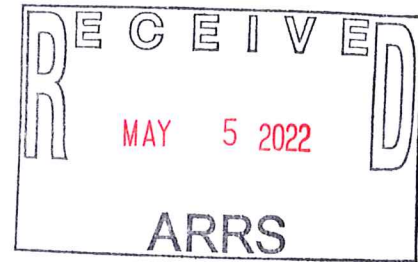




COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION



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May 5, 2022

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: 9 KAR 1:070 – Transition Team

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 9 KAR 1:070, the Executive Branch Ethics Commission proposes the attached amendment to 9 KAR 1:070.

Sincerely,

Steven T. Pulliam
General Counsel
Executive Branch Ethics Commission
1025 Capital Center Drive, Suite 104
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

Final Version: 5/5/2022 11:26 AM

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission**

9 KAR 1:070. Standards of ethical conduct for transition team members and disclosure Form.

RELATES TO: KRS 6.801 – 6.829, 11A.010, ~~[KRS]~~11A.047, 11A.060, 11A.110, 11A.201 – 11A.246

STATUTORY AUTHORITY: KRS 11A.047, 11A.110(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to establish~~prescribe~~ forms for statements required by this chapter. KRS 11A.047(3), (4), and (7) require the commission to establish standards of ethical conduct for transition team members, ~~prescribe a form for the newly elected official to designate transition team leaders,~~ prescribe a form for the transition team leaders to list the members of the transition team, and prescribe a disclosure form for the transition team members to submit to the commission. This administrative regulation establishes the standards of ethical conduct for transition team members and related forms, ~~prescribes the three forms, and incorporates them by reference~~.

Section 1. Definitions. (1) "Agency" is defined by KRS 11A.047(1)(a).

(2) "Commission" means the Executive Branch Ethics Commission as established by KRS 11A.060.

(3) "Engage" is defined by KRS 6.611(13) and 11A.201(4).

(4) "Executive agency decision" is defined by KRS 11A.201(8).

(5) "Executive agency lobbying activity" is defined by KRS 11A.201(10).

(6) "Financial Impact" means to have an effect on the financial position of a person or business whether or not the impact is positive or negative.

(7) "~~Gift~~Gifts" is defined by KRS 11A.010(5).

(8) "Legislative matter" is defined by KRS 6.611(25).

(9) "Lobby" is defined by KRS 6.611(27).

(10) "Newly elected official" means a person elected to an office listed in KRS 11A.010(9)(a) to (g) who has not yet been sworn into office.

(11) "~~Nonpublic~~Non-public information" is defined by KRS 11A.047(1)(b).

(12) "Regular election" is defined by KRS 446.010(37).

(13) "Transition team" is defined by KRS 11A.047(1)(c).

(14) "Transition team lead" means a person designated by the newly elected official to manage the transition team on behalf of the newly elected official.

(15) "Transition team member" is defined by KRS 11A.047(1)(d).

(16) "Transition team end date" is the date of inauguration for the newly elected gubernatorial official or the swearing-in date for all other newly elected officials.

Section 2. **Transition Team Member List.**~~[Newly Elected Official Disclosure of Transition Team Lead.]~~ (1) The commission shall notify the newly elected official of all disclosure requirements within five (5) business days of the date of the regular election.

(2) If the newly elected official decides to create a transition team as **established**~~[provided]~~ in KRS 11A.047(2), then the newly elected official shall **designate a transition team lead**~~[file with the commission a Transition Team Lead Designation form EBEC-301]~~, as required by KRS 11A.047(4)~~[, within ten (10) business days of the date of the regular election]~~.

(3) ~~[The newly elected official shall ensure that the Transition Team Lead Designation form EBEC-301 that is filed with the commission is current and notifies the commission by filing an amended Transition Team Lead Designation form EBEC-301 within five (5) business days of any additions to or departures from the transition team leadership until the transition team end date.]~~

Section 3. Transition Team Member Lists. (1) ~~The commission shall notify each transition team lead of all disclosure requirements within fourteen (14) business day of the date of the regular election.~~

~~(2)]~~ The transition team lead shall file with the commission a Transition Team Members List form EBEC-302, as required by KRS 11A.047(4), within twenty (20) business days of the date of the regular election.

~~(4)[(3)]~~ The transition team lead shall:

(a) Ensure that the Transition Team Members List form EBEC-302 that is filed with the commission is current; and

(b)~~[shall]~~ Notify the commission by filing an amended Transition Team Members List form EBEC-302 within five (5) days of any additions to or departures from the transition team until the transition team end date.

Section ~~3.~~**4.** Transition Team Member Disclosure. (1) Prior to beginning service on a transition team, every transition team member shall file with the commission, as required by KRS 11A.047(7), a Transition Team **Member** Disclosure Statement form EBEC-303.

(2) The transition team member shall update the Transition Team **Member** Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any employment, business interest, or transition team assignment changes that would have a material effect on their originally filed Disclosure Statement form EBEC-303 until the transition team end date.

(3) The transition team member shall update the Transition Team **Member** Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of the acceptance of any **gift**~~[gifts]~~ over **twenty-five (25) dollars**~~[\$25]~~ or acceptance of future employment as required by KRS 11A.047(7)(f) until the transition team end date.

(4) The transition team member shall update the Transition Team **Member** Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any new recusals required pursuant to KRS 11A.047(7)(h) until the transition team end date.

(5) The commission shall notify any transition team member who fails to file the Transition Team **Member** Disclosure Statement form EBEC-303 within ten (10) business days after beginning their initial service.

(6) If within ten (10) business days of receiving notice from the commission, the transition team member has failed to file the required Transition Team **Member** Disclosure Statement form EBEC-

303, the commission ***shall[will]*** send notice to the newly elected official and transition team leads that the transition team member should be removed from the transition team and discontinue all activities on behalf of the transition team until the form is filed.

Section ***4.[5.]*** Standards of Ethical Conduct for Transition Teams. (1) All transition team members shall:

- (a) Comply with KRS 11A.047(5) and (6);
 - (b) Document in writing all state agencies where they may be granted access to nonpublic information obtained for purposes of the transition process;
 - (c) Recuse from any assignment with which they have a financial interest as ***established[defined]*** by KRS 11A.047(6)(a) through (g); and
 - (d) Ensure that their disclosures ***[which are]*** on file with the commission are accurate and current until the transition team end date.
- (2) ***A recusal shall[Recusals-must]*** be documented on the Transition Team ***Member*** Disclosure Statement form EBEC-303 filed with the commission prior to beginning service on the transition team.
- (3) ***A recusal after a member begins[Recusals that arise after beginning]*** service on the transition team ***shall[must]*** be documented by filing an updated Transition Team ***Member*** Disclosure Statement form EBEC-303 with the commission until the transition team end date.

Section ***5.[6.]*** Current and Former Registered Lobbyists. (1) All transition team members who are registered lobbyists under KRS 6.801 ***through[to]*** 6.829 and KRS 11A.201 ***through[to]*** 11A.246 or are former lobbyists who were registered under KRS 6.801 ***through[to]*** 6.829 and KRS 11A.201 ***through[to]*** 11A.246 during the twelve (12) month period prior to becoming a transition team member shall:

- (a) Disclose his or her current or previous registration as a lobbyist during the twelve (12) months prior to becoming a transition team member on the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission;
- (b) Recuse from involvement in a decision-making capacity on the transition team from any executive ***agency[branch]*** decision or legislative matter that would have a financial impact on his or her executive agency lobbying activities or legislative lobbying engaged in during the previous twelve (12) months;
- (c) Not use or reveal any nonpublic information he or she receives in his or her tenure as a transition team member in any current or future executive agency lobbying activity or legislative lobbying; and
- (d) Not receive nonpublic information regarding matters that financially impact his or her clients for whom he or she was engaged to lobby.

Section ***6.[7.]*** Submission. The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

- (1) By hard copy via hand-delivery or U.S. Mail to the commission's address: ***Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601;***
- (2) Electronically by facsimile to (502) 696-5091; or
- (3) Electronically by electronic mail to ethicsfiler@ky.gov.

Section ~~7.8.~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~"Transition Team Lead Designation" EBEC-301 (Rev. 01/2022);~~

~~(b)~~] "Transition Team Members List" EBEC-302 (Rev. 01/2022); and

~~(b)(c)~~] "Transition Team Member Disclosure Statement" EBEC-303 (Rev. 01/2022).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the commission's website at <https://ethics.ky.gov/Pages/default.aspx>.

CONTACT PERSON: Steven T. Pulliam, General Counsel, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, email EthicsFiler@ky.gov.



Andy Beshear
Governor

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Executive Director
Christopher P. Harlow, Pharm. D.

May 3, 2022

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 2:440**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:440, the Board of Pharmacy proposes the attached amendment to 201 KAR 2:440.

Sincerely,

Christopher P. Harlow
Executive Director

REVISED:
5/3/2022 8:44 AM

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amended After Comments)

201 KAR 2:440. Legend drug repository.

RELATES TO: **KRS 217.816, 315.191, 315.450, 315.452, 315.454, 315.456, 315.458, 315.460, 21 U.S.C. 340B, 21 U.S.C. 360-1 to 360-4, 21 U.S.C. 381 to 384g**

STATUTORY AUTHORITY: **KRS 315.191, 315.452, 315.458**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the **Kentucky Board of Pharmacy[board]** to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS **315.452 and 315.458 require[requires]** the board to promulgate regulations to establish the legend drug repository program. This administrative regulation establishes the legend drug repository program and the requirements to participate in the program.

Section 1. Definitions. (1) "Authorized recipient" means a recipient that has received authorization from the board to participate in the legend drug repository program pursuant to Section 2 and whose authorization has not been revoked by the board pursuant to Section 3.

(2) "Board" means the Kentucky Board of Pharmacy.

(3) "Controlled substance" **is[has the same meaning as]** defined **by[in]** KRS 218A.010.

(4) "Dispense" **is[has the same meaning as]** defined **by[in]** KRS 315.010.

(5) "Distribute" **is[has the same meaning as]** defined **by[in]** KRS 315.400.

(6) "Donor" **means: (a)[shall mean]** Any entity legally authorized and permitted to possess drugs, **such as[including but not limited to]** a wholesaler or distributor, third party logistic provider, pharmacy, clinic, surgical or health center, detention and rehabilitation center, laboratory, medical or pharmacy school, prescriber or other health care provider, or health facility; **or**

(b)[. Donor shall also mean] Government agencies and entitles that are federally authorized to possess drugs, **such as: 1.[including but not limited to]** Drug manufacturers;

2.[,] Repackagers;

3.[.] Relabelers;

4.[.] Outsourcing facilities;

5.[.] Veteran Affairs hospitals;

6. Prisons; and

7.[.] FDA authorized importers, such as those under **21 U.S.C. 384g[Federal FD&C Section 801, 804,]** or similar provisions~~[, and prisons]~~.

(7) "Drug" ~~is[has the same meaning as]~~ defined ~~by[in]~~ KRS 315.010.

(8) "Eligible patient" means: **(a)** An individual who is indigent, uninsured, or underinsured; **and**

(b)[.] Other patients, ~~[shall be considered eligible]~~ if a need for the donated drugs is not identified among indigent, uninsured, and underinsured individuals.

(9) "Health care provider" ~~is defined by[has the same meaning as in]~~ KRS 304.17A-005**(23)**.

(10) "~~Health[Heath]~~ facility" ~~is defined by[has the same meaning as in]~~ KRS 216B.015**(13)**.

(11) "Original packaging" ~~means[shall mean]~~ the packaging in which the drug was donated by the donor.

(12) "Pharmacist" ~~is[has the same meaning as]~~ defined ~~by[in]~~ KRS 315.010**(17)**.

(13) "Recipient" means a pharmacy as defined by KRS 315.010**(19)**.

(14) "Relabeler" ~~means any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name, except for establishments that do not change the original labeling, but merely add their own name[has the same meaning as defined in 201 KAR 2:320]~~.

(15) "Repackager" ~~is[has the same meaning as]~~ defined ~~by[in]~~ KRS 315.400**(16)**.

(16) "Returns processor": **(a)** ~~is defined by[shall have the same meaning as in]~~ 21 U.S.C. Section 360eee**(18)**; and

(b) ~~Includes[shall include but is not limited to]~~ a reverse distributor **or similar entity**.

(17) "Unopened tamper-evident packaging" ~~is defined by the [shall have the same meaning as]~~ United States Pharmacopeia (USP) General Chapter 659, Packaging and Storage Requirements, **and includes[including but not limited to]** unopened unit-dose, multiple dose, immediate, secondary, and tertiary packaging.

Section 2. Participation in the Legend Repository Program.

(1) Donors may donate drugs to an authorized recipient. An authorized recipient may receive donated drugs from donors. Prior to the first donation from a new donor, an authorized recipient **shall[must]** verify and record the following:

(a) **That** the donor meets the definition provided in Section 1;

(b) The donor's name, address, phone number, and permit **or license** number;

(c) **That** the donor will only make donations of drugs in accordance with Section 3; **and**

(d) If applicable, **that** the donor will: **1.** remove or redact any patient names and prescription numbers on donated drugs; or **2.** Otherwise maintain patient confidentiality by executing a confidentiality agreement with the authorized recipient.

(2) Any recipient seeking to become an authorized recipient in the program shall complete and provide to the Board the Legend Drug Repository Authorized Recipient Form that includes the specific policies and procedures of the recipient for planned implementation of the repository program. The policies and procedures shall include drug acceptance, destruction or transfer for unauthorized unaccepted drugs, quarantine of donated drugs, the electronic or written maintenance of inventory, storage and maintenance of donated drugs, recordkeeping of dispensed drugs and patient eligibility affidavit forms, separation of donated drugs, and repackaging of donated drugs.

(3) The board may revoke the authorization of a recipient to participate in the program by issuing a written notice to the recipient. **The [Such]** revocation shall include references to the specific requirements that were violated and the corrective actions necessary for the recipient to resume its participation in the program.

(4) **[Nothing in this chapter shall require]** A health facility, pharmacy, pharmacist, or practitioner **shall not be required** to participate in the program established by this section.

(5) A drug manufacturer, repackager, or wholesaler other than a returns processor participating in this program shall comply with the requirements of 21 U.S.C. Sections 360-1 through 360-4 relating to drug supply chain security.

Section 3. Accepting, Inspecting, and Storing Drugs. (1) **In accordance with KRS 315.454,** an authorized recipient **shall[may]** only accept into inventory donated drugs that:

- (a) **1.** Are in original, unopened, sealed, and tamper-evident packaging; or
- 2.** Have been repackaged under this program in accordance with Section **4(4)[4.4];**
- (b) If in a single unit dose, **have[the]** packaging **that is[of that dose must be]** unopened;
- (c) Are not classified as a controlled substance;
- (d) Are not visually adulterated or misbranded;
- (e) Are not samples;
- (f) Have an expiration date of ninety **(90)** days or greater, **unless the drug: 1. Is in high demand, as determined by the professional judgement of the authorized recipient; and**
- 2. Can be dispensed for use prior to the drug's expiration date;**
- (g) **[Have packaging that lists the lot number of the drug;**
- (h)]** Are not considered to be medical supplies;
- (h)[(i)]** Do not require only being dispensed to a patient registered with the drug's

manufacturer in accordance with federal Food and Drug Administration requirements, **in accordance with KRS 315.460**; and

(i) ~~(j)~~ Have a USP-recognized method to detect improper temperature variations if the drugs require temperature control other than “room temperature storage.”

(2) (a) Donated drugs that do not meet the requirements of Section **3(1) shall**~~[3.1 must]~~ be disposed by returning it to the drug donor, destroying it by incinerator, medical waste hauler, or other lawful method, or transferring it to a return processor.

(b) A record of disposed drugs shall consist of the: **1.** Disposal method **[as]** described **in paragraph (a) of this subsection;**~~[above,]~~

2. The date of the disposal;~~;~~ and

3. The name, strength, and quantity of each drug disposed.

(c) ~~No~~ Other **records**~~[record]~~ of disposal shall **not** be required.

(3) All drugs received but not yet accepted into repository inventory shall be quarantined in a separate, designated area.

(4) (a) Prior to or upon **acceptance of**~~[accepting]~~ a donation or transfer into inventory, an authorized recipient shall maintain a written or electronic inventory of the donation, consisting of the: **1.** Name, strength, and quantity of each accepted drug;~~;~~ and **2.**~~[the]~~ Name, address, phone number, and permit **or license** number, if applicable, of the donor.

(b) This record shall not be required if the two **(2)** parties are under common ownership.

(c) ~~No~~ Other **records**~~[record]~~ of donation shall **not** be required.

(5) An authorized recipient shall store and maintain donated drugs **in a manner that distinguishes them**~~[physically separated]~~ from other non-donated inventory and in a secure and temperature-controlled environment that meets the drug manufacturers’ recommendations and USP **Chapter 659, Packaging and Storage Requirements**~~[standards]~~.

Section 4. Safe Distribution and Dispensing of Drugs. (1) ~~[Notwithstanding any other law or rule,]~~ An authorized recipient may:

(a) Distribute donated drugs to another authorized recipient or to an entity participating in a drug donation program operated by another state.

(b) Repackage donated drugs as necessary for storage, dispensing, administration, or distribution in accordance with Section **4(4)**~~[4.4]~~.

(c) Replenish drugs of the same drug name and strength previously dispensed or administered to eligible patients in accordance with 21 U.S.C. 340B.

(2) An authorized recipient **shall**~~[may]~~ only administer or dispense drugs that:

(a) Meet the requirements of Section **3(1) and are not**~~[3.1, including not being]~~ visually adulterated or misbranded, as determined by a pharmacist employed by, or under contract, with the health facility or pharmacy;

(b) Are, if dispensed to a patient, repackaged into a new container or have all previous

patient information on the donated container redacted or removed;

(c) Are properly labeled in accordance with KRS 217.816;

(d) Have an expiration date that will not expire before the full use by the patient based on the prescribing practitioner's directions for use; and

(e) Are: 1. Prescribed by a physician, advanced registered nurse, or a physician assistant; and

2. Dispensed by a pharmacist ***in accordance with*** KRS 315.454(1)(d).

(3) An authorized recipient ***shall only[may]*** dispense or administer drugs to an eligible patient ***if permitted by KRS Chapter 315 and 201 KAR Chapter 2[only if otherwise permitted by law]***. Prescription drugs ***shall: (a)[may]*** Only be dispensed or administered to patients pursuant to a valid prescription drug order; and

(b)[shall] Have patient-specific written or electronic records maintained in accordance with KRS Chapter 315 and 201 KAR Chapter 2.

(4)***(a)*** Repackaged drugs shall be: 1. Labeled with the drug name, strength, and expiration date; ~~and~~

2. ~~***shall be***~~ Kept in a separate designated area until inspected and initialed by a pharmacist.

(b) If multiple packaged donated drugs with varied expiration dates are repackaged together, the shortest expiration date shall be used.

(5) The donation, distribution, transfer, receipt, or facilitation of donations, distribution, transfers, and receipt of drugs pursuant to this chapter shall not be considered wholesale distribution and shall not require licensing as a wholesale distributor.

(6) An entity participating in a drug donation or repository program operated by another state may participate in ***the Kentucky[this]*** program, and in the case of a pharmacy, may dispense donated drugs to residents of ***Kentucky[this state]***. This entity ***shall be[is]*** required to comply with all ***Kentucky statutes[laws]*** and ***administrative regulations [rules in this state]***.

(7) Indigent and uninsured patients shall have priority access to drugs dispensed through the repository program. If a drug is available and no indigent or uninsured patient requests dispensing of the drug, the drug shall be made available to underinsured patients before dispensing to others. All authorized recipients shall use the Patient Eligibility Affidavit Form provided by the board ***or a substantively similar physical or electronic form*** when confirming a patient's status as indigent, uninsured, underinsured or other.

(8) ~~***A[No]***~~ legend drug or supply needed to administer a legend drug that ***is[are]*** donated for use under this program ***shall not[may]*** be resold.

(9) All legend drugs, with the exception of controlled substances and extemporaneously compounded drugs, ***shall be[are]*** eligible for dispensing under this program.

(10) ~~***A[No]***~~ handling fee shall ***not*** be charged to a patient for pharmacy dispensing of a repository drug.

(11) Drugs specified in a recall notice shall be considered recalled unless the drug

has an affixed lot number to exclude it from the recall.

(12) An authorized recipient may dispense a therapeutic equivalent drug product under the following conditions:

(a) The ordering practitioner has indicated "formulary compliance approval" on the prescription, in one (1) of the following ways:

1. In the practitioner's own handwriting; or

2. By checking a "formulary compliance approval" box on a preprinted form;

(b) The pharmacist, within twenty-four (24) hours of the formulary compliance substitution, shall notify the ordering practitioner, in an original writing or by facsimile:

1. That the pharmacist engaged in formulary compliance; and

2. Of the therapeutic equivalent drug product that was dispensed.

(c) The pharmacist may make adjustments in the quantity and directions to provide for an equivalent dose of the preferred formulary therapeutic alternative.

Section 5. Forms and Recordkeeping. (1) All records required by this chapter shall be retained in physical or electronic format, on or off the authorized recipient's premise for a period of five (5) years. A donor or authorized recipient may contract with one another or a third-party to create ~~and~~~~and/or~~ maintain records on each other's behalf. An identifier, such as a serial number or barcode, may be used in place of any or all information required by a record or label pursuant to this chapter if it allows for ~~this~~~~such~~ information to be readily retrievable. Upon request by the board, the identifier used for requested records shall be replaced with the original information. An identifier shall not be used on patient labels when dispensing or administering a drug.

(2) An entity ~~that~~~~which~~ chooses to participate in the program shall make all records available to audit by the board within forty-eight (48) hours.

(3) ~~If~~~~When~~ performing any action associated with this program or otherwise processing donated drugs for tax, manufacturer, or other credit, an authorized recipient is considered to be acting as a returns processor and shall comply with all recordkeeping requirements for nonsaleable returns ~~, in accordance with 21 U.S.C. 360eee~~~~under federal law~~.

(4) A donation, or other transfer of possession or control, shall not be construed as a change of ownership unless ~~it is~~ specified ~~as such~~ by the authorized recipient. If a record of the donation's transaction information or history is required, the history shall: ~~(a)~~ Begin with the donor of the drugs; ~~(b)~~~~shall~~ Include all prior donations; ~~(c)~~ If the drugs were previously dispensed, ~~shall~~ only include drug information required to be on the patient label in accordance with KRS Chapter 315 and 201 KAR Chapter 2.

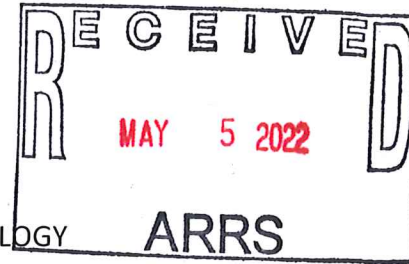
Section 6. ~~[Authority. This chapter shall have sole authority over the program and~~

shall supersede any inconsistent law or rule.

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

- (a) "USP 659 Packaging and Storage Requirements," 05/2017;
- (b) "Legend Drug Repository Authorized Recipient Form," Form Rep. 1121A (12/2021);
- (c) "Legend Drug Repository Patient Eligibility Affidavit Form," Form Rep. 1121B (12/2021).

(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. ***and may be accessed online at <https://pharmacy.ky.gov/Forms/Pages/default.aspx>.***



KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

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Governor

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May 5, 2022

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: Proposed Regulation: **201 KAR 17:110**
Kentucky Board of Speech-Language Pathology and Audiology

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 17:110, the Kentucky Board of Speech-Language Pathology and Audiology proposes the attached amendment to 201 KAR 17:110.

Sincerely,

Kevin R. Winstead, Commissioner
Department of Professional Licensing
(Contact person for this regulation)
KevinR.Winstead@ky.gov
Office: 502-782-8805

cc: Stacy Auterson

BOARDS AND COMMISSIONS
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS)

201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS ~~334A.188, 334A.200, 211.332, 211.334, 211.336, 211.338~~

STATUTORY AUTHORITY: KRS ~~334A.080(1), 334A.200, 211.336(3)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech-Language Pathology and Audiology to promulgate administrative regulations to implement the use of telehealth services by speech-language pathologists and audiologists. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions. (1) "Client" means the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.

(2) "Telehealth" is defined by KRS ~~334A.200(3) and 211.332(5)~~.

(3) "Telepractice" means the practice of speech-language pathology or audiology, as defined by KRS 334A.020(4) and KRS ~~334.020A(6)~~ respectively, provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video.

Section 2. Client Requirements. A practitioner-patient relationship ~~may~~shall not commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a). ~~[An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur.]~~ A licensed health care practitioner may represent the licensee at the initial ~~[in-person]~~ meeting. A licensee who uses telehealth to deliver speech-language pathology or audiology services or who telepractices or the licensed healthcare practitioner representing the licensee shall, at the initial ~~[in-person]~~ meeting with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; ~~and~~

(5) In accordance with KRS 334A.200(1)(a) and 900 KAR 12:005 Section 2(3)(1)(c), obtain the informed consent of the client; and

~~(6)~~ Inform the client in writing about:

(a) The limitations of using technology in the provision of telepractice;

(b) Potential risks to confidentiality of information due to technology in the provision of telepractice as required by KRS 334A.200(1)(b);

(c) Potential risks of disruption in the use of telepractice;

(d) When and how the licensee will respond to routine electronic messages;

- (e) In what circumstances the licensee will use alternative communications for emergency purposes;
- (f) Who else may have access to client communications with the licensee;
- (g) How communications can be directed to a specific licensee;
- (h) How the licensee stores electronic communications from the client; and
- (i) That the licensee may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using telehealth to deliver services or who telepractices shall:

- (1) Limit the telepractice to the licensee's scope of practice;
- (2) Maintain continuing competency or associate with a group who has experience in telehealth delivery of care;
- (3) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 334A.200(1)(b) and KRS 211.332(5)(c);
- (4) Limit access to that information to only those necessary for the provision of services or those required by law; and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using telehealth to deliver speech-language pathology and audiology services and telepractice shall ~~comply with~~:

(a) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(2);[(1)(b)]. ~~[State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced;]~~ and

(b) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

(2) If a person provides speech-language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board or be a provider who is a participant in the audiology and speech-language pathology interstate compact recognized in KRS 334A.188 and delivers telehealth services to a person *in* Kentucky under the standards and provisions of that interstate compact pursuant to KRS 211.336(2)(f).

(3) A person providing speech-language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

(1) Shall conform to the statutes and regulations governing the provision of speech-language pathology and audiology services in Kentucky;

(2) Shall not engage in false, misleading, or deceptive advertising of telepractice in violation of KRS 334A.200(2)(a); and

(3) ~~(2)~~ Shall not split fees in violation of KRS 334A.200(2)(b).

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing,
500 Mero Street, 264 SC, Frankfort, Kentucky 40601, phone (502) 782-8805 (office), email
KevinR.Winstead@ky.gov.

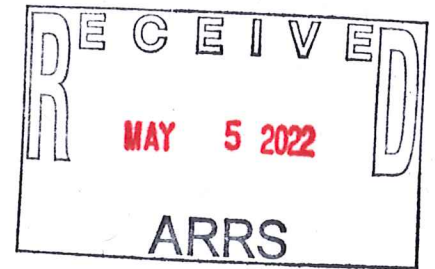
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KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300
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Andy Beshear
Governor



May 5, 2022

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

Re: **201 KAR 20:260E**. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:260E, the Kentucky Board of Nursing proposes the attached agency amendment to 201 KAR 20:260E.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Prather".

Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222
Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 4-29-2022

AGENCY AMENDMENT

**BOARDS AND COMMISSIONS
Board of Nursing**

201 KAR 20:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

Page 1

STATUTORY AUTHORITY

Line 7

After "314.111(1),", insert "(5)."

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 9

After "KRS 314.111(1)", insert "and (5)."

Page 3

Section 2(1)(c)2.b.

Lines 18-19

After "new program of nursing", delete the following:
and shall not increase enrollment at an existing program of nursing

Page 15

Section 3(2)(a) and Section 3(2)(a)1.-3.

Line 2, Lines 4-5 and Lines 6-9

After "request to the board.", delete the following:

- The request is only necessary if the increase is greater than the following:
1. If the enrollment baseline is fifty (50) or less, an increase of ten (10) students;
 2. If the enrollment baseline is fifty-one (51)-100, an increase of twenty (20) students; or
 3. If the enrollment baseline is greater than 100, an increase of twenty-five (25) students.

Pages 15 and 16

Section 3(2)(b), Section 3(2)(b)1.-5., Section 3(2)(c), Section 3(2)(d)

Lines 10-12, Lines 13-17, Lines 18-19, and Line 1

After "(b)", delete the following:

- The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:
1. Number of qualified faculty;
 2. Classroom space;
 3. Clinical sites or simulation resources pursuant to 201 KAR 20:320 Section 3;
 4. Clerical support; and
 5. Financial support.

(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.

(d)

Page 16

Section 3(2)(d)

Line 1

After "The program of nursing shall submit evidence" insert "demonstrating".

After "that it", insert the following:

is maintaining the standards required pursuant to KRS 314.111, and established by 201 KAR 20:260 through 201 KAR 20:360

Lines 1-2

Delete the following:

has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f)

Page 16

Section 3(3)(a)

Line 5

After "subsection (2)", insert "(b)".

Page 16

Section 3(3)(b)

Line 6

After "subsection (2)", insert "(b)".

Line 8

After "subsection (2)", insert "(b)".

Line 10

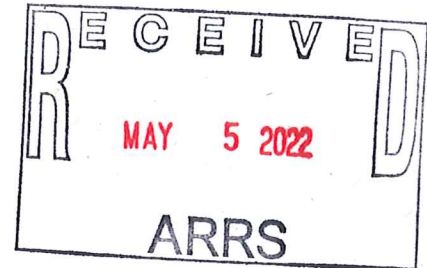
After "subsection (2)", insert "(b)".

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KENTUCKY BOARD OF NURSING

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Andy Beshear
Governor



May 5, 2022

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

Re: **201 KAR 20:480E**. Licensure of graduates of foreign nursing schools.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:480E, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:480E.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Prather".

Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
Louisville, KY 40222
Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 4-27-2022, 3:30 PM

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Nursing

201 KAR 20:480E. Licensure of graduates of foreign nursing schools.

EFFECTIVE: February 2, 2022

RELATES TO: KRS 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 ~~to and~~ 314.991. KRS 314.041 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools. This Emergency Amendment is promulgated pursuant to KRS 39A.180[39A.190], and Section 1(13)(d) of 2020 RS SB 150, 2020 Ky. Acts ch. 73.

Section 1. **Applicants who are Graduates of Foreign Nursing Schools.** [Applicants for Licensure by Examination.]

(1)(a) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(b) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:110.

(2) If licensed in another country evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure **by endorsement** as a registered **nurse shall obtain and submit to the board documentation as provided in KRS 314.041(10)(b)[nursing or a licensed practical nurse shall obtain a full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state].**

(b) An applicant **for licensure by endorsement as a licensed practical nurse shall obtain and submit to the board documentation as provided in KRS 314.051(11)(b)[also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation].** [nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met.]

(5) **An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.**

(6) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until the applicant[he] provides a Social Security number.

Section 2. English Language Proficiency Examinations.

(1) An applicant for licensure shall complete an English Language Proficiency examination unless the language of instruction and the textbooks of the applicant's program of nursing were entirely in English.

(2) The ~~[following]~~ English Language Proficiency ~~examination shall be~~~~examinations are~~ recognized ~~by the National Council of the State Boards of Nursing (NCSBN), and the applicant shall obtain a~~~~with the~~ minimum passing standard ~~recommended by the NCSBN~~:

~~(a) International English Language Testing System (IELTS), 6.5 overall, 6.0 speaking; and~~

~~(b) Test of English as a Foreign Language (TOEFL), eighty-four (84) overall, twenty-six (26) speaking.~~

(3) The applicant shall cause the scores on the English Language Proficiency examination to be sent to the board ~~[by CGFNS]~~. [Applicants for Licensure by Endorsement.

~~(1) An applicant for licensure who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.~~

~~(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.~~

~~(3)(a) An applicant for licensure as a registered nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.~~

~~(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.]~~

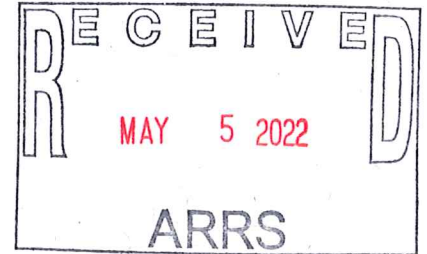
CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

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KENTUCKY BOARD OF NURSING

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Andy Beshear
Governor



May 5, 2022


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 20:480**. Licensure of graduates of foreign nursing schools.

Dear Co-Chairs West and Hale:

After discussions with Adminstrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:480, the Kentucky Board of Nursing proposes the attached suggested substitute to 201 KAR 20:480.

Sincerely,


Jeffrey R. Prather, General Counsel
Kentucky Board of Nursing
312 Whittington Parkway, Suite 300
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Phone: (502) 338-2851
Email: Jeffrey.prather@ky.gov

Final, 4-27-2022, 3:30 PM

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Nursing

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

RELATES TO: KRS 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 ~~to~~~~and~~~~to~~ 314.991. KRS 314.041 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools.

Section 1. **Applicants who are Graduates of Foreign Nursing Schools.**~~[Applicants for Licensure by Examination.]~~

(1)(a) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(b) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:110.

(2) If licensed in another country evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure **by endorsement** as a registered **nurse shall obtain and submit to the board documentation as provided in KRS 314.041(10)(b)**~~[nursing or a licensed practical nurse shall obtain a full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state].~~

(b) An applicant **for licensure by endorsement as a licensed practical nurse shall obtain and submit to the board documentation as provided in KRS 314.051(11)(b)**~~[also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation].~~~~[nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.]~~

~~[(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met.]~~

(5) **An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.**

(6) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until the applicant~~[he]~~ provides a Social Security number.

Section 2. English Language Proficiency Examinations.

(1) An applicant for licensure shall complete *an* English Language Proficiency examination unless the language of instruction and the textbooks of the applicant's program of nursing were entirely in English.

(2) The ~~[following]~~ English Language Proficiency examination shall be ~~examinations are~~ recognized *by the National Council of the State Boards of Nursing (NCSBN), and the applicant shall obtain a*~~[with the]~~ minimum passing standard *recommended by the NCSBN*;

~~(a) International English Language Testing System (IELTS), 6.5 overall, 6.0 speaking; and~~

~~(b) Test of English as a Foreign Language (TOEFL), eighty-four (84) overall, twenty-six (26) speaking].~~

(3) The applicant shall cause the scores on the English Language Proficiency examination to be sent to the board ~~[by CGFNS]~~. [Applicants for Licensure by Endorsement.

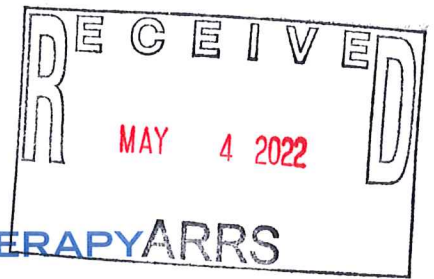
(1) An applicant for licensure who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.

(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.

(3)(a) An applicant for licensure as a registered nurse by endorsement shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.]

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

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Stephen Curley
Executive Director

May 3, 2022

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

RE: 201 KAR 22:020. Eligibility and credentialing procedure.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 22:020, the Kentucky Board of Physical Therapy proposes the attached amendment to 201 KAR 22:020.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Curley", written over a faint, larger version of the signature.

Stephen Curley, Executive Director
Kentucky Board of Physical Therapy

TEAM
KENTUCKYTM

An Equal Opportunity Employer M/F/D

Revised: 5/3/22

SUGGESTED SUBSTITUTE

**BOARDS AND COMMISSIONS
Board of Physical Therapy**

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS ~~[164.772,]~~ 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate.

(1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) ~~[Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation,]~~ Submit to the board a completed nationwide criminal background check[;] as required by KRS 327.310[;] with the background investigation completed no later than six (6) months prior to the date of the filing of the application;

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant for licensure or certification shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

- (1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;
- (2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and
- (3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
- (b) Has an unrestricted license.
- (2) A supervising physical therapist:
 - (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
 - (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
 - (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;
 - (d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
 - (e) Shall notify the board immediately if the supervisory relationship is terminated.
- (3) The applicant with a temporary permit shall:
 - (a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
 - (b) Sign documentation with temporary permit number and designation as required[~~defined~~] in 201 KAR 22:053, Section 5(5)(a) or (b); and
 - (c) Notify the board immediately if the supervisory relationship is terminated.
- (4) The temporary permit shall expire the earlier of:
 - (a) Six (6) months from the date of issuance; or
 - (b) Notice of exam results by the board. A temporary permit holder who is registered for the examination in another jurisdiction shall register with the FSBPT Score Transfer Service to have results submitted to Kentucky within forty-eight (48) hours of the release of the exam results.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

(c) "Applicant Special Accommodations Request Form", February 2022~~December 2012~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

[3\) This material is also available on the board's Web site at pt.ky.gov/Forms/Pages/Exam-Applicant.aspx.](http://pt.ky.gov/Forms/Pages/Exam-Applicant.aspx)

CONTACT PERSON: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and Fax (502) 429-7142, email stephen.curley@ky.gov.

Andy G. Beshear
Governor

KENTUCKY BOARD OF PHYSICAL THERAPY

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Stephen Curley
Executive Director



Applicant Special Accommodations Request Form

Section I – Applicant Information

Name: _____
Last First Middle

Current Street Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone Number: _____ Alternate Phone Number: _____

Email Address: _____

Date of Birth: ____/____/____
Month Day Year

Section II - Information About Your Disability and Requested Accommodations

What type of disability do you have? *Please indicate the specific diagnosis.*

When was your disability first diagnosed? _____

How does your disability affect your daily life?

How does your disability affect your ability to take examinations?

What accommodations are you requesting during the examination?

<input type="checkbox"/> Additional 30 minutes	<input type="checkbox"/> Scribe
<input type="checkbox"/> Time and a Half	<input type="checkbox"/> Zoom Test
<input type="checkbox"/> Double Test Time	<input type="checkbox"/> Screen Magnifier
<input type="checkbox"/> Separate Room	<input type="checkbox"/> Reader
<input type="checkbox"/> Other--Describe Required Accommodation _____	

What accommodations have you received in the past for the following exams?

National Physical Therapy Exam _____

PT/PTA School Exams _____

Undergraduate College Exams _____

Standardized Exams (e.g., SAT, GRE, etc.) _____

Other _____

Section III - Documentation Requirements

A comprehensive report from a qualified examiner appropriate for evaluating your disability must accompany this request form. The report must include the following:

- Name, title, credentials and area of specialization for the qualified examiner
- Specific diagnosis
- Recommendation for specific accommodations
- Rationale for requesting specific accommodations

Section IV – Additional Documentation (Optional)

Applicants may also provide additional documentation as support for their disability request. Examples of the additional documentation are:

- Observations by educators
- Results of psycho-educational or other professional evaluations

Section V – Candidate Affirmation

My signature on this form affirms that the information I have provided on this request is true and accurate. I have truthfully represented my disability and the impact it has on my daily life and examinations.

Applicant Signature

Date



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

312 Whittington Parkway, Suite 102
Louisville, KY 40222-4925
Phone (502) 429-7140
Fax (502) 429-7142
<http://pt.ky.gov>

Stephen Curley
Executive Director

May 3, 2022

Emily Caudill
Regulations Compiler
Administrative Regulation Review Subcommittee
Room 29, Capitol Annex Building
702 Capital Avenue
Frankfort, Kentucky 40601

RE: 201 KAR 22:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 22:070, the Kentucky Board of Physical Therapy proposes the attached amendment to 201 KAR 22:070.

Sincerely,

A handwritten signature in blue ink, appearing to be "S. Curley", written over a blue circular stamp.

Stephen Curley, Executive Director
Kentucky Board of Physical Therapy

TEAM
KENTUCKY™

An Equal Opportunity Employer M/F/D

Revised: 5/3/22

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS Board of Physical Therapy

201 KAR 22:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

RELATES TO: KRS 327.050, 327.060, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate and enforce reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapist assistants. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b);~~[-]~~

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework **[Evaluation]** Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency by:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL IBT):

a. Writing, twenty-two (22);

b. Speaking, twenty-four (24);

c. Listening, twenty-one (21);

d. Reading, twenty-two (22); and~~[er]~~

e. With an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;~~[-]~~

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:020 and 201 KAR 22:135;

(d) Completes the Jurisprudence Exam; and

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3)~~[and (4)]~~ shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board that satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility that is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission ~~on[for]~~ Accreditation ~~in[of]~~ Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months ~~of~~ practice, and if required, after the sixth (6th) month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days; ~~and[-]~~

~~(3)[Effective six (6) months after the Board receives an Originating Agency Number from the Federal Bureau of Investigation,]~~ Submits to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants.

(1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved ~~[?]~~ Supervisory Agreement for Physical Therapists Educated in a Foreign Country ~~[?]~~.

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

Section 3. ~~(1)~~ A foreign-educated physical therapist assistant applicant shall be credentialed if the applicant has:

~~(a)[(4)]~~ Completed the application process;

~~(b)[(2)]~~ Provided written proof that the education institution in which the applicant received his or her education to be a physical therapist assistant is recognized by its own ministry of education;

~~(c)[(3)]~~ Provided proof of legal authorization to reside and seek employment in the United States or its territories;

~~(d)[(4)]~~ Provided proof of authorization to practice as a physical therapist assistant without limitations in the country where the professional education occurred;

~~(e)[(5)]~~ Furnished the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework ~~[Evaluation]~~ Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic

deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1.](a)] Completion of appropriate coursework at a regionally accredited academic institution;

2.](b)] Continuing education in a course approved by the board; or

3.](c)] Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(f)](6)] Shows proof of English Language Proficiency by:

1.](a)] A score of not less than fifty (50) on the Test of Spoken English (TSE);

2.](b)] Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL Internet-based test (TOEFL IBT):

a.](4.)] Writing, twenty-two (22);

b.](2.)] Speaking, twenty-four (24);

c.](3.)] Listening, twenty-one (21);

d.](4.)] Reading, twenty-two (22); ~~or~~ and

e.](5.)] With an overall score of not less than eighty-nine (89); or

3.](e)] Verification that English is the native language of the country of origin; ~~and~~

(g)](7)] Submits a satisfactorily-completed application and appropriate fee as required by **201 KAR 22:020 and** 201 KAR 22:135;

(h)](8)] Completes the Jurisprudence Exam;

(i)](9)] Obtains a passing score on the National Physical Therapy Examination (NPTE); **and**

(j)](10)] Completes the requirements of Section 1(3) of this administrative regulation; **and**

(2)](14)] To be eligible for a temporary permit, a foreign-educated Physical Therapist Assistant applicant **shall/must** complete the requirements of 201 KAR 22:020, Sections 4 and 5.

Section 4. Incorporation by Reference.

(1) The "Supervisory Agreement for Physical Therapists Educated in a Foreign Country", August 2017, ~~is~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at pt.ky.gov/Forms/Pages/Foreign-Educated-Applicant-.aspx.

CONTACT PERSON: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email stephen.curley@ky.gov.



KENTUCKY BOARD OF LICENSURE AND CERTIFICATION FOR DIETITIANS & NUTRITIONISTS

Andy Beshear
Governor

P. O. Box 1360
Frankfort, Kentucky 40602
Phone (502) 892-4254
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<http://bdn.ky.gov>



May 6, 2022

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 33:015**. Application; approved programs.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 33:015, the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists proposes the attached amendments to 201 KAR 33:015.

Sincerely,

/s/ August Lincoln Pozgay
August Lincoln Pozgay, Board Counsel
august.pozgay@ky.gov
502-782-0714 (office)

Kentucky Board of Licensure and Certification for Dietitians and Nutritionists
Mailing Address:
P.O. Box 1360
Frankfort, KY 40602

Physical Address:
500 Mero St, 2 SC 32
Frankfort, KY 40601

Final, 5-3-2022

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021, 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041 requires the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure~~[or]~~, certification, or dual licensure as a nutritionist and as a dietitian; and establishes requirements for programs of study~~[institutions]~~ to be approved by the board.

Section 1. Application.

(1) An ~~Application for Licensure~~, ~~[or]~~ Certification, or Dual Licensure shall be submitted for licensure to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An ~~Application for Licensure~~, ~~[or]~~ Certification, or Dual Licensure shall be submitted for certification to practice nutrition after the requirements established in KRS 310.031 are met.

(3) An ~~Application for Licensure, Certification, or Dual Licensure~~ shall be submitted for dual licensure to practice dietetics and nutrition after the requirements established in KRS 310.021 and ~~KRS~~ 310.031 are met.

~~(4)~~(3) Each ~~Application for Licensure~~, ~~[or]~~ Certification, or Dual Licensure shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

~~(5)~~(4) Each application shall be signed by the applicant.

~~(6)~~(5)(a) Each application to practice dietetics and each application for dual licensure shall include:

1. A copy of the applicant's current registration card issued by the Commission on ~~Dietetic Registration~~; ~~[or]~~

2. A letter from the Commission on Dietetic Registration indicating successful completion of the registration examination~~[-]~~; or

3. A Credential Verification Statement from the Commission on Dietetic Registration.

(b) An Academy of Nutrition and Dietetics membership card shall not constitute compliance with paragraph (a)1. of this subsection.

~~(7)~~(6) Each application to practice nutrition and each application for dual licensure shall include a certified copy of the applicant's official master's transcript or meet the criteria established in~~set forth at~~ KRS 310.031(3).

~~(8)~~(7) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall:

(a) List each jurisdiction and license or registration number;

(b) Provide a complete licensure disciplinary history; and

(c) Provide license verification documentation from each respective jurisdiction that is:

1. Created by each respective jurisdiction within the sixty (60) days prior to the submission of the application; and

2. Is not a license card, scroll, initial certificate, diploma, or other initial license document. ~~[submit a complete Verification of Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently or has formerly been licensed or registered.]~~

Section 2. Approved Programs.

(1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

- (a) Communication;
- (b) Counseling;
- (c) Physical and biological sciences;
- (d) Social sciences;
- (e) Research;
- (f) Food composition;
- (g) Nutrient metabolism;
- (h) Food systems management;
- (i) Nutrition therapy;
- (j) Lifecycle nutrition; and
- (k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

- (a) Food sources of nutrients;
- (b) Physiological and chemical processes of digestion, absorption, and metabolism;
- (c) Nutrient needs throughout the life cycle;
- (d) Nutrition assessment processes;
- (e) Pathophysiology of disease states;
- (f) Medical nutrition therapy;
- (g) Nutrient needs in exercise and fitness; and
- (h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicums, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

Section 3. Incorporation by Reference.

(1) "Application for Licensure, Certification, or Dual Licensure[;]", January 2022, is incorporated by reference. ~~[The following material is incorporated by reference:~~

- ~~(a) "Application for Licensure or Certification", July 2015; and~~
- ~~(b) "Verification of Licensure in Other Jurisdictions", July 2015.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 500 Mero Street, 2SC32, [Division of Occupations and Professions, 911 Leewood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the board's Web site at[is] https://bdn.ky.gov/.***

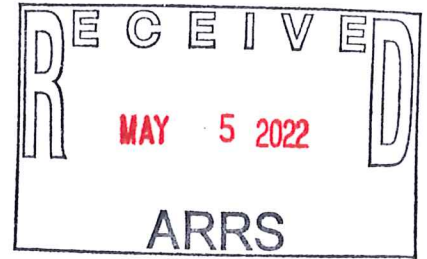
CONTACT PERSON: August Lincoln Pozgay, Executive Advisor, Public Protection Cabinet, 500 Mero Street, 2NCWK#2, Frankfort, Kentucky 40601, phone 502-782-0714, fax 502-564-4818, email august.pozgay@ky.gov.



KENTUCKY BOARD OF ALCOHOL & DRUG COUNSELORS

Andy Beshear
Governor

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Frankfort, KY 40602
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<http://adc.ky.gov>



May 5, 2022

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 35:070**, Supervision experience
Kentucky Board of Alcohol and Drug Counselors

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 35:070, the Kentucky Board of Alcohol and Drug Counselors proposes the attached amendment to 201 KAR 35:070.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin R. Winstead".

Kevin R. Winstead, Commissioner
Department of Professional Licensing
(Contact person for this regulation)
KevinR.Winstead@ky.gov
Office: 502-782-8805

cc: Stacy Auterson

Subcommittee Substitute
BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(As Amended at ARRS)

201 KAR 35:070. Supervision experience.

RELATES TO: KRS 309.0814, 309.083(4), ~~309.0830~~, 309.0831, 309.0832, 309.0833, ~~309.0834~~ 309.0841, 309.0842, ~~309.0830, 309.0834~~

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.0814(1), 309.083(3), 309.0831(3), 309.0832(10), 309.0833(2), 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 through 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience for licensed alcohol and drug counselors, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, certified alcohol and drug counselor associates II, certified alcohol and drug counselor associates I, and registered alcohol and drug peer support specialists.

Section 1. ~~[(1)(a)]~~ Peer Support Specialist Supervision. ~~(1)(a)~~ Peer support specialist supervision shall continue throughout the period of registration. The supervision shall include the four (4) following domains:

1. Advocacy;
2. Ethical Responsibility;
3. Mentoring and Education; and
4. Recovery and Wellness Support.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall include a minimum of ten (10) hours in each of the following four (4) domains:

- (a) Screening assessment and engagement;
- (b) Treatment planning, collaboration, and referral;
- (c) Counseling; and~~;~~
- (d) Professional and ethical responsibilities.~~;~~

(3) Clinical supervision shall ***meet the minimum requirements of the following***:

(a) For applicants with a high school diploma or high school equivalency diploma, ***require*** ~~require~~ ***requires*** 300 hours of clinical supervision with a minimum of ten (10) hours in each domain listed in subsection (2);

(b) For applicants with an associate's degree in a relevant field, ***require*** ~~require~~ ***requires*** 250 hours of clinical supervision with a minimum of ten (10) hours in each domain;

(c) For applicants with an bachelor's degree in a relevant field, ***require*** ~~require~~ ***requires*** 200 hours of

clinical supervision with a minimum of ten (10) hours in each domain; and

(d) For applicants with a master's degree or higher in a relevant field, **require [requires]** 100 hours of clinical supervision with a minimum of ten (10) hours in each domain.

(4)(a) Clinical supervision may occur in individual or **[in]** group settings.

(b) The methods of clinical supervision shall include:

1. Face-to-face;

2. Video conferencing; or

3. Observation, which includes a period of discussion to critique the observed sessions, accompanied by a written explanation **that [which]** includes strengths and deficiencies observed by the supervisor, and develops goals for the supervisee[Teleconferencing].

(5) Supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision exceeding two (2) hours.

(6) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, which documents the required hours of supervision that has occurred during the work experience, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as an Alcohol and Drug Counselor, or Application for Licensure as a Clinical Alcohol and Drug Counselor, which are incorporated by reference in 201 KAR 35:020.

(7) For applicants applying for licensure who already possess a certified alcohol and drug counselor credential, supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the 100 hour supervision requirement under KRS 309.0832(3) and subsection (3)(d) of this section.

Section 2. Except as established by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall also submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as established in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision

shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol drug counselor requesting to become approved by the board to provide supervision shall:

1. Submit a complete and signed Form 4, Request to Provide Supervision;
2. For a certified alcohol and drug counselor or licensed alcohol and drug counselor, have at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and have attended the board-sponsored supervision training;
3. For a licensed clinical alcohol and drug counselor, have at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or have attended the board-sponsored supervision training; and
4. Submit information as to whether or not the applicant has any unresolved complaints against the applicant's license or certification in Kentucky or any other state and, if there is an unresolved complaint, submit official documentation of the complaint or complaints.

(b) The board shall consider the severity, frequency, and history of violations and unresolved complaints.

(c) A person approved by the board on or after March 24, 2021 to provide supervision **shall [will]** have a maximum of five (5) consecutive years from the date of the approval to meet the requirements of KRS 309.0834(1) to become a certified clinical supervisor, and can continue to provide supervision until the earlier of the expiration of the five (5) year period or the date they become a certified clinical supervisor.

(d) [The] Approval as a supervisor pursuant to this subsection shall be limited to five (5) years, **shall not [cannot]** be extended past the five (5) year limit, and **shall be [is]** available only once in the person's lifetime.

(2) A board approved supervisor shall obtain a minimum of three (3) board-sponsored continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twenty-five (25) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

(5) The board may extend certification as a certified clinical supervisor to a person who is approved to provide clinical supervision but does not meet all the provisions of KRS 309.0834(1) if the person:

(a) Submits a complete KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor, with payment of the application fee required by 201 KAR **35:020 [32:020]** Section 1(1);

(b) Is a licensed clinical alcohol and drug counselor or a certified alcohol and drug counselor in Kentucky prior to March 24, 2021;

(c) Was approved by the board to provide clinical supervision prior to March 24, 2021; and

(d) Pays the certification fee required by 201 KAR 35:020 Section 3(4) after the board's approval

of their KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor. A person approved by the board before March 24, 2021 to provide clinical supervision shall, within twelve (12) months of the effective date of this amendment to this administrative regulation, apply for grandparenting as a certified clinical supervisor pursuant to this subsection.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to ensure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling or peer support services provided by the supervisee. If the board receives a complaint concerning a supervisee, the board shall notify the supervisor of record.

(6) For each certificate or license holder supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the domain covered, date of session, length of session, and method of supervision of the session. For each registrant supervised, the supervisor shall maintain a KBADC Form 8, Peer Support Specialists Verification of Supervision Form, for each supervisory session that shall include the date, length, method, and domain covered during the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information that could be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, or certified alcohol and drug counselor associate II, the supervisor of record shall:

- (1) Review all alcohol and drug assessments and treatment plans;
- (2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;
- (3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:
 - (a) Be updated, revised as needed, and submitted to the board annually;
 - (b) Include intended format and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;
- (4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;
- (7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;
- (8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and
- (9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

- (1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:
 - (a) Be updated, revised as needed, and submitted to the board annually;
 - (b) Include intended format and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;
- (2) Review and countersign all peer recovery service plans;
- (3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;
- (4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;
- (7) Have knowledge of the methods and techniques being used by the supervisee;
- (8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and
- (9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor, as needed, in addition to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as established in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision established in the supervisory agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor that results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a ~~[""]~~qualified mental health professional~~[""]~~ as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances ***includes the [include situations such as]*** death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 through 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record.

Section 13. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time established by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board-sponsored training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to ***ensure [insure]*** that the disciplined credential holder's practice is in compliance with KRS 309.080 through 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or the practice of alcohol and drug counseling in a competent manner;

(h) Review and countersign assessments, as needed or appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the

disciplined credential holder, his or her practice, or the supervision process.

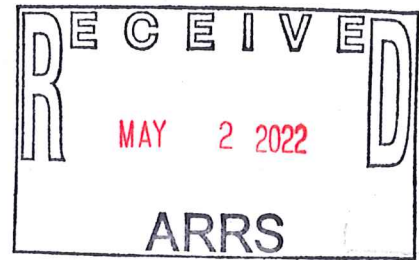
(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

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

- (a) "KBADC Form 3, Supervisory Agreement", March 2021;
- (b) "KBADC Form 4, Request to Provide Supervision", June 2021;
- (c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", March 2021;
- (d) "KBADC Form 7, Supervision Evaluation", March 2021;
- (e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", March 2021;
- (f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", March 2021;
- (g) "KBADC Form 13, Verification of Clinical Supervision", **May [January] 2022**~~[March 2021]~~;
- ~~[and]~~
- (h) "KBADC Form 14, Supervision Annual Report", March 2021; ~~and[-]~~
- (i) "KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor", **May [January] 2022**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.



Board of Medical Imaging and Radiation Therapy

Andy Beshear
Governor

125 Holmes Street, Suite 320
Frankfort, Kentucky 40601
502-782-5687
<http://kbmirt.ky.gov/>

Doyle Decker
Board Chair

May 2, 2022

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 46:060**. Continuing education requirements.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 46:060, the Board for Medical Imaging and Radiation Therapy proposes the attached amendment to 201 KAR 46:060.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Morgan".

Elizabeth Morgan, Executive Director
Board for Medical Imaging and Radiation Therapy
125 Holmes Street, Suite 320
Frankfort, Kentucky 40601

Final, 4-28-2022

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Medical Imaging and Radiation Therapy

201 KAR 46:060. Continuing education requirements.

RELATES TO: KRS 311B.050, 311B.110

STATUTORY AUTHORITY: KRS 311B.050(2), (4), 311B.110(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.050(4) and 311B.110(6) require the board to determine and enforce continuing education requirements and establish guidelines for the approval of continuing education. ~~[The board is authorized by]~~ KRS 311B.110(3) authorizes the board to require that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the approval of continuing education courses.

Section 1. Mandatory Continuing Education Units.

(1) Medical imaging technologists, advanced imaging professionals, radiographers, nuclear medicine technologists, and radiation therapists shall obtain a minimum of twenty-four (24) continuing education units per biennium.

(2) Limited X-Ray machine operators shall obtain a minimum of twelve (12) continuing education units per biennium.

(3) A continuing education unit shall be earned by participating in fifty (50) contact minutes in an approved continuing education program.

Section 2. Methods of Acquiring Continuing Education.

(1) Continuing education units applicable to the renewal of a license shall be directly relevant to the professional growth and development of the medical imaging technologist, radiation therapist, advanced imaging professional, radiographer, nuclear medicine technologist, or limited x-ray machine operator.

(2) Continuing education units may be earned by completing any of the following educational activities:

(a) Academic courses relevant to the radiologic sciences or patient care and is offered by a post-secondary educational institution accredited by a mechanism recognized by the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technologist Certification Board (NMTCB). Relevant courses in the biologic sciences, physical sciences, medical imaging~~[radiologic sciences]~~, interventional procedures, radiation therapy, health and medical sciences, social sciences, verbal communication (oral~~[verbal]~~ and written), mathematics, computer use related to medical imaging or radiation therapy~~[computers]~~, management, cultural competency and ethics related to medical professionals, or post-secondary adult education methodology shall be considered for acceptance~~[accepted]~~. Some subject areas that shall not be applicable include formal education clinical hours ~~or/~~ credits, independent study, courses in archeology, astronomy, fine arts, geology, geography, history, music, philosophy, and religion;

(b) Continuing education units approved by a professional organization recognized by the board or designated as a Recognized Continuing Education Evaluation Mechanism (RCEEM); or

(c) Continuing education units offered by other individuals, organizations, or institutions that have been approved by the board.

(3) Academic course credit equivalency for continuing education units shall be based on one (1) academic quarter credit hour is equal to twelve (12)~~[fifteen (15)]~~ continuing education units or one (1) academic semester credit hour is equal to sixteen (16) continuing education units.

~~[(4) A presenter may earn for the development of a continuing education presentation a maximum of twice the continuing education units awarded for the delivery of the presentation. The presenter shall also receive the continuing education approved for attendance at the presentation.]~~

~~(5) Credit shall not be issued for repeated instruction of the same course within the biennium.]~~

Section 3. Procedure for Preapproval of Continuing Education Programs.

(1) A continuing education program may be approved by two (2) mechanisms:

(a) By applying and receiving approval from a RCEEM; or

(b) By applying and receiving approval from the board.

(2) For board approval of continuing education programs, a person, agency, or company, "CE Sponsor", shall:

(a) Submit KBMIRT Form 9, Continuing Education Program Approval Request Form at least twenty (20) business days in advance of the date of the offering;

(b) Submit the continuing education approval fee as established by 201 KAR 46:020, Section 12;

(c) Provide program participants~~[participant(s)]~~ with documentation of participation such as a certificate of completion;

(d) Participate in the audit of approved continuing education programs including presentation evaluations, attendance, and continuing education participation documentation, as requested by the board; and

(e) Comply with policies set forth by the board, the ARRT, and NMTCB regarding continuing education programs.

(3) A continuing education activity shall be approved if the board determines that the activity is appropriate. The criteria as established in paragraphs (a) through (d) of this subsection shall be used by the board to determine the preapproval of a continuing education program.

(a) The activity shall enhance knowledge and skills associated with professional performance.

(b) It shall pertain to services provided to patients, the public, or medical profession by an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator.

(c) The presenter shall submit a curriculum vitae, an abstract, the objectives, and an outline of the presentation.

(d) The objectives shall be obtainable for the time frame, outline, and scope of the presentation.

Section 4. Responsibilities and Reporting Requirements of Licensee. A licensee shall be responsible for obtaining required continuing education units and submit documents only if requested by the board. Each licensee shall maintain all documentation verifying successful completion of continuing education units for the current and prior biennium. Documentation shall include:

(1) Official transcripts for completed academic courses;

(2) A copy of the program showing an individual as a presenter of an approved continuing education program; or

(3) Completion certificates or cards for continuing education programs.

Section 5. Audit Procedures. (1) The board shall audit a random selection of twenty-five (25) percent of limited x-ray machine operator licensees and ten (10) percent of all other licensees per year and notify the randomly-selected licensees.

(2) Each licensee selected for audit shall furnish documentation of completed continuing education units on KBMIRT Form 8, Licensee Continuing Education Documentation Form, for the identified time frame, and provide the board with a copy of the certificates or records of completion.

(3) Failure to comply with an audit may result in non-renewal, suspension or revocation of license.

Section 6. Temporary Licensees. Continuing education requirements shall not apply to the holders of a temporary license.

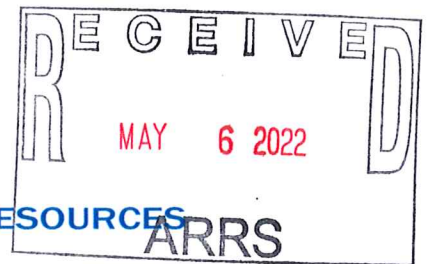
Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 9, "Continuing Education Program Approval Request Form", March 2020; and

(b) KBMIRT Form 8, "Licensee Continuing Education Documentation Form", March 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbmirt.ky.gov>.**

CONTACT PERSON: Elizabeth Morgan, Executive Director, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

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

Brian Clark
Deputy Commissioner

May 6, 2022

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 4:010**. Districts.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:010, Districts, proposes the attached amendment to 301 KAR 4:010.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert".

Jenny Gilbert
Commissioner's Office
Kentucky Department of Fish and Wildlife Resources
1 Sportsmen's Lane
Frankfort, KY 40601

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

301 KAR 4:010. Districts.

RELATES TO: KRS 150.010, 150.022(1), 150.025

STATUTORY AUTHORITY: KRS **150.022**, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate fish and wildlife resources. ***KRS 150.022 authorizes wildlife districts.*** This administrative regulation designates the counties within each wildlife district. ~~*[It is necessary to place each county in one (1) of the nine (9) wildlife districts specified in KRS 150.022.]*~~

Section 1. Wildlife Districts. ~~*[(1)]*~~ For the purposes of representation on the Fish and Wildlife Resources Commission, each county in Kentucky ***shall be[is]*** assigned to a wildlife district ***as established in subsections (1) through (9) of this section.*** ~~*[as]*~~ ~~*[indicated below:]*~~

~~*(1)[(a)]*~~ District I - Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg, Caldwell, Crittenden, ***and*** Christian.

~~*(2)[(b)]*~~ District II - Union, Webster, Hopkins, Muhlenberg, Todd, Henderson, McLean, Logan, Simpson, Allen, Warren, Butler, Ohio, Daviess, ***and*** Hancock.

~~*(3)[(c)]*~~ District III - Meade, Bullitt, Jefferson, Spencer, Oldham, Breckinridge, ***and*** Shelby.

~~*(4)[(d)]*~~ District IV - Hardin, Grayson, Nelson, Washington, Marion, Larue, Taylor, Adair, Cumberland, Monroe, Barren, Green, Hart, Edmonson, ***and*** Metcalfe.

~~*(5)[(e)]*~~ District V - Carroll, Owen, Grant, Harrison, Robertson, Bracken, Pendleton, Gallatin, Boone, Kenton, Campbell, Trimble, ***and*** Henry.

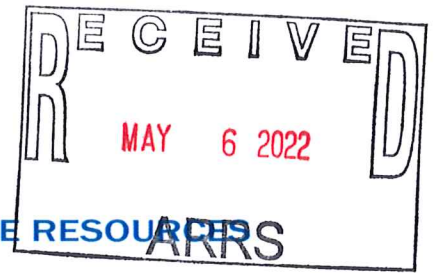
~~*(6)[(f)]*~~ District VI - Franklin, Scott, Anderson, Woodford, Fayette, Mercer, Jessamine, Boyle, Casey, Lincoln, Garrard, Rockcastle, Lee, Estill, Powell, Clark, ***and*** Madison.

~~*(7)[(g)]*~~ District VII - Lawrence, Magoffin, Johnson, Martin, Pike, Floyd, Breathitt, Knott, Perry, Letcher, Leslie, Harlan, ***and*** Owsley.

~~*(8)[(h)]*~~ District VIII - Mason, Lewis, Greenup, Carter, Boyd, Morgan, Wolfe, Menifee, Montgomery, Bath, Rowan, Fleming, Nicholas, Bourbon, ***and*** Elliott.

~~*(9)[(i)]*~~ District IX - Clinton, Russell, Wayne, Pulaski, McCreary, Whitley, Laurel, Clay, Knox, Bell, ***and*** Jackson.

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



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

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Brian Clark
Deputy Commissioner

May 6, 2022

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 4:020**, Ballard Wildlife Management Area restrictions.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:020, Ballard Wildlife Management Area restrictions, proposes the attached amendment to 301 KAR 4:020.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert". The signature is written in a cursive, flowing style.

Jenny Gilbert
Commissioner's Office
Kentucky Department of Fish and Wildlife Resources
1 Sportsmen's Lane
Frankfort, KY 40601

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

301 KAR 4:020. Ballard Wildlife Management Area restrictions.

RELATES TO: KRS 150.010, 150.025, 150.300, 150.600

STATUTORY AUTHORITY: KRS ~~[13A.350,]~~150.025(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.025(1)(g) authorizes the department to promulgate administrative regulations that apply to a limited area or to the entire state. This administrative regulation establishes provisions for Ballard Wildlife Management Area**~~[This administrative regulation pertains to entering upon the premises and disturbing or poaching waterfowl and other wildlife on Ballard Wildlife Management Area, located in Ballard County. This administrative regulation is necessary to prevent disturbance of migratory waterfowl. The function of this administrative regulation is to insure that migratory waterfowl and other wildlife are not disturbed or molested during specified periods or in places that are closed. The purpose of this amendment is to [update terminology and] clarify the administrative regulation].~~

Section 1. Trespass by Unauthorized Persons. A person shall not enter upon the premises of the Ballard Wildlife Management Area for any reason during the period of October 15 through March 15, except~~[the following authorized personnel]:~~

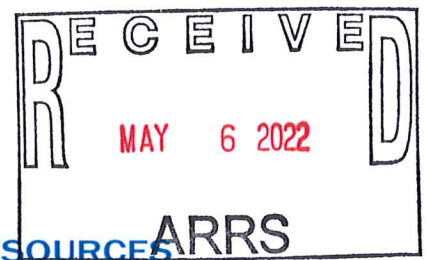
- (1) Department employees acting under the direction of the commissioner of the department;
- (2) The director of the Wildlife Division;
- (3) The Wildlife Management Area Manager;
- (4) U.S. Fish and Wildlife Service special agents; and
- (5) Persons participating in department managed activities.

Section 2. ~~(1)[Carrying of Firearms or Accompanied by a Dog. Only authorized personnel or U.S. Fish and Wildlife Service special agents engaged in assigned duties, shall enter upon the premises of the Ballard Wildlife Management Area during the period October 15 through March 15, shall be permitted to be accompanied by a dog and possess firearms necessary to conduct permitted activities.~~

~~Section 3. Trespass by Boat.]~~ During periods of high water or flood, an unauthorized person shall not enter upon the premises of the Ballard Wildlife Management Area by boat for any purpose.

~~(2)~~ High water or flood conditions shall[do] not affect or change the management area boundary, which is marked by yellow signs.

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



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

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

Brian Clark
Deputy Commissioner

May 6, 2022

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 4:100.** Peabody Wildlife Management Area use requirements and restrictions.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:100, Peabody Wildlife Management Area use requirements and restrictions, proposes the attached amendment to 301 KAR 4:100.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert". The signature is written in a cursive, flowing style.

Jenny Gilbert
Commissioner's Office
Kentucky Department of Fish and Wildlife Resources
1 Sportsmen's Lane
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

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

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions.

RELATES TO: KRS 150.250, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.195(4)(f), (g), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to acquire lands for public use, to promulgate administrative regulations for their management, and to charge fees for their use. KRS 150.195(4)(f) and (g) authorize the department to establish the term and manner of license and permit sales. KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. This administrative regulation establishes a permit for public use of the Peabody Wildlife Management Area and places necessary restrictions on its use by the public.

Section 1. Definitions. (1) "The area" means the Peabody Wildlife Management Area.

(2) "Group" means a family, organization, or gathering using the area for a specific event.

(3) "The Peabody Wildlife Management Area" means the lands in Hopkins, Ohio, and Muhlenberg Counties owned or managed by the Department of Fish and Wildlife Resources.

(4) "Permanent structure" means a blind, pit, stand, or other structure left in place for more than twenty-four (24) hours.

Section 2. Permits Required. Except as ***established[provided]*** in Sections 3 and 4 of this administrative regulation, a person sixteen (16) years or older while on the area shall:

(1) Have in his ***or her*** possession a Peabody Wildlife Management Area user permit; or

(2) Be a member of a group with an event permit, either an individual event permit or annual event permit.

Section 3. Individual and Annual Event Permits. (1) In lieu of individual user permits, a person representing a group using the area shall have in possession an event permit and the area use permit as established in 301 KAR 3:010, Section 6.

(2) An event permit shall:

(a) Apply to each member of the group;

(b) Specify:

1. If it is an individual event permit, its period of validity, not to exceed four (4) days or, if it is an annual event permit, the dates the permit is not valid;

2. The activities in which the group will engage;

3. The name of the group; and

4. The name and address of an individual representing the group.

(3) The department may:

(a) Limit the number of event permits issued; or

- (b) Assign a specific location for an event.
- (4) The department shall:
 - (a) Deny the application for an event which would interfere with:
 - 1. A management objective for the area; or
 - 2. Other uses or users; or
 - (b) Revoke individual or event permits for violations of the terms of the application or this administrative regulation; ***and***
 - (c) Not issue an event permit for an event at which wildlife is taken.

Section 4. Permit Exceptions. An individual or event permit shall not be required of a person:

- (1) On official business and employed by or an agent of:
 - (a) Peabody Coal Company;
 - (b) Beaver Dam Coal Company;
 - (c) Peabody Holding Company; or
 - (d) The Kentucky Department of Fish and Wildlife Resources;
- (2) En route through the area on a state or county road; or
- (3) On the area:
 - (a) As a necessary part of his ***or her*** job; or
 - (b) For the protection of public safety or well-being.

Section 5. Permit Applications. (1) An applicant for an individual permit shall:

- (a) Apply at an authorized license agent; and
- (b) Pay the fee ***established[specified]*** in 301 KAR 3:022.
- (2) An applicant for an event permit shall:
 - (a) Apply on ***the Peabody Wildlife Management Area and Starfire and Robinson Forest Wildlife Management Area Permit Application[a form provided by the department]***; and
 - (b) Pay the fee ***established[specified]*** in 301 KAR 3:022.
- (3) The department shall keep applications and copies of event permits issued in a retrievable form for a minimum of one (1) year after the permits expire.

Section 6. Prohibited Activities. While on the area, a person shall not:

- (1) Swim for recreational purposes;
- (2) Camp, except in a primitive fashion along an existing road;
- (3) Leave a campfire unattended;
- (4) Operate a motorized vehicle:
 - (a) Off an existing road; or
 - (b) Where prohibited by signs;
- (5) Block a road or gate;
- (6) Park, except in a designated parking area unless none are available;
- (7) Park or camp within 100 feet of well heads;
- (8) Target shoot, except at a designated area;
- (9) Construct a permanent structure;
- (10) Leave a temporary blind or stand in place overnight;
- (11) Operate a boat;

(a) With a centerline exceeding eighteen (18) feet six (6) inches in length, except:

1. A canoe shall not have a length restriction; and
2. A pontoon boat shall not exceed twenty-two (22) feet in length;

(b) At greater than idle speed; or

(c) With an internal combustion engine on:

1. Goose Lake;
2. Island Lake; or
3. South Lake.

Section 7. Incorporation by Reference. (1) "Peabody Wildlife Management Area and Starfire and Robinson Forest Wildlife Management Area Permit Application", July 04, 2004 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

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

Brian Clark
Deputy Commissioner

May 6, 2022

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 4:110**. Administration of drugs to wildlife.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 4:110, administration of drugs to wildlife, proposes the attached amendment to 301 KAR 4:110.

Sincerely,

A handwritten signature in black ink that reads "Jenny Gilbert". The signature is written in a cursive, flowing style.

Jenny Gilbert
Commissioner's Office
Kentucky Department of Fish and Wildlife Resources
1 Sportsmen's Lane
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

Final Version: 5/5/2022 1:45 PM

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

301 KAR 4:110. Administration of drugs to wildlife.

RELATES TO: KRS 150.025

STATUTORY AUTHORITY: 2008 Ky. Acts ch.133, sec.5, 150.025(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts ch.133, sec.5 requires[instructs] the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive wildlife. This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions.~~[EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.]~~

Section 1. Definitions. (1) "Captive wildlife":

(a) Means wildlife legally kept in confinement by fence or other structure or restraint intended to prevent escape; and

(b) Does not mean[include] fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of any wildlife.

(3) "Noncaptive wildlife":

(a) Means wildlife not legally kept in confinement by fence or other structure or restraint intended to prevent escape; and

(b) Does not mean[include] fish.

Section 2. Administration of Drugs. Except as established[provided] in Section 4 of this administrative regulation, a person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner pursuant to Section 3 of this administrative regulation.

Section 3. Petitions. (1) A party[Persons or entities] shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drugs[drug(s)].

(2) The commissioner may issue a waiver for the petition requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

(a) Public safety; or

(b) Wildlife disease outbreaks.

Section 4. Exemptions. This administrative regulation shall not apply to: (1) The administration of drugs to captive wildlife including captive cervids;

- (2) The treatment of sick or injured wildlife by:
 - (a) A licensed veterinarian;
 - (b) A holder of a wildlife rehabilitation permit; or
 - (c) A holder of a valid scientific collection permit;
- (3) The administration of drugs by Commercial Nuisance Wildlife Control operators licensed by the department as ***established[set forth]*** in 301 KAR 3:120; or
- (4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 5. Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife if the officer has probable cause to believe the noncaptive wildlife have been administered drugs in violation of this administrative regulation.

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

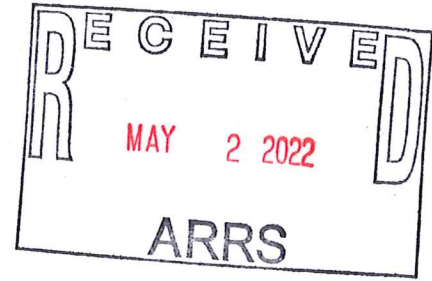
Andy Beshear
Governor



Jamie Link
Secretary, Education and
Labor Cabinet

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

KENTUCKY DEPARTMENT OF EDUCATION
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April 27, 2022

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

Re: **702 KAR 3:090**. Depository of Board, Collateral.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above-referenced administrative regulation, the Kentucky Board of Education proposes the attached suggested amendment.

Sincerely,

Todd G. Allen
General Counsel

Attachment

Staff-suggested Amendment

**Final Version 4/27/2022
EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education**

702 KAR 3:090. Depository of board, collateral.

Page 2

Section 1(2)

Line 17

After "education deposit", insert "shall".

Delete "will".

Page 2

Section 2

Line 21

After "local board", insert "shall".

Delete "must".

Andy Beshear
Governor



Jamie Link
Secretary, Education and
Labor Cabinet

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

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April 26, 2022

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

VIA EMAIL

Re: **704 KAR 7:170**. Corporal Punishment

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above-referenced administrative regulation, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

Todd G. Allen
General Counsel

Attachment

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS)

704 KAR 7:170. Corporal punishment.

RELATES TO: KRS 156.160, ~~[KRS]158.6451, [KRS 503.110, KRS]503.050, [KRS]503.070,~~
503.110

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.444

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 ~~authorizes~~**[grants]** the Kentucky Board of Education ~~to manage~~**[the management]** and control ~~[of]~~the common schools and all programs operated within those schools. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of public school students. KRS 158.444 requires the Kentucky Board of Education to promulgate administrative regulations relating to school safety, student discipline, and related matters. **This administrative regulation establishes the conditions under which corporal punishment may be used in public schools.**

Section 1. Definitions. (1) "Corporal punishment" means the deliberate infliction of physical pain by any means upon the whole or any part of a student's body as a penalty or punishment for student misbehavior. [;]

(2) ~~["Qualified mental health professional" is] [means the same as] [defined by] [in] [KRS 202A.011(12)]. [;]~~

~~[(3)]~~ "Dangerous instrument" ~~is~~ **[means the same as]** defined ~~by~~**[in]** KRS 500.080**(3)**. [;]

~~(3) [(4)]~~ "Deadly weapon" ~~is~~ **[means the same as]** defined ~~by~~**[in]** KRS 500.080**(4)**. [;]

~~(4)~~ **"Evidence-based" is defined by 34 C.F.R. 77.1.**

(5) "Physical injury" ~~is~~ **[means the same as]** defined ~~by~~**[in]** KRS 500.080**(13)**. [; ~~and~~

~~(6)~~ **"Qualified mental health professional" is defined by KRS 202A.011(12).**

~~(7) [(6)]~~ "Serious physical injury" ~~is~~ **[means the same as]** defined ~~by~~**[in]** KRS 500.080**(15)**.

~~(8) [(7)]~~ **"Trauma-informed approach" is defined by KRS 158.4416(1).**

~~[(8)]~~ **"Evidence-based" is defined by 34 C.F.R.77.1.]**

Section 2. ~~A~~**[No]** student with an Individual Education Program (IEP) pursuant to 707 KAR Chapter 1, 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, or identified as a homeless or foster care youth pursuant to 704 KAR 7:090 shall **not** be subjected to corporal punishment.

Section 3. (1) **Except for a local board of education that prohibits corporal punishment pursuant to Section 7(1)(a) of this administrative regulation,** within the first five (5) days of enrollment each school year, the school shall request written consent from the legal guardian of each student to use corporal punishment as a behavior intervention for their child. The written consent shall inform the legal guardian of how to access the student code of conduct, describe the code of conduct violations that may result in corporal punishment, and notify the legal

guardian that consent may be withdrawn at any point during the school year. Absent valid written consent signed by the legal guardian, corporal punishment shall not be administered.

(2) Before administering corporal punishment to a pupil, the school shall contact the child's legal guardian to provide prior notification and receive affirmative verbal consent.

Section 4. ~~[Notwithstanding the provisions of KRS 503.070 and KRS 503.050,]~~ Prior to administering corporal punishment to a pupil, the school shall attempt to remedy problematic behavior through the use of evidence-based practices consistent with a trauma-informed approach [other non-physical means].

Section 5. (1) Corporal punishment may only be administered by the Principal or Assistant Principal. Corporal punishment shall only be administered in the presence of at least one **(1)** additional certified staff member who is the same gender as the student.

(2) Corporal punishment shall not be administered in a location where another student, staff member other than those described in subsection (1) of this section, or adult visitor to the school can see or hear the corporal punishment.

~~(3)~~**(2)** ~~A~~**No** staff member shall **not** be compelled to administer or witness corporal punishment.

Section 6. (1) After administering corporal punishment, the school shall ensure that the student receives a minimum of thirty (30) minutes of counseling provided by the school's guidance counselor, school social worker, school psychologist, or other qualified mental health professional no later than the end of the next school day.

(2) Each incidence of corporal punishment ~~shall~~**must** be recorded in the student information system. Schools shall report:

(a) The time and date **[which]** the punishment was administered;

(b) The name and position of the individual who administered the punishment;

(c) The names and positions of any witnesses to the punishment;

(d) The time and date of the prior consent required under Section 3 **of this administrative regulation;**

(e) The name and relationship of the individual providing consent under Section 3 **of this administrative regulation;**

(f) The behavioral interventions deployed prior to corporal punishment as required under Section 4 **of this administrative regulation;** and

(g) The time and date of the student counseling appointment required under Section 5 **of this administrative regulation.**

Section 7. (1) Each local board of education shall adopt a policy that either:

(a) Prohibits the use of corporal punishment in the district; or

(b) Allows the use of corporal punishment in the district.

(2) If the local board of education adopts a policy allowing the use of corporal punishment, its policy shall:

(a) Define the circumstances under which corporal punishment may be deployed which shall not exceed the justification included in KRS 503.110;

- (b) Define the procedures for deploying **corporal[such]** punishment;
- (c) Define the tool or instrument to be used when administering corporal punishment and include a prohibition on the use of dangerous instruments or deadly weapons;
- (d) Define the limits on corporal punishment and **ensure[ensures]** that corporal punishment **shall[does]** not result in physical injury or serious physical injury; and
- (e) Define the procedures for documenting and reporting **corporal[such]** punishment.

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

CONTACT PERSON: Todd G. 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.

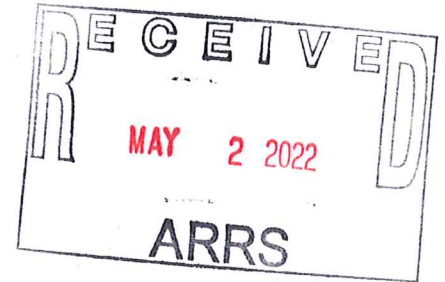
Andy Beshear
Governor



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April 26, 2022

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

VIA EMAIL

Re: **704 KAR 19:002**. Alternative Education Programs

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above-referenced administrative regulation, the Kentucky Board of Education proposes the attached suggested substitute.

Sincerely,

Todd G. Allen
General Counsel

Attachment

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS)

704 KAR 19:002. Alternative education programs.

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 **authorizes[grants]** the Kentucky Board of Education **to manage[the authority over the management]** and control **the[of]** programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) **"A1 school" is defined by 703 KAR 5:240.**

(2) "Alternative education program" is defined by KRS 160.380(1)(b)~~[(a)]~~.

(3)[(2)] "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in the definitions in 707 KAR 1:002 for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(4) "Education record" is defined by [means the same as] 20 U.S.C. 1232g.

(5) "Long term placement" means a student enrolled in an alternative education program for more than ten school days.

(6)[(3)] "Individual education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(6)[(7)][(4)] "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades **6[six (6)]** through **12[twelve (12)]** to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(7)[(8)][(5)] "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program that includes~~[, as appropriate,]~~ academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(8)[(9)][(6)] "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel:

(a)1. To ensure the safety of the individual student, the student body, or staff;

2. To meet the educational needs of the student;
 3. To transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or
 4. For disciplinary purposes; and
- (b) Not made at the request of the parent or emancipated student.

(9) "Long term placement" means a student enrolled in an alternative education program for more than ten (10) school days.

~~[(7) "A1 school" is defined by 703 KAR 5:240(1)(1).]~~

~~(10)[(8)]~~ "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within ~~[the student's assigned school]~~ an existing A1 school.

~~(11)[(9)][(8)]~~ "On-site program" means an alternative education program located within ~~[the student's assigned school]~~ an existing A1 school.

~~(12)[(10)][(9)]~~ "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

~~[(11) "Long term placement" means a student enrolled in an alternative education program for more than ten school days.]~~

Section 2. General Requirements. (1)(a) A district shall ensure that each alternative education program is not limited in scope or design and is aligned to the academic program of the district.[:

- ~~1. Aligns with college and career readiness outcomes;~~
- ~~2. Is not limited in scope or design; and~~
- ~~3. Includes training to build capacity of staff and administrators to deliver high quality services and programming that conform with best practices and guide all students to college and career readiness.:]~~

(b) A student enrolled in an alternative education program may be eligible to participate in one (1) or more types of programs to address student learning needs that may include an alternative digital learning environment, credit recovery, or an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each alternative education program within the district. Locally-adopted policies and procedures shall include the:

(a) Purpose of the program, including the ways the program supports the district's college and career readiness goals for students;

(b) Eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Process for developing the ILPA for students with long term placements, including the composition of the team to develop the ILPA, which shall include an invitation to the [parents]guardian to participate and, as appropriate, an invitation to the student to participate;[: and]

(f) Procedures for collaboration with outside agencies involved with involuntary placements, including courts or other social service agencies to address student transitions between programs;[:]

(g) Procedures for regular, periodic monitoring of the alternative education program by the district; and

(h) Procedures for selecting, implementing, and monitoring the impact of professional learning designed to meet the needs of the teachers and students served by the alternative education program.

(3) An alternative education program shall be either an on-site program or an off-site program.

(4) Alternative education program curriculum shall be aligned with the Kentucky [Core] Academic Standards established in 704 KAR 3:303 and 704 KAR Chapter 8, and the student learning goals in the ILP.

(5) Each alternative education program student shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6) An alternative education program shall be subject to any applicable requirements of Kentucky's Consolidated State Plan [~~703 KAR 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver~~], or its successor.

(7) Each student participating in an alternative education program shall be eligible to access extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Each student participating in an alternative education program shall continue to be able to access resources and services already available in the district, including instructional materials, tutoring, intervention, transportation, library and media services, specialty course work, and counseling services, in furtherance of each student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1)(a) The placement of students by the district in an alternative education program shall be either voluntary or involuntary.

(b) A student entering an alternative education program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(c) The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2)(a) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC) process pursuant to 707 KAR 1:320.

(b) For a child with a disability, the IEP shall address the changed educational delivery needs of the student based upon entry into or exit from an alternative education program.

(c) The placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student enrolled in an alternative education program.

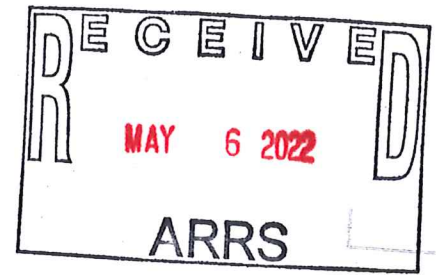
(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student participation, educational programming, achievement, and transition to and from alternative education programs.

(3) Districts ~~[are]~~**shall be** responsible for ensuring that ~~[student]education~~ records are maintained and recorded in the student information system for each student in an alternative education program ~~[-regardless of whether services are provided by district staff or non-district staff].~~

Section 6. Personnel. Alternative education program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020. ~~School districts[, and]~~ shall comply with the classified and certified assignment restrictions established in KRS 160.380(3) when operating alternative education programs.

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

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



KENTUCKY LABOR CABINET
Department of Workplace Standards

Andy Beshear
Governor

Kimberlee C. Perry
Commissioner
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
Telephone: (502) 564-3070

Jamie Link
Secretary

Jacqueline Coleman
Lieutenant Governor

Vickie L. Wise
Deputy Secretary

May 6, 2022

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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,

John Ghaelian
General Counsel
Department of Workplace Standards
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

REVISED:
4/29/2022 8:54 AM

SUGGESTED SUBSTITUTE

LABOR CABINET
Department of Workplace Standards
(Amended After Comments)

803 KAR 1:006. Employer-employee relationship.

RELATES TO: KRS Chapter 337

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner ***of the Department of Workplace Standards*** to promulgate ***administrative*** regulations ***relating to employer-employee relationships.*** ~~*[The function of]*~~ This administrative regulation ***establishes requirements for determining*** ~~*[is to define]*~~ what constitutes an employer-employee relationship.

Section 1. Definitions. (1) "Employee" is defined by KRS 337.010(1)(e) and (2)(a).
(2) "Employer" is defined by KRS 337.010(1)(d).

Section 2. The Employer-Employee Relationship. (1) ~~*[In order for KRS Chapter 337 to be applicable there must be an employer-employee relationship.]*~~ An employer-employee relationship ***shall require*** ~~*[requires]*~~ an employer, employee, and the act or condition of work.

(2) ***If determining*** ~~*[To determine]*~~ whether an individual is an employee for purposes of an employer-employee relationship, the ***following*** factors ~~*[that]*~~ shall be considered ***[include]***:

(a) The extent to which the services rendered are an integral part of the principal's business;

(b) The permanency of the relationship;

(c) The amount of the alleged contractor's investment in facilities and equipment;

(d) An alleged contractor's opportunities for profit and loss;

(e) The amount of initiative, judgement, or foresight in open market competition with others required for the success of the claimed independent enterprise; and

(f) The nature and degree of control by the principal. The ***following*** factors ***shall*** ~~*[to]*~~ be considered ***if*** ~~*[when]*~~ determining control ~~*[include]*~~:

1. Whether there are restrictive provisions in the agreement between the possible employer and possible employee ***that*** ~~*[which]*~~ require the work be satisfactory to the possible employer and detailing how the work is to be performed;

2. Whether the possible employer has control over the business of the person performing work even though the possible employer does not control the particular circumstances of the work;

3. Whether an agreement is indefinite or for a long period of time;

4. Whether the possible employer may cancel the agreement at his or her discretion~~[,]~~ and **the extent of[on how much] notice provided;**

5. Whether the possible employer may discharge employees of an alleged independent contractor;

6. Whether the work done by an alleged independent contractor is the same or similar to that done by admitted employees; and

7. The degree of independent business organization and operation.

(3) In addition to the factors in subsection (2)(f) of this section, if control cannot be firmly established, the following factors shall be considered when determining if an independent contractor is an employee:

(a) Whether the work done by the alleged independent contractor is listed on the payroll with the appropriate tax deductions;

(b) Whether the payments to the alleged independent contractor are charged to a labor and salary account or selling expense account;

(c) Whether the employees of the alleged independent contractor **are required to[must]** be approved by the possible employer;

(d) Whether the possible employer keeps the books and prepares payroll for the possible employee;

(e) Whether the alleged independent contractor is assigned to a particular territory without freedom of movement outside **of that territory[thereof];**

(f) Whether the alleged independent contractor has an independent economic or other interest in **the[his or her]** work, other than increasing his or her **own[on]** pay;

(g) **How[Whether]** the respective tax returns of the parties list the remuneration paid; and

(h) Whether the possible employer has control over the manner in which the work is to be performed.

(4) The following factors shall be immaterial to the determination of whether an employer-employee relationship exists:

(a) The place where the work is performed;

(b) The absence of a formal employment agreement;

(c) Whether the state or local government grants a license to the alleged independent contractor;

(d) The measurement, method, or designation of compensation;

(e) The fact that no compensation is paid and the alleged **independent contractor[employee] is required to[must]** rely entirely on tips, if other indications of employment are present; and

(f) Whether the alleged **independent contractor**~~[employee]~~ is paid by the piece,~~[or]~~ by the job, or on a percentage or commission basis.

Section 3. Work. The subject matter of the employer-employee relationship **shall consist of**~~[must be]~~ work or its equivalent. The essential elements of work **shall consist of exertion that is**~~[are]~~:

- (1) Physical or mental~~[exertion]~~, whether burdensome or not;
- (2) Controlled or required by the employer; and
- (3) Pursued necessarily and primarily for the benefit of the employer and their business.

Section 4. Religious, Charitable and Nonprofit Organizations, Schools, Volunteer Workers, Members of Religious Orders. (1) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be employees.

(2) Individuals who volunteer their services to religious, charitable and similar nonprofit organizations and schools **and** not as employees or in contemplation of pay for the services rendered, shall not be considered employees.

(3) Although the volunteer services described in subsection (2) of this section do not create an employer-employee relationship, the organizations for which they are performed may have employees performing compensated service whose employment is subject to KRS Chapter 337.

(a) In accordance with KRS Chapter 337, **if**~~[where]~~ an employer-employee relationship exists, employees shall not be paid less than statutory wages for hours worked in the workweek.

(b) **If the**~~[there are circumstances where an]~~ employee **is permitted by law to donate**~~[may donate]~~ services as a volunteer,~~[and]~~ the time~~[so]~~ spent **as a volunteer** shall not be compensable work.

(c) An employer-employee relationship shall not exist with respect to the volunteer time between the: **1.** Organization and the volunteer; or **2. [between the]** Volunteer and the person for whose benefit the service is performed.

(4) As part of an overall education program, public or private schools and institutions of higher learning may permit or require students to engage in activities conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution. These activities **shall**~~[do]~~ not result in an employer-employee relationship between the student and the school or institution. **An employer-employee relationship shall not be created if**~~[The fact that]~~ a student **receives**~~[may receive]~~ a minimal payment or stipend for participation in **these**~~[the]~~ activities~~[shall not create an employer-employee relationship]~~.

(5)(a) **A hospital patient, school student, or institutional inmate shall not be considered as an employee of the hospital, school, or institution if** tasks performed **by the hospital patient, school student, or institutional inmate are[as]** a normal part of a program of treatment, rehabilitation, or vocational training **[shall not be considered as work of a kind requiring a hospital patient, school student, or institutional inmate to be considered an employee of the hospital, school, or institution].**

(b) Initial participation by a student with disabilities in a school-work program or sheltered workshop program shall not constitute an employer-employee relationship if the following conditions are met:

1. The activities are educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the individuals. The individual may receive some payment for **the[his or her]** work in order to have a more realistic work situation, **[or]** as an incentive to the individual, or to ensure that the employer **treats[will treat]** the individual as a worker;

2. The time in attendance at the school plus the time in attendance at the experience station, either in the school or with an outside employer, **shall[does]** not substantially exceed time the individual would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session shall be considered substantial; and

3. The individual **shall[does]** not displace a regular employee or impair the employment opportunities of others, by performing work **that[which]** would otherwise be performed by regular employees who would be employed by the school or an outside employer.

Section 5. Outside Work or Homework Performed by Independent Contractor. (1) A homemaker is an employee, even though there may be a buying and selling arrangement between the parties.

(2) If the employer asserts outside work or homework is performed by independent contractors, the following factors shall be considered in determining whether employee-employer relationship exists:

(a) Whether the employer has the right to control the manner of the performance of the work or the time in which the work is to be done;

(b) Whether the employer pays taxes for Social Security, unemployment, or workers' compensation insurance;

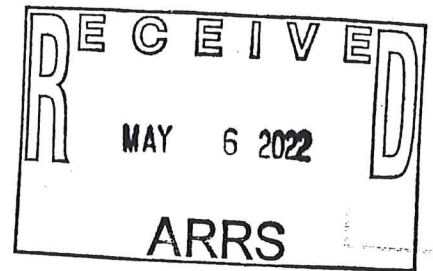
(c) Whether the homemaker ever collected any benefits, such as unemployment or workers' compensation, because of unemployment by the employer;

(d) Whether the employer furnishes the material or finances, directly or indirectly, **for** the purchase of the material **that[which]** the homemaker uses;

- (e) When the practice of buying and selling between the employer and the homemaker began, and what ~~[are]~~ the mechanics of the transaction are;
- (f) Whether the homemaker bills the employer for the work done;
- (g) Whether bills of sale are prepared;
- (h) Whether sales taxes are paid, or ~~[are]~~ state or local exemptions obtained, because of retail purposes;
- (i) Whether payments are made in cash or by check;
- (j) How the homemaker profits under the buying-selling arrangement compared with wages as a homemaker;
- (k) Whom the homemaker considers to be the employer;
- (l) Whether the homemaker has a license to do business; and
- (m) The equipment used, what its value is, and who furnishes it.

Section 6. Trainees and Student-trainees. Whether trainees or students are employees under KRS Chapter 337, depends upon all circumstances of their activities on the premises of the employer. If all the following criteria apply, the trainees or students shall not be employees under KRS Chapter 337:

- (1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
- (2) The training is for the benefit of the trainees or students;
- (3) The trainees or students do not displace regular employees, but work under their close observation;
- (4) The employer that provides the training derives no immediate advantage from the activities of the trainees or students and, on occasion, operations may actually be impeded;
- (5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- (6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.



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May 6, 2022

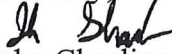
Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,


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REVISED:
4/29/2022 9:02 AM

SUGGESTED SUBSTITUTE

**LABOR CABINET
Department of Workplace Standards
(New Administrative Regulation)**

803 KAR 1:026. Equal pay provisions, meaning and application.

RELATES TO: KRS 337.420-337.433

STATUTORY AUTHORITY: KRS 337.420(3), 337.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.425 authorizes the Commissioner of the Department of Workplace Standards to promulgate[issue] administrative regulations necessary or appropriate to carry out the provisions of KRS 337.420 to 337.433. ~~[The function of]~~ This administrative regulation establishes requirements relating to[is to provide guidance with respect to the meaning and] application of the equal pay provisions set forth in KRS 337.420 to 337.433.

Section 1. Definitions. (1) "Employer" is defined by KRS 337.420(2).

(2) "Establishment" means a distinct physical place of business that is[. Each] physically separate from other places[place] of business ~~[is considered a separate establishment].~~

(3) "Wage rate" is defined by KRS 337.420(3) ~~[and includes all payments made to or on behalf of the employee as remuneration for employment. This includes fringe benefits such as vacation and holiday pay, premium payments for work on Saturdays, Sundays, holidays, regular days of rest, pension benefits, insurance benefits, and other fringe benefits paid as compensation for employment. Payments made by an employer to an employee which do not constitute compensation for employment, such as payments related to maternity and reasonable payments for reimbursable expenses of traveling on the employer's business, are not wages to be compared for equal pay purposes].~~

Section 2. Application of Provisions in General.

(1) Application to employers. The prohibition against discrimination in wages on the basis of sex contained in KRS 337.423 shall apply[applies] to every employer within the state.

(2) Application to establishments.

(a) The prohibition against discrimination in wages on the basis of sex **shall apply[applies]** within the same establishment.

(b) **If[Where]** an employer has more than one (1) establishment in which he or she employs employees, there shall **not** be **any[no]** comparison between wages paid to employees in different establishments.

(3) A wage rate shall encompass all payments made to or on behalf of the employee as remuneration for employment, including fringe benefits, such as:

(a) 1. Vacation and holiday pay;

2. Premium payments for work on Saturdays, Sundays, holidays, or regular days of rest; and

3. Pension benefits, insurance benefits, and other fringe benefits paid as compensation for employment.

(b) Payments made by an employer to an employee that do not constitute compensation for employment, such as payments related to maternity and reasonable payments for reimbursable expenses of traveling on the employer's business, shall not constitute wages to be compared for equal pay purposes.

Section 3. Male Jobs and Female Jobs. (1) **If[Where]** an employee of one (1) sex is hired or assigned to a particular job to replace an employee of the opposite sex, comparison of the newly assigned employee's wage rate with that of the replaced former employee **shall be[is]** required, whether or not the job is performed concurrently by employees of both sexes.

(2) A prohibited sex-based wage differential **shall exist[occurs]** if all employees of one (1) sex are removed from a particular job by transfer or discharge so as to retain employees of only one (1) sex in a job previously performed interchangeably or concurrently by employees of both sexes.

(a) The employer's obligation to pay the higher rate for the job **shall not[cannot]** be avoided or evaded by confining the job to members of the lower paid sex.

(b) **The employer shall increase[Compliance with the law can be achieved only by increasing]** the wage rate to the higher rate paid for the job when performed by employees of the opposite sex.

Section 4. Inequalities in Pay. (1) Inequalities in pay between employees of the opposite sexes **that[which]** may be a violation of KRS 337.423 **shall** include **the following situations:**

(a) **[Where an inequality, allegedly based on a difference in job content, is in fact one on which]**The employee:

1. Occupies a[occupying the] job that purportedly requires a[requiring the] higher degree of skill, effort, or responsibility; and

2. Receives the lower wage rate;

(b) ~~[Where]~~ Employees of only one (1) sex are concentrated in the lower grades of the wage scale, and there is no material relationship other than sex between the lower wage rates paid to the employees and the higher rates paid to employees of the opposite sex; or

(c) ~~1. [If in]~~ A particular establishment **tends to pay for the same work:**

a. All persons of one (1) sex ~~[tend to be paid]~~ at the lowest rate of the range; and

b. Employees of the opposite sex ~~[hired to perform the same work tend to be paid]~~ at the highest rate of the range; ~~;~~ and

2. No specific factor or factors other than sex are associated with the difference in pay.

(2) Differentials in entrance rates shall not constitute a violation of KRS 337.423 if the factors taken into consideration in determining which rate is to be paid each employee are applied equally to men and women.

Section 5. Equality and Inequality of Pay in Particular Situations. (1) Overtime work. Overtime premiums **shall be [are]** a part of wages for purposes of KRS 337.423.

(a) It ~~shall [is]~~ not **be** a prohibited wage rate **differential if [differential where]:**

1. Male and female employees perform comparable work during regular hours, but:

a. Employees of **only** one (1) sex ~~[only]~~ continue working overtime into another work period; and

b. Work performed during this later period is compensated at a higher rate, **if it [where such]** is required by law or is the customary practice of the employer; or

2. Male and female employees are performing equal work in an establishment during regular hours, but:

a. Only some of these employees continue working into an overtime period; ~~;~~ and

b. Payment of a higher wage rate is paid for the overtime, **if [so long as]** employees, whether male or female, are paid for the actual overtime hours worked.

(b) A prohibited wage rate **differential shall occur if [differential occurs where]** men and women receive the same straight-time rates for work subject to the equal pay standards, but:

1. Employees of one (1) sex receive an overtime premium rate of twice the straight-time rate; **and [while]**

2. Employees of the opposite sex receive only one and one-half (1 1/2) times the straight-time rate for overtime.

(2) Special assignments. If an employee is required to perform an additional task outside regular working hours, it shall not justify payment of a higher wage rate to that employee for all hours worked. Employees who are assigned a different and unrelated task to be performed outside the regular workday may be paid at a different rate of pay for the time spent in performing **this [such]** additional duty **if [provided]** the rate is commensurate with the task performed.

(3) Vacation or holiday pay. Vacation or holiday pay ~~shall[is deemed to]~~ be considered as remuneration for employment included in wages ~~[-within the meaning of the law]~~. A wage rate differential shall occur if[occurs when]:

(a) Employees of one (1) sex receive vacation pay for a greater number of hours than employees of the opposite sex;

(b) The work is subject to KRS 337.423; and

(c) There is no specified exception to the wage rate differential pursuant to KRS 337.423(1).

(4) Contributions to employee benefit plans.

(a) If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women, a[no] wage differential prohibited by KRS 337.423 shall not[will] result from these[such] payments, even though the benefits that[which] accrue to the employees ~~[in question-]~~ are greater for one (1) sex than for the other.

(b) The fact that an employer making unequal contributions for employees of opposite sexes in the[this] situation described in paragraph (a) of this subsection shall[will] not be considered a wage rate differential prohibited by KRS 337.423, if the resulting benefits are equal for the employees.

(5) Commissions. The establishment of different rates of commission for different types of merchandise shall[is] not be a violation of the equal pay provisions if[where] the factor of sex provides no part of the basis for the differential.

(6) Head of household. Head of household status shall not bear any[bears no] relationship to the requirements of the job or to an employee's performance on the job. If a differential in pay exists because an employee of one (1) sex is head of a household and the other employee of the opposite sex is not, the differential shall be considered to be[is] based on the factor of sex.

Section 6. The Equal Pay for Equal Work Standard; Generally. (1) In accordance with KRS 337.423, an employer shall be[is] prohibited from paying employees of one (1) sex wages at rates lower than employees of the opposite sex for comparable work on jobs with comparable skills, efforts, and responsibilities required for performance. Application of the equal pay standard:

(a) Shall[is] not be dependent on job classifications or titles.

(b) Shall be dependent[but rather] on actual job requirements and performance.

(2) In accordance with KRS 337.423, jobs with comparable requirements shall be compared in applying the equal pay for equal work standard.

(a) Jobs that require comparable skill, effort, and responsibility in their performance shall[may] not be required to be identical in every respect. Jobs shall be scrutinized as a whole and over a full work cycle.

(b) Inconsequential differences in job content shall not be a valid excuse for payment of a lower wage to an employee of one (1) sex than to an employee of the opposite sex, if the two (2) employees are performing comparable work on essentially the same jobs in the same establishment.

(c) In determining whether job differences are so substantial as to make jobs unequal, whether and to what extent significance has been given to **these[such]** differences in setting the wage levels for the jobs shall be considered.

(d) In determining whether differences in job content are substantial in order to establish whether or not employees are performing comparable work, the amounts of time **that[which]** employees spend in the performance of different duties shall not be the sole criteria.

(3) In order for the equal pay standard to apply, an analysis of the following shall be conducted:

(a) Comparable skill in performance.

1. Skill **shall**:

a. Include[Includes] factors, such as experience, training, education, and ability; **and**

b. [-It shall] Be measured in terms of the performance requirements of the job.

2. If employees are required to have the same skill in order to perform either of two (2) jobs, the jobs **shall** require comparable skill, even **if[though]** the employee in one (1) of the jobs **does[may]** not exercise the required skill as frequently or during as much of **the[his or her]** working time as the employee in the other job. Possession of a skill not needed to meet requirements of the job shall not be considered in making a determination regarding comparability of skill.

3. The efficiency of the employee's performance in the job shall not be considered in evaluating skill. **[:]**

(b) Comparable effort in performance.

1. Effort requires measurement of the physical or mental exertion needed for the performance of a job.

2. Jobs may require comparable effort in their performance even though the effort may be exerted in different ways on the two (2) jobs. Differences only in the kind of effort required to be expended in **this[such-a]** situation shall not justify wage differentials.

3. The occasional or sporadic performance of an activity **that[which]** may require extra physical or mental exertion **shall[is]** not alone **be** sufficient to justify a finding of unequal effort.

4. A wage rate differential based on differences in the degree or amount of effort required for performance of jobs shall be applied uniformly to men and women. **[: -and]**

(c) Comparable responsibility.

1. Responsibility **shall be[is]** the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the

degree of responsibility required in the performance of otherwise comparable jobs **shall** cover a wide variety of situations.

2. If one (1) employee of a group performing jobs **that[which]** are comparable in other respects, is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor, payment of a higher rate to the employee **may[might]** be based on the additional responsibility required to perform the job.

Section 7. Exceptions to Equal Pay Standards. (1) **In accordance with** KRS 337.423(1), **the following differentials shall be[provides two (2)]** exceptions to the standard requiring that employees doing comparable work be paid equal wages, regardless of sex, **Differentials paid pursuant to an established:**

(a) **[Differentials paid pursuant to an established]** Seniority system; or

(b) **[Differentials paid pursuant to established]** Merit increase system.

(2) If an employer relies on the excepting language to exempt a differential in pay from the operation of the equal pay provisions, the employer shall be **required[able]** to demonstrate that **the** wage rate differential is based on a factor other than sex **if[where]** it appears that the payments are for jobs requiring comparable skill, effort, and responsibility.

(3) A showing that a wage differential is based on a factor other than sex, so as to be exempt from the KRS 337.423, **shall[may]** be incomplete without a showing that there is a reasonable relationship between the amount of the differential and the weight properly attributable to the factor other than sex. **[To illustrate,]** If male employees who work forty (40) hours each week and female employees who work thirty-five (35) hours each week are performing comparable work on jobs; **[;]** the **job** performance **[of which]** requires comparable skill, effort, and responsibility; **[;]** and **the employees[they]** are paid weekly salaries for this work, a differential in the amounts **may[could]** be justified **[as]** based on a difference in hours of work. **[However,]** If the difference in salaries paid is too great to be accounted for by the difference in hours of work, then it shall be necessary to show some **[other]** factor, other than sex, as the basis for the unexplained portion of the wage differential.

(4) Application of exceptions **[illustrated]**.

(a) **[When applied without distinction to employees of both sexes,]** Shift differentials, incentive payments, production bonuses, performance and longevity raises, and **similar payments shall[the like will]** not result in equal pay violations **if applied without distinction to employees of both sexes.**

(b) "Red circle" rates. The term "red circle" **rate shall mean[rates describes]** certain unusual, higher than normal wage rates **that[which]** are maintained for various reasons.

1. **If[The use of a "red circle" rate may arise in a situation where]** an employer wishes to transfer a long-service employee, who can no longer perform their regular job because of ill health, to different work **that[which]** is now being performed by employees

of the opposite sex, ***this may result in a red circle rate***. Under the "red circle" principle, the employer may continue to pay the employee his or her present salary, which is greater than that paid to the employees of the opposite sex, for the work both will be doing. Maintaining an employee's established wage rate despite a reassignment to a less demanding job ***shall be[is]*** a valid reason for the differential, even ***if[though]*** other employees performing the less demanding work would be paid at a lower rate ***because[since]*** the differential is based on a factor other than sex.

2. ***If[Where]*** wage rate differentials have been or are being paid on the basis of sex to employees performing comparable work, rates of the higher paid employees shall not be "red circled" ***[in order to comply with the statute]***.

(c) Temporary reassignments.

1. An employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for the regular job is higher than the rate usually paid for the work to which the employee is temporarily reassigned, the employer may continue to pay the employee the higher rate ***[,]*** under the "red circle" principle.

2. An employee may be required, during the period of temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. The employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production, and if the reassignment is ***[in fact a]*** temporary ***[one]***.

3. If a piece rate is paid to employees of the opposite sex who perform the work to which the ***employee[employer]*** in question is reassigned, failure to pay that employee the same piece rate paid to the other employees ***shall constitute discrimination[would discriminate]*** on the basis of sex.

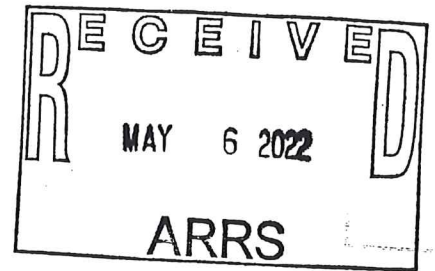
4. Failure to pay the higher rate to the reassigned employee after it becomes known that the reassignment will not be ***[of a]*** temporary ***shall be[nature is]*** an indication that sex, rather than the temporary nature of the assignment, is the real basis for the wage differential. Failure to pay the higher rate for a period longer than one (1) month ***shall[will]*** raise questions as to whether the reassignment was, in fact, intended to be ***[a]*** temporary ***[one]***.

(d) Training programs. Employees employed under a bona fide training program may, in the furtherance of their training, be assigned from time to time to various types of work in the establishment. The employee in training status may be performing comparable work with nontrainees of the opposite sex whose wage rates may be unequal to those of the trainee. ***If[Provided]*** the rate paid to the employee in training status is paid, regardless of sex, under the training program, the differential ***may be considered[can be shown]*** to be attributable to a factor other than sex, and ***a[no]*** violation of the equal pay standard ***shall not[will]*** result.

(e) Temporary and part-time employees.

1. The payment of different wage rates to permanent employees, ***as compared with*** temporary employees ***that[such-as]*** may be hired during the holiday season, ***shall [would]*** not be a violation of the equal pay provisions, even ***if[though]*** comparable work is performed by both groups of workers.

2. The payment of a different wage to employees who work only a few hours a day, ***as compared with*** employees of the opposite sex who work a full day, ***shall[will] not be a violation of[not necessarily involve noncompliance with]*** the equal pay provisions, even ***if[though]*** both groups of workers are performing comparable work in the same establishment.



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May 6, 2022


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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

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Sincerely,


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SUGGESTED SUBSTITUTE
Final Version: 4/28/2022 9:50 AM

LABOR CABINET
Department of Workplace Standards
(Based on Amended After Comments Version)

803 KAR 1:061. Overtime pay requirements

RELATES TO: KRS 337.285, 29 C.F.R. 778.110, 778.112, 778.113, 778.114, 778.116, 778.117 – 778.121, 778.215, 778.301, 778.302(a), (b)

STATUTORY AUTHORITY: KRS ~~337.285~~, 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.285 requires overtime pay standards. KRS 337.295 authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes standards~~[the official interpretations]~~ of the Department of Workplace Standards, Kentucky Labor Cabinet, with respect to~~[the meaning and application of the]~~ overtime pay requirements established in KRS 337.285.

Section 1. Definitions. (1) "Profit-sharing~~[Profit sharing]~~ plan" means any person or arrangement that provides for the distribution by the employer to the employees of employees'~~[their]~~ respective shares of profits.

(2) "Profit-sharing~~[Profit sharing]~~ trust" means any program or arrangement that provides for the irrevocable deposit by the employer of the employee's distributive shares of profits with a trustee for deferred distribution to the employees of employees'~~[their]~~ respective shares.

Section 2. Application of Overtime Provisions Generally. (1) Because there is not an absolute limitation in KRS 337.285 regarding~~[on]~~ the number of hours that an employee may work in any workweek, the employee may work as many hours a week as the employee and employer determined, if the required overtime compensation is paid to the employee for hours worked in excess of forty (40) hours as established in KRS 337.285.

(2) In accordance with KRS 337.285, an employer shall not be required to pay an employee overtime compensation for hours in excess of eight (8) per day or for work on Saturdays, Sundays, holidays, or regular days of rest.

(3) If more than forty (40) hours are not actually worked in the workweek, overtime compensation pursuant to KRS 337.285 need not be paid.

(4) KRS 337.285 shall not relieve an employer of an obligation the employer may have assumed by agreement or of any obligation imposed by other state or federal laws to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or work day.

Section 3. The Workweek as the Basis for Applying KRS 337.285. If in any workweek KRS 337.285 applies and an employee or employer is not exempt from overtime pay requirements, the employer shall total all the hours worked by the employee in that workweek and pay overtime compensation for each hour worked in excess of forty (40) hours.

Section 4. Each Workweek Stands Alone. (1) In accordance with KRS 337.285, in a single workweek an employer shall not average hours over two (2) or more weeks. If an employee works thirty (30) hours one (1) week and fifty (50) hours the next, the employee shall receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even if the average number of hours worked in the two (2) weeks is forty (40).

(2) This section shall apply regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether the employee is paid on a daily, weekly, biweekly, monthly, or other basis.

(3) This section shall apply to pieceworkers and employees paid on a commission basis. For pieceworkers and commission workers, the hours worked and the compensation earned shall be determined on a workweek basis.

Section 5. Determining the Workweek. (1) An employee's workweek shall be based on a fixed and regularly recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods, which need not coincide with the calendar week but may begin on any day and at any hour of the day.

(2) For purposes of computing pay in accordance with KRS 337.285, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees.

(3) Once the beginning time of an employee's workweek basis is established, it shall remain fixed regardless of the schedule of hours worked.

(a) The beginning of the workweek may be changed if the change is intended to be static and not designed to evade overtime requirements.

(b) The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made shall be accomplished as established in Section 13 of this administrative regulation.

Section 6. General Standard for Overtime Pay. The general overtime pay standard in KRS 337.285 requires that overtime shall be compensated at a rate not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed but shall not be less than the statutory minimum. If the employee's hourly rate of pay is higher than the statutory minimum, the overtime compensation shall be computed at a rate not less than one and one-half (1 1/2) time the higher rate.

Section 7. Overtime compensation shall be at an hourly rate in accordance with KRS 337.285, which is based on the rate per hour.

(1) An employer shall not be required to compensate employees on an hourly rate basis. Employee earnings may be determined on a piece-rate, salary, commission, or other basis, but the

overtime compensation due to employees shall be computed on the basis of the hourly rate calculated based on earnings computed at the hourly rate of employees during each workweek.

(2) The hourly rate of pay of an employee shall be determined by dividing the total remuneration for employment in any workweek by the total number of hours worked by the employee in that workweek for which the compensation was paid.

Section 8. (1) Hour rate employee. Overtime pay criteria for hourly rate employees ***shall be[is]*** as established in 29 C.F.R. 778.110.

(2) Pieceworker. If an employee is employed on a piece-rate basis, the hourly rate of pay shall be computed by adding together total earnings for the workweek from piece rate and all other sources and dividing that sum by the number of hours worked in the week for which compensation was paid. For the overtime work the pieceworker is entitled to be paid, in addition to the total weekly earnings at this hourly rate for all hours worked, a sum equivalent to one-half (1/2) this rate of pay multiplied by the number of hours worked in excess of forty (40) in the week.

(3) Day rates and job rates. The overtime pay criteria for day rates and job rates ***shall be[are]*** as established in 29 C.F.R. 778.112.

(4) Salaried employee. The overtime pay criteria for salaried employees ***shall be[is]*** as established in 29 C.F.R. 778.113 and 778.114.

(5) Employees working two (2) or more rates. If an employee in a single workweek works at two (2) or more different types of work for which different nonovertime rates of pay have been established, the hourly rate for that week shall be the weighted average of the rates. The total earnings shall be computed to include compensation during the workweek from all the rates and shall then be divided by the total number of hours worked at all jobs.

(6) Payments other than cash. The overtime pay criteria for payments other than cash ***shall be[are]*** as established in 29 C.F.R. 778.116.

(7) Commission payments. The overtime pay criteria for commission payments ***shall be[is]*** as established in 29 C.F.R. 778.117 through 778.121.

(8) Other methods of determining the regular hourly rate shall be allowed if ***the method:***
(a) Provides[they provide] for each employee employed by an employer to be paid a rate of not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed; and

(b)[the method] is not being used as an attempt to evade the provisions of KRS 337.285.

Section 9. Payments Excluded from Computing Hourly Rate. As used in KRS 337.285, the "hourly rate at which he is employed" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts, ~~or~~ payments in the nature of gifts made at holiday times or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency. The sums shall not be credited toward overtime compensation due.

(a) To qualify for this exclusion, the bonus shall be actually a gift or in the nature of a gift.

(b) If it is measured by hours worked, production, or efficiency, the payment shall be considered geared towards wages and hours during the bonus period and shall not be considered in the nature of a gift.

(c) If the payment is so substantial that ***the payment[it]*** can be assumed that employees consider it a part of the wages for which ***employees[they]*** work, the bonus shall not be considered to be in the nature of a gift.

(d) If the bonus is paid pursuant to contract, ***the bonus[it]*** shall not be in the nature of a gift;

(2)(a)1. Payments made for an occasional period during which time worked is not being performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause;

2.[.] Reasonable payments for traveling expenses or other expenses incurred by an employee in the furtherance of the employer's interests and properly reimbursable by the employer;[.] and

3. Other similar payments to an employee that are not made as compensation for the employee's hours worked in any workweek.

(b)[.] No part of the payments shall be credited toward overtime compensation due pursuant to KRS 337.285;

(3) Sums paid in recognition of services performed during a given period if:

(a) Both the fact that payment is to be made and the amount of the payment shall be determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly; or

(b) The payments are made pursuant to a bona fide profit-sharing plan or trust or ***bona[bonda]*** fide thrift or savings plan.

1. The sums shall not~~[, however,]~~ be credited toward overtime compensation due pursuant to KRS 337.285.

2. In order for a bonus to qualify for exclusion as a discretionary bonus, the employer shall retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid.

3. The sum to be paid as a bonus shall be determined by the employer without prior promise or agreement.

4. The employee shall not have a contract right, express or implied, to any amount.

5. If the employer promises in advance to pay a bonus, the employer shall have ***waived[abandoned]*** discretion with regard to it;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for avoiding old-age, retirement, life, accident, ~~[or]~~ health insurance, or similar benefits for employees. The sums shall not be credited toward overtime compensation pursuant to KRS 337.285;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because the hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee's normal working hours. Extra compensation paid for these hours shall be creditable toward overtime compensation pursuant to KRS 337.285;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, regular days of rest, or in the sixth or seventh day of the workweek, in which the premium rate is not less than one and one-half (1 1/2) times the rate established in good faith for like work performed in nonovertime hours on other days. Extra compensation paid for these shall be creditable toward overtime compensation pursuant to KRS 337.285; or

(7) Extra compensation provided by a premium rate period to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday, in which the premium rate is not less than one and one-half (1 1/2) times the rate established in good faith by the contract or agreement for similar work performed during the workday or workweek. Extra compensation paid for these hours shall be creditable toward overtime compensation pursuant to KRS 337.285.

Section 10. Requirements of A ~~[""]~~bona fide "Profit-sharing Plan or Trust." (1) A bona fide profit-sharing plan or trust shall comply with paragraphs (a) through (f) of this subsection.

(a) The profit-sharing plan or trust shall constitute a definite program or arrangement in writing, communicated or made available to the employees, which shall be established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees, which wages or salaries shall not be dependent upon or influenced by the existence of the profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(b) All contributions or allocations by the employer in the fund to be distributed to the employees shall be:

1. Derived solely from profits of the employer's business as a whole~~[""]~~ or an established branch or division of the business~~[which is]~~ recognized for general business purposes and for which profits shall be separately and regularly calculated in accordance with accepted accounting practice; and

2. Made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(c) Eligibility to share in profits shall extend to at least all employees who are subject to the minimum wage and overtime provisions of KRS 337.285, or to all employees in an established part of the employer's business as established in paragraph (b) of this subsection if eligibility can be determined factors such as length of service or minimum schedule of hours or days of work, which are established in the plan or trust and that eligibility need not extend to officers of the employer.

(d) The amounts paid to individual employees shall be determined in accordance with a definite formula or method of calculation established in the plan or trust. The formula or method of calculation shall be based on factors such as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employees, length of service, or distribution on a per capita basis.

(e) An employee's total share determined in accordance with paragraph (d) of this subsection shall not be diminished because of any other remuneration received by the employee.

(f) Provision shall be made either for payment to the individual employees of employees'~~[their]~~ respective shares of profits after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of the employee's distributive shares of profits with a trustee for deferred distribution to the employees of employees'~~[their]~~ respective shares after a stated period of time or upon the occurrence of appropriate contingencies established in the plan or trust. The right of an employee to receive his or her share shall not be dependent upon continuing in the employ of the employer after the period for which the determination of profits has been made.

(2) A plan or trust that contains any of the following provisions shall not be deemed to meet the requirements of a bona fide profit-sharing or trust:

(a) The share of any individual employee is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;~~[-]~~

(b) The amount to be paid periodically by the employer into the fund or trust to be distributed to the employees is a fixed sum;

(c) Periodic payments of minimum amounts to the employees are guaranteed by the employer; or

(d) Any individual employee's share, by the terms of the plan or trust to be distributed to the employees **shall be[are]** based on factors other than profits, such as hours of work, production, efficiency, sales, or savings in cost.

Section 11. Requirements of A ~~["]~~bona fide Thrift or Savings Plan.~~[""]~~ (1) A bona fide thrift or savings plan shall meet all of the standards established in paragraphs (a) through (e) of this subsection.

(a) The thrift or savings plan shall constitute a definite program or arrangement if **the plan[it]** is in writing;~~[-]~~ adopted by the employer or by contract as a result of collective bargaining and communicated, or made available to the employees;~~[-]~~ and established and maintained, in good faith;~~[-]~~ for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings through the regular purchase of public or private securities.

(b) The plan shall establish the category or categories of employees participating and the basis of **the employee's'[their]** eligibility. Eligibility shall not be based on factors such as work, production, or efficiency of the employees. Hours of work may be used to determine eligibility of part-time or casual employees.

(c) The amount any employee could save under the plan shall be stated in the plan or determined in accordance with a definite formula established in the plan. The formula shall be based on factors such as the straight-time earnings or total earnings, **base[case]** rate of pay, or length of service of the employee.

(d)~~1.~~ The employer's total contribution in any year shall not exceed fifteen (15) percent of the participating employees' total earnings during the year; **and**

~~2.[-In addition,]~~ The employer's total contribution in any year shall not exceed the total amount saved or invested by the participating employees during that year.

(e) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation established in the plan. The formula or method of calculation shall be based on the amount saved or length of time the individual employee retains savings or investment in the plan if the employee's share is not determined because of any other remuneration received by the employee.

(2) An employee's participation shall be on a voluntary basis.

(3) An employee's wages or salary shall not be dependent upon or influenced by the existence of the thrift or savings plan or the employer's contributions to the plan.

(4) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan shall not be based upon the employee's hours of work, production, or efficiency.

Section 12. Conditions for Exclusion of Benefit-plan Contributions under Section 9(4) of this Administrative Regulation. The criteria for the exclusion of benefit-plan contributions under Section 8(4) of this administrative regulation ***shall be[are]*** as established in 29 C.F.R. 778.215.

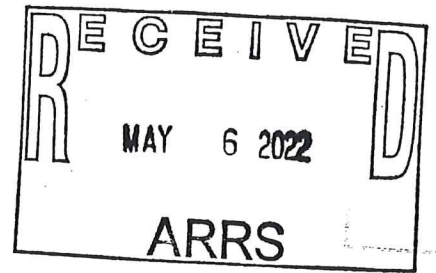
Section 13. Overlapping ***if[When]*** Change of Workweek is Made. (1) As established in Section 5 of this administrative regulation, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of KRS 337.285.

(a) A change in the workweek necessarily results in a situation in which one (1) or more hours or days fall in both the old workweek as previously constituted and the new workweek.

(b) If the workweek in a plant commenced at 7 a.m. on Monday and it is now proposed to being the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday shall constitute both the last hours of the old workweek and the first hours of the newly established workweek.

(2) The criteria for the computation of overtime due for overlapping workweeks ***shall be[is]*** as established in 29 C.F.R. 778.301 and 778.302(a) and (b).

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May 6, 2022

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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,

John Ghaelian
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LABOR CABINET
Department of Workplace Standards

803 KAR 1:064. Trading time.

RELATES TO: KRS 337.275, 337.285, 45 U.S.C. 181

STATUTORY AUTHORITY: KRS 337.295

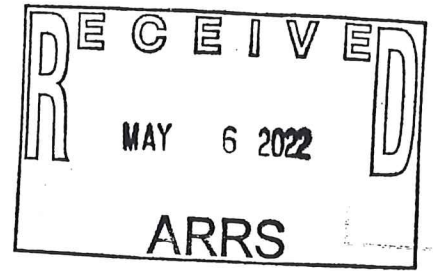
NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to ***promulgate[issue]*** administrative regulations for special items usual in a particular employer-employee relationship. ***[The function of]*** This administrative regulation ***establishes[is to define]*** the criteria to be met by public employers who wish to ***allow[permit]*** employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of 45 U.S.C. 181 to use the practice of "trading time."

Section 1. Definition. "Trading time" means the practice of employees engaged in fire protection activities and employees of carrier by air subject to 45 U.S.C. 181 substituting for one another on regularly scheduled tours of duty, or for some part thereof, in order to ***allow[permit]*** an employee to be absent from work for personal matters.

Section 2. The practice of "trading time" shall ***not affect[be deemed to have no effect on]*** hours of work if ***[the following criteria are met]***:

- (1) The trading of time is done voluntarily by the employees participating in the program and not at the request of the employer;
- (2) The reason for trading time is due to the employee's desire or need to attend to personal matters and not to the employer's business operations; and
- (3) A record is maintained by the employer of all time traded by employees.

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May 6, 2022


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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,


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LABOR CABINET
Department of Workplace Standards

803 KAR 1:067. Hours worked.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 785.11 – 785.21, 785.23, 785.27 – 785.33, 785.35, 785.38, 785.39, 785.48

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate[issue] administrative regulations to carry out the provisions of KRS 337.275 through[-] 337.325, 337.345 and 337.385 through[-] 337.405. ~~[The function of]~~ This administrative regulation establishes[is to define] the principals involved in determining what constitutes working time pursuant to KRS 337.275 and 337.285.

Section 1. Definition. "Employee" is defined by KRS 337.010(1)(e) and (2)(a).

Section 2. Employees Suffered or Permitted to Work. The criteria for "suffered or permitted to work" applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.11 through 785.13.

Section 3. Waiting Time. The criteria for "waiting time" applicable to KRS 337.275 and 337.285 shall be as established in 29 C.F.R. 785.14 through 785.17.

Section 4. Rest and Meal Periods. The criteria for rest and meal periods applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.18 and 785.19.

Section 5. Sleeping Time and Certain Other Activities. The requirements for sleeping time and certain other activities applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.20, 785.21, and 785.23.

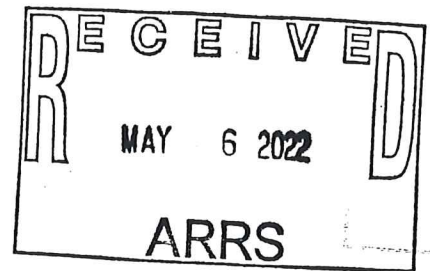
Section 6. Lectures, Meetings, and Training Programs. The requirements for lectures, meetings, and training programs applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.27 through 785.32.

Section 7. Travel Time. The requirements for travel time applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.33, 785.35, 785.38, and 785.39.

Section 8. Recording Work Time. (1) In accordance with KRS 337.320, there is no particular method of keeping a time record worked by an employee. Recordkeeping requirements shall be as established[are set out] in 803 KAR 1:068.

(2) Criteria for the use of time clocks applicable to KRS 337.275 and 337.285 ***shall be[are]*** as established in 29 C.F.R. 785.48.

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May 6, 2022


Senator Stephen West, Co-Chair
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RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

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Sincerely,


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LABOR CABINET Department of Workplace Standards

803 KAR 1:068. Recordkeeping requirements.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295, **337.320**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.320 requires employers to keep records of hours of work and wages paid to employees subject to the provisions of KRS Chapter 337 for **at least** one **(1)** year after **date of** entry and **authorizes**~~[provides that]~~ the commissioner determine what information is required. ~~[The function of]~~ This administrative regulation **establishes**~~[is to set forth the]~~ recordkeeping requirements for employers subject to KRS Chapter 337.

Section 1. Definition. "Workday" means any consecutive twenty-four (24) hours.

Section 2. Each employer shall keep the records required by this administrative regulation safe and accessible at the place or places of employment, or at one **(1)** or more established central recordkeeping offices where the records **shall be**~~[are customarily]~~ maintained. ~~If~~~~[Where]~~ the records are maintained at a central recordkeeping office, other than in the place or places of employment, the records shall be made available within seventy-two (72) hours following notice from the commissioner or the commissioner's authorized representative.

Section 3. ~~Each~~~~[Every]~~ employer shall maintain and preserve payroll or other records containing the following information and data for employees subject to KRS Chapter 337:

(1) Name in full, and on the same record, the employee's identifying symbol or number if used in place of name on any time, work, or payroll records;

(2) Social Security number;

(3) Home address, including zip code;

(4) Date of birth, if under eighteen (18);

(5) **Gender**~~[Sex]~~ and occupation in which employed;

(6) Time of day and day of week on which the employee's workweek begins.

(a) **Except as established in paragraph (b) of this subsection**, if the employee is part of a work force or employed in or by an employer all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force shall suffice.

(b) If ~~an~~~~[, however, any]~~ employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall be kept for that employee or group of employees;

(7) Hours worked each workday and each workweek;

(8) Regular rate of pay and total straight-time earnings or wages for all hours worked during the workweek;

(9) Total overtime compensation for the workweek;

(10) Total additions to or deductions from wages paid each pay period. ~~Each~~**[Every]** employer making additions to or deductions from wages shall also maintain, in individual employee accounts, a record of the dates, amounts, and nature of the items **that comprise[which make up]** the total addition and deductions; and

(11) Total wages paid each pay period and date of payment.

Section 4. Employers who make retroactive payment of wages or compensation due under KRS 337.275 and 337.285 shall:

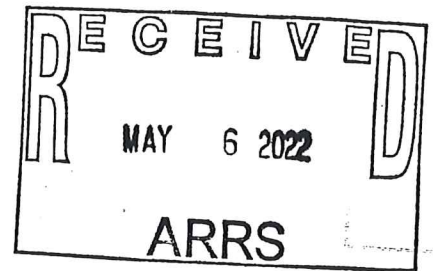
(1) Prepare a report of each payment showing the amount of payment to each employee, the period covered by the payment, and the date of payment;

(2) File the original report, which shall evidence payment by the employer and receipt by the employee, with the commissioner or the commissioner's authorized representative within ten (10) days after payment is made;

(3) Deliver a copy of the report to the employee; and

(4) Preserve a copy of the report as part of the employee's records **for at least one (1) year after date of entry.**

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May 6, 2022


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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, **803 KAR 1:071**, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,


John Ghaelian
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LABOR CABINET
Department of Workplace Standards
(Based on Amended After Comments Version)

803 KAR 1:071. Executive, administrative, supervisory, or professional employees; salesmen.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 541

STATUTORY AUTHORITY: KRS 337.010(2)(a)2, 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010(2)(a)2 ***requires exemption for[ex-empts]*** any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman[;] or as an outside collector as the terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements ***established[set forth]*** in KRS 337.275 and 337.285. This administrative regulation ***establishes[defines]*** what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or outside collector.

Section 1. Scope. (1) The exemptions ***established[set forth]*** in KRS 337.010(2)(a) shall not apply to workers as established in 29 C.F.R. 541.3(a).

(2)(a) The exemptions ***established[set forth]*** in KRS 337.010(2)(a) shall not apply to workers as established in 29 C.F.R. 541.3(b)(1).

(b) The exempted employees ***established in paragraphs (a) this subsection shall[identified in subsection 2(a) of this section do]*** not qualify as exempt employees for reasons established in 29 C.F.R. 541.3(b)(2) through 541.3(b)(4).

Section 2. Executive Employees. (1) The term, "individual employed in a bona fide executive capacity" in KRS 337.010(2)(a)2 ***shall include[includes]*** employees:

(a) Compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.100(a)(2) through 541.100(a)(4) and 541.101.

(2) ***An "employee" employed in a bona fide executive capacity, as established by KRS 337.010(2)(a)2., shall also include an[Business owner. The term "employee employed in a bona fide executive capacity" in KRS 337.010(2)(a)2 also include any] employee who owns at least a bona fide twenty (20) percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporation[corporate] or other type of organization, and who is actively engaged in its management. The salary requirements of Section 8 of this administrative regulation shall not apply to business owners established[described] in this subsection.***

(3) A person who performs activities established in 29 C.F.R. 541.102 shall be considered engaged in management["Management" shall include activities as established in 29 C.F.R. 541.102].

(4) A customarily recognized department or subdivision shall comply with the criteria[(3) The phrase "a customarily recognized department or subdivision" is as] established in 29 C.F.R. 541.103.

(5) An executive exempt as established in KRS 337.010(2)(a)2. shall comply with the criteria[(4) To qualify as an exempt executive under KRS 337.010(2)(a)2, the criteria shall be as] established in 29 C.F.R. 541.104.

(6) An employee's suggestions and recommendations shall be given "particular weight" if the factors established in 29 C.F.R. 541.105 have been met[(5) To determine whether an employee's suggestions and recommendations are given "particular weight" the factors shall be as established in 29 C.F.R. 541.105].

(7)[(6)] The criteria for concurrent performance of exempt and nonexempt work shall be as established 20 C.F.R. 541.106.

Section 3. Administrative Employees. (1) The term "individual employed in a bona fide administrative capacity" in KRS 337.010(2)(a)2 shall include employees:

(a) Compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.200(a)(2) and 541.200(a)(3).

(2) To qualify for the administrative exemption in KRS 337.010(2)(a)2, the criteria shall be as established in 29 C.F.R. 541.201 through 541.204.

Section 4. Professional Employees. (1) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include employees:

(a) Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.300(a)(2).

(2) To qualify for the learned professional exemption, the criteria shall be as established in 29 C.F.R. 541.301.

(3) To qualify for the creative professional exemption, the criteria shall be as established in 29 C.F.R. 541.302.

(4) Teachers.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include any employee as established in 29 C.F.R. 541.303(a) through (c).

(b) The salary requirements of Section 8 of this administrative regulation shall not apply to the teaching professionals **established[described]** in this subsection.

(5) Practice of law or medicine.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include any employee as established in 29 C.F.R. 541.304(a) through 541.304(c).

(b) The salary requirements of Section 8 of this administrative regulation shall not apply to the employees **established[described]** in this subsection.

Section 5. Supervisors. The term "individual employed in a bona fide supervisory capacity" in KRS 337.010(2)(a)2 **shall include[includes]** employees:

- (1) **[Who are]**Compensated for his or her services on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and
- (2) Who meet the criteria as established in 29 C.F.R. 541.104.

Section 6. Outside Sales Employees. (1) The term "individual employed in the capacity of outside salesman" in KRS 337.010(2)(a)2 shall include employees:

- (a) Whose primary duty is:
 1. Making sales; or
 2. Obtaining orders or contracts for services or for the use of facilities for which consideration will be paid by the client or customer; and
 - (b) **[Who is]**Customarily and regularly engaged away from the employer's place or places of business in performing the employee's primary duty.
- (2) In determining the primary duty of an outside sales employee, the criteria shall be as established in 29 C.F.R. 541.500(b).
- (3) The salary requirements of Section 8 of this administrative regulation shall not apply to employees **established[described]** in this section.
- (4) Making sales or obtaining orders.
- (a) The criteria for making sales within the meaning of this section shall include criteria as established 29 C.F.R. 541.501(b) and 541.501(d).
 - (b) Obtaining orders for the use of facilities **shall include[includes]** the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.
- (5) The criteria for an outside sales employee to be customarily and regularly engaged "away from the employer's place or places of business" shall be as established in 29 C.F.R. 541.502.
- (6) The criteria for determining if promotional work is exempt under this section shall be as established in 29 C.F.R. 541.503.
- (7) The criteria for **[drivers who sell to be]**exempt **drivers who sell** under this section shall be as established in 29 C.F.R. 541.504.

Section 7. Outside Collector. (1) The term "individual employed as an outside collector" in KRS ~~337.010(2)(a)2~~**337.010(20)(a)2** shall include any employee who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business and whose primary duty is **collecting money for**:

- (a) **[Collecting money for]**Goods or services previously or presently **provided by the[furnished by his]** employer; or
 - (b) **[Collecting money for]**An account placed in the hands of his employer for collection.
- (2) In determining the primary duty of an outside collector, work performed incidental to and in conjunction with the employee's outside collection activities shall be exempt work.
- (3) The salary requirements of Section 8 of this administrative regulation shall not apply to the outside collector employees **established[described]** in this section.

Section 8. Salary Requirements. (1) To qualify as an exempt executive, administrative, professional, or supervisory employee under KRS 337.010(2)(a)2, an employee shall be compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities. Administrative and professional employees may also be paid on a fee basis as **established[defined]** in Section 12 of this administrative regulation.

(2) The \$684 per week may be translated into equivalent amounts for periods longer than one (1) week. The requirement shall be met if the employee is compensated biweekly on a salary basis of **at least** \$1,368, semimonthly on a salary basis of **at least** \$1,482, or monthly on a salary basis of **at least** \$2,964. ~~[Except,]~~ The shortest period of payment that meets this compensation requirement **shall be[is]** one (1) week.

(3) For academic administrative employees, the compensation requirement may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as **established[provided]** in Section ~~4(4)(b)~~ **[3(4)]** of this administrative regulation.

(4) For computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than twenty-seven (27) dollars and sixty-three (63) cents an hour, as **established[provided]** in Section 14 of this administrative regulation.

(5) The exception from the salary or fee requirement shall not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions **that[which]** service the medical profession.

Section 9. Highly-compensated Employees. (1) An employee with total annual compensation of at least \$107,432 shall be exempt under KRS 337.010(2)(a)2 if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee **established[identified]** in this administrative regulation. ~~[Where the annual period covers periods both prior to and after the date this administrative regulation is effected, the amount of total annual compensation due will be determined on a proportional basis.]~~

(2)(a) "Total annual compensation" shall include at least \$684 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a fifty-two (52) week period.

(b) "Total annual compensation" shall not include board, lodging, or other facilities as **established[defined]** in Section 13 of this administrative regulation ~~[,]~~ and shall not include payments for medical insurance, payments for life insurance, contributions to retirement plans, and the cost of other fringe benefits.

(c) If an employee's total annual compensation does not total at least the minimum amount established in subsection (1) of this section by the last pay period of the fifty-two (52) week period, the employer may, during the last pay period or within one (1) month after the end of the fifty-two (52) week period, make one (1) final payment sufficient to achieve the required level.

(d) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in subsection (1) of this section, based upon the number of weeks

that the employee will be or has been employed. An employer may make one (1) final payment as under paragraph ~~(c)~~~~(b)~~ of this subsection within one (1) month after the end of employment.

(e) The employer may use any fifty-two (52) week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply.

(3) A highly compensated employee shall qualify for exemption if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee established~~identified~~ in this administrative regulation.

(4) This section shall not apply to employees whose primary duty includes performing nonoffice or manual work.

Section 10. Salary Basis. (1)(a) The criteria for an employee to be considered paid "on a salary basis" within the meaning of this administrative regulation shall be as established by 29 C.F.R. 541.602(a)(1) through 541.602(a)(2).

(b) Up to ten (10) percent of the salary amount required in paragraph (a) of this subsection~~Section 10(1)(a) of this administrative regulation~~ may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently.

1. The employer may utilize any fifty-two (52) week period as the year, such as a calendar year, fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply.

2. This provision shall not apply to highly compensated employees.

3. If by the last pay period of the fifty-two (52) week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than fifty-two (52) times the weekly salary amount required, the employer may make one (1) final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any final payment made after the end of the fifty-two (52) week period shall count only toward the prior year's salary amount.

4. An employee who does not work a full fifty-two (52) week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established, based upon the number of weeks that the employee will be or has been employed. An employer may make one (1) final payment under subparagraph 3. of this paragraph~~subsection (1)(b)3 of this section~~ within one (1) pay period after the end of employment.

(2)(a) The exceptions to the prohibition against deductions from pay in the salary basis requirement shall be as established in 29 C.F.R. 541.602(b)(1) and 541.602(b)(3) through 541.602(c).

(b) Deductions from pay in the salary basis requirement may be made for absences of one (1) or more full days occasioned by sickness or disability, if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability.

1. If the employer's particular plan, policy, or practice provides compensation for the absences, deductions for absences of one (1) or more full days because of sickness or disability may be made before an employee has qualified under the plan, policy, or practice, and after the employee has

exhausted his or her leave allowance thereunder. It is not required that the employee be paid any portion of his or her salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice.

2. If the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of one (1) or more full days if benefits are provided in accordance with the particular law or plan.

3. For an industrial accident, ***if the employer has a plan, policy, or practice of providing compensation for sickness and disability other than that relating to industrial accidents***, the "salary basis" requirement shall be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer; ~~***if, the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents***~~.

(3) The effect of improper deductions from salary ***shall be[are]*** as established in 29 C.F.R. 541.603.

Section 11. The criteria for the minimum guarantee plus extras ***shall be[are]*** as established in 29 C.F.R. 604.

Section 12. The criteria for when administrative and professional employees may be paid on a fee basis, rather than on a salary basis ***shall be[are]*** as established in 29 C.F.R. 541.605.

Section 13. Board, Lodging, or Other Facilities. (1) The phrase "exclusive of board, lodging, or other facilities" shall mean "free and clear" or independent of any claimed credit for noncash items of value that an employer ***might[may]*** provide to an employee.

(a) Costs incurred by an employer to provide an employee with board, lodging, or other facilities shall not count towards the minimum salary amount required for exemption under this administrative regulation.

(b) Separate transactions ***shall not be[are not]*** prohibited between employers and their employees, but the costs to employers associated with the transactions shall not be considered in determining if an employee has received the full required minimum salary payment.

(2) "Other facilities" ***shall include[refers to]*** items similar to board and lodging, such as meals ***provided[furnished]*** at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing ***provides[furnished]*** for dwelling purposes; and transportation ***provided[furnished]*** to employees for ordinary commuting between their homes and work.

Section 14. Computer Employees. (1) Computer system analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field shall be eligible for an exemption as professionals under KRS 337.010(2)(a)2. Job titles shall not be determinative of the applicability of this exemption.

(2) The exemption for computer employees shall apply to any computer employee as established in 29 C.F.R. 541.400(b) and 541.402.

(3) The exemption for computer employees shall not include employees **as** established in 29 C.F.R. 541.401.

Section 15. Miscellaneous Provisions. (1) The criteria for primary duty **shall be[are]** as established in 29 C.F.R. 541.700.

(2) The phrase "customarily and regularly" **shall be[is]** as established in 29 C.F.R. 541.701.

(3) Directly and closely related shall be as established in 29 C.F.R. 541.703

(4) The criteria for determining **if[whether]** the use of manuals precludes an exemption under KRS 337.010(2)(a)2 **shall be[is]** as established in 29 C.F.R. 541.704.

(5) The criteria for the prohibition of KRS 337.010(2)(a)2 exemption to trainees **shall be[is]** as established in 29 C.F.R. 541.705.

(6) The criteria for the application of emergencies to exempt employees shall be as established in 29 C.F.R. 541.706.

(7) The criteria for determining **if[whether]** occasional tasks **preclude[precludes]** exemption under KRS 337.010(2)(a)2 **shall be[are]** as established in 29 C.F.R. 541.707.

(8) The criteria for the exemption of employees performing a combination of exempt duties as **established[set forth]** in this **administrative** regulation **shall be[are]** as established in 29 C.F.R. 541.708.

(9) The requirement that the employee be paid on a salary basis shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$1,043 a week (exclusive of board, lodging, or other facilities).

(a) An employee in this industry who is otherwise exempt under Sections 2, 3, or 4 of this administrative regulation, and who is employed at a base rate of at least \$1,043 a week **shall be[is]** exempt if paid a proportionate amount, based on a week of not more than six (6) days, for any week in which the employee does not work a full workweek for any reason.

(b) An otherwise exempt employee in this industry **shall qualify[qualifies]** for exemption if the employee is employed at a daily rate under the following circumstances:

1. The employee is in a job category for which a weekly base rate is not provided, and the daily base rate would yield at least \$1,043 if six (6) days were worked; or

2. The employee is in a job category having a weekly base rate of at least \$1,043, and the daily base rate is at least one-sixth (1/6) of such weekly base rate.

(10) Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of Section 10 of this administrative regulation shall not be disqualified from exemption under Sections 2, 3, 4, 5, or 14 of this administrative regulation on the basis that the employee is paid according to a pay system established by statute, ordinance, or administrative regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and **that[which]** requires the public agency employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one (1) work-day if accrued leave is not used by an employee because:

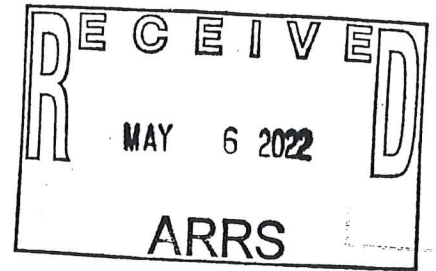
1. Permission for its use has not been sought or has been sought and denied;

2. Accrued leave has been exhausted; or

3. The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

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KENTUCKY LABOR CABINET
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May 6, 2022

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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, **803 KAR 1:076**, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,


John Ghaelian

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LABOR CABINET

Department of Workplace Standards

803 KAR 1:076. Exclusions from minimum wage and overtime.

RELATES TO: KRS **Chapter 199**, 337.010, 337.275, 337.285, **29 U.S.C. 213, 29 C.F.R. 782.2**

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010 ***requires the exclusion***~~*[excludes]*~~ certain types of employees from being subject to the minimum wage and overtime provisions of KRS 337.275, and KRS 337.285 ***requires the exclusion of***~~*[excludes]*~~ certain employees from its coverage. ~~*[The function of]*~~ This administrative regulation ***establishes***~~*[is to define these]*~~ exclusions ***from minimum wage and overtime provisions.***

Section 1. Definitions. (1) "Excise taxes" means taxes ~~*[that are]*~~ levied on:

(a) The manufacture, sale, or consumption of a commodity;~~*[;]*~~ and

(b) Licensure~~*[taxes levied on license]*~~ to pursue certain occupations and corporate privileges.

(2) "Hotel":

(a) Means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels ~~*that*~~***[which]*** provide accommodations for transients; ***and***

(b) Does not mean~~*[;]*~~ an establishment ***with***~~*[whose]*~~ income ***[is]*** primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods~~*[shall not be considered a hotel]*~~.

(3) "Motel" means an establishment ~~*that*~~***[which]*** provides services similar to that of a "hotel" ***defined***~~*[described]*~~ in subsection (2) of this section, but ~~*that*~~***[which]*** caters mostly to the motor-ing public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) "Restaurant":

(a) Means an establishment ***[which is]*** primarily engaged in selling and serving ~~*[to purchasers at]*~~ retail prepared food and beverages for consumption. This includes establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, ~~*and*~~***[or]*** tea rooms; ***and***

(b) Does not mean:

1. [The term "restaurant" shall not include] Drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and nonalcoholic beverages; or

2. Establishments offering meal service on a boarding or term basis or providing the service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for operation, such as a boarding house;~~;~~ dining facilities of a boarding school, college, or university **that[which]** serves its students and faculty;~~;~~ lunchroom facilities for private and public day school students;~~;~~ and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Retail store" or "service industry" means an establishment seventy-five (75) percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

Section 2. Hotel or Motel. If hotels or motels are primarily engaged in providing lodging facilities, food, and drink to the public, the exemption **established[provided]** for hotels and motels in KRS 337.010(2)(a)6 and ~~[KRS]337.285~~ shall **stand even if[not be defeated because]** the hotel or motel engages in all or some of the following activities:

(1) The operation of valet services offering cleaning and laundering service for the garments of their guests;

(2) News stands;

(3) Hobby shops;

(4) Renting out of their public rooms for meetings;

(5) Lectures;

(6) Dances;

(7) Trade exhibits; or

(8) Weddings.

Section 3. Exemptions from Minimum Wage and Overtime. (1) Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than \$95,000 for the five (5) preceding years, exclusive of excise taxes at the retail level, shall be exempt from both the minimum wage and overtime provisions **[of the statutes]**.

(2) To qualify for this exemption, the establishment shall be recognized as retail in the particular industry. Typically, a retail or service establishment ~~[is one which]~~ sells goods or services to the general public **and[. It]** serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization **that[which]** is at the end of the stream of distribution, disposing in small quantities of the products and skills of the organization and does not take part in the manufacturing process.

(3) To compute the average annual gross volume of sales made for business done, the business shall add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than \$95,000, the establishment shall be exempt.

(a) If the establishment has been in business for less than five (5) years, the gross sales shall be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than \$95,000, the establishment shall be exempt.

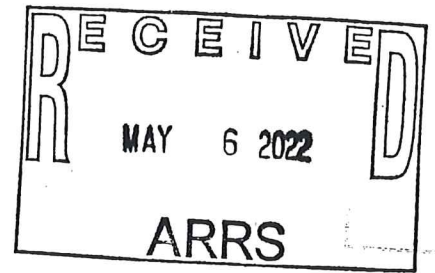
(b) If the establishment has been in business for less than one (1) year, the gross sales shall be totaled for the number of months the establishment has been in business and divided by the number of months. This amount shall then be multiplied by twelve (12). If this amount is less than \$95,000, the establishment shall be exempt.

(c) Excise taxes at the retail level shall not be computed in totaling the gross volume of sales. Excise taxes ~~[which are]~~ levied at the manufacturers, wholesalers, or other distributive level shall not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from Overtime. (1) Employees of retail stores ~~with [whose]~~ principal duties ~~[are]~~ connected with the selling, purchasing, and distributing of goods and employees of a restaurant, hotel, and motel operation. ~~An [any]~~ employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935, ~~27 U.S.C. 213, [;]~~ any sales person, parts person, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers; or any sales person primarily engaged in selling trailers, boats, or aircraft, if the employee is employed by a nonmanufacturing establishment primarily in the business of selling trailers, boats, or aircraft to ultimate purchasers; any driver employed by an employer engaged in the business of operating taxi cabs; employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected and abused and who are in the care of private nonprofit child caring facilities licensed by the Cabinet for Health and Family Services under KRS Chapter 199, and any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person shall be exempt from the overtime provisions of KRS 337.285.

(2) ~~An employee of a retail store with principal duties not connected to [Employees of a retail store whose principal duties are not connected with]~~ the selling, purchasing, and distributing of the goods shall not be considered as exempt employees, ~~and nor shall an employee [nor will employees]~~ of a service establishment ~~that [which]~~ does not sell goods, but is in the business of selling a service.

CONTACT PERSON: Duane Hammons, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-1507, fax (502) 564-5484, email Kenneth.hammons@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

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Deputy Secretary

May 6, 2022


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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, **803 KAR 1:081** and 803 KAR 1:091.

Sincerely,


John Ghaelian
General Counsel
Department of Workplace Standards
Labor Cabinet
Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601

SUGGESTED SUBSTITUTE
Final Version: 4/29/2022 3:22 PM

LABOR CABINET
Department of Workplace Standards

803 KAR 1:081. Board, lodging, gratuities, and other allowances.

RELATES TO: KRS 337.275, 337.285, **29 C.F.R. 531.31 – 531.58**

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. ~~[The function of]~~ This administrative regulation ~~establishes~~~~[is to set forth]~~ what allowances may be credited toward the payment of wages as required KRS Chapter 337.

Section 1. Definitions. (1) "Tip" means a sum presented by a customer as a gift or gratuity in recognition of some service performed. A tip is distinguished from a payment of a charge made for the service.

(2) "Tipped employees" is defined ~~by~~~~[in]~~ KRS 337.010(2)(d).

(3) "Wages" is defined ~~by~~~~[in]~~ KRS 337.010(1)(c).

Section 2. Board, Lodging, and Other Facilities. (1) In accordance with KRS 337.275 and 337.285, an employer may be permitted to include as wages paid to an employee, the reasonable cost of ~~providing~~~~[furnishing]~~ an employee with board, lodging, or other facilities if they are customarily ~~provided~~~~[furnished]~~ by the employer to employees.

(a) Reasonable cost shall not include a profit to the employer or to any affiliated person.

(b) This section shall not prohibit payment of wages in facilities ~~provided~~~~[furnished]~~ either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only ~~if~~~~[where]~~ customarily ~~provided~~~~[furnished]~~ to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but ~~[it is essential that the]~~ acceptance of the facility ~~shall~~ be voluntary and uncoerced.

(2) The criteria for board, lodging, or other facilities being customarily ~~provided~~~~[furnished]~~ as applicable to KRS 337.275 and 337.285 ~~shall be~~~~[are]~~ as established in 29 C.F.R. 531.31.

(3) Other facilities.

(a) The criteria for "other facilities", as applicable to KRS 337.275 and 337.285, ~~shall be~~~~[are]~~ as established in 29 C.F.R. 531.32(a).

(b) The cost of ~~providing~~~~[furnishing]~~ facilities ~~that~~~~[which]~~ are primarily for the benefit or convenience of the employer shall not be recognized as reasonable and shall not be included in computing wages. Facilities primarily for the benefit or convenience of the employer ~~shall~~ include, ~~for example~~~~[but are not limited to]~~:

1. Tools of the trade and other materials and services incidental to carrying on the employer's business;

2. The cost of any construction by or for the employer; and
3. The cost of uniforms and of their laundering, ~~if[where]~~ the nature of the business requires the employees to wear a uniform.

(4) The prohibition of kickbacks, as applicable to KRS 337.275 and 337.285, ~~shall be[is]~~ as established in 29 C.F.R. 531.35.

(5) The criteria for payment ~~if[where]~~ additions or deductions are involved in nonovertime workweeks, as applicable to KRS 337.375 and 337.285, ~~shall be[are]~~ as established in 29 C.F.R. 531.36(a).

(6) Overtime workweeks.

(a) Pursuant to KRS 337.285, ~~an employee[employees]~~ shall receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which the employee is employed. ~~If[When]~~ overtime is worked by an employee who receives the whole or part of his or her wage in facilities and it becomes necessary to determine the portion of wages represented by facilities, all of the facilities shall be measured by the requirements of this administrative regulation.

(b) Deductions may be made on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285.

~~1.[However,]~~ The amount deducted shall not exceed the amount ~~that[which]~~ could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek.

~~2.~~ Deductions in excess of this amount for the items shall be ~~prohibited[illegal]~~ in overtime workweeks as well as in non-overtime workweeks.

~~3.~~ There ~~shall not be a[is no]~~ limit on the amount ~~that[which]~~ may be deducted for board, lodging, or other facilities in overtime workweeks ~~if[provided that]~~ these deductions are made only for the reasonable cost of the items ~~provided[furnished]~~.

(c) ~~If[Where]~~ deductions are made from the stipulated wage of an employee, the regular rate of pay ~~shall be based on[is arrived at on the basis of]~~ the stipulated wage before any deductions have been made. ~~If[Where]~~ board, lodging, or other facilities are customarily ~~provided[furnished]~~ as addition to a cash wage, the reasonable cost of the facilities to the employer shall be considered as part of the employee's regular rate of pay.

Section 3. Payment Made to Person Other than Employee. (1) Amounts deducted for taxes. Taxes~~[which are]~~ assessed against the employee and~~[which are]~~ collected by the employer and forwarded to the appropriate governmental agency ~~shall[may]~~ be included as wages. This principle ~~shall be[is]~~ applicable to the employee's share of Social Security, as well as other federal, state, or local taxes. ~~A deduction shall not[No deduction shall]~~ be made for any tax or share of a tax ~~that[which]~~ the law requires to be borne by the employer.

(2) The criteria for payments to third persons pursuant to a court order, ~~as~~ applicable to KRS 337.275 and 337.285, ~~shall be[are]~~ as established in 29 C.F.R. 531.39(a).

(3) The criteria for payments to an employee's assignee, ~~as~~ applicable to KRS 337.275 and 337.285, ~~shall be[are]~~ as established in 29 C.F.R. 531.40.

Section 4. Payment of Wages to Tipped Employees. (1) Conditions for taking tip credits in making wage payments.

(a) The wage credit permitted on account of tips under KRS 337.275(2) shall be taken only with respect to wage payments made under KRS Chapter 337 to those employees whose occupations in the workweeks for which the payments are made are those of "tipped employees."

(b) To determine **if[whether]** a tip credit may be taken in paying wages to a particular employee, it is necessary to know:

1. What payments constitute tips;
2. **if[Whether]** the employee receives more than thirty (30) dollars a month in payments in the occupation in which the employee is engaged; and
3. **if[Whether]** in the occupation the employee receives these payments in that amount customarily and regularly.

(2) General characteristics of tips.

(a) To qualify as a tip, the customer shall determine:

1. **if[Whether]** a tip is given;
2. The amount of the tip; and
3. Who shall be the recipient of the tip.

(b) Only tips actually received by an employee as money belonging to the employee, which are used as the employee chooses free of any control by the employer, shall be counted in determining **if[whether]** the employee is a tipped employee within the meaning of the KRS Chapter 337 and in applying the provisions of KRS 337.275(2).

(3) The following shall not be considered tips:

- (a) Criteria established in 29 C.F.R. 531.55(a);
- (b) **if[Where]** the employment agreement **includes[is-such]** that amounts presented by customers as tips belong to the employer and shall be credited or turned over to the employer, the employee is in effect collecting for his or her employer additional income from the operations of the employer's establishment. Even though the amounts are not collected by imposition of any compulsory charge on the customer, the employee is not receiving tips within the meaning of KRS Chapter 337.

(4) More than thirty (30) dollars a month in tips. If an employee employed is not a tipped employee, the employee shall receive the full compensation required by KRS Chapter 337 in cash or allowable facilities without any credit for tips received.

(a) Pursuant to KRS 337.010(2)(d), ~~the definition of~~ tipped employee does not require that the calendar month be used in determining **if[whether]** more than thirty (30) dollars a month is customarily and regularly received as tips. A recurring monthly period beginning on the same day of the calendar month may be used.

(b) The fact that an employee is part of a group **that[which]** has a record of receiving more than thirty (30) dollars a month in tips shall not qualify the employee as a tipped employee.

(5) The criteria for "customarily and regularly", as applicable to KRS 337.010(2)(d), **shall be[are]** as established in 29 C.F.R. 531.57.

(6) Criteria for the exception of initial and terminal months of employment from the requirement that a tipped employee receive more than thirty (30) dollars a month in tips **shall be[is]** as established in 29 C.F.R. 531.58.

(7) The tip wage credit. In determining compliance with the wage payment requirements of ~~the statutes, under the provisions of~~ KRS 337.275(2), the amount paid to a tipped employee by an employer **shall be[is]** deemed to be increased on account of tips by an amount equal to the

formula ***established in KRS 337.275(2) if[set forth in statute provided that]*** the employer satisfies all the requirements in the workweek for which the wage payment is made.

(a) This credit ***shall be[is]*** in addition to any credit for board, lodging, or other facilities ***that[which]*** may be allowable under this administrative regulation. The actual amount ***shall be[is]*** left by ***KRS 337.275(2)[the statute]*** to determination by the employer on the basis of the employer's information taken from his or her records concerning the tipping practices and receipts in the establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employee shall receive the maximum in actual tips.

(b) If the employee is receiving less than the amount credited, the employer ***shall be[is]*** required to pay the balance so that the employee receives at least the minimum wage with the combination of wages and tips.

1. The tip credit shall be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee.

2. An employer shall not use any part of an employee's tips to pay the minimum wage to any employee; but may only apply credit toward the payment of the minimum wage to the employee who actually received the tip.

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated as part of the employer's gross receipts, the employer shall pay the employee the full minimum hourly wage.

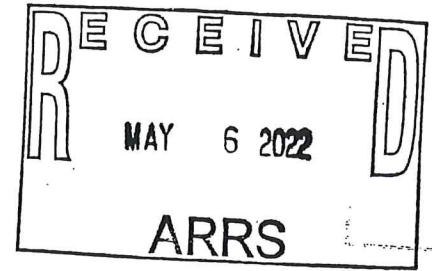
(8) Overtime payments. ***If[When]*** overtime is worked by a tipped employee who is subject to the overtime pay provisions of KRS 337.285, the regular rate of pay ***shall be[is]*** determined by dividing the employee's total remuneration for employment in any workweek by the total number of hours actually worked in that workweek for which the compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of the formula ***established[set forth]*** in ***KRS 337.275(2)[statute]***), the reasonable cost of any facilities ***provided[furnished]*** the employee by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. The tips ***shall not constitute[are not]*** payments made by the employer to the employee as remuneration for employment.

(9) Tip pooling. Pursuant to KRS 337.275(2), employees may enter into an agreement to divide tips among themselves. ***If[Where]*** employees enter into this type of agreement, the amounts retained by the employees ***shall be[are]*** considered tips of the individuals who retain them. ***If[Where]*** an employer requires employees to pool tips, ***[no]*** credit shall ***not*** be taken and the employer shall pay the employee the full minimum wage.

Section 5. Records. ***If[Where]*** an employer uses the reasonable cost of ***providing[furnishing]*** an employee with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it shall be necessary to keep the following records, in addition to those required by KRS 337.320:

- (1) The facility being provided by the employer to the employee; and
- (2) The cost being charged for the facility by the employer.

CONTACT PERSON: Duane Hammons, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601; phone (502) 564-1507, fax (502) 564-5484, email Kenneth.hammons@ky.gov.



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May 6, 2022


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

RE: 803 KAR 1:006, Employer-employee relationship; 803 KAR 1:026, Equal pay provisions, meaning and application; 803 KAR 1:061, Overtime pay requirements; 803 KAR 1:064, Trading time; 803 KAR 1:067, Hours worked, 803 KAR 1:068, Recordkeeping requirements; 803 KAR 1:071, Executive, administrative, supervisory, or professional employees; salesmen; 803 KAR 1:076, Exclusions from minimum wage and overtime; 803 KAR 1:081, Board, lodging, gratuities, and other allowances; 803 KAR 1:091, Workers with Disabilities and Work Activities Centers' employee's wages.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised concerning the above referenced regulations the Kentucky Labor Cabinet proposes the attached amendments to 803 KAR 1:006, 803 KAR 1:026, 803 KAR 1:064, 803 KAR 1:067, 803 KAR 1:068, 803 KAR 1:071, 803 KAR 1:076, 803 KAR 1:081 and 803 KAR 1:091.

Sincerely,


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Final Version: 4/29/2022 4:14 PM

LABOR CABINET
Department of Workplace Standards
(Based on Amended After Comments Version)

803 KAR 1:091. Workers with Disabilities and Work Activities Centers' employee's wages.

RELATES TO: KRS 337.275 - 337.325, 337.285, 29 U.S.C. 201, 29 C.F.R. 525~~[337.345, 337.385-337.405]~~

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to ~~promulgate~~~~[issue]~~ administrative regulations permitting workers with disabilities and work activities centers' employees to be employed at less than the established minimum wage. KRS 337.010(2)(a)5 requires that the wages be ~~established~~~~[set]~~ for a period of time fixed by the commissioner. ~~[The function of]~~This administrative regulation ~~establishes~~~~[is to set]~~ certain standards to be used in obtaining these special rates.

Section 1. Definitions.~~[As used in this administrative regulation, unless the context requires otherwise:]~~

(1) "Commissioner" is defined by KRS 337.010(1)(a).

(2) "Department" is defined in KRS 337.010(1)(b).

(3) "Work Activities Centers" means centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. The purpose of work activities centers is carrying out a recognized program of rehabilitation for workers with disabilities ~~and~~~~[and/or]~~ providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(4) "Worker with a Disability" is defined by 29 C.F.R. 525.3(d).

Section 2. (1) ~~An~~~~[No]~~ employer shall ~~not~~ employ a worker with a disability or work activities center employee at less than the applicable minimum wage, unless the employment has been authorized by a special certificate issued by the commissioner or by the U.S. Department of Labor. The rate of pay and the period of time effective shall be ~~established~~~~[fixed]~~ by the certificate.

(2) ~~If~~~~[When]~~ the minimum wage ~~established~~~~[provided]~~ by KRS 337.275 is less than or equal to the federal minimum wage, the commissioner ~~shall~~~~[will]~~ not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938~~[, as amended]~~ (FLSA), 29 U.S.C. 201. For these persons the employer shall request a certificate from the U.S. Department of Labor. Valid certificates issued by the U.S. Department of Labor, Wage Hour Division, which authorize rates of pay lower than the applicable Kentucky minimum wage, ~~shall~~~~[will]~~ be accepted as authority to pay subminimum wage rates, ~~if~~~~[provided that]~~ the information submitted in the applications is complete and accurate. If there is any reason to believe that the employment is, or may be in the future, subject to the FLSA minimum wage, the federal certificate shall be obtained~~[,]~~ and a state certificate ~~shall~~~~[will]~~ not be necessary.

(3) For workers with disabilities or work activities center employees not covered by the minimum wage provisions of the FLSA, certificates may be issued by the commissioner if all of the requirements for federal certification are met. These requirements ***shall be as published in 29 C.F.R. [are published in Title 29,] Part 525 [of the Code of Federal Regulations].*** For state certification, the commissioner ***shall [will]*** exercise the authority and functions ***that [which]*** the administrator has for the federal certificates.

(4) In the event an employer misuses a certificate in any way, the commissioner reserves the right to revoke the certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the commissioner ***shall [will]*** revoke any authority for payment of less than the minimum wage ***established [provided]*** by KRS 337.275.

(5) Application ***to Employ Workers with Disabilities at Subminimum Wages shall [for Kentucky special minimum wage certificates for workers with disabilities and work activities center employees will]*** be submitted to the Division of Wages and Hours, Kentucky Department of Workplace Standards, Kentucky Labor Cabinet, 500 Mero Street, 3rd floor, Frankfort, Kentucky 40601 and shall be accompanied by the completed federal special minimum wage certificate applications, as appropriate under ***29 C.F.R. Part 525 [Title 29, Part 525 of the Code of Federal Regulations].***

Section 3. Incorporation by Reference. (1) "Application to Employ Workers with Disabilities at Subminimum Wages", April 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workplace Standards, Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Duane Hammons, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-1507, fax (502) 564-5484, email Kenneth.hammons@ky.gov.

KENTUCKY LABOR CABINET
DEPARTMENT OF WORKPLACE STANDARDS
DIVISION OF WAGES AND HOURS
500 MERO STREET, 3RD FLOOR
FRANKFORT, KENTUCKY 40601-4381

**APPLICATION TO EMPLOY WORKERS WITH DISABILITIES
AT SUBMINIMUM WAGES**

This is an application for the authority to employ workers with disabilities at subminimum wage rates under KRS 337.010(2)(a)(5) and 803 KAR 1:091.

Please submit one copy of the completed form along with U.S. Department of Labor Form WH-226 ("Application for Authority to Employ Workers with Disabilities at Subminimum Wages") and Form WH-226A ("Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages"), and any attachments, to the address shown above. Retain a completed copy for your records. A certificate may not be granted unless properly completed applications have been received and approved.

1. REPRESENTATIONS AND WRITTEN ASSURANCES

I certify that I have read this form and to the best of my knowledge and belief, all answers and information given in the application and attachments are true; that the representations set forth in support of this application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true; and I acknowledge that the authorization, if issued or continued, is subject to revocation in accordance with the provisions of 803 KAR 1:091.

I represent that as set forth in the regulations governing the employment of workers with disabilities, the following conditions exist and will continue to exist:

1. Workers employed under the authority in 803 KAR 1:091 have disabilities for the work to be performed;
2. Wage rates paid to workers with disabilities under the authority in 803 KAR 1:091 are commensurate with those paid experienced workers, who do not have disabilities, in industry in the vicinity for essentially the same type, quality, and quantity of work;
3. The operations are and will continue to be in compliance with 803 KAR 1:091, FLSA, PCA, SCA, and Contract Work Hours and Safety Standards Act (CWHSSA), an overtime statute for Federal contract work, as applicable;
4. No deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility;

5. Records required under 29 C.F.R. part 525 with respect to documentation of disability, productivity, work measurements or time studies, and prevailing wage surveys will be maintained.

Further, I certify that:

1. The wage rates of all hourly-rated employees paid in accordance with 803 KAR 1:091 and FLSA section 14(c) will be reviewed at least every six months; and

2. Wages paid to all employees under 803 KAR 1:091 and FLSA section 14(c) will be adjusted at periodic intervals, at least once a year, to reflect changes in the prevailing wage paid to experienced workers, who do not have disabilities, employed in the vicinity for essentially the same type of work.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

Name (print or type)

Title

Signature

Date

2. APPLICATION TYPE

(a) This is a request for authority to employ workers with disabilities in a (*check all boxes that apply*):

____ Community Rehabilitation Program (Work Center)

____ Hospital / Residential Care Facility (Patient Workers)

____ School Work Experience Program (SWEP)

____ Business Establishment

(b) This is (*check one*):

____ Initial Application

____ Renewal Application

Has this employer ever previously applied for a 14(c) certificate? _____ Yes _____ No

Has this employer ever previously held a 14(c) certificate? _____ Yes _____ No

If YES, list the most recently held main establishment certificate number:

3. EMPLOYER INFORMATION

Legal Name of Employer:

Prior Name(s) of Employer (*If Changed Since Last Application*):

Street Address:

Mailing Address (*If Different From Street Address*):

Federal Employer Identification Number (EIN):

Application Contact Person:

Telephone Number:

Fax Number:

Email Address:

4. PARENT ORGANIZATION (IF DIFFERENT FROM ITEM 3)

Legal Name of Parent Organization:

Mailing Address:

_____ Check here if mail is to be sent to parent organization instead of the employer's address listed in Item 3.

5. EMPLOYER STATUS

(a) Status (*check one*): _____ Public (State or Local Government) _____ Private, For Profit
_____ Other (_____)

(b) Is this employer a local or State educational agency? _____ Yes _____ No

6. NUMBER OF ESTABLISHMENTS AND WORK SITES

What is the total number of establishments and work sites, including your main establishment, branch establishment work sites, off-site work locations, or school work experience program sites, to be covered by this certificate? _____

State the number of each type of establishment and work site to be covered by this certificate:

_____ Main Establishment _____ Branch Establishment

_____ Off-site Work Location _____ School Work Experience Program Work Site

7. NUMBER OF WORKERS WITH DISABILITIES

(a) Provide the date that the employer's most recently completed fiscal quarter ended: __/__/__

(b) Provide the total number of workers with disabilities who were employed at subminimum wages during the most recently completed fiscal quarter at all establishments and work sites: _____

(c) Provide the number of workers with disabilities employed at subminimum wages for the same time period in each of the following categories:

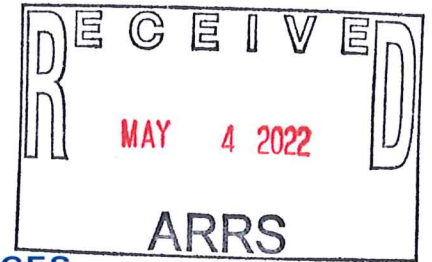
Community Rehabilitation Program (Work Center): _____

School Work Experience Program (SWEP): _____

Hospital/Residential Care Facility (Patient Workers): _____

Business Establishment: _____

**SEND THE COMPLETED APPLICATION ALONG WITH FORM WH-226 AND
FORM WH-226A (AND ANY ATTACHMENTS) TO
THE ADDRESS AT THE TOP OF THE FORM.**



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

Kelli Rodman
Executive Director

May 4, 2022

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

Re: **922 KAR 1:470** suggested amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 1:470, the Department for Community Based Services proposes the attached LRC suggested amendment. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Sarah A. Cooper
Deputy Executive Director
Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR
HEALTH AND FAMILY SERVICES

Staff-suggested Amendment

Version 4/22/2022

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

922 KAR 1:470. Central registry.

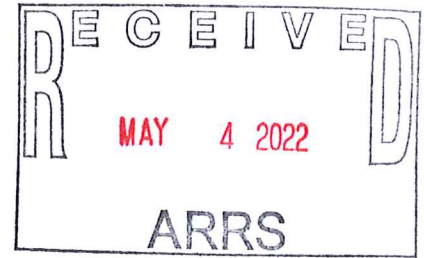
Page 4

Section 3(5)

Line 23

After "an individual", insert "who".

Delete "that".



CABINET FOR HEALTH AND FAMILY SERVICES
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Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **922 KAR 2:280** suggested amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 2:280, the Department for Community Based Services proposes the attached LRC suggested amendments. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Lucie Estill
Executive Staff Advisor
Office of Legislative and Regulatory Affairs



KENTUCKY CABINET FOR
HEALTH AND FAMILY SERVICES

Staff-suggested Amendment

Version 4/22/2022

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Child Care

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

Page 9

Section 5(4)

Line 13

After "background", insert "check".

Delete "check's".

Page 10

Section 6(1)(a)2.c.(v)

Line 17

After "escape and other", insert "offenses".

Delete "offense".

Page 17

Section 9(3)

Line 8

After "review shall include", delete "the following information".