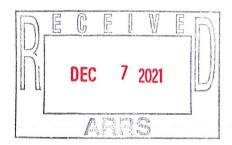
Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

December 7, 2021



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

Re: 502 KAR 20:020. Detection of deception examiners.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 20:020, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 20:020.

Sincerely,

Heather M. Lee

Paralegal Consultant

leatherm. Lee

# REVISED: 12/7/2021 1:43 PM

# Suggested Amendment Justice and Public Safety Cabinet Department of State Police

# 502 KAR 20:020. Detection of deception examiners.

```
Page 2
Section 2(1)
Line 1
After "manner", insert "that".
Delete "which".
```

# Page 2 Section 2(4)

Line 7

After "not divide fees", insert comma. After "split or divide", delete "the". After "fees", insert comma.

# Page 3 Section 3(7)

Line 7

After "examination report", insert "that". Delete "which".

# Page 3 Section 3(8)

Line 10

After "first reviewing", insert "with the examinee". After "the", insert ": (a)". Capitalize "issues".

#### Line 11

After "covered during the examination", insert semicolon. After "and", insert "(b)". Delete "the". Capitalize "general".

#### Line 12

After "asked during the examination", delete "with the examinee".

```
Page 4
Section 3(11)(b)2.
Line 13
      After "diagnosis", insert "that".
      Delete "which".
Page 5
Section 4(3)(b)1.
Line 8
      After "passed an examination", insert comma.
Page 5
Section 4(3)(c)2.
Line 13
       After "laboratory", insert comma.
Page 7
Section 4(9)
Line 1
       After " "yes" ", insert "or "no" ".
Page 7
Section 4(12)
Line 5
       After "comparison questions", insert comma.
       After "sex", insert comma.
 Page 7
Section 4(15)
 Line 12
       After "evidence", delete "until".
       After "at least", insert "until".
 Page 7
 Section 5(2)(b)
 Line 22
```

After "contained", insert "in the file".
Delete "therein".

## Page 8

## Section 6(1)(d)

### Line 14

After "polygraph subject material", insert the following: that is sponsored by individuals who are nationally recognized as experts in the profession or is otherwise shown to be high quality training in the field and Delete "which".

## Line 15

After "secretary or", insert "the secretary's". Delete "his".

# Page 8 Section 6(2)

### Line 17

After "required instruction", insert comma.

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

December 7, 2021

Ms. Emily Caudill, Regulations Compiler Legislative Research Commission 029, Capitol Annex 702 Capital Avenue Frankfort KY 40601 DEC 7 2021

Re: 502 KAR 31:020. Law Information Network of Kentucky.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 31:020, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 31:020.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee



#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET DEPARTMENT OF <u>KENTUCKY</u> STATE POLICE (As Amended at ARRS)

# 502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500-17.540, 42 U.S.C. 14071

STATUTORY AUTHORITY: KRS 15A.160, 17.500(6), 17.510, 17.520(5)[, 42 U.S.C. 14071]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.510 requires[and 42 U.S.C. 14071 require] the Justice and Public Safety Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions.

- (1) "Authorizing Official" means an official identified in KRS 17.510(3), (4), and (5).
- (2) "[Cabinet" is defined in KRS 17.500(2).
- (3) "]Department" means the Department of Kentucky State Police.
- (3)[(4)] "LINK" means the Law Information Network of Kentucky.
- (4)[(5)] "NCIC" means the National Crime Information Center.
- (5)[(6)] "Registrant" is defined by KRS 17.500(5).
- (6)[(7)] "Registrant information" means the specific information set forth in KRS 17.500(6), as well as the name and address of any place where the registrant is a student.
  - (7)[(8)] "SOR" means the Sex Offender Registry.

Section 2. Sex Offender Duty to Register Notification Form.

- (1) A registrant shall provide the information required to complete the Sex Offender Duty to Register Notification Form #P:227.
  - (2) Completion of Sex Offender Duty to Register Notification Form #p:227.
- (a) The Division of Probation and Parole shall complete the Sex Offender Duty to Register Notification Form #P:227 for the sentencing court.
- (b) A registrant shall, in the presence of the sentencing judge, sign the Sex Offender Duty to Register Notification Form #P:227 on the registrant's signature line, in ink.
  - (c) A copy of the completed form shall be provided to the registrant.

Section 3. Kentucky Sex Offender Registrant Responsibility Form[if-Registrant is Incarcerated].

- (1) [If incarcerated,] A registrant shall provide the information required to complete Kentucky Sex Offender Registrant Responsibility form.
  - (2) Completion of Kentucky Sex Offender Registrant Responsibility form.
- (a) An authorizing official shall complete the Kentucky Sex Offender Registrant Responsibility form.
- (b) A registrant shall, in the presence of an authorizing official, sign the Kentucky Sex Offender Registrant Responsibility form on the [inmate] signature line, in ink or electronically.

(c) An authorizing official shall sign and date the Kentucky Sex Offender Registrant Responsibility form, in ink <u>or electronically</u>.

Section 4. SOR Registration Forms.

- (1) The following Sex Offender Registry Forms have been established:
- (a) The Kentucky Sex Offender Registry Entry and Modification Form #P:225 shall be completed by all persons required to register pursuant to KRS 17.510(2) as follows:
  - 1. Persons initially registering with the Sex Offender Registry; and
  - 2. Persons changing registrant information; and
- (b) The Kentucky Sex Offender Registry Move-In Form (#P:226) shall be completed by all parties required to register pursuant to KRS 17.510(6) or (7).
  - (2) Completion of the #P:225 and the P#:226.
- (a) The #P:225 and #P:226, as appropriate, shall be completed *[either]* in the presence of or by the authorizing official and shall include:
  - 1. The date of release from custody;
  - 2. Maximum discharge date of supervised release, or serve out date, whichever is later;
  - 3. [Initial date of registry expiration;
  - 4.] Name of person completing the form, if registrant is assisted;
  - 4.[5.] Office phone number of the releasing entity; and
  - 5.[6.] The date the form is signed.
- (b) The registrant shall read the #P:225 or #P:226, as appropriate, in the presence of the authorizing official.
- (c) The registrant shall sign the #P:225 or #P:226, as appropriate, on the registrant's signature line of the form, in ink <u>or electronically</u>.
- (d) The authorizing official shall sign the #P:225 or #P:226, as appropriate, on the authorizing official signature line.
- (e) The authorizing official shall mail one (1) copy of the completed #P:225 or #P:226 to the department on the day the form is <u>submitted electronically</u>[completed].
  - (3) A #P:225 or #P:226 shall not be [considered] complete if:
- (a) It does not contain the registrant information required by KRS 17.500(6) and this administrative regulation;
  - (b) It contains erroneous or false information;
  - (c) An item on the form cannot be read or understood; or
  - (d) The registrant or authorizing official fails to sign the appropriate line.
- (4) If the department determines that a #P:225 or #P:226 is incomplete, the department shall notify the submitting authorizing official, of:
  - (a) The reason the #P:225 or #P:226 Entry Form was determined to be incomplete; and
  - (b) The action required to complete the #P:225 or #P:226.
- (5) Once[When] the deficiencies of an incomplete #P:225 or #P:226 are corrected, the department shall enter the corrected information into the SOR, LINK, and NCIC.
- (6) The department shall enter correct information from an incomplete #P:225 or #P:226 into SOR, LINK, and NCIC.

Section 5. Sex Offender Registry Address Verification Forms. A registrant shall verify the accuracy of the registrant information contained in the appropriate Sex Offender Registry Address Verification Form (#SOR 1T, #SOR 1L, #SOR 1WL, and #SOR 1WT) mailed to him or her by the department.

(1) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) year registrant that resides in Kentucky, an Address Verification Form #SOR 1T to the last known

address of the registrant.

- (2) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WT) to the last known address of the registrant.
- (3) At least once every ninety (90) days, the department shall mail an Address Verification Form (#SOR 1L) to the last known address of each lifetime registrant that resides in Kentucky.
- (4) At least once every ninety (90) days, the department shall mail to the last known address of each lifetime registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WL).
  - (5) Completion of Sex Offender Registry Address Verification Forms. A registrant shall:
  - (a) Complete each item in the Address Verification Form;
  - (b) Sign the Address Verification Form on the signature line in ink; and
- (c) Mail the completed Address Verification Form to the department on the day the form is completed.
  - (6) An Address Verification Form shall not be [considered] complete if:
  - (a) It does not contain the information required;
  - (b) It contains erroneous or false information;
  - (c) An item on the form cannot be read or understood; or
  - (d) The registrant fails to sign on the appropriate line.
- (7) If the department determines that an Address Verification Form is incomplete, the department shall return the form to the submitting registrant, notifying the submitting registrant of:
  - (a) The reason the Address Verification Form was returned; and
- (b) The action required by the registrant to properly complete the Address Verification Form prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Sex Offender Duty to Register Form #P:227", June 2006;
- (b) "Sex Offender Registry Entry and Modification Form #P:225", December 2017[June 2006];
- (c) <u>"Form #P:226"</u>, <u>December 2017[June 2006</u>];
- (d) "Sex Offender Registry Address Verification Form #SOR 1T", <u>December 2018[May 2009]</u>;
- (e) "Sex Offender Registry Address Verification Form #SOR 1L", <u>December 2018[May 2009]</u>;
- (f) "Sex Offender Registry Address Verification Form #SOR 1WT", <u>December 2018[May 2009]</u>;
- (g) "Sex Offender Registry Address Verification Form #SOR 1WL", <u>December 2018[May 2009]</u>; and
- (h) "Kentucky Sex Offender Registrant Responsibility Form", <u>July 2020</u> [<u>January 2019</u>][July 2006].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Data Processing Section, <u>1266[1250]</u> Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

Andy Beshear GOVERNOR

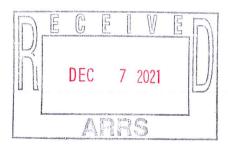


Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

December 7, 2021

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



Re: 502 KAR 40:010. Law Information Network of Kentucky.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 40:010, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 40:010.

Sincerely,

Heather M. Lee

Paralegal Consultant

Glathern. Lee



#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

## 502 KAR 40:010. Law Information Network of Kentucky.

RELATES TO: KRS 16.060, 17.110

STATUTORY AUTHORITY: KRS 16.060, 16.080[,17.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.060 <u>requires</u> [mandates that] the Commissioner of the Department of <u>Kentucky</u> State Police <u>to</u> [shall] collect, classify, and maintain information useful for the detection of crime and the identification, apprehension, and conviction of criminals. KRS 17.110 <u>requires</u> [provides that] city and county police <u>to</u> [shall] file felony arrest reports with the Justice Cabinet, Department of <u>Kentucky</u> State Police. [KRS 17.080 provides that the Secretary of Justice may adopt rules and administrative regulations necessary to carry out the functions vested in the cabinet by KRS Chapter 17:] KRS 16.080 <u>authorizes</u> [provides that] the Commissioner of the Department of <u>Kentucky</u> State Police <u>to promulgate</u> [may adopt such rules and] administrative regulations necessary to carry out the responsibilities of the <u>department</u> [Department of State Police as outlined in KRS 16.010 to 16.170]. This administrative regulation establishes the definitions to be used in the administration of the Law Information Network of Kentucky.

- Section 1. <u>Definitions</u>. [As employed in 502 KAR 40:010 through 502 KAR 40:040, unless the context requires otherwise:] (1) "Administration of criminal justice" means the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of Criminal History Record Information (CHRI). ["Law Information Network of Kentucky," hereafter referred to as LINK, shall be defined as the system, including hardware, software, equipment; facilities, procedures, agreements and organizations thereof responsible for the timely acceptance, processing, and subsequent dissemination of criminal justice information.]
- (2) "Criminal justice agency" means a governmental agency, or a subunit thereof, which performs administration of criminal justice pursuant to a statute, regulation, ordinance, or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Criminal justice agency includes the Office of Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, or correctional school, State Police, State Fire Marshal, Board of Alcohol Beverage Control, Justice and Public Safety Cabinet, and any other criminal justice agency engaged in the administration of criminal justice.

"Criminal justice information," hereafter referred to as CJI, shall be defined as information collected by criminal justice agencies that is needed for performance of their legally

authorized, required function. This includes: wanted person information; stolen property information; criminal history information; information compiled in the course of investigation of crimes that are known or believed on reasonable grounds to have occurred, including information on identifiable individuals; and information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

- (3) "Criminal justice information" or "CJI" means information collected by criminal justice agencies that is needed for performance of their legally authorized, required function. Criminal justice information includes wanted person information, stolen property information, criminal history information, information compiled in the course of investigation of crimes that are known or believed on reasonable grounds to have occurred including the information on identifiable individuals, and information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity. "Criminal justice agency" shall be defined as: a governmental agency or a subunit thereof which performs administration of criminal justice pursuant to a statute, regulation, ordinance, or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, State Police, State Fire Marshal, fire department, Board of Alcohol Beverage Control, Justice and Public Safety Cabinet and every other criminal justice agency engaged in the administration of criminal justice.
- (4) "Law Information Network of Kentucky" or "LINK" means the system, including hardware, software, equipment, facilities, procedures, agreements, and organizations thereof, responsible for the timely acceptance, processing, and subsequent dissemination of criminal justice information. "Administration of criminal justice" shall be defined as the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage and dissemination of Criminal History Record Information (CHRI).
- (5) "Satellite agency" <u>means</u> [shall be defined as] a nonterminal agency accessing the LINK System through a terminal agency.
- (6) "Terminal agency" <u>means</u> [shall be defined as] an agency that has direct access to the LINK System via automated means.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email *Justice.RegsContact@ky.gov* [amy.barker@ky.gov].

Andy Beshear GOVERNOR



Kerry Harvey
CABINET SECRETARY

Robyn Bender GENERAL COUNSEL

DEC

December 7, 2021

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

Re: 502 KAR 50:010. Admissibility of evidence.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 50:010, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendment to 502 KAR 50:010.

Sincerely,

Heather M. Lee

Paralegal Consultant

Heather M. Lee



#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of <u>Kentucky</u> State Police (As Amended at ARRS)

## 502 KAR 50:010. Admissibility of evidence.

RELATES TO: KRS 16.140

STATUTORY AUTHORITY: KRS 16.140(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.140 establishes a trial board within the Department of <u>Kentucky</u> State Police to hear charges against officers. KRS 16.140(8) <u>authorizes</u> [provides that] the commissioner <u>to</u> [may] promulgate [reasonable rules and] administrative regulations governing the procedure before the trial board. This administrative regulation <u>establishes</u> [is necessary to define the] standards for the admissibility of evidence in proceedings before the trial board.

Section 1. Presiding Officer. The designated members of the trial board **shall** [will], prior to the beginning of a trial, select one (1) of its members as the presiding officer. The presiding officer may[, if desired,] have the assistance of counsel in order to rule on evidentiary or procedural matters. The presiding officer shall not vote or otherwise participate in the trial board's determination of guilt or innocence or in the setting of the punishment, if any.

Section 2. Strict Rules of Evidence Not to Apply. Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky shall be admitted in hearings before the trial board; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person [men] in the conduct of the person's [their] affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the presiding officer shall give effect to the rules of privilege recognized by the laws of the Commonwealth of Kentucky.

Section 3. Discovery. Any officer against whom trial board charges have been filed may discover evidence. Discovery may be accomplished by use of the Open Records Law. Requests for documents shall be directed to the official custodian of records for the Kentucky State Police. Accused officers may also request the commissioner or presiding officer issue a subpoena for documents held by the agency that are relevant to an accused officer's defense. Discovery privileges, including the deliberation process and work product rule, shall be observed.

Section 4. Judicial Notice. The presiding officer may take judicial notice of matters of common knowledge that are beyond reasonable dispute, statutes, and official court records.

Section 5. Interrogation of Witnesses. The rules of law that apply to state court proceedings concerning the manner and scope of examination and cross-examination of witnesses shall apply to trial board proceedings.

Section 6. Impeachment of Witnesses. The rules of law concerning the impeachment of witnesses that apply to state court proceedings shall apply to trial board proceedings.

<u>Section 7. Continuances. (1) A continuance of a scheduled hearing may be granted by the commissioner for good cause.</u>

- (2) A request for a continuance shall:
- (a) Be made in writing;
- (b) State the reason for the request;
- (c) Include proposed dates for rescheduling the hearing;
- (d) Be filed with the commissioner; and
- (e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.
- (3) An objection to a request for a continuance shall:
- (a) Be made in writing;
- (b) State the reason for the objection to the request for continuance;
- (c) Be filed with the commissioner; and
- (d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.
- (4)(a) The commissioner shall transmit to all parties an order either granting or denying the request for  $\boldsymbol{a}$  continuance.
- (b) If the continuance is granted, the order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-686, email Justice.RegsContact@ky.gov.

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

DEC

December 7, 2021

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

Re: 503 KAR 1:060

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:060, the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:060.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive

Richmond, KY 40475

## **Staff-suggested Amendment**

# Final Version 11/22/2021 JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council

503 KAR 1:060. Definitions for 503 KAR Chapter 1.

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

2021

December 7, 2021

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

Re: 503 KAR 1:090

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:090, the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:090.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive

Richmond, KY 40475

## **Staff-suggested Amendment**

# Final Version 11/22/2021 JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council

## 503 KAR 1:090. Approval of course curriculums.

Page 2

Section 1(2)

Line 1

After "submitted by a", insert "recognized school or a".

After "the council", delete "or a recognized school".

Page 2

Section 1(3)

Line 3

After "taught by one", insert "(1)".

Page 2

Section 1(10)

Line 14

Delete the quotation marks from the word "passing".

## **Staff-suggested Amendment**

# Version 10/27/2021 JUSTICE AND PUBLIC SAFETY CABINET **Kentucky Law Enforcement Council**

503 KAR 1:090. Approval of course curriculums.

**Material Incorporated by Reference** 

Form 31

Page 5

Orientation paragraph

After ", the behavioral", insert "objectives". Delete "objectiaves".



Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly
KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

December 7, 2021

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

Re: 503 KAR 1:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:100 the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:100.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive

Richmond, KY 40475

## **Staff-suggested Amendment**

# Final Version 11/22/2021 JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council

503 KAR 1:100. Certifications of instructors.

Page 1 Section 1(3) Line 18

After "applicant shall", delete "meet the following requirements".

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

December 7, 2021



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

Re: 503 KAR 1:110

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:110 the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:110.

Sincerely,

Deaidra Douglas Kentucky Law Enforcement Council 4449 Kit Carson Drive

Richmond, KY 40475

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (As Amended at ARRS)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d) STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course, which meets the requirements[required] for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records.

Section 1. <u>Peace Officer</u> Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

- (1) Successfully complete a minimum of 800 hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council [(KLEC)] in accordance with KRS 15.330 and 503 KAR 1:090;
- (2) <u>Pass [Attain a minimum passing score on]</u> all assessments <u>or examinations</u> as outlined in the current KLEC-approved curriculum; and
- (3) Successfully complete all other assignments, exercises, and projects included in the course. Afterhours assignments may be required, and shall be successfully completed **[in order]** to pass the training segment for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training *[in order]* to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

- (1) Physical training entry requirements.
- (a) Within five (5) days from the first date of the basic training course, the recruit shall be tested [. at a minimum,] in all physical training areas set forth in 503 KAR 1:140 Section 4(4)(a), as instructed and evaluated by qualified department instructors; and the evaluation standards for those tests shall meet or exceed the standards required for peace officer precertification status under KRS 15.386.[in the following events, in the order listed, as instructed and evaluated by qualified department instructors:
  - 1. Bench press;
  - 2. Situps;
  - 3. 300 meter run;
  - 4. Pushups; and

- 5. One and five-tenths (1.5) mile run.
- (b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:
  - 1. Bench Press, based upon a percentage of the recruit's body weight:
- a. 9 points Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- b. 9.5 points Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
  - c. 10 points Recruit shall bench press at least sixty-four (64) percent of body weight;
- d. 10.5 points Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- e. 11 points Recruit shall bench press at least seventy-three (73) percent or more of body weight; 2. Situps:
  - 9 points Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
  - b. 9.5 points Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
  - c. 10 points Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
  - d. 11 points Recruit shall complete nineteen (19) repetitions or more in one (1) minute;
  - 3. 300 meter run:
  - a. 9 points Recruit shall complete in sixty-eight (68) seconds or less;
  - b. 9.5 points Recruit shall complete in sixty-seven (67) seconds or less;
  - c. 10 points Recruit shall complete in sixty-five (65) seconds; and
  - d. 11 points Recruit shall complete in less than sixty-five (65) seconds;
  - 4. Pushups:
  - a. 9 points Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
  - b. 9.5 points Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
  - c. 10 points Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- d. 10.5 points Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- e. 11 points Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and
  - 5. One and five-tenths (1.5) mile run:
  - a. 9 points Recruit shall complete in 1,076 seconds (17:56) or less;
  - b. 9.5 points Recruit shall complete in 1,054 seconds (17:34) or less;
  - c. 10 points Recruit shall complete in 1,032 seconds (17:12) or less;
  - d. 10.5 points Recruit shall complete in 1,004 seconds (16:44) or less; and
  - e. 11 points Recruit shall complete in 975 seconds (16:15) or less.
  - (c) A recruit shall:
- 1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and
  - 2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:
  - a. A total score of fifty (50) points; or
  - b. Nine (9) points on any one (1) physical training event.
  - (b)[<del>(d)</del>] Retest.

- 1. A recruit <u>who</u> [that] fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.
- 2. A recruit **who [that]** obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.
- 3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.
  - 4. All failed events shall be retested on the same date.
- 5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the [physical training] entry requirements.
- 6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.
- (2) Physical training graduation requirements. (a) <u>To [In order to]</u> graduate, the recruit shall successfully complete [each of] the [following] physical ability requirements in 503 KAR 1:140 Section 4(4)(b) within ten (10) [five (5)] days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(a)[(b)] of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140, as instructed and evaluated by qualified department instructors.[:
- 1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;
  - 2. Situps. Eighteen (18) situps in one (1) minute;
  - 3. 300 meter run in sixty-five (65) seconds;
  - 4. Pushups. Twenty-five (25) pushups; and
  - 5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.]
- (b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.
- (c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:
- 1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;
  - 2. All failed events shall be retested on the same date;
- 3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and
- 4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.
- (3) A physical training midpoint <u>assessment[test]</u> shall be administered to the recruits at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal and Repetition of Basic Training. (1) Failure of Training.

- (a) A recruit that is removed from basic training due to a training segment failure pursuant to Section 5 of this administrative regulation shall:
  - 1. Be removed from the basic training class;
  - 2. Reenter basic training in a subsequent class that has the first available vacancy;
- 3. Start the training at the beginning of the training segment that the recruit did not successfully complete; and
- 4. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.
- (b) Upon the recruit's return, the recruit shall attend and participate at the beginning of the segment failed.
- 1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment which was failed. The hiring agency may recover these costs of repeating the training segment from its recruit; and
- 2. If the training segment is successfully completed, the recruit shall continue with the remainder of the basic training course.
- (c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:
  - 1. Be required to repeat basic training in its entirety; and
  - 2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.
- (2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:
  - (a) Shall not graduate with the recruit's basic training class;
  - (b) Shall be permitted to retest with the [very] next basic training class; and
  - (c) Upon successful completion, may graduate with that class.
- (3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:
  - (a) Be required to repeat basic training in its entirety; and
  - (b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall [at a minimum] include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

- (2) Basic Training Topics.
- (a) Legal subjects;
- (b) Physical training;
- (c) Defensive tactics;
- (d) Patrol;
- (e) Vehicle operations;
- (f) Firearms;
- (g) Criminal investigation;
- (h) D.U.I./Field sobriety testing;

- (i) Breath testing; or
- (j) Practical evaluation/testing.
- Section 5. <u>Practical Test and Examinations.[Assessments.]</u> (1) Scheduled <u>practical tests or [and/or]</u> examinations[assessments] shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include [at a minimum] one (1) or more of the topics listed in Section 4 of this administrative regulation.
- (2) A recruit shall be permitted one (1) <u>re-test[reassessment]</u> per <u>practical **test [tests] or** [and/or] examination [examinations][assessment] failed during basic training, but shall not exceed a total of two (2) <u>re-tests[reassessments]</u> during basic training.</u>
- (3) A recruit who fails a practical test **or [and/or]** examination[an assessment] shall not be <u>retested[reassessed]</u>:
  - (a) Earlier than forty-eight (48) hours from the original test or examination; or
  - (b) Later than:
- 1. Five (5) days after the original <u>test or</u> examination. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to <u>re-take[take]</u> the <u>practical **test [tests] or [and/or] examination [examinations]**[reassessment]; and</u>
  - 2. The last scheduled day of the basic training course.
  - (4) A recruit shall fail basic training if the recruit fails:
- (a) A practical test **or [and/or]** examination[An assessment] and fails to complete the retake[take a reassessment] as authorized by this section;
  - (b) A practical test or [and/or] examination re-take[reassessment]; or
- (c) A practical test **or [and/or]** examination[An assessment] after taking two (2) <u>retakes[reassessments]</u> in accordance with subsection (2) of this section.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

- (2) An excused absence from the course which causes a recruit to miss any of the required hours of basic training shall be made up through an additional training assignment.
- Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:
- (a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and
- (b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.
- (2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished <u>areas</u> of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 17.

CONTACT PERSON: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

December 7, 2021



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

Re: 503 KAR 1:120

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:120 the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:120.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive

Richmond, KY 40475

enclosure

### **Staff-suggested Amendment**

# Final Version 11/22/2021 JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

Page 5 Section 3(8) Line 2

Delete the quotation marks from the word "pass".

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

December 7, 2021



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

Re: 503 KAR 1:140

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:140 the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:140.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive

Richmond, KY 40475

enclosure

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (As Amended at ARRS)

## 503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council [(KLEC)] to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the Council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q *along with[frand]* a copy of the proposed job task analysis. The agency shall supply:

- (a) The name of the entity that completed the analysis;
- (b) The date on which the analysis was completed;
- (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
- (d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.
- (2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:
  - (a) Credentials and history of the entity conducting the analysis.
- 1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.
- 2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.
  - 3. Number and quality of job task analyses completed.
  - (b) Methodological approach.
  - 1. Reasonable, standardized format of the study and the report.
  - 2. Relative reliability and validity of the study's sampling techniques and practice.
  - 3. Other considerations that reflect sound practice of the scientific method.

- 4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.
  - (3) Initial review.
- (a) Within five (5) business days of receipt of the application, the KLEC office <u>shall</u> <u>notify</u> [shall <u>mail a notification to</u>] the agency that [either]:
  - 1. The application has been received and is complete; or
- 2. The application is incomplete. The notice that an application is incomplete shall identify [and] the specific information to [which shall] be supplemented [in order] to process the application. The agency shall submit [The KLEC office shall receive] the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned [r] and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.
- (b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests [,] and the specific reasons supporting a recommendation to reject.
- (c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.
- (d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:
  - 1. The reasons for the finding; and
  - 2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) <u>Each agency participating in certification shall submit</u> [The KLEC office shall receive] a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office [from each agency participating in certification] prior to any applicant testing. [If an agency initiates participation in certification, KLEC Form Q or KLEC Form tele-Q shall be submitted to the KLEC office.] The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

- (2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall <u>notify</u> [mail a notification to] the agency that the form:
  - (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify [and] the specific information to [which shall] be supplemented [in order] to process the form. The agency shall submit [The KLEC office shall receive] the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.
- (3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the

minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall <u>notify</u> [mail a notice to] the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC [1-1] along with the specific reasons supporting a recommendation to reject the agency testing.

- (4) KLEC Review. The KLEC [Peace Officer] Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected [,] and the specific reasons supporting the rejection.
- (5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:
  - 1. With the Secretary of the Justice and Public Safety Cabinet; and
  - 2. Within thirty (30) days of receipt of the notice of rejection.
  - (b) The notice of appeal shall be submitted:
  - 1. In writing [On KLEC Form S]; and
  - 2. With a copy of the notice of rejection of agency testing attached.
  - (c) A copy of the notice of appeal shall <u>also</u> be mailed to the KLEC office by certified mail.
- (d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.
  - (e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.
- (2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.
- (3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.
- (4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.[
- (5) An agency may request certification for a peace officer that has completed a non-DOCJT law enforcement basic training by submitting KLEC Form B Basic Training Previously Completed (non-DOCJT) to the KLEC Office.]
- Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed. (1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire: [Form H-2 Personal History Statement].
  - (a) Biographical history;
  - (b) Family history;

- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (q) Credit history.
- (2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.
- (a) <u>The applicant shall be fingerprinted by</u> [The agency shall submit one (1) completed FD 258 FBI Fingerprint Card to] the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.
  - (b) The KSP shall forward the results of state and FBI records check to the employing agency.
- (c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.
- (d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.
- (3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.
- (a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:
  - 1. Cognitive abilities;
  - 2. Personality characteristics; and
  - 3. Related constructs, including:
  - a. Integrity; and
  - b. Conscientiousness.[;] [and
  - c. Vocational preference;]
- (b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the ["]Standards for Educational and Psychological Testing["], American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.[;]
- (c) 1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;
  - 2. The summary statement shall classify applicants as:
  - a. Essentially suitable; ["Suitable";]
  - b. May be unsuitable; ["Not suitable";] or
  - c. Borderline suitability; and
- 3. If an applicant is classified as ["] borderline <u>suitability["]</u> or ["] may be <u>unsuitable["]</u> [not <u>suitable</u>], the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.[; and]
- (d) Screening shall be administered in accordance with the ["] Standards for Educational and Psychological Testing ["], American Educational Research Association, American Psychological

Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

- (4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.
  - (a) Precertification status.
- 1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:
  - a. Bench press;
  - b. Sit-ups;
  - c. 300 meter run;
  - d. Push-ups; and
  - e. One and five-tenths (1.5) mile run.
- 2. An applicant shall pass the physical ability test for precertification status if he or she achieves a *cumulative* score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:
  - a. Bench press, based upon a percentage of the recruit's body weight:
- (i) 9 points Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
  - (iii) 10 points Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points Recruit shall bench press at least seventy-three (73) percent or more of body weight;
  - b. Sit-ups:
  - (i) 9 points Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
  - (ii) 9.5 points Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
  - (iii) 10 points Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
  - (iv) 11 points Recruit shall complete nineteen (19) repetitions or more in one (1) minute;
  - c. 300 meter run:
  - (i) 9 points Recruit shall complete in sixty-eight (68) seconds or less;
  - (ii) 9.5 points Recruit shall complete in sixty-seven (67) seconds or less;
  - (iii) 10 points Recruit shall complete in sixty-five (65) seconds; and
  - (iv) 11 points Recruit shall complete in less than sixty-five (65) seconds;
  - d. Push-ups:
  - (i) 9 points Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
  - (ii) 9.5 points Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
  - (iii) 10 points Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

- e. One and five-tenths (1.5) mile run:
- (i) 9 points Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points Recruit shall complete in [less than] 975 seconds (16:15) or less [seconds].
- 3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.
- 4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

### a. A cumulative score of at least fifty (50) points for all five (5) events; and

- **<u>b.</u>** At least nine (9) points on each physical training event.
- 5. At the sole discretion of the hiring agency, an applicant **who [that]** fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.
- a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required *cumulative* [overall] fifty (50) point minimum.
- b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.
- 6. If an applicant obtains a point value for each event, but does not obtain <u>a cumulative</u> [an everall] score of <u>at least</u> fifty (50) <u>points</u>, the <u>applicant</u> [examinee] may attempt the test battery again, in its entirety. This shall be considered a second test administration and not [be considered] a retest.
- 7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.
- 8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status [in its entirety].
  - (b) Certification status.
- 1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) [five (5)] days of graduation from law enforcement basic training, which [, except for the precertification test score requirements,] shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:
- a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;
  - b. Sit-ups. Nineteen (19)[Eighteen (18)] sit-ups in one (1) minute;
  - c. 300 meter run in <u>less than</u> sixty-five (65) seconds;
  - d. Push-ups. Twenty-five (25) push-ups; and
  - e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.
- 2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

- 3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status <u>during the [:]</u> training graduation test:
- a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;
  - b. All failed events shall be retested on the same date; and
- c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.
- (5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.
- (a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.
- (b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.
- (c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.
- (6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.
- (a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the ["] Mandatory Guidelines for Federal Workplace Drug Testing Programs, ["] 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

<u>SCREENING</u>		
Marijuana metabolites	<u>50 ng/mL</u>	
<u>Cocaine</u> metabol	<u>ite</u>   <u>150 ng/mL</u>	
(Benzoylecgonine)		
Codeine / Morphine	2,000 ng/mL	
Hydrocodone / Hydromorpho	ne 300 ng/mL	
Oxycodone / Oxymorphone	<u>100 ng/mL</u>	
6-Acetylmorphine	<u>10 ng/mL</u>	
Phencyclidine (PCP)	25 ng/mL	
Amphetamine	/ 500 ng/mL	
<u>Methamphetamine</u>		
MDMA / MDA	500 ng/mL	

<u>CONFIRMATION</u>	
THC/THCA	<u>15 ng/mL</u>
Benzoylecgonine	<u>100 ng/mL</u>
Codeine	<u>2,000 ng/mL</u>
<u>Morphine</u>	<u>2,000 ng/mL</u>
<u>Hydrocodone</u>	<u>100 ng/mL</u>
<u>Hydromorphone</u>	<u>100 ng/mL</u>

Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	<u>10 ng/mL</u>
Phencyclidine (PCP)	<u>25 ng/mL</u>
<u>Amphetamine</u>	<u>250 ng/mL</u>
<u>Methamphetamine</u>	<u>250 ng/mL</u>
MDMA	<u>250 ng/mL</u>
MDA	250 ng/mL

[using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:

- 1. THC (marijuana), 20 ng/ML, 5 GC/MS;
- 2. Amphetamines, to include Methamphetamine and Methylenedioxymethamphetamine, 300 ng/ML, 100 GC/MS;
  - 3. Cocaine, 150 ng/ML, 50 GC/MS;
  - 4. Opiates, 300 ng/ML, 150 GC/MS;
  - 5. Barbiturates, 200 ng/ML, 100 GC/MS;
  - 6. Phencyclidine (PCP), 25 ng/ML, 25 GC/MS;
  - 7. Methadone, 300 ng/ML, 100 GC/MS;
  - 8. Oxycodone (Oxycontin), 100 ng/ML, 100 GC/MS;
  - 9. Benzodiazepines, 200 ng/ML, 100 GC/MS; and
  - 10. Propoxyphene, 300 ng/ML, 200 GC/MS;]
- (b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.
- (7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant[, using the questions in the KLEC Form I-3, Pre-employment Polygraph Background/Criminal Questions].
- (8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.
  - (9) High school diploma.
- (a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:
  - 1. Submission of a copy of a diploma or transcript from a public high school; or
  - 2. Submission of a diploma or transcript from a private high school that:
  - a. Is certified by or recognized by the Kentucky Department of Education; or
- b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall <u>also</u> submit <u>a completed Applicant Education Verification form</u> [affidavit or documentary proof of compliance upon request of the KLEC].

- (b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).
- Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:
  - (a) KLEC Form I-1 Consent for Pre-employment Polygraph Examination;
  - (b) KLEC Form K-1 Drug Screening through Urinalysis Applicant Consent Form;
  - (c) KLEC Form T-1 Medical Release Phase I Testing; and
  - (d) KLEC Form T-2 Liability Waiver Phase I Testing.
  - (2) Testing schedule.
- (a) The KLEC office shall <u>publish online or otherwise make available [mail]</u> to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.
- (b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.
  - (c) Advance notice of the schedule shall be made public prior to the testing.
- (d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.
- (3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.
- (a) Applicants shall provide current photographic identification when the testing is administered.
- (b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.
- Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.
- (2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.
  - (3) Length of test result validity.
- (a) Physical ability for precertification status [:] results shall be considered current and valid one (1) year from the passing date of the test.
- (b) Suitability screening [:] results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.
- (c) Polygraph examination [:] results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

- (d) Drug screening [:] results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who [that] leaves and reenters the testing process for preselection screening shall submit to another drug screening.
- (4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.
  - (5) Agency access to prior test results.
- (a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.
- (b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.
- (c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.
- Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.
- (2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.
- (3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:
  - (a) Passes or fails the test; or
  - (b) Performs or completes every component of the physical ability test.
- Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:
  - (a) Sixty-five (65) dollars for each psychological screening;
  - (b) \$100 for each polygraph examination; and
  - (c) Sixteen (16) dollars for each drug screening.
- (2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.
  - (3) Financial hardship.
- (a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:
- 1. The actual approved budget of the governmental unit for the current and the preceding year;
  - 2. The number of certification applicants for the current and preceding year;

- 3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
- 4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.
- (b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that *[either]*:
  - 1. The application has been received and is complete; or
- 2. The application is incomplete and <u>shall identify</u> the specific information <u>to</u> [which shall] be supplemented [in order] to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.
- (c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC[-] along with a recommendation to approve or reject the application for financial hardship[-] and the specific reasons supporting a recommendation to reject.
  - (d) KLEC review.
- 1. The KLEC Committee on <u>Professional Standards[Certification</u>] shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.
- 2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected [,] and shall provide the specific reasons supporting the rejection.
  - (e) Appeal.
- 1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.
  - 2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.
- 3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.
- 4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail[, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102].
- 5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.
- (4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOCJT.
- Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.
- (2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the

employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

- (a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support [KLEC];
  - (b) The basic training course or academy is a single, stand alone course;
- (c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and
- (d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:
  - 1. The twenty-four (24) hour legal update Penal Code course;
  - 2. The sixteen (16) hour legal update constitutional procedure course;
- 3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and
- 4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:
  - a. Basic officer skills;
  - b. Orientation for new police chiefs; or
  - c. Mandatory duties of the sheriff.
- (2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:
- (a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;
- (b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he <u>or she</u> completed his <u>or her</u> basic training course or academy;
  - (c) The basic training course or academy is a single, stand alone course; and
- (d) [A basic training credit of fifty (50) hours for each year of his full-time, peace officer service together with the basic training course hours allows compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

- (e)] The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.
- (3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:
- (a) <u>1.</u> The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the <u>Office of Kentucky Law Enforcement Support [KLEC]</u>; <u>or</u>
- 2. [If] The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time [-] peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and
  - (b) The basic training course or academy was a single, stand-alone course.
- (4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:
  - (a) Federal Bureau of Investigation;
  - (b) Bureau of Alcohol, Tobacco, and Firearms;
  - (c) Drug Enforcement Administration; or
  - (d) United States Secret Service.
- (5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.
- (6) An agency may request certification for a peace officer <u>who</u> [that] has completed an out-of-state law enforcement basic training by submitting for the applicant:
- (a) A [His] certificate of completion or other official documentation showing completion of basic training;
  - (b) A [His] transcript of classes for basic training with individual class hours specified; and
- (c) <u>A</u> letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:
  - 1. At least one (1) year; or
- 2. **[For]** Three (3) or more years with at least one (1) year in the state in which he <u>or she</u> completed his <u>or her</u> basic training course or academy.
- (7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.
- Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

- (2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. [In order] To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority.[\*
- (a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and
- (3)[(b)] For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 Drug Screening Approval, KLEC Form Q-4 Polygraph Approval, and KLEC Form Q-5 Suitability Screener[Psychological Examination] Approval, indicating that the following testing procedures have been completed:

(a)[1.] Polygraph;

(b)[2.] Suitability screening;

(c)[3.] Drug screen; and

(d)[4.] Medical examination or history statement.

(4)[3)] Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5)[(4)] An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

- Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.
  - (2) Use of alcohol or other intoxicants.
- (a) An applicant shall not possess, consume, <u>or [nor]</u> be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.
- (b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.
  - (c) An applicant shall not participate in physical ability testing if:
  - 1. The applicant has taken:
  - a. A controlled substance as prescribed by a physician; or
  - b. Any other medication, whether prescribed or not; and
- 2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.
- (3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or

is disruptive of *testing*, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify [A copy of KLEC Form R shall be mailed to] the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing.[7] The notice shall state the supporting reasons and circumstances of the removal[,] and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation

randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, [in order] to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the

possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;
  - (b) "KLEC Form A Testing Registration Attesting to Minimum Standards", 2021[June 2014];
  - (c) "KLEC Form C Grandfather Information", 2021[July 2006];
  - (d) "KLEC Form D All Standards Met", 2021[June 2014];
  - (e) "KLEC Form D-1 All Standards Met Inactive to Active Status", 2021[June 2014];
  - (f) "KLEC Form E Request for Certification for Exempt Officers", March 1, 1999;
  - (g) "KLEC Form F Status Update", 2021[June 2014];
  - (h) "KLEC Form G-1 Medical Examination Report", 2021[June 2014];
  - (i) "KLEC Form G-2 Medical History Statement", 2021[June 2014];
  - (j) "KLEC Form G-3 Medical Screening Guidelines Implementation Manual", 2021[June 2014];
  - (k) "KLEC Form H-1 Background Investigation", 2021[June 2001];
  - (I)[ "KLEC Form H-2 Personal History Statement", January 19, 1999;
  - (m)] "KLEC Form I-1 Consent for Pre-employment Polygraph Examination", 2021[June 2014]; (m)[(n)] "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021[June 2014];

(n)[(o)] "KLEC Form I-3 – Pre-employment Polygraph Background/Criminal Questions", October 11, 2005;

(p)] "KLEC Form J - JTA Submission", January 19, 1999;

(o)(q)] "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021[July 2006]:

 $(\underline{p})[(r)]$  "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", <u>2021[July 2006]</u>;

(a)[(s)] "KLEC Form L-1 - Code of Ethics", 2021[June 2014];

(r)[(t)] "KLEC Form L-2 - Canon of Ethics", 2021[June 2014];

(s)[<del>(u)</del>] "KLEC Form Q - Agency Submission Form", 2021[October 2006];

(t)[(v)] "KLEC Form Q-3 - Drug Screening Approval", 2021[July 2006];

(u)[<del>(w)</del>] "KLEC Form Q-4 - Polygraph Approval", 2021[July 2006];

 $\underline{(v)[(x)]}$  "KLEC Form Q-5 – <u>Suitability Screener[Psychological Examination]</u> Approval", <u>2021[July 2006]</u>;

(w)[(y)] "KLEC Form tele-Q - Agency Submission Form", 2021[June 2014];[

(z) "KLEC Form R - Removal from Testing", January 19, 1999;

(aa) "KLEC POPS Form S - Notice of Appeal", January 19, 1999;]

(x)[(bb)] "KLEC Form T-1 - Medical Release - Phase I Testing", 2021[June 2014];

(y)[<del>(cc)</del>] "KLEC Form T-1a - Physician's Medical Release Form", <u>2021[June 2014]</u>;

(z)[(dd)] "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021[July 2001];

(aa)[(ee)] "POPS Form PT-1 - Physical Agility Test Session Report", 2021[January 2003];

(bb)[(ff)] "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc)[(gg)] "KLEC Physical Fitness Testing Protocols", 2021[December 2009]; and

(dd)[(hh)] "KLEC Education Form - Applicant Education Verification", 2021[July 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive [Office Funderburk Building, Eastern Kentucky University], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at https://klecs.ky.gov/.

CONTACT PERSON: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

Chief Michael "Spike" Jones KLEC Board Chairman Kenton County Police Chief

John Moberly KLEC Executive Director



Andy Beshear Governor

Kerry Harvey Kentucky Justice and Public Safety Cabinet Secretary

2021

DEC

December 7, 2021

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

Re: 503 KAR 1:170

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 1:170 the Justice and Public Safety Cabinet, Kentucky Law Enforcement Council proposes the attached amendment to 503 KAR 1:170.

Sincerely,

Deaidra Douglas

Kentucky Law Enforcement Council

4449 Kit Carson Drive Richmond, KY 40475

enclosure

#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (As Amended at ARRS)

#### 503 KAR 1:170. Career Development Program.

**RELATES TO: KRS 15.310** 

STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council [(KLEC)] to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators (public safety dispatchers). This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunicators (public safety dispatchers).

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

- (2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, strategic orientation, or provides material related to higher order abstractions that force conceptual thinking.
- (3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division.
- (4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.
  - (5) "KLEC" means the Kentucky Law Enforcement Council.
  - (6) "Manager" means a position within law enforcement or public safety dispatch:
  - (a) Between the executive and supervisor positions; and
- (b) Which is responsible for the supervision of supervisory employees, and possibly involving planning, organization, public relations, discipline, or general administrative work.
  - (7) "Public Safety Dispatch" means telecommunications as described in KRS 15.530-15.590.
  - (8) "Public Safety Dispatcher" means a telecommunicator as described in KRS 15.530-15.590.
  - (9) "Supervisor" means a position which is responsible:
  - (a) For the direct supervision of nonsupervisory personnel; and
  - (b) Possibly for line duties in law enforcement or public safety dispatch.
  - (10) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or public safety dispatch course is categorized as a:

- (a) Conceptual skills course;
- (b) Human skills course; or

- (c) Technical skills course.
- (2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.
- (3) A law enforcement or public safety dispatch course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or public safety dispatcher who wishes to apply for a particular career step certificate shall:

- (1) Complete a "Form 1 Participant Commitment Form", which shall include the following:
- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Current rank and full time employee status;
- (d) The program to which the applicant wishes to commit;
- (e) Signature of the applicant; and
- (f) Signature of the applicant's agency head;
- (2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:
  - (a) Intermediate Law Enforcement Officer;
  - (b) Advanced Law Enforcement Officer;
  - (c) Law Enforcement Officer Investigator;
  - (d) Law Enforcement Traffic Officer;
  - (e) [Advanced Deputy Sheriff;
  - (f)] Law Enforcement Supervisor;
  - (f)[(g)] Law Enforcement Manager;
  - (q)[(h)] Law Enforcement Executive;
  - (h)[(i)] Intermediate Public Safety Dispatcher;
  - (i)(i) Advanced Public Safety Dispatcher;
  - (i)[(k)] Public Safety Dispatcher Supervisor;
  - (k)[(H)] Public Safety Dispatcher Manager/Director;
  - (l)[<del>(m)</del>] Law Enforcement Chief Executive;
  - (m)[(n)] Law Enforcement Training Officer;
  - (n)[(o)] Law Enforcement Officer Advanced Investigator;
  - (o)[(p)] Crime Scene Processing Officer;
  - (p)[(q)] Communications Training Officer; [or]
  - (q)[(r)] Crime Scene Technician;
  - (r) School Resource Officer I;
  - (s) School Resource Officer II;
  - (t) School Resource Officer III;
  - (u) Law Enforcement Tactical Officer;
  - (v) Law Enforcement Canine Officer;
  - (w) Sheriff Supervisor;
  - (x) Sheriff Manager;
  - (y) Sheriff Executive;
  - (z) Sheriff Chief Executive; or

### (aa) Investigative Public Safety Dispatcher;[.]

- (3) Include the following information on the application form:
- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Date of employment with current agency;
- (d) Current rank or title and date of promotion to that position;
- (e) Employment history;
- (f) Training history;
- (g) Educational history;
- (h) Signature of program applicant; and
- (i) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and
- (4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed the required:
  - (a) KLEC-approved or recognized courses; and
  - (b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit.

- (1) The KLEC shall approve in-service training before it is applied toward a career development step.
- (2) A program participant shall not receive more than one (1) program credit for an in-service training course.
- (3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.
- (4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.
- (5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
- (a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and
- (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
  - (b) Four (4) years of experience and an associate's degree;
  - (c) Four (4) years of experience and ninety-five (95) hours of college credit;
  - (d) Five (5) years of experience and eighty (80) hours of college credit;
  - (e) Six (6) years of experience and sixty-five (65) hours of college credit;

- (f) Seven (7) years of experience and fifty (50) hours of college credit; or
- (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

- (1) Complete the Intermediate Law Enforcement Career Step;
- (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
- (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
- (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
- (c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:
  - (a) Forty (40) hours of technical skills development courses;
  - (b) Forty (40) hours of conceptual skills development courses; and
  - (c) Eighty (80) hours in one (1) of the following options of courses:
  - 1. Academy of Police Supervision;
- 2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or
  - 3. A KLEC-approved or recognized equivalent course; and
- (3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a master's degree;
  - (b) Four (4) years of experience and a bachelor's degree;
  - (c) Six (6) years of experience and an associate's degree;
  - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
  - (e) Seven (7) years of experience and eighty (80) hours of college credit;
  - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
  - (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete the:
- (a) [Department of Criminal Justice Training] Criminal Justice Executive Development Course;
- (b) [Department of Criminal Justice Training] School for Strategic Leadership;
- (c) Federal Bureau of Investigation (FBI) National Academy;
- (d) University of Louisville Southern Police Institute Administrative Officers Course;
- (e) Northwestern University School of Police Staff and Command;
- (f) Police Executive Leadership College; or
- (g) Another management leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
- (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a master's degree;
  - (b) Four (4) years of experience and a bachelor's degree;
  - (c) Six (6) years of experience and an associate's degree;
  - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
  - (e) Seven (7) years of experience and eighty (80) hours of college credit;
  - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
  - (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:

- (a) Have active peace officer certification in accordance with KRS 15.386(2);
- (b) Successfully complete:
- 1. Orientation for New Chiefs[, offered by the Department of Criminal Justice Training];
- 2. Mandatory Duties of the Sheriff[-offered by the Department of Criminal Justice Training];
- 3. [Department of Criminal Justice Training] School for Strategic Leadership;
- 4. Three (3) Police Executive Command courses[, offered by the Department of Criminal Justice Training];
  - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
- 6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;
  - (c) Successfully complete one (1) of the following:
  - 1. 120 hours of training in conceptual or human skills development; or
- 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
- (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - 1. Two (2) years of experience and a bachelor's degree;

- 2. Three (3) years of experience and sixty (60) hours of college credit; or
- 3. Four (4) years of experience and thirty (30) hours of college credit.
- (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:

- (a) Successfully complete:
- 1. Orientation for New Chiefs[, offered by the Department of Criminal Justice Training];
- 2. Mandatory Duties of the Sheriff[-offered by the Department of Criminal Justice Training];
- 3. [Department of Criminal Justice Training] School for Strategic Leadership;
- 4. Three (3) Police Executive Command courses[, offered by the Department of Criminal Justice Training];
  - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
- 6. Another executive leadership course recognized by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;
  - (b) Successfully complete one (1) of the following:
  - 1. 120 hours of training in conceptual or human skills development; or
- 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
- (c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - 1. Two (2) years of experience and a bachelor's degree;
  - 2. Three (3) years of experience and sixty (60) hours of college credit; or
  - 3. Four (4) years of experience and thirty (30) hours of college credit.
- (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Chief Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:
- (a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and
  - (b) 120 training hours in investigative courses identified by the KLEC; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;

- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of in-service training, consisting of:
- (a) Forty (40) hour Collision Investigation Techniques course or a KLEC-approved equivalent; and
  - (b) 160 training hours in traffic courses identified by the KLEC; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. [Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
- (a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;
- (b) Forty (40) hours shall be in technical skills development; and
- (c) Forty (40) hours shall be in human skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 14.] Communications Training Officer Certificate. To demonstrate proficiency in the Communications Training Officer Career Step, a person shall:

- (1) Have active certification as a:
- (a) CJIS telecommunicator in accordance with KRS 15.565; or
- (b) Non-CJIS telecommunicator in accordance with KRS 15.560;
- (2) Complete the following courses:
- (a) Forty (40) hour Communications Training Officer course;
- (b) Sixteen (16) hour Communications Training Officer: Developing a Training Program course;
- (c) Eight (8) hour Ethics course; and
- (d) A sixteen (16) hour Cultural Awareness course; and
- (3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
- (b) Three (3) years of experience and **[either]** twenty (20) hours of college credit or an associate's degree;
  - (c) Four (4) years of experience and fifteen (15)[forty-five (45)] hours of college credit;
  - (d)[(b)] Five (5) years of experience and ten (10)[forty (40)] hours of college credit; or
  - (e)[(c)] Six (6) years of experience and five (5)[thirty-five (35)] hours of college credit[; or
  - (d) Seven (7) years of experience and thirty (30) hours of college credit;
  - (e) Eight (8) years of experience and twenty-five (25) hours of college credit; or
  - (f) Nine (9) years of experience and twenty (20) hours of college credit].

<u>Section 14[Section 15.]</u> Intermediate Public Safety Dispatcher Certificate. To demonstrate proficiency in the Intermediate Public Safety Dispatcher Career Step, a person shall:

- (1) Have active certification as a[:
- (a) CJIS] telecommunicator in accordance with KRS 15.560 or KRS 15.565; [or
- (b) Non-CJIS telecommunicator in accordance with KRS 15.560;]
- (2) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses; and
- (3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
- (b) Three (3) years of experience and <u>[either]</u> twenty (20) [thirty (30)] hours of college credit <u>or an associate's degree</u>;
  - (c) [(b)] Four (4) years of experience and ten (10) [twenty-five (25)] hours of college credit; or
  - (d) [(c)] Five (5) years of experience and five (5) [twenty (20)] hours of college credit;[
  - (d) Six (6) years of experience and fifteen (15) hours of college credit;
  - (e) Seven (7) years of experience and ten (10) hours of college credit; or
  - (f) Eight (8) hours of experience and five (5) hours of college credit].

<u>Section 15.[Section 16.]</u> Advanced Public Safety Dispatcher Certificate. To demonstrate proficiency in the Advanced Public Safety Dispatcher Career Step, a person shall:

- (1) Have active certification as a[:
- (a) CJIS] telecommunicator in accordance with KRS 15.560 or KRS 15.565;[; or
- (b) Non-CJIS telecommunicator in accordance with KRS 15.560;]

- (2) Complete the Intermediate Public Safety Dispatcher Career Step;
- (3) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses; and
- (4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
- (b) Three (3) years of experience and **[either]** twenty (20) hours of college credit or an associate's degree;
  - (c) Four (4) years of experience and fifteen (15) [forty-five (45)] hours of college credit;
  - (d) [(b)] Five (5) years of experience and ten (10) [forty (40)] hours of college credit; or
  - (e) [(c)] Six (6) years of experience and five (5) [thirty-five (35)] hours of college credit[;
  - (d) Seven (7) years of experience and thirty (30) hours of college credit;
  - (e) Eight (8) years of experience and twenty-five (25) hours of college credit; or
  - (f) Nine (9) years of experience and twenty (20) hours of college credit].

<u>Section 16.[Section 17.]</u> Public Safety Dispatcher Supervisor Certificate. To demonstrate proficiency in the Public Safety Dispatcher Supervisor Career Step, a person shall:

- (1) Have active certification as a[:
- (a) CJIS] telecommunicator in accordance with KRS 15.560 or KRS 15.565; [or
- (b) Non-CJIS telecommunicator in accordance with KRS 15.560][;]
- (2) Complete the Advanced Public Safety Dispatcher Career Step;
- (3) Successfully complete [Leadership 911 or] eighty (80) hours of KLEC-approved public safety dispatch leadership courses; and
- (4) Have one (1) of the following combinations of full-time public safety dispatch experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree [an associate's degree];
- (b) Three (3) years of experience and [either] twenty-five (25) [fifty-five (55)] hours of college credit or an associate's degree;
  - (c) Four (4) years of experience and twenty (20) [fifty (50)] hours of college credit;
  - (d) Five (5) years of experience and fifteen (15) [forty-five (45)] hours of college credit;
  - (e) Six (6) years of experience and ten (10) [forty (40)] hours of college credit; or
  - (f) Seven (7) years of experience and five (5) [thirty-five (35)] hours of college credit[; or
  - (g) Eight (8) years of experience and thirty (30) hours of college credit].

<u>Section 17[Section 18.]</u> Public Safety Dispatcher Manager/Director Certificate. To demonstrate proficiency in the Public Safety Dispatcher Manager/Director Career Step, a person shall:

- (1) Have active certification as a[:
- (a) CJIS] telecommunicator in accordance with KRS 15.560 or KRS 15.565; [or
- (b) Non-CJIS telecommunicator in accordance with KRS 15.560;]
- (2) Obtain the Public Safety Dispatcher Supervisor Certificate;
- (3) Successfully complete [<del>Telecommunications</del>] Executive Development I, II, and III or <u>eighty</u> (80)[120] hours of KLEC-approved public safety dispatch leadership courses; and

- (4) Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
- (b) <u>Three (3) [Four (4)]</u> years of experience and <u>[either]</u> twenty-five (25) hours of college credit or an associate's degree;
  - (c) Four (4) years of experience and twenty (20) hours of college credit;
  - (d) Five (5) years of experience and fifteen (15) [sixty (60)] hours of college credit;
  - (e)[<del>(d)</del>] Six (6) years of experience and ten (10) [fifty-five (55)] hours of college credit; or
  - (f)[(e)] Seven (7) years of experience and five (5) [fifty (50)] hours of college credit[;
  - (f) Eight (8) years of experience and forty-five (45) hours of college credit;
  - (g) Nine (9) years of experience and forty (40) hours of college credit; or
  - (h) Ten (10) years of experience and thirty-five (35) hours of college credit].

<u>Section 18.[Section 19.]</u> Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Career Step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Have successfully completed the following:
- (a) Intermediate Law Enforcement Officer Certificate;
- (b) Advanced Law Enforcement Officer Certificate; and
- (c) 120 hours of in-service training, which shall include:
- 1. Police Training Officer course;
- 2. Field Instructor course; and
- 3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and
- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 19.[Section 20.]</u> Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the following:
- (a) Law Enforcement Officer Investigator Certificate; and
- (b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and

- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 20.[Section 21.]</u> Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Kentucky Criminalistics Academy or the National Forensic Academy; and
- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 21.[Section 22.]</u> Crime Scene Technician. To demonstrate proficiency in the Crime Scene Technician career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Crime Scene Technician portion of the Kentucky Criminalistics Academy or have completed any of the following courses to equal not less than 200 hours:
  - (a) Bloodstain Pattern Recognition;
  - (b) Forensic Mapping;
  - (c) CAD Zone;
  - (d) Fingerprint Pattern Recognition and Comparison Techniques;
  - (e) Digital Photography;
  - (f) Advanced Latent Fingerprints;
  - (g) Crime Scene Investigation; or
  - (h) Any KLEC-approved course equivalents; and

- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22. School Resource Officer I Certificate. To demonstrate proficiency in the School Resource Officer I Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2) and active school resource officer I certification in accordance with KRS 158.4414;
  - (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
  - (a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and
  - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
  - (b) Four (4) years of experience and an associate's degree;
  - (c) Four (4) years of experience and ninety-five (95) hours of college credit;
  - (d) Five (5) years of experience and eighty (80) hours of college credit;
  - (e) Six (6) years of experience and sixty-five (65) hours of college credit;
  - (f) Seven (7) years of experience and fifty (50) hours of college credit; or
  - (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 23. School Resource Officer II Certificate. To demonstrate proficiency in the School Resource Officer II Career Step, a peace officer shall:

- (1) Complete the School Resource Officer I Career Step;
- (2) Have active certification in accordance with KRS 15.386(2) and active school resource officer I and II certification in accordance with KRS 158.4414;
  - (3) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
  - (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
  - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
  - (c) Twenty (20) percent (thirty-two (32) hours) shall be in conceptual skills development; and
- (4) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;

- (c) Eight (8) years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 24. School Resource Officer III Certificate. To demonstrate proficiency in the School Resource Officer III Career Step, a peace officer shall:</u>

- (1) Complete the School Resource Officer I and II Career Step;
- (2) Have active certification in accordance with KRS 15.386(2) and active school resource officer I, II and III certification in accordance with KRS 158.4414;
  - (3) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
  - (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
  - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
  - (c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and
- (4) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 25. Law Enforcement Tactical Officer Certificate. To demonstrate proficiency in the Law Enforcement Tactical Officer Career Step, a peace officer shall:</u>

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of in-service training, consisting of KLEC approved tactical courses; and[:]
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 26. Law Enforcement Canine Officer Certificate. To demonstrate proficiency in the Law Enforcement Canine Officer Step, a peace officer shall:</u>

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete 200 hours of in-service training, consisting of KLEC recognized canine courses; and[:]
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and a master's degree;
  - (b) Six (6) years of experience and a bachelor's degree;
  - (c) Eight (8) years of experience and an associate's degree;
  - (d) Eight (8) years of experience and 110 hours of college credit;
  - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
  - (f) Ten (10) years of experience and eighty (80) hours of college credit;
  - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
  - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

<u>Section 27. Sheriff Supervisor Certificate. To demonstrate proficiency in the Sheriff Supervisor Career Step, a peace officer shall:</u>

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:
  - (a) Forty (40) hours of technical skills development courses;
  - (b) Forty (40) hours of conceptual skills development courses; and
  - (c) Eighty (80) hours in one (1) of the following options of courses:
  - 1. Duties of the Sheriff's Office;
- 2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or
  - 3. A KLEC-approved or recognized equivalent course; and
- (3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a master's degree;
  - (b) Four (4) years of experience and a bachelor's degree;
  - (c) Six (6) years of experience and an associate's degree;
  - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
  - (e) Seven (7) years of experience and eighty (80) hours of college credit;
  - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
  - (g) Nine (9) years of experience and fifty (50) hours of college credit.

<u>Section 28. Sheriff Manager Certificate. To demonstrate proficiency in the Sheriff Manager Career Step, a peace officer shall:</u>

(1) Have active peace officer certification in accordance with KRS 15.386(2);

- (2) Complete the:
- (a) Criminal Justice Executive Development Course; [or]
- (b) School for Strategic Leadership; [er]
- (c) Sheriff's Executive Command Course; [er]
- (d) Federal Bureau of Investigation (FBI) National Academy;
- (e) University of Louisville Southern Police Institute Administrative Officers Course;
- (f) Northwestern University School of Police Staff and Command;
- (g) Police Executive Leadership College; or
- (h) Another management leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
- (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a master's degree;
  - (b) Four (4) years of experience and a bachelor's degree;
  - (c) Six (6) years of experience and an associate's degree;
  - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
  - (e) Seven (7) years of experience and eighty (80) hours of college credit;
  - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
  - (g) Nine (9) years of experience and fifty (50) hours of college credit.
- <u>Section 29. Sheriff Executive Certificate.</u> (1) To demonstrate proficiency in the Sheriff Executive Career Step a peace officer shall:
  - (a) Have active peace officer certification in accordance with KRS 15.386(2);
  - (b) Successfully complete:
  - 1. Orientation for New Chiefs-Sheriffs; [-]
  - 2. Mandatory Duties of the Sheriff:[-]
  - 3 School for Strategic Leadership;
- 4. Three (3) Police Executive Command courses or three (3) Sheriff's Executive Command courses;
  - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
- 6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;
  - (c) Successfully complete one (1) of the following:
  - 1. 120 hours of training in conceptual or human skills development; or
- 2. Law Enforcement or Sheriff Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
- (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - 1. Two (2) years of experience and a bachelor's degree;
  - 2. Three (3) years of experience and sixty (60) hours of college credit; or
  - 3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Sheriff Executive Career Step.

Section 30. Sheriff Chief Executive Certificate. (1) To demonstrate proficiency in the Sheriff Chief Executive Career Step, a peace officer shall:

- (a) Have active peace officer certification in accordance with KRS 15.386(2);
- (b) Successfully complete:
- 1. Orientation for New Chiefs;
- 2. Mandatory Duties of the Sheriff;
- 3. School for Strategic Leadership;
- 4. Three (3) Police Executive Command courses;
- 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
- 6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;
  - (c) Successfully complete one (1) of the following:
  - 1. 120 hours of training in conceptual or human skills development; or
- 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
- (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - 1. Two (2) years of experience and a bachelor's degree;
  - 2. Three (3) years of experience and sixty (60) hours of college credit; or
  - 3. Four (4) years of experience and thirty (30) hours of college credit.
- (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Sheriff Chief Executive Career Step.

<u>Section 31. Investigative Public Safety Dispatcher Certificate. To demonstrate proficiency in the Investigative Public Safety Dispatcher Career Step, a dispatcher shall:</u>

- (1) Have active telecommunications certification in accordance with KRS 15.565 or 15.560;
- (2) Have earned the Intermediate and Advanced Public Safety Dispatcher certificates [:] and

[{a}] thirty-two (32) hours of KLEC approved public safety dispatch investigative courses; and[-]

- (3) Have one (1) of the following combinations of full-time dispatch experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelor's degree;
  - (b) Three (3) years of experience and an associate's degree;
  - (c) Three (3) years of experience and twenty (20) hours of college credit;
  - (d) Five (5) years of experience and ten (10) hours of college credit; or
  - (e) Six (6) years of experience and five (5) hours of college credit.

Section <u>32 [23]</u>. Certificate of Completion. The KLEC shall issue a certificate and uniform lapel pin to a peace officer or telecommunicator upon completion of a career development step.

Section <u>33[24]</u>. Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section <u>34[25]</u>. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Career Development Program Participant Commitment Form, ["] Form 1", 2021[February 2013];
  - (b) "Intermediate Law Enforcement Officer["], Form 2", 2021[February 2013];
  - (c) "Advanced Law Enforcement Officer["], Form 3", 2021[February 2013];
  - (d) "Law Enforcement Officer Investigator["], Form 4", 2021[February 2013];
  - (e) "Law Enforcement Traffic Officer["], Form 5", 2021[February 2013];
  - (f) ["Advanced Deputy Sheriff", Form 6, February 2013;
  - (g)] "Law Enforcement Supervisor["], Form 7", 2021[February 2013];
  - (g)[(h)] "Law Enforcement Manager ["], Form 8", 2021[February 2013];
  - (h)[<del>(i)</del>] "Law Enforcement Executive**["]**, Form 9<u>"</u>, <u>2021[February 2013];</u>
  - (i)[(j)] "Intermediate Public Safety Dispatcher["], Form 11", 2021[February 2013];
  - (j)[(k)] "Advanced Public Safety Dispatcher, ["] Form 12", 2021[February 2013];
  - (k)[(+)] "Public Safety Dispatcher Supervisor[-], Form 13\_, 2021[February 2013];
  - (I)[(m)] "Public Safety Dispatcher Manager/Director["], Form 14", 2021[February 2013];
  - (m)[(n)] "Law Enforcement Chief Executive["], Form 15", 2021[February 2013];
  - (n)[(o)] "Law Enforcement Training Officer["], Form 16", 2021[February 2013];
  - (o)[<del>(p)</del>] "Law Enforcement Officer Advanced Investigator["], Form 17", 2021[February 2013];
  - (p)[<del>(q)</del>] "Crime Scene Processing Officer["], Form 18", 2021[February 2013];
  - (q)[(r)] "Communications Training Officer["], Form 19", 2021[February 2013]; [and]
  - (<u>r)[(s)]</u> "Crime Scene Technician, ["] Form 20", 2021;[February 2013]
  - (s) "School Resource Officer I["], Form 21", 2021;
  - (t) "School Resource Officer II["], Form 22", 2021;
  - (u) "School Resource Officer III["], Form 23", 2021;
  - (v) "Law Enforcement Tactical Officer["], Form 24", 2021;
  - (w) "Law Enforcement Canine Officer["], Form 25", 2021;
  - (x) "Sheriff Supervisor["], Form 28", 2021;
  - (y) "Sheriff Manager["], Form 29", 2021;
  - (z) "Sheriff Executive [-], Form 30", 2021;
  - (aa) "Sheriff Chief Executive [-], Form 31", 2021; and
  - (bb) "Investigative Public Safety Dispatcher ["], Form 32", 2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council [Department of Criminal Justice Training], Funderburk Building, Suite 401, 4449 Kit Carson Drive [Eastern Kentucky University, 521 Lancaster Road], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at https://klecs.ky.gov/.

CONTACT PERSON: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.



Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary

Nicolai R. Jilek / Commissioner

December 7, 2021

Ms. Emily Caudill, Regulations Compiler Legislative Research Commission 029, Capitol Annex 702 Capital Avenue Frankfort KY 40601 DEC 8 2021

Re: 503 KAR 3:020

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 3:020 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 3:020.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





#### **Subcommittee Substitute**

## JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS)

503 KAR 3:020. Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15A.070(1), 15.440

STATUTORY AUTHORITY: KRS 15A.070[(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) <u>requires the</u> [authorizes] Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements for trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:

- (a) Be removed from training by the:
- 1. Director:
- 2. Branch manager; or
- 3. Section supervisor; and
- (b) Not receive credit for completed portions of training.
- (2) A trainee shall be *[considered]* unqualified if:
- (a) He or his agency files an incomplete or fraudulent application to attend the training course;
- (b) He is not presently employed as a law enforcement officer and has not received special permission to attend;
  - (c) He arrives at the beginning of training physically unable to participate because of:
  - 1. Physical injury; or
  - 2. Being under the influence of alcohol or drugs (prescription or illegal);
- (d) He has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course;
- (e) He is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;
  - (f) He failed to complete a prerequisite law enforcement training course; or
- (g) He is not employed in a capacity for which the course is designed and has not received special permission to attend.
- (3) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.
  - (4) Agency request. The department shall remove a trainee from training upon written request

of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS 11A.040.

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.

- (a) Expulsion. The trainee is dismissed from the course, [and] all privileges are terminated, no credit shall be awarded for the completed portion of the course, and the trainee **shall** [may] not return to the same course for a period of two (2) years unless he or she obtains permission from the commissioner.
- (b) Suspension. The trainee is suspended from the course and no credit shall be awarded for the completed portion of the course. The trainee **shall [may]** not return to the same course for a period of two (2) years unless he or she obtains permission from the commissioner. [
- (b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.]
- (c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.
  - (d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.
- (2) First violation. Depending upon the severity and egregiousness of the violative action, any penalty listed in *subsection* (1) of this section [Section 3 of this administrative regulation] may be imposed.
  - (3)[<del>(2)</del>] Second and subsequent violations.
- (a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.
- (b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.
- (4) Actions held in abeyance. If a trainee voluntarily withdraws from a training course while a disciplinary action is pending, the department may hold the action in abeyance and resume prosecution of the disciplinary proceeding if the trainee returns to any training at the department within two (2) years.
- (5)[(3)] Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.
  - (6)[(4)] Penalty records.
  - (a) The department shall keep a written record of any penalty imposed on a trainee.
  - (b) A copy of any penalty imposed on a trainee shall be placed in his training file.

- (c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.
- (d) Original disciplinary action documents shall be stored with the department's official records custodian in accordance with the department's records retention schedule.
- Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of, a department activity, a department staff member **shall [may]** take all reasonable steps necessary to terminate the situation, including removal of the trainee from the training course pending initiation of disciplinary action.
- Section 5. Conduct Requirements. A trainee attending a training course shall meet the following conduct requirements:
- (1) General conduct chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. [Penalty: verbal warning or written reprimand.]
  - (2) General conduct insubordination. A trainee shall:
- (a) Obey a lawful order from a department staff member. [Penalty: verbal warning, written reprimand, loss of privileges.]
- (b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, trainee, or other department trainee or guest. [Penalty: verbal warning, written reprimand.]
- (3) General conduct grooming. The trainee shall maintain a professional personal appearance in accordance with the department's dress code policy, which reflects favorably upon the trainee, the department, and the trainee's agency. [Penalty: verbal warning or written reprimand.]
- (4) General conduct alcoholic beverages and other intoxicants. A trainee shall not possess, consume, *or [nor]* be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a training course or bring alcoholic beverages, *controlled substances*, *or other intoxicating substances not therapeutically prescribed by a physician* into the Thompson Residence Hall. [Penalty: written reprimand, loss of privileges, or expulsion.]
- (a) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. [Penalty: verbal warning, written reprimand.]
  - (b) Confiscation.
- 1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed intoxicating substance, he shall immediately confiscate it.
- 2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.
  - (5) General conduct weapons and other dangerous devices.

- (a) A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or boobytrap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS Chapter 224[.01-400]), fireworks, or instruments used by law enforcement for control purposes (such as batons, stunguns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. [Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.]
  - (b) Confiscation.
- 1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an unlawfully possessed weapon or other dangerous device he shall immediately confiscate it.
- 2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.
  - (6) General conduct department property.
- (a) A trainee shall not negligently or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. [Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.]
- (b) A trainee shall not have successfully completed training until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.
  - (7) General conduct conduct unbecoming a trainee. A trainee shall not:
- (a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor, or violation, while enrolled in a training class. [Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. Additionally,] In addition to any disciplinary action imposed by the department, the appropriate prosecutorial authority shall [may] be notified of the activity.
- (b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material <u>or private erotic matter</u> as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous, or threatening conduct, engage in sexual harassment, or <u>engage in</u> conduct which is patently offensive. [Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.]
  - (8) Training activities absences.
- (a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence if possible. [Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.]
- (b) All absences from training shall be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or if an unexpected absence, on the first day upon returning.
- (c) If a trainee is absent <u>for</u> less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided by the instructor who taught the missed subject area and shall be approved by the

section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.

- (d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.
- (e) A trainee shall not be allowed to repeat a test that occurs during the trainee's unexcused absence.
- (9) Training activities breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. [Penalty: verbal warning or written reprimand.]
  - (10) Training activities general conduct.
- (a) A trainee shall be attentive during training activities. [Penalty: verbal warning or written reprimand.]
- (b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. [Penalty:verbal warning or written reprimand.]
- (c) A trainee shall not negligently or intentionally engage in conduct which creates or may create a risk of injury to others during a training session. [Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.]
- (11) Training activities dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. [Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.]
  - (12) Residence hall.
- (a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. [Penalty: verbal warning, written reprimand, loss of privileges.]
- (b) Doors shall be locked whenever a room is unoccupied. [Penalty: verbal warning or written reprimand.]
- (c) The use of cooking appliances or space heaters **shall be** [is**]** prohibited. [Penalty: verbal warning, written reprimand, loss of privileges].
- (d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.
  - (e) A trainee residing at the residence hall shall not:
- 1. Have any person of the opposite sex in his room without the permission of the department. [Penalty: verbal warning, written reprimand, loss of privileges.]
- 2. Keep pets, animals, or birds of any kind in his room. [Penalty: verbal warning, written reprimand, loss of privileges.]
- 3. Engage in dangerous, disruptive, immoral, or obscene behavior. [Penalty: verbal warning, written reprimand, loss of privileges.]

Section 6. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures

provided by Sections 8 through 12 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning or written reprimand.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the

opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner.

- (1) When a charge is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:
- (a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or
  - (b) The trainee has been charged with misconduct serious enough to authorize expulsion.
- (2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 8. Complaint. Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. *The* [*This*] complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 9. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

- (2) After investigating the matter, the section supervisor shall:
- (a) Take no action unless it [if none] is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses, shall be forwarded to the legal officer.

Section 10. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

- (2) The legal officer may make or cause further inquiry into the matter for additional information.
  - (3) The legal officer shall [either]:

- (a) File any charges against the trainee as he believes are justified by the evidence; or
- (b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
  - (4) The charging document shall:
  - (a) Be in writing;
- (b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;
- (c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges:[-]
  - (d) Be signed by the legal officer; and
- (e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. The copy shall be served upon the trainee *[either]* in person or by mail.

Section 11. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

- (2) At the initial appearance before the commissioner:
- (a) The legal officer shall:
- 1. Read the charges to the trainee; and
- 2. Explain to the trainee:
- a. The charges;
- b. His right to an administrative hearing in accordance with KRS Chapter 13B; and
- c. His right to be represented by legal counsel.
- (b) The legal officer shall explain to the trainee the possible answers to the charges, which shall be[:] admit the charges are true, deny the charges are true but waive an administrative hearing, or deny the charges are true and ask for an administrative hearing.
- (c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives an administrative hearing.
  - (d) The trainee shall be requested to answer the charges.
- (e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives an administrative hearing:
  - 1. He shall be permitted to make a statement of explanation; and
  - 2. The commissioner shall impose a penalty.
- (f) If the trainee denies the charges and requests an administrative hearing, or refuses to answer the charges, the commissioner shall set a date for the administrative hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.
- (3) The commissioner may remove the trainee from some or all training until the administrative hearing if:
- (a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 12. Hearing. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

CONTACT PERSON: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.



Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary
Nicolai R. Jilek / Commissioner

December 7, 2021

Ms. Emily Caudill, Regulations Compiler Legislative Research Commission 029, Capitol Annex 702 Capital Avenue Frankfort KY 40601 DEC 8 2021

Re: 503 KAR 3:030

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 3:030 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 3:030.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS)

#### 503 KAR 3:030. Training charges.

RELATES TO: KRS 15.340

STATUTORY AUTHORITY: KRS 15A.070, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.340 authorizes the Department of Criminal Justice Training to determine whether certain persons to whom it offers training or agencies employing such persons must bear any <u>or</u> [of] all costs of training. This administrative regulation prescribes training charges and identifies those who <u>shall</u> [must] pay for training.

### Section 1. Definition. [As used in this administrative regulation] "Eligible category" means [includes]:

- (1) City police departments;
- (2) County police departments;
- (3) Urban-county police departments;
- (4) Public airport authority police departments established pursuant to KRS 183.880;
- (5) Department of Kentucky State Police;
- (6) State or public university departments of safety established pursuant to KRS 164.950;
- (7) Local boards of education <u>employing school resource officers</u> [, limited to school security officers] who are special law enforcement officers appointed pursuant to KRS 61.902;
- (8) Sheriffs' departments, except for those deputy sheriffs identified in KRS 70.045 and 70.263(3);
  - (9) Constables;
  - (10) Coroners;
- (11) Department of Alcoholic Beverage Control, limited to field representatives and investigators appointed pursuant to KRS 241.090;
- (12) Department of Insurance Division of Insurance Fraud Investigation, limited to insurance fraud investigators appointed pursuant to KRS 304.47-040;
- (13) State agencies that have adopted certification pursuant to KRS 15.380(2), limited to those peace officers for whom the certification requirements of KRS 15.380 to 15.402 have been incorporated into their job specifications;
- (14) Officers who are certified by the Kentucky Law Enforcement Council pursuant to KRS 15.380(4) or (5), and are presently employed in the capacity for which certification was obtained;
- (15) Persons participating in courses offered under the **[KRS 15.518]** Law Enforcement Professional Development and Wellness Program **pursuant to KRS 15.518**.
- Section 2. Basic Training. While participating in a basic training course conducted by the department. [:]
  - (1)] persons employed [full time] as sworn law enforcement officers in an eligible category [,] shall

be eligible to receive free tuition, housing at facilities to be provided by the department, and meals, not to exceed the amounts established in Section 7 of this administrative regulation. [1]

- (2) Persons employed part time in an eligible category, whether sworn or unsworn, shall be eligible to receive free tuition.]
- Section 3. In-service Training. (1) Persons employed in an eligible category, whether sworn or unsworn, while participating in in-service training courses conducted by the department shall be eligible for free tuition, limited to a maximum of eighty (80) hours during a calendar year. [When calculating the maximum number of free training hours to which the person is eligible:
- (1) The hours associated with an in-service training course that is substituted for a failed in-service training course, shall not be included;
- (2)(2)] If a person has accumulated fewer than eighty (80) hours of in-service training at the time of registration for an additional in-service training course, and subsequently completes the course, which brings the in-service training total to more than eighty (80) hours, the person shall not be required to pay fees for the training which exceeds eighty (80) hours.
- Section 4. Telecommunications. (1) Persons employed [full-time] in an eligible category to dispatch law enforcement units by means of radio communications or to operate teleprocessing equipment associated with the Law Information Network of Kentucky (LINK), shall be eligible to receive:
- (a) Free tuition, housing at facilities to be provided by the department, and meals, not to exceed the amounts established in Section 7 of this administrative regulation, while participating in the Telecommunications Academy conducted by the department; **and**[
- (b) Free tuition and housing at facilities to be provided by the department, while participating in the telecommunications basic course, Criminal Justice Information Systems (CJIS) full access course, or CJIS inquiry only course, conducted by the department;]
- (b)[(c)] Free tuition while participating in other telecommunications courses conducted by the department, limited to a maximum of eighty (80) hours during a calendar year. When calculating the maximum number of free training hours to which the person is eligible:
- 1. The hours associated with the Telecommunications Academy, telecommunications basic course, CJIS full access course, or CJIS inquiry only course shall not be added;
- 2. The hours associated with a telecommunications course that is substituted for a failed telecommunications course, shall not be added; **and**
- 3. If a person has accumulated fewer than eighty (80) hours of telecommunications training at the time of registration for an additional telecommunications course, and subsequently completes the course, which brings the telecommunications training total to more than eighty (80) **hours**, the person shall not be required to pay fees for the training which exceeds eighty (80) hours.[;]
- (2) Persons employed part time in an eligible category to dispatch law enforcement units by means of radio communications or to operate teleprocessing equipment associated with the law information network of Kentucky (LINK), shall be eligible to receive free tuition while participating in telecommunications courses conducted by the department, limited to a maximum of eighty (80) hours during a calendar year. The calculation of the maximum number of free training hours to which the person is eligible, shall be made as established in this administrative regulation in subsection (1)(c)1 through 3 of this section.]

Section 5. Fees in Reciprocation. If an agency or person has provided training services to the department, the commissioner may waive some or all fees for training provided by the department [1] when requested by the agency or person. The commissioner shall advise in writing, prior to the start date of the requested training, of the specific training which shall be provided and the fees which shall be waived. The waiver of fees shall be limited to the terms as described in writing by the commissioner.

Section 6. Payment of Fees Required. (1) <u>The enrolling agency of a [A]</u> person who is not eligible for free fees as determined in Sections 2 through 5 of this administrative regulation, shall be required to pay all applicable fees as established in Section 7 of this administrative regulation.

- (2) A person who repeats a training course conducted by the department, within three (3) years from the start date of the original course, whether the first course was passed or failed, shall be required to pay all applicable fees as established in Section 7 of this administrative regulation for the repeated course. A training course that is substituted for a failed training course shall be considered retraining, for which all applicable fees **shall** [**must**] be paid.
- (3) If a person participates in a training course, for which it is determined prior to participation that fees are required, but fails the course, full fees **shall be** [are] due.
- (4) If a person participates in a training course, for which it is determined prior to participation that fees are required, but withdraws from training for reasons other than those which constitute extenuating circumstances, as defined in 503 KAR 1:110 or 503 KAR 5:090, training fees shall be assessed based upon **the [that]** training which was received. If payment has been received by the department, the person, or the agency responsible for the payment of training fees, shall be reimbursed the amount in excess of the actual training fees which were incurred.
- (5) If a person exits a course owing fees, he or she shall not be allowed to return **to** the same or a substitute course until the outstanding course balance is paid in full. [If a person participates in a training course, for which he is eligible for free fees, but withdraws from training for reasons other than those which constitute extenuating circumstances asdefined in 503 KAR 1:110 or 503 KAR 5:090, full fees shall be required for that portion of trainingreceived prior to the withdrawal if the person repeats the training course within three (3) years from the start date of the original course. But for the provisions of this subsection, if the person would otherwise not be eligible for free fees when repeating the course, full fees shall be due forthe entire course.]
- (6) Fees may be required as a result of a disciplinary suspension or expulsion, pursuant to 503 KAR 3:010, which are made part of the commissioner's final order.

Section 7. Fees. (1) Tuition per person shall be:

- (a) \$600 per week.
- (b) \$120 per day for training of less than one (1) week.
- (c) \$120 for training which involves more than four (4) hours but less than eight (8) hours.
- (d) Sixty (60) dollars for training which involves less than four (4) hours.
- (2) Housing charges per person, for accommodations provided by the department, shall be:
- (a) Seventy-five (75) dollars per five (5) day training week, which shall include Sunday night through Thursday night; or
  - (b) Fifteen (15) dollars per day.

- (3) Meals. A person in an eligible category shall be allotted a meal allowance for breakfast, lunch, and dinner on Monday through Friday of each training week. The meal allowance for each training session shall be based upon the actual meal costs as determined by the department.
- (a) A person shall be allotted eighty-five (85) dollars per week for meals. Each person shall be provided a meal card which may be used no earlier than the evening meal on Sunday, but no later than the lunch meal on Friday. Use of the meal card shall be limited to those food service providers approved and designated by the department.
- (b) A person provided with a meal card shall not be restricted to a specific amount per meal. Purchases in excess of eighty-five (85) dollars per week, or those incurred at a food service provider which is not approved and designated by the department, shall be paid by the person.
- (4) Supplemental charges may be imposed for supplies and materials which have been furnished by the department, including ammunition provided by the department in a firearms training course.]
- Section 8. Procedures. (1) When <u>an enrolling agency is</u> [a person shall be] required to pay fees for training, the [personor their] authorized agency head [who] shall be responsible for payment of fees. [r.] [shall enter into a written agreement particularly describing the required charges, by executing DOCJT Form 60, prior to the start date of the course. If DOCJT Form 60 is not received by the department prior to the start date of the course, the person shall be ineligible to participate in the course.]
- (2) Payment of required fees for training shall be made prior to the start date of the course. If payment is not received by the department prior to the start date of the course, the person shall be ineligible to participate in the course.
- (3) Payments shall be made by a check **from [ef]** the employing agency, or cashier's check **from [ef]** the person, payable to the Kentucky State Treasurer.[
  - (4) Payment arrangements.
- (a) When fees are required for training, an employing agency may request that they be allowed to satisfy the payment obligation through a schedule of payments. Prior to the start date of the requested training, the agency shall submit to the department:
- 1. A list of each officer within the agency, and their required training for the current and preceding year;
  - 2. The actual approved budget of the governmental unit for the current and the preceding year;
  - 3. The actual revenue receipts of the governmental unit for the current and the preceding year;
- 4. A detailed explanation of why the governmental unit requires a payment arrangement to meet the costs of the training, including the reason that sufficient funding was not budgeted; and
  - 5. A proposed schedule of payments.
- (b) The commissioner shall notify the agency in writing, prior to the start date of the course, asto whether the agency's request has been approved, and if so, the specific terms of the scheduleof payments.
- (c) If the agency fails to abide by the terms as established by the commissioner, the person who is receiving training may be removed from training. Additionally, the agency may be denied future requests for payment arrangements.

Contract for Training Fees, Revised 5/15/00.

(2) This material may be inspected, copied, or obtained at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.



Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary

Nicolai R. Jilek / Commissioner

December 7, 2021

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

DEC 8 2021

Re: 503 KAR 3:050

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 3:050 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 3:050.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





#### **Subcommittee Substitute**

# JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS)

### 503 KAR 3:050. Telecommunications (Public Safety Dispatch) Academy[-CJIS] graduation requirements; records.

RELATES TO: KRS 15.530, 15.550, 15.560[<del>(1)</del>], 15.565

STATUTORY AUTHORITY: KRS 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch) Academy.[-CJIS.]

Section 1. Definitions. (1) "Academy" means the <u>minimum 160</u> [205] hour Telecommunications (Public Safety Dispatch) Academy[-CJIS] course conducted by the department of Criminal Justice Training.

(2) "CJIS" is defined by KRS 15.530(1).

Section 2. Academy Content. The academy shall consist of the following eight (8) areas:

- (1) Introduction to Dispatching;
- (2) Duties and Responsibilities;
- (3) Phone procedures;
- (4) Radio procedures;
- (5) Calls for service;
- (6) Emergency medical dispatch;
- (7) Criminal justice information system (CJIS); and
- (8) Final Exam and Graduation.

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

- (a) Successfully complete a minimum of  $\underline{160}$  [205] hours of Kentucky Law Enforcement Council (KLEC)-approved training;
- (b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:
- 1. Minimum score on the Emergency Medical Dispatch written examination; [as set by the Emergency Medical Dispatch provider;]
  - 2. Minimum score on the CPR written examination [as set by the CPR provider]; and
  - 3. Seventy (70) percent on all other examinations for which a numerical score is assigned;
  - (c) Pass all examinations for which a pass-or-fail designation is assigned; and
- (d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and shall be successfully completed *[in*

order] to pass the training area for which they were assigned.

(2) A trainee shall **fail** [**be considered to have failed**] the academy if the trainee does not meet the requirements established in subsection (1) of this section.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

- (2) A trainee who fails an examination shall not be reexamined:
- (a) Earlier than twenty-four (24) hours from the original examination; or
- (b) Later than the last scheduled day before the academy graduation.
- (3) A trainee shall **fail** [**be considered to have failed**] the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the Branch Manager or Telecommunications Training Section Supervisor.

- (2) An excused absence from the academy which causes a trainee to miss any of the <u>160</u> [205] hours of training shall be made up through an <u>approved</u> [additional] training assignment. <u>Make up training assignments shall be approved by the course instructor.</u>
- (3) If a trainee misses more than ten (10) percent of the total hours of the academy and all absences were excused and all work was made up, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point of the trainee's withdrawal. [If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent.] The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.
- (4) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he **or she** shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of the academy does not last for a period of longer than one (1) year; and

(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. If while enrolled in the academy, a trainee's employment as a dispatcher is terminated by resignation or dismissal and he **or she** is

unable to complete the academy, he <u>or she</u> may complete the remaining training within one (1) year of reemployment as a dispatcher. The trainee shall repeat the academy in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:

- (1) Available to the council and the secretary for inspection or other appropriate purposes; and
- (2) Maintained in accordance with applicable standards in KRS Chapter 171.

CONTACT PERSON: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.



Andy Beshear / Governor
Kerry Harvey / Justice Cabinet Secretary
Nicolai R. Jilek / Commissioner

December 7, 2021



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

Re: 503 KAR 4:010

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 4:010 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 4:010.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





Version: 12/6/21

#### SUGGESTED SUBSTITUTE

#### JUSTICE AND PUBLIC SAFETY CABINET **Department of Criminal Justice Training**

503 KAR 4:010. Definitions for 503 KAR Chapter 4.

RELATES TO: KRS 237.110(4)(i), 237.120, 237.122, 237.124 [(2)(f)] STATUTORY AUTHORITY: KRS <u>15A.070(5)</u>, 237.110(4)(i), 237.120(1), 237.122(1), 237.124

[(2)(f)]NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4)(i) [<del>(2)(f)</del>], 237.120(1), and 237.122(1) require the department to operate and maintain a program for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program; and to offer or approve firearms safety courses. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations [under the following criteria: 1. Be not more than eight (8) hours in length; 2. Include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, and handgun marksmanship principles; 3. Include actual range firing of a handgun in a safe manner, and the firing of not more than twenty (20) rounds at a full-size silhouette target, during which firing, not less than eleven (11) rounds must hit the silhouette portion of the target; and 4. Include information on and a copy of laws relating to possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503]. This administrative regulation establishes the definitions for administrative regulations relating to [: (1)] the certification of firearms instructors; and [(2)] firearms safety and training courses or classes. requires the department topromulgate administrative regulations concerning the: (1) certification and decertification of firearms instructors practicing in Kentucky; and (2) firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation establishes the definitions for administrative regulations relating to: (1) the certification of firearms instructors; and (2) firearms safety and training courses or classes.]

Section 1. Definitions. (1) "Applicant training course" means a firearms safety or training course or class required by KRS 237.110(4)(i) [(2)(f)] that:

- (a) The department:
- 1. Conducts; or
- 2. Has approved; or

(b) Is conducted by firearms instructors certified by the department.

(2) ["Certifying agency" means the Department of Criminal Justice Training or federal agency that qualifies students as competent with firearms.

(3)] "Department" means the Department of Criminal Justice Training.

(3)[(4)] "Instructor candidate" means a person who is taking a firearms safety or training course orclass in order to qualify as a firearms instructor.

(4)[(5)] "Instructor trainer" means a firearms instructor who has been certified by the department totrain qualified firearms instructors.

(5)[(6)] "Certified firearms instructor" means a person who has been certified by the department toteach applicant training courses.

(6)[(7)] "Student" means a person taking an applicant training course.

CONTACT PERSON: Deaidra Douglas, Assistant General Counsel, Justice and Public Safety

Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Richmond, Kentucky 40475, phone (859) 622-8229, email deaidra.douglas@ky.gov.

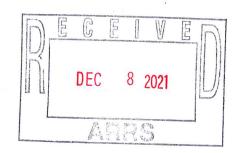


Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary
Nicolai R. Jilek / Commissioner

December 7, 2021

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



Re: 503 KAR 4:040

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 4:040 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 4:040.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training 4449 Kit Carson Drive

Richmond, KY 40475

enclosure





Version: 12/6/21

#### SUGGESTED SUBSTITUTE

#### JUSTICE AND PUBLIC SAFETY CABINET **Department of Criminal Justice Training**

503 KAR 4:040. Required instructor training.

RELATES TO: KRS 237.110, 237.120, 237.122, 237.124, <u>237.126[, 237.136]</u>

STATUTORY AUTHORITY: KRS <u>15A.070(5)</u>, 237.120(1), 237.122(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.120(1) and 237.122(1) require the department to operate and maintain a program for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes the training required for certification as a firearms instructor or firearms instructor trainer.

Section 1. [An applicant training course student shall complete an "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527, and 503.

Section 2.] A firearms instructor or instructor trainer course shall include:

(1) Fourteen (14) hours of classroom instruction covering at least the following topics:

(a) By means of a videotape produced by the department:

- 1. The requirements for obtaining a concealed deadly weapons license in Kentucky;
- 2. Sections of KRS Chapters 237 and 527 that relate to firearms; and
- 3. Sections of KRS Chapter 503 relating to the justifiable use of force;

(b) The conduct of applicant training courses;

(c) Recordkeeping requirements of this administrative regulation;

(d) The basic nomenclature of handguns;

(e) The basic principles of marksmanship; and

(f) The safe handling of handguns;

(2) A classroom demonstration, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to prepare and deliver a classroom presentation using materials from the applicant curriculum; and

(3) Range instruction and firing of live ammunition, during which the instructor candidate shall

receive instruction on and demonstrate competency in the ability to:

(a) Handle and fire a handgun safely and accurately;

(b) Conduct a function test and safety inspection of common types of handguns;

(c) Clean and care for common types of handguns; and

(d) Supervise and conduct live firing exercises in a safe and efficient manner.

Section 2 [3]. To qualify as a certified firearms instructor or an instructor trainer, the instructor candidate shall achieve:

(1) A minimum score of seventy (70) percent on a written examination covering the material taught during the classroom portion of the course;

(2) A minimum score of eighty (80) percent on range firing of a handgun, without receiving any assistance in holding, aiming, or firing by any other person, from a safe position while aiming at a full size silhouette target approved by the department[B-21-PC silhouette target or an equivalent target approved by the department], with a minimum of:

(a) Ten (10) rounds from seven (7) yards; and

(b) Ten (10) rounds from fifteen (15) yards; and

- (3) A score of "passing" from the course instructor for demonstrating competency in each of the following:
  - (a) Supervising and conducting live fire;

(b) Cleaning and inspecting handguns; and

(c) Preparing and delivering the classroom lecture. The lecture shall be graded by using the "CCDW Instructor and Instructor Trainer Five (5)-Minute Presentation" Form. The form shall be submitted to the department as a part of the class record.

Section 3 [4]. [A] In order to avoid unnecessary repetition of the course work in the CCDW applicant course, a person who desires to be certified as a CCDW firearms instructor or instructor trainer, but does not possess a CCDW license, shall be permitted to complete the appropriate CCDW firearms instructor training course and shall be issued an applicant certificate which can be used to apply for a CCDW license. Upon showing proof to the Department of Criminal Justice Training that the person has obtained a license, the person shall be certified as an instructor or instructor trainer.

Section 4 [5]. (1) An instructor candidate who fails to meet the requirements of Section 2 [3] of this administrative regulation may retake the examination, range work, or classroom demonstration one (1) time without having to repeat the course.

(2) An instructor candidate shall retake the examination, range work, or classroom demonstration within thirty (30) days of the date of failure to meet the requirements of Section  $\underline{2}$ 

[3] of this administrative regulation.

(3) A certified firearms instructor trainer may use a CCDW "Training Class Roster Form," CCDW #5 to comply with the class roster requirements of KRS 237.110(22)(d).

Section 5 [6]. (1) A course participant shall provide a safe, functional handgun and factoryloaded ammunition.

(2) Prior to conducting range firing, the course instructor shall:

(a) Inspect each [/] applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

Section  $\underline{6}$  [7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A (07/12/06 edition), Department of Criminal Justice Training;

(b)] "CCDW Instructor and Instructor Trainer Five (5)-Minute Presentation," (6/02 edition),

Department of Criminal Justice Training; and (b)[(e)] "CCDW Training Class Roster Form (CCDW #5)," October 2015[(July 15, 2006

edition)], Department of Criminal Justice Training.[;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Criminal Justice Training, Funderburk Building, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at https://www.docjt.ky.gov/forms.

CONTACT PERSON: Deaidra Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Richmond, Kentucky 40475, phone (859) 622-8229, email deaidra.douglas@ky.gov.

### DEPARTMENT OF CRIMINAL JUSTICE TRAINING CARRY CONCEALED DEADLY WEAPONS

#### **CCDW TRAINING CLASS ROSTER**

Submit original to the Department of Criminal Justice Training Retain 1 copy for your files Must be completed by Instructor (Type or Print Legibly)

Instructor Name	<u> </u>	Instructor Number Phone Number	
Address			
Assistant Instructors			
Name		Instructor Number	Hours
Date(s) of Class			
Start Date		End Date	
Location of Class			
Classroom Address	City	Count	y Hours
	City	Count	v Hours
Range Address	City	Count	y man
Enclosures			
☐ CCDW Training Class Rost		<b>-</b>	
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Instructor's Signature

Date

Pursuant to KRS 237.110(22)(d), this Class Roster Form (along with CCDW Forms 126-A, 126-B and Test Answer Sheet) must be submitted to the Department of Criminal Justice Training within five (5) working days of completion of class.

#### DEPARTMENT OF CRIMINAL JUSTICE TRAINING CARRY CONCEALED DEADLY WEAPONS

#### **CCDW TRAINING CLASS ROSTER**

Submit original to the Department of Criminal Justice Training Retain 1 copy for your files

Must be completed by Instructor (Type or Print Legibly)		
Name	Address	

Date

Instructor Signature

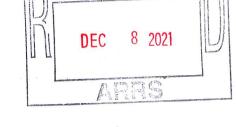


Andy Beshear / Governor Kerry Harvey / Justice Cabinet Secretary Nicolai R. Jilek / Commissioner

December 7, 2021

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

Re: 503 KAR 4:050



Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 4:050 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 4:050.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





Version: 12/6/21

#### SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET **Department of Criminal Justice Training**

503 KAR 4:050. Required content and conduct of [the] applicant training course.

RELATES TO: KRS 237.110, 237.122, 237.124 STATUTORY AUTHORITY: KRS 237.124

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.124(1) requires the department to operate [promulgate administrative regulations concerning the operation of]a program for the training of applicants for a concealed deadly weapons license. KRS 237.124(2) authorizes the department to promulgate administrative regulations to implement the training program. This administrative regulation establishes the training [that] program.

Section 1. An applicant training course shall be:

- (1) The standardized training course furnished by the department; and
- (2) Taught by a certified firearms instructor.

Section 2. Applicant Training Course Content. (1) Classroom instruction. An applicant training course shall include at least six (6) hours, but not more than eight (8) hours, of classroom instruction, covering the following topics:

- (a) Handgun safety in the classroom, at home, on the firing range or while carrying the firearm;
- (b) The basic principles of marksmanship;
- (c) Care and cleaning of handguns; and
- (d) By means of a videotape produced by the department:
- 1. The requirements for obtaining a concealed deadly weapons license in Kentucky;
- 2. Sections of KRS Chapters 237 and 527 relating to firearms; and
- 3. Sections of KRS Chapter 503 relating to the justifiable use of force.
- (2) Live firing exercises. An applicant training course shall include live firing exercises of sufficient duration for an applicant to fire a handgun:
  - (a) From a safe position;
- (b) Without receiving any assistance in holding, aiming, or firing from the instructor or any other person:
- (c) Twenty (20) rounds observed by the instructor. The instructor shall observe the applicant for each round fired, including those fired after the applicant has hit the silhouette portion of the target[as required by KRS 237.110(4)(i)(3)]; and
- (d) At a distance from a department approved, full-size [a B-21] silhouette target, [or an equivalent as approved by the department, of seven (7) yards.
- (3) If range firing is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to a student for the purposes of subsection (2)(b) of this section.

Section 3. The classroom portion of the course shall be taught, at the certified firearms instructor's discretion, in one (1) six (6) hour block or divided into segments of not less than one (1) hour each.

Section 4. (1) An applicant training course shall not be open to persons who are less than twenty-one (21) years of age.

(2) An applicant training course student shall complete:

(a) An "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527, and 503; and

(b) A "Release of Liability, Agreement to Waive Claims, Express Assumption of Risks, and

Indemnity Agreement," Form #126-B.

Section 5. A certified firearms instructor shall not discuss the videotape or KRS Chapters 237, 503, or 527 with students, either individually or as a class.

Section 6. (1) At the conclusion of the classroom portion of an applicant training course, a certified firearms instructor shall:

(a) Distribute a standard course examination to the students;

- (b) Not leave the room in which the examination is being held while the examination is in progress, unless another certified firearms instructor is physically present in the room to supervise the examination; and
- (c) Collect examination booklets and answer sheets from each student at the end of the examination period.
- (2) At the conclusion of the classroom portion of an applicant training course, a certified firearms instructor may:
  - (a) Grade the applicant's examination; and
  - (b) Provide the applicant with his or her score.

Section 7. Except for an instructor, a person shall not:

(1) Make a copy of the applicant training course examination, in whole or in part;

(2) Possess an applicant training course examination, or questions from an examination, unless authorized by the department; or

(3) Divulge the contents of applicant training course examination questions to another person.

Section 8. (1) A student shall use a safe, functional handgun and factory-loaded ammunition.

- (a) An instructor or instructor trainer may choose to provide a safe, functional handgun at the request of the student for use during the class.
- (b) An instructor or an instructor trainer shall not advertise that students will be furnished a handgun for use in the class.

(c) A handgun shall not be furnished unless special circumstances dictate the need to do so

and the student requests it.

- (d) An instructor or instructor trainer shall not charge a fee for furnishing a handgun, but may recover the actual cost of ammunition that is provided at the request of the student.
  - (2) Prior to conducting range firing, a certified firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

Section 9. A passing grade shall not be given on range work to an applicant who:

(1) Does not follow the orders of a certified firearms instructor;

(2) In the judgment of a certified firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or

(3) Fails to hit the silhouette portion of a target with not less than eleven (11) [a majority of the twenty (20)] rounds without assistance in holding, aiming, or firing the firearm from the instructor or another person.

Section 10. In accordance with the requirements of KRS 237.110(22)(g), if the department believes that an instructor has not complied with the requirements for teaching a certified firearms instructor or applicant class, it shall send a "VF-1 Verification Form" to each student who has been listed by the instructor as having successfully completed the class taught by that instructor.

Section 11. (1) The "Applicant Request for Training for License to Carry Concealed Deadly Weapons" and course fee required by KRS 237.122 shall be sent to the department at the same time as the class roster required by KRS 237.110(22)(d).

(2) A certified firearms instructor may use a "CCDW Training Class Roster Form," CCDW #5, to

comply with the class roster requirements of KRS 237.110(22)(d).

Section 12. An applicant training course shall not have more than:

(1) Forty (40) students in the classroom portion; or

(2) Five (5) students per range officer engaged in range firing. Students in a waiting area at a range facility who are not actively engaged in loading, unloading or firing handguns shall not be considered to be engaged in range firing for the purposes of this subsection.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form

#126-A, July 2019[(07/12/06 edition)], Department of Criminal Justice Training;

(b) "Release of Liability, Agreement to Waive Claims, Express Assumption of Risks, and Indemnity Agreement," Form #126-B, <u>July 2019[(07/12/06 edition)]</u>, Department of Criminal Justice Training;

(c) VF-1 "Verification Form", (6/02 edition), Department of Criminal Justice Training; and

(d) CCDW #5 "CCDW Training Class Roster Form", October 2015[(July 15, 2006 edition)], Department of Criminal Justice Training.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, <u>4449</u> Kit Carson Drive, Richmond, Kentucky 40475-3137, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at

https://www.docjt.ky.gov/forms.

CONTACT PERSON: Deaidra Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Richmond, Kentucky 40475, phone (859) 622-8229, email deaidra.douglas@ky.gov.

# DEPARTMENT OF CRIMINAL JUSTICE TRAINING CARRYING CONCEALED DEADLY WEAPONS

# APPLICATION REQUEST FOR TRAINING FOR LICENSE TO CARRY CONCEALED DEADLY WEAPONS Type or Print Legibly

SOCIAL SECURITY # COMPLETE NAME (LAST, FIRST, MIDDLE)  DAYTIME PHONE NO. BIRTH DATE SEX EMAIL ADDRESS (optional)  MAILING ADDRESS (Street or PO Box, City, State & Zip Code)  Would you like your training certificate emailed to you? Yes No TRAINING INFORMATION  TRAINING INFORMATION  Date(s) Hours Location (Facility, Street, City & ZIP code) County  Classroom: Additional Date: (If needed) Range Qualify Time: I hereby certify that I attended the above class, received instruction of not less than 6 classroom hours as applicant, and 14 classroom hours as an instructor - As well as shot 20 qualifying rounds at the range and acknowledge that I have received copies of sections of KRS Chapter 237, 527 and 503.  Applicant's Signature Date  INSTRUCTOR AND INSTRUCTOR-TRAINER APPLICANTS ONLY  CCDW License: Yes No Hys estatach copy of License Do Not want my name, address and phone number to be made public. Do Not want my name, address and phone number to be made public. Do want my name, address and phone number to be made public. Fing Range: Pass Fail Instructor Ive Fire: Pass Fail Instructor Five Minute Presentation: Pass Fail Instructor Live Fire: Pass Fail Instructor Number Phone Number I hereby certify that I am currently a "qualified firearms instructor" under 503 KAR, Chapter 4; that I followed the approved curriculum in teaching this course; and that the above named person attended this course.	TYPE OF APPLIC	ATION (Check	Appropi	ŕ	Applicant			ctor-Trainer
DAYTIME PHONE NO. BIRTH DATE SEX EMAIL ADDRESS (optional)  MAILLING ADDRESS (Street or PO Box, City, State & Zip Code)  Would you like your training certificate emailed to you? Yes \Rightarrow \Righ	COCIAL SECUDITY #			PERSONAL INFORMATION  COMPLETE NAME (LAST, FIRST, MIDDLE)				
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Date(s)   Hours   Location   (Facility, Street, City & ZIP code)   County								
Classroom:  Additional Date: (If needed) Range Qualify Time:  I hereby certify that I attended the above class, received instruction of not less than 6 classroom hours as applicant, and 14 classroom hours as an instructor - As well as shot 20 qualifying rounds at the range and acknowledge that I have received copies of sections of KRS Chapter 237, 527 and 503.  Applicant's Signature  Date  INSTRUCTOR AND INSTRUCTOR-TRAINER APPLICANTS ONLY    CCDW License: Yes   No   If Yes attach copy of License   1 Do Not want my name, address and phone number to be made public. (complete line below) County of Business   Business Phone # (with area code)  INSTRUCTOR SECTION  Written Exam: %   Firing Range: Pass   Fail   Instructor Live Fire: Pass   Fail   Instructor Five Minute Presentation: Pass   Fail   Instructor Number   Phone Number   Instructor's Name   Instructor Number   Phone Number   Instructor Live Fire: Pane   Instructor Number   Phone Number   Instructor Start   Instructor Header   Instructor H	Would you like yo	ur training cert	ificate er	nailed to you? You	es 🗌 No			
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# RELEASE OF LIABILITY, AGREEMENT TO WAIVE CLAIMS, EXPRESS ASSUMPTION OF RISKS, AND INDEMNITY AGREEMENT

(Read the following and be certain you understand the implications of signing)

By signing this document I understand that I waive certain legal rights, including the right to sue.

# EXPRESS ASSUMPTION OF THE RISKS ASSOCIATED WITH HANDLING, CARRYING, AND SHOOTING FIREARMS

do hereby affirm and acknowledge that I have been informed of inherent hazards and risks associated with firearms and their carrying and storage, including in the home. I fully understand that these risks can lead to severe injury and even death. I understand that use of a firearm for personal protection may lead to criminal and/or civil charges being brought against me. Despite the potential hazards and dangers associated with firearms, and personal protection, I wish to proceed and I freely accept and expressly assume all risks, dangers, and hazards that may arise from firearms and personal protection and which could result in personal injury, death and property damage to myself or others. I understand that a repeated or flagrant violation of safety rules on the range or otherwise during training may result in my ejection from training without rebate of the fee.					
RELEASE OF LIABILITY, AGREEMENT TO WAIVE CLAII ASSUMPTION OF RISKS, AND INDEMNITY AGRE	MS, EXPRESS EEMENT				
In consideration of being allowed to participate in required training for the carrying well as the use of any of the facilities and use of the equipment of a releasee, I here	g of concealed deadly weapons, as by agree as follows:				
<ol> <li>TO WAIVE AND RELEASE ANY AND ALL CLAIMS, DIRECT OR INDIF against any of the following named persons or entities (hereinafter referred to a</li> </ol>	RECT, that I may have in the future s Releasees):				
Instructor(s) The Kentucky department of Criminal Justice Training, its agents and employe	es				
2. To release the releasees, their officers, directors, employees, representative liability and responsibility, whatsoever, for any claim or cause of action that assigns may have for personal injury, property damage or wrongful death arisit defense, defense of another or other use, whether caused by the active or passotherwise. By executing this document, I agree to hold the releasees harmless occur to me or others during firearms use as above or during firearms instruction.	ng from firearms use, including self- ssive negligence of the releasees or s for any injury or death which may on.				
<ol> <li>By entering into this Agreement, I am not relying on any oral or written representable.</li> <li>Releasees, other than what is set forth in this Agreement. I further agree that the and interpreted in accordance with the laws of the Commonwealth of Kentucky</li> </ol>	nis Adreement shall be governed by				
I hereby declare that I am 21 years of age or above and am competent to sign this Agreement.					
I HAVE READ THIS AGREEMENT, I UNDERSTAND IT AND I AGREE TO	BE BOUND BY IT.				
SIGNATURE OF APPLICANT	_ DATE				
SIGNATURE OF WITNESS	_ DATE				

# DEPARTMENT OF CRIMINAL JUSTICE TRAINING CARRY CONCEALED DEADLY WEAPONS

## **CCDW TRAINING CLASS ROSTER**

Submit original to the Department of Criminal Justice Training Retain 1 copy for your files Must be completed by Instructor (Type or Print Legibly)

Instructor Name Instructor Num				
Address			Phone Number	
Assistant Instructors			Llouro	
Name		Instructor Number	Hours	
Date(s) of Class				
Start Date End Date				
			4,	
Location of Class				
Classroom Address	City	County	Hours	
Range Address	City	County	Hours	
Enclosures				
CCDW Training Class Roster -				
Check or Money Order made p  ( Applicants x \$25.00 = \$	eayable to the <b>Kent</b> S) + ( li	ucky State Treasurer nstructors x \$50.00 = \$	) = \$	
CCDW Forms 126 A&B – Appli	icant Request for T ssumption of Risks	raining for License & Rel , and Indemnity Agreeme	ease of Liability, nt	
Agreement Olams, Express / k				
CCDW Answer Sheets Five Minute Presentation Form	(la about a tau a Carrier	o Only) CCDW Form #4		

Instructor's Signature

Pursuant to KRS 237.110(22)(d), this Class Roster Form (along with CCDW Forms 126-A, 126-B and Test Answer Sheet) must be submitted to the Department of Criminal Justice Training within five (5) working days of completion of class.

CCDW Form #5 revised October 2015

# DEPARTMENT OF CRIMINAL JUSTICE TRAINING CARRY CONCEALED DEADLY WEAPONS

## **CCDW TRAINING CLASS ROSTER**

Submit original to the Department of Criminal Justice Training
Retain 1 copy for your files

Must be completed by Instructor (Type or Print Legibly)  Name  Address			
Name	Address		
	\$		
·			
Instructor Signature	Date		

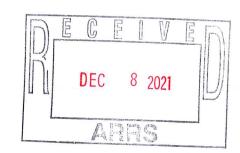


Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary
Nicolai R. Jilek / Commissioner

December 7, 2021

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



Re: 503 KAR 5:080

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 5:080 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 5:080.

Sincerely,

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





#### 12/6/21

#### SUGGESTED SUBSTITUTE

## JUSTICE AND PUBLIC SAFETY CABINET **Department of Criminal Justice Training**

503 KAR 5:080. Definitions for 503 KAR Chapter 5.

RELATES TO: KRS 15.410 - 15.510

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.430 establishes the Law Enforcement Foundation Program Fund. KRS 15.450(1) authorizes the secretary or the secretary's designee to promulgate administrative regulations necessary to carry out KRS 15.410 through 15.510. This administrative regulation establishes [provides] definitions for [of certain terms as used in] 503 KAR Chapter 5, which pertains to the Law Enforcement Program Foundation Fund. [This administrative regulation also repeals the administrative regulations previously in this chapter.]

Section 1. Definitions. [The following definitions shall apply in this chapter:]

(1) "Cabinet" means the [Kentucky] Justice and Public Safety Cabinet.

(2) ["Secretary" means the secretary of the Kentucky Justice Cabinet.

(3)] "Council" means the Kentucky Law Enforcement Council as established in KRS 15.315.

(3)[(4)] "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.

(4)[(5)] "Fund administrator" means the person responsible for administering the fund pursuant to[-] KRS 15.450(1) [provides that the fund shall be administered by the secretary or his designated representative.

(6) "Salary supplement funds" means money disbursed from the fund to local units of government for salary supplement purposes. A "salary supplement" is the fund money disbursed by a local unit of government to an individual police officer].

(5)[(7)] "Local unit" has the same meaning as "unit of government" as defined by [in] KRS 15.420(5) [means the local unit of government of any city or county, or any combination of cities and counties of the Commonwealth].

(6)[(8)] "Police officer" is defined by KRS 15.420(2).

(7) "Salary supplement" means the fund money disbursed by a local unit of government to an individual police officer.

(8) "Salary supplement funds" means money disbursed from the fund to local units of

government for salary supplement purposes.

- (9) "Secretary" means the secretary of the Justice and Public Safety Cabinet. [means a "full-time member" (defined in subsection (9) of this section) of a "lawfully organized police department" (defined in subsection (11) of this section) of county, urban-county, or city government who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer, sheriff, deputy sheriff, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (9) "Full-time member" means a sworn police officer who is paid a salary by the local unit for "working regularly" (defined in subsection (10) of this section) as a law enforcement officer.

(10) "Working regularly" means the officer is working a minimum of forty (40) hours a

week according to a uniform weekly schedule that is standard for police officers employed by that employing agency. No local unit shall arrange, by reduction of weekly hours or otherwise, the employment of a person who is otherwise considered a police officer so as to subvert the intent and purpose of KRS 15.410 to 15.510 or these administrative regulations.

(11) "Lawfully organized police department" means a law enforcement unit organized in accordance with statutory authority, and one which has a separate and identifiable physical and management identity from other law enforcement units, including a separate chief.]

CONTACT PERSON: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.



Andy Beshear / Governor

Kerry Harvey / Justice Cabinet Secretary
Nicolai R. Jilek / Commissioner

December 7, 2021



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

Re: 503 KAR 5:100

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 503 KAR 5:100 the Justice and Public Safety Cabinet, Department of Criminal Justice Training proposes the attached amendment to 503 KAR 5:100.

Sincerely, ·

Deaidra Douglas

Department of Criminal Justice Training

4449 Kit Carson Drive

Richmond, KY 40475

enclosure





#### 12/7/21

#### SUGGESTED SUBSTITUTE

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training

503 KAR 5:100. Disbursement of salary supplement funds; audits.

RELATES TO: KRS <u>15.440</u>, 15.460, 15.470, <u>15.480</u>, 15.490, 15.500(1)

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.460, 15.470, 15.490, and 15.500(1) establish [pertain to disbursements from the Law Enforcement Foundation Program Fund; KRS 15.490(1) pertains to reports from local units to the Justice Cabinet; and KRS 15.490(2) pertains to payroll deductions. This administrative regulation expands on these] disbursement, reporting, and recordkeeping requirements for the Law Enforcement Foundation Program Fund. KRS 15.450(1) authorizes the secretary or the secretary's designee to promulgate administrative regulations necessary to carry out KRS 15.410 through 15.510. This administrative regulation establishes procedures to implement those requirements [provisions].

Section 1. Disbursement <u>Procedures</u> [from Fund to Local Unit]. (1) [Local unit's entitlement. Upon becoming eligible to participate in the fund, a local unit is entitled to receive annually, from the fund, salary supplement funds of \$4,000] [\$2,500] [for each qualified police officer it employs. If the fund is insufficient to provide funds at this rate, the cabinet shall establish the rate to be paid to the local units.

(2) Procedural requirements.

(a)] A participating local unit shall submit to the fund administrator, within five (5) working days of the action, personnel action forms containing the information (<u>such as</u> hirings <u>and[,]</u> firings[, etc.]) <u>needed</u> [required] by the fund administrator or his designee [in order] to determine the amount of salary supplement funds to be disbursed to the local unit.

(2)[(b)] The fund administrator or his designee shall mail fund checks promptly to all eligible local

units that [which] have submitted timely personnel action forms.

- (3)[(e)] The local unit shall, upon request from the fund administrator, provide an acknowledgement of receipt of funds in a written correspondence signed by the agency that includes:
- (a) The local agency name, month of roster report, check amount, and number of current officers; and

(b) A statement that indicates that:

- 1. The local agency has reviewed the fund roster for the current month and agrees that the officer status and pay stipend information accurately reflects the agency's most current records in accordance with 503 KAR 5:100, Disbursement of salary supplement funds; audits; and
- 2. If he or she has received the roster but is not the individual responsible for verifying this information, he or she will contact the fund office (859-622-2224) as soon as possible. [be required to acknowledge, to the fund administrator, receipt of funds on a form provided for this purpose. (These forms are available from the Kentucky Law Enforcement Foundation Program Fund, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building [107 Stratton Building, Eastern Kentucky University][, Richmond, Kentucky 40475.]
  - [(d) Local units shall provide such other information and reports as the fund

# administrator or his designee reasonably deems necessary.]

Section 2. Disbursement from Local Unit to Police Officer. (1) [Purposes for which local unit may use funds. The funds shall be used only as a cash salary supplement to police officers who meet the qualifications established by statute and by this administrative regulation. The funds shall not be used to supplant existing salaries or as a substitute for normal salary increases. The funds shall be received, held, and expended only in accordance with the law.

(2)] Qualifications for receiving a salary supplement. [In order to be entitled] To receive a salary supplement from a local unit, a person shall [must] be:

(a) A ["]police officer[" - that is, a "full-time member" of a "lawfully organized department" of county, urban-county, or city government (for definitions, see 503 KAR 5:080)]; and

- (b) Employed by a local unit of government <u>that</u> [which] is eligible to participate in the fund <u>pursuant to KRS 15.440 and</u>[. (For participation requirements for local units, see] 503 KAR 5:090.
  - <u>(2)</u> [+)

(3)] Determining the amount of the salary supplement.

- (a) [Each police officer shall be paid by his local unit that amount of money which is paid from the fund to the local unit because of his qualifications. Thus a qualified officer who is employed "full time" for an entire year shall entitle his local unit to receive \$4,000] [\$2,500] [(or, if the fund is insufficient to provide funds at this rate, the amount established by the cabinet), and he shall be paid this same amount by his local unit.
- (b) Funds shall be disbursed from the fund to local units on a monthly basis, and] A police officer's salary supplement shall be determined on a monthly basis. [(for example, \$208.33 per month if the annual supplement is \$2,500).] If an officer works less than a full month, his salary supplement shall be determined on an hourly basis. The hourly rate shall be determined by dividing the annual supplement by 2,080 (fifty-two (52) weeks multiplied by forty (40) hours per week).[; therefore, if the annual supplement is \$2,500, the hourly supplemental rate shall be one (1) dollar and twenty (20) cents for each hour he receives salary from his local unit.]

(b)[(e)] Salary, for salary supplement purposes, shall include pay for leave (such as annual, sick, compensatory, military, civil or educational leave). Leave without pay shall not be included.

(c)[(d)] A police officer shall be paid a salary supplement while suspended from duty with pay, but shall not be paid one while suspended without pay.

(d)[(e)] A police officer shall not be paid a salary supplement for pay for overtime work (hours

over forty (40) per week).

(e)[(f)] A police officer, if [provided he is] qualified to participate in the fund during the period, shall be paid a salary supplement for that period of time during which he is not receiving a salary but is receiving workers' compensation benefits. This salary supplement shall be determined at the same monthly rate and, if a time period of less than a month is involved, hourly rate as is provided for in paragraph (a) of this subsection [(3)(b) of this section].

(f)[(g)] The local unit shall keep hourly [-] employment records to document:

1. That a police officer is ["] full time["] and thus qualifies for a salary supplement;[;] and [;]

2. The salaried hours (<u>such as</u> work, leave with pay, <u>and</u> suspension with pay[<u>, etc.]</u>) of each officer receiving a salary supplement.

[(4) Payroll deductions. Under KRS 15.490(2), local units shall include the salary supplement paid to a police officer from the fund as a part of the officer's salary in determining all payroll deductions.]

Section 3. Audit of Local Unit. (1) The cabinet <u>may</u> [shall have the authority to] audit, or [to] authorize an audit of, local units receiving salary supplement funds.

(2) For audit purposes, the local unit shall maintain accurate financial records, which shall

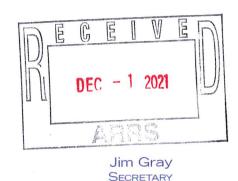
include [, but not be limited to,] books of original entry, source documents supporting accounting transactions, a general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records.

(3) These records shall be retained by the local unit until destruction is authorized by the

cabinet.

CONTACT PERSON: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.





Andy Beshear Governor

December 1, 2021

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

RE: 603 KAR 3:100. Noxious weeds and invasive plants to be eradicated from rights-of-way.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 603 KAR 3:100, the Transportation Cabinet proposes the attached subcommittee substitute amendment to 603 KAR 3:100.

Sincerely,

Larisa Plecha, Esq. Staff Attorney III

Kentucky Transportation Cabinet

Office of Legal Services 200 Mero Street, 6<sup>th</sup> Floor Frankfort, KY 40622

(502) 564-7650

Larisa.plecha@ky.gov

#### **Subcommittee Substitute**

# TRANSPORTATION CABINET Department of Highways Division of Maintenance (As Amended at ARRS)

# 603 KAR 3:100. Noxious weeds and invasive plants to be eradicated from rights-of-way.

**RELATES TO: KRS 176.051** 

STATUTORY AUTHORITY: KRS 176.051

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.051 requires the Transportation Cabinet to eradicate noxious weeds and invasive plants from state-owned rights-of-way and establishes a list of noxious weeds and invasive plants that shall be eradicated by the department. KRS 176.051(4)(a) authorizes the cabinet to promulgate an administrative regulation to add or remove noxious weeds and invasive plants from the list established in KRS 176.051(1). This administrative regulation adds and deletes noxious weeds and invasive plants from the list established in KRS 176.051(1) in consideration of the criteria established in KRS 176.051(4)(a)1. through 4.

Section 1. (1) Noxious weeds and invasive plants shall be added to the list established in KRS 176.051(1), including:

- (a) Spotted knapweed; and
- (b) Cutleaf teasel. [; and
- (c) The thistles Cirsium arvense and Carduus nutans, commonly known as Canada thistles and Musk (nodding) thistles, respectively.]
- (2) <u>Giant foxtail</u> [Noxious weeds and invasive plants] shall be deleted from the list established in KRS 176.051(1)[, including:
  - (a) Giant foxtail; and
- (b) The thistles Cirsium arvense and Carduus nutans, commonly known as Canada thistles and nodding thistles, respectively].

Section 2. Review. The department shall review the list of noxious weeds and invasive plants in this administrative regulation as established in KRS 176.051(4)(b).

CONTACT PERSON: Larisa Plecha, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email larisa.plecha@ky.gov.





Andy Beshear Governor

December 1, 2021

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

RE: 603 KAR 5:360. Transportation Cabinet use of interstate and parkway signs to locate missing persons.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 603 KAR 5:360, the Transportation Cabinet proposes the attached agency amendment to 603 KAR 5:360.

Sincerely,

Larisa Plecha, Esq. Staff Attorney III

Kentucky Transportation Cabinet

Office of Legal Services 200 Mero Street, 6<sup>th</sup> Floor

Frankfort, KY 40622

(502) 564-7650

Larisa.plecha@ky.gov

### **Agency Amendment**

## December 1, 2021 TRANSPORTATION CABINET **Department of Highways Division of Incident Management**

603 KAR 5:360 Transportation Cabinet use of interstate and parkway signs to locate missing persons.

Page 2 Section 2 **Lines 14-16** 

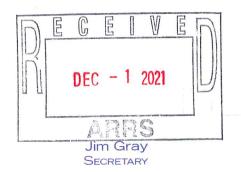
After "by KRS 39F.200", insert the following:

, the county emergency management agency as defined in KRS 39A.020(16), Kentucky State Police, or local law enforcement.

Delete the following:

in the County where the missing person was last seen





Andy Beshear Governor

December 1, 2021

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

RE: 603 KAR 5:360. Transportation Cabinet use of interstate and parkway signs to locate missing persons.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 603 KAR 5:360, the Transportation Cabinet proposes the attached suggested amendment to 603 KAR 5:360.

Sincerely,

Larisa Plecha, Esq. Staff Attorney III

Kentucky Transportation Cabinet

Office of Legal Services 200 Mero Street, 6<sup>th</sup> Floor Frankfort, KY 40622

(502) 564-7650

Larisa.plecha@ky.gov

#### **Staff-suggested Amendment**

# 11/30/2021 TRANSPORTATION CABINET Department of Highways Division of Incident Management

603 KAR 5:360. Transportation Cabinet use of interstate and parkway signs to locate missing persons.

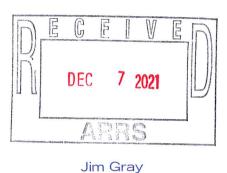
Page 1
NECESSITY, FUNCTION, AND CONFORMITY paragraph
Line 13

After "39F.180", insert "(6)". Delete "(2)(e)".

Page 4
Section 2(8)(b)
Line 4

After "been issued", delete "that takes precedence".





Andy Beshear Governor

SECRETARY

December 7, 2021

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

RE: 603 KAR 10:040. Advertising Devices.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 603 KAR 10:040, the Transportation Cabinet proposes the attached subcommittee substitute amendment to 603 KAR 10:040.

Sincerely,

Larisa Plecha, Esq. Staff Attorney III

Kentucky Transportation Cabinet

Office of Legal Services 200 Mero Street, 6<sup>th</sup> Floor Frankfort, KY 40622

(502) 564-7650

larisa.plecha@ky.gov

#### **Subcommittee Substitute**

# TRANSPORTATION CABINET Department of Highways Division of Maintenance (As Amended at ARRS)

#### 603 KAR 10:040. Advertising devices.

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for static and electronic advertising devices.

Section 1. Definitions.

- (1) "Abandoned" means that, for a period of one (1) year or more, an advertising device previously lawfully erected has:
  - (a) Not displayed advertising;
  - (b) Displayed obsolete advertising; or
  - (c) Needed substantial repairs due to lack of maintenance.
- (2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.
- (3) "Advertiser" means a person or entity entered into a contractual agreement with the owner of an advertising device for advertisement services in the advertiser's interest that is displayed upon the subject advertising device at the time of violation.
  - (4) "Advertising device" is defined by KRS 177.830(5).[
- (5) "Business device" means a device for advertising for which no compensation is derived, received, or exchanged for its use.]

(5)[(6)] "Centerline of the highway" means a line:

- (a) Equidistant from the edges of the median separating the main traveled ways of a divided:
- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway; or
- (b) That is the centerline of the main traveled way of a non-divided:
- 1. Interstate;

- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway.
- (6)[(7)] "Commercial or industrial activities" is defined by KRS 177.830(9).
- (7)[(8)] "Commercial or industrial land use":
- (a) Means an activity, in a zoned area within 660 feet of the interstate or parkway right-of-way, engaged in for financial gain; and
  - (b) Does not mean:
  - 1. The leasing of property for residential purposes;
  - 2. An activity conducted in a building principally used as a residence;
- 3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;
  - 4. Operation, maintenance, or storage of an advertising device;
  - 5. A railroad track or minor siding; or
  - 6. A facility generally recognized as a utility, such as a cell tower.
- (8)[(9)] "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.
  - (9)[(10)] "Compensation" is defined by KRS 177.830(11).
- (10)[(11)] "Conversion" or "converted" means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.
- (11)[(12)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.
- (12)[(13)] "Destroyed" means <u>an</u> [a nonconforming] advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.
  - (13)[(14)] "Electronic advertising device":
- (a) Means an advertising device that changes its message or copy by programmable electronic or mechanical processes; and
- (b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half (1/2) of the face.
- (14)[(15)] "Enlargement" means an addition to the permitted area of the facing of an advertising device.

## (15)[(16)] "Erect":

- (a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and
  - (b) Does not mean routine maintenance, including changing of a message or copy.
- (16)[(17)] "Exchange credit" means a singular allotment of value assigned by the department for the removal of an approved eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.
- (17)[(18)] "Extension" means a temporary addition to an advertising device for a message or copy.
- (18)[(19)] "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.

(19)[(20)] "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.

(20)[(21)] "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C.131, refers to the existence of the highway on June 1, 1991.

(21)[(22)] "FHWA adjusted urban area boundaries" means a boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.

### (22)[(23)] "Highway" means:

- (a) An interstate, parkway, national highway system, or federal-aid primary highway located within the boundaries of the state of Kentucky and being further depicted by the Transportation Cabinet on http://maps.kytc.ky.gov/PAFOA/; and
  - (b) A public road maintained by the department.
  - (23)[(24)] "Interstate highway" is defined by KRS 177.830(2).
- (24)[(25)] "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection or as later allowed by law.
- (25)[(26)] "Legal <u>permitted</u> [permit]" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

#### (26)[(27)] "Main traveled way":

- (a) Means the traveled way of a highway on which through traffic is carried; and
- (b) Does not mean frontage roads, turning roadways, or parking areas.
- (27)[(28)] "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light from a device.
- (28)[(29) "Noncompliant advertising device" means an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.
- (30) "Noncompliant permit" means written authorization allowing the continued existence of a noncompliant advertising device, subject to current state law and this administrative regulation.
- (31)] "Nonconforming advertising device" means an advertising device that was once lawfully erected but does not comply with:
  - (a) Current state law or this administrative regulation; or
  - (b) Changed conditions such as:
  - 1. A change in zoning;
  - 2. The relocation or reclassification of a highway;
  - 3. A change in restriction on size, space, or distance; or
  - 4. The abandonment of required business or businesses.
- (29)[(32)] "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.
- (30)[(33)] "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(31)[(34)] "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

(32)[(35)] "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

- (a) Within 660 feet from the edge of the right-of-way in an area defined as an urban area; and
- (b) Within and extending [Extending] beyond 660 feet from the edge of the right-of-way outside of an area defined as an urban area.

(33)[(36)] "Scenic byway" is defined by KRS 177.572.

(34)[(37)] "Scenic highway" is defined by KRS 177.572.

(35)[(38)] "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half (1/2) of the face.

(36)[(39)] "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an adverting device of the same basic construction using new materials and at the same location.

(37)[(40)] "Substantial structure" means an affixed, solid, or strong permanent construction.

(38)[(41)] "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(39)[(42)] "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(40)[(43)] "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

(41)[(44)] "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

Section 2. Conditions Relating to Static and Electronic Advertising Devices Located in a Protected Area.

- (1) A static or an electronic advertising device located in a protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.
  - (2) A permit shall only be issued for a device in a protected area of:
- (a) An interstate or parkway being erected or maintained fifty (50) feet or more from the edge of the main traveled way or turning roadway that:
- 1. Is zoned commercial or industrial and was an incorporated municipality on or before September 21, 1959; or
- 2. Was zoned commercial or industrial and included a commercial or industrial land use on or before September 21, 1959; or
  - (b) A national highway system or federal-aid primary highway being erected or maintained in:
  - 1. A commercial or industrial zone; or
- 2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured **perpendicular to and along the centerline** [along or parallel to the pavement] of the highway; and
  - (c) Complies with applicable county or city zoning ordinance and regulations.

- (3) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured **perpendicular to and along** [horizontally and at a right angle to] the centerline of the interstate, parkway, national highway system, or federal-aid primary highway.
- (4) The erection or existence of an advertising device shall be prohibited in a protected area if the device:
  - (a) Is abandoned;
  - (b) Is not clean and in good repair;
  - (c) Is not securely affixed to a substantial structure permanently attached to the ground;
  - (d) Directs the movement of traffic;
  - (e) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;
- (f) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;
  - (g) Is erected or maintained upon a tree;
  - (h) Is erected upon or overhanging the right-of-way;
  - (i) Is mobile, temporary, or vehicular;
  - (j) Is a static advertising device and painted or drawn on rocks or another natural feature; or
- (k) Is a static advertising device and includes or is illuminated by flashing, intermittent, or moving lights.
- (5) The spacing, measured perpendicular to and along the centerline of the highway, between static and electronic advertising devices with visible facings oriented in the same [per] direction of travel on:
- (a) Interstates, parkways, national highway systems, or limited access federal-aid primary highways shall be a minimum of:
  - 1. 2,500 feet between electronic advertising devices;
  - 2. 500 feet between an electronic advertising device and a static advertising device; or
  - 3. 500 feet between a static advertising device and another static advertising device; and
- (b) Non-limited access federal-aid primary highways shall, pursuant to KRS 177.863(2)(a), be a minimum of:
- 1. 300 feet between advertising devices, unless separated by a building, natural obstruction, or roadway, in a manner so that only one (1) sign located within the required spacing distance shall be visible from the highway at any **given** [one] time; or
  - 2. 100 feet between advertising devices if located within an incorporated municipality.
- (6) An advertising device displaying copy or message, whether or not legible, that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements of this section for each highway independently.
- (7) An electronic advertising device shall only be erected or maintained within an urban area located within 660 feet of right-of-way of a highway.
- (8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section <u>6</u>[8] of this administrative regulation.
- (9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section  $\underline{6[8]}$  of this administrative regulation.
  - (10) Lighting used for a static advertising device shall be:
  - (a) Only white;

- (b) Effectively shielded to prevent a beam of light from being directed at the interstate, parkway, national highway system, or federal-aid primary highway;
- (c) Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; and
  - (d) Of a luminance less than 300 nits.
  - (11) An electronic advertising device erected or maintained in a protected area shall:
  - (a) Not have a facing larger than 672 square feet;
  - (b) Not have more than one (1) face per facing;
  - (c) Not contain extensions to the face;
  - (d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and
- (e) Be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is **one and one-half (1.5)** [1.5] foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.
  - (12) The message or copy on an electronic advertising device shall:
  - (a) Be static for at least eight (8) seconds;
  - (b) Change from one (1) message or copy to another in less than two (2) seconds;
  - (c) Not blink, scroll, or contain animation or video; and
  - (d) Be programmed to freeze in a static display if a malfunction occurs.
  - (13) A static advertising device:
  - (a) Shall not:
  - 1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);
- 2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or
- 3. Have interior angles between two (2) facings that exceed forty-five (45) degrees **if device has more than two (2) faces**; and
- (b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).
- (14) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.
  - (15) The name of the owner of an advertising device shall:
  - (a) Be legible from the main traveled way;
  - (b) Not be larger than twenty (20) square feet;
  - (c) Be shown without other owner information; and
  - (d) Not be considered an advertisement.

Section 3. Exchange of Advertising Device for Permit.

- (1) An advertising device proposed for exchange shall require eligibility approval by the department pursuant to [subsections (3), (4), and (5) of] this section prior to removal.
- (2) The owner of an approved advertising device exchange shall receive an exchange credit by the department upon verification of removal.
  - (3) An advertising device eligible for exchange shall be:

- (a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;
  - (b) Not less than fifty (50) square feet per facing; and
  - (c) Situated in an unpermittable location in a protected area.[; or

#### (d) Observable from a scenic highway.]

- (4) The submittal of six (6) exchange credits shall be required for one (1) new electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.
- (5) The submittal of five (5) exchange credits shall be required for the conversion of an existing legal permitted static advertising device in an urban area to an electronic advertising device.
- (6) If an Application for Electronic Advertising Device is denied by the department, the department shall hold and apply any exchange credits pending the outcome of any subsequent appeal or until exchange credits can be applied toward another approved application.
- (7) If the permittee voluntarily removes an advertising device and receives an exchange credit, the permittee shall thereby waive any right or claim to any additional compensation from the department for that device.
- (8) The ownership of an exchange credit may be transferred with acknowledgment of the department and shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

Section 4. Nonconforming Static and Electronic Advertising Devices.

- (1) A nonconforming advertising device in a protected area shall require a nonconforming permit.
- (2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section <u>6[8]</u> of this administrative regulation.
  - (3) A nonconforming advertising device may remain in place if the device:
  - (a) Is not abandoned;
- (b) Has been subjected to only routine maintenance as established in subsection (4)[(6)] of this section;
- (c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and
- (d) Remains unaltered beyond the extent of routine maintenance as it was on the effective date of the state law or requirement of KAR Title 603 that made the device nonconforming.
- (4) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:
  - (a) In kind replacement of material components with a like material component;
  - (b) Painting of supports and frames;
  - (c) Changing existing nonstructural light fixtures for energy efficiency;
  - (d) Replacement of nuts, bolts, or nails;
- (e) A safety related addition, such as a catwalk, that does not prolong the life of the advertising device but provides protection for workers;
  - (f) Rebuilding a destroyed advertising device; or
  - (g) Changing an advertising message or copy on an advertising device.

- (5) An owner shall not conduct non-routine maintenance of a nonconforming advertising device. Non-routine maintenance shall include:
  - (a) Enlargement of the device;
- (b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life, such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
  - (c) The addition of bracing, guy wires, or other reinforcement;
  - (d) A change in the location or configuration of the device;
  - (e) A change in the direction or configuration of the face or faces;
- (f) The addition of a light or lights, either attached or unattached, to help illuminate the nonconforming static adverting device structure that previously had no lighting for illumination; or
- (g) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process on a static advertising device.
- (6) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section  $\underline{8[10]}$  of this administrative regulation.

## Section 5. [Business Devices.

- (1) A business device that complies with this administrative regulation shall only be erected in a protected area if the device complies with county or city zoning ordinances but shall not require a permit from the department.
- (2) A business device shall only be erected upon the property parcel where the business or businesses are located as is demarcated by the unique Parcel Identification Number utilized and assigned by the Property Valuation Administration Office of jurisdiction and:
  - (a) Inside the activity boundary line; or
  - (b) No further than 400 feet from the activity boundary line.
- (3) A business device placed within fifty (50) feet of the activity boundary line shall not exceed 1,250 square feet, including border and trim excluding supports. An entrance or exit on the property shall be considered within the activity boundary line.
- (4) If further than fifty (50) feet outside the activity boundary line, a business device shall not exceed:
  - (a) Twenty (20) feet in length, width, or height; and
  - (b) 150 square feet in area, including border and trim and excluding supports.
- (5) No more than one (1) business device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.
- (6) If taking measurements for the placement of a business device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.
- (7) A business device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the property parcel.
- (8) If taking measurements for the placement of business device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

- (9) A business device erected for a shopping center, mall, or other combined business location shall either:
  - (a) Identify a business or businesses situated upon the same property parcel; or
  - (b) Display business activities being conducted upon the same property parcel.
  - (10) A business device shall not:
  - (a) Be of such intensity as to cause glare or impair the vision of a driver;
  - (b) Move, or have moving or animated parts;
  - (c) Be erected or maintained on a tree; or
  - (d) Be erected upon or overhanging the right-of-way.
- (11) An electronic business device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.
- (12) A business device shall not affect the spacing requirements of an advertising device as established in Section 2(5) of this administrative regulation.
- (13) Extensions of a facing up to fifteen (15) percent shall be allowed but shall not exceed the maximum size of the facing of the device as established this section.
- (14) The owner of a business device shall be subject to revolving compensation compliance reviews and upon request shall provide to the department all requested documentation relevant to certify the continued compliance of a business device such as:
- (a) A signed affidavit in which the device owner shall attest to the device's compliance to current law and this administrative regulation;
  - (b) Financial records or statements relevant to compliance certification; and
  - (c) PVA parcel data.
- (15) If the device is determined to be an advertising device, paragraphs (a) through (d) of this subsection shall apply.
- (a) The department shall send notice by certified letter to the owner of a business device that becomes subject to this chapter. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.
- (b) The device owner shall apply for and obtain an advertising device permit in accordance with the provisions of this administrative regulation within sixty (60) days of notice.
- (c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.
- (d) If the owner of a device as established in paragraph (a) of this subsection does not obtain an advertising device permit within sixty (60) days of the notice, the owner shall be subject to:
  - 1. A fine of \$500 per violation pursuant to KRS 177.990(2); and
  - 2. Provisions as established in KRS 177.870.
- (16) If the device is found to be out of compliance with current business device requirements, paragraphs (a) through (d) of this subsection shall apply.
- (a) The department shall send notice by certified letter to the owner of a business device stating the required corrective action or actions to become compliant with the provisions

of this section. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.

- (b) The device owner shall implement required corrective actions or actions within sixty (60) days of notice.
- (c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.
- (d) If the owner of a device as established in paragraph (a) of this subsection does not correct the violation or violations within sixty (60) days of notice, the owner shall be subject to:
  - 1. A fine of \$500 per violation pursuant to KRS 177.990(2); and
  - 2. Action pursuant to Section 10 of this administrative regulation.

Section 6. Noncompliant Static and Electronic Advertising Devices.

- (1) A noncompliant advertising device in a protected area shall require a noncompliant permit.
- (2) A noncompliant advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.
  - (3) A noncompliant advertising device may remain in place if the device:
  - (a) Is not abandoned;
- (b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and
  - (c) Was in compliance with local zoning, sign, or building restrictions at time of erection.
- (4) A noncompliant advertising device in a protected area shall be granted a legal permit if the device is in compliance with current state law and this administrative regulation.
- (5) Except as established in subsection (3)(b) of this section, maintenance on a noncompliant advertising device shall constitute a violation of KRS 177 and this administrative regulation and shall result in the loss of noncompliant classification and action pursuant to Section 10 of this administrative regulation.
  - (6) Noncompliant advertising devices shall not be eligible as an exchange credit.

Section 7.] Scenic Highways and Byways.

- (1) Subsequent to the designation of a scenic highway by the Transportation Cabinet, additional static or electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.
- (2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for a static or electronic advertising device located on a scenic byway as a static or electronic advertising device located on a scenic highway.
- (3) Only routine maintenance as established in Section <u>4(4)[4(3)]</u> shall be performed on a static or electronic advertising device legally in existence on the date of the scenic highway designation.

Section 6.[Section 8.] Permits, Renewals, and Transfers.

(1) The requirements of this section shall apply to legal <u>and[-]</u> nonconforming[<del>, and noncompliant</del>] advertising devices within a protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) A permit shall be required from the department for a legal <u>and[7]</u> nonconforming[<del>, or</del>

noncompliant] advertising device located within a protected area.

- (3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within three (3) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.
- (4) An application for a static or an electronic advertising device permit shall be submitted on a completed Application for Static Advertising Device, TC Form 99-221 or Application for Electronic Advertising Device, TC Form 99-222.
- (5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section **7[9]** of this administrative regulation.
- (6) The timing of issuance of an advertising device permit shall be determined based on the order in which a completed application and payment of applicable fees are made to the department.
- (7) The permit issued for the erection of a static or electronic advertising device that has not been constructed prior to the renewal date shall be revoked.
- (8) If an advertising device is erected or maintained without an approved permit, the department shall issue a notice of violation to the owner of the device. If the owner of the device cannot be identified, the department shall send notice to the landowner of record.
- (9) If a violation is not cured within sixty (60) days of the date of receipt of the notice, the owner or landowner shall be subject to:
  - (a) A fine of \$500 per violation pursuant to KRS 177.990(2); and
  - (b) Action pursuant to Section 8[10] of this administrative regulation.
- (10) <u>Between</u> [<u>Beginning in 2023, between</u>] the renewal period of November 1 and December 31, a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, and applicable photographs shall be submitted <u>beginning in 2023</u>. An incomplete or inaccurate submission shall not be considered by the department.
- (11) Annual permit renewals shall require a fee in the amount of \$100 per each static or electronic advertising device pursuant to KRS 177.860(1).
- (12) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees within thirty (30) days of the expiration of the permit shall result in:
- (a) The owner of the legal <u>and[,]</u> nonconforming[, or noncompliant] advertising device being fined \$500 per permit violation pursuant to KRS 177.990(2); and
  - (b) Conditional suspension of the permit.
- (13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.
- (14) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration of the permit shall result in:

- (a) Revocation of the permit;
- (b) Loss of nonconforming [or noncompliant] classification for a nonconforming [or noncompliant] advertising device; and
  - (c) Action pursuant to Section  $\underline{8[10]}$  of this administrative regulation.
- (15) A static or electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location or configuration shall not be changed. A transfer of ownership for an advertising device shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.
- (16) Notification of a substantial change to an approved static or electronic advertising device permit shall be submitted **and approved by** [to] the department prior to work being performed. Substantial change to an advertising device shall include:
  - (a) Enlargement of the device;
  - (b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;
- (c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life, such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
  - (d) The addition of bracing, guy wires, or other reinforcement;
  - (e) A change in the location of the device;
  - (f) A change in the direction or configuration of the face or faces; or
- (g) The addition of a light or lights, either attached or unattached, to help illuminate a static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit.
- (17) Making a substantial change to a device without <u>prior approval from</u> [first submitting notification to] the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section <u>8</u>[10] of this administrative regulation.
- (18) Issuance of a permit under this administrative regulation shall not create a contract or property right in the permit holder.

# Section 7.[Section 9.] Permit Fees.

- (1) <u>Permit fees and annual renewal fees shall be assessed pursuant to KRS 177.860</u> <u>beginning on January 1, 2023[Beginning on January 1, 2023, pursuant to KRS 177.860, permit fees and annual renewals fees shall be assessed]</u>, including:
  - (a) \$250 for an Application for Electronic Advertising Device permit;
  - (b) \$150 for an Application for Static Advertising Device permit; and
  - (c) \$100 for the Advertising Device Annual Permit Renewal Request.
  - (2) A fee established by this section shall be payable by cashier's check or electronic payment.
  - (3) A fee paid to the department established in this section shall be nonrefundable.

# Section 8.[Section 10.] Notice of Violations; Appeals.

(1) The department shall notify the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

- (2) If <u>the</u> device continues to be in violation thirty (30) days after notice, the department shall notify the landowner, the advertiser, and the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.
- (3) The landowner, the advertiser, or the owner of an advertising device aggrieved by the findings of the department may request an administrative hearing. An administrative hearing shall be pursuant to KRS Chapter 13B.
  - (a) The request shall be in writing and within thirty (30) days of the certified letter.
- (b) A request for a hearing shall thoroughly state the grounds upon which the hearing is requested.
- (c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.
- (4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department shall proceed pursuant to KRS 177.870.

#### Section 9.[Section 11.] Penalties.

- (1) The owner of an advertising device in violation of a provision of KRS Chapter 177 or **[ef]** this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).
- (2) The department shall deny or revoke a permit if the permit application or renewal contains false or materially misleading information.

# Section 10.[Section 12.] Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "Application for Static Advertising Device", TC Form 99-221, July 2021;
- (b) "Application for Electronic Advertising Device", TC Form 99-222, October [99-221, July] 2021;
  - (c) "Advertising Device Annual Permit Renewal Request", TC Form 99-223, October [July] 2021;
- (d) "Advertising Device or Exchange Credit Ownership Transfer", TC Form 99-224, October [July] 2021; and
- (e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Kentucky Transportation Cabinet may be found on the department's Web site at: <a href="http://maps.kytc.ky.gov/PAFOA/">http://maps.kytc.ky.gov/PAFOA/</a>.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.

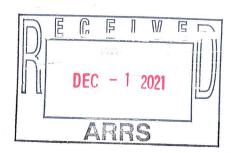
CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.



#### **Finance and Administration**

Academic Services #202 | 400 East Main Street Frankfort, KY 40601 | (502) 597-6343 KYSU.EDU

December 1, 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 745 KAR 1:035, Kentucky State University proposes the attached suggested amendment to 745 KAR 1:035.

Sincerely,

Gregory M. Rush, Vice President

Finance & Administration Kentucky State University

400 East Main Street

Frankfort, Kentucky 40601

#### **Subcommittee Substitute**

# (As Amended at ARRS)

### 745 KAR 1:035. Procurement procedures.

**RELATES TO: KRS 164A.575** 

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 <u>authorizes</u> [vests the responsibility with] the governing board of a public institution of public higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by <u>promulgating</u> [issuing] administrative regulations <u>and it also authorizes</u>[. It also permits] the board to delegate these responsibilities to an institution official. [The function of] This administrative regulation <u>implements</u> [shall be to implement] the provisions of KRS 164A.560(1) and 164A.575 at Kentucky State University.

Section 1. The Board of Regents of Kentucky State University, under the authorization of KRS 164A.560, elects to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [(10)], (11), [and] (12), (13), (14), (15), (16), (17), and (18).

Section 2. The president of the university shall be authorized by the Board of Regents of Kentucky State University to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [(10)], (11), [and] (12), (13), (14), (15), (16), (17), and (18).

Section 3. The president of the university shall be authorized by the Board of Regents of Kentucky State University to negotiate with vendors as authorized by KRS 164A.575[(2)].

CONTACT PERSON: Gregory M. Rush, Vice President for Finance and Administration, Finance and Administration, Julian M. Carroll Academic Services Building, Suite 201, 400 East Main Street, Frankfort, Kentucky 40601, phone (502) 597-6343, and email Gregory.Rush@kysu.edu.

Andy Beshear Governor

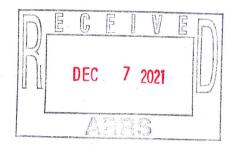


Ray A. Perry Secretary

Allyson Taylor Commissioner

December 7, 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, Kentucky 40601



Re: 804 KAR 4:212. In State Distilled Spirits Supplier License.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 804 KAR 4:212, In-State Distilled Spirits Supplier License, the Department of Alcoholic Beverage Control proposes the attached amendment to 804 KAR 4:212.

Sincerely,

Joshua Newton | General Counsel

Department of Alcoholic Beverage Control

500 Mero Street 2NE33

Frankfort, Kentucky 40601



#### Final, 11-29-2021

#### SUGGESTED SUBSTITUTE

### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

#### 804 KAR 4:212. In-State Distilled Spirits Supplier License.

RELATES TO: KRS 243.030(35), 244.130, 244.440

STATUTORY AUTHORITY: KRS 241.060; KRS 243.030(35)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate reasonable <u>administrative</u> regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This <u>administrative</u> regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

Section 1. Definition. "In-state distilled spirits supplier" means a resident brand owner and supplier of distilled spirits products who does not operate a distillery, but through other legal means creates distilled spirits products to sell under its own brand name.

Section 2. License. (1) An in-state distilled spirits supplier license shall authorize the licensee to:

- (a) Sell distilled spirits under brands that the licensee owns, for which the licensee is the primary source of supply, or in which the licensee has an exclusive interest, at wholesale to wholesalers in the Commonwealth; and
- (b) Advertise distilled spirits brands that the licensee is authorized to sell in accordance with KRS 244.130.
- (2) An in-state distilled spirits supplier license shall not authorize the licensee to purchase, transport, store, or possess distilled spirts for the purposes of sale.

Section 3. Qualifications. (1) To qualify for an in-state distilled spirits supplier license, the applicant shall:

- (a) Reside in Kentucky;
- (b) Be the owner, the primary source of supply, or have an exclusive interest in a particular brand of distilled spirits;
  - (c) Obtain a federal wholesaler's basic permit;
  - (d) Register with the Kentucky Department of Revenue; and
  - (e) Comply with all federal and state laws and regulations.
  - (2) An applicant that wishes to sell 50,000 or more gallons of distilled spirits shall:
- (a) Complete the Online <u>In-State Distilled Spirits Supplier License</u> Application for an instate distilled spirits supplier license via the department's Online Portal at: https://abc-portal.ky.gov/s/ <u>following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and</u>
- (b) Pay an annual fee equal to the amount of the fee for the out-of-state distilled spirits and wine supplier's license under KRS 243.030(30).

(3) An applicant that wishes to sell less than 50,000 gallons of distilled spirits shall:

(a) Complete the Online <u>In-State Distilled Spirits Supplier License</u> Application for a limited in-state distilled spirits supplier license via the department's Online Portal at: https://abc-portal.ky.gov/s/ <u>following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and</u>

(b) Pay an annual fee equal to the amount of the fee for the limited out-of-state distilled spir-

its and wine supplier's license under KRS 243.030(31).

Section 4. Prohibited substantial interests. An in-state distilled spirits supplier license applicant and in-state distilled spirits supplier licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a "manufacturer" as defined in 804 KAR 4:015.

Section 5. Brand Registration. In accordance with 804 KAR 4:410 and KRS 244.440, an instate distilled spirits supplier licensee shall register with the department all brands the licensee intends to sell in Kentucky.

Section 6. Taxes. An in-state distilled spirits supplier licensee shall pay all applicable taxes for the sales of its products.

Section 7. Direct Shipper Licenses. This <u>administrative</u> regulation shall not be interpreted to relate to direct shipper licenses.

Section 8. Incorporation by Reference. (1) <u>The following material is incorporated by reference:</u>

(a) "Online In-State Distilled Spirits Supplier License Application", December[June] 2021;

and [, is incorporated by reference.]

(b)[(2)] "Kentucky Alcoholic Beverage Control Licensing Portal Applicant\Licensee User Guide (Request or Apply)", September 2021, depicting the application process through the de-

partment's online portal[, is incorporated by reference].

(2)[(3)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. <u>This material is also available on the department's Web site at https://abc.ky.gov/newstatic\_Info.aspx?static\_ID=652.</u>

CONTACT PERSON: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

#### MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested substitute the agency needs to file <u>one (1)</u> <u>clean copy</u> of the "Online In-State Distilled Spirits Supplier License Application" with the December 2021 Edition Date.

Andy Beshear Governor



Ray A. Perry Secretary

Allyson Taylor Commissioner

December 7, 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, Kentucky 40601

DEC 7 2021

Re: 804 KAR 4:251. Special Temporary License.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 804 KAR 4:251, Special Temporary License, the Department of Alcoholic Beverage Control proposes the attached amendment to 804 KAR 4:251.

Sincerely,

Joshua Newton | General Counsel Department of Alcoholic Beverage Control 500 Mero Street 2NE33

Frankfort, Kentucky 40601



#### Final, 11-24-2021

#### SUGGESTED SUBSTITUTE

### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

804 KAR 4:251. Special temporary licenses.

**RELATES TO: KRS 243.260** 

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: <u>KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to applications for licensure.</u> KRS 243.260 provides for the issuance of a special temporary license in wet territory to any regularly organized fair, exposition, racing association, or other party, when, in the opinion of the board a necessity <u>for the license[therefore]</u> exists. This administrative regulation establishes application procedures and requirements for special temporary licenses.

Section 1. Definition. "Organized civic or community-sponsored event" means a public gathering of broad appeal where citizens are invited and encouraged to attend without significant cost of admission that is sponsored or acknowledged by the city or county government in which the event is conducted, including any convention, conference, celebration, pageant, parade, festival, fair, public display, commemoration, or other type of public assemblage conducted for the benefit and enjoyment of the general public.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 shall complete the online application process and submit their <u>Online Special Temporary License</u> Application electronically at the Kentucky Alcoholic Beverage Control portal: https://abcportal.ky.gov/BELLEExternal. The applicant shall complete and submit their application no later than five (5) working days prior to the date for which the license is requested.

Section 3. An applicant for a special temporary license pursuant to KRS 243.260 shall provide supplemental information as the board shall **find[deem]** necessary for proper review of the application.

Section 4. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260, necessity, in the opinion of the board, shall limit applicants to:

(1) A regularly organized fair, exposition, racing association, nonprofit organization, or political campaign function; or

(2) A for-profit individual, corporation, or organization if the license will be used in conjunction with an organized civic or community-sponsored event.

Section 5. For-profit individual, corporate, or organizational applicants for a temporary license in conjunction with an organized civic or community\_sponsored event shall submit written or documentary evidence of the civic nature of the event, including promotional materials or news articles evidencing the local government's knowledge of, and support for, the event for which the applicant seeks a temporary license.

Section 6. Incorporation by Reference. (1) "Online Special Temporary License Application", February 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. <u>This material is also available on the department's Web site at https://abc.ky.gov/newstatic\_Info.aspx?static\_ID=652.</u>

CONTACT PERSON: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

Andy Beshear Governor



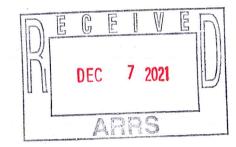
Ray A. Perry Secretary

Allyson Taylor Commissioner

December 7, 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, Kentucky 40601

Re: 804 KAR 4:480. License Surrender.



Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 804 KAR 4:480, License Surrender, the Department of Alcoholic Beverage Control proposes the attached amendment to 804 KAR 4:480.

Sincerely,

Joshua Newton | General Counsel

Department of Alcoholic Beverage Control

500 Mero Street 2NE33

Frankfort, Kentucky 40601



#### Final, 11-24-2021

#### SUGGESTED SUBSTITUTE

### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control

804 KAR 4:480. License surrender.

RELATES TO: KRS <u>243.100</u>, 243.520[<del>, 243.100</del>] STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. This <u>administrative</u> regulation empowers the board to continue administrative proceedings to adjudicate violations of KRS Chapters 241 to 244 by licensees and former licensees despite the surrender of their licenses in order to ensure that licensees who violate alcoholic beverage control laws <u>are[may be]</u> held accountable and duly prevented from becoming licensed again for two (2) years in accordance with KRS 243.100.

Section 1. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license. The board shall retain the authority to enforce relevant provisions and penalties of KRS Chapters 241 to 244 against any individual or business entity who is under investigation for or charged with a violation of those chapters, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.

Section 2. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

CONTACT PERSON: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

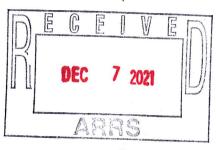


#### Andy Beshear Governor

## PUBLIC PROTECTION CABINET Department of Insurance

P.O. Box 517
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December 3, 2021



Ray A. Perry Secretary

Sharon P. Clark Commissioner

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 05:025. Credit for reinsurance.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 05:025, the Department of Insurance proposes the attached amendment to 806 KAR 5:025.

Sincerely,
aligal P. Gall

Abigail Gall, Regulations Coordinator

Department of Insurance

500 Mero Street

Frankfort, KY 40601



#### Final, 12-2-2021

#### SUGGESTED SUBSTITUTE

# PUBLIC PROTECTION CABINET Department of Insurance Division of Financial Standards and Examinations

806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS <u>61.876</u>, <u>61.878</u>, <u>304.5-140</u>, <u>304.33-350</u>, <u>12 U.S.C. 1703</u>, <u>1709</u>, <u>1715b</u>, <u>15 U.S.C. 78a-78kk</u>, <u>80a</u>, <u>42 U.S.C. Section 5402(6)</u>

STATUTORY AUTHORITY: KRS 304.2-110, 304.5-140

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

Section 1. Definitions.

(1) "Additional information required by the commissioner" means any supplementary information directly related to the requirements specified by statute and this administrative regulation, that is necessary to ensure that the requirements specified by statute and this administrative regulation are being met, and does not add additional requirements not specified by statute and this administrative regulation.

(2) "Beneficiary" means:

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

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

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

(4)[(3)] "Grantor" means:

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

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

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

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

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

1. Are directly secured by a first lien on a single parcel of real estate, including stock allocat-

ed to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

- 2. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Sections 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Section 1703; or
- (b) Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and by its terms provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of paragraph (a) of this subsection.

(7)[(6)] "Obligations" means:

- (a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
  - (b) Reserves for reinsured losses reported and outstanding;
  - (c) Reserves for reinsured losses incurred, but not reported; and
  - (d) Reserves for allocated reinsured loss expenses and unearned premiums.
- (8)[(7)] "Promissory note" means, when used in connection with a manufactured home, a loan, or advance or credit sale, as evidenced by a retail installment sales contract or other instrument.
- (9)[(8)] "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.
- Section 2. Reinsurer Licensed in Kentucky. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky as of any date on which statutory financial statement credit for reinsurance is claimed.
- Section 3. Accredited Reinsurers. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Kentucky as of the date on which statutory financial statement credit for reinsurance is claimed.
  - (1) To gain accreditation, a reinsurer shall:
- (a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and authority to examine its books and records;
- (b) File a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one (1) state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;
- (c) File annually a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

- (d) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- (2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications established by <u>subsection (1) of this section[Section 3(1)]</u>, the commissioner may suspend or revoke the accreditation.
- (3) Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.
- Section 4. Reinsurer Domiciled in Another State. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS 304.5-140(3)(c) and files a properly executed Form AR-1.
- Section 5. Reinsurers Maintaining Trust Funds. (1) The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter <u>ifffor so long as</u>] credit for reinsurance is claimed, maintains a trust fund in an amount in accordance with this section in a qualified U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. <u>The assuming insurer shall annually report to the commissioner pursuant to KRS 304.5-140(3)(d)1.[The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.]</u>
- (2) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall satisfy all requirements of KRS 304.5-140(3)[(1)](d)5.[(5)], and 6.[(6)], and include that contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.
- (3) (a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate because it contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
- (b) The assets shall be distributed, and claims shall be filed with and valued, by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
- (c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
- (d) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(4) Liabilities shall include:

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

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the as-

suming insurer;

- 2. Reserves for losses reported and outstanding;
- 3. Reserves for losses incurred, but not reported;
- 4. Reserves for allocated loss expenses; and

5. Unearned premiums.

- (b) For business ceded by domestic insurers authorized to write life, health and annuity insurance:
- 1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

2. Aggregate reserves for accident and health policies;

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

4. Liabilities for policy and contract claims.

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

(a) Government obligations that are not in default as to principal or interest, that are valid and

legally authorized, and that are issued, assumed, or guaranteed by:

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

2. A state of the United States;

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

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

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the

equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

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

1. Are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other ma-

terial respects to other obligations of the same institution that are so rated;

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

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

the NAIC;

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

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

tion shall be subject to the following additional limitations:

- 1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five (5) percent of the assets of the trust;
- 2. An investment in any one (1) mortgage-related security shall not exceed five (5) percent of the assets of the trust;

3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five

(25) percent of the assets of the trust; and

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

(e) Equity Interests.

- 1. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
- a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
- b. The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph <u>in</u> an amount exceeding one (1) percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

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

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

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

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

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

Securities Valuation Office of the NAIC.

(g) Investment Companies.

- 1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:
- a. Invests at least ninety (90) percent of its assets in the types of securities that qualify as an investment under paragraph (a), (b), or (c) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (a), (b), or (c) of this subsection; or
- b. Invests at least ninety (90) percent of its assets in the types of equity interests that qualify as an investment under paragraph (e)1. of this subsection;
- 2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
- a. An investment in an investment company qualifying under subparagraph 1.a. of this paragraph shall not exceed ten (10) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five (25) percent of the assets in the trust; and
- b. Investments in an investment company qualifying under subparagraph 1.b. of this paragraph shall not exceed five (5) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (e)1. of this subsection.

(h) Letters of Credit.

- 1. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- 2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where a draw would be required shall be deemed to be negligence, willful misconduct, or both.
- (6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 7 of this administrative regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

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

(a) Ratings Security Required:

Secure – 1 0%; Secure – 2 10%; Secure – 3 20%; Secure – 4 50%; Secure – 5 75%; and Vulnerable –6 100%. (b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner shall require the certified reinsurer to post 100 percent[%] security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquida-

tion, or conservation against the ceding insurer.

- (d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverable for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables shall only be included in the deferral for [for only] the [following] lines of business set forth in KRS 304.5-140(3)(m)3. [as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence shall be included in the deferral:
- \_\_\_1. Line 1: Fire;
- 2. Line 2: Allied Lines;
- 3. Line 3: Farm owners multiple peril;
- 4. Line 4: Homeowners multiple peril;
- 5. Line 5: Commercial multiple peril;
- 6. Line 9: Inland Marine;
- 7. Line 12: Earthquake; and
- 8. Line 21: Auto physical damage.]
- (e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- (f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.
  - (2) Certification process.
- (a) Upon receipt of an application for certification, the commissioner shall promptly post notice at insurance.ky.gov, including instructions on how members of the public may respond to the application.
- (b) No fewer than thirty (30) days after posting the notice required by paragraph (a) of this subsection, the commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer, which shall include the rating assigned the certified reinsurer in accordance with subsection (1) of this section.
  - (c) To be eligible for certification, the assuming insurer shall:
- 1. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection (3) of this section.
- 2. Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (d)8. of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.
- 3. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable <u>under this subparagraph[by the commissioner]</u>. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings shall be one (1) factor

used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- a. Standard & Poor's;
- b. Moody's Investors Service;
- c. Fitch Ratings;
- d. A.M. Best Company; or
- e. Any other Nationally Recognized Statistical Rating Organization.
- 4. Comply with any other requirements reasonably imposed by the commissioner <u>pursuant</u> to KRS 304.2-110.
- (d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors considered as part of the evaluation process shall include:
- 1. The certified reinsurer's financial strength rating from an acceptable rating agency, as described in the matrix below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification;

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure – 1	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
Secure – 2	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
Secure – 3	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
Secure – 4	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
Secure – 5	<u>B++, B+</u>	BBB+, BBB, BBB-	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable</u> <u>– 6</u>	<u>B, B-C++,</u> <u>C+,</u> <u>C, C-, D,</u> <u>E, F</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-, CCC,</u> <u>CC, C, D, R</u>	<u>Ba1, Ba2, Ba3,</u> <u>B1, B2, B3, Caa,</u> <u>Ca, C</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-, CCC+,</u> <u>CC, CCC-, DD</u>

- 2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- 3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F or Schedule S;
- 4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S;
- 5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsur-

ance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enter-

prise, on the basis described in subparagraph 8. of this paragraph;

8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion, as filed with the non-U.S. jurisdiction supervisor, with a translation into English. Upon the initial application for certification, the commissioner shall consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domicili-

ary jurisdiction in the context of an insolvency proceeding;

- 10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
- 11. Any other <u>additional</u> information <u>required by the fdeemed relevant by the sioner.</u>
- (e) Based on the analysis conducted under subparagraph (d)5. of this subsection, of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (d)1. of this subsection, if the commissioner finds that:
- 1. More than fifteen (15) percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or
- 2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.
- (f) The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for 100 **percent[%]** of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- (g) The certified reinsurer shall agree to meet [applicable] information filing requirements under this paragraph[as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis]. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall be withheld from public disclosure. The [applicable] information filing requirements are, as follows:
- 1. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;
  - 2. Annually, Form CR-F or CR-S, as applicable;
- 3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (4) of this section;
- 4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, as filed with the certified reinsurer's supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last two (2) years filed with the certified

reinsurer's supervisor;

- 5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
- 6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level: and
- Any other <u>additional</u> information <u>required by the commissioner</u> that the commissioner may reasonably require.
  - (h) Change in Rating or Revocation of Certification.
- 1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (d)1. of this subsection.
- 2. The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- 3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- 4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 7 of this administrative regulation in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 5 of this administrative regulation, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer shall not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.
  - (i) The commissioner shall publish a list of all certified reinsurers and their ratings.
- (3) Qualified Jurisdictions. (a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- (b) Pursuant to KRS 304.5-140(3)(e)4.b. the additional To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and shall consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the com-

missioner as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional] factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, shall include:

1. The framework under which the assuming insurer is regulated.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

3. The substance of financial and operating standards for assuming insurers in the domicili-

ary jurisdiction.

4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

6. The history of performance by assuming insurers in the domiciliary jurisdiction.

- 7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction shall not be considered to be a qualified jurisdiction if it fails to satisfy the requirements of KRS 304.5-140(3)(e)4.b[if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards].
- 8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

9. Any other matters deemed relevant by the commissioner, pursuant to KRS 304.2-110.

- (c) The Commissioner shall consider the list of qualified jurisdictions published through the NAIC Committee Process as required in KRS 304.5-140(3)(e)4.c.[A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions.] If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraph[subsection (3)](b)1. to 9. of this subsection.[section]
- (d) U.S. jurisdictions that meet the requirements <u>described in KRS 304.5-140(3)(e)4.d.</u> <u>shall be recognized as qualified jurisdictions[for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions]</u>.

(4) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

- (a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner <u>shall have[has]</u> the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR<sub>-1</sub> and any additional information <u>required by[as]</u> the commissioner [requires]. The assuming insurer shall be considered to be a certified reinsurer in this state.
- (b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time

and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time by providing written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (2)(h) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

- (5) Mandatory Funding Clause. In addition to the clauses required under Section <u>14[43]</u> of this administrative regulation, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
- (6) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.
- Section 7. (1) The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer as provided in KRS 304.5-140(4). [Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of KRS 304.5-140(3) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, heldin a qualified United States financial institution as defined in KRS 304.5-140(1)(b). This security shall be in the form of any of the following:

  (a) Cash;
- (b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets:
- (c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in KRS 304.5-140(1)0(a), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
  - (d) Any other form of security acceptable to the commissioner.]
- (2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 14[13] of this administrative regulation and the applicable portions of Sections 10, 11, or 12 of this administrative regulation have been satisfied.
- Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(b).
  - (2) The trust agreement shall create a trust account into which assets shall be deposited.
- (3)(a) Except as provided by paragraph (b) of this subsection, assets in the trust account shall be held by the trustee at the trustee's office in the United States.
- (b) A bank may apply for the <u>commissioner's[executive director's]</u> permission to use a foreign branch office of the bank as trustee for trust agreements. If the <u>commissioner [executive director]</u> approves the use of a foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall be presentable, as a matter of legal right, at the trustee's prin-

cipal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall:

- 1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and
  - 2. Not be required to give notice to the grantor;

(b) The beneficiary:

1. May be required to acknowledge receipt of withdrawn assets; and

- 2. Shall not be required to present other statements or documents in order to withdraw assets.
- (c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement; and
- (d) The agreement shall not contain references to other agreements or documents except as provided by subsection (11) of this section.
  - (5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take all steps necessary to:

1. Transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary; and

2. Deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except upon:

1. Written instructions from the beneficiary; or

2. The call or maturity of a trust asset, in which case the trustee may withdraw the asset **if[se long as]** the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in

which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence,

willful misconduct, or lack of good faith.

(11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this subsection, if:

- 1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and
  - 2. It is customary practice to provide a trust agreement for a specific purpose.
  - (b) To pay or reimburse the ceding insurer for the:
- 1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or
- 2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer:
- (c) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
- (d)1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2. of this paragraph, if the:
  - a. Ceding insurer has received notification of termination of the trust account; and
- b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.
  - 2. Amounts withdrawn pursuant to subparagraph 1. of this paragraph shall be deposited:
  - a. In the name of the ceding insurer; and
- b. In a qualified United States financial institution, as defined in KRS 304.5-140(1)(a) and (b), apart from its general assets; and
- c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date.
- (12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 10(1)(b) of this administrative regulation, <u>iffso long</u> as the conditions required by this section are included in the trust agreement.
- (13) The reinsurance agreement or trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code, or any combination thereof, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five (5) percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement.
  - Section 9. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3).
  - (1) The trust agreement may provide that the:
  - (a) Trustee may resign only if written notice of resignation is:
  - 1. Given to the beneficiary and grantor; and
  - 2. Effective not less than ninety (90) days after receipt of the notice.
  - (b) Grantor may remove the trustee if written notice is:
  - 1. Given to the trustee and beneficiary;
  - 2. Effective not less than ninety (90) days after receipt of the notice;
  - (c) Resignation or removal of the trustee shall not be effective until:
- 1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and
  - 2. All assets in the trust have been duly transferred to the new trustee.
  - (2)(a) The grantor may have the full and unqualified right to:
  - 1. Vote any shares of stock in the trust account; and
  - 2. Receive from time to time payments of any dividends or interest upon any shares of stock

or obligations included in the trust account.

- (b) Interest or dividends shall be:
- 1. Forwarded promptly upon receipt to the grantor; or
- 2. Deposited in a separate account established in the grantor's name.
- (3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:
  - (a) Specifies categories of investments acceptable to the beneficiary; and
- (b) Authorizes the trustee to invest funds and accept substitutions that the trustee determines are:
  - 1. At least equal in market value to the assets withdrawn; and
  - 2. Consistent with the restrictions in Section 10(1)(b) of this administrative regulation.
  - (4) The trust agreement may:
- (a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and
- (b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified assets.
- (5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.

Section 10. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3).

- (1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:
  - (a) Require the assuming insurer to:
  - 1. Enter into a trust agreement;
  - 2. Establish a trust account for the benefit of the ceding insurer; and
  - 3. Specify what the agreement is to cover.
- (b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:
  - 1. Be valued according to the current fair market value of the assets; and
  - 2. Consist of:
  - a. Cash that is United States legal tender;
- b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;
  - c. Investments permitted by the insurance code; or
  - d. A combination of the assets specified in clauses a. through c. of this subparagraph;
- (c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.
- (d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.
- (e) If a trust agreement is entered into in conjunction with a reinsurance agreement that covers risks other than life, annuities, or accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.
  - (f) Require the assuming insurer, prior to depositing assets with the trustee, to:
  - 1. Execute assignments or endorsements in blank; or
- 2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary.

- (g) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
- (h) 1. As provided by subparagraph 2 of this paragraph, stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement.
- 2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:
- a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;
- b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;
- c. To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and
- d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.
  - (2) The reinsurance agreement may [also] contain provisions that:
- (a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or part of the trust assets from the trust account and transfer the withdrawn assets to the assuming insurer provided that:
- 1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or
- 2. After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.
  - 3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.
  - (b) Provide for:
- 1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(h)1., 2., and 3. of this section or for payments under subsection (1)(h)4. of this section, amounts that are subsequently determined not to be due; and
- 2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3. of this section.
  - (c) Permit the award by an arbitration panel or court of competent jurisdiction of:
  - 1. Interest at a rate different from that provided in paragraph (b)2. of this subsection;
  - 2. Court or arbitration costs;
  - 3. Attorney's fees; and
  - 4. Other reasonable expenses.
- (3)(a) If established on or before the date of <u>filing[filling]</u> the financial statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements that are required to be filed with the <u>department[office]</u> pursuant to this administrative regulation.
  - (b) The amount of a reduction for the existence of an acceptable trust account:
- 1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and

- 2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
- (4) [A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:
- (a) Be acceptable until January 1, 1997; and
- (b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.
- (5)] The failure of a trust agreement to specifically identify the beneficiary shall not be construed to affect actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 11. Letters of Credit Qualified under KRS 304.5-140(3).

- (1) A letter of credit shall:
- (a) Be clean, irrevocable, and unconditional;
- (b) Issued or confirmed by a qualified United States financial institution <u>described in KRS</u> 304.5-140(1)(a) and (b);
  - (c) Contain an issue date, and date of expiration;
- (d) State that it is not subject to a condition or qualification not contained in the letter of credit;
- (e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sight draft under the letter of credit; and
- (f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.
  - (2) The heading of a letter of credit may include a boxed section that:
- (a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and
- (b) Is clearly marked to indicate that the information is only for internal identification purposes.
- (3) The letter of credit shall contain a statement that the obligation of the qualified United States financial institution <u>described in KRS 304.5-140(1)(a) and (b)</u> under the letter of credit is not contingent upon reimbursement with respect thereto.
- (4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.
  - (5) The letter of credit shall state:
  - (a) Whether it is governed by the:
  - 1. Laws of Kentucky;
- 2. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600, available at https://www.uscib.org/ucp-600-ud-4465/;
- 3. International Standby Practices of the International Chamber of Commerce Publication 590; or
  - 4. Any successor publication; and
- (b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution <u>described in KRS 304.5-140(1)(a) and (b)</u>.
  - (6) A letter of credit shall provide for an extension of time to draw against it if it:
  - (a) Is made subject to subsection (5)(a)2., 3., or 4. of this section; and
- (b) An occurrence specified in Article 36 of "Publication 600" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.
- (7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a) *and (b)*.

- (8) If a letter of credit is issued by a United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution described in subsection (7) of this section, the following additional requirements shall be met:
- (a) The issuing United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
- (b) The evergreen clause shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.
  - (9) Reinsurance agreement provisions.
- (a) The reinsurance agreement for which the letter of credit is obtained may contain provisions that:
- 1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what shall be covered.
- 2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement:
  - a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and
- b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.
- 3.a. **[Te]** Reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
- b. **[Te]** Reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;
- c. **[Fe]** Fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement; and
- d. [Te] Pay other amounts the ceding insurer claims are due under the reinsurance agreement.
- (b) The provisions in paragraph (a) of this subsection[4. The provisions of this paragraph] shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- (c)[(b)] Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:
- 1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a)2. of this subsection; or
- 2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the reasons established in paragraph (a)3.a. through 3c. of this subsection or, in the case of paragraph (a)3.d. of this subsection, any amounts that are subsequently determined not to be due.
- (d)[(e)] In lieu of the stipulation permitted by paragraph (a)2. of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:
- 1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and
  - 2. It is customary practice to provide a letter of credit for a specific purpose.
- (10)(a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.
- (b) The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the let-

ter of credit was intended to secure.

Section 12. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

#### Section 13. Reciprocal Jurisdictions.

- (1) Pursuant to KRS 304.5-140 (3)(f)1., the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and that **meets[shall meet]** the other requirements of this administrative regulation.
- (2) A reciprocal jurisdiction shall mean a jurisdiction as described in KRS 304.5-140, that **is[shall-be]** designated by the commissioner pursuant to subsection (8) of this section, and **meets[shall-meet]** one (1) of the following:
  - (a) A non-U.S. jurisdiction that is set forth in 304.5-140(1)(c); f. (d)
- (b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- (c) A qualified jurisdiction, as determined by the commissioner pursuant to KRS 304.5-140(3)(e)4.[304.5-140(3)(g)], which is not otherwise described in paragraph (a) and (b) of this subsection [(1) or (2) above] and meets all the following additional requirements [as determined by the commissioner]:
- 1. Provides that an insurer which has its head office or is domiciled in a qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
- 2. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for the reinsurance;
- 3. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in the qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and shall not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
- 4. Provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the qualified jurisdiction, including **[but not limited to]** the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.
  - (3) Credit Allowance.
- (a) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer when each of the conditions below are met:
- 1. The assuming insurer shall be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;
- 2. The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and con-

firmed as set forth in KRS 304.5-140(3)(f)6., according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than \$250,000,000; or

- b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
- (i) Minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least \$250,000,000; and

(ii) A central fund containing a balance of the equivalent of at least \$250,000,000.

- (4) The assuming insurer shall have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
- (a) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction set forth in subsection (2)(a) of this section, the ratio specified in the applicable covered agreement;
- (b) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (2)(b) of this section, a risk-based capital ratio of [three hundred (1300])] percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or
- (c) If the assuming insurer is domiciled in a reciprocal jurisdiction set forth in subsection (2)(c) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency and that is similar to the solvency provisions of the Kentucky Insurance Code.

(5) The assuming insurer shall agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, of its agreement to the requirements set forth in KRS 304.5-

140(3)(f)3.a., b., c., d., and e. and [following]:

- (a) The security required by KRS 304.5-140(3)(f)3.e. shall be in a form consistent with the provisions of KRS 304.5-140(3)(e) and (4), and sections 7, 8, 9, 10, 11, or 12 of this administrative regulation; and [The assuming insurer shall agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subsection (3) or (4) of this section, or if any regulatory action is taken against it for serious noncompliance with applicable law;]
- (b) The assuming insurer shall agree in writing to meet the applicable information filing requirements as set forth in KRS 304.5-140(3)(f)4. and subsection (6) of this section. [The assuming insurer shall consent in writing to the jurisdiction of the court of this state and to the appointment of the commissioner as agent for service of process:

1. The commissioner may also require that the consent be provided and included in each reinsurance agreement under the jurisdiction of the commissioner; and

- 2. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent that such agreements are unenforceable under applicable insolvency or delinquency laws.
- (c) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;
- (d) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred (100) percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;

(e) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement, which may involve a ceding insurer of this state, and shall agree to notify the ceding insurer and the commissioner, and to provide one hundred (100) percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme or arrangement. Such security shall be in a form consistent with the provisions of KRS 304.5-140(4) and Sections 7, 8, 9, 10, 11, or 12 of this administrative regulation; and

- (f) The assuming insurer shall agree in writing to meet the applicable information filing requirements as set forth in KRS 304.5-140(3)(f)4. and subsection (6) of this section.]
- (6) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:
- (a) For the two (2) years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
- (b) For the two (2) years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
- (c) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
- (d) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subsection (7) of this section.
- (7) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
- (a) More than fifteen (15) percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;
- (b) More than fifteen (15) percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or
- (c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.
- (8) Pursuant to 304.5-140(3)(g)1.a., the commissioner shall publish a list of reciprocal jurisdictions which can be found on the department's Web site at https://insurance.ky.gov/ppc/newstatic Info.aspx?static ID=648:
- (a) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The list created by the commissioner shall include any reciprocal jurisdiction as defined *in subsection[as described by Section 13]*(2) of this *section[administrative regulation]*, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process. *This process is published by the NAIC and can be found on the NAIC Web site*\*\*at \*\*Interval Committee Process\*\* \*\*Interval Committee Process\*\* \*\*Interval Committee Process\*\* \*\*Interval Committee Process\*\* \*\*Interval Committee Process\*\*\* \*\*Interva
- (b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one (1) or more of the requirements set

- forth in KRS 304.5-140, and subsection[Section 13](2) of this section[administrative regulation], or in accordance with a process published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection 2(a), fand] (b), and (c) of this section. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to KRS 304.5-140 and this administrative regulation.
- (9) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with *KRS 304.5-140 and* this section.
- (a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) and (4) of this section have been met, the commissioner **shall have[has]** the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.
- (b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer *shall[must]* submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.
- (10) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section. If the commissioner makes such a determination:
- (a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension shall qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with KRS 304.5-140 and Section 7 of this administrative regulation; or
- (b) If an assuming insurer's eligibility is revoked, credit for reinsurance shall not be granted after the effective date of the revocation with respect to any reinsurance agreements entered by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of *KRS 304.5-140* and Section 7 of this administrative regulation.
- (11) Before denying statement credit or imposing a requirement to post security with respect to Section 7 of this administrative regulation or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:
- (a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one (1) of the conditions listed in subsections (3) and (4) of this section;
- (b) Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and consumer protection;
- (c) After the expiration of ninety (90) days, or less, as set out in paragraph (b) of this subsection, determine[if the commissioner determines] that if no or insufficient action was taken by the assuming insurer, to [the commissioner may] impose any of the requirements as set out in this subsection; and
- (d) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.
  - [<u>(12) If subject to a legal process of rehabilitation, liquidation or conservation, as ap</u>

# plicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.]

<u>Section 14.[Section 13.]</u> Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

- (1) Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and
- (2) Provision pursuant to KRS 304.5-140(3)[(2)](f), if the assuming insurer, is an unauthorized assuming insurer, and has:
- (a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;
  - (b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;
  - (c) Designated an agent upon whom service of process may be effected; and
  - (d) Agreed to abide by the final decision of the court or panel.

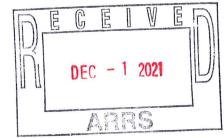
<u>Section 15.[Section 14.]</u> Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of this administrative regulation shall conform to the requirements of KRS 304.5-140 and this administrative regulation if credit is to be given to the ceding insurer for reinsurance.

<u>Section 16.[Section 15.]</u> Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Certificate of Assuming Insurer," Form AR-1, 12/95 [1 December 95];
- (b) "Certificate of Certified Reinsurer," Form CR-1, 9/19 [(09/19)];
- (c) "Form CR-F" 9/19 [(09/19)]; [and]
- (d) "Form CR-S",9/19 [(09/19).]; and
- (e) "Form RJ-1", 9/21.
- (2) <u>This material[#]</u> may be inspected, copied, or <u>obtained, subject to applicable copyright law,</u> from the Department of Insurance, 500 Mero St., Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. <u>This material is also available on the department's internet Web site at https://insurance.ky.gov/ppc/CHAPTER.aspx.</u>

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email <u>abigail.gall@ky.gov</u>.





## CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor

275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander
Secretary

December 1, 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: 900 KAR 12:005

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 900 KAR 12:005, the Cabinet for Health and Family Services proposes the attached amendments to 900 KAR 12:005.

Sincerely,

Lucie Estill

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs

**Attachments** 



#### SUGGESTED SUBSTITUTE to Ordinary Only to Amended After Comments Version

Final Version: 11/29/2021 9:45 AM

# CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Data and Analytics Division of Telehealth Services

#### 900 KAR 12:005. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2) - (5), **304.17A-005(23)**, 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. **[\$]**3729-3733, 42 U.S.C. **[\$]**1320a-7b(b), 42 U.S.C. **[\$ecs.**]1320d to 1320d-9, 42 U.S.C. **[\$]**1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth. *This administrative regulation establishes a telehealth terminology glossary*.

Section 1. Definitions. (1) "Department" means Department for Medicaid Services.

- (2) "Division" means Division of Telehealth Services.
- (3) "Health care provider" is defined by KRS 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).
  - (4)[(3)] "Health care service" is defined by KRS 211.332(2).
  - (5)[(4)] "Professional licensure board" is defined by KRS 211.332(3).
- (6)[(5)] "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).
  - (7)[(6)] "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. (1) Health care providers performing a telehealth or digital health service shall:

- (a) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;
- (b) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. [sees.] 1320d through[to] 1320d-9, unless waived by the applicable federal authority;
  - (c) Obtain patient informed consent in accordance with KRS 311.5975 and [KRS] 304.40-320;
  - (d) Secure credentialing if required by a third party or insurer or other payor;
- (e) <u>Establish guidelines to contact, refer, and obtain treatment for a patient who needs</u> <u>emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain treatment for a patient for a patien</u>

#### privileges by hospitals or facilities to admit and treat patients];

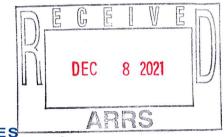
- (f)1. Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code "02" to secure reimbursement for a professional telehealth service; or
- 2. Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;
  - (g) Utilize non-public facing technology products that are HIPAA compliant;
- (h) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:
  - 1. Live or real-time audio and video synchronous telehealth technology;
  - 2. Asynchronous store-and-forward telehealth technology;
- 3. Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;
  - 4. Audio-only telecommunications systems; or
  - 5. Clinical text chat technology **if[when]**:
- a. Utilized within a secure, HIPAA compliant application or electronic health record system; and
  - b. Meeting:
  - (i) The scope of the provider's professional licensure; and
  - (ii) The scope of practice of the provider; and
- (i) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:
  - 1. False Claims Act, 31 U.S.C. § 3729-3733;
  - 2. Anti-Kickback Statute, 42 U.S.C. [§] 1320a-7b(b); and
  - 3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.SC. [8]1395nn).

#### Section 3. Incorporation by Reference.

- (1) "Telehealth Terminology Glossary", July 2021, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at https://telehealth.ky.gov.

CONTACT PERSON: Krista Quarles, Policy Specialist, 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 Office of the Secretary

Andy Beshear Governor

275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

December 7, 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: 902 KAR 2:240E. COVID-19 test acquisition and distribution.

Dear Co-Chairs West and Hale:

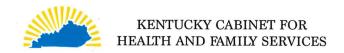
After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 2:240E, the Department for Public Health proposes the attached agency amendment to 902 KAR 2:240E. Please feel free to contact Julie Brooks at the department at (502) 564-3970, ext. 4069.

Sincerely,

Krista Quarles Policy Analyst

Office of Legislative and Regulatory Affairs

La Quallo



#### 1/31/2020

### AGENCY AMENDMENT

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health

902 KAR 2:240E. COVID-19 test acquisition and distribution.

Page 2 Section 2(2) Line 12

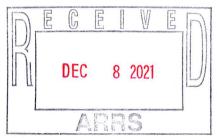
After "(2)", insert the following:

KDPH will facilitate distribution of tests to eligible entities that have been approved through a standardized resource request process

Delete the following:

A standardized request process describing eligible entities, program requirements, and including a link to an online request survey shall be available at the kycovid19.ky.gov website





## CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary

Andy Beshear Governor

275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

December 6, 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: 907 KAR 1:030. Home health agency services.

Dear Regulations Compiler:

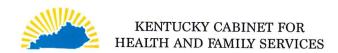
After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 1:030, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 1:030.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely.

Krista Quarles Policy Analyst

Office of Legislative and Regulatory Affairs Cabinet for Health and Family Services



#### 12/6/21

#### SUGGESTED SUBSTITUTE

# CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations

907 KAR 1:030. Home health agency services.

RELATES TO: KRS <u>205.622</u>, <u>216.935</u>, <u>216.936</u>, <u>216.937</u>, <u>216.9375</u>, <u>216.939[205.520]</u>, <u>369.101-369.120</u>, 42 C.F.R. <u>431.17</u>, 440.70, 447.325, <u>484.115</u> [484.4], 45 C.F.R. 164.316, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements relating to Medicaid Program home health care services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

- (2) "Electronic signature" is defined by KRS 369.102(8).
- (3) "Enrollee" means a recipient who is enrolled with a managed care organization.
- (4) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- (5) "Home health agency" or "HHA" means:
- (a) An agency defined pursuant to 42 C.F.R. 440.70(d); and
- (b) A Medicare and Medicaid-certified agency licensed in accordance with 902 KAR 20:081.
- (6) "Home health aide" is defined by KRS 216.935(3) [means a person who meets the home health aide requirements established in 902 KAR 20:081].
- (7) "Licensed practical nurse" or "LPN" means a person who is licensed in accordance with KRS 314.051.
- (8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
- (9) "Medical social worker" means a person who meets the medical social worker requirements as established in 902 KAR 20:081.
- (10) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
- (11) "Nursing service" means the delivery of medication, or treatment by a registered nurse or a licensed practical nurse supervised by a registered nurse, consistent with KRS Chapter 314 scope of practice provisions and the Kentucky Board of Nursing scope of practice determination guidelines.
  - (12) "Occupational therapist" is defined by KRS 319A.010(3).
  - (13) "Occupational therapy assistant" is defined by KRS 319A.010(4).
  - (14) "Physical therapist" is defined by KRS 327.010(2).
  - (15) "Physical therapist assistant" means a skilled health care worker who:
  - (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy services and related duties as assigned by the supervising physical therapist.
  - (16) "Place of residence" means, excluding a hospital or nursing facility, the location at which

a recipient resides.

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- (17) "Plan of care" means a written plan which shall:
- (a) Stipulate the type, nature, frequency and duration of a service; and
- (b) At least every sixty (60) days, be reviewed and signed by a HHA staff person and physician, advanced practice registered nurse, or physician assistant[and HHA staff person at least every sixty (60) days].
  - (18) "Provider" is defined by KRS 205.8451(7).
- (19) "Qualified medical social worker" means a person who meets the qualified medical social worker requirements as established in 902 KAR 20:081.
- (20) "Qualified social work assistant" means a social work assistant as defined in 42 C.F.R. 484.115 [484.4].
  - (21) "Recipient" is defined by KRS 205.8451(9).
  - (22) "Registered nurse" or "RN" is defined by KRS 314.011(5).
  - (23) "Speech-language pathologist" is defined by KRS 334A.020(3).
  - (24) "Speech-language pathology assistant" is defined by KRS 334A.020(8).

Section 2. Conditions of Participation. (1) In order to provide home health services, a provider shall:

- (a) Be an HHA; and
- (b) Comply with:
- 1. 907 KAR 1:671;
- 2. 907 KAR 1:672;
- 3. 907 KAR 1:673:
- 4. All applicable state and federal laws; and
- 5. The Home Health Services Manual.
- (2)(a) A home health provider shall maintain a medical record for each recipient for whom services are provided.
  - (b) A medical record shall:
- 1. Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service:
  - 2. Contain a copy of the plan of care;
- 3. Document verbal orders from the physician, advanced practice registered nurse, or physician assistant, if applicable;
- 4. Except as established in paragraph (d) of this subsection, be retained for a minimum of five (5) years from the date a covered service is provided or until any audit dispute or issue is resolved beyond five (5) years;
  - 5. Be kept in an organized central file within the HHA; and
  - 6. Be made available to the department upon request.
- (c) The individual who provided a service shall date and sign the health record on the date that the individual provided the service.
- (d)1. If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (b)4. of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.
- 2. In the case of a recipient who is a minor, the recipient's medical record shall be retained for three (3) years after the recipient reaches the age of majority under state law or the length established in paragraph (b)4 of this subsection or subparagraph 1 of this paragraph, whichever is longest.
  - (3) A provider shall comply with 45 C.F.R. Part 164.
- (4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.
  - (b) Failure to return a payment to the department in accordance with paragraph (a) of this

#### section may be:

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

#### Section 3. Covered Services. (1) A home health service shall be:

- (a) Prior authorized by the department to ensure that the service or modification of the service is medically necessary and adequate for the needs of the recipient;
  - (b) Provided pursuant to a plan of care; and
  - (c) Provided in a recipient's place of residence.
- (2) The following services provided to a recipient by a home health provider who meets the requirements in Section 2 of this administrative regulation shall be covered by the department:
  - (a) A nursing service which shall:
  - 1. Include part-time or intermittent nursing services; and
- 2. If provided daily, be limited to thirty (30) days unless additional days are prior authorized by the department;
  - (b) A therapy service which shall:
- 1. Include physical therapy services provided by a physical therapist or a physical therapist assistant who is under the supervision of a physical therapist;
- 2. Include occupational therapy services provided by an occupational therapist or an occupational therapy assistant who is under the supervision of an occupational therapist;
- 3. Include speech-language pathology services provided by a speech-language pathologist or a speech-language pathology assistant who is under the supervision of a speech-language pathologist;
- 4. Be provided pursuant to a plan of treatment which shall be developed by the appropriate therapist and physician, advanced practice registered nurse, or physician assistant;
  - 5. Be provided in accordance with 907 KAR 1:023; and
  - 6. Comply with the:
  - a. Physical therapy service requirements established in the:
- (i) Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is a physical therapy service provided to an adult; or
- (ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is a physical therapy service provided to a child;
  - b. Occupational therapy requirements established in the:
- (i) Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is an occupational therapy service provided to an adult; or
- (ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is an occupational therapy service provided to a child; or
  - c. Speech-language pathology service requirements established in the:
- (i) Technical Criteria for Reviewing Ancillary Services for Adults if the service is a speechlanguage pathology service provided to an adult; or
- (ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the service is a speechlanguage pathology service provided to a child;
  - (c) A home health aide service which shall:
- 1. Include the performance of simple procedures as an extension of therapy services, personal care, range of motion exercises and ambulation, assistance with medications that are ordinarily self-administered, reporting a change in the recipient's condition and needs, incidental household services which are essential to the recipient's health care at home when provided in the course of a regular visit, and completing appropriate records;
  - 2. Be provided by a home health aide who is supervised at least every fourteen (14) days by:
  - a. An RN;
  - b. A physical therapist, for any physical therapy services that are provided by the home health

aide;

- c. An occupational therapist, for any occupational therapy services that are provided by the home health aide; or
- d. A speech-language pathologist, for any speech-language pathology services that are provided by the home health aide; and
  - 3. Be a service that the recipient is either physically or mentally unable to perform;
  - (d) A medical social service which shall:
  - 1. Be provided by a qualified medical social worker or qualified social work assistant; and
  - 2. Be provided in conjunction with at least one (1) other service listed in this section:
- (e) A supply listed on the Home Health Schedule of Supplies, which shall be covered if provided to a recipient pursuant to the recipient's plan of care; or
- (f) A supplemental nutritional product listed on the Home Health Schedule of Supplies, which shall:
  - 1. Be ingested orally or delivered by tube into the gastrointestinal tract;
  - 2. Provide for the supplemental nutrition of a recipient; and
- 3. Require a completed MAP-248 signed by a physician, advanced practice registered nurse, or physician assistant certifying the medical necessity of the supplemental nutritional product.

Section 4. Limitations and Exclusions from Coverage. (1) A domestic or housekeeping service which is unrelated to the health care of a recipient shall not be covered.

- (2) A medical social service shall not be covered unless provided in conjunction with another service pursuant to Section 3 of this administrative regulation.
  - (3) Supplies for personal hygiene shall not be covered.
  - (4) Drugs shall not be covered.
- (5) Disposable diapers shall not be covered for a recipient age three (3) years and under, regardless of the recipient's medical condition.
- (6) Except for the first week following a home delivery, a newborn or postpartum service without the presence of a medical complication shall not be covered.
- (7) A recipient who has elected to receive hospice care shall not be eligible to receive coverage under the home health program.
  - (8)(a) There shall be an annual limit of twenty (20):
- 1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection;
- 2. Physical therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection; and
- 3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (b) of this subsection.
- (b) The limits established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:
  - 1. Department if the recipient is not enrolled with a managed care organization; or
  - 2. Managed care organization in which the enrollee is enrolled if the recipient is an enrollee.
- (c) Prior authorization by the department shall be required for each visit that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for a speech-language pathology service provided to the same recipient during the same time period

via the home health services program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A provider that chooses to use electronic signatures shall:
- (a) Develop and implement a written security policy that shall:
- 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
- 2. Identify each electronic signature for which an individual has access; and
- 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
- 1. Be completed and executed by each individual using an electronic signature;
- 2. Attest to the signature's authenticity; and
- 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
  - (c) Provide the department, immediately upon request, with:
  - 1. A copy of the provider's electronic signature policy;
  - 2. The signed consent form; and
  - 3. The original filed signature.

Section 8. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights. (1) An appeal of an adverse action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

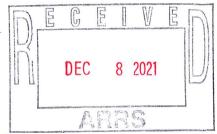
Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "MAP-248", *August [July]* 2021[April 2009];
- (b) "Home Health Services Manual", May 2014;
- (c) "Technical Criteria for Reviewing Ancillary Services for Adults", February 2000;
- (d) "Technical Criteria for Reviewing Ancillary Services for Pediatrics", April 2000; and
- (e) "Home Health Schedule of Supplies", May 2014.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:
- (a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.; or
- (b) The Web site located at <a href="https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hh.aspx">https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hh.aspx</a> [http://www.chfs.ky.gov/dms/incorporated.htm].

CONTACT PERSON: Krista Quarles, Policy Specialist, 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 Office of the Secretary

Andy Beshear Governor

275 East Main Street, 4W-C Frankfort, KY 40621 www.chfs.ky.gov Eric C. Friedlander Secretary

December 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: 907 KAR 10:815. Per diem inpatient hospital reimbursement.

Dear Regulations Compiler:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 10:815, the Department for Medicaid Services proposes the attached suggested substitute to 907 KAR 10:815.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Lucie Estill

**Executive Staff Advisor** 

Office of Legislative and Regulatory Affairs



#### 12/6/21

#### SUGGESTED SUBSTITUTE

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Fiscal Management

#### 907 KAR 10:815. Per diem inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.637, **205.638**, 205.639, 205.640, <u>205.6405</u>, <u>205.6406</u>, <u>205.6407</u>, <u>205.6408</u>[<del>205.641</del>], 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(I), **1395x(mm)**, 1395tt, 1395ww(d)(5)(F), **[1395x(mm)**,] 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), [205.637(3), 205.640(1), 205.641(2), 216.380(13)], 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a, [1396r-4]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions related to per diem inpatient hospital reimbursement including provisions necessary to enhance reimbursement pursuant to KRS [442.308 and] 205.638.

Section 1. Definitions. (1) "Base year" means the state fiscal year cost reporting period used to establish a per diem rate.

- (2) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.
  - (3) "CMS" means Centers for Medicare and Medicaid Services.
- (4) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.
  - (5) "Department" means the Department for Medicaid Services or its designee.
- (6) "Diagnosis related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.
- (7) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25.
- (8) "DRG service" means a discharge, excluding crossover claims or no pay claims, assigned a discharge classification by the diagnosis related group grouper used by the department pursuant to 907 KAR 10:830[825], whether the discharge is reimbursed by discharge or via a per diem basis.
  - (9) "GII" means Global Insight, Incorporated.
- (10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.
- (11) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
- (12) "Long-term acute care hospital" or "LTAC hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).
  - (13) "Medical education cost" means a direct cost that is:
  - (a) Associated with an approved intern and resident program; and
  - (b) Subject to limits established by Medicare.

- (14) "Operating cost" means allowable routine, ancillary service, or special care unit cost related to inpatient hospital care.
- (15) "Parity factor" means a factor applied to a per diem rate to establish cost coverage parity with diagnosis related group hospital reimbursement.
  - (16) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.
- (17) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.
  - (18) "Rebase" means to redetermine per diem rates using more recent data.
- (19) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.
- (20) "State-designated free-standing rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated *that [which]*:
- (a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;
- (b) Provides at least fifty-one (51) percent of the statewide total of inpatient acute rehabilitation care to Medicaid-eligible recipients;
- (c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution post-discharge;
  - (d) Is licensed as an acute hospital limited to rehabilitation; and
  - (e) Is a teaching hospital.
- (21) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a recipient.
  - (22) "Third party[payor]" means a payor of a third party pursuant to KRS 205.510(18)[(16)].
- (23) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.
- (24) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.
- (25) "Weighted average" means an average that reflects an individual element's proportionality to all elements.
- Section 2. Payment for Rehabilitation or Psychiatric Care in an In-State Acute Care Hospital. (1) For rehabilitation care in an in-state acute care hospital that has a Medicare-designated rehabilitation or psychiatric distinct part unit, the department shall reimburse:
- (a) A facility specific per diem rate based on the most recently received Medicare cost report received prior to the rate year, trended and indexed to the current state fiscal year; and
  - (b) In accordance with Sections 6 and 9 of this administrative regulation.
- (2) The department shall reimburse for rehabilitation or psychiatric care provided in an in-state hospital that does not have a Medicare-designated distinct part unit:
- (a) On a facility specific per diem basis equivalent to its aggregate projected payments for DRG services divided by its aggregate projected Medicaid paid days. Aggregate projected payments and projected Medicaid paid days shall be the sum of:
- 1. Aggregate projected payments and aggregate projected Medicaid paid days for non-per diem DRG services as calculated by the model established in 907 KAR 10:830[825];
  - 2. Actual prior year payments inflated by the GII; and
  - 3. Per diem DRG service Medicaid days; and
  - (b) In accordance with Sections 6 and 9 of this administrative regulation.

Section 3. Payment for Long-term Acute Care Hospital Care, In-State Freestanding Psychiatric Hospital Care, and In-State Freestanding Rehabilitation Hospital Care. (1) The department shall

reimburse for inpatient care provided to eligible Medicaid recipients in an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, or LTAC hospital on a per diem basis.

- (2) The department shall calculate a per diem rate by:
- (a) Using a hospital's state fiscal year 2005 cost report, allowable cost and paid days to calculate a base cost per day for the hospital;
- (b) Trending and indexing a hospital's specific cost, excluding capital cost, per day to the current state fiscal year;
- (c) Calculating an average base cost per day for hospitals within similar categories, for example rehabilitation hospitals, using the indexed and trended base cost per day;
- (d) Assigning no hospital a base cost per day equaling less than ninety-five (95) percent of the weighted average trended and indexed base cost per day of hospitals within the corresponding category;
- (e) Applying a parity factor equivalent to aggregate cost coverage established by the DRG reimbursement methodology established in 907 KAR 10:830[825]; and
- (f) Applying available provider tax funds on a pro-rata basis to the pre-provider tax per diem calculated in paragraphs (a) through (e) of this subsection.
- Section 4. Payment to a Newly-participating In-State Freestanding Psychiatric Hospital, Freestanding Rehabilitation Hospital or a Long-Term Acute Care Hospital. (1) The department shall reimburse a newly-participating in-state freestanding psychiatric hospital, freestanding rehabilitation hospital or long-term acute care hospital the minimum per diem rate paid to hospitals in their category until the first fiscal year cost report submitted by the hospital has been finalized.
- (2) Upon finalization of the first fiscal year cost report for a facility, the department shall reimburse the facility a per diem rate in accordance with Section 3 of this administrative regulation.
- Section 5. Payment for Critical Access Hospital Care. (1) The department shall pay a per diem rate to a critical access hospital equal to the hospital's Medicare rate.
- (2) A critical access hospital's final reimbursement for a fiscal year shall reflect any adjustment made by CMS.
- (3)(a) A critical access hospital shall comply with the cost reporting requirements established in Section 10 of this administrative regulation.
- (b) A cost report submitted by a critical access hospital to the department shall be subject to audit and review.
- (4) An out-of-state critical access hospital shall be reimbursed under the same methodology as an in-state critical access hospital.
- (5) The department shall reimburse for care in a federally defined swing bed in a critical access hospital pursuant to 907 KAR 1:065.
- Section 6. Reimbursement Limit. Total reimbursement to a hospital, other than to a critical access hospital, shall be subject to the limitation established in 42 C.F.R. 447.271.
- Section 7. In-State Hospital Reimbursement Updating Procedures. (1) The department shall adjust an in-state hospital's per diem rate annually according to the following:
- (a) An operating and professional component per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the GII; and
  - (b) A capital per diem rate shall not be adjusted for inflation.
- (2) The department shall, except for a critical access hospital, rebase an in-state hospital's per diem rate every four (4) years.
  - (3) Except for an adjustment resulting from an appeal in accordance with Section 21 of this

administrative regulation, the department shall make no other adjustment.

Section 8. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform to a universal rate year.

Section 9. Cost Basis. (1) An allowable Medicaid cost shall:

- (a) Be a cost allowed after a Medicaid or Medicare audit;
- (b) Be in accordance with 42 C.F.R. Parts 412 and 413;
- (c) Include an in-state hospital's provider tax; and
- (d) Not include a cost listed in Section 11 of this administrative regulation.
- (2) A prospective rate shall include both routine and ancillary costs.
- (3) A prospective rate shall not be subject to retroactive adjustment, except for:
- (a) A critical access hospital; or
- (b) A facility with a rate based on un-audited data.
- (4) An overpayment shall be recouped by the department as follows:
- (a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or
- (b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 10. In-State Hospital Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid program shall submit to the department a copy of each Medicare cost report it submits to CMS, an electronic cost report file (ECR), and the Supplemental Medicaid Schedule KMAP-1 [and the Supplemental Medicaid Schedule KMAP-1 as required by this subsection]:

- (a) A cost report shall be submitted:
- 1. For the fiscal year used by the hospital; and
- 2. Within five (5) months after the close of the hospital's fiscal year.
- (b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.
- 1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.
- 2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.
- (2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.
  - (3) A cost report submitted by a hospital to the department shall be subject to audit and review.
- (4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

- (a) A cost associated with a political contribution;
- (b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and
- (c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1. and 2. of this paragraph:

- 1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.
- 2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.
- (2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.
- (3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.
- Section 12. Trending of an In-state Hospital's Cost Report Used for Rate Setting Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or un-audited, shall be trended to the beginning of the universal rate year to update an in-state hospital's Medicaid cost.
- (2) The trending factor, referenced in subsection (1) of this section, to be used shall be the inflation factor prepared by GII for the period being trended.
- Section 13. In-State Hospital Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.
- (2) The department shall apply the inflation factor prepared by GII for the universal rate year as the indexing factor.

Section 14. In-State Hospital Minimum Occupancy Factor. (1) If an in-state hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

- (a) Artificially increasing the occupancy factor to the minimum factor; and
- (b) Calculating the capital costs using the calculated minimum occupancy factor.
- (2) The following minimum occupancy factors shall apply:
- (a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer total licensed beds;
- (b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more total licensed beds; and
- (c) A newly-constructed in-state hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.
- Section 15. Reduced Depreciation Allowance. The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.
- Section 16. Reimbursement for Out-of-state Hospitals. (1) For inpatient psychiatric or rehabilitation care provided by an acute out-of-state hospital, the department shall reimburse a per diem rate comprised of an operating per diem rate and a capital per diem rate.
- (a) The psychiatric operating per diem rate shall be the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180.
- (b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate paid for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180[, Psychiatric hospitals; operation and services].
- (c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.
- (2) For care provided by an out-of-state freestanding psychiatric hospital, the department shall reimburse a per diem rate comprised of a psychiatric operating per diem rate and a capital per

diem rate.

- (a) The psychiatric operating per diem rate shall equal seventy (70) percent of equal the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state freestanding psychiatric hospitals.
- (b) The psychiatric capital per diem rate shall equal seventy (70) percent of the median psychiatric capital per diem cost for all in-state freestanding psychiatric hospitals.
- (c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.
- (3) For care in an out-of-state rehabilitation hospital, the department shall reimburse a per diem rate equal to the median rehabilitation per diem rate for all in-state rehabilitation hospitals minus any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.
- (4) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made via this section of this administrative regulation.
- Section 17. Supplemental Payments. In addition to a payment based on a rate developed under Section 2, 3, or 4 of this administrative regulation, the department [shall]:
- (1)(a) **Shall** make quarterly supplemental payments to an in-state hospital which qualifies as a psychiatric access hospital in an amount:
- 1.[(a)] Equal to the hospital's uncompensated costs of providing care to Medicaid recipients and individuals not covered by a third party [payer], not to exceed \$6 million annually; and
  - 2.[(b)] Consistent with the requirements of 42 C.F.R. 447.271; or
- (b) [The department] May allow an in-state hospital that qualifies as a psychiatric access hospital to participate in and receive enhanced funding under the Hospital Rate Improvement Program described in 907 KAR 10:840 to provide funding for payments described in paragraph (a) of this subsection [Section 17(1)] if an average commercial rate methodology is available for that program, if [provided that]:
- 1. Upon request of the Department for Behavioral Health, Developmental, and Intellectual Disabilities, the qualifying hospital or hospital system agrees to provide behavioral health care for Medicaid recipients and uninsured individuals with no third party coverage;
- 2. The hospital functions as the state hospital for state mental health in District IV pursuant to 908 KAR 2:040; [and]
- 3. The payments described in *paragraph (a) of this subsection [Section 17(1)]* are not duplicated within the fee-for-service or Hospital Rate Improvement Programs; and
- 4. The hospital complies with the qualifying hospital requirements established in 907 KAR 10:840; and
- (2) **Shall** make an annual payment to an in-state state-designated free-standing rehabilitation teaching hospital that is not state-owned or operated in an amount:
- (a) Determined on a per diem or per discharge basis equal to the nonreimbursed costs of providing care to Medicaid recipients. Costs shall be the amount of cost identified on a hospital's most recent cost report received by the department for a fiscal year reduced by the cost of care covered by third parties; and
- (b) Equal to the amount of per diem payments pursuant to this administrative regulation or per discharge diagnosis related group payments pursuant to 907 KAR 10:830[825] received by the hospital for Medicaid recipients not covered by third parties.
- Section 18. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned hospital the full cost of inpatient care via a certified public expenditure (CPE) contingent upon approval by CMS.
- (2) To determine the amount of costs eligible for a CPE, an in-state hospital's allowed charges shall be multiplied by the hospital's operating cost-to-total charges ratio.
  - (3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

- (4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.
- (b) If any difference between actual cost and submitted cost remains, the department shall reconcile any difference with the provider.
- Section 19. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:
  - (1) The contract shall contain a provision granting the department access:
  - (a) To the subcontractor's financial information; and
  - (b) In accordance with 907 KAR 1:672; and
- (2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.
- Section 20. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.
- (2) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.
- (a) A prospective per diem shall be set based on the operating budget and projected number of patient days for care not subject to a diagnosis related group method of reimbursement.
- (b) A prospective per diem rate set in accordance with paragraph (a) of this subsection shall be tentative and subject to settlement at the time the first audited fiscal year end report is available to the department.
- (c) During the projected rate year, the budget shall be adjusted if indicated and justified by the submittal of additional information.
  - (3) If two (2) or more separate entities merge into one (1) organization, the department shall:
  - (a) Merge the latest available data used for rate setting:
  - (b) Combine bed utilization statistics, creating a new occupancy ratio;
- (c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;
- (d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting;
- (e) If one (1) of the entities merging has disproportionate status and the other does not, retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid;
  - (f) Recognize an appeal of the merged per diem rate in accordance with 907 KAR 1:671; and
  - (g) Require each provider to submit a Medicaid cost report for the period:
- 1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and
- 2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 10 of this administrative regulation.
- Section 21. Appeals. (1) An administrative review shall not be available for a facility or service reimbursed via the per diem methodology for the determination of the requirement, or the proportional amount, of any budget neutrality adjustment used in the calculation of the per diem rate.
- (2) An administrative review shall be available for a calculation error in the establishment of a per diem rate.
  - (3) An appeal shall comply with the review and appeal provisions established in 907 KAR

1:671.

Section 22. <u>Federal Financial Participation</u>. A <u>policy established in this administrative</u> regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

<u>Section 23.</u> Incorporation by Reference. (1) [The following material is incorporated by reference:]

- (a)] "Supplemental Medicaid Schedule KMAP-1", January 2007, is incorporated by reference [edition][; and
  - (b) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:
- (a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (b) Online at the department's Web site at: https://chfs.ky.gov/agencies/dms/MAPForms/KMAP1.XLS.

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